(3)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
S. JACKSON KIMBALL, SPECIAL CIRCUIT COURT JUDGE
Case No. 2015-CP-46-01409
Appellate Case No.: 2016-001921

IN RE:

Deborah Dereede Living Trust dated
December 18, 2013

Hugh Dereede and Tyre Dealer Network
Consultants, Inc., ... Respondents,

v.

Courtney Feeley Karp, Individually and
As Trustee of the Deborah Dereede Living
Trust dated December 18, 2013 and Michael
Fehily, as a qualified beneficiary of the
Deborah Dereede Living Trust dated
December 18, 2013, ... Defendants,

Of which

Courtney Feeley Karp, Individually and
As trustee of the Deborah Dereede Living
Trust dated December 18, 2013 is the, ... Appellant.

RECORD ON APPEAL
VOLUME I OF II

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BALLARD & WATSON
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RECEIVED
AUG 15 2017
SC Court of Appeals

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ATTORNEYS FOR RESPONDENTS

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Certificate of Counsel

STATE OF SOUTH CAROLINA **IN THE PROBATE COURT**

COUNTY OF YORK **CASE FILE NO.: 2014GC4600088**

FILED RECEIVED
2015 MAY -4 AM 10: 22
JUDGE OF PROBATE
YORK COUNTY, SC

IN THE MATTER OF DEREEDE TRUST

COVER SHEET

Hugh Dereede, et al.
PETITIONERS

Courtney Karp, et al.
RESPONDENT

CHECK ONE:
[x] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
[ ] ACTION DISMISSED _____

IT IS ORDERED AND ADJUDGED: [x] See attached Order; [ ] Statement of judgment by the court.

Dated at York, South Carolina, this 4th day of May, 2015.

Carolyn W. Rogers
Judge of Probate

This Order was entered on the 4th day of May, 2015, and copies mailed first class the 4th day of May, 2015, to attorneys of record or to parties (when appearing *pro se*) as follows:

John P. Gettys, Jr., Esquire
P. O. Box 707
Rock Hill, SC 29731

Peter J. Nosal, Esquire
852 Gold Hill Road, #201
Fort Mill, SC 29708

FILED RECEIVED
2015 MAY -4 AM 10: 22
JUDGE OF PROBATE
YORK COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT **ROA 0002**

COUNTY OF YORK) CASE NO: 2014 – GC- 46- 00088

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

ORDER

THIS MATTER is before the Court on Defendant Courtney Feeley Karp's Motion to Remove to Circuit Court and for Attorney's Fees and Costs filed March 13, 2015. Counsel for Defendant Courtney Feeley Karp and the Plaintiff appeared on May 1, 2015 to argue the pending Motion.

Pursuant to South Carolina Code Section 62-1-302 (a)(3) the Probate Court has "exclusive original jurisdiction over all subject matter related to . . . trusts." South Carolina Code Section 62-1-302(d) states that "[n]otwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and related to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court." South Carolina Code Section 62-1-302(d)(4) then provides that proceedings that may be removed include "matters involving the internal or external affairs of trusts as provided

#1 of 2

in Section 62-7-201. . . ."

On December 23, 2014 the Plaintiff initiated the pending case involving the internal affairs of a trust. Defendant Courtney Feeley Karp made a proper and timely motion to remove the matter to Circuit Court in her Answer filed on March 13, 2015.

At the hearing, the Plaintiff argued the reference in S. C. Code Section 62-1-302(d)(4) to Section 62-7-201 allows the Court discretion to retain jurisdiction of the proceeding because of the use of the word "may" in 62-7-201(a) and the general principle that a specific statute overrides a general provision. The Court does not read Section 62-7-201 as providing an alternative to 62-1-302(d)(4) or addressing removal with more specificity, but finds the reference to 62-7-201 is for purposes of illustration. Based on the plain language of Sections 62-1-302(d) and 62-7-201(a) and the Reporter's Comment to Section 62-7-201 regarding the "right" to remove, the Court declines to adopt the Plaintiff's argument. The matter must be removed to the York County Circuit Court.

Defendant Courtney Feeley Karp, through Counsel, made an oral motion for attorney fees and costs pursuant to South Carolina Code Section 62-1-111. Defendant Courtney Feeley Karp's argument for removal prevailed and, as such, the Court concludes, that an award of fees and costs equal to $563.25 is appropriate.

THEREFORE, IT IS HEREBY ORDERED:

1. That this matter be removed to the York County, South Carolina Circuit Court.

2. That Defendant Courtney Feeley Karp's costs and attorney fees in the amount of $563.25 be paid by the Plaintiff.

IT IS SO ORDERED.

Carolyn M. Rogers

May 4, 2015

Carolyn Rogers
Judge of Probate
York County Probate Court

#2 of 2
CWR

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601409

FILED-RECEIVED
2015 JUN 12 AM 10:11
C.C.C.P. & G.S.
YORK COUNTY, SC

PLAINTIFF(S)	DEFENDANT(S)
Hugh Dereede	Tyre Dealer Network Consultants Inc; Holly Feeley Karp; Michael Fehily

Submitted by: Court

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on June 11, 2015, upon Defendants' Motion to Dismiss pursuant to Rule 12(c), SCRCP. Representing the parties were: John P. Gettys, Jr., for Plaintiffs; and, Peter J. Nosal for Defendants.

A motion to dismiss under Rule 12(c) tests the legal sufficiency of a claim or defense after the ". . . pleadings are closed . . ." It is similar to a motion pursuant to Rule 12(b)(6), SCRCP, in that it must be granted if, reviewing the pleadings as a whole, the moving party is entitled to the relief sought as a matter of law. In considering the motion, all allegations of the pleading, and all inferences reasonably deducible therefrom are deemed admitted. *See, e.g., FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct.App. 2002) (standard applied under Rule 12(b)(6), SCRCP). The question is whether, in the light most favorable to the non-moving party, and with every doubt resolved on his behalf, the claim or defense fails as a matter of law. *See, e.g., Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987) (standard applied under Rule 12(b)(6), SCRCP).

Having applied this standard, I find and conclude that Defendants are not entitled to judgment on the pleadings. The pleadings raise an issue of fact to be resolved between the language of the trust agreement and the duty imposed on the trustee, Defendant Feeley-Karp, to satisfy claims against the settlor's estate before making disbursements from the trust. It would be inappropriate to end this case with finality at this juncture without further clarification of the facts and circumstances affecting the legal issues presented. Therefore, it is ordered that Defendants' motion be denied.

AND IT IS SO ORDERED.

JM

#1

ORDER INFORMATION

ROA 0005

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

M Kimball

Special Circuit Court Judge

3063 — **Judge Code**

6/11/2015 — **Date**

For Clerk of Court Office Use Only

This judgment was entered on 6-12-15, and a copy mailed first class or placed in the appropriate attorney's box on 6-12-15, to attorneys of record or to parties (when appearing pro se) as follows:

John P. Gettys Jr. PO Box 707 Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

Peter John Nosal 852 Gold Hill Road #201 Fort Mill, SC 29708-7206

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton bka

Court Reporter: N/A

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED 5/13/16 FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601409

ROA 0006

Hugh Dereede	Tyre Dealer Network Consultants Inc	Courtney Feeley Karp Courtney Feeley Karp Trustee	Michael Fehily Deborah Dereede Living Trust Dated December 18 2013
PLAINTIFF(S)			DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on February 29, 2016, upon Defendant's Motion for Summary Judgment, and Plaintiffs' Motion to Amend the Complaint. Representing the parties were: John P. Gettys for Plaintiffs; and, Peter J. Nosal for Defendant Courtney Feeley Karp.

(1) Defendant's Motion for Summary Judgment:

Summary judgment is appropriate only when there is no genuine issue of material fact, and judgment is warranted as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. Further, the evidence and all reasonable inferences therefrom are viewed in the light most favorable to the non-moving party. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004). The non-moving party need only submit a mere scintilla of evidence to withstand a summary judgment motion where the standard of proof is by a preponderance of the evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

Applying this standard, Defendant is not entitled to summary judgment. Under the facts of this case, it would be inappropriate to end the case at this juncture, and render judgment on the legal issues presented without further clarification of the facts affecting the legal issues presented. Therefore, it is ordered that the motion for summary judgment be denied.

(2) Plaintiffs' Motion to Amend Complaint:

I find and conclude that pursuant to Rule 15, SCRCP, leave to amend should not be granted under the facts and circumstances of this case. The parties have completed discovery, and a trial of the case is scheduled for April 19, 2016. Further, Plaintiffs are permitted to offer evidence of the matters for which amendment is sought, consistent with the allegations and claims already presented by the existing Complaint. Therefore, it is ordered that Plaintiffs' Motion to Amend the Complaint be denied.

AND IT IS SO ORDERED.

ROA 0006

ORDER INFORMATION

ROA 0007

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

M M Kimball

Special Circuit Court Judge | 3063 **Judge Code** | 2/29/2016 **Date**

For Clerk of Court Office Use Only

This judgment was entered on 3/1/16, and a copy mailed first class or placed in the appropriate attorney's box on 3/1/16, to attorneys of record or to parties (when appearing pro se) as follows:

John P. Gettys Jr. PO Box 707 Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

Peter John Nosal 852 Gold Hill Road #201 Fort Mill, SC 29708-7206
Daniel Hardee Harshaw PO Box 977 York, SC 29745

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: N/A

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

#2

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601409

RCA 0008

Hugh Dereede	Tyre Dealer Network Consultants Inc	Courtney Feeley Karp Courtney Feeley Karp Trustee	Michael Fehily Deborah Dereede Living Trust Dated December 18 2013
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before me on March 29, 2016, upon Defendants' motion pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the Court's Order filed March 1, 2016. Representing the parties were: John P. Gettys for Plaintiffs; and, Peter J. Nosal for Defendants.

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to ". . . reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

Therefore, it is ordered that Plaintiff's/Defendant's Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		ROA 0009

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Special Circuit Court Judge	3063 Judge Code	3/29/2016 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John P. Gettys Jr. PO Box 707 Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

Peter John Nosal 852 Gold Hill Road #201 Fort Mill, SC 29708-7206
Daniel Hardee Harshaw PO Box 977 York, SC 29745

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: N/A

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

#2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-46-01409

ROA 0010

Deborah Dereede Living Trust dated December 18, 2013	Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013
Hugh Dereede and Tyre Dealer Network Consultants, Inc.	Michael Fehily, as qualified beneficiary of the Deborah Dereede Living Trust dated December 18, 2013
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: John P. Gettys, Jr.	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED RECEIVED
2016 JUN 15 AM 9:19
DAVID HAMILTON
YORK CO & GS
COUNTY SC

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Deborah Dereede Living Trust dated December 18, 2013, Hugh Dereede and Tyre Dealer Network Consultants, Inc.	Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013	$250,000.00
		$

		$

If applicable, describe the property, including tax map information and address, referenced in the order: ROA 0011

131 Whispering Pines Drive, Clover, SC 29710, Tax Map No. 577-19-01-012

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Spec

Circuit Court Judge

3063
Judge Code

6/13/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of Jun, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of Jun, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

John P. Gettys, Jr.
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Peter Nosal
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ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton /JS
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2015CP46-1409
ROA 0012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF PROBATE
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	CASE NO. 2015-GC-46-01409
IN RE:	)	
Deborah Dereede Living Trust dated December 18, 2013,	)	
Hugh Dereede and Tyre Dealer Network Consultants, Inc.,	)	
Plaintiffs,	)	
vs.	)	**ORDER**
Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013 and Michael Fehily, as a qualified beneficiary Of the Deborah Dereede Living Trust Dated December 18, 2013,	)	
Defendants.	)	

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2016 JUN 15 AM 9:19
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

This matter came before me on April 19, 2016, for a trial. Representing the parties were John P. Gettys for Plaintiffs, and Peter J. Nosal for Defendant, Courtney Feeley-Karp ("Karp" or "Trustee"). Also present were the parties. Michael Fehily did not enter an appearance in this action and was, therefore, not present for the hearing. Both sides presented exhibits and the testimony of witnesses, including Professor Alan Medlin, and the Trust Protector, Catherine Kennedy, each of whom was recognized by the Court as an expert in the field of trust and estate law. Based on the testimony, exhibits, and arguments of counsel, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

The following are findings of fact, presented in narrative format, which I find to be based on all the evidence, and after consideration of any applicable burden of proof. I have also considered the credibility of the witnesses in reaching these findings.

This is a declaratory judgment action brought by Plaintiff, requesting the court interpret certain provisions of the Deborah Dereede Revocable Living Trust dated December 18, 2013 ("Trust"), that became irrevocable upon the death of the Settlor, Deborah Dereede ("Settlor" or "Deborah").

Deborah transferred title of the real property having the address of 131 Whispering Pines Drive, Lake Wylie, South Carolina ("Whispering Pines"), to herself as Trustee simultaneously with the creation of the Living Trust on December 18, 2013, thereby bringing this real property within the corpus of the Trust. This real property was initially purchased with the assistance of $250,000.00 loan from Plaintiff Tyre Dealer Network Consultants, Inc. ("TDN").

Article VI, Section 4(a) of the aforethe Trust Agreement, reads as follows:

> Section 4. Specific Gifts
>
> My Trustee shall make the following specific distribution of trust property.
>
> a. Specific Distribution of Real Estate Sales Proceeds, Household Contents, and Certain Vehicles to HUGH DEREEDE.
>
> As soon as practicable following my death, my Trustee shall sell the house and lot located at 131 Whispering Pines Dr., Lake Wylie, SC 29710. The sales proceeds shall be used first to pay off any mortgage against the property, and second to pay off that certain promissory note given by me to Tyre Dealer Network Consultants, Inc. Said promissory note, at the time of the execution of my Trust, is in the amount of $250,000.00 but in no event shall the amount due exceed one-half of the sales price of the property. After payoff of said mortgage and said note, my Trustee shall then distribute one-half of the remaining net sales proceeds to HUGH DEREEDE, outright and free of trust. The other one-half of the remaining net sales proceeds shall be distributed in accordance with the Articles that follow. Until the sale of the property, HUGH DEREEDE may continue to use and occupy the premises. In addition, my Trustee shall distribute to HUGH DEREEDE, outright and free of trust, all my or my Trust's interest in and to the following items: the HOUSEHOLD CONTENTS OF 131 WHISPERING PINES DR., LAKE WYLIE, SC 29710; THE 2013 CADILLAC CTS; THE 2008 GMC ENVOY; and, the 1999 MAXUM CABIN CRUISER.

Deborah died on August 15, 2014. Thereafter, Karp became Trustee of the Trust and, upon acceptance of this position, Karp assumed fiduciary responsibility to all beneficiaries of the Trust. Subsequent to the death of the Settlor all probate assets of decedent became assets of the Trust pursuant to a Pour Over Will filed and probated in the York County Probate Court. In December, 2014, Whispering Pines was sold to an unrelated third party, with the net proceeds of sale totaling $356,242.86. Both before and after the closing, Plaintiffs, by and through Plaintiff Hugh Dereede ("Dereede") requested from the Trustee assurance that the terms of the Trust would be fulfilled, so that Dereede and TDN would receive each of their distributions immediately upon sale of the real property. The Trustee, citing estate law and fiduciary obligations, refused to distribute monies to Dereede and TDN, as requested.

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In relevant part, Article Six, Section 4.a., of the Trust requires the Trustee to sell the house and lot at 131 Whispering Pines Drive "as soon as practicable" after the Settlor's death, and to distribute the proceeds as follows: first, pay off the mortgage against the property; second, pay the $250,000.00 note owing to TDN; third, pay half the remaining balance of the sales proceeds to Dereede; and fourth and last, pay the other half of the remaining balance in accordance with the lesser prioritized remaining provisions of the Trust, which include possible distributions to the Trustee in her individual beneficiary capacity, and to her brother. This prioritization by the Settlor in Article Six makes particular sense given that $250,000.00 was loaned to the Settlor towards the purchase of Whispering Pines by TDN.

Thereafter, Plaintiff filed an action seeking ". . . a declaration of rights of legal relations . . . relating solely to the construction and interpretation of the Trust Agreement. . . ." In their prayer for relief, they requested the Court to order the proceeds of sale of Whispering Pines paid as directed by the Settlor, to find that the Trustee breached her fiduciary duty to each of the Plaintiffs, and to award attorney's fees and costs for the Trustee's action.

In response, the Trustee filed a Motion for Removal to Circuit Court, Motion to Dismiss, Affirmative Defenses and Answer, in which she, as Trustee, pled Article XIV, Section 21 of the Trust, the no-contest clause, to ". . . disinherit [each] Plaintiff's interest under the Trust and dismiss this suit."

CONCLUSIONS OF LAW

Based on the findings of fact herein, I make the following conclusions of law.

It is axiomatic that "[w]here an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellis, Inc. v. Miccichi,* 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App 2004) (quoting *Heins v. Heins,* 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App. 2001)). As with statutory construction or interpretation, construction and interpretation of a contract is a question of law to be decided by the court. *Hawkins v. Greenwood Development Corp.,* 328 S.C. 585, 493 S.E.2d 875 (Ct.App 1997).

The same rule of construction applies to trust agreements. "(R)esort is first to be had to [the instrument's] language, and if such is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument." *Chiles v. Chiles*, 270 S.C. 379, 383-384, 242 S.E.2d 426, 429 (1978).

1. **Interpretation of Trust Language.**

To determine the intent of the Settlor in the payment of monies from the Trust, and the timeliness of payment, one must look first at the relevant terms of the Trust document. In doing so, I conclude that the plain meaning of the Trust language, expresses the Settlor's intent to prefer (1) the repayment of the note given to TDN, and (2) the distribution to her husband, Dereede, over all other payments and distributions from the Trust.

Article Five, Section 2 of the trust is entitled "Immediate Distribution of Specific Devises", and provides for the distributions to the persons and entities named in Article Six. Article Five, Section 2, provides for distributions from the remainder of the trust only after the distributions made in Article Six. Thus, I conclude that the Settlor's payment and distribution scheme is first to TDN and Dereede pursuant to Article Six, and second, to all other distributions.

Article Five, Section 2, further directs that the distributions to TDN and Dereede be made "[a]s soon as practicable . . ." after the Settlor's death. Article Six provides similarly as to the preference for, and timing of, the payment and distribution to TDN and Dereede. The Settlor's requirement for payment and distribution to TDN and Dereede to be the first priority, and as soon as practicable, should be read, consistent with other provisions, to indicate her intention that such distribution be made sooner than any other distribution, and not be unduly delayed.

A trustee has a duty to follow the directions of the settlor. Although normally a trustee is to treat all beneficiaries fairly, equitably, and impartially, a trustee must treat with partiality any beneficiary that the settlor directs be so treated. Here, the Settlor directed that TDN and Dereede be given first priority as to the distribution required by Article Six. Thus, the Trustee should have prioritized the interests of TDN and Dereede over all other payments and distributions from the Trust, including her own.

The fact that the probate estate had only *de minimus* liquid assets at the time of the sale of Whispering Pines is not necessarily a reason to refuse distribution. The probate estate had other significant assets that could have been liquidated to pay any claims. Moreover, the Trust had approximately $53,000 in funds remaining, even after the payments to TDN and Dereede, which could have been used to pay probate creditors if necessary.

Based on the foregoing, I conclude that the trustee could have, and should have, made the payments and distributions from the proceeds of the sale, as required by Article Five, Section 2, and Article Six of the Trust, without waiting for the creditor's claim time period to expire, and

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without incurring personal liability under S.C. Code Ann. § 62-7-505(a)(3), 62-7-1010(b) and/or 62-3-808.[1]

2. **Truestee's Breach of Duty.**

A trustee, as a fiduciary, is under a duty of loyalty to act solely in the best interest of the beneficiary. *Yates v. Yates,* 292 S.C. 49, 51, 354 S.E.2d 800, 801 (Ct. App. 1987). A trustee must exclude all selfish interest in his dealings on behalf of the beneficiaries. *Cartee v. Lesly,* 290 S.C. 333, 336, 350 S.E.2d 388, 389-90 (1986). While a trustee is entitled to protect himself, a trustee should not put his interests above those of the settlor, and those the settlor intends to benefit. When a trustee is also a remainder beneficiary, and disregards the settlor's directions in order to protect his own beneficial interests over the interest of a preferred beneficiary, the trustee is in breach of his duty. I conclude that to be the case in this instance.

In effect, TDN's position, as indicated by the language of the Trust, is essentially that of a creditor for the repayment of a loan, and the instruction to honor this commitment upon the sale of the real property was explicit. The Trustee's failure to pay TDN upon consummation of the sale of Whispering Pines was a breach of her fiduciary duty. Similarly, based on the clear language of the Trust, the Trustee should have distributed one-half of the net proceeds of sale, after payment of the mortgage lien holder and TDN, to Dereede upon the tolling of the creditor's period.[2] Her failure to do so is, likewise, a breach of her fiduciary duty to Dereede.

In *Cartee, supra*, the Court clearly stated,

> The powers of a trustee are either mandatory or discretionary. A power is mandatory when it authorizes and commands the trustee to perform some positive act and is discretionary when the trustee may refrain from exercising it. (citing *Page v. Page*, 243 S.C. 312, 133 S.E.2d 829 (1963)). Absolute liability arises when the trustee fails to do some mandatory act required by the express terms of the trust instrument. 290 S.C. at 336, 350 S.E.2d at 389.

While she asserts otherwise, I conclude that Karp had no sufficient legal reason for withholding a distribution to either TDN, or Dereede. She was protected from personal liability from making such distributions. S.C. Code Ann. § 62-7-604(b) protects a trustee from personal liability for postmortem distributions from a revocable trust unless the trustee knows about or has

[1] Rather, Dereede would have been subject to any creditor's claim assessable against his beneficial interest, and only in the priority as expressed by the Settlor's preference versus the other Trust beneficiaries S.C. Code Ann. § 62-7-505(a)(3) allows a Settlor to direct the source of payment from a revocable trust when its assets become subject to probate creditors.

[2] The period ended in June, 2015.

received notice of a contest of the trust's validity.[3]

The purpose of the protection afforded distributions pursuant to § 62-7-604(b) is to allow distributions from revocable trusts sooner than would otherwise be allowed by probate. This is consistent with the use of revocable trusts, rather than wills and testamentary trusts, to avoid probate. This Rule is also consistent with the scheme and purpose of the section to allow distributions from a revocable trust before the probate claims period has expired, if a trustee lacks notice of claims about the trust's validity, or the need for trust assets to augment an insolvent estate's ability to pay probate creditors. Under the statute, trust beneficiaries, rather than the trustee, would be subject to reimbursing probate creditors entitled to revocable trust assets to pay their claims. In other words, the Trustee was protected by statute from personal liability for making such distributions, had she made them as directed to be done by the Settlor.

3. **No-contest Clause - Probable Cause.**

No-contest clauses are intended to protect estates from litigation and beneficiary fights over the testator's or trustor's competency, and the amounts bequeathed to each beneficiary. *See Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 12, 633 S.E.2d 722, 725-26 (2006). As a general rule, no-contest clauses are enforceable and work to keep certain aspects of the deceased's private life private. *Id.* However, South Carolina, along with many other states, recognize an exception when the challenger of a trust, or terms of a trust, has probable cause for instituting proceedings. S.C. Code Ann. § 62-7-605. The Restatement provides that probable cause, with respect to will and trust contests, amounts to a reasonable expectation of success in the contest and significant evidence for such expectation. *See* RESTATEMENT 3RD, PROPERTY & WILLS, § 8.5.

In the present case, I find and conclude that probable cause existed for the filing of the suit. First, as discussed above, the Settlor expressed a clear preference for the rights of TDN and Dereede over other beneficiaries. Second, the loan from TDN enabled the Settlor to purchase the subject property of the trust. The no-contest clause applies only to "any devisee, legatee, or beneficiary . . . or legal heirs, or any person claiming under any of them." TDN is a creditor, not a beneficiary. The no-contest clause does not apply to creditors. TDN is entitled to repayment according to the terms of the Trust, regardless of whether it filed a claim as a probate creditor.

The expression of the Settlor's intent to repay TDN and Dereede before any other

[3] § 62-7-604(b) does not specifically and expressly limit the protection of the trustee for distributions to situations involving contests of the trust's validity.

payment or distribution, other than the mortgagee of Whispering Pines, is consistent with her right under § 62-7-505(a)(3) to direct the source of the payment to probate creditors.

Based upon the discussion herein, I conclude that Plaintiffs were justified in seeking the Court's intervention in this regard. Therefore, the necessary probable cause existed, and, as allowed under § 62-7-605, Karp cannot enforce the no-contest clause to defeat their claim.

4. **Bad Faith.**

Although I find and conclude that the Trustee breached her fiduciary duty to both Dereede and Tyre as discussed herein, I do not find that she acted in bad faith. The testimony of Professor Alan Medlin, who was Plaintiffs' expert witness, and the testimony of the Trust Protector, Catherine H. Kennedy, was that they could not say that there was a lack of good faith on the part of the Trustee. My finding and conclusion in this regard is largely based upon the expert opinion of these eminently qualified witnesses.

5. **Attorney's fees and costs.**

S.C. Code Ann. § 62-7-1004 (1976, as amended) provides:

> In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

As pleaded by Plaintiffs, this action involved the administration of the Trust. Under the facts and circumstances of this case, I find and conclude that the equities of the parties, and justice, dictates an award of fees and costs to the Plaintiffs. The amount of the award will be determined in subsequent proceedings in accordance with the order below.

ORDER

Based on the findings of fact and conclusions of law herein, it is declared and ordered as follows:

1. The Trustee was required to distribute $250,000.00 to TDN upon the sale of Whispering Pines.

2. The Trustee breached her fiduciary duty as Trustee by failing to distribute $250,000 to TDN upon the sale of Whispering Pines in payment TDN's loan to the Settlor.

3. The Trustee breached her fiduciary duty as Trustee by failing to pay to Dereede fifty percent of the remaining net proceeds of the sale of Whispering Pines upon the tolling of the claims period, at the latest.

4. TDN is a creditor of the Estate, and therefore, the no-contest clause is not applicable to TDN for the purposes of disallowing TDN's interests due to filing this action.

5. Dereede had probable cause to file this action, and therefore, his claim for payment is not disallowed by the no-contest clause in the Trust.

6. The Trustee did not act in bad faith in her breach of fiduciary duties to TDN and Dereede.

7. Plaintiffs are granted an award of attorney's fees and costs pursuant to S.C. Code Ann. § 62-7-1004 in an amount to be determined by separate order of this Court. Plaintiffs shall submit to the Court an affidavit of attorneys' fees and costs, along with applicable time and billing records, within fifteen days of the date of this Order, and simultaneously, shall serve the same on Defendant Feeley-Karp's counsel. Defendant Feeley-Karp shall have fifteen days to serve and file any objection to the requested award. If objection is made, the Court will hold a hearing to determine the amount of the award. If no objection is timely made, the Court will enter an order granting an award as submitted by Plaintiffs.

ALL OF WHICH IS SO ORDERED.

June 9, 2016

S. Jackson Kimball
Special Circuit Court Judge
York County

#8

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601409 ROA 0020

Hugh Dereede	Tyre Dealer Network Consultants Inc	Courtney Feeley Karp Courtney Feeley Karp Trustee	Michael Fehily Deborah Dereede Living Trust Dated December 18 2013

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER ON MOTION FOR RECONSIDERATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

S/S Jackson Kimball	3063	9/13/2016
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only
ROA 0020

This judgment was entered on **09/13/2016**, and a copy mailed first class or placed in the appropriate attorney's box on **09/13/2016**, to attorneys of record or to parties (when appearing pro se) as follows:

ROA 0021

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF PROBATE
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	CASE NO. 2015-GC-46-01409
IN RE:	)	
Deborah Dereede Living Trust dated December 18, 2013,	)	
Hugh Dereede and Tyre Dealer Network Consultants, Inc.,	)	
Plaintiffs,	)	
vs.	)	**ORDER ON MOTION FOR RECONSIDERATION**
Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013 and Michael Fehily, as a qualified beneficiary Of the Deborah Dereede Living Trust Dated December 18, 2013,	)	
Defendants.	)	

FILED-RECEIVED
2016 SEP 13 AM 9:46
DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, SC

This matter came before me on August 25, 2016, for a hearing on Defendants' Amended Motion for Reconsideration. Representing the parties at the hearing were Daniel J. Ballou and John P. Gettys for Plaintiffs, and Desa A. Ballard for Defendants. The parties were not present at the hearing. Based on the record of the trial of the case and arguments of counsel, I find and conclude as follows.

The purpose of Rule 59(e), SCRCP, is to request the trial judge to ". . . reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted); *Elam v. S.C. Dep't Transp.* 361 S.E. 9, 21-22, 602 S.E.2d 772, 779 (2004). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009). However, ". . . a party usually is allowed to ask a court to reconsider its decision even if it means rehashing all or

part of an argument previously presented." *Elam, supra,* 361 S.E. at 21, 602 S.E.2d at 778-779.

In this instance, Defendants raise a number of distinct issues that warrant specific discussion below.

1. Subject Matter Jurisdiction.

Defendants first challenge the subject matter jurisdiction of the court, and as a related matter, the standing of the parties. This case seeks a declaratory judgment requesting the court to interpret certain provisions of the Deborah Dereede Revocable Living Trust dated December 18, 2013 (the "Trust"). Defendants assert that the trust protector provisions contained in Article Three, Section 8(h), of the Trust establish an exclusive, and extra-judicial, remedy for resolution of disputes, claims or conflict between the beneficiaries the Trust by requiring that all disputes be resolved through a trust protector. They assert that because of this provision, the court does not have subject matter jurisdiction over the case. Defendants offered no authority for the proposition that a trust protector provision such as exists in the Trust deprives the court of subject matter jurisdiction, but argue that the provision operates similarly to an arbitration clause in a contract.

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (Citations omitted). Sec. 8(h) of the Trust begins, "[t]he Trust Protector *may* unilaterally resolve any dispute, claim or conflict between beneficiaries . . . between a beneficiary and a trustee, or between trustees." (Emphasis added.) The permissive nature of this clause indicates an element of discretion on the part of the trust protector, but does not suggest an exclusive venue for resolution of all disputes.

The second paragraph of Sec. 8(h) provides that "[n]o one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution." This language of the Trust suggests that the trust protector mechanism is intended to be a form of alternative dispute resolution, not a jurisdictional bar that would preempt the jurisdiction of this Court. This is not unlike the ADR Rules applicable to nearly all civil actions.

This case was brought as a declaratory judgment, seeking interpretation of the terms of the Trust, and removed to this Court pursuant to S.C. Code Ann. § 62-1-302(d)(4). I find and conclude that it is the kind of case this court is empowered to hear. S.C. Code Ann. § 62-7-201(a). Thus, this Court has subject matter jurisdiction.

At the time this dispute arose, no trust protector had been appointed under the Trust. Although Defendants requested, with the Plaintiffs consent, to the appointment of Catherine Kennedy to serve as trust protector in this matter, such appointment did not occur until late in the litigation, after substantial discovery had occurred, and numerous motions had been filed, and subsequently heard, by this Court. Moreover, it is clear from the record that Ms. Kennedy was not asked to ". . . unilaterally resolve any dispute . . . ." Rather she was asked to advise what the trustee should do to resolve the parites' dispute, and to render an opinion as to whether the trustee acted in good faith. (Tr. 207-212.) Even then, she specifically declined to render an opinion as to probable cause on the part of the Plaintiffs, stating, "I think that's for the Court to determine." (Tr. at 223.) While her qualifications as an expert witness were unassailable, her testimony at trial was inconsistent with the arbiter role of a trust protector in the form described in the Trust, and it is apparent that the parties did not treat her as such in this case.

Significantly, this issue has not been raised heretofore in this case.[1] On the contrary, Defendants made no motion under Rule 12(b) to object to subject matter jurisdiction, and took action themselves invoke this court's jurisdiction by removing the case from the Probate Court. Further, they have actively participated in the litigation since its filing. I therefore conclude that both by the language used in the trust, and the conduct of the parties in applying the trust protector provision, Art. Three, Sec. 8(h) does not deprive this court of subject matter jurisdiction to hear this case. Moreover, even if Defendants had the right under the Trust to require resolution of this dispute by a trust protector, I find and conclude they have waived that right, just as one can effectively waive the right to arbitration.

2. <u>Standing</u>.

Related to the question of subject matter jurisdiction, Defendants assert that under Art. Three Sec. 8(h), no person has standing to file a civil claim without first submitting it to the trust protector. Similarly, they argue that if Tyre Dealer Network Consultants, Inc. ("TDN") is determined to be a mere creditor of the estate, it does not have standing at all to assert claims under the Trust, and its remedy was limited to filing a creditor's claim against the estate.

As noted above, I find and conclude that Art. Three, Sec. 8(h) does not deprive this court of subject matter jurisdiction. Nevertheless, I would note that both Plaintiffs' expert and

[1] I certainly recognize that the issue of subject matter jurisdiction may be raised at any time, and thus, can be raised at this juncture. Even so, Defendants have litigated this case in such a way that subject matter jurisdiction was obviously never a consideration of theirs.

Defendants' expert, who was the trust protector, testified that TDN could be either a beneficiary, or a creditor, and that given the intent of the Settlor determined from the plain language of the Trust, it could be both. (Tr. 140-41, 217-19.) Because the Settlor saw fit to specifically require payment of the TDN loan out of the Trust, requiring it to separately file a creditor's claim against the estate would present an issue of double recovery, and would be contrary to the Settlor's intent. In any event, I find and conclude that these issues do not create a bar to Plaintiffs for lack of standing.

3. **Interpretation of the Trust.**

Defendants assert that the Trust is inherently ambiguous, precluding any finding of clear evidence of intent with respect to the order of distribution under the Trust. Whatever inconsistencies may exist in the Trust document, the critical language pertaining to prioritizing distributions could not be more plain. Those provisions, under Art. Five, Sec. 2, clearly require the payment and distribution scheme asserted by Plaintiffs, and establish an order of distributions that mandates payments to Plaintiffs ahead of other distributions. As a result, I decline to reconsider any of the findings or conclusions relating to prioritization or partiality of payment.

As for the grounds asserted regarding the trustee's justification for refusing to make payments to the Plaintiffs, I decline to reconsider the findings and conclusions contained in the Order. I specifically note that the trustee herself is a licensed attorney familiar with the law, and possesses greater knowledge of the obligations of a trustee and the legal requirements of a fiduciary. Additionally, while Defendants contend that the trustee was justified in delaying payments because of the possibility of a subsequent will of the Settlor, there is no evidence that any such will was ever alleged or presented. I find that using the possibility of a subsequent will as justification to disregard the clear language of the Trust is speculative and pretextual.

4. **Probable Cause.**

I further decline to reconsider my Order finding that Plaintiffs had probable cause to bring this action and did not violate the "no contest" clause of the Trust. Because of the clear intent of the Trust to require preferential distribution to Plaintiffs, the fact that the Trustee relies on arguments outside the plain language of the Trust to justify nonpayment, and the uncontroverted opinion testimony of Professor Medlin regarding probable cause, I conclude that the original determination of this issue in the Order is correct. (Tr. 158-163; 175; 224.)

5. **Attorney's Fees.**

S.C. Code Ann. § 62-7-1004 (1976, as amended) provides:

> In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

The award of fees under this statute is not limited by the terms or conditions of the Trust, and can be made in favor of any party, not simply to the beneficiaries of the Trust, and against any party. *Id.* In light of my finding that the trustee breached her fiduciary duty to Plaintiffs, and the facts and circumstances of this case, I find that justice and equity require an award of fees to the Plaintiffs, and I choose not to alter or amend the Order in that regard. The separate question of the amount of fees to be awarded will be the subject of a petition for fees and costs to be submitted by Plaintiffs, and will be resolved after a hearing on that issue at a separate time.

6. **Individual Liability of the Trustee.**

Concerning remedies for breach of trust, S.C. Code Ann. § 62-7-1001(1976, as amended) provides:

> (b) To remedy a breach of trust that has occurred or may occur, the court may:
>
> . . . . . .
>
> (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
>
> . . . . . .
>
> (10) order any other appropriate relief.

Defendants assert that defendant Courtney Feeley-Karp is not liable individually for payment of damages to Plaintiffs, since her actions were taken in her role as trustee under the Trust. While it is true that the Order specifically only finds Ms. Feeley-Karp liable for actions as trustee, that does not insulate her from personal liability, or limit recovery to whatever amount she may be entitled to as a trust beneficiary. If Ms. Feeley-Karp was not a beneficiary of the trust and recovery was limited to a trustee's entitlement under the trust, recovery against her for breach of trust would be frustrated. That would lead to an absurd result, frustrating Plaintiffs' recovery of damages for the trustee's malfeasance. Nor does the Order limit recovery by Plaintiffs to the value of the assets of the trust.

This determination applies to the statutory provision for the award of attorney's fees and

costs. Ms. Feeley-Karp may be ordered to pay money, and the court may find her to be personally liable for such payment as "any other appropriate relief." Accordingly, I do not alter or amend my findings or conclusions pertaining to her individual liability.

CONCLUSION

Based upon the record presented from the trial of this case, and the memoranda and arguments submitted by counsel for the parties, I find no matter presented that was not addressed expressly, or by clear implication, in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order. Therefore, I conclude that Defendants' motion must be denied.

AND IT IS SO ORDERED.

September 12, 2016

S. Jackson Kimball
Special Circuit Court Judge
York County

#6

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4601409

ROA 0028

Hugh Dereede	**Tyre Dealer Network Consultants Inc**	**Courtney Feeley Karp Courtney Feeley Karp Trustee**	**Michael Fehily Deborah Dereede Living Trust Dated December 18 2013**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION
ORDER FOR ATTORNEY FEES

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

S/ S JACKSON KIMBALL	3063	11/8/2016
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **11/8/2016**, and a copy mailed first class or placed in the appropriate attorney's box on **11/8/2016**, to attorneys of record or to parties (when appearing pro se) as follows:

ROA 0029

John P. Gettys Jr. PO Box 707 Rock Hill, SC 29731

Peter John Nosal 852 Gold Hill Road #201 Fort Mill, SC 29708-7206
Daniel Hardee Harshaw PO Box 977 York, SC 29745
Desa Ballard PO Box 6338 West Columbia, SC 29171-6338

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	Case No.: 2015-CP-46-01409
Hugh Dereede and Tyre Dealer Network Consultants, Inc.	)	
Plaintiffs,	)	**ORDER FOR ATTORNEY'S FEES**
v.	)	
Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust Dated December 18, 2013 and Michael Fehily, as a qualified beneficiary of the Deborah Dereede Living Trust Dated December 18, 2013,	)	
Defendants.	)	

FILED-RECEIVED
2016 NOV -8 AM 11:14
DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, S.C.

This matter came before me on September 21, 2016, upon Plaintiffs' petition for attorney's fees and costs pursuant to S.C. Code Ann. § 62-7-1004 (1976, as amended). Plaintiffs filed an Affidavit of Attorney's Fees and Costs on June 21, 2016, and Defendants filed a Return to Affidavit of Attorney's Fees and Costs ("Return") on July 5, 2016. Plaintiffs filed a Supplemental Affidavit of Attorney's Fees on July 14, 2016 ("Supplemental Affidavit"), and an updated Affidavit of Attorney's Fees on September 29, 2016. Defendants filed a Return to Updated Affidavit of Attorney's Fees and Costs on October 10, 2016.

By previous Order dated June 9, 2016 ("Order"), I made specific finding of fact and conclusions of law supporting the Plaintiffs' claims in this action, which are incorporated by reference herein. I previously found that an award of attorney's fees and costs in this case was appropriate "as justice and equity may require", as set forth in S.C. Code Ann. § 62-7-1004 (1976, as amended). In this case, Plaintiffs are "the prevailing party" with regard to the claims asserted herein.

Based upon the Trustee's refusal to make distributions in accordance with the terms of the Trust, I find that justice and equity require the assessment of fees and costs against her. While I did not find that the Trustee acted in bad faith, I found and concluded that she had violated her fiduciary duties to Plaintiffs, and that probable cause existed for the bringing of this action against her. By order dated September 13, 2016, I declined to reconsider the findings of

#1

fact and conclusions of law in the Order ("Order on Motion for Reconsideration").

In support of their application for an award of attorney's fees, Plaintiffs have submitted affidavits detailing fees and costs incurred by Plaintiffs in prosecuting this matter, and an updated statement of fees incurred has been provided to the Court. Those affidavits reflect fees totaling $42,232.00 incurred by Plaintiffs through July 11, 2016, and an additional $4,582.50 incurred since July 11, 2016, for a total of $46,814.50. Plaintiffs also incurred costs of $21,129.89, including expert witness fees, incurred prior to and at trial, totaling $17,400.00.

There are six factors the court must consider in determining an award of attorney's fees: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991); *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). Each factor is addressed separately as follows.

Nature, extent and difficulty of legal services.

This case arose in the context of a dispute between beneficiaries of the Deborah Dereede Revocable Living Trust dated December 18, 2013 ("Trust"), which became irrevocable upon the death of the Settlor, Deborah Dereede ("Settlor"). The primary asset of the Trust was real property located at 131 Whispering Pines Drive, Lake Wylie, South Carolina (the "Property"), which was purchased by the Settlor with the assistance of funds loaned by Tyre Dealer Network Consultants, Inc. ("TDN"), a company owned wholly by Hugh Dereede ("Dereede"). The Trust provided that as soon as practicable after the Settlor's death, the Property shall be sold, with the proceeds ". . . used first to pay off any mortgage against the property, and second to pay off that certain promissory note given by me to Tyre Dealer Network Consultants, Inc." One half of the remaining net sales proceeds were then directed to be paid to Dereede outright, and free of trust. The Settlor died on August 15, 2014, and the Property was sold in December of 2014.

As set forth in my previous Order, upon the sale of the Property, the plain language of the Trust required repayment of the promissory note to TDN, and immediate distribution of one-half of the net sales proceeds to Dereede, before all other payments or distributions under the Trust.

This case has been characterized by numerous pretrial and post-trial motions, objections and hearings. It has required the application of the South Carolina Probate Code and case law from this and other jurisdictions. It has also involved issues arising from the appointment of a trust protector.

The trial of this case required the preparation and presentation of extensive testimony and examination of two expert witnesses, and the examination of the Trustee, who is a practicing attorney licensed in another state.

In light of these factors, I find and conclude that the nature, extent and difficulty of legal services provided are reasonable and justify the award herein.

Time and Labor Devoted to the Case.

Plaintiffs' Counsel conducted extensive factual investigation, legal research, and responded to numerous motions filed by the Trustee, and preparation of the case for mediation and trial. Plaintiffs' counsel estimates more than 186 hours of time were devoted to this case through April, 2016, and additional time has been incurred since then as set forth in the invoices attached to the affidavits submitted herein. Since the Order was issued, the Trustee filed a Motion for Reconsideration and Amended Motion, which required extensive review of the trial transcript and motions in the case, and a separate hearing. I find and conclude that the time and labor devoted to this case reflected by the affidavits submitted by counsel is reasonable and fair.

Additionally, the amount in dispute, and the fact that the Trustee asserted the forfeiture provisions of the Trust to nullify any entitlement of Plaintiffs, made this case particularly difficult, and warranted the attorney time expended.

Professional Standing of Counsel.

Plaintiffs' Counsel is an experienced and competent attorney. His practice involves a substantial of probate work, and I have found him to be very knowledgeable in the case law involving probate matters, and the Probate Code in particular. He and his firm are well-respected in the community, and frequently appear before this court.

Contingency of Compensation.

Plaintiffs' Counsel was paid an hourly fee for his services. Payment was not contingent on the success of this motion or the outcome of the case.

Fees Customarily Charged for Similar Services.

Plaintiffs' Counsel charged his clients a rate of $250 per hour. Counsel's hourly charges are commensurate with those charged by similarly-experienced attorneys in this geographic area, and in this area of practice.

Beneficial Results Obtained.

Counsel's efforts resulted in the Order requiring payment of proceeds in accordance with the terms of the Trust, which had been refused by the Trustee since the sale of the Property.

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There is no question that Counsel's efforts obtained a beneficial result for his clients, satisfying this factor in the award of fees and costs.

Defendants' objection to award.

In her Returns, the Trustee opposed and objected to the award of any attorney's fees or costs, asserting that they were not awardable at all. The Trustee did not oppose any particular entry of charges in the Affidavits, or the amount sought by Plaintiffs. Moreover, the Trustee does not dispute the reasonableness of the fees sought, the standing of counsel or the suggested analysis of the fees charged. The legal grounds asserted by the Trustee in opposition to the award of fees at all are resolved in my prior Order, which is incorporated herein by reference.

Finally, prior to the July 14, 2016 Supplemental Affidavit, the Trustee objected to the filing of an amended affidavit setting forth additional facts and circumstances in support of the Plaintiffs' petition. I find no basis for excluding of the affidavit filed herein, and therefore overrule that objection.

In summary, I have considered each of the relevant factors, and find that an award of attorney's fees of $46,814.50 and costs of $21,129.89 is reasonable under the facts of this case. Therefore, based upon the findings and conclusions herein, it is ordered that Plaintiffs are entitled to recover from the Trustee attorney's fees in the amount of $46,814.50, and costs of $21,129.89.

AND IT IS SO ORDERED.

November 4, 2016

S. Jackson Kimball, III
Special Circuit Court Judge
York County

#4

STATE OF SOUTH CAROLINA)
)
) **APPOINTMENT OF TRUST PROTECTOR**
COUNTY OF YORK)

FILED
2016 FEB 26 AM 9:46
DAVID HAMILTON C.C.P.&G.S.
YORK COUNTY, SC

WHEREAS, the Deborah Dereede Living Trust under agreement dated December 18, 2013 ("the Trust") was established by Deborah Dereede as Settlor and Trustee; and

WHEREAS, Deborah Dereede died on August 15, 2014; and

WHEREAS, Article Three (Trustees) of the Trust includes Section 8 (Trust Protector Provisions) that states "the function of the Trust Protector is to protect the financial resources controlled and governed by my Trust and interests of the beneficiaries;" and

WHEREAS, the Trust Protector must be independent and be accessible to all beneficiaries and Trustees; and

WHEREAS, the Trust Protector shall be independent and only interest will be to protect the financial resources governed by the Trust and beneficiaries thereto; and

WHEREAS, Article Three, Section 8(f)(Consultation) states that "my Trustee is authorized to consult with the Trust Protector as to any matter relating to the investment of assets, discretionary distributions and the use of principal, tax matters, dealings with beneficiaries, and any other matter relating to the administration of my Trust in keeping with the objectives and purpose of this Trust agreement;" and

WHEREAS, Article Three, Section 8(a)(Appointment of Trust Protectors) states "in the event a Trust Protector is needed to act, the First Successor Trustee who is independent . . . shall act as Trust Protector, or if no individual is available, a majority of the Successor Trustees designated under Section 4 of this Article, shall have the right to designate by written instrument a Trust Protector who is qualified;" and

WHEREAS, Article Three, Section 4 lists the current Trustee, Courtney Feeley Karp, as the first successor Trustee and Hugh Dereede as the next successor Trustee, and neither can serve as Trust Protector because they are interested parties; and

WHEREAS, Catherine H. Kennedy is qualified to serve as Trust Protector because she is independent, assisted in the drafting of South Carolina Trust Code provisions that are the basis of the ongoing dispute between the parties, and is a licensed South Carolina attorney who is experienced in Trust, Estate, and Probate matters; and

NOW, THEREFORE, in consideration of the above and in accordance with the Trust:

(1) Courtney Feeley Karp and Hugh Dereede, do hereby make, publish and declare this to be their written designation that Catherine H. Kennedy be appointed to serve as Trust Protector for the Trust.

(2) Catherine H. Kennedy hereby accepts her appointment as the Trust Protector of the Trust effective as of the date hereof and agrees to exercise all duties and responsibilities assigned to the Trust Protector of the Trust as set forth in the Trust.

[SIGANTURE PAGES FOLLOW]

IN WITNESS WHEREOF, I, Courtney Feeley Karp, have executed this Designation of Appointment of Trust Protector for the Deborah Dereede Living Trust Dated December 18, 2013 on October 22, 2015.

(SEAL)
COURTNEY FEELEY KARP as Trustee of the Deborah Dereede Living Trust Dated December 18, 2013.

Witness: Starr T. Hallett

Witness: Naziold Islamaj

STATE OF MASSACHUSETTS)
COUNTY OF Plymouth)

PROBATE

Personally appeared before me the undersigned witness, who, being duly sworn, says that he saw the within named COURTNEY FEELEY KARP sign, seal and as her act and deed deliver the foregoing instrument, and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Witness

Subscribed and sworn to before me
on the 22 day of October, 2015

Notary Public for Massachusetts
My commission expires on: 12/14/18

NAZIOLD ISLAMAJ
Notary Public
Commonwealth of Massachusetts
My Commission Expires December 14, 2018

IN WITNESS WHEREOF, I, Hugh Dereede, have executed this Designation of Appointment of Trust Protector for the Deborah Dereede Living Trust Dated December 18, 2013 on October 23, 2015.

_____ (SEAL)
HUGH DEREEDE as Successor Trustee of the Deborah Dereede Living Trust Dated December 18, 2013.

_____
Witness: Lynn Blackwell

_____
Witness: Rosalind Watson

_____)
)
_____) PROBATE

Personally appeared before me the undersigned witness, who, being duly sworn, says that he saw the within named Hugh Dereede sign, seal and as his act and deed deliver the foregoing instrument, and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____
Witness

Subscribed and sworn to before me
on the 23 day of October, 2015

_____
Notary Public for Ontario
My commission expires on: N/A

IN WITNESS WHEREOF, I, Catherine H. Kennedy, have executed this Acceptance of Appointment of Trust Protector for the Deborah Dereede Living Trust Dated December 18, 2013 on October ____, 2015.

_____ (SEAL)
CATHERINE H. KENNEDY

_____

Witness:

_____

Witness:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

Personally appeared before me the undersigned witness, who, being duly sworn, says that he saw the within named CATHERINE H. KENNEDY sign, seal and as her act and deed deliver the foregoing instrument, and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____
Witness

Subscribed and sworn to before me
on the _____ day of _____, 2015

_____
Notary Public for South Carolina
My commission expires on: _____

FILED RECEIVED
2014 DEC 22 PM 3:26
JUDGE OF PROBATE
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	IN THE COURT OF PROBATE
COUNTY OF YORK	SIXTEENTH JUDICIAL CIRCUIT
	CASE NO. 2014-GC-46-_____
IN RE: Deborah Dereede Living Trust dated December 18, 2013, Hugh Dereede and Tyre Dealer Network Consultants, Inc., Plaintiffs, vs. Courtney Feeley-Karp, individually And as Trustee of the Deborah Dereede Living Trust dated December 18, 2013 and Michael Fehily, as a qualified beneficiary Of the Deborah Dereede Living Trust Dated December 18, 2013, Defendants.	COMPLAINT NON-JURY

Plaintiffs, Hugh Dereede and Tyre Dealer Network Consultants, Inc. (hereinafter "Plaintiffs")bring this action for a declaration of rights or legal relations involving Courtney Feeley-Karp individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013 (hereinafter "Feeley-Karp") and Michael Fehily (hereinafter "Fehily"), as a Qualified Beneficiary of the Deborah Dereede Living Trust dated December 18, 2013 (hereinafter "Trust Agreement"), relating solely to the construction and interpretation of the Trust Agreement (attached hereto as Exhibit A), as set forth below.

1. The Plaintiff Hugh Dereede is a citizen and resident of Canada and

is a beneficiary of the Deborah Dereede Living Trust dated December 18, 2013, which was executed in York County, South Carolina.

2. The Plaintiff Tyre Dealer Network Consultants, Inc. is a Canadian corporation which provided a loan for the purchase of 131 Whispering Pines Drive, Lake Wylie, SC to decedent and is also beneficiary of the Trust Agreement.

3. The Defendant, Courtney Feeley-Karp is a citizen and resident of the State of Massachusetts and is Trustee of the aforesaid Trust; and a beneficiary of the same Trust.

4. The Defendant, Michael Fehily is a citizen and resident of the State of Texas, and also a beneficiary of said Trust.

5. This action involves a dispute relative to the refusal to distribute assets by the Trustee of the Deborah Dereede Living Trust dated December 18, 2013 as required under the terms of the Trust. The dispute centers around language related to the disposition of the sales proceeds of the sale of 131 Whispering Pines Drive, Clover, South Carolina.

JURISDICTION

6. This Court has subject-matter jurisdiction over this action pursuant to S.C. Code Ann. § 62-7-201(a)(1987).

7. Pursuant to S.C. Code Ann. § 62-7-108 (1987) and Article Fourteen, Section 18 of the Trust Agreement, the terms of this Trust shall be governed by the laws of the State of South Carolina which is the location of the Decedent's

residence, the proceeds of the sale of which requires this Court's interpretation of said Trust.

8. The Court has personal jurisdiction over Defendant Feeley-Karp because she, pursuant to S.C. Code Ann. § 62-7-202(a) (1987), accepted the role of Trustee of the Trust Agreement which has its principal place of administration in South Carolina.

9. The Court has personal jurisdiction over Defendant Fehily because, pursuant to S.C. Code Ann. § 62-7-202(b) (1987), he is a Qualified Beneficiary of the Trust Agreement having its principal place of administration in South Carolina.

BACKGROUND

10. Previously, Deborah Dereede (the "Decedent") transferred ownership of a certain tract of property located in York County, South Carolina, being more particularly described as 131 Whispering Pines Drive, Clover, South Carolina to herself as Trustee and her successors in Trust by deed dated December 18, 2013 recorded on December 18, 2013 in Book 13883 at Page 240 of the Office of the Clerk of Court for York County, South Carolina.

11. Subsequent to Decedent's death the subject property was contracted for sale to an unrelated third party by Feeley-Karp, as Trustee. Subsequent to being put under contract the Trustee has refused to acknowledge her responsibility and, in fact disputes her responsibility, to

distribute the proceeds of sale as required under Article Six Section 4(a) of said Trust.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

12. The preceding paragraphs are realleged and incorporated herein by reference as if fully set forth verbatim to the extent not inconsistent herewith.

13. This cause of action is brought pursuant to the Uniform Declaratory Judgment Act, Sections 15-53-10, *et.seq.*,of the South Carolina Code of Laws, 1976, as amended, and this Court has jurisdiction over the matter.

14. Subsequent to the sale of 131 Whispering Pines Drive, the Trustee is required to follow the wishes of the initial Trustee as set forth in Article VI, Section 4(a) of the aforesaid Trust Agreement, which reads as follows:

> *Section 4. Specific Gifts*
>
> *My Trustee shall make the following specific distribution of trust property.*
>
> *a. Specific Distribution of Real Estate Sales Proceeds, Household Contents, and Certain Vehicles to HUGH DEREEDE*
>
> *As soon as practicable following my death, my Trustee shall sell the house and lot located at 131 Whispering Pines Dr., Lake Wylie, SC 29710. The sales proceeds shall be used first to pay off any mortgage against the property, and second to pay off that certain promissory note given by me to Tyre Dealer Network Consultants, Inc. Said promissory note, at the time of the execution of my Trust, is*

in the amount of $250,000.00, but in no event shall the amount due exceed one-half of the sales price of the property. After payoff of said mortgage and said note, my Trustee shall then distribute one-half of the remaining net sales proceeds to HUGH DEREEDE, outright and free of trust. The other one-half of the remaining net sales proceeds shall be distributed in accordance with the Articles that follow. Until the sale of the property, HUGH DEREEDE may continue to use and occupy the premises. In addition, my Trustee shall distribute to HUGH DEREEDE, outright and free of trust , all my or my Trust's interest in and to the following items: the HOUSEHOLD CONTENTS OF 131 WHISPERING PINES DR., LAKE WYLIE, SC 29710; THE 2013 CADILLAC CTS; THE 2008 GMC ENVOY; and, the 1999 MAXUM CABIN CRUISER.

15. The real property in question was sold to a third party on December ___, 2014, with the proceeds of sale made payable to said Trustee.

16. The Trustee has refused to distribute the proceeds as required pursuant to the terms of the Trust, as is evidenced by her withholding such monies and subsequent failure to forward such proceeds as required. Further, the Trustee has clearly expressed her intention not to follow the terms of the Trust by email (attached hereto as Exhibit B) and incorporated herein.

17. Article Five, Section 2 clearly requires the Trustee to pay such monies to Plaintiffs wherein it directs:

ARTICLE FIVE – TRUST ADMINISTRATION AT MY DEATH

SECTION 2. Immediate Distribution of Specific Devises

As soon as practicable after my death, my Trustee shall make certain distributions from my Trust Estate in the manner and amounts and to the persons and/or entities specified in Article Six of my Trust Agreement. The remainder of my Trust Estate, after all the foregoing distribution have been made, and including any lapsed gifts (unless otherwise stated in Article Six), shall be held, administered and distributed as set forth in Section 3 of this Article.

18. That by reason of accepting the position as Trustee, Defendant Courtney Feely-Karp has a fiduciary relationship to the Trust and its beneficiaries.

18. During the time of this fiduciary relationship, and by failing to distribute said funds as required, Defendant Courtney Feely-Karp has violated her duty of good faith, loyalty, honesty and fair dealing owed to the beneficiaries.

19. The Plaintiff, Tyre Dealer Network Consultants, Inc., is informed and believes that it is entitled to an Order of this Court finding and declaring that the Trustee is required to disburse such monies to Tyre Dealer Network Consultants, Inc. as per the plain meaning of Article Six, Section 4 (a) pursuant to Article Five, Section 2 of said Trust.

20. Further, the Plaintiff, Hugh Dereede, is informed and believes that he is entitled to an Order of this Court requiring the Trustee to divide the net

proceeds from such sale, after payment to Plaintiff Tyre Dealer Network Consultants, Inc., such that he receives a sum certain as was the wishes of the decedent, directed in Article Six, Section 4(a) of said Trust Agreement.

FOR A SECOND CAUSE OF ACTION

(Probable Cause)

21. Each and every allegation set forth in the preceding paragraphs is realleged and incorporated herein by reference to the extent not inconsistent herewith.

22. Article Fourteen, Section 21 of the Trust Agreement, is a "no contest" provision that purports to discourage challenges to the validity of the Trust and challenges to any action taken or proposed to be taken in good faith by the Successor Trustee.

23. Pursuant to S.C. Code Ann. § 62-7-605, a no contract clause is unenforceable if probable cause exists for institutioning a proceeding.

24. Plaintiff has probable cause to challenge the Defendant Trustee's actions as described hereinabove, especially in light of Defendant's assertions found in Exhibit B.

FOR A THIRD CAUSE OF ACTION

(Litigation Costs)

25. Each and every allegation set forth in the preceding paragraphs is

realleged and incorporated herein by reference to the extent not inconsistent herewith.

26. All allegations made hereinabove are repeated and realleged herein.

27. Plaintiff's are informed and believes that they are entitled to an award from the Trust, or from the Defendant Feeley-Karp's distribution of said Trust, for the costs of this action, including reasonable attorney fees, pursuant to the terms of the Trust.

WHEREFORE, the Plaintiff prays for the following:

(a) For an Order finding that the proceeds of sale of 131 Whispering Pines Drive, Clover, South Carolina shall be paid as mandated by Decedent through the plain language of Article Six Section 4(a) of the Deborah Dereede Living Trust Agreement dated December 18, 2013; and

(b) For an Order of the Court finding that Courtney Feely-Karp breached her fiduciary duty owed to each of the Plaintiffs, and awarding actual and punitive damages to the Petitioner; and

(c) For an amount of attorneys fees and costs due Plaintiff pursuant to the terms of the Trust for the Trustee's actions in withholding such proceeds from sale.

(d) And for such other and further relief as this Court may deem just

and proper.

John P. Gettys, Jr.
Morton & Gettys, LLC
334 Oakland Avenue
Rock Hill, SC 29730
(803) 366-3388
Fax: (803) 366-4044
Attorneys for Plaintiff

Rock Hill, South Carolina
July 23, 2014

EXHIBIT "A"

This

REVOCABLE FAMILY WEALTH TRUST

prepared for

DEBORAH DEREEDE

Haselden, Owen, Boloyan & Corson, LLC
4609 Charlotte Hwy., Ste. 1
Lake Wylie, SC 29710
(803) 831-2738 FAX (803) 831-0180
www.PlanningYourLegacy.com

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DEBORAH DEREEDE REVOCABLE LIVING TRUST

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DEBORAH DEREEDE REVOCABLE LIVING TRUST

Article One - Creation of My Trust

Section 1. Parties

My Trust Agreement, dated December 18, 2013, is made between DEBORAH DEREEDE, the Trustor, and the Initial Trustee as appointed under Section 4 of Article Three.

Section 2. Trust Name

My Trust may be referred to as the:

DEBORAH DEREEDE REVOCABLE LIVING TRUST, dated December 18, 2013.

The formal name of my Trust and the designation to be used for the transfer of title to the name of my Trust is:

> DEBORAH DEREEDE, Trustee, or her successors in trust, under the DEBORAH DEREEDE REVOCABLE LIVING TRUST, dated December 18, 2013, and any amendments thereto.

Section 3. Trust is Revocable

My Trust is a revocable trust. My Trust is a grantor trust under the provisions of Sections 673-677 of the Code. Use my Social Security Number as the tax identification number of my Trust.

Section 4. Family Members

All references to "children" are to (i) all of the children so identified in this Section 4 (subject to the exclusion of any child under subsequent provisions of this Section 4) and (ii) any children conceived or adopted by me subsequent to the execution of this instrument and prior to my death.

a. Marital Status

I am presently married and the name of my Spouse is HUGH DEREEDE.

b. My Children

The names and birth dates of my children are as follows:

Name	Birth Date
COURTNEY FEELEY-KARP	March 26, 1977
MICHAEL FEHILY	August 14, 1979

Section 5. Citizenship of Trustor and Spouse

DEBORAH DEREEDE is a citizen of the United States of America. HUGH DEREEDE is a citizen of Canada.

Article Two - Trust Property

Section 1. Initial Trust Property

I hereby assign, convey, transfer and deliver to my Trustee all property set forth on Schedule A, attached hereto, and made part of my Trust Estate. My Trustee acknowledges receipt of all assets listed on the attached Schedule and agrees to hold, manage and distribute my Trust Estate under the provisions set forth in my Trust Agreement.

All assets titled in the name of my Trust, in the name of my Trustee, or in the name of a nominee as authorized under my Trust Agreement but not listed on Schedule A, shall be considered a part of my Trust Estate as if they had been set forth on the attached Schedule.

I acknowledge and understand the nature of my property as tenancy-in-common property with my Spouse.

Section 2. Additional Trust Property

I, or any other person or entity, may transfer or devise to my Trustee additional assets, real or personal, and may name my Trustee as the beneficiary of life insurance policies, annuities, retirement plans or similar contracts. Except where such transfer would cause the loss of a Marital Deduction, such assets, policies and proceeds, upon notice and acceptance by my Trustee, shall be a part of my Trust Estate and subject to all the terms of my Trust Agreement.

Section 3. Character of Trust Property

All property transferred by me into my Trust shall retain its character. All such property transferred, and income thereon, less withdrawals thereof, shall be my Trust Estate.

Section 4. Acceptance of Trust Property

All property transferred to my Trust, and accepted by my Trustee, shall be held, administered and distributed according to the terms of my Trust Agreement.

Article Three - Trustees

Section 1. Definition

All uses of the word "Trustee" in my Trust Agreement shall be deemed a reference to the person or entity then serving as Trustee and shall include alternate Successor or Co-Trustees (if multiple Trustees are serving), unless the context requires otherwise.

Section 2. Trustee's Resignation

Any Trustee may resign at any time without court approval by giving written notice to me if I am living and competent. If I am not then living and competent, written notice shall be given to my next Successor Trustee; or if there is no next Successor Trustee, to the beneficiaries then entitled to receive income or principal distributions under my Trust Agreement or their respective Personal Representatives, or if any of such beneficiaries are then minors, to the persons having the care or custody of any such minor. Such resignation shall be effective upon the appointment of a Successor Trustee.

Section 3. Trustee's Removal

Any Trustee may be removed under my Trust Agreement as follows:

a. While Alive and Competent

While I am alive and competent, I shall have the right to add a Trustee, or to remove or replace any other Trustee appointed under my Trust Agreement at any time without cause.

b. Removal by Other than Me

After my death or incapacity, a majority in interest of the beneficiaries then entitled to receive income or principal distributions from a separate trust, or their respective Legal Representatives, shall have the discretion and power to remove any serving Trustee of such separate trust at any time for cause, as defined under Section 20 of Article Fourteen. The serving Trustee who is being removed for cause may accept such removal, or may, within thirty days of receiving written notice of removal, petition a court of competent jurisdiction for a determination as to whether sufficient cause exists for such Trustee's removal and shall continue to serve until otherwise ordered by such court. A majority in interest of the then living income beneficiaries of any trust hereunder (in the case of a minor beneficiary, the legal guardian or natural parent of the minor beneficiary) shall have the right to remove any corporate trustee of such trust by a written instrument duly acknowledged and delivered to such corporation. Concurrent with the exercise of this right, the income beneficiaries (in the case of a minor

beneficiary, the legal guardian or natural parent of the minor beneficiary) shall appoint a corporate Successor Trustee by a written instrument duly acknowledged and delivered to the corporation appointed Successor Trustee; provided, however that such corporation must be a trust company or bank possessing trust powers organized under the laws of the United States of America or one of the states thereof and it must have under its management a minimum of One Hundred Million Dollars in trust assets. Upon receipt by the removed corporation of the written notice of acceptance of appointment by the successor corporation, the removed corporation shall forthwith surrender and deliver to the corporate Successor Trustee all of the assets in the trust estate, and the trusteeship of the removed corporation shall terminate.

c. Notice to Removed Trustee

Unless a serving Trustee has petitioned, or will petition within thirty days, a court as provided in the paragraphs above, written notice of removal under my Trust Agreement shall be effective immediately when signed by the person or persons authorized to make the removal and delivered to my Trustee personally, or within three business days after mailing by certified mail, return receipt requested. The written notice removing a Trustee shall identify the Successor Trustee appointed pursuant to the other provisions of this Article.

d. Transfer of Trust Property

Unless petitioning the court as provided above, my Trustee so removed shall promptly transfer and deliver to the Successor Trustee all property of my Trust under the removed Trustee's possession and control.

Section 4. Appointment of Trustees

I shall serve as the Initial Trustee of my Trust. If for any reason I am unwilling or unable to serve or continue to serve as Trustee, then COURTNEY FEELEY-KARP shall serve as Successor Trustee. If for any reason COURTNEY FEELEY-KARP were unwilling or unable to serve as Trustee, then HUGH DEREEDE shall serve as Trustee. If for any reason all of the above named Successor Trustees are unwilling or unable to serve, then a Successor Trustee shall be appointed as provided under Section 5 of this Article.

Section 5. No Designated and Qualified Successor Trustees

If at any time there is no Trustee acting under my Trust Agreement and there is no person or entity designated and qualified as a Successor Trustee, a majority in interest of the beneficiaries then eligible to receive distributions of income or principal under my Trust Agreement, or their Legal Representatives, shall appoint a Successor Trustee. If any trust existing under my Trust Agreement lacks a Trustee and no successor is appointed pursuant to this Article, the vacancy shall be filled by a court of competent jurisdiction.

Section 6. Rights, Responsibilities, and Duties of Successor Trustees

Other than amending or revoking my Trust, or appointing or removing a Trustee, a Successor Trustee shall have the same rights, powers, duties, discretion and immunities as if named as an Initial Trustee under my Trust Agreement. No Successor Trustee shall be personally liable for any act, or failure to act, of any predecessor Trustee or shall have any duty to examine the records of any predecessor Trustee. A Successor Trustee may accept the account rendered and the property delivered by, or on behalf of, a predecessor Trustee as a full and complete discharge of the duties of the predecessor Trustee without incurring any responsibility or liability for doing so.

Section 7. Co-Trustee's Responsibility for Acts of Other Co-Trustees

No Co-Trustee shall be responsible for the act, omission or default of any other Co-Trustee without actual knowledge thereof.

Section 8. Trust Protector Provisions

The function of the Trust Protector is to protect the financial resources controlled and governed by my Trust and the interests of the beneficiaries.

a. Appointment of Trust Protectors

In the event a Trust Protector is needed to act, the first Successor Trustee who is independent within the meaning set forth in Code Section 672(c) shall act as Trust Protector, or if no such individual is available, a majority of the Successor Trustees designated under Section 4 of this Article, shall have the right to designate by written instrument a Trust Protector who is qualified, as defined in Paragraph b. hereunder.

b. Qualifications of Trust Protector

A candidate for service as Trust Protector must be independent and may not be related to, or be subordinate to, any member of my family or the family of any direct or indirect beneficiary. Any person or corporation who provides professional services to any one or more members of my family is not per se a prohibited person if compensation for services rendered constitutes, excluding compensation for service as Trust Protector, two percent or less of his, her or its income during any calendar year.

c. Trust Protector May Not Serve as Trustee

Except for the special fiduciary authority given to a Trust Protector, a Trust Protector, including any Successor Trust Protector, may not serve as a Trustee. This is in keeping with my intent and purpose that the Trust Protector's only

interest will be to protect the financial resources governed by my Trust Agreement and the beneficiaries thereto. It is further provided and required that the Trust Protector may never have any personal financial interest in any property of my Trust or in the outcome of any transaction or any business by or for my Trust other than the payment of a fair and reasonable compensation for his, her or its services as the Trust Protector. The responsibilities of the Trust Protector shall be limited to the exercise of the power, duty, or discretionary authority as provided throughout my Trust Agreement. Said Trust Protector shall not be concerned with, nor shall have, any authority with respect to any other aspects of administration of my Trust Estate.

d. Special Fiduciary Authority of Trust Protector

In addition to the authority specifically given to the Trust Protector under various provisions throughout my Trust Agreement, the Trust Protector will have the authority to perform any one or more of the following functions to the extent that the discretionary authority of my Trustee to perform a function might constitute an act of self-dealing or might jeopardize the tax status of my Trust.

1. Valuation

The value of certain property of my Trust may not be readily ascertainable, for example, real estate and securities held in a closely held corporation, partnership, limited liability company or other investment or business organization. Marketable securities shall be included in this category if and to the extent that market quotations are not readily available for trades of the security in an established securities market. Whenever my Trustee's right to determine the value of this kind of property may be self-serving or may produce a possible conflict of interest or adverse taxation issues, the Trust Protector is to value the property of my Trust.

2. Voting Rights

Whenever my Trustee's right to vote an equity interest in a corporation, partnership, Limited Liability Company, investment trust or business trust or other entity may be interpreted as self-serving or may produce a possible conflict of interest or adverse taxation issues, the Trust Protector will have the right to vote the equity interest. Voting rights will include decision-making authority with regard to the sale, exchange, or liquidation of any equity interest in a closely held corporation, partnership, Limited Liability Company, investment trust or business trust or other entity.

3. **Life Insurance Policies**

Whenever my Trustee's rights as to the control and maintenance of a life insurance policy or any interest in a life insurance policy could result in the inclusion of the proceeds of the policy in the estate of the insured for tax purposes, decision making with regard to a life insurance policy or interest in a policy is to be made by the Trust Protector.

4. **Discretionary Distributions of Trust Income and Principal**

To the extent my Trustee has the discretionary authority to make distributions of income or principal to or among beneficiaries or to retain all or any part of the income, and to the extent this discretionary authority may result in, or appear to be, a conflict of interest or an opportunity for self-dealing or may produce adverse tax consequences, the Trust Protector is to make all decisions with regard to the discretionary distributions of income and principal and the retention of income.

5. **Gifting Powers**

To the extent my Trustee has the authority to make gifts of income or principal to such Trustee and to the extent this authority to gift may result in, or appear to be, a conflict of interest or an opportunity for self-dealing or may produce adverse tax consequences, the Trust Protector is to make all decisions with regard to any gifts made to such Trustee.

6. **Property Located In Another Jurisdiction**

The Trust Protector may appoint an Ancillary Trustee to control and administer property located in another jurisdiction.

e. **Amendment Powers**

1. **Changes in Law or Beneficiary Circumstances**

The Trust Protector may, from time to time, amend my Trust Agreement, including any sub-trust created hereunder, to address changes in federal or state law, or other circumstances which may affect my Trust and its beneficiaries or to delete provisions rendered obsolete due to changes in law or beneficiary circumstances. In exercising such power, the Trust Protector shall consider the overall best interest of the present and future

beneficiaries and shall be guided by what the Trust Protector believes, in his or her discretion, would have been my intent in light of such changed circumstances.

2. Repeal of Federal Death Taxes

In the event of the repeal of the federal estate tax and generation-skipping transfer tax (as currently set forth in Chapters 11 and 13 of the Code) after my death or disability, the Trust Protector may terminate my Trust Agreement, or any sub-trust created hereunder, by distributing the trust principal to my living descendants in whatever proportion the Trust Protector deems appropriate. In exercising such power, the Trust Protector shall, in addition to the factors set forth in the preceding paragraph, consider the following:

A. The enactment of any federal income, capital gains or other tax which would impact adversely on, or offset, the tax benefits of any proposed trust or sub-trust termination;

B. The benefits afforded to the beneficiaries by the continuation of my Trust, such as protection against the claims of judgment creditors, divorcing spouses, and insulation from the reach of governmental agencies; and

C. The likelihood of re-enactment of a federal estate, gift, or generation-skipping transfer tax or comparable tax which would subject my Trust Estate to the imposition of such tax or taxes in the hands of, or upon lifetime or testamentary transfers by, the beneficiaries to whom my Trust Estate would have been distributed upon termination.

f. Consultation

My Trustee is authorized to consult with the Trust Protector as to any matter relating to the investment of assets, discretionary distributions and the use of

principal, tax matters, dealings with the beneficiaries, and any other matter relating to the administration of my Trust in keeping with the objectives and purpose of this Trust Agreement. My Trustee will not be liable for any act or omission to act if acting according to the written instructions of, or with the written consent of, the Trust Protector.

g. Accounting and Transaction Reports

The Trust Protector will have the authority to receive and review any and all accounting reports, records, tax returns, transaction reports and ownership records concerning my Trust. All records of my Trust must be open for inspection at all reasonable times by the Trust Protector.

h. Resolution of Disputes

The Trust Protector may unilaterally resolve any dispute, claim or conflict between beneficiaries, including those who have, or claim to have, a present or future interest in property, between a beneficiary and a trustee, or between trustees. Such resolution shall be binding on all parties to my Trust and shall not be subject to review.

No one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution together with detailed supporting information and a detailed supporting memorandum of law. In the event the Trust Protector finds the supporting information or memorandum of law insufficient, the Trust Protector may request such additional information as the Trust Protector reasonably feels necessary to resolve such claim. The Trust Protector may employ, and may act upon the advice of, legal counsel in making a resolution of any issue of fact and law. The Trust Protector may submit the claim or dispute for mediation and/or binding arbitration. Subsequent to his or her review, the Trust Protector may give any claimant the authority to file and maintain an action in a court of law. The granting of such authority by the Trust Protector shall in no way nullify the "No Contest" provision provided under the "Other Trust Provisions" of my Trust. Whenever a dispute, conflict, or claim involves an interpretation or construction of my Trust Agreement, the Trust Protector may file an action in a court of competent jurisdiction for the interpretation and construction of such Trust Agreement, or the Trust Protector may instruct my Trustee to do so.

i. Business Judgment

The Trust Protector is permitted and authorized to exercise "Business Judgment" in the course of service in the capacity of Trust Protector. The Trust Protector will not be liable for any act or omission to act unless it is conclusively established that the act or omission to act was motivated by an actual intent to

harm my Trust or a beneficiary of my Trust or is an act of self-dealing for personal pecuniary benefit. My Trust will pay or reimburse the costs of defending and/or settling any claim made against the Trust Protector unless it is conclusively established that the Trust Protector's conduct was motivated by an actual intent to harm my Trust or a beneficiary of my Trust. All provisions of my Trust Agreement that limit the liability of my Trustee will likewise apply in limiting the liability of the Trust Protector.

j. Authority of Successor Trust Protector

A Successor Trust Protector will have all of the authority and duties of the Trust Protector by original appointment, but will not be responsible for the acts, or omissions to act, of his, her, or its predecessor.

k. Compensation

A Trust Protector may receive reasonable compensation as an expense of administration. The Trust Protector is entitled to reasonable reimbursement for expenses and costs incurred on behalf of my Trust. Payment of compensation shall be from the funds of my Trust.

l. Bond

Unless otherwise required in written articles of appointment, the Trust Protector will serve without the requirement of bond or other security.

Article Four – My Lifetime Rights

Section 1. Income and Principal

a. Right to Trust Income and Principal

My Trustee shall pay to me, or apply for my benefit during my lifetime, all or such part of the income and principal of my Trust Estate as I may direct.

b. Trustee Liability

Upon any distribution of the income or principal of my Trust Estate authorized or directed by me, my Trustee shall incur no liability, and shall be under no obligation or responsibility for such distribution.

Section 2. My Incapacity

a. Intent to Return Home

Notwithstanding any other provision of my Trust Agreement, as a notification to any governmental benefits provider, if I become incapacitated it is conclusively presumed that I intend to return home.

b. Distribution of Income and Principal

During any period of my incapacity, my Trustee shall pay to my legal representative, or apply for my benefit, as much of the net income and principal of my Trust Estate as my Trustee, in my Trustee's discretion, shall deem necessary or advisable. Any undistributed net income shall be added to principal.

Section 3. Right to Amend or Revoke Trust

a. Power to Revoke and Amend

While I am alive, I may at any time or times amend any provision of my Trust Agreement or revoke my Trust in whole or in part.

b. Method to Revoke or Amend

Any amendment or revocation of my Trust Agreement made during my life shall be by a written instrument signed by me and delivered to my Trustee.

c. **Trustee Consent**

Any exercise of a power of amendment substantially affecting the duties, rights and liabilities of my Trustee shall be effective upon my Trustee only if agreed to by my Trustee in writing.

d. **Delivery of Property After Revocation**

After any revocation with respect to my Trust, my Trustee shall promptly deliver the Trust Estate to me.

e. **Trustee's Retention of Assets Upon Revocation**

In the event of any revocation of all or part of my Trust, my Trustee shall be entitled to retain sufficient assets to reasonably secure the payment of liabilities my Trustee has lawfully incurred in administering my Trust unless I indemnify my Trustee against loss or expense.

Section 4. Exercise of My Rights and Powers by Others

Any right or power, other than (i) an amendment by Will, or (ii) any right or power that would constitute a general power of appointment if held by my Attorney-in-Fact, may be exercised for and on my behalf by any Attorney-in-Fact who, at the time of the exercise, is duly appointed and acting for me under a valid and enforceable Power of Attorney executed by me. Only if no such Attorney-in-Fact is then available may a legal representative appointed by a court of competent jurisdiction exercise such right or power.

Other than as provided in this Section, my powers under my Trust Agreement are personal to me and may not be exercised by any other person or entity.

Section 5. Property Held as Nominee

For administrative convenience, it is contemplated that certain assets may be added to my Trust Estate, from time to time, with the possession and control thereof retained by or redelivered to me. Notwithstanding such control or redelivery, such assets shall be assets of my Trust Estate and held by me as the nominee of my Trustee. During the period such assets are in my possession, they shall be subject to the following terms and conditions:

a. I may receive directly and devote to my own use and benefit any dividends, interest, income, or proceeds or distributions from or upon such assets and neither I nor my Trustee shall have any duty of accounting to the other or to any other person with regard thereto.

b. Any sale, exchange or other transfer of such assets by me shall constitute a withdrawal of such assets from my Trust Estate, and my Trustee shall have no further interest therein or duties with regard thereto. Though not a

condition precedent to any such withdrawal, I agree to notify my Trustee of all such withdrawals.

c. I shall be responsible for reporting the income from such assets to the appropriate taxing authorities, and my Trustee shall have no responsibility for including such income on any fiduciary returns prepared by my Trustee or for the preparation of any other government filing with respect thereto unless I duly notify my Trustee of such income items and a full and adequate accounting thereof is made and presented to my Trustee.

d. I shall protect and indemnify my Trustee against all losses, liabilities and expenses that may result directly or indirectly from my use, possession, management or control of such assets.

e. Upon my death or incapacity, my Trustee shall remain entitled to the possession thereof and shall continue to have all the rights, powers and duties with respect to such assets that are granted to my Trustee herein. My Trustee is not responsible for assets held by me as nominee. However, it is also understood that my Trustee shall use any reasonable and prudent means to secure possession of any trust assets of which my Trustee has knowledge. My Trustee shall have no duty, accountability or responsibility to me or to any other person with respect to any assets of which my Trustee has no knowledge or of which my Trustee is unable to obtain possession and control.

Section 6. Government Assistance and Medicaid Planning

If at any time during my lifetime I become incapacitated, my Trustee shall have the power to deal with governmental agencies and to make applications for, receive and administer benefits on my behalf, including but not limited to, Social Security, Medicare, Medicaid, Supplemental Security Income, In-Home Support Services, and any other government resources and community support services available to the elderly or incapacitated. My Trustee shall also cooperate in government assistance and Medicaid planning initiated by my Attorney-in-Fact appointed under a Durable Power of Attorney; or, if none, with any legal representative that may be appointed by a court of competent jurisdiction. Such planning shall include, but is not necessarily limited to, the power and authority to:

a. Transfer ownership of the assets of my Trust Estate from my Trust back to ownership in my name;

b. Make home improvements and additions to my family residence;

c. Pay off, partly or in full, the encumbrance, if any, on my family residence;

d. Purchase a family residence, if I do not own one;

e. Purchase a more expensive family residence;

f. Purchase an annuity under the guidelines provided by HCFA Transmittal No. 64 or any successor guidelines issued by the Centers for Medicare and Medicaid Services or similar government agency;

g. Make gifts as directed by my Attorney-in-Fact;

h. Make payments under any care contract negotiated by my Attorney-in-Fact; and

i. Make payments as generally suggested as part of a "spend-down" program by my Attorney-in-Fact.

In exercising the above powers, my Trustee shall take into consideration that my primary concern shall be for my welfare and all government assistance and Medicaid Planning shall be of secondary importance to my welfare.

Article Five - Trust Administration at My Death

Section 1. My Testamentary Power of Appointment

Subject to any payments required under Section 3 of this Article, upon my death, my Trustee shall distribute my Trust Estate to any person or entity, and upon any trust terms and conditions, as I shall appoint by my Will or codicil, or by any other written instrument filed with my Trustee prior to my death and specifically referring to and exercising this testamentary general power of appointment. This power of appointment shall be exercisable by me alone and in all events. My Trustee may rely upon any instrument that my Trustee, in good faith, believes to comply with the provisions above in carrying out the terms of this power of appointment and shall not be liable for any good faith act in reliance upon that Will, codicil, or other written instrument even if for any reason it is later determined to be invalid with respect to its purported exercise of this power of appointment. If my Trustee receives no notice, within six (6) months after my death, of the existence of any Will or codicil, that exercises this power of appointment, my Trustee may distribute my Trust Estate as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if a valid Will or codicil exercising this power is thereafter discovered.

Section 2. Immediate Distribution of Specific Devises

As soon as practicable after my death, my Trustee shall make certain distributions from my Trust Estate in the manner and amounts and to the persons and/or entities specified in Article Six of my Trust Agreement. The remainder of my Trust Estate, after all the foregoing distributions have been made, and including any lapsed gifts (unless otherwise stated in Article Six), shall be held, administered and distributed as set forth in Section 3 of this Article.

Section 3. Creation, Administration and Distribution of Administrative Trust Upon and After Death

Upon my death, my Trust Estate, including any additions thereto by reason of my death, shall thereafter be known as the "Administrative Trust." My Trustee shall:

a. Pay all expenses, debts, claims and taxes from the Administrative Trust as provided in Section 4 of this Article;

b. Distribute that portion of the Administrative Trust consisting of any property effectively appointed pursuant to the provisions of Section 1 of this Article (the "Appointed Property"); and

c. Distribute the remainder of the Administrative Trust (the "Remainder Property") as provided under the Articles that follow.

My Trustee may distribute the Appointed Property and allocate the Remainder Property in a single distribution or allocation or in a series of partial distributions or allocations. If an allocation is to be made to one or more trusts, then until full allocation has been made to any such trust, my Trustee of the Administrative Trust may pay to any beneficiary of such trust such amounts of income and/or principal as are consistent with the terms of such trust. Such payments shall be in lieu of, and thus credited toward, the income and/or principal remaining to be allocated to such trust. No payment shall be made to any beneficiary of any trust which exceeds the amount of income and/or principal then remaining to be allocated to such trust as provided herein, nor shall any payment of income and/or principal be made to any beneficiary of any trust which exceeds the amount which might properly be distributed to such beneficiary at that time under the terms of such trust. No payment shall be made to my Spouse and credited toward any amount which would otherwise be allocated to the Marital Trust, if any, if such payment involves trust assets which are prohibited from being allocated to the Marital Trust under the provisions of Article Seven.

Section 4. Payment of Expenses, Debts, Claims and Taxes

Unless other provisions for payment have been made, my Trustee shall pay the following expenses, debts, claims and taxes:

a. Final medical expenses and all funeral costs;

b. Legally enforceable claims against me;

c. Reasonable expenses of the administration of my Trust, including those attributable to my Probate Estate or those attributable to the distribution of any bequest;

d. Any allowances mandated by a court of competent jurisdiction to those dependent upon me;

e. Any estate, inheritance, succession, generation-skipping transfer, or similar taxes payable by reason of my death; and

f. Any penalties or interest on any of the above expenses, claims, debts or taxes owed by my Probate Estate or me.

Section 5. Source of Payment of Death Taxes, Claims and Expenses

a. Payment Out of Trust Property

Except as specifically provided for elsewhere in my Trust Agreement, all Death Taxes, claims and expenses payable under the provisions of this Article may be paid by my Trustee out of the Administrative Trust. Such payments may be allocated, partly or wholly, in my Trustee's discretion, to income or principal,

keeping in mind the provisions of Treasury Regulation Section 20.2056(b)-4(d)(1)(ii).

b. Exception for Trust Retirement Assets

The provisions of Paragraphs h. and i. of Section 1 of Article Fourteen shall control the payment of all Death Taxes, claims and expenses attributable to Retirement Plan Death Benefits payable to my Trustee as the result of my death.

c. Exception for Property Passing Outside of Trust

All Death Taxes, claims and expenses attributable to assets passing outside of my Trust or my Probate Estate shall be assessed against those persons receiving such property. Notwithstanding the preceding sentence, my Trustee may, in my Trustee's discretion, pay all or part of that portion of the Death Taxes, claims and expenses attributable to assets passing outside of my Trust that would otherwise be chargeable against a beneficiary's interest in such outside property using funds provided by such beneficiary, funds from such beneficiary's share of the Trust Estate, or both.

Section 6. Apportionment of Expenses, Claims, Taxes and Liabilities

Unless specifically directed otherwise by another separate provision of my Trust Agreement, all expenses, claims, taxes and liabilities attributable to any specifically distributed property shall be apportioned to the beneficiaries of such specific distributions. Any distribution of specific trust property under my Trust Agreement shall pass subject to all liens, mortgages or encumbrances attributable thereto.

Section 7. Exceptions to Apportionment of Death Taxes

a. No Apportionment of Death Taxes to Property Qualifying for Marital or Charitable Deduction

Notwithstanding any provision in my Trust Agreement to the contrary, it is my intent that no Death Taxes shall be apportioned to, or against, any part of my Trust Estate, or any beneficiary thereof, which qualifies for the federal estate tax Marital or Charitable Deduction.

b. Apportionment to Exempt and Non-Exempt Trusts

Death Taxes chargeable among trusts hereunder that are substantially identical except that one trust is exempt and the other trust is non-exempt shall be charged first to the Non-Exempt Trust until exhausted and then to the Exempt Trust. The preceding sentence shall not apply to the extent that charging and paying such taxes as provided in such sentence increases the Inclusion Ratio of any Exempt Trust hereunder.

Section 8. Payment by Trustee or Personal Representative

My Trustee, in my Trustee's discretion, may make distributions authorized under this Article either directly to the person or entities to whom payment is owed or to the Personal Representative of my Probate Estate. Written statements by my Personal Representative that such sums are due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of my Trustee. My Trustee shall be under no duty to see to the application of any such payments made to my Personal Representative.

Section 9. Tax Elections

If no Personal Representative has been appointed, with regard to the payment of any income tax, gift tax, estate tax, inheritance tax, generation-skipping transfer tax or any other tax due because of my death, my Trustee shall have the right to make any available elections allowed under the law or to sign and file any tax return. If a Personal Representative has been appointed, the Personal Representative shall have such rights and duties.

Section 10. Termination of Administrative Trust

The Administrative Trust shall be deemed terminated when all of the assets of the Administrative Trust have been paid or distributed in accordance with the provisions of Section 3 of this Article, except for a reasonable amount which is set aside for the payment of unascertained or contingent liabilities and expenses (excluding any claim by a beneficiary in his or her capacity as such).

Article Six - Specific Distributions of Trust Estate

Section 1. Distributions Other Than as Provided Under Article Six

Except for the distributions directed in the following Sections of this Article Six, all distributions of my Trust Estate shall be made in accordance with the Articles that follow.

Section 2. Disposition of Tangible Personal Property by Separate Writing

If at the death of my Spouse and me, my Trust Estate, other than any specific devises provided for under this Article, is comprised of tangible articles of a personal nature of mine, such as jewelry, clothing, household furniture and furnishings, musical instruments, books, pictures, paintings, objects of art, silverware and silver pieces, rugs, linen, automobiles and the like, then such assets shall be distributed, to the extent permitted by state law, according to the provisions of a written instrument signed by me and delivered to my Trustee. To the extent that all such property is not effectively disposed of by such written instrument or in the event I fail to execute such written instrument directing the distribution of my tangible personal property, then my Trustee shall distribute such assets with the remainder of my Trust Estate as if it had been an original part thereof. With respect to any property to which a minor child shall become entitled under this Section, my Trustee may, if my Trustee in my Trustee's reasonable discretion deems such property unsuitable for such minor's use, sell such property and add the proceeds from such sale to such minor child's share of my Trust Estate. Any such property which my Trustee, in my Trustee's reasonable discretion, shall deem suitable for such minor's use shall be delivered either (i) without bond to the Guardian of the person of such child, or if there is no such Guardian, to any suitable person who has the care or control of such child, or (ii) directly to such child if, in my Trustee's judgment, such minor child is of maturity to properly administer such property. Notwithstanding any other provision of my Trust Agreement, property distributed under this Section shall not be subject to apportionment and/or the payment of any estate, inheritance or other death taxes.

Section 3. Specific Distribution Not Part of My Trust Estate

If the property making up any specific distribution set forth in this Article is not a part of my Trust Estate at the time such specific distribution is directed to be made, and will not become a part thereof within a reasonable time, my Trustee shall disregard that specific distribution.

Section 4. Specific Gifts

My Trustee shall make the following specific distributions of trust property.

a. **Specific Distribution of Real Estate Sales Proceeds, Household Contents, and Certain Vehicles to HUGH DEREEDE**

As soon as practicable following my death, my Trustee shall sell the house and lot located at 131 WHISPERING PINES DR., LAKE WYLIE, SC 29710. The sales proceeds shall be used first to pay off any mortgage against the property, and second to pay off that certain promissory note given by me to TYRE DEALER NETWORK CONSULTANTS, INC. Said promissory note, at the time of the execution of my Trust, is in the amount of $250,000.00, but in no event shall the amount due exceed one-half of the sales price of the property. After payoff of said mortgage and said note, my Trustee shall then distribute one-half of the remaining net sales proceeds to HUGH DEREEDE, outright and free of trust. The other one-half of the remaining net sales proceeds shall be distributed in accordance with the Articles that follow. Until the sale of the property, HUGH DEREEDE may continue to use and occupy the premises. In addition, my trustee shall distribute to HUGH DEREEDE, outright and free of trust, all my or my Trust's interest in and to the following items: the HOUSEHOLD CONTENTS OF 131 WHISPERING PINES DR., LAKE WYLIE, SC 29710; the 2013 CADILLAC CTS; the 2008 GMC ENVOY; and, the 1999 MAXUM CABIN CRUISER.

If HUGH DEREEDE dies prior to my death, these provisions shall lapse and my Trustee shall administer these specific distributions in accordance with the Articles that follow. The specific distribution recipient shall bear all expenses, claims, liens, encumbrances and taxes (including Death Taxes) relative to this specific distribution.

Article Seven - Division into Family Trust and Marital Trust

Section 1. Division of Remainder Property

There shall be no division of the Remainder Property into a Family Trust and Marital Trust. Upon my death, my Trustee shall instead allocate and distribute the Remainder Property as provided in the Articles that follow.

Article Eight - Family Trust

Section 1. No Family Trust

There shall be no Family Trust. Upon my death, my Trustee shall instead allocate and distribute the Remainder Property as provided in the Articles that follow.

Article Nine - Marital Trust

Section 1. No Marital Trust

There shall be no Marital Trust. Upon my death, my Trustee shall instead allocate and distribute the Remainder Property as provided in the Articles that follow.

Article Ten - Distributions to Beneficiaries

Section 1. Division of Trust Estate Into Shares

Upon my death, my Trustee shall divide the Remainder Property into separate and equal shares (and for purposes of determining such division and subsequent distributions shall take into account the exclusion of any descendant as may be directed in Article One) as follows:

a. One Share for Each Living Child

My Trustee shall create one share for each of my children then living.

b. One Share for Each Deceased Child Leaving Descendants

My Trustee shall create one share for each of my deceased children who have then living descendants, to be further subdivided, per stirpes.

Each share shall constitute a separate and independent trust, and Exempt Trusts shall remain separate from Non-Exempt Trusts. The decisions of my Trustee as to the assets to constitute each such trust or sub-trust shall be conclusive, subject only to the requirement that said trusts or sub-trusts shall be of the respective values. The trusts for living children shall be held, administered and distributed pursuant to Section 3. The trusts for the descendants of deceased children shall be held, administered and distributed pursuant to Section 4.

Section 2. Trustee(s) for Beneficiaries

My Trustee appointed under Article Three shall serve as my Trustee for the trust created for a beneficiary. The last Trustee to serve shall have the right to designate one or more Successor Trustees by written instrument delivered to such Successor Trustee(s). In the event the last Trustee fails to appoint a Successor Trustee, then a Successor Trustee shall be appointed by the Trust Protector appointed under my Trust.

Section 3. Distribution to Family Access Trust for Living Children

Unless distributions from a trust are withheld pursuant to Section 5 of this Article, my Trustee shall hold the trust for a living child as a Family Access Trust, to be administered and distributed as follows:

a. Income Accumulated

The entire net income of the Family Access Trust shall be accumulated and added to principal on an annual basis if not distributed under the provisions of the paragraphs immediately following.

b. **Child's Withdrawal Power**

Subject to the provisions of Section 5 of this Article and provided the child for whom a Family Access Trust is created is competent, my Trustee shall distribute to such child the portion or portions of the net income and/or principal of such child's Family Access Trust, up to the whole thereof, as such child may, from time to time, demand in a writing delivered to my Trustee. No limitation shall be placed by my Trustee on such child as to either the amount of or the reasons for such invasion or invasions of net income and principal from such living child's trust. The Trustee shall comply with and shall have no responsibility to inquire into or to determine for what purpose any such withdrawals are being made.

c. **Fully Discretionary Payments**

If the child for whom a Family Access Trust is created is unable or unwilling to exercise his or her power of withdrawal as set forth above, my Trustee may, from time to time, pay to, or for the benefit of such child and/or such child's descendants, such portion or portions of the income and/or principal (as appropriate) of such child's trust, up to the whole thereof, as the Trustee, in its discretion, deems appropriate.

d. **Guidelines for Discretionary Distributions**

In exercising discretion, my Trustee shall, at all times, give primary consideration to the needs of the child for whom the Family Access Trust was created. The needs of such child's descendants shall be secondary. No amount paid to or applied for the benefit of such child or his/her descendants need thereafter be repaid to the Trustee or restored to such child's trust. My Trustee shall give consideration to all other income and resources then known to be available to the child and his/her descendants before making a discretionary distribution of principal. My Trustee shall be entitled to rely upon the written certification of such beneficiary or Legal Representative of such beneficiary as to the nature and extent of such beneficiary's needs and the inadequacy of such beneficiary's resources apart from the Trust. As to these matters, when relying upon such certification, my Trustee shall not be required to make further inquiry into the authenticity of the need or to the availability of other resources to satisfy the need. It is my desire that my Trustee consider the needs of the beneficiary in keeping with the standard of living that has been previously enjoyed by such beneficiary.

e. **Failure to Withdraw Trust Estate**

If a child fails to withdraw a portion of his/her Family Access Trust to which he/she is entitled as provided above, or if such child withdraws only a part of such portion, my Trustee shall continue to hold and administer the undrawn portion in accordance with the provisions herein, provided however, that such child shall

have the continuing right to effect withdrawals of said undrawn portion upon the terms and conditions set forth above.

f. Death of Child Before Complete Distribution

In the event of the death of a child for whom a Family Access Trust has been set aside, subsequent to the creation of said child's trust and before the complete distribution of said child's Family Access Trust, such Family Access Trust shall lapse, and my Trustee shall distribute and deliver the remaining balance of said Family Access Trust, subject to the provisions of Section 5, pursuant to said child's general power of appointment as provided below. In the event such child fails to exercise his or her general power of appointment, then my Trustee shall distribute, subject to provisions of Section 5, such child's Family Access Trust to the Family Access Trusts created for such child's then living descendants, per stirpes, to be further held, administered and distributed as provided in Section 4. In the event such child dies without descendants then living, my Trustee shall deliver the remaining balance of said Family Access Trust, outright and free of trust, to my descendants, per stirpes. If I have no descendants then living, my Trustee shall deliver the remaining balance of said Family Access Trust in accordance with the provisions of Article Eleven.

g. General Power of Appointment

Each child for whom a Family Access Trust is created shall have a general power of appointment, exercisable by such child's Will, or a codicil thereto, specifically referring to and exercising this power of appointment, in favor of any person or entity, including such child, such child's creditors, the estate of such child, and the creditors of such child's estate, outright or in trust, some or all of the principal of such child's Family Access Trust as it exists at such child's death. If my Trustee receives no notice during the life of such child of the existence of a Will or codicil that exercises this power of appointment, my Trustee may distribute the assets of such child's Family Access Trust as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if such Will or codicil is thereafter discovered.

Section 4. Distribution of Family Access Trust for Descendants

Unless distributions from a trust are withheld pursuant to Section 5 of this Article, my Trustee shall hold the trust for a descendant as a Family Access Trust, to be administered and distributed as follows:

a. Trustee

Subject to the provisions of paragraph e. of Section 5, of this Article, the Trustee of each Family Access Trust for a descendant shall be the descendant for whom

the Family Access Trust was created. Such descendant shall have the right, by written instrument, to appoint a Co-Trustee to act with him or her, and to designate one or more Successor Trustees. If all Successor Trustees appointed by such descendant are unable or unwilling to serve, or should such descendant fail to appoint Successor Trustees, a Trustee shall be appointed by the Trust Protector appointed at Article Three.

b. Income Accumulated

The entire net income of the Family Access Trust shall be accumulated and added to principal on an annual basis if not distributed under the provisions of the paragraphs immediately following.

c. Descendant's Withdrawal Power

Subject to the provisions of Section 5 of this Article and provided the descendant for whom a Family Access Trust is created is competent, my Trustee shall distribute to such descendant the portion or portions of the net income and/or principal of such descendant's Family Access Trust, up to the whole thereof, as such descendant may, from time to time, demand in a writing delivered to my Trustee. No limitation shall be placed by my Trustee on such descendant as to either the amount of or the reasons for such invasion or invasions of net income and principal from such living descendant's trust. The Trustee shall comply with and shall have no responsibility to inquire into or to determine for what purpose any such withdrawals are being made.

d. Fully Discretionary Payments

If the descendant for whom a Family Access Trust is created is unable or unwilling to exercise his or her power of withdrawal as set forth above, my Trustee may, from time to time, pay to, or for the benefit of such descendant and/or such descendant's descendants, such portion or portions of the income and/or principal of such descendant's trust, up to the whole thereof, as the Trustee, in my Trustee's discretion, deems appropriate.

e. Guidelines for Discretionary Distributions

In exercising discretion, my Trustee shall, at all times, give primary consideration to the needs of the descendant for whom the Family Access Trust was created. The needs of such descendant's issue shall be secondary. No amount paid to or applied for the benefit of such descendant or his or her issue need thereafter be repaid to the Trustee or restored to such descendant's trust. My Trustee shall give consideration to all other income and resources then known to be available to the descendant and issue before making a discretionary distribution of principal. My Trustee shall be entitled to rely upon the written certification of such beneficiary or Legal Representative of such beneficiary as to the nature and extent of such

beneficiary's needs and the inadequacy of such beneficiary's resources apart from the Trust. As to these matters, when relying upon such certification, my Trustee shall not be required to make further inquiry into the authenticity of the need or to the availability of other resources to satisfy the need. It is my desire that my Trustee consider the needs of the beneficiary in keeping with the standard of living that has been previously enjoyed by such beneficiary.

f. Failure to Withdraw Trust Estate

If a descendant fails to withdraw a portion of such descendant's Family Access Trust to which such descendant is entitled as provided above, or if such descendant withdraws only a part of such portion, my Trustee shall continue to hold and administer the undrawn portion in accordance with the provisions herein, provided however, that such descendant shall have the continuing right to effect withdrawals of said undrawn portion upon the terms and conditions set forth above.

g. Death of Descendant Before Complete Distribution

In the event of the death of a descendant, subsequent to the creation of such descendant's Family Access Trust and before complete distribution of his or her Family Access Trust, the Family Access Trust set aside for such descendant's benefit shall lapse, and my Trustee shall distribute and deliver the remaining balance of such descendant's Family Access Trust, subject to the provisions of Section 5, pursuant to such descendant's general power of appointment as provided below. In the event such descendant fails to exercise his or her general power of appointment, then my Trustee shall distribute, subject to provisions of Section 5, such descendant's Family Access Trust to Family Access Trusts created for such descendant's then living issue, per stirpes, to be further held, administered and distributed as provided above. In the event such descendant dies without issue then living, my Trustee shall deliver the remaining balance of said Family Access Trust, outright and free of trust, to my descendants, per stirpes. If I have no descendants then living, my Trustee shall deliver the remaining balance of said Family Access Trust in accordance with the provisions of Article Eleven.

h. General Power of Appointment

A descendant shall have a general power of appointment, exercisable by such descendant's Will, or a codicil thereto, specifically referring to and exercising this power of appointment, in favor of any person or entity, including such descendant, such descendant's creditors, the estate of such descendant, and the creditors of such descendant's estate, outright or in trust, some or all of the principal of such descendant's Family Access Trust as it exists at such descendant's death. If my Trustee receives no notice during the life of such

descendant of the existence of a Will or codicil that exercises this power of appointment, my Trustee may distribute the assets of such descendant's Family Access Trust as though this power of appointment had not been exercised and shall be conclusively presumed to have acted in good faith even if such Will or codicil is thereafter discovered.

Section 5. Postponement of Distribution by Trustee

Subject to the provisions of Section 7 of Article Fourteen, but notwithstanding any other provisions of this Article, if my Trustee determines that there is a compelling reason to postpone a distribution to a beneficiary, then my Trustee shall continue to hold and administer such beneficiary's trust as follows:

a. Income Accumulated

The entire net income of such beneficiary's trust shall be accumulated and added to principal on an annual basis if not distributed under the provisions of the paragraph immediately following.

b. Discretionary Payment of Principal

My Trustee shall pay to, or apply for the benefit of, such beneficiary only as much of the principal and accumulated income of such beneficiary's trust as my Trustee, in my Trustee's sole discretion, considers necessary for the proper health, education, maintenance and support of such beneficiary. Notwithstanding the preceding sentence, all discretionary distributions of principal and accumulated income to a Special Needs Beneficiary shall be governed by the provisions of paragraph c. immediately following.

c. Discretionary Payment of Income and Principal for Special Needs Beneficiaries

My Trustee shall apply for the benefit of a Special Needs Beneficiary such amounts of principal and accumulated income of the Special Needs Beneficiary's trust as provided for under Section 3 of Article Fourteen.

d. Guidelines for Trustee's Discretion in Making Distributions

My Trustee shall take into consideration, to the extent my Trustee considers it advisable, any other income or resources of such beneficiary known to the Trustee. When, in my Trustee's discretion, the compelling reason for the postponement of a distribution ceases to exist, my Trustee shall make available for withdrawal by such beneficiary the postponed distribution(s), which such beneficiary shall request by written instrument filed with my Trustee. Notwithstanding the preceding sentence, the termination of the postponement of

distributions to a Special Needs Bene ficiary shall be governed by the provisions under Section 3 of Article Fourteen. Furthermore, if the sole reason for the postponement of such beneficiary's distribution was due to such beneficiary not yet attaining the age of eighteen, my Trustee shall make the required distribution upon the beneficiary attaining such age, unless my Trustee determines; in my Trustee's discretion, that there are other compelling reasons to continue to hold and administer such beneficiary's trust under the provisions of this Section.

e. Compelling Reason

A compelling reason includes, but is not limited to, the following:

1. The beneficiary has not attained the age of eighteen;
2. The beneficiary is a Special Needs Beneficiary as defined under Section 3 of Article Fourteen;
3. The susceptibility of the beneficiary to undue influence or duress by an individual or a group;
4. Alcohol or substance abuse by the beneficiary;
5. The beneficiary has a gambling or compulsive gambling problem;
6. A pending marital separation or dissolution of marriage or divorce of the beneficiary;
7. Potential financial difficulty or a proven inability of the beneficiary to manage money;
8. A serious tax disadvantage upon distribution to the beneficiary;
9. Minimization of income, gift, estate, generation-skipping, or other transfer taxes of a beneficiary, or beneficiaries, or the Trust Agreement; and
10. Substituting income, gift, estate, generation-skipping or other transfer taxes of the beneficiary for another.

f. Distributions Withheld

Any distribution may be postponed, including distributions of income or principal, whether in complete or partial termination of the beneficiary's trust, one or more of a series of payments, or otherwise.

g. Evidence of a Compelling Reason

In connection with the foregoing, and in furtherance thereof, my Trustee is authorized to require the beneficiary to submit to my Trustee for review appropriate evidence as to the existence or non-existence of the compelling reason for which the postponement of a distribution of income or principal has been made or is being considered. Upon the request of my Trustee, such evidence shall include the submission to blood tests or similar tests showing the absence of alcohol addiction or substance abuse, said tests to be conducted and administered by medical personnel approved by my Trustee.

h. Notice to Beneficiary; Request for Reconsideration

If my Trustee decides to postpone a beneficiary's distribution, then my Trustee shall provide written notification to such beneficiary of such postponement decision. Upon notification by my Trustee of the intent to postpone a distribution, such beneficiary may request reconsideration of such decision and submit to my Trustee such reports, information, or other evidence as such beneficiary deems appropriate. If a beneficiary seeks the advice, counsel, or representation of an attorney with regard to postponed distributions, then such beneficiary shall be entitled to reimbursement of the legal fees and costs incurred for such representation. Such reimbursement shall be limited to no more than one-half of one percent of the value of such beneficiary's trust at the beginning of the calendar year in which such reimbursement is requested. A request for such reimbursement of legal fees and costs shall be limited to once every two calendar years.

Section 6. General Power of Appointment Over Non-Exempt Assets

Should a beneficiary die prior to the creation of his or her separate trust of my Trust Agreement or die subsequent to the creation of such trust but before complete distribution of such trust, and as a result of said death a portion of my Trust Agreement would be subject to GST Tax but for the provisions of this Section, the beneficiary may, pursuant to a General Power of Appointment exercised in his or her last Will (but not in a codicil) and specifically referring to this power of appointment, provide for such trust to pass to the creditors of such beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's trust. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of my Trust Agreement.

Article Eleven - Lack of Designated Beneficiaries

Section 1. Remainder by Intestate Succession

If at any time there is no beneficiary entitled to receive all or any part of my Trust Estate under the preceding Articles, all of the remaining portion of my Trust Estate shall then be distributed, outright and free of trust, to those persons who would be my heirs at law had I died intestate owning my Trust Estate.

Notwithstanding the preceding, any Retirement Plan Assets that come under the control of my Trustee shall not be distributed to any charitable beneficiary and shall only be distributed to Heirs at Law that are younger than the oldest beneficiary named under the provisions of Article Ten (and disregarding all testamentary powers of appointment contained therein).

Article Twelve - Trustee Provisions

Section 1. Co-Trustees Voting Provisions

a. Co-Trustee May Not Act Independently

All Co-Trustees acting under my Trust Agreement must act in concert with other Co-Trustees as provided in the other provisions of this Section.

b. Unanimous Vote for Two Trustees

Other than as provided in Section 1.a. of this Article, if only two Trustees are serving, they shall act unanimously in the exercise of all powers and discretion granted to them under my Trust Agreement.

c. Majority Vote for More Than Two Trustees

Other than as provided in Section 1.a. of this Article, if more than two Trustees are serving under my Trust Agreement, they shall act by majority vote and any exercise of a power or discretion by a majority of my Trustees shall have the same effect as an exercise by all of them.

d. Trust Protector Resolves Disputes

Other than as provided in Section 1.a. of this Article, if my Trustees are not able to reach an agreement on any decision as set forth in this Section, they shall consult with the Trust Protector as provided under Section 8 of Article Three of my Trust Agreement.

Section 2. Delegation of Trustee Powers and Discretions

Notwithstanding any other provision of my Trust Agreement, any one or more of the Co-Trustees serving under my Trust Agreement may, from time to time, delegate to another Co-Trustee or Co-Trustees any or all of such Co-Trustee's powers and discretion by an instrument in writing delivered to the other Co-Trustees and may revoke such designation at will in the same manner; provided, however, the foregoing shall not apply to a "Trust Protector" appointed under Trust Protector Provisions of Article Three. For example, a Co-Trustee may authorize withdrawals of trust funds from any savings and/or checking account upon the signature of one of the others serving as Co-Trustee. Also, a Co-Trustee may authorize the opening and maintaining of bank accounts or safe deposit boxes, in the name of the Co-Trustee, with any bank, trust company or savings and loan association authorized and doing business in any state of the United States of America, and may authorize such bank, trust company or savings and loan association to make distributions to or for the benefit of the beneficiaries hereunder. Additionally, if a corporation, bank or trust company and an individual serve as Co-Trustees, the individual Co-Trustee shall not be obligated (but may so act if he or she wishes) to sign or

countersign checks for disbursements of trust funds held by the corporation, bank or trust company. The delegating Co-Trustee shall incur no liability to any beneficiary of any trust created hereunder with respect to the administration of such trust during the period of any such delegation.

Section 3. No Trustee Bond Required

No Trustee specifically named under my Trust Agreement shall be required to post any bond for the faithful performance of such Trustee's responsibilities.

Section 4. Compensation of Trustee

Other than when I am serving as Trustee, my Trustee shall be entitled to reasonable compensation for services rendered. Such compensation is payable without the need of a court order. In calculating the amount of compensation, customary charges for similar services, in the same geographic area, for the same time period shall be used as guidelines. Any corporate fiduciary shall be entitled to receive compensation for its services in accordance with its published fee schedule in effect from time to time and any trustee who is normally compensated on an hourly basis shall be so compensated. My Trustee shall also be entitled to reimbursement for reasonable costs and expenses incurred during the exercise of my Trustee's duties under my Trust Agreement.

Section 5. Change in Corporate Trustee

Any corporate successor to the trust business of any corporate trustee named under my Trust Agreement, or acting hereunder, shall succeed to the capacity of its predecessor without re-conveyance or transfer of trust property.

Section 6. Notice to Trustee

Until my Trustee receives written notice of any death or other event which triggers the right to payments from any trust or trust shares created under my Trust Agreement, my Trustee shall incur no liability for distributions made in good faith to persons whose interests may have been affected by such event.

Section 7. Duty to Account

My Trustee shall render accounts, upon request, to the income beneficiaries under my Trust Agreement at least annually, at the termination of a trust created hereunder and upon a change in my Trustees in the manner required by law.

Section 8. No Court Supervision

No trust or trust share created under my Trust Agreement shall require the active supervision of any state or federal court.

Article Thirteen - Powers of My Trustee

Section 1. Powers

In addition to any power hereinafter specifically granted to my Trustee, it is my intention that my Trustee has all powers granted to a trustee under state law, as well as those powers respecting property in my Trust Estate that an absolute owner of such property would have. In accordance with such intention, any power my Trustee needs to administer my Trust Estate, which is not hereinafter listed, shall be considered as provided for herein. All powers shall be exercised only in a fiduciary capacity, and such powers may be exercised without the approval or supervision of any court. It is also my intention that the investment of Trust assets shall be governed by the Uniform Prudent Investor Act, as enacted under the statutes that govern my Trust. If the Uniform Prudent Investor Act has not been enacted by the state whose law governs this document, then the Uniform Prudent Investor Act itself shall apply.

a. Retention of Property

My Trustee shall have the power to retain any ownership interest, partial or complete, in real property, farming and other family business enterprises, as well as other illiquid investments, such as restricted securities transferred, devised or bequeathed to my Trustee, regardless of any lack of diversification, risk, or non-productivity and regardless of whether or not such property is of a character authorized by state law for the investment of trust funds. My Trustee shall have the power to continue the operation of any such property or business enterprises at the risk of my Trust Estate as long as my Trustee believes that the retention of such property is in furtherance of my goals in creating my Trust and is in the best interest of my beneficiaries. Notwithstanding the above, my Spouse shall have the power to require underproductive property to be made reasonably productive. My Trustee shall diversify the balance of my Trust Estate in accordance with the Uniform Prudent Investor Act, as enacted under the statutes that govern my Trust.

b. Additions

My Trustee shall have the power to receive additions to the assets of the various trusts created under my Trust Agreement from any source.

c. Business Participation

My Trustee shall have, notwithstanding any overall effect on the fair market value of the property held in any trust or trust share, the power to form, terminate, continue or participate in the operation of any business enterprise including a corporation, a sole proprietorship, a general or limited partnership (as a general or limited partner) or a limited liability company (as a managing or non-managing member) and to effect any form of incorporation, dissolution, liquidation or

reorganization, including, but not limited to, the recapitalization and reallocation of classes of shares or other changes in the form of the business enterprise or to lend money or make a capital contribution to any such business enterprise.

d. Banking Powers

My Trustee shall have the following additional powers regarding financial transactions:

1. Existing Accounts

My Trustee may continue, modify, and terminate an account or other prior banking arrangement.

2. New Accounts

My Trustee may establish any type of account (including, but not limited to, checking, savings, and certificates of deposit) or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, industrial loan company, brokerage firm, or other financial institution.

3. Establishing, Entering and Closing Safe Deposit Boxes

My Trustee may open a new safe deposit box or space in a bank vault, access an existing safe deposit box or vault space containing trust property and withdraw or add to its contents, or close a safe deposit box or space in a bank vault.

4. Contracting Services

My Trustee may contract to procure other services that my Trustee considers appropriate which are offered by banks or other financial institutions.

5. Checks, Drafts, and Negotiable Paper; Withdrawals

My Trustee may make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or non-negotiable paper of mine, or payable to me or to my order, and deposit or receive the cash or other proceeds of those transactions. Furthermore, my Trustee may withdraw by check, order, or otherwise my money or property deposited with or left in the custody of a financial institution.

6. **Receiving Negotiable or Non-Negotiable Instruments**

My Trustee may receive for me and act upon a sight draft, warehouse receipt, or other negotiable or non-negotiable instrument.

7. **Letters of Credit, Credit Cards, and Travelers Checks**

My Trustee may apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit as my Trustee finds necessary for the proper maintenance of trust property and financial needs.

8. **Extensions to Pay**

My Trustee may consent to extend the time of payment, due to or from me, with respect to any financial transaction with a bank or other financial institution.

e. Make Investments

My Trustee shall have the power to invest in any type of investment that plays an appropriate role in achieving the investment goals as set forth in my Trust Agreement, which investment shall be considered as part of the total portfolio. No category or type of investment shall be prohibited. I specifically do not wish to limit the universe of trust investments in any way other than is dictated by my Trustee's exercise of reasonable care, skill and caution. In connection with my Trustee's investment and management decisions with respect to my Trust, my Trustee is specifically entitled to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies, the role that each investment or course of action may play within the overall trust portfolio that may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property; the expected total return from income and the appreciation of capital, and the asset's special relationship or special value, if any, to the purposes of my Trust or to one or more of the beneficiaries. My Trustee shall not be limited to any one investment strategy or theory, including modern portfolio theory, the efficient markets theory or otherwise, but should be free to consider any appropriate investment strategy or theory under all circumstances.

My Trustee may delegate investment and management functions that a prudent person of comparable skills would properly delegate under the circumstances. Should my Trustee delegate such function, my Trustee shall exercise reasonable care, skill and caution in selecting an Investment Advisor and shall establish, in writing, the scope and terms of the delegation consistent with the purposes and

terms of my Trust. Such writing shall cover the terms of the Investment Advisor's duties and describe the Trust assets to be managed by the Investment Advisor.

Notwithstanding the general powers of my Trustee, the following provisions shall apply to each trust from time to time held hereunder which is being managed by an Investment Advisor (subject to any limitations or modifications contained in the written agreement between my Trustee and such Investment Advisor or Advisors):

1. My Trustee shall follow the directions of the Investment Advisor with respect to the retention, purchase, sale or encumbrance of my Trust assets subject to management by such Investment Advisor and the investment and reinvestment of any funds derived from those assets, and shall have no duty to make or participate in making any decision regarding the same. The sole authority and discretion regarding the management of such assets shall belong to the Investment Advisor.

2. So long as my Trustee follows the direction or advice of the Investment Advisor, my Trustee shall be under no duty to review the assets subject to such Investment Advisor's management or to make any recommendations with respect to the investment or reinvestment thereof or to determine whether any direction or advice received from the Investment Advisor is proper.

3. My Trustee shall not be accountable for any loss or depreciation in value sustained by reason of any action: (i) taken with the direction or approval of the Investment Advisor, or (ii) not taken by reason of direction, disapproval or inaction by the Investment Advisor pursuant to the preceding provisions of this Section 1.e. In addition, my Trustee may issue proxies to vote all securities included among the assets subject to management by the Investment Advisor, and my Trustee shall not thereafter be liable for the manner in which those securities are voted, for any direct or indirect result of that voting, or for any failure to vote such securities.

4. Except as modified by the provisions of this Section 1.e., the powers and duties of my Trustee with respect to the assets of my Trust Estate managed by an Investment Advisor shall be the same as those with respect to all other assets of my Trust Estate.

5. An Investment Advisor, by written notice to my Trustee, may resign at any time, or may, from time to time, waive any or all such Investment Advisor's rights, powers and duties. By accepting the delegation of the trust asset management function and acting as Investment Advisor, such Advisor submits to the jurisdiction of the courts of this state. An Investment Advisor shall be entitled to reasonable compensation, and such compensation shall be paid from the assets of my Trust and may be charged, in my Trustee's discretion, to income or principal, or partly to each. My Trustee shall incur no personal liability for the payment of such fees. The rights and powers herein conferred to an Investment Advisor shall be exercisable only in a fiduciary capacity.

f. Digital Assets

In addition to any other powers held, my Trustee shall have the power to open, continue, modify, terminate, access, view, make use of, and give instructions in regards to any financial, social media, or other account or other arrangement on the world wide web (also known as the internet) and/or on any other public or private network, and to access, view, and transfer any or all data owned by or concerning me or my Trust, in any format, including any electronic or digital data, no matter where it may be located, in this state, another state, or another country.

My Trustee may obtain password and/or login information and have complete access to any electronic account maintained by me or on my behalf, including, without limitation, electronic mail and on-line financial accounts.

g. Manage Securities

My Trustee shall have the power to buy, sell and trade in securities of any nature, including options, futures contracts, short sales, and for such purposes, may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by my Trustee with such brokers as security for loans and advances made to my Trustee. My Trustee shall have all the rights, powers and privileges of any owner with respect to securities held in trust, including, but not limited to, the power to vote and give proxies and pay assessments or other charges, participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations and, in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as my Trustee may deem advisable, and do all other acts which persons of prudence, discretion and intelligence would do or take for their own account.

h. Allocation of Principal and Income

Except as otherwise specifically provided in my Trust Agreement, the determination of all matters with respect to what is principal and income of my Trust Estate (including the power of adjustment between principal and income under Section 104 of the Uniform Principal and Income Act of 1997 or similar provision under the law that governs this document), and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the Uniform Principal and Income Act of 1997 as from time to time enacted by the state statute which governs my Trust Agreement. Any such matter not provided for either in my Trust Agreement or under the Uniform Principal and Income Act of 1997 shall be determined by my Trustee in my Trustee's discretion.

My Trustee's powers shall be subject to my Trustee's duty to treat income beneficiaries and remainder beneficiaries equitably, except as provided below:

1. A reasonable reserve for the depreciation of all income-producing, depreciable real and personal property, and capital improvements and extraordinary repairs on income-producing property, shall be charged to income from time to time;

2. A reasonable reserve for the depletion of all depletable natural resources, including, but not limited to, oil, gas and mineral, and timber property, shall be charged to income from time to time;

3. Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal;

4. A reasonable reserve for the amortization of all intangible property having a limited economic life including, but not limited to, patents and copyrights, shall be charged to income from time to time; and

5. All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be; provided, however, my Trustee shall not set aside out of income a reserve for the depreciation, depletion, obsolescence, repair, replacement, improvement or amortization of capital assets (tangible or intangible) contributed to my Trust during my lifetimes or

by Will upon my death. Further provided, if my Trust is a partner in a partnership, my Trustee shall be entitled to accept, with respect to such partnership interest, any accounting methods used by the partnership, regardless of whether such methods include depreciation reserves, regardless of the assumptions on which any such reserve may be based, and regardless of whether such accounting methods are inconsistent with those methods used by my Trustee with respect to other property of my Trust Estate.

The income and principal of Retirement Assets and Annuities shall be governed by the provisions under Section 1 of Article Fourteen.

i. Sell, Exchange and Repair

My Trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair Trust property.

j. Lease

My Trustee shall have the power to lease Trust property for terms within or beyond the terms of the Trust and for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

k. Permit Beneficiaries to Use or Reside Upon Trust Assets

Unless in conflict with the provisions of Section 3. e. of Article Fourteen, my Trustee may permit any beneficiary to reside upon or occupy any real property in my Trust Estate or use any personal property in my Trust Estate, upon such terms, provisions and conditions as my Trustee determines. Notwithstanding the above, to the extent that Section 5 of Article Fourteen grants my Spouse the right to reside upon Trust Estate property, such other provision shall take precedence and its terms and conditions shall prevail.

l. Borrow

My Trustee shall have the power to borrow money for any trust purpose upon terms and conditions as my Trustee may deem proper and to obligate my Trust Estate for repayment; to encumber my Trust Estate or any of its property by mortgage, deed of trust, pledge or otherwise, using such procedure or procedures to consummate the transaction or transactions as my Trustee may deem advisable (including securing or guaranteeing a loan to me in my individual capacities for a purpose not connected with my Trust). My Trustee shall have the power to borrow money on behalf of one trust from any other trust provided for under my

Trust Agreement, and to obligate the borrowing trust to repay such borrowed money, provided that such loan shall be adequately secured and shall bear interest at current bank rates. Notwithstanding the above, the assets of the Family Trust may not be used to secure or guarantee a loan for my Spouse in his or her individual capacity, should such loan or guarantee cause inclusion of such assets in my Spouse's estate. Furthermore, the assets of the Marital Trust, if any, may not be used to secure or guarantee a loan that would in any way endanger the federal estate Marital Deduction.

m. Guarantees

My Trustee shall have the power to unconditionally or conditionally guarantee the payment of any and all indebtedness, advances, obligations and liabilities currently in existence or hereafter made, incurred or created by me, individually or jointly with others, or incurred or created by any person or any partnership (general or limited), or other legal entity, provided my Trustee holds an interest in such corporation, partnership or entity, and such guarantee benefits directly or indirectly my Trust Estate or its beneficiaries. Guarantees may be made to secure indebtedness, advances, obligations and liabilities to banks, savings and loans, real estate investment trusts, any and all institutional investors, persons, corporations, partnerships and other legal entities. Notwithstanding the above, the assets of the Family Trust may not be used to secure or guarantee a loan for my Spouse in his or her individual capacity, should such loan or guarantee cause inclusion of such assets in my Spouse's estate. Furthermore, the assets of the Marital Trust, if any, may not be used to secure or guarantee a loan that would in any way endanger the federal estate Marital Deduction.

n. Make Loans

My Trustee shall have the power to lend Trust money to my Personal Representative or to any beneficiary under my Trust (including me) or to a trust for the benefit of any such beneficiary, as may be agreed upon between my Trustee and such parties, provided, however, that any such loan shall be adequately secured and shall bear a reasonable rate of interest. My Trustee shall also have the power to loan or advance my Trustee's own funds to my Trust for any Trust purpose, with interest at current rates, and to receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of my Trust.

o. Purchase Assets from My Estate

My Trustee may use Trust funds to purchase any securities or other property tendered to it by my Personal Representative or any Trustee of any trust established by me, at any time and from time to time at the then market value of such property. If there is any question as to the market value of such property,

such value shall be determined by the Trust Protector, as provided for under Section 8 of Article Three of my Trust Agreement.

p. Deal With Other Trusts

My Trustee may advance cash or other assets to any other trust or estate of which my Trust is a beneficiary in an amount equal to all or any portion of any expense, debt and other charges, and estate, inheritance, succession, transfer and other death taxes which are attributable to my Trust's share of such other trust or estate.

q. Insure

My Trustee shall have the power to carry, at the expense of my Trust, insurance of such kinds and in such amounts as my Trustee deems advisable to protect my Trust Estate and my Trustee against any hazard.

r. Agents

My Trustee shall have the power to employ managers, agents, attorneys, accountants, auditors, depositories and proxies, with or without discretionary powers, and to rely on the advice given by such advisors.

s. Litigation

Subject to the provisions of Section 8 of Article Three, my Trustee shall have the power to commence or defend, at the expense of my Trust, such litigation with respect to my Trust or any property of my Trust as my Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of my Trust.

t. Accept Gifts

My Trustee shall be authorized to accept gifts from any individual who desires to contribute to the principal of the respective trusts created hereunder. Such acceptance of any additional gift shall be in the discretion of my Trustee.

u. Pay Gift Taxes

If at any time any gift tax becomes due from me, by reason of my Trust Estate or any interest therein being includible for such tax purposes, such gift tax, together with interest, penalties, costs, Trustee's compensation and attorney's fees, in the discretion of my Trustee, may be paid by my Trustee from my Trust Estate, unless other adequate provision shall have been made therefor. Any such payments shall be charged to the principal of the share of my Trust Estate or any interest therein so included for such tax purposes.

v. **Payment of Expenses**

My Trustee shall have the power to pay any taxes, assessments, reasonable compensation of my Trustee and other expenses incurred in the collection, management, care, protection and conservation of my Trust Estate.

w. **Corporate Fiduciary**

If any stock of a corporate entity that is my Trustee, or of any affiliate or successor of such Trustee, shall be included in the assets of my Trust, my Trustee shall have full authority, in my Trustee's discretion, and notwithstanding any regulation or rule of law to the contrary, to retain the stock and any increases resulting from stock dividends and stock splits and from the exercise of purchase rights and the purchase of fractional shares needed to round out fractional share holdings that may arise concerning the stock. My Trustee shall vote such stock either directly or by proxy. However, to the extent my Trustee is prohibited by law from voting such stock, my Trustee shall vote in accordance with the written instructions of the Trust Protector appointed under Section 8 of Article Three.

x. **Investment Transactions**

With regard to record keeping for investment transactions, my Trustee need not provide copies of confirmations or similar notifications each time a trade or investment transaction occurs, but investment transactions shall be set forth in my Trustee's periodic accounting.

y. **Farm or Ranch Property**

With respect to farm or ranch property, my Trustee shall have all necessary powers to participate in and operate any farming (including tree farming) or ranch operation, personally or with hired labor, tenants or sharecroppers; to lease any farm for cash or a share of crops under a lease that permits or precludes the material participation of my Trustee to fertilize and improve the soil; to employ conservation practices; to participate in government programs; and to perform any other acts deemed by my Trustee as necessary or desirable to operate the property. In making a decision whether to materially participate in farming or ranch operations, my Trustee shall consider whether an election should be made or has been made under Sections 2032A of the Code to qualify for special farm-use valuation or the qualified family owned business interest deduction, or both.

z. **Power to Divide or Combine Trusts**

My Trustee shall have the power to divide a single trust or share thereof into separate divisions, each to be administered in accordance with the terms and conditions of the single trust from which they were created (or in accordance with such terms and conditions as they may be affected by my Trustee's power to

comply with "S" Corporation requirements) when my Trustee, in my Trustee's discretion, determines that division is desirable or advisable in view of tax considerations, including considerations related to income tax, gift tax, inheritance tax or generation-skipping transfer tax or other objectives of the trusts and their beneficiaries.

My Trustee shall not be required to make a physical segregation or division of the various trust subdivisions created under my Trust Agreement except as segregation or division may be required by reason of the termination and distribution of any of the trust subdivisions, but my Trustee shall keep separate accounts and records for different undivided interests.

My Trustee, in my Trustee's discretion, shall have the further power to combine two or more trusts or trust subdivisions having substantially the same terms into a single trust for purposes of administration when tax or other factors indicate that such combination would be desirable or advisable. In deciding whether to combine trusts or trust subdivisions, my Trustee shall consider the generation-skipping "inclusion ratio" of the trusts or trust subdivisions to be combined. Trusts or trust subdivisions having the same inclusion ratios may be combined. Trusts or trust subdivisions having different inclusion ratios should generally not be combined unless their inclusion ratios are maintained unchanged through substantially separate and independent shares of different beneficiaries within the meaning of Section 2654(b) of the Code and the applicable regulations thereunder. Specifically, unless there is a Personal Representative, my Trustee has the authority to allocate any portion of my exemptions under Section 2631(a) of the Code to property as to which I am the respective Transferor, including any property transferred by me during my lifetime as to which I did not make an allocation prior to my death. My Trustee also has the authority to make the special election under Section 2652(a)(3) of the Code. If Sections 2631(a) or 2652(a)(3) of the Code are not interpreted to allow a Trustee to exercise such election, then a Personal Representative shall be appointed and is authorized to allocate my exemption and to exercise the said special election.

aa. Termination of Small Trust

If at any time after my death the costs of administration of my Trust (or any share thereof) are of such an amount in relation to the then principal and undistributed income of my Trust (or any share thereof) that my Trustee, in my Trustee's discretion, determines that my purposes in establishing my Trust (or any share thereof) would no longer be served, and if my Trustee deems it advisable to distribute the then principal and undistributed income of my Trust (or any share thereof) to the then living beneficiary or beneficiaries and thereby cause the termination of such trust or share, my Trustee (other than my estate and any then current beneficiary of my Trust) may do so without responsibility on the part of my Trustee. If no such Trustee is then serving, the Trust Protector appointed

under Section 8 of Article Three shall serve for the purpose of determining the advisability of termination and administering the termination process.

bb. Power to Subject Trust Property to Probate

It is my intention to avoid probate through the use of my Trust. If, however, my Trustee and Personal Representative mutually determine that it shall be in the best interests of the beneficiaries of my Trust, and the beneficial interests of the beneficiaries are not thereby altered, my Trustee may subject any asset to probate to accomplish a result unavailable without probate. This power shall be strictly construed and shall only be used to secure any tax or other benefit otherwise unavailable to my Trust. Accordingly, other than a distribution that would cause a Marital or Charitable Deduction to fail, my Trustee, in my Trustee's discretion, may accomplish this objective by distributing such property to my estate.

cc. Power to Change Situs

My Trustee shall have the power, exercisable by written instrument signed and acknowledged by my Trustee, to change the situs of any trust or trust share held by my Trustee; and, in conjunction with any such change and without any need to obtain the approval of any court, to elect that such trust or trust share shall be subject to the jurisdiction of the new situs. In addition, my Trustee may move the assets of such trust or trust share to the location of the new situs. In no event, however, may this power be exercised in a manner that would cause the denial of Marital Deduction qualification for any portion of my Trust Estate, or that would prevent a trust or trust share from qualifying as a permitted shareholder of "S" corporation stock for federal income tax purposes.

dd. Release of Trustee Powers

Each Trustee who determines it to be in the best interest of any beneficiary may, at any time, by instrument executed with all the formalities of a deed and delivered personally or sent by certified mail to another then acting Trustee, if any, or to some beneficiary of the affected trust or trusts, release and relinquish or disclaim upon any terms, either in whole or in part, temporarily or permanently, revocably or irrevocably, with or without binding successors, any one or more of the powers, rights, authorities, and discretions conferred upon such Trustee by any provision or provisions of my Trust Agreement or generally pursuant to law, which release and relinquishment or disclaimer shall be binding on all affected beneficiaries. If the release and relinquishment or disclaimer of a power, right, authority, or discretion is made by less than all of my Trustees upon whom it is conferred, such power, right, authority, or discretion shall continue to be exercisable in full by my Trustee or Trustees (other than any Successor Trustees on whom it is, by its terms, binding) who have not thus released and relinquished or disclaimed it.

ee. **Pay Death and Generation-skipping Transfer Taxes of Beneficiaries**

Upon the death of any beneficiary other than me, any estate, inheritance, succession, or other death taxes (including any generation-skipping transfer taxes), duties, charges, or assessments, together with interest, penalties, costs, Trustee's compensation and attorneys' fees, which shall become due by reason of my Trust Estate or any interest therein being includible for such tax purposes, may be paid by my Trustee from my Trust Estate (other than the Marital Trust, if any,) unless other adequate provision shall have been made therefor. Any such payments shall be charged to the principal of the share of my Trust Estate or the separate trust so included. If my Trustee considers that any distribution from a trust hereunder, other than pursuant to a power to withdraw or appoint, is a taxable distribution subject to a generation-skipping transfer tax payable by the distributee, my Trustee shall augment the distribution by an amount which my Trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates. If my Trustee considers that any termination of any interest in or power over trust property hereunder is a taxable termination subject to a generation-skipping transfer tax, my Trustee shall pay the tax from the trust property to which the tax relates, without any adjustment of the relative interests of the beneficiaries. If the tax is imposed in part by reason of trust property hereunder and in part by reason of other property, my Trustee shall pay that portion thereof which the value of the trust property bears to the total property taxed, taking into consideration deductions, exemptions and other factors which my Trustee deems pertinent. My Trustee may make any such payments directly, or to a Legal Representative or other fiduciary, and my Trustee may rely upon a written statement of such fiduciary as to the amount and propriety of such taxes, interest, penalties and other costs, and shall be under no duty to see to the application of any funds so paid.

Section 2. Gifts by Trustee

a. **General Gift Authority**

My Trustee is authorized to make gifts, grants, or other transfers without consideration, either outright or in trust, for any legitimate estate planning purpose, to or for my benefit, my descendants, or charitable organizations (including, without limitation, any Private Charitable Foundation, Charitable Remainder Trust, or Charitable Lead Trust established by me, as well as any public charity), even if the donee is serving as my Trutee.. Such gifts may include the forgiveness of indebtedness, the completion of any charitable pledges I have made, and the direct payment of tuition and medical care for the benefit of any such persons pursuant to the provisions of Section 2503(e) of the Code. Such gifts may be made in cash, in kind, or partly in each on a pro rata or non-pro rata basis. If any gifts are made to any individuals, then such gifts shall be made equally to all descendants of the same generation. For example, if a gift is made

to my child or grandchild, as the case may be, then a similar gift or gifts of the same amount must be made to each of my then living children or grandchildren, as the case may be.

b. Deathbed Gifts

1. Circumstances for Making and Amount of Deathbed Gifts

Without limiting my Trustee's authority to make gifts under Paragraph a. immediately preceding, if my Trustee determines that (i) I am terminally ill and it is unlikely that I will live, and (ii) my estate is or may be subject to death taxes, then my Trustee, in my Trustee's sole discretion, may make gifts up to the full amount of the federal gift tax annual exclusion amount under Section 2503(b) of the Code or successor statute, taking into account, if I am married, the amount that may be given by me from my separate property, if any, if my Spouse is willing and able to sign a consent to split the gift pursuant to Section 2513 of the Code (hereinafter referred to as "deathbed gifts").

2. Permissible Donees

My Trustee is authorized to make deathbed gifts to the following individuals: (i) First, to my then living children; provided, however, that if sufficient funds or suitable assets are not available to make the full amount of such gifts to all of my said children, then the funds or assets that are available shall be apportioned equally among said children; (ii) Second, if there are sufficient funds or suitable assets remaining after making the foregoing gifts to my then living children, then out of the remaining funds or assets, gifts shall be made to the then living children of my children (i.e., my grandchildren), in equal shares, per capita and not by right of representation; provided, however, that if sufficient funds or suitable assets are not available to make the full amount of such gifts to all such grandchildren, then the funds or assets that are available shall be apportioned equally among said grandchildren.

3. Completion of Deathbed Gifts Prior to My Death

I request that my Trustee take all action reasonably necessary to insure that the deathbed gifts authorized hereunder are completed for federal gift tax purposes prior to my death, including making gifts by wire transfer, electronic funds transfer, or other method

that is reasonably calculated to complete such gifts prior to my death. If I am in an irreversible coma or vegetative state and my life is being prolonged solely by artificial means under circumstances where the timing of my death may be subject to the control of my Health Care Agent, the Conservator of my person, or other legal representative, then I request that my Trustee hereunder confer with such Health Care Agent, Conservator, or legal representative concerning the timing of such gifts in relation to the timing of my death.

4. Effect on Testamentary Plan

It is my desire that my Trustee make such deathbed gifts in order to save Death Taxes even if doing so is inconsistent with my testamentary plan. For example, if my Will or my Trust Agreement provides for the distribution of my estate to my children in equal shares upon my death, it nevertheless is my desire that my Trustee include my grandchildren in such deathbed gifts if Death Taxes could thereby be reduced, even if the effect would be to reduce the amounts passing to my children at my death or shift the total amount passing to each line of descent.

c. Limitation on Gifts to Trustee

Notwithstanding the provisions of Subsections a. and b. above, any gifts my Trustee is authorized to make to himself or herself, or for his or her benefit, either directly or indirectly, including the discharge of his or her legal obligations, shall be limited to the greater of (i) five thousand dollars ($5,000), or (ii) five percent (5%) of my Trust Estate during any calendar year, which power shall be non-cumulative and shall lapse at the end of each calendar year; provided, however, that gifts to my Trustee may exceed such limitation if any one of the following conditions is met: (i) the Trust Protector provided for under Article Three of my Trust Agreement consents in writing to the gift to such Trustee, (ii) my then living adult children (other than my Trustee) unanimously consent in writing to the gift to such Trustee, or (iii) court approval of the gift to my Trustee is obtained on petition by my Trustee or any other interested person pursuant to state law.

d. Income Tax Effects

In making gifts hereunder, my Trustee may, but shall not be required to, consider the income tax effects of making a gift of any asset, the income tax basis of which differs from the fair market value, including the possibility of a step-up in basis at my deaths pursuant to Section 1014 of the Code. In that regard, my Trustee shall have the sole discretion to determine whether the estate tax savings of making such gifts outweighs the income tax consequences.

e. **Gifts are Discretionary**

My Trustee shall have the sole discretion to determine whether and to what extent to make gifts hereunder; provided, however, that, except as otherwise provided above in Section 2.b., it is my desire that the donees of each generation be treated equally. Nothing stated herein shall be construed to require my Trustee to make any such gifts and my Trustee shall not be liable to any person for failing to make any gifts authorized hereunder, or for the manner in which such gifts are made, except for his or her bad faith, willful misconduct, or gross negligence, including without limitation the death tax or income tax consequences to my estate, beneficiaries, or heirs at law. My Trustee shall be held free and harmless from any such liability, loss, cost, or expense, including reasonable attorney's fees, arising from my Trustee's acts or omissions in connection with making any gifts under the provisions of my Trust Agreement.

f. **Payments to or for Benefit of Minors**

If a gift is made hereunder to any person who is under the age of twenty-one (21), and if no trust is established for such person, such person's gift may, in the discretion of my Trustee, be distributed to an adult member of such person's family (to be selected by my Trustee) as custodian until such age as my Trustee determines (but not to exceed the age of 21), under the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act.

g. **Consent to Split Gifts**

My Trustee is authorized to consent to split gifts made by either my Spouse or me (if I am married at such time) under Section 2513 of the Code or successor statute, and similar provisions of any state or local gift tax.

Section 3. Trustee Environmental Powers

a. **Trustee Authorized to Inspect Property Prior to Acceptance**

1. **Actions at Expense of Trust Estate**

Prior to acceptance of the position of Trustee by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated, or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of my Trust Estate:

A. **Enter Property**

To enter and inspect any existing or proposed asset of my Trust (or of any partnership, limited liability

company, or corporation in which my Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

B. Review Records

To review my records and those of the currently acting Trustee (or of any partnership, limited liability company, or corporation in which my Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

C. Rights Equivalent to Partner, Member, or Shareholder

The right of the proposed, designated, or acting Trustee to enter and inspect assets and records of a partnership, limited liability company, or corporation under this provision is equivalent to the right under state law of a partner, member, or shareholder to inspect assets and records under similar circumstances.

D. Right to Still Refuse Acceptance of Trusteeship

Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of my Trust.

E. Right to Accept Trusteeship Over Other Assets Only

If an asset of my Trust is discovered, upon environmental audit by the acting Trustee or any proposed or designated Trustee, to be contaminated with hazardous waste or otherwise not in compliance with environmental law or regulation, my Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of my trust. My Trustee, in his or her

discretion, may petition a court to appoint a receiver or Special Trustee to hold and manage the rejected asset, pending its final disposition.

F. Right to Reject Asset

Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to such Trustee.

b. Termination, Bifurcation or Modification of Trust Due to Environmental Liability

1. Trustee's Powers over Hazardous Waste Property

If my Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of, any federal, state, or local environmental law or regulation, my Trustee may take one or more of the following actions, if my Trustee, in my Trustee's discretion, determines that such action is in the best interest of my Trust and its beneficiaries:

A. Modify Trust

Modification of trust provisions, upon court approval, granting my Trustee such additional powers as are required to protect my Trust and its beneficiaries from liability or damage relating to the actual or threatened violation of any federal, state, or local environmental law or regulations, with it being my desire that my Trustee keep in mind my dispositive wishes expressed elsewhere in my Trust and that my Trustee consider and weigh any potentially negative federal and state income, gift, estate, or inheritance tax consequences to my Trustee, my Trust and its beneficiaries;

B. Bifurcate Trust

Bifurcation of my Trust to separate said asset from other assets of my Trust Estate;

C. **Appoint a Special Trustee**

Appointment of a Special Trustee to administer said asset; and/or

D. **Abandon Property**

Abandonment of such asset.

2. **Termination of Trust or Distribution of Other Assets**

With court approval, my Trustee may terminate my Trust or partially or totally distribute my Trust Estate to my beneficiaries.

3. **Broad Discretion**

It is my intent that my Trustee shall have the widest discretion in the identification of, and response to, administration problems connected with potential environmental law liability to my Trust Estate and my Trustee, in order to protect the interests of my Trust, my Trustee and the beneficiaries of my Trust.

4. **Trustee's Powers Relating to Environmental Laws**

My Trustee shall have the power to take, on behalf of my Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. § 9601(25), or any successor statute, relating to any asset that is or has been held by my Trustee as part of my Trust Estate.

c. **Indemnification of Trustee from Trust Assets for Environmental Expenses**

1. **Indemnification and Reimbursement for Good Faith Actions**

My Trustee shall be indemnified and reimbursed from my Trust Estate for any liabilities, losses, damages, penalties, costs, or expenses arising out of, or relating to, federal, state, or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from my Trustee's intentional

wrongdoing, bad faith, or reckless disregard of his or her fiduciary obligation.

A. **Environmental Expenses Defined**

Environmental expenses shall include, but are not limited to: (i) Costs of investigation, removal, remediation, response, or other clean-up costs of contamination by hazardous substances, as defined under any environmental law or regulation; (ii) Legal fees and costs arising from any judicial, investigative, or administrative proceeding relating to any environmental law or regulation; (iii) Civil or criminal fees, fines, or penalties incurred under any environmental law or regulation; and (iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

2. **Properties and Businesses Covered**

This right to indemnification or reimbursement shall extend to environmental expenses relating to: (i) Any real property or business enterprise that is or has been at any time owned or operated by my Trustee as part of my Trust Estate; and (ii) Any real property or business enterprise that is or has been at any time owned or operated by a corporation, limited liability company, or partnership, in which my Trustee holds or has held, at any time, an ownership or management interest as part of my Trust Estate.

3. **Right to Pay Expenses Directly from Trust**

My Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of my Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

4. **Right to Lien Trust Assets**

My Trustee shall have a primary lien against assets of my Trust for the reimbursement of environmental expenses, which are not paid directly from Trust assets.

5. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law

My Trustee shall not be liable to any beneficiary of my Trust or to any other party for any good faith action or inaction relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however, that my Trustee shall be liable for any such action, inaction, or payment which is a breach of trust and is committed in bad faith or with reckless or intentional disregard of his or her fiduciary obligations.

6. Allocation of Environmental Expenses and Receipts Between Principal and Income

My Trustee may, in my Trustee's discretion, allocate between the income and principal of my Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, my Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. My Trustee may, in my Trustee's discretion, create a reserve for the payment of anticipated environmental expenses.

Article Fourteen - Other Trust Provisions

Section 1. Provisions Respecting Retirement Assets

a. Explanation of Section

It is my intent, and the sole purpose of the following provisions, to insure that the beneficiaries of my Trust who are subject to the Minimum Required Distribution Rules be identifiable individuals and that they be treated as Designated Beneficiaries under such rules, so that the life expectancies of such beneficiaries may be used to calculate the Minimum Required Distributions mandated by the Code. This Section shall be interpreted with this intent and purpose being paramount to any other direction in it.

b. Definitions

As used in my Trust Agreement, the following terms, whether or not capitalized, have the following meanings, unless the context very clearly indicates otherwise.

1. Retirement Plan and Retirement Plan Proceeds

The term "Retirement Plan" means an annuity, employee pension plan, a qualified or non-qualified plan of deferred compensation, an individual retirement account or individual retirement annuity ("IRA"), or similar arrangement. The term includes any plan or arrangement described in Sections 401(a), 403, or 408(a), (b) or (k) of the Code. The term "Retirement Plan Proceeds" means proceeds receivable by any beneficiary (including a fiduciary) under a Retirement Plan upon or following the death of the participant.

2. Eligible Retirement Plan

The term "Eligible Retirement Plan" has the meaning given under Section 402(c)(8)(B) of the Code and generally means any Retirement Plan that is eligible to receive a tax-free rollover.

3. Participant, Employee and Employee's Benefit

The term "Participant," as used in this Section, includes any individual who has contributed to, directly or indirectly (through contribution by an employer on the employee's behalf), any Retirement Plan as defined above, including the owner of an IRA or Roth IRA. The term "Employee" shall have the same meaning as the term "Participant" and the term "Employee's Benefit" shall

include benefits under any Retirement Plan, including an IRA or Roth IRA.

4. Required Beginning Date

The term "Required Beginning Date" ("RBD") will have the meaning given by Section 401(a)(9) of the Code and the Treasury Regulations hereunder. The RBD generally refers to April 1st following the calendar year in which the Participant attains age 70½, except that with regard to a qualified plan, if the participant is not a five percent (5%) owner (as defined in Section 416 of the Code) the RBD may be April 1st following the calendar year in which the Participant retires, if later.

5. Applicable Date

The term "Applicable Date," as used in this Section, means September 30th of the year after the Participant's death.

6. Minimum Required Distribution Rules

The "Minimum Required Distribution Rules" ("MRD Rules") are the rules described in Section 401(a)(9) and Sections 408(a)(6) or (b)(3) of the Code (or anywhere else Section 401(a)(9) of the Code is made applicable by cross-reference, as the case may be).

7. Designated Beneficiary

A "Designated Beneficiary" means an identifiable individual who is entitled to any portion of Retirement Plan Proceeds, contingent on the Participant's death or another specified event, but in any case is to be given the meaning used in the Treasury Regulations under Section 401(a)(9) of the Code, as then in effect. To the extent members of a class of beneficiaries capable of expansion or contraction can be treated as being identifiable under the Proposed Treasury Regulations because of the possibility at the Applicable Date of identifying the class member with the shortest life expectancy, such class of beneficiaries shall be treated as a Designated Beneficiary, even though members of the class may be unborn at that time.

8. Contingent Beneficiary

A "Contingent Beneficiary," for purposes of this Section only, is a Designated Beneficiary who is entitled to any portion of

Retirement Plan Proceeds, contingent on a specified event, other than the Participant's death (e.g., death of another beneficiary).

9. **Retirement Account Trustee**

The term "Retirement Account Trustee," as used in a beneficiary designation form or other document designating the beneficiary of Retirement Plan Proceeds, shall be interpreted to mean the then acting Trustee of my Trust Agreement.

c. **Trustee May Be Named As Death Beneficiary of Retirement Plan**

My Trustee may be named as a Designated Beneficiary of Retirement Plan Proceeds. If so, my Trustee will be treated as owning the right to receive distributions from the Retirement Plan as fully as any other person or individual who was named as a Designated Beneficiary, except that such ownership shall be in a fiduciary capacity. Such interest (i.e., the right to receive distributions from the Retirement Plan) will be treated as an asset of my Trust and will be subject, generally, to the same provisions applicable to other trust assets. The death of a beneficiary of my Trust will not terminate the interest that my Trust has in a Retirement Plan.

d. **Agreement to Provide Copies of All Amendments to Trust**

In the case where, prior to my death, I, as the Participant, am required under the Treasury Regulations for Section 401(a)(9) of the Code to provide a copy of my Trust Agreement to the plan administrator, plan trustee, or IRA sponsor, trustee, or custodian, as the case may be, I agree that if my Trust Agreement is amended at any time in the future (but before my death), I will, within a reasonable time, provide to such plan trustee, plan administrator, or IRA sponsor, custodian, or trustee, as the case may be, a copy of each such amendment.

e. **Method of Distribution under Retirement Plans**

To the extent my Trustee has an interest in a Retirement Plan, my Trustee shall have the power to determine the form and manner of distribution from such Retirement Plan.

f. **Rollovers and Transfers**

My Trustee will have the unrestricted power to transfer or rollover any interest in a Retirement Plan to any other Eligible Retirement Plan or Plans, in order to effectuate the requirements of this Section, or as my Trustee may otherwise determine to be in the best interest of the beneficiaries, provided that in such case my Trustee shall continue as the holder of the interest, to the same extent as before.

g. **Coordination with Minimum Required Distribution Rules**

If my Trustee is named as the beneficiary of Retirement Plan Proceeds that are subject to the MRD Rules, and if, under the circumstances existing on the Applicable Date, the Retirement Plan Proceeds or the right to receive the Retirement Plan Proceeds are or may be payable to my Trustee, then the beneficiaries of my Trust are intended to be Designated Beneficiaries under the MRD Rules, and the following provisions shall apply:

1. **Use of Retirement Plan Proceeds**

Except as otherwise specifically provided to the contrary in the paragraph immediately below, but notwithstanding anything else herein to the contrary, Retirement Plan Proceeds shall be used entirely and exclusively for the benefit of the Designated Beneficiaries who are living at the Applicable Date.

2. **Unborn Beneficiaries**

Notwithstanding the immediately preceding paragraph, in the event that all of the primary Designated Beneficiaries of a particular trust who were living at the Applicable Date have died, my Trustee shall make distributions to those beneficiaries who would otherwise benefit under such trust, but only in the manner and to the extent consistent with my intent and the purpose for this Section as set forth in Paragraph a. of this Section.

3. **Trustee Required to Distribute During Life Expectancy of Beneficiary**

Unless the law applicable to MRDs from qualified plans and IRAs, interpreted in accordance with my intent and the purpose for this Section as set forth in Subsection a. above, clearly allows for a less rapid distribution from my Trust, all Retirement Plan Proceeds received by my Trust must be distributed to one or more Designated Beneficiaries of my Trust before the expiration of the life expectancy of the youngest Designated Beneficiary of my Trust to which this rule is applied, unless such beneficiary dies prior to the expiration of such life expectancy, taking into account only those beneficiaries alive as of the Applicable Date.

h. **Use of Retirement Plan Proceeds to Pay Debts or Expenses**

Use of Retirement Plan Proceeds for the payment of debts and expenses directly attributable and proportionate to the estate tax value of such Retirement Plan Proceeds is limited to those payments that can actually be made prior to the

Applicable Date or would otherwise not cause my Trust to fail to be a qualified beneficiary. Notwithstanding the rules otherwise applicable to apportionment, abatement and the payment of debts and expenses, Retirement Plan Proceeds shall not be used to pay any of my debts or expenses still outstanding as of the Applicable Date and thereafter, or would otherwise cause my Trust not to be a qualified beneficiary.

i. Use of Retirement Plan Proceeds to Pay Debts or Expenses

Use of Retirement Plan Proceeds for the payment of Death Taxes directly attributable and proportionate to the estate tax value of such Retirement Plan Proceeds is limited to those payments that can actually be made prior to the Applicable Date, or would otherwise not cause my Trust to fail to be a qualified beneficiary. Notwithstanding the rules otherwise applicable to apportionment, abatement and the payment of Death Taxes, Retirement Plan Proceeds shall not be used to pay any Death Taxes still outstanding as of the Applicable Date and thereafter. However, in that case, the Death Taxes attributable and proportionate to such Retirement Plan Proceeds, to the extent otherwise apportionable under this instrument, shall, in my Trustee's discretion, be paid from funds provided by such beneficiary or charged against other property or trust distribution receivable by the beneficiary as a result of my death (provided that such other property is not otherwise eligible for the Marital Deduction).

j. No Power of Appointment Over Retirement Plan Proceeds

Except as provided below in this Section, but notwithstanding anything else to the contrary, no one (other than me) will have any power of appointment over any Retirement Plan Proceeds held in trust, except that my Spouse shall have all such demand rights over income that are otherwise provided herein, in cases where my Spouse has a qualifying income interest for life in a trust or in a Retirement Plan. Any power of appointment that would otherwise have been applicable but for this paragraph will be treated as if it existed but was unexercised.

k. Separate Account and Special Distribution Requirements

My Trustee will separately account for all Retirement Plan Proceeds, using sub-trusts if necessary, and will see to it that those benefits are only distributed to Designated Beneficiaries (as defined above) who are identifiable on the Applicable Date, as long as any Designated Beneficiary of such trust (or sub-trust, as the case may be) is alive. Further, my Trustee will actually distribute those benefits to those beneficiaries within such time as is required under applicable tax law, or under Treasury Regulations (whether proposed, temporary, or final) in order to carry out the purpose of this Section as provided under Subsection a. above.

l. Application of Rules to Sub-trusts

I realize that a sub-trust may be the beneficiary of Retirement Plan Proceeds. In that case, the rules of this Section are to be applied within the particular sub-trust involved, and are not meant to give the beneficiaries of other sub-trusts an interest they would not otherwise have had.

m. Incorporation by Reference of Terms of Beneficiary Designation

If the terms of any beneficiary designation signed by me would otherwise fail because such terms are not a part of my will and/or Trust), I incorporate such terms by reference, as a part of my Trust as if fully set out in this document.

n. Principal and Income Allocations of Payments from Retirement Plans

My Trustee shall allocate to income that portion of each "Payment" (up to the whole thereof) that equals (i) the amount of "Inside Income" that my Trustee reasonably determines has occurred since the right to receive Payments became subject to trust; reduced by (ii) the amount of prior Payments from the same contractual, custodial, or trust arrangement that was allocated to trust income. My Trustee shall allocate the balance of the Payment, if any, to principal.

The term "Payment" refers to an amount that is received or withdrawn pursuant to a contractual, custodial, or trust arrangement under a Retirement Plan. The term "Inside Income" with respect to each contractual, custodial, or trust arrangement, refers to that portion of Payments that are characterized by the payor as interest, dividends, or a dividend equivalent. To the extent any portion of a Payment is not so characterized by the payor, Inside Income shall consist of any amounts that would be allocable to income under applicable state law governing the allocation of principal and income for trusts, if said statutes were applied to a trust holding the assets that fund all Payments to which my Trust is entitled under such arrangements. If my Trustee cannot identify the character, amount, or nature of said assets, my Trustee may reasonably estimate the character, amount and nature of such assets.

Section 2. Provisions Relating to Income in Respect of a Decedent

Upon my death, if my Spouse survives me and if my Trustee (other than my Spouse) determines in my Trustee's discretion, that it is in the best interest of any beneficiary of my Trust, my Trustee may disclaim all or any right to receive any Income in Respect of a Decedent ("IRD") assets. If my Trustee so disclaims, such disclaimed IRD assets shall pass outright to my Spouse. If my Spouse is the only Trustee at the relevant time, the Trust Protector provided for under Section 8 of Article Three shall act as Trustee for this purpose.

Section 3. Special Needs Provisions

a. Definition of "Special Needs Beneficiary"

For purposes of my Trust Agreement, the term "Special Needs Beneficiary" refers to a beneficiary who is entitled to receive any form of need-based government or private support or benefit, including, but not limited to, such programs as Medicaid, Supplemental Security Income ("SSI"), In-Home Supportive Services, Medicare, and Aid for Dependent Children.

b. Definition of "Special Needs"

For purposes of my Trust Agreement, the term "Special Needs" refers to supplemental, non-support expenditures from my Trust assets that, pursuant to the other provisions of this Section, my Trustee is authorized to disburse, in my Trustee's sole and absolute discretion. Special Needs, subject to the general supplemental, non-support limitation, include, but are not limited to, medical, dental, diagnostic or therapeutic treatment, or nursing or home care services for which the Special Needs Beneficiary is not receiving government or private benefits, and is not eligible to receive such benefits. Special Needs also includes the differential between any treatment, service or care that the Special Needs Beneficiary is receiving from any government or private source and the level of treatment, service or care my Trustee deems appropriate for the beneficiary. Disbursements for education, travel (including travel by those my Trustee believes the companionship of which will benefit the Special Needs Beneficiary), entertainment devices or events and electronic devices are also to be considered Special Needs.

c. Overall Limitation on Distribution

It is my intention that distributions from my Trust Estate supplement, but not supplant, impair or diminish, any forms of government or private support or benefit which a beneficiary of my Trust is then receiving or becomes eligible to receive. For purposes of this Section, the term "support" refers to food, clothing or shelter. The terms of my Trust Agreement shall be read and interpreted to prevent any action by my Trustee which would supplant, impair, diminish or otherwise interfere with, limit or reduce the Special Needs Beneficiary's receipt of, or eligibility for, any form of government or private benefits. Any power of distribution (whether or not exercised), granted to my Trustee pursuant to the terms of my Trust Agreement that would result in the loss, diminishment or ineligibility for government or private benefits is hereby revoked; and, only such powers as will not result in ineligibility for such benefits, or loss, diminishment or impairment, thereof, shall remain exercisable by my Trustee.

d. Discretionary Distribution of Accumulated Income and Principal

My Trustee may pay for the benefit of a Special Needs Beneficiary such accumulated income and principal of such beneficiary's share, up to the whole thereof, as my Trustee, in his or her discretion, shall determine from time to time, for the Special Needs of the Special Needs Beneficiary. My Trustee, in exercising discretion under this paragraph, shall consider all income or resources available to the Special Needs Beneficiary. The Special Needs Beneficiary has no rights to any distributions under my Trust.

e. Treatment of Any Residence Held by Trust

Notwithstanding the provisions of Section 1. k. of Article Thirteen, my Trustee may charge the Special Needs Beneficiary rent on any residence owned, in whole or in part, by the Special Needs Beneficiary's share. My Trustee must charge rent if the failure to do so would cause ineligibility for any government or private benefits.

f. Rights of Creditors and Others

My Trust assets are not intended to be used for the support of the Special Needs Beneficiary, but are only intended to supplement resources, income or government or private assistance available to the Special Needs Beneficiary. No part of my Trust Estate, neither principal nor income, shall be subject to anticipation or assignment by the Special Needs Beneficiary, nor be subject to attachment by any creditor of the Special Needs Beneficiary, governmental agencies or any other individual or entity; including any who may have provided goods or services to the Special Needs Beneficiary.

g. Power to Terminate Beneficiary's Share of Trust

If my Trustee determines that the existence of my Trust renders the Special Needs Beneficiary ineligible for governmental or private benefits that, in the discretion of my Trustee, substantially outweigh the benefits my Trust can bestow upon such beneficiary, or my Trustee determines that, notwithstanding the spendthrift provisions of my Trust, a substantial portion or all of the principal and accumulated income of the Special Needs Beneficiary's share is subject to invasion, garnishment, attachment, execution or other similar action by a creditor or a government agency, my Trustee may terminate such share and distribute the principal and accrued income in accordance with the paragraph that follows. Furthermore, in the event a court of competent jurisdiction determines the provisions of this Section are contrary to law or public policy, then subject to any right of appeal, the Special Needs Beneficiary's share of my Trust shall be deemed unavailable for purposes of qualifying for or maintaining any public or private support benefits or services, regardless of whether the beneficiary is

actually entitled to such benefits or services, and if this is not sufficient to cure any deficiency then the Special Needs Beneficiary's share shall be deemed to have failed and my Trustee shall distribute the principal and accrued income of such share in accordance with the paragraph that follows.

h. Payment and Distributions on Termination of Discretionary Trust

In the event a share for a Special Needs Beneficiary is terminated subject to the paragraph immediately above, my Trustee shall distribute the remaining principal and accrued income of such share to the Special Needs Beneficiary's siblings, per stirpes. If the Special Needs Beneficiary has no then living siblings but has living descendants who are of the age of majority, my Trustee shall distribute the remaining principal and accrued income of such share to such descendants of the Special Needs Beneficiary, per stirpes. If the Special Needs Beneficiary has no living descendants who are of the age of majority, my Trustee shall distribute the remaining principal and accrued income of such beneficiary's share to my then living descendants, per stirpes. If I have no then living descendants, my Trustee shall distribute the balance of the Special Needs Beneficiary's share of my Trust as provided in the paragraph that follows. It is my hope, wish and desire that any beneficiary under this paragraph will use any distribution received hereunder to provide for the supplemental needs, as defined above, of the Special Needs Beneficiary.

i. Payment and Distributions on Death of Beneficiary

Unless terminated under the paragraphs immediately above, or by the exhaustion of the corpus, the Special Needs Beneficiary's share of my Trust shall terminate upon such beneficiary's death. My Trustee may pay the expenses of such beneficiary's last illness and funeral, and all administrative expenses relating to such beneficiary's share, including reasonable attorney's and accountant's fees, if, in my Trustee's discretion, other satisfactory provisions have not been made for the payment of such expenses. My Trustee shall divide and distribute, free of trust, the balance of the Special Needs Beneficiary's share into as many shares of equal value as there are then surviving children of the beneficiary, if any, plus one share for each deceased child of such beneficiary leaving descendants then surviving, each of said descendant's interests to be determined per stirpes. Should there be no children or descendants of the beneficiary then surviving, my Trustee shall divide and distribute, free of trust, the balance of the beneficiary's share into as many shares of equal value as I have then surviving children, if any, plus one share for each of my deceased children leaving descendants then surviving, each of said descendant's interests to be determined per stirpes. Should I have no children or descendants then surviving, the Special Needs Beneficiary's share shall terminate and my Trustee shall distribute the balance of the beneficiary's share according to the provisions of Article Eleven of my Trust.

Section 4. Life Insurance

Notwithstanding anything to the contrary contained in my Trust Agreement, with respect to any policy of life insurance owned by me as my separate property or being held in my Trust, I shall retain, during my lifetime, all incidents of ownership with respect to such policies (including, but not limited to, all rights and powers to sell, transfer, assign or hypothecate such policies or any of them, to change the beneficiary of any policy, to borrow any sum from the insurer or from any other person and to assign any policy to such lender, and to receive all payments, dividends, surrender values, benefits or privileges of any kind which may accrue on account of said policies). Any other person on whose life such policies are held ('Insured') shall have no incidents of ownership with respect to such policies only by reason of being an Insured with respect to such policies and shall not act as my Trustee of such policies. The above provisions shall not prohibit or restrict me from owning any policies as Community Property. Such policies shall be governed as follows:

a. **Trust as Owner**

My Trustee shall not be required to pay premiums, assessments, or other charges on any life insurance policy of which my Trust is the owner, which are required to keep it a binding insurance contract, nor shall my Trustee be responsible for determining whether such payments have been made. However, my Trustee may pay, from income or from principal of my Trust, any and all premiums, assessments, or other charges with respect to such insurance policies that may be required in order to preserve them as binding contracts, and my Trustee may exercise any non-forfeitures or dividend options under the policies. In the event that my Trustee receives any notice requiring the payment of a premium, or whenever my Trustee intends to cancel, convert or substantially modify any insurance policy, my Trustee shall give me written notice of the event.

b. **Trust as Beneficiary**

With respect to any policy of life insurance which designates my Trust as a primary or contingent beneficiary in any manner:

1. Except as provided in Section 4.a. of this Article, my Trustee shall have no responsibility, with respect to any policy, for the payment of premiums, notification of premiums due, or for any action required to keep any policy in force.

2. On receipt of proof of death of any Insured and on obtaining possession of an insurance policy, my Trustee shall use reasonable efforts to collect all sums payable under policy terms. All sums received shall be principal of my Trust Estate, except for interest paid by the insurer,

which shall be income. Subject to any contrary provision in the beneficiary designation of any policy, all sums payable under any policy shall be allocated to the trusts created hereunder based on the ownership of the policy immediately before the Insured's death;

3. My Trustee shall have full power to compromise, arbitrate or otherwise adjust any claim, dispute or controversy arising under any policy, and shall have authority to initiate, defend, settle and compromise any legal proceeding necessary, in my Trustee's opinion, to collect the proceeds of any policy. My Trustee shall not be obligated to engage in litigation to enforce the payment of any policy unless my Trustee is indemnified to its satisfaction against any resulting expenses and liability; and

4. My Trustee's receipt of payment for policy proceeds to any insurer shall be considered to be full discharge, and the insurer shall not be under any duty to inquire concerning the application of policy proceeds by my Trustee.

c. Simultaneous Death

Notwithstanding anything in my Trust Agreement to the contrary:

1. Where the Insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the proceeds of the policy shall be distributed as if the Insured had survived the beneficiary; and

2. Where the owner and the Insured in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the policy shall be distributed as if the Insured had survived the owner.

d. Purchase of Additional Insurance

My Trustee may apply for and receive life insurance on the life of any beneficiary under my Trust.

Section 5. Residence and Vacation Residence Usage by Spouse

Notwithstanding anything to the contrary hereinabove, from and after my death, my Spouse, at his election, shall have the right to possess and occupy, during his life, the real property in my

Trust Estate that we were using for our principal residence and/or vacation residence at the time of my death, without any obligation upon my Spouse to pay rent. While my Spouse shall possess and occupy said residence, my Spouse shall manage, care for and protect it.

My Trustee shall pay a portion (set forth below) of any mortgage or trust deed payments (both principal and interest), any property taxes, assessments, insurance, maintenance and repairs on all such residential property, or any rent or lease payments, out of principal and/or income of the Family Trust and the Marital Trust, if any such share exists. The portion of such payments and expenses paid by my Trustee shall be an amount that is or was proportionate to the respective interests in such residential property held by the Family Trust and the Marital Trust. The remaining portion of such payments and expenses shall be paid by my Spouse

My Trustee may exchange such residential property for other residential property, or sell such residential property, only with the consent of my Spouse, if competent to give such consent, or if my Spouse is not competent to give such consent, with the consent of his/her Attorney-in-Fact. My Trustee may also use my Trust Estate to purchase, rent or lease other residential property selected by my Spouse or his/her Attorney-in-Fact, as the case may be. Any sale or purchase may be solely for cash or partly for cash and partly on credit, and at such price and upon such terms as shall be mutually agreed upon by my Trustee and my Spouse. The purchase price for the replacement residential property, or the value of the other residential property which is rented or leased, however, shall not exceed the selling price, less selling expenses, of the property sold, unless my Spouse shall contribute the amount of such excess, as determined by my Trustee, either by paying or agreeing to exonerate or indemnify my Trust Estate against any liability for the amount of such excess. My Spouse shall not be obligated to give security for his/her liability under such agreement of exoneration or indemnification. In the event that my Trustee sells any residential property and my Spouse does not request the purchase, rental or lease of a replacement residence, my Trustee shall invest and reinvest the proceeds of any such sale or distribute the same in accordance with the other provisions of my Trust Agreement. The right, title and interest of my Spouse and of my Trustee in any other residential property acquired under the provisions of this Section shall be proportionate to their respective contributions to the purchase price. The right, title and interest of my Trust Estate in any other residential property received in exchange or by purchase, shall be subject to all the terms and conditions of this Section, including the provisions hereof relating to the possession and occupancy, sale or exchange, and the acquisition of other residential property in place thereof. If any residential property possessed or occupied by my Spouse is located on realty used for commercial or farming purposes, this Section shall apply only with respect to the residential structures thereon, along with the land on which they stand and the land reasonably necessary for the exercise of the right of ingress thereto and egress therefrom, and my Trustee, in my Trustee's discretion, may continue to use the balance of the real property for commercial or farming purposes.

If my Spouse is acting as Trustee hereof at the time my Trustee is called upon to exercise any of his powers, duties, or discretionary authority set forth above in this Section, then such powers, duties and discretionary authority may be limited as set forth in Section 8 of Article Three. This Section shall also apply to our principal residence, in the event we are living but neither of us is acting as Trustee and references to the Family Trust and Marital Trust shall be irrelevant.

Section 6. "S" Corporation Stock

Notwithstanding any other provisions of my Trust Agreement, my Trustee shall not allocate any Subchapter "S" Corporation Stock (as defined by Section 1361 et. seq. of the Code) held in my Trust Estate at my death, to the extent possible, to any trust or trust share created under my Trust Agreement which would have the effect of causing the "S" Corporation status to be terminated because the trust or the trust share was not a qualified Subchapter "S" shareholder, or was not a Qualified Subchapter "S" Corporation Trust ("QSST"), as defined at Section 1361 of the Code, as amended. In furtherance of the above, it is my intention that my Trustee shall have the right, in my Trustee's sole discretion (but keeping in mind my dispositive wishes as set forth elsewhere in my Trust Agreement), to bifurcate any and all trusts created hereunder, at any time or from time to time after my death, to create trusts which hold "S" Corporation stock and shall at all times be classified as QSSTs within the meaning of Section 1361 of the Code and the corresponding provisions of state law. The above provisions may be limited as set forth in Section 8 of Article Three of my Trust Agreement.

To that end, all such QSSTs shall be subject to the following rules:

a. During the life of the current income beneficiary there shall be only one income beneficiary of a QSST;

b. Any principal distributed during the life of the current income beneficiary may be distributed only to such beneficiary;

c. The income interest of the current income beneficiary in the QSST shall terminate on the earlier of such beneficiary's death or the termination of the QSST;

d. Upon termination of the QSST during the life of the current income beneficiary, the QSST shall distribute all of its assets to such beneficiary; and

e. All of the income (within the meaning of Section 643 (b) of the Code) shall be distributed (or shall be required to be distributed) currently to one individual who is a citizen or resident of the United States of America.

My Trustee, in his or her discretion, may, in the alternative, attempt to exchange, sell, or convey such stock to such persons or entities who would not cause the "S" Corporation election to be revoked or terminated for any reason attributable to that person's or entity's ownership of such stock and the proceeds or property received from such exchange, sale, or conveyance shall then be applied in accordance with the provisions of my Trust Agreement. It is further provided that, notwithstanding this paragraph, my Trustee shall hold, administer, and dispose of any and all of my Trust Estate such that the continuation of the "S" Corporation election shall be of secondary consideration in deference to my primary intent that the total value of my Trust Estate distributed under the terms of my Trust Agreement be maximized to the extent possible, considering all

income tax, estate tax, and any other taxes or expenses that could potentially diminish the value of such Trust Estate.

Section 7. The Rule Against Perpetuities

Notwithstanding any other provision of my Trust Agreement, unless sooner terminated or vested in accordance with other provisions of my Trust Agreement, all interests in the Trust Estate not otherwise vested, including, but not limited to, all trusts and powers of appointment created hereunder, shall terminate: (i) one day prior to twenty-one years after the death of the last survivor of the group composed of: 1) those beneficiaries described herein, 2) each of my spouse's and my descendants living on the date of my death (or such other date my Trust becomes irrevocable), 3) my spouse, and 4) me, or (ii) if longer, the maximum period or term as may be authorized under the laws of the state identified in the Governing State Law Section of this Article or such other jurisdiction whose laws are applicable to my Trust. At that time, distribution of all principal and all accrued, accumulated, and undistributed income share shall be made to the persons (or their representatives as authorized herein) then entitled to distributions of income or principal and in the manner and proportions herein stated, irrespective of their then attained ages.

Section 8. Spendthrift Protection

To the fullest extent permissible by law, no interest in the principal or income of any trust created hereunder shall be anticipated, assigned, encumbered or subject to any creditor's claim or to legal process prior to its actual receipt by the beneficiary. Notwithstanding any provision herein to the contrary, this Section shall not apply to Qualified Disclaimers (as defined in Section 2518 of the Code) made by any beneficiary as to his or her interest in my Trust. Except as herein otherwise expressly provided, all income or principal to be paid to any beneficiary shall be paid by my Trustee directly and only to such beneficiary, to the Legal Representative of such beneficiary, or, where authorized, applied for the benefit of such beneficiary. If any creditor or other claimant attempts, by any means, to subject to the satisfaction of the claim of such creditor or claimant the interest of any beneficiary to receive income or periodic payments from principal or income, or both, then notwithstanding any other provisions herein, and in the absolute discretion of my Trustee, my Trustee may suspend such beneficiary's payments from my Trust. To the extent that the provisions of this Section would exclude any portion of my Trust Estate from qualifying for the Marital Deduction, it shall be null and void.

Section 9. Incapacity and Competency

A person shall be considered incapacitated in the event such person has been determined to be so by a court of competent jurisdiction; has been certified by two licensed physicians to be unable to properly handle his or her own affairs by reason of physical illness or mental illness; is unavailable for a period of not less than six months when his or her whereabouts are unknown and it is not known whether he or she is dead or alive; or, in the case of a trustee, such trustee is prevented by state law from exercising a power or powers granted to such trustee under my Trust Agreement. To the extent a trustee is prevented by state law from exercising a power or powers

granted to such trustee under my Trust Agreement, the Successor Trustee shall have the power to exercise such power or powers, provided such power is not a general power of appointment if held by a Successor Trustee. If a Successor Trustee is prevented from exercising a power or powers because such power or powers would constitute a general power of appointment, the Trust Protector appointed under the provisions of Section 8 of Article Three shall exercise such denied power or powers. A person shall be considered to have regained capacity, as applicable, upon such a determination by a court of competent jurisdiction; upon certification by two licensed physicians that the person is able to properly handle his or her own affairs; upon his or her renewed availability; or if any state law proscription as to the exercise of a power or powers is removed. The term "incapacity" is intended to be interchangeable with the terms "disability" and "incompetency." The term "competent" in my Trust Agreement refers to a person who is not incapacitated.

Section 10. Income and Principal Payments

Unless prohibited by state law or a court of competent jurisdiction and other than as directed in the Special Needs Provisions of this Article, all payments of income or principal shall be made in such of the following ways as my Fiduciary determines appropriate:

a. To each respective beneficiary in person upon his or her personal receipt;

b. Deposited in any bank to the credit of such beneficiary in any account carried in his or her name or jointly with another or others;

c. To the parent or Legal Representative of the beneficiary;

d. To a Custodian under a Uniform Transfers to Minors Act or Uniform Gifts to Minors Act selected by my Trustee for such period of time under applicable law as my Trustee determines appropriate;

e. To some near relative, friend or institution having primary responsibility for the care and custody of the beneficiary;

f. By my Trustee using such payment directly for the benefit of such beneficiary; or

g. To the Trustee of any revocable trust of which the beneficiary is me.

Section 11. Limit on Trustee's Discretion

Notwithstanding any other provision in my Trust Agreement except for the general power of appointment specifically provided under the Section entitled "General Power of Appointment Over Non-Exempt Assets" in Article Ten, no individual Trustee, other than myself, who is also a beneficiary hereunder ("Trustee-beneficiary") shall have any right, power, duty or discretion concerning my Trust Estate if such right, power, duty or discretion conferred upon such Trustee-beneficiary under my Trust Agreement would constitute a general power of appointment under

Code Sections 2041 or 2514 that would cause any assets of my Trust Estate to be included in the estate of such Trustee-beneficiary. Any such right, power, duty or discretion with such effect shall be null and void with respect to such Trustee-beneficiary. No Trustee who is under a legal obligation to any beneficiary of my Trust Agreement or other person shall under any circumstances partake in any decisions relating to any discretionary distributions of income or principal of my Trust Estate that can be used to discharge any such legal obligation of such Trustee.

If, however, such powers may be possessed without violating the restrictions imposed by my Trustee acting jointly with the Trust Protector appointed under the provisions of Section 8 of Article Three, then my Trustee may possess those powers and authorities without violating this Section. Such Trust Protector shall act jointly with my Trustee whenever the joint possession of a power or authority would not violate the restrictions imposed by this Section. Such Trust Protector shall act alone whenever only sole possession of a power or authority would not violate the restrictions imposed by this Section.

Section 12. Disclaimer by Beneficiary

Any beneficiary under my Trust Agreement shall be entitled to disclaim all or any portion of such beneficiary's interest in my Trust.

Section 13. Captions

The captions of Articles, Sections and Paragraphs used in my Trust Agreement are for convenience of reference only and shall have no significance in the construction or interpretation of my Trust Agreement.

Section 14. Severability

Should any of the provisions of my Trust Agreement be, for any reason, declared invalid, such invalidity shall not affect any of the other provisions of my Trust Agreement, and all invalid provisions shall be wholly disregarded in interpreting my Trust Agreement.

Section 15. Statutory References

Unless the context clearly requires another construction, each statutory reference in my Trust Agreement shall be construed to refer to the statutory section mentioned, related successor sections, and corresponding provisions of any subsequent law, including all amendments.

Section 16. Survivorship

a. Simultaneous Deaths

For purposes of my Trust Agreement, if my Spouse and me die under circumstances in which the order of my deaths cannot be established, and I die with the smaller Taxable Estate, then I shall be deemed to have survived my

Spouse. If I die with the larger Taxable Estate, then my Spouse shall be deemed to have survived me. If both of my Taxable Estates are equal, then my Spouse shall be deemed to have survived me.

If any beneficiary under my Trust Agreement and I die under circumstances in which the order of deaths cannot be established, I shall be deemed to have survived the beneficiary, and my Trust Agreement shall be construed accordingly.

b. **Generation-Skipping Transfer Tax Matters**

A person (the "Non-Skip Person") shall not be deemed to have been alive on the date of the death of any person upon whose death a transfer is deemed to occur for generation-skipping transfer tax purposes or the date of any distribution from, or any termination of, any interest in any trust or share under my Trust Agreement for which the date of the Non-Skip Person's death is relevant (the "Transfer Date") if: (i) the Non-Skip Person is actually alive on the Transfer Date; (ii) the Non-Skip Person is not actually alive on the date ninety (90) days following the Transfer Date; and (iii) the existence of such a condition of survivorship causes another person who would otherwise be assigned to a generation below that of the Non-Skip Person to be assigned to the generation of the Non-Skip Person for generation-skipping transfer tax purposes.

Section 17. Gender and Number

In my Trust Agreement, where appropriate, except where the context otherwise requires, the singular includes the plural and vice versa, and words of any gender shall not be limited to that gender.

Section 18. Governing State Law

My Trust Agreement and the trusts created under it shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

Section 19. Reliance on Affidavit of Trust

Any person may act in reliance upon a properly issued Affidavit or Certificate of Trust reflecting the relevant terms of my Trust Agreement without risk or incurring any liability to me, my Trustees or the beneficiaries of my Trust.

Section 20. Definitions

The following terms as used in my Trust Agreement are defined as indicated:

a. **Beneficiary Designation**

The term "Beneficiary Designation" means any document executed by me that affects the manner of payment of amounts held in a plan (of whatever type) subject to the distribution rules of Section 401(a)(9) of the Code, any commercial annuity or any similar deferred payment arrangement, or life insurance contract.

b. **Business Judgment**

The term "Business Judgment" means that the fiduciary acted on an informed basis, in good faith, and with the honest belief that his or her actions are in the best interest of my Trust and its beneficiaries.

c. **Child, Children and Descendants**

The terms "child" or "children" mean lawful blood descendants in the first degree of the parent designated; and "descendants" means the lawful blood issue, in any degree, of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent or parents, and such adopted child and his or her issue shall be considered issue of the adopting parent or parents and of anyone who is, by blood or adoption, an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant, in the appropriate degree, of the ancestor designated even though such descendant is born after the death of a parent. Notwithstanding the preceding provisions of this Section, the terms of Article One may exclude certain descendants from being treated as such hereunder by restricting the availability of Trust benefits.

d. **Code**

The term "Code" means the Internal Revenue Code of 1986, as amended from time to time. The terms "Income in Respect of a Decedent," "Gross Estate," "Taxable Estate," "State Death Tax Credit," "Marital Deduction," "Exclusion," "Disclaimer" and any other terms that, from the context in which they are used, refer to the Code, shall have the same meaning as such terms have for the purposes of applying the Code to my Trust Agreement.

e. **Death Taxes**

The term "Death Taxes" means all inheritance, estate, succession and other similar taxes that are payable by any person on account of that person's interest in the estate of the decedent or by reason of the decedent's death, including penalties and interest, but excluding the following:

1. Any additional tax that may be assessed under Sections 2032A of the Code; and

2. Any federal or state tax imposed on a generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by my Trust Agreement.

f. Education

The term "education" shall be given broad interpretation and may include, but not be limited to:

1. High School

Education at public or private elementary, middle, junior high or high schools, including boarding schools;

2. College

Undergraduate and graduate study in any and all fields whatsoever, whether of a professional character in colleges or other institutions of higher learning;

3. Specialized Training

Specialized formal or informal training in music, the stage, handicrafts, the arts, or vocational or trade schools, whether by private instruction or otherwise; and

4. Other Educational Activities

Any other activity including foreign or domestic travel that shall tend to develop fully the talents and potentialities of each beneficiary regardless of age.

g. Family Access Trust

The term "Family Access Trust" shall mean a trust designed to give the beneficiary liberal access to the income and principal of the trust while preserving the separate property character of an inheritance of a beneficiary, thereby affording the beneficiary a degree of asset protection in the event the beneficiary becomes involved in a legal separation, marital dissolution or divorce proceeding.

h. **Family Sentry Trust**

The term "Family Sentry Trust" shall mean a third party fully discretionary spendthrift trust designed to provide maximum protection from the creditors of the trust beneficiary as well as from divorcing spouses. The trust is known as a Family Sentry Trust because of these asset protection features.

i. **For Cause**

The term "for cause" means and includes any material act or omission to act by a trustee or other fiduciary constituting ordinary negligence, gross negligence, self-dealing, or intentional fraud. The term "material" identifies a significant monetary damage to my Trust or to any beneficiary of my Trust as the result of the act or omission to act by a trustee or other fiduciary constituting ordinary negligence, gross negligence, self-dealing or intentional fraud. The term "material" does not include incidental or insignificant monetary damage to my Trust or a trust beneficiary; monetary damages realized by someone who is not a beneficiary of my Trust; nor an intangible loss or damage that cannot be valued under the fair market valuation standards of the tax laws of the United States of America.

j. **Heirs at Law**

References to "heirs at law" mean individuals who are living at the time when property is directed to be distributed to them. Those individuals' identities and the shares of the distributable property that they each receive shall be determined under the intestacy laws of the State of South Carolina which then govern the distribution of the personal property of a resident dying at such time, without creditors, and owning only the distributable assets.

k. **Investment Trustee**

The Investment Trustee serves in the capacity of a co-trustee with regard to a Family Access Trust for my Spouse or any Family Sentry Trust established herein. The sole role of the Investment Trustee is to make investment decisions with regard to the sub-trust assets. The Investment Trustee is a fiduciary and is bound by the duties and liabilities of a Trustee dealing with investments as more fully described in Section 1 of Article Thirteen of my Trust Agreement. The Investment Trustee holds none of the daily administrative and distributive powers over the sub-trust. These powers remain with my Trustee.

l. **Personal Representative**

The term "Personal Representative" means executor, executrix, administrator, or administratrix. The term Legal Representative shall include Personal

Representative, conservator, guardian, custodian or an agent under a power of attorney for property.

m. Per Stirpes

In every case in which a disposition of an interest is to be made to the descendants of a person "per stirpes," it is intended that such disposition shall be made in accordance with the principle of representation. This principle, in relation to my Trust Agreement, means that whenever property is to be distributed to the descendants of a person, such property shall be divided into as many shares as there are, at the time of disposition, then living descendants in the nearest degree of kinship to such person and then deceased descendants in the same degree who left descendants who are then living; each then living descendant in the nearest degree receiving one share, and one share for each then deceased descendant in the same degree, being further subdivided among his or her descendants in the same manner.

n. Trust Estate

The term "Trust Estate" means all of the property, real and personal, intangible and tangible, which has been transferred to my Trustee, whether or not listed on any Schedules.

o. Trustee's Discretion

The term "discretion" with regard to a Trustee means such Trustee's sole but reasonable judgment. In exercising any discretionary power with respect to my Trust, my Trustee shall, at all times, act in accordance with fiduciary principles and shall act reasonably under the circumstances and not in bad faith or in disregard of the purposes of my Trust.

p. Trustor

The term "Trustor" shall be interchangeable with the terms "settlor," "grantor," "donor" or other similar terms.

Section 21. No Contest Clause

Notwithstanding the "Resolution of Disputes" provisions under Section 8 of Article Three of my Trust, if any devisee, legatee, or beneficiary under my Trust, or any amendment thereto, no matter how remote or contingent such beneficiary's interest appears, or any of my legal heirs, or any person claiming under any of them, directly or indirectly, does any of the following, then in that event I specifically disinherit such person or persons, and all such legacies, bequests, devises and interests given to such person or persons under my Trust, or any amendment thereto, or any other Trust document created by me at any time, shall be forfeited and shall be distributed as provided elsewhere herein as though such person or persons had predeceased me without issue:

a. Unsuccessfully challenges the appointment of any person named as a trustee in my Trust Agreement, or any amendment thereto, or unsuccessfully seeks the removal of any person acting as a trustee;

b. Objects in any manner to any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement, or any amendment thereto, whether my Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

c. Objects to any construction or interpretation of my Trust Agreement, or any amendment thereto, or to the provisions of either, that is adopted or proposed in good faith by my Trustee, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

d. Claims entitlement to (or an interest in) any asset alleged by my Trustee to belong to the Probate or Trust Estate, whether such claim is based upon a community or separate property right, Marvin rights, a contract or other right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

e. Files a creditor's claim against the assets of the Probate or Trust Estate and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

f. Anyone, other than me, attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on my life or any designation of beneficiaries for any pension plan, Keogh, SEP, or IRA;

g. In any other manner contests my Trust Agreement, or any amendment thereto, executed by me, or in any other manner, attacks or seeks to impair or invalidate any of my Trust's provisions; or

h. Conspires with or voluntarily assists anyone attempting to do any of the above acts.

Expenses to resist any above contest or other attack of any nature upon any provision of my Trust Agreement, or any amendment thereto, shall be paid from the trusts created hereunder as expenses of administration.

In the event that any provision of this Section is held to be invalid, void, or illegal, the same shall be deemed severable from the remainder of the provisions in this Section and shall in no way affect, impair, or invalidate any other provision in this Section. If such provision is deemed

invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The authority of the Trust Protector appointed under Section 8 of Article Three to resolve disputes between Co-Trustees, beneficiary and Trustee, and among beneficiaries in no way nullifies the provisions of this Section. The provisions of this Section shall not apply to any disclaimer by any person of any benefit under my Trust Agreement, or any amendment thereto.

Execution

I have executed my Trust Agreement on the date set forth on the first page of my Trust Agreement.

I certify that I understand my Trust Agreement and that it correctly states the terms and conditions under which my Trust Estate is to be held, managed and disposed of by my Trustee. I approve this revocable living trust in all particulars and request my Trustee to execute it.

Trustor and Trustee:

DEBORAH DEREEDE

Witnesses:

SIGNATURE OF FIRST WITNESS

NAME OF FIRST WITNESS

STREET ADDRESS

CITY, STATE, ZIP

SIGNATURE OF SECOND WITNESS

NAME OF SECOND WITNESS

STREET ADDRESS

CITY, STATE, ZIP

STATE OF SOUTH CAROLINA)
SS
COUNTY OF YORK)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named DEBORAH DEREEDE, sign, seal and as her act and deed deliver the within instrument and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

WITNESS

Sworn to before me this December 18, 2013 by DEBORAH DEREEDE, and the above named witness.

Notary Public for South Carolina
My Commission Expires: 11/26/2016

Prepared by:
Philip J. Corson
Haselden, Owen, Boloyan & Corson, LLC
4609 Charlotte Hwy., Ste. 1
Lake Wylie, SC 29710
(803) 831-2738 FAX (803) 831-0180
www.PlanningYourLegacy.com

EXHIBIT "B"

Dawn Hardee

ROA 0133

Subject: FW: closing of 131 Whispering Pines

From: cfeeleykarp@gmail.com
To: Tdndereede@aol.com
CC: roy.karp@comcast.net
Sent: 12/11/2014 10:57:44 P.M. Eastern Standard Time
Subj: Re: closing of 131 Whispering Pines

Dear Hugh:

As I have explained before, estate law requires that all debts and expenses of Mom's estate be paid and settled before any distributions are made. This includes anything in the Trust as the Trust has legal responsibility for paying the debts of the estate. Therefore, I cannot within my fiduciary obligations make any distributions until then. Once the estate's debts have been paid and probate has closed I will be able to make distributions, including the amount of money owed to you under the Trust from the sale of the house. As I have repeatedly said, I do not know when or how long that will take as this is a complicated estate and cannot provide any date certain for such distributions.

Thank you,
Courtney

On Thu, Dec 11, 2014 at 6:54 PM, <Tdndereede@aol.com> wrote:
Dear Courtney,

In light of the upcoming closing of the above property, Monday December 15th, 2014, I would like you to confirm that you will be following your mother's instructions in her Trust by having the proceeds of the sale of the house forwarded to me after the bank has been paid out.

Please advise when I can expect the money to be send to me after or on Monday, the 15th of December 2014.

Thanks in advance,

Hugh Dereede

STATE OF SOUTH CAROLINA FILED RECEIVED IN THE PROBATE COURT ROA 0134

COUNTY OF YORK 2015 MAR 13 PM 2:45 CASE NO: 2014 – GC- 46- 00088

JUDGE OF PROBATE
YORK COUNTY, SC

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC. Plaintiffs, vs. COURTNEY FEELEY-KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013; Defendants.	**MOTION FOR REMOVAL TO CIRCUIT COURT, MOTION TO DISMISS, AFFIRMATIVE DEFENSES, AND ANSWER**

NOW COMES Defendant, Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013, by and through counsel, and answers the Complaint as follows:

MOTION FOR REMOVAL TO CIRCUIT COURT

To the extent the allegations of Plaintiffs' Complaint related to an internal or external matter involving a trust, Defendant herby moves this court pursuant to S.C. Code Ann. §62-1-302(d)(4) for removal of this matter to the Circuit Court of York County.

FIRST AFFIRMITVE DEFENSE
MOTION TO DISMISS 12(b)(6)

Defendant moves the court to dismiss this action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

CERTIFIED TRUE COPY Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

SECOND AFFIRMATIVE DEFENSE
NO CONTEST CLAUSE

The Deborah Dereede Revocable Living Trust, dated December 18, 2013 ("the Trust") contains a "No Contest Clause" (Article 14, Section 21) that is designed to discourage beneficiaries from needless harassing, frustrating, or prohibiting the Trustee from efficiently and effectively fulfilling her fiduciary responsibilities. Pages 14-21 through 14-23 of the Trust are attached hereto as Exhibit A and incorporated herein by reference. The applicable language of this Trust provision states that if "any devisee, legatee, or beneficiary under my Trust . . .does any of the following, then in that event I specifically disinherit such person or persons . . . " A reason to enforce the No Contest Clauses is if (as stated in Article 14, Section 21 paragraph (b)) a beneficiary "Objects in any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement, or any amendment thereto, whether my Trustee is acting under my Trust Agreement, or any amendment thereto, whether my Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith."

A letter from Plaintiffs' counsel dated December 3, 2014 (CC to closing Attorney Barry Mack) objecting to the actions taken by the Trustee to insure the orderly sale of Trust assets is attached hereto as Exhibit B and incorporated herein by reference. An email from Plaintiff, Hugh Dereede, dated December 22, 2014 to the Trustee confirms that Hugh Dereede is the alter ego of Plaintiff Tyre Dealer Network Consultants, Inc. and provides further evidence of the objections by Plaintiffs to the actions taken by the Trustee is attached hereto as Exhibit C and incorporated herein by reference. Courtney Feeley-Karp has at all times acted in good faith while serving as Trustee and her response to Plaintiffs' demand for immediate trust distributions is attached hereto as Exhibit D and incorporated herein by reference. The Trustee's decision not to distribute assets from the Trust until after the closing of the Estate of Deborah Dereede's claims period is reasonable and prudent Trust administration and established the Trustee's good faith actions to protect any legitimate known or unknown creditors.

The No Contest clause is hereby pled to disinherit the Plaintiffs' interest under the Trust and dismiss this lawsuit. Plaintiffs have further failed to adequately plead Probable Cause in their complaint pursuant to S.C. Code Ann. §62-7-605.

THIRD AFFIRMITVE DEFENSE
UNJUST ENRICHMENT

The Settlor of the Trust had mistakenly paid sums to the Plaintiffs and has conferred a benefit upon the Plaintiffs for which the Trust has received no benefit in return.

FOURTH AFFIRMITIVE DEFENSE
IN PARI DELICTO

To the extent that Plaintiffs complain that Defendant's actions were the cause of their loss, the Plaintiffs' claim is subject to and barred by the doctrine of *in pari delicto* and should be dismissed.

FIFTH AFFIRMITVE DEFENSE
UNCLEAN HANDS

To the extent that the Plaintiffs complain that Defendant's actions were the cause of their loss, its claims are subject to dismissal under the doctrine of unclean hands.

SIXTH AFFIRMITIVE DEFENSE
ESTOPPEL

Defendant asserts that the Plaintiffs are estopped from pursuing this claim pursuant to the underlying Agreement between the parties.

SEVENTH AFFIRMITIVE DEFENSE
FAILURE TO MITIGATE DAMAGES

The Defendant is informed and believes, and therefore alleges that the Plaintiffs have failed to mitigate their damages and their claims and causes of action are or should be barred.

RESERVATION OF DEFENSES

Defendant expressly reserve any additional and further defenses as may be revealed throughout the course of discovery in this matter or upon receipt of additional information.

ANSWER SUBJECT TO FORGOING
MOTIONS TO DISMISS AND AFFIRMITIVE DEFENSES

1. The allegations contained in Paragraph 1 are admitted.

2. It is admitted that Tyre Dealer Network Consultants, Inc. is a beneficiary of the Trust if, but Plaintiff lacks sufficient information to determine the validity of the remaining allegations, and as such, they are denied.

3. Admitted.

4. Admitted.

5. Denied.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. It is admitted that subsequent to the Decedent's death the subject property was contracted for sale to an unrelated third party by Feeley-Karp as Trustee, but the remaining allegations in paragraph 11 are denied.

12. The allegations contained in Paragraph 12 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

13. The allegations contained in Paragraph 13 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

14. Denied.

15. It is admitted that the real property in question was sold and the proceeds distributed to the Trustee, but the remaining allegations are denied.

16. Denied.

17. Denied.

18. Admitted.

18.1 Denied.

19. Denied.

20. Denied.

21. The allegations contained in Paragraph 21 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

22. It is admitted that Article Fourteen, Section 21 of the Trust is a "no contest clause," the remaining allegations are not clearly stated and as such, are denied.

23. The allegations contained in Paragraph 23 of the Complaint are not clearly stated, and as such, are denied.

24. Denied.

25. The allegations contained in Paragraph 25 of the Complaint are stated in the

form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

26. The allegations contained in Paragraph 26 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

27. Denied.

WHEREFORE, having answered the Plaintiffs' Complaint, Defendant Courtney Feeley-Karp (individually and as Trustee), prays that the Court as follows:

1. Order that this Complaint be dismissed with prejudice;

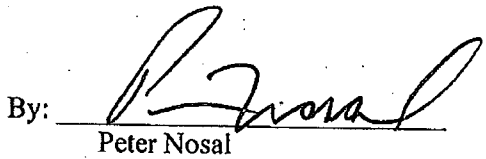
2. Order that Article 14, Section 21 of the Trust is valid, enforceable, and that the Defendant must adhere to the terms of the Trust by declaring that the Plaintiffs' interest in the Trust have been forfeited;

3. Order that the Plaintiffs reimburse the Trust for expenses and attorney's fees related to the Defense of this action;

4. Order for such other and further relief as this Court may deem just and proper.

This the 13 day of March, 2015.

NOSAL & JETER, LLP
852 Gold Hill Road #201
Fort Mill, SC 29708
Phone: (803) 351-3597
Fax: (803) 403 – 9515
pete@nosaljeterlaw.com

By: 

Peter Nosal
State Bar No. 79152
Attorney for Defendant Courtney Feeley-Karp (Individually and as Trustee)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

FILED RECEIVED
2015 MAR 23 PM 1:04
JUDGE OF PROBATE
YORK COUNTY, SC

IN THE PROBATE COURT

ROA 0139

CASE NO: 2014 – GC- 46- 00088

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY-KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

MOTION FOR REMOVAL TO CIRCUIT COURT, MOTION TO DISMISS, AFFIRMATIVE DEFENSES, AND AMENDED ANSWER

NOW COMES Defendant, Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013, by and through counsel, and answers the Complaint as follows:

MOTION FOR REMOVAL TO CIRCUIT COURT

To the extent the allegations of Plaintiffs' Complaint related to an internal or external matter involving a trust, Defendant herby moves this court pursuant to S.C. Code Ann. §62-1-302(d)(4) for removal of this matter to the Circuit Court of York County.

FIRST AFFIRMITVE DEFENSE
MOTION TO DISMISS 12(b)(6)

Defendant moves the court to dismiss this action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
NO CONTEST CLAUSE

ROA 0140

The Deborah Dereede Revocable Living Trust, dated December 18, 2013 ("the Trust") contains a "No Contest Clause" (Article 14, Section 21) that is designed to discourage beneficiaries from needless harassing, frustrating, or prohibiting the Trustee from efficiently and effectively fulfilling her fiduciary responsibilities. Pages 14-21 through 14-23 of the Trust are attached hereto as Exhibit A and incorporated herein by reference. The applicable language of this Trust provision states that if "any devisee, legatee, or beneficiary under my Trust . . .does any of the following, then in that event I specifically disinherit such person or persons . . . " A reason to enforce the No Contest Clauses is if (as stated in Article 14, Section 21 paragraph (b)) a beneficiary "Objects in any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement, or any amendment thereto, whether my Trustee is acting under my Trust Agreement, or any amendment thereto, whether my Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith."

A letter from Plaintiffs' counsel dated December 3, 2014 (CC to closing Attorney Barry Mack) objecting to the actions taken by the Trustee to insure the orderly sale of Trust assets is attached hereto as Exhibit B and incorporated herein by reference. An email from Plaintiff, Hugh Dereede, dated December 22, 2014 to the Trustee confirms that Hugh Dereede is the alter ego of Plaintiff Tyre Dealer Network Consultants, Inc. and provides further evidence of the objections by Plaintiffs to the actions taken by the Trustee is attached hereto as Exhibit C and incorporated herein by reference. Courtney Feeley-Karp has at all times acted in good faith while serving as Trustee and her response to Plaintiffs' demand for immediate trust distributions is attached hereto as Exhibit D and incorporated herein by reference. The Trustee's decision not to distribute assets from the Trust until after the closing of the Estate of Deborah Dereede's claims period is reasonable and prudent Trust administration and established the Trustee's good faith actions to protect any legitimate known or unknown creditors.

The No Contest clause is hereby pled to disinherit the Plaintiffs' interest under the Trust and dismiss this lawsuit. Plaintiffs have further failed to adequately plead Probable Cause in their complaint pursuant to S.C. Code Ann. §62-7-605.

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UNJUST ENRICHMENT

The Settlor of the Trust had mistakenly paid sums to the Plaintiffs and has conferred a benefit upon the Plaintiffs for which the Trust has received no benefit in return.

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IN PARI DELICTO

To the extent that Plaintiffs complain that Defendant's actions were the cause of their loss, the Plaintiffs' claim is subject to and barred by the doctrine of *in pari delicto* and should be dismissed.

FIFTH AFFIRMITVE DEFENSE
UNCLEAN HANDS

To the extent that the Plaintiffs complain that Defendant's actions were the cause of their loss, its claims are subject to dismissal under the doctrine of unclean hands.

SIXTH AFFIRMITIVE DEFENSE
ESTOPPEL

Defendant asserts that the Plaintiffs are estopped from pursuing this claim pursuant to the underlying Agreement between the parties.

SEVENTH AFFIRMITIVE DEFENSE
FAILURE TO MITIGATE DAMAGES

The Defendant is informed and believes, and therefore alleges that the Plaintiffs have failed to mitigate their damages and their claims and causes of action are or should be barred.

RESERVATION OF DEFENSES

Defendant expressly reserve any additional and further defenses as may be revealed throughout the course of discovery in this matter or upon receipt of additional information.

ANSWER SUBJECT TO FORGOING
MOTIONS TO DISMISS AND AFFIRMITIVE DEFENSES

1. The allegations contained in Paragraph 1 are admitted.

2. It is admitted that Tyre Dealer Network Consultants, Inc. is a beneficiary of the Trust if, but Plaintiff lacks sufficient information to determine the validity of the remaining allegations, and as such, they are denied.

3. Admitted.

4. Admitted.

5. Denied.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. It is admitted that subsequent to the Decedent's death the subject property was contracted for sale to an unrelated third party by Feeley-Karp as Trustee, but the remaining allegations in paragraph 11 are denied.

12. The allegations contained in Paragraph 12 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

13. The allegations contained in Paragraph 13 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

14. Denied.

15. It is admitted that the real property in question was sold and the proceeds distributed to the Trustee, but the remaining allegations are denied.

16. Denied.

17. Denied.

18. Admitted.

18.1 Denied.

19. Denied.

20. Denied.

21. The allegations contained in Paragraph 21 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

22. It is admitted that Article Fourteen, Section 21 of the Trust is a "no contest clause," the remaining allegations are not clearly stated and as such, are denied.

23. The allegations contained in Paragraph 23 of the Complaint are not clearly stated, and as such, are denied.

24. Denied.

25. The allegations contained in Paragraph 25 of the Complaint are stated in the

form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

26. The allegations contained in Paragraph 26 of the Complaint are stated in the form of a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

27. Denied.

WHEREFORE, having answered the Plaintiffs' Complaint, Defendant Courtney Feeley-Karp (individually and as Trustee), prays that the Court as follows:

1. Order that this Complaint be dismissed with prejudice;

2. Order that Article 14, Section 21 of the Trust is valid, enforceable, and that the Defendant must adhere to the terms of the Trust by declaring that the Plaintiffs' interest in the Trust have been forfeited;

3. Order that the Plaintiffs reimburse the Trust for expenses and attorney's fees related to the Defense of this action;

4. Order for such other and further relief as this Court may deem just and proper.

This the 23 day of March, 2015.

NOSAL & JETER, LLP
852 Gold Hill Road #201
Fort Mill, SC 29708
Phone: (803) 351-3597
Fax: (803) 403 – 9515
pete@nosaljeterlaw.com

By: _____

Peter Nosal
State Bar No. 79152
Attorney for Defendant Courtney Feeley-Karp (Individually and as Trustee)

Representative, conservator, guardian, custodian or an agent under a power of attorney for property.

m. Per Stirpes

In every case in which a disposition of an interest is to be made to the descendants of a person "per stirpes," it is intended that such disposition shall be made in accordance with the principle of representation. This principle, in relation to my Trust Agreement, means that whenever property is to be distributed to the descendants of a person, such property shall be divided into as many shares as there are, at the time of disposition, then living descendants in the nearest degree of kinship to such person and then deceased descendants in the same degree who left descendants who are then living; each then living descendant in the nearest degree receiving one share, and one share for each then deceased descendant in the same degree, being further subdivided among his or her descendants in the same manner.

n. Trust Estate

The term "Trust Estate" means all of the property, real and personal, intangible and tangible, which has been transferred to my Trustee, whether or not listed on any Schedules.

o. Trustee's Discretion

The term "discretion" with regard to a Trustee means such Trustee's sole but reasonable judgment. In exercising any discretionary power with respect to my Trust, my Trustee shall, at all times, act in accordance with fiduciary principles and shall act reasonably under the circumstances and not in bad faith or in disregard of the purposes of my Trust.

p. Trustor

The term "Trustor" shall be interchangeable with the terms "settlor," "grantor," "donor" or other similar terms.

Section 21. No Contest Clause

Notwithstanding the "Resolution of Disputes" provisions under Section 8 of Article Three of my Trust, if any devisee, legatee, or beneficiary under my Trust, or any amendment thereto, no matter how remote or contingent such beneficiary's interest appears, or any of my legal heirs, or any person claiming under any of them, directly or indirectly, does any of the following, then in that event I specifically disinherit such person or persons, and all such legacies, bequests, devises and interests given to such person or persons under my Trust, or any amendment thereto, or any other Trust document created by me at any time, shall be forfeited and shall be distributed as provided elsewhere herein as though such person or persons had predeceased me without issue:

EXHIBIT
4
ROA 0144

a. Unsuccessfully challenges the appointment of any person named as a trustee in my Trust Agreement, or any amendment thereto, or unsuccessfully seeks the removal of any person acting as a trustee;

b. Objects in any manner to any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement, or any amendment thereto, whether my Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

c. Objects to any construction or interpretation of my Trust Agreement, or any amendment thereto, or to the provisions of either, that is adopted or proposed in good faith by my Trustee, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

d. Claims entitlement to (or an interest in) any asset alleged by my Trustee to belong to the Probate or Trust Estate, whether such claim is based upon a community or separate property right, Marvin rights, a contract or other right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

e. Files a creditor's claim against the assets of the Probate or Trust Estate and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

f. Anyone, other than me, attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on my life or any designation of beneficiaries for any pension plan, Keogh, SEP, or IRA;

g. In any other manner contests my Trust Agreement, or any amendment thereto, executed by me, or in any other manner, attacks or seeks to impair or invalidate any of my Trust's provisions; or

h. Conspires with or voluntarily assists anyone attempting to do any of the above acts.

Expenses to resist any above contest or other attack of any nature upon any provision of my Trust Agreement, or any amendment thereto, shall be paid from the trusts created hereunder as expenses of administration.

In the event that any provision of this Section is held to be invalid, void, or illegal, the same shall be deemed severable from the remainder of the provisions in this Section and shall in no way affect, impair, or invalidate any other provision in this Section. If such provision is deemed

invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The authority of the Trust Protector appointed under Section 8 of Article Three to resolve disputes between Co-Trustees, beneficiary and Trustee, and among beneficiaries in no way nullifies the provisions of this Section. The provisions of this Section shall not apply to any disclaimer by any person of any benefit under my Trust Agreement, or any amendment thereto.

[illegible]
[illegible]
[illegible]
[illegible]
ELIZABETH SMITH OWEN
RICHARD MCCRAE III
MICHAEL K. HATCH
MELISSA G. CASSELL
JOHN MARK STREET
[illegible]

December 3, 2014

RECEIVED DEC 05 2014

Philip J. Corson
100 Stone Village Dr., Ste 208
Fort Mill, SC 20708

RE: Last Will and Testament and Trust of Deborah Dereede

Dear Philip,

I hope this letter finds you well. I have been retained by Hugh Dereede relative to the assets he is to receive under the Trust of his former wife. Mr. Dereede has received conflicting information from the Personal Representative of the Estate who, I understand, is represented by you and has referenced conversation she has had with you in some of her statements relative to her position as Trustee.

I understand the marital home at 131 Whispering Pines, Lake Wylie, is scheduled for closing on December 15 or thereabout. Please accept this letter as a request for confirmation that the terms of the Trust as detailed are to be followed. Our understanding is the note and mortgage on the home are to be paid in full with the sale proceeds. Subsequent to payoff of the note and mortgage giving good title to the purchaser, the Two Hundred Fifty Thousand ($250,000.00) Dollars owed to Tyre Dealer Network Consultants, Inc. shall be paid in full in the amount of Two Hundred Fifty Thousand ($250,000.00) Dollars.

We would ask that this payment be shown on the settlement statement so that there is no question it has been paid at closing.

In addition, our expectation is that the one-half of the proceeds, after payment of both the first mortgage and the mortgage to Tyre Dealer Network Consultants, Inc. be paid to Hugh Dereede and shown on the settlement statement as such.

[illegible]
[illegible]
Post Office Box 707
Rock Hill, SC 29731
office 803.366.7388
fax 803.324.3768

[illegible]
York, SC 29745
office 803.684.9601
fax 803.684.9552

www.mortongetty.com

EXHIBIT
B
Blumberg Excelsior

I am copying Barry Mack, who I understand is the closing attorney, on this letter so that he is aware of our position in this matter.

Finally, and not related to the closing, I understand that my client has received the 2008 GMC Envoy and has the Cabin Cruiser up for sale at the Lake Wylie Marina. This leaves the 2012 Cadillac CTS of which my client wishes to know where this car is and whether your clients are interested in purchasing it from him.

Thank you for your consideration in this matter and I look forward to hearing from you soon.

With Kind Regards, I am

Sincerely,

John P. Gettys, Jr.

JPG,jr/dmh

CC: Barry Mack

Gmail by Google

Pete Nosal <pete@nosaljeterlaw.com>

Fwd: 131 whispering pines

Courtney Feeley Karp <cfeeleykarp@gmail.com> Thu, Feb 12, 2015 at 4:31 PM
To: Pete Nosal <pete@nosaljeterlaw.com>

Email from Hugh re: payout.
---------- Forwarded message ----------
From: <Tdndereede@aol.com>
Date: Mon, Dec 22, 2014 at 1:26 PM
Subject: 131 whispering pines
To: cfkarp@comcast.net
Cc: mjtfehily@gmail.com, eran.fehily@gmail.com

Dear Courtney and Roy,

I understand the closing has occurred and you are now in possession of the proceeds of sale. Please accept this as a request that you pay both my company and myself as directed under the terms of the Trust. I understand you have a position contrary to what I believe is appropriate under the terms of the Trust. If you are not agreeable to paying the monies as directed per your mother's wishes, I hope you can see the opportunity presented by my going to the expense of filing a lawsuit.

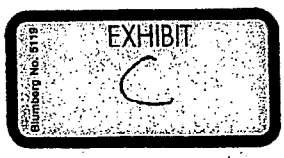
If you are truly worried about liability issues, then an Order from a Court of competent jurisdiction directing you to pay my company and me as per the terms of the trust should be the "protection" you seek. If this is the case, I hope you will file the appropriate paperwork, confirming my position and request the Court issue such an Order to pay such monies thereby protecting you from additional creditors.

Regardless, I do request a final email from you, now that you have the funds as to when I can expect payment on behalf of my company and a check for one half the net proceeds."

Wishing the three of you a merry Christmas and Happy 2015.

Best regards,

Hugh



Dawn Hardee

Subject: FW: closing of 131 Whispering Pines **ROA 0150**

From: cfeeleykarp@gmail.com
To: Tdndereede@aol.com
CC: roy.karp@comcast.net
Sent: 12/11/2014 10:57:44 P.M. Eastern Standard Time
Subj: Re: closing of 131 Whispering Pines

Dear Hugh:

As I have explained before, estate law requires that all debts and expenses of Mom's estate be paid and settled before any distributions are made. This includes anything in the Trust as the Trust has legal responsibility for paying the debts of the estate. Therefore, I cannot within my fiduciary obligations make any distributions until then. Once the estate's debts have been paid and probate has closed I will be able to make distributions, including the amount of money owed to you under the Trust from the sale of the house. As I have repeatedly said, I do not know when or how long that will take as this is a complicated estate and cannot provide any date certain for such distributions.

Thank you,
Courtney

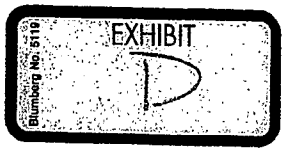
On Thu, Dec 11, 2014 at 6:54 PM, <Tdndereede@aol.com> wrote:
Dear Courtney,

In light of the upcoming closing of the above property, Monday December 15th, 2014, I would like you to confirm that you will be following your mother's instructions In her Trust by having the proceeds of the sale of the house forwarded to me after the bank has been paid out.

Please advise when I can expect the money to be send to me after or on Monday, the 15th of December 2014.

Thanks in advance,

Hugh Dereede



STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE CIRCUIT COURT

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

MOTION FOR JUDGMENT ON THE PLEADINGS

FILED RECEIVED
2015 MAY 13 PM 4:11
DAVID M. HILTON
CLERK OF COURT
YORK, SC
BY: [signature]
DEPUTY, SC

Courtney Feeley Karp, as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013 moves the Court, pursuant to Rule 12 (c) of the South Carolina Rules of Civil Procedure to enter Judgment in her favor on her Second Affirmative Defense – No Contest Clause on the ground that the undisputed facts appearing in the pleadings and applicable Exhibits entitle the Trustee of the Deborah Dereede Living Trust, dated December 18, 2013 to an Order to enforce Article 14, Section 21 (the "No Contest Clause") of said trust against the Plaintiff(s).

This the 13 day of May, 2015.

NOSAL & JETER, LLP
852 Gold Hill Road #201
Fort Mill, SC 29708
Phone: (803) 351-3597
Fax: (803) 403 – 9515
pete@nosaljeterlaw.com

By: [signature]

Peter Nosal
State Bar No. 79152
Attorney for Defendant Courtney Feeley Karp (as Trustee)

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF YORK

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

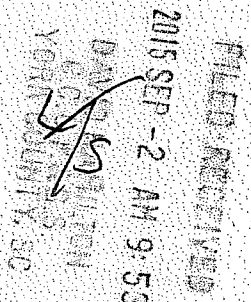
Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

DEFENDANT COURTNEY FEELEY KARP'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS HUGH DEREEDE AND TYRE DEALER NETWORK CONSULTANTS, INC.



TO: PLAINTIFFS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT Defendant, Courtney Feeley Karp (Individually and as Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013), by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Please for York County, within 10 days hereof, or as soon as practicable thereafter, for an Order granting Defendant summary judgment pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, as to her Second Affirmative Defense – No Contest Clause.

This motion is based on the following grounds:

1. Defendant is the Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013 (the "Trust") and the Personal Representative of the Estate of Deborah Dereede (the "Estate").

2. Plaintiffs Hugh Dereede and Tyre Dealer Network Consultants, Inc. are beneficiaries of the Deborah Dereede Living Trust, dated December 18, 2013 ("the Trust"). *See* ¶ 1 and 2 of Plaintiffs' Complaint.

3. Plaintiff Tyre Dealer Network Consultant, Inc. admits that Hugh Dereede is its agent. *See* Plaintiff Tyre Dealer Network Consultants, Inc.'s Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 3.

4. At the time of Deborah Dereede's death, the Trust was a revocable trust written under South Carolina law. See Section 3, page 1-1 of the Trust.

5. South Carolina Trust Code § 62-7-505(a)(3) states "After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62-3-801 et seq."

6. It is impossible for a Personal Representative to predict the number or amount of claims for any estate, but it was even more difficult for the Defendant, as Personal Representative, for the Estate because Deborah Dereede had lived in many different cities and states during her life time, had been a small business owner, and had been involved in litigation. *See* ¶ 39 of the Affidavit of Courtney Feeley Karp.

7. A month after Deborah Dereede's death, in September 2014, her Estate did not contain enough liquid assets to pay for her funeral. *See* ¶ 43 of the Affidavit of Courtney Feeley Karp.

8. The Trustee informed the Plaintiffs that under South Carolina law, the Trust would be liable for claims against the Estate if the Estate lacked sufficient assets to pay legitimate claims. *See* ¶ 56 of the Affidavit of Courtney Feeley Karp.

9. The Plaintiffs admit that the Defendant, as Trustee, informed both that, per South Carolina law, the Trust could be responsible for valid debts of the Estate. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 2 and 3.

10. The Trustee also understood that she could be held personally liable for making preliminary distributions that damaged legitimate creditors of the Estate per S.C. Trust Code Section 62-7-1010(b).

11. Prior to the initiation of this lawsuit, Counsel for the Defendant informed Counsel for Plaintiffs that the Trustee had decided to protect herself "legitimate known and unknown creditors, and would not make any preliminary distributions from the Trust or Estate until the eight (8) month South Carolina Creditor Claim period had closed." *See* ¶ 58 of the Affidavit of Courtney Feeley Karp. *See also* ¶ 5 of the Affidavit of Edward J. Ribadeneira.

12. Creditors of the Estate had until June 2, 2015 to file claims against the Estate in the York County Probate Court.

13. Counsel for Plaintiffs understood the Defendant's decision regarding Trust distributions to be reasonable. *See* ¶ 59 of the Affidavit of Courtney Feeley Karp. *See also* ¶ 5 of the Affidavit of Edward J. Ribadeneira.

14. Plaintiffs, prior to the close of the Estate's Creditor period, made multiple demands to the Trustee for an immediate trust distribution. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9, 14, and 15. *See* Plaintiff Tyre Dealer Network Consultants, Inc. Answer to Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9, 14, and 15.

15. Plaintiffs objected to the Trustee's decision not to make immediate Trust distributions. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9 and 14. *See* Plaintiff Tyre Dealer Network Consultants, Inc. Answer to Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9 and 14.

16. The Trust contains a "No Contest Clause" that clearly expresses the Settlor's intent to disinherit a beneficiary who "objects in any manner to any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement . . ." *See* Pages 14-21 and 14-22 of the Trust.

17. Plaintiff Hugh Dereede admits that prior to December 3, 2014 he read Article 14, Section 21 of the Trust. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 1.

18. South Carolina Trust Code Section 62-7-605 states "a provision in a revocable Trust purporting to penalize any interested person for contesting the validity of the Trust or instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting proceedings."

19. The Plaintiffs' Complaint, South Carolina law, Affidavits, and completed discovery fail to show even a scintilla of Probable Cause to support the Plaintiffs decision to initiate this action in defiance of the Defendant's, as Trustee, good faith decisions.

20. The Plaintiffs' Complaint, Admissions, and Defendant's Answer, coupled with South Carolina Code Section 62-7-505 (a)(3) are controlling as to the facts that (1) Plaintiffs are beneficiaries of the Trust, (2) Plaintiffs were informed that the Trust could be liable for debts of the Estate, (3) Plaintiffs were informed that the Defendant, as Trustee, was not going to make Trust distributions until after the Creditor's Period had run, (4) Plaintiffs filed a lawsuit in objection to the Defendant's decision not to make immediate Trust distributions, (5) the Defendant's decisions, as Trustee, were reasonable, grounded in South Carolina law, made in good faith, and (6) as such, Plaintiffs lacked probable cause to challenge her decisions and should be disinherited according to the Trust's "No Contest Clause."

Based on the foregoing, Defendant in entitled to judgment as a matter of law. This Motion is supported by the affidavit of Courtney Feeley Karp and the affidavit of Edward Ribadeneira, both filed contemporaneously herewith, and by such other materials, memoranda, affidavits, deposition excerpts, and other documents to be filed with the Court in advance of the hearing.

Please be present to defend if so minded.

This the 2 day of September, 2015

By: _____

Peter Nosal
State Bar No. 79152
NOSAL & JETER, LLP
852 Gold Hill Road #201
Fort Mill, SC 29709
Phone: (803) 351 – 3597
Fax: (803) 403 – 9515
Email:pete@nosaljeterlaw.com
Attorney for Defendant Courtney Feeley Karp

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF YORK

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

AFFIDAVIT OF COURTNEY FEELEY KARP

FILED-RECEIVED
2015 SEP -2 AM 9:35
YORK COUNTY

I, COURTNEY FEELEY KARP, being first duly sworn do state for my affidavit as follows:

1. I am a resident of Suffolk County, Massachusetts. I am over eighteen (18) years of age and am fully competent.

2. I am the Personal Representative of the Estate of Deborah Dereede and the Trustee of the Deborah Dereede Living Trust, dated December 18, 2013 (the "Trust").

3. I have known Hugh Dereede for more than five years and acknowledge that he was married to my mother, Deborah Dereede, at the time of her death.

4. I know that Hugh Dereede is the sole employee and agent for Tyre Dealer Network Consultants, Inc.

5. In June of 2004 my mother purchased a house located at 19225 N 39th Way, Phoenix, Arizona, 85050 as her primary residence as a result of a recent promotion which required her to move to Phoenix.

6. In September 2012, my mother was diagnosed with breast cancer and began receiving treatment, including chemotherapy, surgery, and radiation in Charlotte, North Carolina. In the summer of 2013, doctors found no evidence of cancer in my mother.

7. On or around October 7, 2013, my mother had imaging testing on her lungs because of shortness of breath, during which a spot was seen on her liver and a later biopsy confirmed was malignant. After researching her treatment options, she became a patient at Dana Farber Cancer Institute in Boston, Massachusetts.

8. On December 18, 2013, my mother executed an estate plan, including a Last Will and creation of the Deborah Dereede Living Trust, dated December 18, 2013, at South Carolina attorney Phillip Corson's office.

9. My mother was in Boston on February 3, 2014 for a chemo treatment. Afterwards, we planned to go out to dinner to celebrate her birthday and to tell her that I was pregnant.

10. My mom was thrilled to learn about my pregnancy and insisted that I not go with her to chemo treatments with her anymore due to my compromised immune system during pregnancy.

11. In March 2014, her condition took a turn for the worst. The treatment was no longer working and she needed a blood transfusion. Her doctors advised her to move to Boston to focus on a new treatment.

12. In April 2014, my mother moved to the Boston area.

13. On June 16, 2014, I gave birth to my daughter Louisa Catherine Karp (Louisa), who was born at 26 weeks of gestation, weighing 1 pound, 6 ounces. Louisa's extremely premature birth has led to significant, ongoing health challenges, most significantly Bronchopulmonary Dysplasia, also known as Chronic Lung Disease.

14. Louisa spent the next 141 days – almost five months – in the Newborn Intensive Care Unit (NICU) at Beth Israel Deaconess Medical Center in Boston. She was intubated until her 20th day of life and received Continuous Positive Airway Pressure (CPAP) until September 10, 2014, when she was transferred to oxygen support through a RAM cannula. On October 20, 2014 we learned that Louisa was aspirating her feeds by mouth, so we were forced to discontinue all oral feeding, and a week later she had surgery at Boston Children's Hospital to implant a gastric feeding tube in her stomach. On November 4, 2014, she was discharged from Beth Israel NICU, and we brought her home with the feeding tube and continuous oxygen support.

15. To this day, my daughter requires continuous care and has been hospitalized multiple times since her discharge from the NICU.

16. On July 25, 2014, my mother collapsed and was rushed by ambulance to Lahey Hospital where she was unresponsive and ultimately intubated.

17. On July 28, 2014, Hugh, my brother Michal Fehily, and I, made the decision to

extubate my mother, with the hope that she might regain consciousness.

18. Throughout Mom's incapacitation, Hugh demanded her wallet, phone, and other personal effects from me. He insisted he needed to address "financial" matters.

19. When myself and other relatives made it clear to Hugh that we would not discuss financial matters, he left the hospital.

20. Approximately 20 minutes after leaving the hospital, Hugh called my husband to inform him that he remembered that my mother wanted his adopted granddaughter to have her fur coat. Roy informed Hugh that my mother had regained consciousness and that she was able to communicate again. Hugh did not return to see her, but asked us to tell her he loved her.

21. On August 3, 2014, I received an email from Hugh in which he said that "he can no longer take it sitting in a hospital room watching and waiting for my wife to die" and was returning his home to Canada and that we would be back for the funeral.

22. My family and I tried to make my mom as comfortable as possible while she fought her last illness.

23. On or around August 11, 2014, Hugh returned and would stay until Mom's funeral.

24. On August 15, 2014, my mother passed away.

25. On August 16, 2014, I met with my husband, Hugh and the funeral director to begin planning the wake and funeral. When the issue of payment arose, I asked if we could use her life insurance proceeds to pay the bill.

26. Hugh was present for this conversation and we all agreed that was the most logical way to address payment.

27. The wake was held on August 22, 2014 and the funeral on August 23, 2014. Roy and I planned a luncheon reception for family and friends after the burial. Hugh decided to return straight to Canada from the cemetery rather than attend the luncheon.

28. On or about September 2, 2014, I submitted my mom's Will to the York County Probate Court and was appointed her Personal Representative.

29. Upon my mother's death, I became the Trustee of the Trust and was made responsible for carrying out its terms and, specifically, the distribution upon death provisions.

30. Before taking any action as Personal Representative or Trustee, I thoroughly read both the Last Will of Deborah Dereede and the Deborah Dereede Living Trust, dated December 18, 2013.

31. I understood that my mother's Will was a "pour-over will," which distributed the residuary of her Estate to her Trust.

32. I read and understood Article Six, Section 4 ("Specific Gifts"), Sub-section (a) ("Specific Distribution of Real Estate Sales Proceeds, Household Contest, and Certain Vehicles to HUGH DEREEDE). I understood that it named Hugh Dereede and Tyre Dealer Network Consultants, Inc. as beneficiaries under the Article. Tyre Dealer Network Consultants was to receive, under the terms of a promissory note, a distribution from the Trust of $250,000 after the sale of the Trust property located at 131 Whispering Pines Dr., Lake Wylie, South Carolina, 29710, and Hugh Dereede was to receive half of the net proceeds of the sale of the house, as well as two cars and a boat. I also understood that Hugh Dereede and Tyre Dealer Networks Consultants were responsible for all costs associated with these specific bequests.

33. I read and understood Article 14, Section 21 of the Trust, the "No Contest Clause." The Clause opens with the language "Notwithstanding the "Resolution of Disputes" provisions under Section 8 of Article Three of my Trust, or any amendment thereto, no matter how remote or contingent such beneficiary's interest appears, or any of my legal heirs, or any person claiming under any of them, directly or indirectly, does any of the following, then in that event I specifically disinherit such person or persons, and all such legacies, bequests, devises and interests given to such person or persons under my Trust, or any amendment thereto, or any other Trust document created by me at any time, shall be forfeited and shall be distributed as provided elsewhere herein as though such person or persons had predeceased me without issue." Sub-section (b) provides for disinheritance in the instance any person "Objects in any manner to any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement, or any amendment thereto whether my Trustee is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith."

34. I am a licensed attorney in good standing with the Massachusetts Bar.

35. I took my roles as Personal Representative and Trustee very seriously, and researched South Carolina Probate and Trust law to ensure that I carried out my duties properly.

36. In my research I became familiar with South Carolina Trust Code § 62-7-505(a)(3), which states "After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the

extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62-3-801 et seq."

37. My mother's Trust was a revocable trust at the time of her death, so I knew that South Carolina Trust Code § 62-7-505(a)(3) governed and made the Trust liable for valid debts of the Estate.

38. I am also familiar with South Carolina Trust Code § 62-7-604. I determined that this statute was not applicable to the creditor claim period based on the language and the Reporters Comments, which state "This section does not address possible liability for the debts of the deceased settlor or a trustee's possible liability to creditors for distributing trust assets. For possible liability of the trust, see Section 62-7-505(a)(3) and Comment." I followed the terms of South Carolina Trust Code § 62-7-505 when determining how and when to distribute from the Trust.

39. My mother seemed to have a complex estate. She had lived in many different cities and states during her lifetime. She owned real property in three states and, prior to her employment at Continental General Tire, had owned a small tire business in Massachusetts that closed in 1995. I was generally aware that there had been litigation around such closure, although my mother was living in Texas at the time and I was in college. I had no idea if there were any outstanding claims, judgments or creditors related to this past litigation.

40. Soon after I was appointed Personal Representative, I contacted her employer, Continental General Tire, Co., regarding Mom's benefits. I was told, despite expressly naming my brother and me as her beneficiaries, under federal law, her retirement 401(k) and life insurance benefits would be paid to Hugh, as he had not expressly waived these benefits so that my mother's wishes would be honored.

41. Hugh would not agree to disclaim his rights to her ERISA benefits.

42. There is a provision in my mom's Trust that purported to allow her surviving spouse rights to any "marital or vacation residence." The provision was vague and ambiguous as to who would be responsible for costs associated with any such residence. Hugh asserted an intent to live in her Arizona house during the winter via an email sent to me on September 18, 2014.

43. In September 2014, the Estate had no liquid assets or other means to pay the debts and expenses of the Estate. Because Hugh would not waive his right to my mom's life insurance, there wasn't even enough cash in the estate to pay for

her funeral.

44. I knew that, because my mom's Trust was revocable until she died, the Trust's assets would have to be used to satisfy legitimate Estate debts if the Estate did not have sufficient resources.

45. I also believed, based on my due diligence research of South Carolina Trust Law, that if I made preliminary distributions of Trust or Estate assets and creditors asserted claims, I would be personal liable to those creditors to the extent that I made a distribution too soon under South Carolina Trust Code § 62-7-1010 (b).

46. In order to protect myself, legitimate known and unknown creditors, I decided not to make any preliminary distributions from the Trust or Estate until the end of the South Carolina Probate Code § 62-3-801 eight (8) month creditor claim period.

47. The eight (8) month creditor claim period for my mother's Estate did not end until June 2, 2015.

48. In October 2014, I left my daughter in the hospital to fly to Arizona to pack up my mom's Arizona house and to meet with an estate attorney and realtor.

49. I wanted to meet with Edward Ribadeneira, an Arizona Trust and Estate attorney, because of Hugh's assertion that was going to occupy the residence and I wanted to be certain that the trust complied with Arizona law.

50. The funeral director wanted to be paid and the Arizona house needed work, so my husband and I personally paid over $13,000 for the funeral, burial, and related expenses as well as more than $10,000 to bring my mother's utility bills up to date and address other necessary maintenance. We did this knowing we had no legal obligation to do so but certain expenses were necessary in furtherance of the administrations of estate, such as yard work, house cleaning, etc... in order to put the houses on the market.

51. My mother had put the Trust property located at 131 Whispering Pines Court, Lake Wylie, South Carolina up for sale during her lifetime.

52. I continued to keep the property on the market and received the first offer in September 2014 and ultimately negotiated the terms of the sale to close in December 2014.

53. On December 11, 2014, I learned from the closing attorney, Barry Mack, that John Gettys sent him a letter, in his capacity as counsel for Hugh Dereede and Tyre Dealer Network Consultants, Inc., demanding that Hugh Dereede be paid $250,000 at closing. Later that day, Hugh Dereede demanded immediate payment from the sale, via email communication.

54. The letter from John Gettys was an objection to my actions as Trustee.

55. The email from Hugh Dereede was an objection to my actions as Trustee.

56. I responded to Hugh's email and reminded him of the Trust's liability for Estate debts and my decision to wait until the creditor claims were all known before distributing from the Trust.

57. I contacted my trust administration attorney, Edward Ribadeneira, to address the situation with Mr. Gettys, as the closing attorney informed me that we needed to resolve the issue before we would close on the house.

58. Ed told Mr. Gettys that I had decided to protect myself, legitimate known and unknown creditors, and would not make any preliminary distributions from the Trust or Estate until the eight (8) month South Carolina creditor claim period had closed.

59. I understand that Mr. Gettys told Ed that my decision was reasonable.

60. At the time of the closing, the Estate had no liquid assets and had significant outstanding debts and fiduciary obligations.

61. The Trust property at 131 Whispering Pines Dr., Lake Wylie, SC, 29710 was scheduled to close sale on December 15, 2014. I continued to take steps to move forward with the sale of the house, reviewing and signing closing documents and communicating with the closing attorney.

62. The house closed on December 19, 2014, after a delay of four days, due in part to Hugh's decision to challenge my decision not to pay him at closing.

63. On December 22, 2014, the proceeds from the sale of the South Carolina house were wire transferred to the Trust's account.

64. Later that day, Hugh Dereede once again demanded, via email, immediate payment and threatened to initiate legal action if immediate payment was not made.

65. Due to the repeated explanations of the reasoning and rationale for my behavior and Hugh's continued disregard for both it and South Carolina Probate and Trust law, I consider this email demand to be a contest to my good faith actions taken as Trustee and in violation of Article 14, Section 21 of the Trust.

66. Later that day, I contacted my estate attorney to discuss how to best respond to this demand following the Christmas holiday, which for my husband and I would be spent in Boston Children's Hospital NICU with Louisa.

67. On December 23, 2014, Hugh Dereede filed this action.

68. The filing of this action and its continued litigation is another contest to my good faith actions taken as Trustee.

69. I am familiar with South Carolina Trust Code § 62-7-605, which states "A provision in a revocable trust purporting to penalize any interested person for contesting the validity of the trust or instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting proceedings."

70. Hugh Dereede and Tyre Dealer Network Consultants, Inc. did not have probable cause to bring this action. I explained to both that my decision not to make immediate distributions from the Trust was based on South Carolina law. I told them that I would make distributions after the statutory creditor's period had expired.

71. Hugh is an impatient man and refused to wait for his money.

72. As Trustee, I have the fiduciary obligation to uphold the terms of the Trust.

73. The "No Contest Clause" is a provision of this Trust.

74. I have the fiduciary duty to uphold this provision if a beneficiary's actions require it.

75. This action was initiated because Hugh wanted me to immediately uphold the terms of the Trust that were beneficial to him, even if that meant that I would be held personally liable to creditors that presented claims at the end of the filing period.

76. Additionally, Hugh wants me to ignore the "No Contest Clause" provision in the Trust despite the fact that it was included to prevent the pattern of behavior he has exhibited. Hugh also is not concerned about my liability to other beneficiaries if I did not hold him and his company accountable for violating the terms of the Trust.

77. I have done my best to uphold the terms of the Trust and to follow South Carolina law. I regret that Hugh filed this lawsuit, but now I understand why this Trust has a "No Contest" provision.

78. Hugh's actions and decisions have been a significant burden on me, my family, and have strained my relationship with my brother.

Further the Affiant sayeth not.

This the 18th day of August, 2015.

COURTNEY FEELEY KARP

Sworn to and subscribed before me this 18th day of August, 2015.

Notary Public
My commission expires: 2/20/2020

Monique Yolanda McLean
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 20, 2020

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE CIRCUIT COURT

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

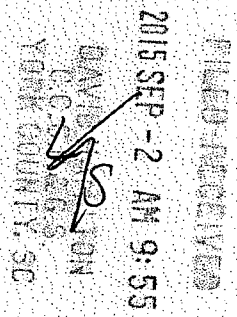
Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

AFFIDAVIT OF EDWARD J. RIBADENEIRA



STATE OF ARIZONA

COUNTY OF MARICOPA

IN THE CIRCUIT COURT

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

AFFIDAVIT OF EDWARD J. RIBADENEIRA

I, EDWARD J. RIBADENEIRA, being first duly sworn do state for my affidavit as follows:

1. I am a resident of Maricopa County, Arizona. I am over eighteen (18) years of age and am fully competent.

2. I am an attorney in good standing and licensed to practice with the State of Arizona, Bar No. 018123.

3. Courtney Feely Karp, the Personal Representative of Deborah Dereede (the "Estate") and the Trustee of the Deborah Dereede Living Trust, dated December 18, 2013, (the "Trust") engaged my services on or around October 24, 2014, on behalf of the Estate and the Trust to assist with the sale of certain real property located in Arizona.

4. During the course of representation, Mrs. Karp asked me to correspond with John Gettys, the attorney for Hugh Dereede, with regard to certain demands being made by Mr. Dereede against the Estate and the Trust relative to the sale of the South Carolina property. At that time Mr. Dereede was demanding payment from the proceeds derived from the sale of the South Carolina property and threatening suit.

5. On December 16, 2014 I had a discussion with Mr. Gettys regarding his client's demand for payment from the Trust and the promissory note referenced in the Trust. During this conversation, Mr. Gettys and I discussed

the proper order of payments from an estate or a trust, that creditors have priority of payment, that all creditors had not yet been determined, that the personal representative/executor/trustee could be held personally responsible if funds were distributed to beneficiaries prior to paying third party creditors and that neither the Trust nor the Estate would be making any large distributions of assets prior to the payment of all administrative expenses and third party debts. He acknowledged that he would advise his client similarly if he were in my position. After this conversation, I was very confident that no lawsuit would be forthcoming and that the Mrs. Karp would be able to complete the administration of the Trust and the Estate without undue interference from Mr. Dereede.

Further the Affiant sayeth not.

This the 12th day of August, 2015.

EDWARD J. RIBADENEIRA

Sworn to and subscribed before me this 12th day of August, 2015.

Notary Public
My commission expires: 12/28/2016

JAN LOHMAN
Notary Public - Arizona
Maricopa County
My Comm. Expires Dec 28, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2015-CP-46-01409
Hugh Dereede and Tyre Dealer Network Consultants, Inc.	)	
Plaintiffs,	)	
v.	)	**PLAINTIFF HUGH DEREEDE'S ANSWER TO DEFENDANT COURTNEY FEELEY KARP'S (INDIVIDUALLY AND AS TRUSTEE) REQUESTS FOR ADMISSION**
Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust Dated December 18, 2013 and Michael Fehily, as a qualified beneficiary of the Deborah Dereede Living Trust Dated December 18, 2013,	)	
Defendants.	)	

TO: Courtney Feeley Karp, Defendant
c/o Peter J. Nosal, Defendant's Attorney
852 Gold Hill Road, Unit 201
Fort Mill, SC 29708

The Plaintiff, Hugh Dereede, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby responds to the Defendant's requests for admissions as follows:

1. Admit that prior to December 3, 2014, Plaintiff read Articles Five, Six, and Fourteen of the Deborah Dereede Living Trust, dated December 18, 2013 (the "Trust").

Response: Admitted.

2. Admit that Defendant, as Trustee, informed you that, per South Carolina estate law, the Trust could be responsible for valid debts of the estate.

Response: Admitted only to the extent that Defendant has cited this argument, however incorrect or improper the same may be, as her justification for

withholding the appropriate distributions due to Plaintiff and Tyre Dealer Network Consultants, Inc. per the terms of the Trust.

3. Admit that the Trustee informed Plaintiff that she was not going to make any trust distributions until all valid debts were settled.

Response: Plaintiff admits only that Trustee informed him that she was not making any distributions beyond what she feels to be proper or "valid."

4. Admit that Plaintiff has objected to actions Defendant has made as Trustee of the Trust.

Response: Admitted.

5. Admit that upon the death of Deborah A. Dereede, Plaintiff received various payments from Continental General Tire, Inc. including +/- $119,000.00 in life insurance proceeds, +/- $41,673.59 from a 401k, and +/- $287.50 / week pension payment.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

6. Admit that the last General Tire Designation of Beneficiary Form completed by Deborah Dereede indicated that she intended for her son and daughter to receive her Continental General Tire, Inc. retirement benefits.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff denies this Request.

7. Admit that in September 2014 Plaintiff emailed the Trustee and told her that Plaintiff elected to utilize the Trust real estate in Arizona as a vacation residence.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

8. Admit that in October 2014 Plaintiff understood that the Trust lacked sufficient liquid capital to pay routine bills associated with its real estate.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits that the Trustee stated this to be the case.

9. Admit that Plaintiff's attorney, John Gettys, wrote a letter to Philip Corson (c.c. Barry Mack) dated December 3, 2014, indicating that Plaintiff and Tyre Dealer Network Consultants Inc. wanted a trust distribution to be made to Plaintiff at the closing of the sale of 131 Whispering Pines Drive, Lake Wylie, SC (the "closing").

Response: Admitted to the extent that Plaintiff's attorney wrote a letter requesting, on behalf of both Plaintiff and Tyre Dealer Network Consultants, Inc., that a distribution be made to Plaintiff at the closing of the sale of 131 Whispering Pines Drive, Lake Wylie, SC, as is required per the terms of the trust. However, the Plaintiff denies the allegation of paragraph 9 to the extent it implies that a trust distribution, rather than a distribution of the sale proceeds as required by the Trust Agreement, was requested.

10. Admit that the December 3, 2014 letter references a payment to Tyre Dealer Network Consultants, Inc. for $250,000.00, but Deborah Dereede never executed an enforceable Promissory Note.

Response: The Plaintiff admits only so much of the allegations of paragraph 10 which state that a letter existed referencing a payment to Tyre Dealer Network Consultants, Inc. for $250,000.00. However, as related to the clause ("but Deborah Dereede never executed an enforceable Promissory Note"), the Plaintiff can neither admit nor deny this request for admission because the Plaintiff does not have sufficient knowledge or information, after having made a reasonable inquiry of the information available to it, to form a belief as to the truth or falsity of this matter.

11. Admit that Plaintiff objected to the Trustee's decision not to include payments to Plaintiff or Tyre Dealer Network Consultants, Inc. on the closing Settlement Statement.

Response: Plaintiff will admit that he requested the Trustee direct the closing attorney to show the payoff to Tyre Dealer Network Consultants, Inc. on the Settlement Statement.

12. Admit that the closing was scheduled for December 15, 2014.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

13. Admit that, because of Plaintiff's attempt to be included on the Settlement Statement, the closing was delayed until December 19, 2014.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff denies this Request.

14. Admit that on December 22, 2014 Plaintiff emailed the Trustee (Defendant's Exhibit C) and noted Plaintiff's objection to a position Defendant had taken as Trustee to not make distributions to Trust beneficiaries until all valid debts of the estate were known and paid.

Response: Admitted only to the extent that Plaintiff did email Trustee objecting to the Defendant's cited argument, however incorrect or improper the same may be, as her justification for withholding the appropriate distributions due to Plaintiff and Tyre Dealer Network Consultants, Inc. per the terms of the Trust.

15. Admit that upon filing the complaint on December 23, 2014, Plaintiff objected to the Trustee's decision not to make Trust distributions until all valid debts of the estate were known and settled.

Response: Admitted.

16. Admit that the Trustee's decision to not make distributions to Trust beneficiaries until "all debts and expenses" of Deborah Dereede's estate were paid and settled was an action taken in good faith by the Trustee.

Response: Denied.

17. Admit that Deborah Dereede included the "No Contest Clause" in the Trust to discourage challenges and objections to the Trustee's decisions.

Response: Denied.

18. Admit that Plaintiff paid Michael Fehily a sum of money or assets that resulted in him not filing an Answer to this action.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits that he made a financial gift to Michael Fehily. As to any other questions within this request regarding the cause of his failure to file an Answer to this action, a response would be better forthcoming from Mr. Fehily himself.

Respectfully submitted,

Morton & Gettys
John P. Gettys, Jr. S.C. Bar No. 8673
331 E. Main St., Suite 300
Rock Hill, SC 29731
John.gettys@mortongettys.com
(803) 366-3373 Telephone
(803) 366-4044 Fax

ATTORNEY FOR THE PLAINTIFFS

Rock Hill, SC
Dated: July 23, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2015-CP-46-01409
Hugh Dereede and Tyre Dealer Network Consultants, Inc.	)	
Plaintiffs,	)	
v.	)	**PLAINTIFF TYRE DEALER NETWORK CONSULTANTS, INC.'S ANSWER TO DEFENDANT COURTNEY FEELEY KARP'S (INDIVIDUALLY AND AS TRUSTEE) REQUESTS FOR ADMISSION**
Courtney Feeley-Karp, Individually and as Trustee of the Deborah Dereede Living Trust Dated December 18, 2013 and Michael Fehily, as a qualified beneficiary of the Deborah Dereede Living Trust Dated December 18, 2013,	)	
Defendants.	)	

TO: Courtney Feeley Karp, Defendant
c/o Peter J. Nosal, Defendant's Attorney
852 Gold Hill Road, Unit 201
Fort Mill, SC 29708

The Plaintiff, Tyre Dealer Network Consultants, Inc., pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby responds to the Defendant's requests for admissions as follows:

1. Admit that Plaintiff is Hugh Dereede's entity.

   Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

2. Admit that Plaintiff has no employees.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

3. Admit that Hugh Dereede is Plaintiff's agent.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

4. Admit that Plaintiff and Hugh Dereede claim that Plaintiff gave money to Deborah Dereede to use for the down payment on 131 Whispering Pines Drive, Lake Wylie, SC.

Response: Plaintiff admits the allegations of paragraph 4 to the extent that Deborah Dereede was loaned $250,000.00 by Plaintiff and Hugh Dereede to be repaid upon the sale of the house, as she acknowledged in her trust agreement.

5. Admit that neither Plaintiff nor Hugh Dereede holds a valid Promissory Note signed by Deborah Dereede.

Response: Plaintiff admits that it does not have possession of a promissory note signed by Deborah Dereede.

6. Admit that Plaintiff was informed that Defendant, as Trustee, was not going to make any trust distributions until all valid debts of the estate of Deborah Dereede were settled.

Response: Admitted only to the extent that Plaintiff was informed of Defendant's argument, however incorrect or improper the same may be, as

her justification for withholding the appropriate distributions due to Plaintiff Tyre Dealer Network Consultants, Inc. per the terms of the Trust.

7. Admit that Plaintiff has objected to actions Defendant has made as Trustee of the Trust.

Response: Admitted.

8. Admit that in October 2014 Plaintiff understood that the Trust lacked sufficient liquid capital to pay routine bills associated with its real estate.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits that the Trustee told him this was the case.

9. Admit that Plaintiff's attorney, John Gettys, wrote a letter to Philip Corson (c.c. Barry Mack) dated December 3, 2014, indicating that Plaintiff and Hugh Dereede wanted a trust distribution to be made to Plaintiff at the closing of the sale of 131 Whispering Pines Drive, Lake Wylie, SC (the "closing").

Response: Admitted to the extent that Plaintiff's attorney wrote a letter requesting, on behalf of both Plaintiff and Hugh Dereede, that a distribution be made to Plaintiff at the closing of the sale of 131 Whispering Pines Drive, Lake Wylie, SC, as is required per the terms of the trust. However, the Plaintiff denies the allegation of paragraph 9 to the extent it implies that a trust distribution, rather than a distribution of the sale proceeds as required by the Trust Agreement, was requested.

10. Admit that the December 3, 2014 letter references a payment to Plaintiff for $250,000.00, but Deborah Dereede never executed an enforceable Promissory Note.

Response: The Plaintiff admits only so much of the allegations of paragraph 10 which state that a letter existed referencing a payment to Plaintiff for $250,000.00. However, as related to the clause ("but Deborah Dereede never executed an enforceable Promissory Note"), the Plaintiff can neither admit nor deny this request for admission because the Plaintiff does not have sufficient knowledge or information, after having made a reasonable inquiry of the information available to it, to form a belief as to the truth or falsity of this matter.

11. Admit that Plaintiff objected to the Trustee's decision not to include payments to Plaintiff or Hugh Dereede on the closing Settlement Statement.

Response: Plaintiff will admit that it requested the Trustee direct the closing attorney to show the payoff to Plaintiff on the Settlement Statement.

12. Admit that the closing was scheduled for December 15, 2014.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff admits this Request.

13. Admit that, because of Plaintiff's attempt to be included on the Settlement Statement, the closing was delayed until December 19, 2014.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and without waiving the foregoing general and specific objections, Plaintiff denies this Request.

14. Admit that on December 22, 2014 Hugh Dereede emailed the Trustee (Defendant's Exhibit C) and noted Plaintiff's objection to a position Defendant had taken as Trustee to not make distributions to Trust beneficiaries until all valid debts of the estate were known and paid.

Response: Admitted only to the extent that Hugh Dereede did email Trustee objecting to the Defendant's cited argument, however incorrect or improper the same may be, as her justification for withholding the appropriate distributions due to Plaintiff and Hugh Dereede per the terms of the Trust.

15. Admit that upon filing the complaint on December 23, 2014, Plaintiff objected to the Trustee's decision not to make Trust distributions until all valid debts of the estate were known and settled.

Response: Admitted.

16. Admit that the Trustee's decision to not make distributions to Trust beneficiaries until "all debts and expenses" of Deborah Dereede's estate were paid and settled was an action taken in good faith by the Trustee.

Response: Denied.

17. Admit that Deborah Dereede included the "No Contest Clause" in the Trust to discourage challenges and objections to the Trustee's decisions.

Response: Denied.

18. Admit that Plaintiff paid Michael Fehily a sum of money or assets that resulted in him not filing an Answer to this action.

Response: The Plaintiff objects to this Request on the basis that it is not relevant to any claim or defense of any party to this action. Subject to and

without waiving the foregoing general and specific objections, Plaintiff admits that it made a financial gift to Michael Fehily. As to any other questions within this request regarding the cause of his failure to file an Answer to this action, a response would be better forthcoming from Mr. Fehily himself.

Respectfully submitted,

Morton & Gettys
John P. Gettys, Jr. S.C. Bar No. 8673
331 E. Main St., Suite 300
Rock Hill, SC 29731
John.gettys@mortongettys.com
(803) 366-3373 Telephone
(803) 366-4044 Fax

ATTORNEY FOR THE PLAINTIFFS

Rock Hill, SC
Dated: July 23, 2015

ROA 0180

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF YORK

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

DEFENDANT COURTNEY FEELEY KARP'S AMENDED MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS HUGH DEREEDE AND TYRE DEALER NETWORK CONSULTANTS, INC.

FILED - RECEIVED
2015 NOV -6 PM 4:25
DAVID HAMILTON
CCCP & GS
YORK COUNTY, SC

TO: PLAINTIFFS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT Defendant, Courtney Feeley Karp (Individually and as Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013), by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Please for York County, within 10 days hereof, or as soon as practicable thereafter, for an Order granting Defendant summary judgment pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, as to her First Affirmative Defense – Motion to Dismiss 12(b)(6), Sixth Affirmative Defense – Estoppel, and Seventh Affirmative Defense – Failure to Mitigate Damages, or in the alternative, her Second Affirmative Defense – No Contest Clause.

This motion is based on the following grounds:

I. Defendant asks for an Order to Dismiss the Plaintiffs' lawsuit per her First Affirmative Defense – Motion to Dismiss 12(b)(6), Sixth Affirmative Defense – Estoppel, and Seventh Affirmative Defense – Failure to Mitigate Damages

1. This is an ongoing dispute between two beneficiaries (Hugh Dereede and Tyre Dealer Network Consultants, Inc.) of the Deborah Dereede Revocable Living Trust, dated December 18, 2013 (the "Trust") and the Trustee of the Trust.

2. Article 3, Section 8 of the Trust is titled "Trust Protector Provisions." See pages 3-3 through 3-8 of the Trust.

3. Article 3, Section 8, paragraph a (Appointment of Trust Protectors) states "in the event a Trust Protector is needed to act, the first Successor Trustee who is independent . . . shall act as Trust Protector, or if no such individual is available, a majority of the Successor Trustees designated under Section 4 of this Article, shall have the right to designate by written instrument a Trust Protector who is qualified."

4. Article 3, Section 4 lists Courtney Feeley Karp as the first successor Trustee and Hugh Dereede as the second.

5. In December 2014, Courtney Feeley Karp was serving as Trustee.

6. Article 3, Section 8, paragraph c (Trust Protector May Not Serve as Trustee) disqualified Courtney Feeley Karp from serving as Trust Protector because she was serving as Trustee.

7. Hugh Dereede cannot serve as Trust Protector in this matter because he is not independent.

8. Article 3, Section 8, paragraph h (Resolution of Disputes) states:

> The Trust Protector may unilaterally resolve any dispute, claim or conflict between beneficiaries, including those who have, or claim to have, a present or future interest in property, between a beneficiary and a trustee, or between trustees. Such resolution shall be binding on all parties to my Trust and shall not be subject to review.
>
> No one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution together with detailed supporting information and a detailed supporting memorandum of law. In the event the Trust Protector finds the supporting information or memorandum of law insufficient, the Trust Protector may request such additional information as the Trust Protector reasonably feels necessary to resolve such claim. . . . Subsequent to his or her review, the Trust Protector may give any claimant the authority to file and maintain an action in a court of law. The granting of such authority by the Trust Protector shall in no way nullify the "No Contest" provision provided under the "Other Trust Provisions" of my Trust. Whenever a dispute, conflict, or claim involves an interpretation or construction of my Trust Agreement, the Trust Protector may file an action in a court of competent jurisdiction for the interpretation or construction of such Trust Agreement, or the Trust Protector may instruct my Trustee to do so.

9. Prior to filing this lawsuit, the Plaintiffs did not submit their claim to a properly appointed, independent Trust Protector.

10. The Plaintiffs brought "this action for a declaration of rights or legal relations . . . relating solely to the construction and interpretation of the Trust Agreement.

11. The Trust requires that the Trust Protector or Trustee bring an action for the interpretation or construction of the Trust.

12. Catherine Kennedy of Turner Padget Graham and Laney, P.A. in Columbia, South Carolina, is serving as Trust Protector.

13. The Trust Protector is aware of the disputes central to this matter and is working to resolve them according to the authority granted to her by the Trust. *See* letter to Catherine Kennedy (Exhibit A).

14. Dismissal of the Plaintiffs' case is proper because the Trust Protector is working to resolve their claims, the Plaintiffs were not the proper party to initiate an action for the interpretation or construction of the Trust, and because no one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution together with detailed supporting information and a detailed supporting memorandum of law.

II. In the Alternative, the Defendant asks for an Order granting Defendant summary judgment pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure as to her Second Affirmative Defense – No Contest Clause.

15. Defendant is the Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013 (the "Trust") and the Personal Representative of the Estate of Deborah Dereede (the "Estate").

16. Plaintiffs Hugh Dereede and Tyre Dealer Network Consultants, Inc. are beneficiaries of the Deborah Dereede Living Trust, dated December 18, 2013 ("the Trust"). *See* ¶ 1 and 2 of Plaintiffs' Complaint.

17. Plaintiff Tyre Dealer Network Consultant, Inc. admits that Hugh Dereede is its agent. *See* Plaintiff Tyre Dealer Network Consultants, Inc.'s Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 3.

18. At the time of Deborah Dereede's death, the Trust was a revocable trust written under South Carolina law. See Section 3, page 1-1 of the Trust.

19. South Carolina Trust Code § 62-7-505(a)(3) states "After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62-3-801 et seq."

20. It is impossible for a Personal Representative to predict the number or amount of claims for any estate, but it was even more difficult for the Defendant, as

Personal Representative, for the Estate because Deborah Dereede had lived in many different cities and states during her life time, had been a small business owner, and had been involved in litigation. *See* ¶ 39 of the Affidavit of Courtney Feeley Karp.

21. A month after Deborah Dereede's death, in September 2014, her Estate did not contain enough liquid assets to pay for her funeral. *See* ¶ 43 of the Affidavit of Courtney Feeley Karp.

22. The Trustee informed the Plaintiffs that under South Carolina law, the Trust would be liable for claims against the Estate if the Estate lacked sufficient assets to pay legitimate claims. *See* ¶ 56 of the Affidavit of Courtney Feeley Karp.

23. The Plaintiffs admit that the Defendant, as Trustee, informed both that, per South Carolina law, the Trust could be responsible for valid debts of the Estate. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 2 and 3.

24. The Trustee also understood that she could be held personally liable for making preliminary distributions that damaged legitimate creditors of the Estate per S.C. Trust Code Section 62-7-1010(b).

25. Prior to the initiation of this lawsuit, Counsel for the Defendant informed Counsel for Plaintiffs that the Trustee had decided to protect herself "legitimate known and unknown creditors, and would not make any preliminary distributions from the Trust or Estate until the eight (8) month South Carolina Creditor Claim period had closed." *See* ¶ 58 of the Affidavit of Courtney Feeley Karp. *See also* ¶ 5 of the Affidavit of Edward J. Ribadeneira.

26. Creditors of the Estate had until June 2, 2015 to file claims against the Estate in the York County Probate Court.

27. Counsel for Plaintiffs understood the Defendant's decision regarding Trust distributions to be reasonable. *See* ¶ 59 of the Affidavit of Courtney Feeley Karp. *See also* ¶ 5 of the Affidavit of Edward J. Ribadeneira.

28. Plaintiffs, prior to the close of the Estate's Creditor period, made multiple demands to the Trustee for an immediate trust distribution. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9, 14, and 15. *See* Plaintiff Tyre Dealer Network Consultants, Inc. Answer to Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9, 14, and 15.

29. Plaintiffs objected to the Trustee's decision not to make immediate Trust distributions. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9 and 14. *See* Plaintiff Tyre Dealer Network Consultants, Inc. Answer to Answer to

Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9 and 14.

30. The Trust contains a "No Contest Clause" that clearly expresses the Settlor's intent to disinherit a beneficiary who "objects in any manner to any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement . . ." *See* Pages 14-21 and 14-22 of the Trust.

31. Plaintiff Hugh Dereede admits that prior to December 3, 2014 he read Article 14, Section 21 of the Trust. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 1.

32. South Carolina Trust Code Section 62-7-605 states "a provision in a revocable Trust purporting to penalize any interested person for contesting the validity of the Trust or instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting proceedings."

33. The Plaintiffs' Complaint, South Carolina law, Affidavits, and completed discovery fail to show even a scintilla of Probable Cause to support the Plaintiffs decision to initiate this action in defiance of the Defendant's, as Trustee, good faith decisions.

34. The Plaintiffs' Complaint, Admissions, and Defendant's Answer, coupled with South Carolina Code Section 62-7-505 (a)(3) are controlling as to the facts that (1) Plaintiffs are beneficiaries of the Trust, (2) Plaintiffs were informed that the Trust could be liable for debts of the Estate, (3) Plaintiffs were informed that the Defendant, as Trustee, was not going to make Trust distributions until after the Creditor's Period had run, (4) Plaintiffs filed a lawsuit in objection to the Defendant's decision not to make immediate Trust distributions, (5) the Defendant's decisions, as Trustee, were reasonable, grounded in South Carolina law, made in good faith, and (6) as such, Plaintiffs lacked probable cause to challenge her decisions and should be disinherited according to the Trust's "No Contest Clause."

Based on the foregoing, Defendant in entitled to judgment as a matter of law. This Motion is supported by the affidavit of Courtney Feeley Karp and the affidavit of Edward Ribadeneira, both previously filed, and by such other materials, memoranda, affidavits, deposition excerpts, and other documents to be filed with the Court in advance of the hearing.

Please be present to defend if so minded.

This the 6 day of November, 2015

By: _____ **ROA 0185**

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November 2, 2015

VIA U.S. Mail and Email

Ms. Catherine H. Kennedy
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P.O. Box 1473
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803-227-4367
ckennedy@turnerpadget.com

Dear Cathy,

Thank you for serving as Trust Protector for the Deborah Dereede Living Trust dated December 18, 2013 ("the Trust"). My client Courtney Feeley Karp ("Trustee"). is the Trustee of the Trust. I understand that the Trustee has completed the necessary steps to engage your services as Trust Protector. There is an ongoing dispute between the Trustee, Hugh Dereede (a beneficiary under the Trust) and Hugh Dereede's company (Tyre Dealer Network Consultants, Inc.) (individually a "Plaintiff" or together "the Plaintiffs). Hugh Dereede and Tyre Dealer Network Consultants, Inc. ("Tyre") initiated a lawsuit in December 2014 against my client as Trustee and as a beneficiary of the Trust and Michael Fehily as a beneficiary, and are continuing to pursue claims against the Trust and Trustee.

Under Article Three, Section Eight of the Trust ("Trust Protector Provisions"), the Trustee requests that you assist her by resolving the questions below which are the basis of the ongoing dispute between the parties. Specifically, the Trustee asks the following:

(1) If she was required to distribute Trust property to Plaintiffs in December of 2014, either at (a) the closing of the sale of the South Carolina real property owned by the Trust on December 19, 2014, or (b) prior to filing of Plaintiffs' lawsuit on December 23, 2014.

Bloomberg No. 5119
ROA 0186
EXHIBIT A

(2) If she should have distributed Trust property in response to Plaintiffs' demands during the prosecution of their lawsuit?

(3) If the Plaintiffs' decision to resolve their disputes through litigation was proper and timely.

(4) If her decision to not distribute Trust property until all debts and expenses of the estate were known was reasonable and in good faith?

(5) Finally, if the Plaintiffs' actions as detailed in the attached documents trigger the Trust's "no contest clause" found in Article Fourteen, Section 21?

I have attached the Plaintiffs' December 2014 Complaint, my client's Answer, and the Plaintiffs' proposed Amended Complaint. The Plaintiffs filed a motion to amend last month and it will be heard on November 19, 2015. The Settlor, Deborah Dereede, passed away on August 15, 2014. My client, who is also the personal representative of her estate, wishes to close the estate and subsequently distribute all Trust property as soon as possible, but needs to know who is entitled to the Trust's assets. She understands that the Trust gives you the authority to resolve disputes between beneficiaries and between trustees and beneficiaries.

Please contact me directly should you have any questions or require additional information. I have copied John Gettys and Daniel Harshaw, who are counsel for Plaintiffs and Michael Fehily respectively.

I appreciate your time and willingness to assist in resolving this dispute.

Sincerely,

Peter Nosal

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF YORK

CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

FILED-RECEIVED
2015 FEB 18 AM 9:
DAVID A. HILLE
C.C.P.&G.S.
YORK COUNTY, SC

DEFENDANT COURTNEY FEELEY KARP'S SECOND AMENDED MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS HUGH DEREEDE AND TYRE DEALER NETWORK CONSULTANTS, INC.

FILED-RECEIVED
2016 FEB 04 PM 1:
DAVID A. HILLE
CLERK OF COURT
YORK COUNTY, SC
CANCELLED

TO: PLAINTIFFS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT Defendant, Courtney Feeley Karp (Individually and as Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013), by and through its undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for York County, within 10 days hereof, or as soon as practicable thereafter, for an Order pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure that (1) the Defendant acted in Good Faith and pursuant to South Carolina law when she refused to make untimely trust distributions to Plaintiffs in December 2014; (2) Article 14, Section 21 of the Trust is valid, enforceable, and that the Defendant must adhere to the terms of the Trust by declaring that the Plaintiffs' interest in the Trust are forfeited; (3) the Plaintiffs reimburse the Trust for expenses and attorney fees related to the Defense of this action; and (4) for such other and further relief that this Court may deems just and proper. In the alternative, the Defendant moves for a dismissal of this action based on the Plaintiffs' lack of standing to bring a claim for a declaration of rights under the Deborah Dereede Living Trust, dated December 18, 2013.

This motion is based on the following undisputed facts:

1. Plaintiffs Hugh Dereede and Tyre Dealer Network Consultants, Inc. are beneficiaries of the Deborah Dereede Living Trust, dated December 18, 2013 ("the Trust"). *See* ¶ 1 and 2 of Plaintiffs' Complaint.

2. Plaintiff Tyre Dealer Network Consultant, Inc. admits that Hugh Dereede is its agent. *See* Plaintiff Tyre Dealer Network Consultants, Inc.'s Answer to

Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 3.

3. Upon the death of Deborah Dereede on August 15, 2014, the Defendant became the Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013 (the "Trust") and was appointed the Personal Representative of the Estate of Deborah Dereede (the "Estate") on September 12, 2014.

4. An Estate was promptly opened in the York County Probate Court. The initial notice to creditors was published on October 2, 2014 which caused the creditor's period to run to June 2, 2014.

5. The dispute between the parties concerns whether or not the Trustee acted in good faith when she interpreted Article Five (Trust Administration at My Death), Section 2 (Immediate Distribution of Specific Devises) and Article Six (Specific Distributions of Trust Estate) of the Trust.

6. Article Five, Section 2 (Immediate Distribution of Specific Devises) instructed the Trustee to, as soon as practicable after the death of the Settlor, to make certain distributions from (the) Trust Estate in the manner and amounts and to the person and/or entities specified in Article Six.

7. Article Six, Section 4(a) states "as soon as practicable following my death, my Trustee shall sell the house and lot located at 131 Whispering Pines Drive, Lake Wylie, SC 29710" and distribute the proceeds so as to satisfy the mortgage on the property and pay off "that certain promisory note given by me to Tyre Dealer Network Consultants, Inc." Half of the remaining funds were to be distributed to Hugh Dereede and the Trust was to retain the other half.

8. The closing of the sale of 131 Whispering Pines Drive, Lake Wylie, SC 29710 was scheduled for December 15, 2014. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's Request For Admission ¶ 12.

9. On December 3, 2014 counsel for Plaintiffs wrote a letter to Phillip Corson (cc to Barry Mack the closing attorney) indicating that the Plaintiffs expected to be paid at closing. See Exhibit B of Defendant's Amended Answer. *See also* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's Request For Admission ¶ 9.

10. On December 11, 2014 at 6:54 pm, Plaintiff Hugh Dereede stated (in an email to Defendant under the subject closing of 131 Whispering Pines) "In light of the upcoming closing of the above property, Monday December 15, 2014, I would like you to confirm that you will be following your mother's instructions in her Trust by having the proceeds of the sale of the house forwarded to me after the bank has been paid out. Please advise when I can expect the money to be send to me after or on Monday, the 15th of December 2014." See Exhibit C of Defendant's Amended Answer.

11. On December 11, 2014 at 10:57 p.m., the Defendant wrote to Hugh Dereede and said "Dear Hugh, As I have explained before, estate law requires that all debts and expenses of Mom's estate be paid and settled before any distributions are made. This includes everything in the Trust as the Trust has legal responsibility for paying the debts of the estate. Therefore, I cannot within my fiduciary obligations make any distributions until then. Once the estate's debts have been paid and probate has closed I will be able to make distributions, including the amount of money owed to you under the terms of the Trust from the sale of the house. As I have repeatedly said, I do not know when or how long that will take as this a complicated estate and cannot provide any date certain for distributions." See Exhibit D of Defendant's Amended Answer.

12. On December 22, 2014 Hugh Dereede emailed the Defendant again and wrote (in part) "I understand that closing has occurred and you are now in possession of the proceeds of the sale. Please accept this as a request that you pay both my company and myself as directed under the terms of the Trust. I understand you have a position contrary to what I believe is appropriate . . . " See Exhibit C of Defendant's Amended Answer. *See also* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 14.

13. On December 23, 2014 Plaintiffs initiated this action and admit "that upon filing the complaint . . . Plaintiff objected to the Trustee's not to make Trust distributions until all valid debts of the estate were known and settled." *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 15.

14. Plaintiffs deny that "the Trustee's decision to not make distributions to Trust beneficiaries until all debts and expenses of Deborah Dereede's estate were paid and settled was an action taken in good faith by the Trustee." *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 16.

15. On, at least, three separate occasions prior to initiating this lawsuit the Plaintiffs (individually and through counsel) made written demands for a trust distribution upon the sale of Trust Property located in Lake Wylie, South Carolina. See Defendant's Exhibits B, C, and D of her Answer.

16. Each time, Defendant explained that her decision not to make immediate trust distributions was grounded in South Carolina law and the terms of the Trust. Both the terms of Trust and South Carolina Law require assets in the Trust to used to satisfy valid debts of the Estate of Deborah Dereede. See Exhibit B of Plaintiffs' Complaint. *See also* South Carolina Trust Code § 62-7-505(a)(3). *See also* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's Request For Admission ¶ 2. *See also* ¶ 56 of the Affidavit of Courtney Feeley Karp.

17. On at least one occasion, counsel for Plaintiffs indicated that the Defendant's position was reasonable. *See* ¶ 59 of the Affidavit of Courtney Feeley Karp. *See also* ¶ 5 of the Affidavit of Edward J. Ribadeneira.

18. Plaintiffs objected to the Trustee's decision not to make immediate Trust distributions. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9 and 14. *See* Plaintiff Tyre Dealer Network Consultants, Inc. Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 9 and 14.

19. The Trust contains a "No Contest Clause" that clearly expresses the Settlor's intent to disinherit a beneficiary who "objects in any manner to any action taken or proposed to be taken in good faith by my Trustee under my Trust Agreement . . . and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith" *See* Pages 14-21 and 14-22 of the Trust, paragraph b.

20. Plaintiff Hugh Dereede admits that prior to December 3, 2014 he read Article 14, Section 21 of the Trust. *See* Plaintiff Hugh Dereede's Answer to Defendant Courtney Feeley Karp's (Individually and as Trustee) Requests for Admission, ¶ 1.

21. After objecting to the Defendant's reasoned and prudent decision not to make distributions from Trust to Plaintiffs in December 2014, the Plaintiffs initiated this lawsuit on December 23, 2014 bringing multiple claims including a "declaration of rights . . . relating solely to the construction and interpretation of the Trust" and alleging breach of fiduciary duty.

22. The Trust states that "no one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution together with detailed supporting memorandum of law" and "whenever a dispute, conflict, or claim involves an interpretation and construction of (the) Trust Agreement, the Trust Protector may file an action in a court of competent jurisdiction for the interpretation and construction of such Trust Agreement, or the Trust Protector may instruct my Trustee to do so." Page 3 – 7, Section 8 paragraph h.

23. By consent, in November 2015, in an effort to resolve the ongoing dispute, Catherine Kennedy of Turner Padget Graham and Laney, P.A. in Columbia, South Carolina, was appointed by Defendant and Hugh Dereede to serve as Trust Protector.

24. Having previously served as Probate Judge in Richland County and chaired the Bench/Bar committee that recommended the recent changes to the South Carolina Probate Code, which become effective on January 1, 2014, Catherine Kennedy is experienced, knowledgeable, and qualified to serve as Trust Protector.

25. Article 3, Section 8 of the Trust is titled "Trust Protector Provisions." See pages 3-3 through 3-8 of the Trust.

26. Article 3, Section 8 of the Trust states "the function of the Trust Protector is to protect the financial resources controlled and governed by my Trust and the interests of the beneficiaries."

27. Article 3, Section 8(b) states that a "candidate for Trust Protector must be independent".

28. All parties had access to the Trust Protector and, initially, she received a letter from Defendant's counsel (Attached hereto as Exhibit A), Plaintiffs' Summons and Complaint, Plaintiffs' Motion to Amend Complaint, and Defendant's Amended Answer.

29. On January 8, 2016 the Trust Protector emailed counsel for Plaintiffs and Defendant and asked if the parties agreed with the Facts (attached hereto as Exhibit B), counsel for Plaintiffs agreed (attached hereto as Exhibit C) and she then reviewed the applicable facts, law, and pleadings and published the report attached hereto as Exhibit D.

30. The Trust Protector's report indicates that the Defendant "acted reasonably and prudently and in accordance with the terms of the Trust in refusing the Spouse's (Plaintiff) demands in December 2014" Page 6 ¶ 1 of Exhibit D.

31. Plaintiffs objected to Defendant not making distributions immediately, but the Trust Protector's report notes that the Trustee "was directed in Article Five, Section Two to make the specific distributions 'as soon as practicable' not *immediately*. It would not have been practicable or feasible to distribute to the Spouse at the time of closing." Page 6 ¶ 1 of Exhibit D.

32. The Trust Protector's report indicates that "in December 2014, the Trustee would have been foolish, if not in breach of her fiduciary duty, to immediately distribute the net proceeds received from the sale of Lake Wylie. Her actions served to fulfill her fiduciary responsibility to uphold the terms of the trust . . ." Page 5, ¶ 7 of Exhibit D.

33. Furthermore, the Trust Protector's report states the Trustee acted appropriately in resisting Plaintiffs' demands for trust distributions in June 2015 so that the applicability of the "no contest clause" could be adjudicated. Page 6, ¶ 4 of Exhibit D.

34. The Trust states that "subsequent to his or her review the Trust Protector may give any claimant the authority to file and maintain and action in a court of law." Page 3-7, Section 8, Paragraph h.

35. The Trust Protector's report indicates that she would not have authorized the Plaintiffs to bring this lawsuit in December 2014 had she been appointed at that time, but writes "the issue of good faith, by the terms of the Trust itself, must be adjudicated by a court of competent jurisdiction, not by the Trust Protector. Since the determination of probable cause is so connected to the good faith adjudication and since it is already pending before the court, the Trustee is instructed to seek resolution of those issues in the present forum." Page 7, ¶ 5 of Exhibit D.

36. Based on the foregoing, the Pleadings, applicable Discovery, the Trust Protector's Report and coupled with South Carolina Code Section 62-7-505(a)(3); Defendant in entitled to a judgment as a matter of law as to the Plaintiffs' rights under the Trust that (1) Plaintiffs are beneficiaries of the Trust, (2) Plaintiffs were informed that the Trust could be liable for debts of the Estate, (3) Plaintiffs were informed that the Defendant, as Trustee, was not going to make Trust distributions until after the Creditor's Period had run, (4) Plaintiffs filed a lawsuit after multiple objections to the Defendant's decision not to make immediate Trust distributions, (5) the Defendant's decisions, as Trustee, were reasonable, grounded in South Carolina law, and, as such, were made in good faith, and (6) the Trustee shall uphold the Trust's "No Contest Clause" and the Plaintiffs shall be treated as if they predeceased Deborah Dereede, along with attorney fees, and expenses related to the Defense of Plaintiffs' lawsuit.

This Motion is supported by the affidavit of Courtney Feeley Karp and the affidavit of Edward Ribadeneira, both previously filed, by the Trust Protector's report filed contemporaneously herewith, and by such other materials, memoranda, affidavits, deposition excerpts, and other documents to be filed with the Court in advance of the hearing.

Please be present to defend if so minded.

This the 17 day of February, 2016

By: _____

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November 2, 2015

VIA U.S. Mail and Email

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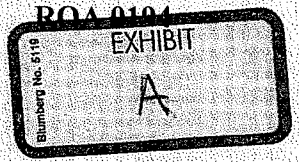
Dear Cathy,

Thank you for serving as Trust Protector for the Deborah Dereede Living Trust dated December 18, 2013 ("the Trust"). My client Courtney Feeley Karp ("Trustee"). is the Trustee of the Trust. I understand that the Trustee has completed the necessary steps to engage your services as Trust Protector. There is an ongoing dispute between the Trustee, Hugh Dereede (a beneficiary under the Trust) and Hugh Dereede's company (Tyre Dealer Network Consultants, Inc.) (individually a "Plaintiff" or together "the Plaintiffs). Hugh Dereede and Tyre Dealer Network Consultants, Inc. ("Tyre") initiated a lawsuit in December 2014 against my client as Trustee and as a beneficiary of the Trust and Michael Fehily as a beneficiary, and are continuing to pursue claims against the Trust and Trustee.

Under Article Three, Section Eight of the Trust ("Trust Protector Provisions"), the Trustee requests that you assist her by resolving the questions below which are the basis of the ongoing dispute between the parties. Specifically, the Trustee asks the following:

(1) If she was required to distribute Trust property to Plaintiffs in December of 2014, either at (a) the closing of the sale of the South Carolina real property owned by the Trust on December 19, 2014, or (b) prior to filing of Plaintiffs' lawsuit on December 23, 2014.

ROA 0194



(2) If she should have distributed Trust property in response to Plaintiffs' demands during the prosecution of their lawsuit?

(3) If the Plaintiffs' decision to resolve their disputes through litigation was proper and timely.

(4) If her decision to not distribute Trust property until all debts and expenses of the estate were known was reasonable and in good faith?

(5) Finally, if the Plaintiffs' actions as detailed in the attached documents trigger the Trust's "no contest clause" found in Article Fourteen, Section 21?

I have attached the Plaintiffs' December 2014 Complaint, my client's Answer, and the Plaintiffs' proposed Amended Complaint. The Plaintiffs filed a motion to amend last month and it will be heard on November 19, 2015. The Settlor, Deborah Dereede, passed away on August 15, 2014. My client, who is also the personal representative of her estate, wishes to close the estate and subsequently distribute all Trust property as soon as possible, but needs to know who is entitled to the Trust's assets. She understands that the Trust gives you the authority to resolve disputes between beneficiaries and between trustees and beneficiaries.

Please contact me directly should you have any questions or require additional information. I have copied John Gettys and Daniel Harshaw, who are counsel for Plaintiffs and Michael Fehily respectively.

I appreciate your time and willingness to assist in resolving this dispute.

Sincerely,

Peter Nosal

12/18/2013	Trust Agreement Created 131 Whispering Pines Drive transferred to Trust
08/15/2014	Deborah Dereede died
09/12/2014	Estate opened; Courtney-Feeley-Karp appointed as PR
10/02/2014	1st Notice to Creditors published
12/19/2014	Closing of sale of 131 Whispering Pines Net proceeds of $356,242.86 paid to Trust
12/23/2014	Lawsuit filed
06/02/2015	8 months for unknown creditors to file claims expired 2 claims filed prior to 12/2014: $ 250.14; $14,843.54
08/15/2015	1 year expired – absolute bar to claims
11/12/2014	Inventory filed Probate Assets were: New Hampshire home Phoenix, AZ home Cadillac car } Specifically left Lincoln car } to cabin cruiser boat } to Hugh Dereede 2 bank accounts $619.25

EXHIBIT 3

Bumgarner, Nv

Gmail by Google

Pete Nosal <pete@nosaljeterlaw.com>

ROA 0197

Dereede

John Gettys <John.Gettys@mortongettys.com> Fri, Jan 8, 2016 at 2:46 PM
To: "Kennedy, Catherine H." <CKennedy@turnerpadget.com>, Pete Nosal <pete@nosaljeterlaw.com>

Yes

John P Gettys, Jr., Partner
Attorney at Law
MORTON & GETTYS
Fountain Park Place
331 E Main St, Suite 300
PO Box 707
Rock Hill, SC 29731

Main Tel: 803.366.3373
Fax: 803.366.4044
Web: www.mortongettys.com

A Limited Liability Company

MORTON & GETTYS
ATTORNEYS AT LAW

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CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, UNLESS SPECIFICALLY INDICATED OTHERWISE, ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING TAX RELATED PENALTIES OR PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX RELATED MATTER ADDRESSED HEREIN.

From: Kennedy, Catherine H. [mailto:CKennedy@TurnerPadget.com]
Sent: Friday, January 08, 2016 2:43 PM
To: Pete Nosal <pete@nosaljeterlaw.com>; John Gettys <John.Gettys@mortongettys.com>
Subject: Dereede

Do you both agree with these facts?

EXHIBIT 5119
ROA 0197

Function of the Trust Protector

Under the terms of the Deborah Dereede Revocable Living Trust dated December 18, 2013 (the "Trust"), the Trust Protector is to protect the financial resources of the Trust and the interests of the beneficiaries thereto. In Article Three, Section 8 of the Trust, Deborah Dereede (the "Decedent') provided for the authority of a Trust Protector but did not specifically appoint a Trust Protector. Among other powers, she granted the Trust Protector the power to resolve a dispute or conflict between the beneficiary and the trustee. The present dispute is with regard to a distribution required under the Trust and is between Courtney Feeley-Karp, the Decedent's daughter and an attorney, in her capacity as trustee of the Trust (the "Trustee") and two trust beneficiaries, Tyre Dealer Network Consultants, Inc. ("Tyre") and Hugh Dereede, the Decedent's spouse and a trust beneficiary (the "Spouse").

In this instance the dispute resulted in a lawsuit being filed by the Spouse in late 2014. At that point no Trust Protector was serving. The undersigned Trust Protector was not appointed until October 2015. Although the Trust Agreement provides that "no one may file or instigate a claim in a court of law without first submitting the claim to the Trust Protector for resolution. . ." no Trust Protector was in place at the time the suit was filed. Nevertheless, if the undersigned can resolve the dispute, I will attempt to do so.



Pertinent Facts **ROA 0199**

The background on the Decedent, as I understand it, is that she had been married several times and used a number of different names. She had lived and/or worked in New Hampshire, Massachusetts, Arizona, South Carolina, North Carolina and Canada, The Decedent had aggressive medical treatment for her cancer in the months prior to her death.

The pertinent dates are as follows:

12/18/2013	Trust Agreement Created 131 Whispering Pines Drive transferred to Trust
08/15/2014	Deborah Dereede died
09/12/2014	Estate opened; Courtney Feeley-Karp appointed as PR
10/02/2014	1st Notice to Creditors published
11/12/2014	Inventory filed
12/19/2014	Closing of sale of 131 Whispering Pines Net proceeds of $356,242.86 paid to Trust
12/23/2014	Lawsuit filed by Hugh Dereede
06/02/2015	8 months for unknown creditors to file claims expired 2 claims filed with probate court prior to 12/2014: $ 250.14; $14,843.54
08/15/2015	1 year expired – absolute bar to claims Supplemental Inventory filed

The probate assets were:

New Hampshire home	
Phoenix, AZ home	
Cadillac car	} Specifically left to Hugh Dereede via Trust
Cabin cruiser boat	} Specifically left to Hugh Dereede via Trust
Lincoln car	$3,500 value per Supplemental I&A
2 bank accounts	$619.25.

The only asset in the Trust was 131 Whispering Pines Drive. Some non-probate assets such as an IRA, a 401(k) and a bank account passed outside the Decedent's Will and Trust.

Distributions

The Trustee was directed "as soon as practicable after [the Decedent's] death" to make certain distributions from the Trust Estate as set forth in Article Six of the Trust. Article Six, Section 4 is denominated as "Specific Gifts," but it begins by directing the Trustee, as soon as practicable following [the Decedent's] death, to sell 131 Whispering Pines Drive, Lake Wylie, SC ("Lake Wylie"). The proceeds are to be used first to pay off any mortgage on Lake Wylie, second to pay off the balance owing on a promissory note to Tyre, not to exceed one-half of the sales price, and then to distribute one half of the remaining proceeds to the Spouse. It is this provision in Article Six that is the cause of the dispute between the Trustee and the Spouse.

The Trustee was also to distribute to the Spouse the contents of Lake Wylie, the Cadillac, a 2008 GMC Envoy (which apparently the Decedent did not own at her death) and the Maxum Cabin Cruiser. No dispute regarding these items was raised in the lawsuit.

The net Trust Estate after the Article Six distributions and after payment of claims (see below) was to be divided into shares for the Decedent's children and held in a "Family Access Trust" pursuant to the provisions of Article Ten.

Claims

The Trust Estate, after the distributions set forth in Article Six of the Trust, was to be used to pay expenses, debts, claims and taxes except as specifically provided elsewhere in the Trust.

In Section 6 of Article 5 and in Section 4.a. of Article Six, all expenses, claims, liens, encumbrances, taxes (including Death Taxes) and liabilities attributable to any specifically distributed property were to be allocated to the specific distributions.

No Contest Clause

Article 14, Section 21 is the "No Contest Clause." This provision disinherits any person who does a prohibited action, and all interests given to such person are forfeited and distributed as though the person predeceased the Decedent without issue. Part b prohibits any objection in any manner to any action taken by the Trustee in "good faith" if the Trustee's action is "later adjudicated by a court of competent jurisdiction to have been taken in good faith." Part c prohibits a person from objecting to any construction or interpretation of the Trust adopted in good faith by the Trustee if the objection is "later adjudicated by a court of competent jurisdiction to be an invalid objection."

Trust Protector

Article 3, Section 8 authorizes the appointment of a Trust Protector by a majority of the Successor Trustees designated in Section 4 of Article 3. Section 4 names Courtney Feeley-Karp (the Trustee) and Hugh Dereede (the Spouse) as the successive Successor Trustees.

Claims

South Carolina law subjects the probate assets first to the payment of debts, claims and expenses. See S.C. Code Ann. § 62-3-801 *et seq*. If the probate assets are insufficient, then the property in the Trust at the Decedent's death is liable for the claims of the Decedent's creditors, costs of administration, and funeral and burial expenses. See S.C. Code Ann. § 62-7-505(a)(3). This Code section recognizes that a settlor, in this case the Decedent, has the right to specify the source from which liabilities will be paid.

Distribution of Trust Property

Once a formerly revocable trust becomes irrevocable due to the settlor's death, S.C. Code § 62-7-604 allows, but does not mandate, a trustee to distribute trust property in accordance with the terms of the trust. Unless the trustee is on notice of a possible action to contest the trust, the trustee incurs no liability if the trust is later determined to be invalid. The beneficiary who receives a distribution from a trust that is later determined to be invalid is liable to return the distribution. The comments to this section make it clear that the liability of the trust assets for the debts of the settlor and the trustee's possible liability to creditors for such distribution is not addressed in this section.

Penalty Clause for Contest

S.C. Code § 62-7-605 provides that a no contest or penalty clause in a trust is not enforceable if "probable cause exists for instituting proceedings."

Duty to Administer Trust

S.C. Code § 62-7-806 requires a trustee to administer the trust in good faith in accordance with its terms and purposes and the interests of the beneficiaries and in accordance with the South Carolina Trust Code.

Special Skills Of Trustee

S.C. Code § 62-7-806 requires a trustee with special skills or expertise to use those skills or expertise in administration of the trust.

With this understanding of the facts, the Trust provisions and the law, we turn to the Trustee's actions in this matter.

I understand that Lake Wylie was on the market for sale at the time of the Decedent's death. The Trustee continued to market the property. So clearly she attempted to sell Lake Wylie as soon as practicable after the Decedent's death, as directed in the Trust.

Lake Wylie sold in December 2014, four months after the Decedent's death. The mortgage to Bank of America was paid off from the proceeds. After payment of the closing costs attributable to the Trust as seller, the Trust netted $356,242.86. It would appear that there existed $250,000 to pay the debt to Tyre, assuming that was the amount owing. The maximum amount that could be paid to Tyre from the literal provisions of the Trust was $307,500. It would therefore appear that additional proceeds existed to be divided as directed in the Trust, with one-half being paid to the Spouse.

This transaction cannot be considered in a vacuum, however. What was happening with the remainder of the Decedent's Estate and Trust? There existed $619.25 in liquid assets at the Decedent's death. Funeral and burial expenses had to be paid from some source. Expenses of administration, including court costs had to be paid from some source. Until their sale, three houses had to be maintained with their attendant expenses and real estate taxes. Two cars and a boat generated expenses and personal property taxes. Additionally, two claims had been filed against the estate and the claims period had five more months to run for unknown creditors and 8 ½ more months to run for those creditors that were known, if any. The Lincoln car could be sold to generate a small amount of cash, but there was clearly an insufficient amount of cash to maintain the estate and trust assets.

At the sale of Lake Wylie, the other two parcels of real estate had not yet been sold and any such sales might not occur for some time, if at all (the Phoenix real estate was encumbered by two mortgages). There were considerable medical expenses incurred prior to the Decedent's death that might result in substantial claims. The Decedent owned real estate in three different states and worked in another state from which creditors' claims might arise.

In Section 4 of Article Five, "unless other provisions for payment have been made," the Trustee was mandated to pay from trust assets the Decedent's final medical expenses and funeral costs, legally enforceable claims against the Decedent, and reasonable expenses of trust administration including expenses related to the probate estate. Once Lake Wylie sold, a fund existed to pay these debts, expenses and claims, albeit a fund that might have to be reimbursed given the order for payment of debts set out in the Trust.

In December 2014 the Trustee would have been foolish, if not in breach of her fiduciary duties, to immediately distribute the net proceeds received from the sale of Lake Wylie. Her actions served to fulfill her fiduciary responsibility to uphold the terms of the trust and to administer trust assets for all the beneficiaries and for actual and potential creditors of the Decedent's estate and Trust. As an attorney, she was bound to use her special expertise to administer the trust. Had she done as the Spouse requested, she would have potentially subjected

herself to personal liability should insufficient funds have existed in the probate estate to pay creditors. Furthermore, given that the Spouse was a "citizen and resident of Canada" as stated in his Complaint, pursuing him for assets that needed to be returned to pay creditors would have been costly and difficult. Moreover, the Trustee was required to follow the terms of the Trust not only in the payment of debts, claims and expenses, but also in that she was directed in Article Five, Section 2 to make the specific distributions "*as soon as practicable*" not "*immediately*". It would not have been practicable or feasible to distribute to the Spouse at the time of closing. In my opinion the Trustee acted reasonably and prudently and in accordance with the terms of the Trust in refusing the Spouse's demands in December 2014.

Prior to the closing of the Lake Wylie sale, the Spouse requested that he and Tyre be paid by the closing attorney at the closing. The Trustee disagreed with the Spouse's request and so informed the Spouse. The sale closed on a Friday and the following Tuesday the Spouse filed a declaratory judgment action seeking an interpretation of the Trust with regard to distribution of the proceeds and seeking a determination that probable cause existed for filing the action. It appears that the Spouse and Tyre disagreed with the action taken, or, in this case, not taken, by the Trustee and with the Trustee's interpretation of the Trust as to when the distribution should be made. Thus the Spouse's and Tyre's legal action appears to invoke the provisions of the No Contest Clause. The Spouse and Tyre seemed to recognize this possibility since in their Complaint they sought a determination that they had probable cause.

In early June 2015, the time frame for unknown creditors to file claims expired. It is my understanding that the Spouse thereafter requested distribution although the lawsuit was still pending. In August 2015, the ultimate time frame for creditors' claims expired. It is my understanding that the Spouse again requested distribution.

The Trustee resisted the Spouse's requests in June and thereafter on the basis that, if the Spouse's and Tyre's actions violated the No Contest Clause, then neither was entitled to a distribution from the Trust. The Trustee was thus looking to the terms of the Trust itself in withholding distribution after the claims period expired since the application of the No Contest clause had been placed squarely before the court. It is my opinion that, due to the Spouse's and Tyre's actions in bringing suit, the Trustee was justified in not distributing any assets to them until the applicability of the No Contest Clause was adjudicated.

Summary

The Decedent's provision for a Trust Protector to be able to resolve disputes was an effort to avoid controversy over her Trust and to resolve disagreements without the expense, delay and acrimony that is usually involved in a court proceeding. In that no Trust Protector was serving at the time suit was filed, there was no one to review the Spouse's and Tyre's claims in an attempt to resolve the dispute or to grant permission for the filing of the lawsuit.

The Spouse could have contacted the Trustee to request the appointment of a Trust Protector prior to filing suit. However they were already in a dispute. Given that the Spouse and the Trustee, as the only two named successors, had to act jointly to appoint a Trust Protector, there certainly was no guarantee that the Trustee would have responded positively and that his

request would have been be honored. It does not seem to me that the later appointment of a Trust Protector relates back to require dismissal of the suit a year after it has was filed.

Nonetheless, given the facts as I understand them as recited above, had I been appointed, I would not have granted the Spouse and Tyre the authority to maintain a court action. I believe I would have resolved the issue through a direction to the Trustee as to what amount to distribute at what time. Mediation would also have been an alternative.

We are beyond that point. Presently, two inter-related issues remain to be resolved: One-Did the Trustee take the action and make the interpretation in good faith? Two-Did the Spouse and Tyre have probable cause to bring the action?

If the Trustee lacked good faith and the Spouse's and Tyre's objections were valid, then it would appear that probable cause existed to bring the action. Therefore the Spouse and Tyre would not forfeit their distributions. On the other hand, if the Trustee acted in good faith in her refusal to distribute and in her adoption of her construction of the Trust Agreement, then the terms of the No Contest Clause of the Trust itself are met. The issue of probable cause would then affect the enforceability of that provision.

Clearly the issue of good faith, by the terms of the Trust itself, must be adjudicated by a court of competent jurisdiction, not by the Trust Protector. Since the determination of probable cause is so connected to the good faith adjudication and since it is already pending before the court, the Trustee is instructed to seek resolution of those issues in the present forum.

Respectfully submitted,

Catherine H. Kennedy
Trust Protector

January 15, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, TRACY L. MATTINGLY, a Notary Public for South Carolina, do hereby certify that **CATHERINE H. KENNEDY** personally appeared before me this day and acknowledged the due execution of the Report of the Trust Protector.

Witness my hand and official seal this the 29th day of January, 2016.

Tracy L. Mattingly
Notary Public for South Carolina
My Commission Expires: 02/23/2021

STATE OF SOUTH CAROLINA)
)
) **APPOINTMENT OF TRUST PROTECTOR**
COUNTY OF YORK)

FILED/RECEIVED
2015 FEB 26 AM 9:46
DAVID HAMILTON WILKINS
YORK COUNTY, SC

WHEREAS, the Deborah Dereede Living Trust under agreement dated December 18, 2013 ("the Trust") was established by Deborah Dereede as Settlor and Trustee; and

WHEREAS, Deborah Dereede died on August 15, 2014; and

WHEREAS, Article Three (Trustees) of the Trust includes Section 8 (Trust Protector Provisions) that states "the function of the Trust Protector is to protect the financial resources controlled and governed by my Trust and interests of the beneficiaries;" and

WHEREAS, the Trust Protector must be independent and be accessible to all beneficiaries and Trustees; and

WHEREAS, the Trust Protector shall be independent and only interest will be to protect the financial resources governed by the Trust and beneficiaries thereto; and

WHEREAS, Article Three, Section 8(f)(Consultation) states that "my Trustee is authorized to consult with the Trust Protector as to any matter relating to the investment of assets, discretionary distributions and the use of principal, tax matters, dealings with beneficiaries, and any other matter relating to the administration of my Trust in keeping with the objectives and purpose of this Trust agreement;" and

WHEREAS, Article Three, Section 8(a)(Appointment of Trust Protectors) states "in the event a Trust Protector is needed to act, the First Successor Trustee who is independent . . . shall act as Trust Protector, or if no individual is available, a majority of the Successor Trustees designated under Section 4 of this Article, shall have the right to designate by written instrument a Trust Protector who is qualified;" and

WHEREAS, Article Three, Section 4 lists the current Trustee, Courtney Feeley Karp, as the first successor Trustee and Hugh Dereede as the next successor Trustee, and neither can serve as Trust Protector because they are interested parties; and

WHEREAS, Catherine H. Kennedy is qualified to serve as Trust Protector because she is independent, assisted in the drafting of South Carolina Trust Code provisions that are the basis of the ongoing dispute between the parties, and is a licensed South Carolina attorney who is experienced in Trust, Estate, and Probate matters; and

NOW, THEREFORE, in consideration of the above and in accordance with the Trust:

(1) Courtney Feeley Karp and Hugh Dereede, do hereby make, publish and declare this to be their written designation that Catherine H. Kennedy be appointed to serve as Trust Protector for the Trust.

(2) Catherine H. Kennedy hereby accepts her appointment as the Trust Protector of the Trust effective as of the date hereof and agrees to exercise all duties and responsibilities assigned to the Trust Protector of the Trust as set forth in the Trust.

[SIGANTURE PAGES FOLLOW]

IN WITNESS WHEREOF, I, Courtney Feeley Karp, have executed this Designation of Appointment of Trust Protector for the Deborah Dereede Living Trust Dated December 18, 2013 on October 22, 2015.

(SEAL)
COURTNEY FEELEY KARP as Trustee of the Deborah Dereede Living Trust Dated December 18, 2013.

Witness: Starr T. Hallett

Witness: Nazlold Islamaj

STATE OF MASSACHUSETTS)
COUNTY OF Plymouth)

PROBATE

Personally appeared before me the undersigned witness, who, being duly sworn, says that he saw the within named COURTNEY FEELEY KARP sign, seal and as her act and deed deliver the foregoing instrument, and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Witness

Subscribed and sworn to before me
on the 22 day of October, 2015

Notary Public for Massachusetts
My commission expires on: 12/14/18

NAZIOLD ISLAMAJ
Notary Public
Commonwealth of Massachusetts
My Commission Expires December 14, 2018

IN WITNESS WHEREOF, I, Hugh Dereede, have executed this Designation of Appointment of Trust Protector for the Deborah Dereede Living Trust Dated December 18, 2013 on October 23, 2015.

_____ (SEAL)
HUGH DEREEDE as Successor Trustee of the Deborah Dereede Living Trust Dated December 18, 2013.

_____
Witness: Lynn Blackwell

_____
Witness: Rosalind Watson

_____)
)
_____) **PROBATE**

Personally appeared before me the undersigned witness, who, being duly sworn, says that he saw the within named Hugh Dereede sign, seal and as his act and deed deliver the foregoing instrument, and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____
Witness

Subscribed and sworn to before me
on the 23 day of October, 2015

_____
Notary Public for Ontario
My commission expires on: N/A

IN WITNESS WHEREOF, I, Catherine H. Kennedy, have executed this Acceptance of Appointment of Trust Protector for the Deborah Dereede Living Trust Dated December 18, 2013 on October ____, 2015.

_____ (SEAL)
CATHERINE H. KENNEDY

_____

Witness:

_____

Witness:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

Personally appeared before me the undersigned witness, who, being duly sworn, says that he saw the within named CATHERINE H. KENNEDY sign, seal and as her act and deed deliver the foregoing instrument, and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____
Witness

Subscribed and sworn to before me
on the _____ day of _____, 2015

_____

Notary Public for South Carolina
My commission expires on: _____

STATE OF SOUTH CAROLINA IN THE CIRCUIT COURT **ROA 0211**

COUNTY OF YORK CASE NO: 2015 CP 4601409

HUGH DEREEDE and TYRE DEALER NETWORK CONSULTANTS, INC.

Plaintiffs,

vs.

COURTNEY FEELEY KARP (Individually and as Trustee of the Deborah Dereede Living Trust, dated December 18, 2013) and MICHAEL FEHILY, as a qualified beneficiary of the Deborah Dereede Living Trust, dated December 18, 2013;

Defendants.

DEFENDANT COURTNEY FEELEY KARP'S RULE 59(E) MOTION FOR RECONSIDERATION

FILED-RECEIVED
2016 MAR 10 AM 8:11
DAVID M. HILTON
CLERK OF COURT
YORK COUNTY, SC

TO: THE HONORABLE S. JACKSON KIMBALL III AND THE PLAINTIFFS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT Defendant, Courtney Feeley Karp (Individually and as Trustee of the Deborah Dereede Revocable Living Trust, dated December 18, 2013), by and through her undersigned counsel, will move before the Honorable S. Jackson Kimball III, within 10 days hereof, or as soon as practicable thereafter, for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to amend the Order entered March 1, 2016 denying the Defendant's Motion for Summary Judgment.

The Defendant moves the court to reconsider its Order denying her motion for Summary Judgment and to issue an Order that (1) that the Defendant acted in Good Faith and pursuant to South Carolina law when she refused to make untimely trust distributions to Plaintiffs in December 2014; (2) Article 14, Section 21 of the Trust is valid, enforceable, and that the Defendant must adhere to the terms of the Trust by declaring that the Plaintiffs' interest in the Trust are forfeited; (3) that the Plaintiffs reimburse the Trust for expenses and attorney fees related to the Defense of this action; and (4) for such other and further relief that this Court may deems just and proper.

In the alternative, the Defendant moves this court to reconsider its Order and grant partial Summary Judgment and issue an Order that the Defendant acted in Good Faith and pursuant to South Carolina law when she refused to make untimely trust distributions to Plaintiffs in December 2014

This motion is based on the following facts:

1. It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *Zinkland v. Brown*, 478 F.3d 634 (4th Cir. 2007)

2. This motion is, in part, brought to reduce the number of issues the court must decide if a trial is necessary to fully adjudicate this matter.

3. In arguments for the Motion to Amend Complaint, Counsel for Plaintiffs indicated that the Defendant's bad faith occurred when she failed to distribute Trust assets to the Plaintiffs after the statutory eight month creditor's claim period ended.

4. Defendant's affidavit indicates that she acted in good faith and in accordance with South Carolina law when she decided not to make trust distributions to the Plaintiffs in December 2014.

5. Plaintiffs Complaint states that their probable cause for initiating this lawsuit in December 2014 was based on Exhibit B of their Complaint where in an email, the Defendant explained to the Plaintiffs why she was not going to make trust distributions in December 2014.

6. Additionally, the Complaint in paragraph 18(a) states the Defendant "has violated her duty of good faith, loyalty, honesty and fair dealing owed to the beneficiaries."

7. No additional evidence has been put into the record to support the allegations in the Complaint that the Defendant "has violated her duty of good faith, loyalty, honesty and fair dealing owed to the beneficiaries" prior to filing this action.

8. Besides the Plaintiffs' Complaint, the court record lacks any assertions that the Defendant acted in bad faith or contrary to South Carolina law when she refused to make trust distributions to the Plaintiffs in December 2014.

9. The record includes multiple assertions that the Defendant's decision not to make distributions from Trust in December 2014 was prudent, reasonable, and in accordance with South Carolina law.

10. The Plaintiffs' current position is that the Defendant's alleged bad faith occurred in 2015 and not December 2014.

11. According to Black's Law Dictionary probable cause for Torts is "a reasonable belief in the existence of facts on which a claim is based an in the legal validity of the claim itself."

12. With the Plaintiffs' assertion on February 29, 2016 that the Defendant's bad faith occurred in 2015 and not in December 2014 along with the lack of evidence to support the assertions in their Complaint that the Defendant acted

inappropriately in December 2014, the Plaintiffs have not met their burden to establish they had a reasonable belief in the existence of facts to support their claim that the Defendant's decision to withhold Trust distributions in December 2014 was unreasonable, made in bad faith and "violated her duty of good faith, loyalty, honesty and fair dealing owed to the beneficiaries."

This Motion is supported by South Carolina law, court records, pleadings, affidavits, and other documents to be filed with the Court in advance of the hearing.

Respectfully submitted.

This the 10 day of March, 2016

By: _____

Peter Nosal
State Bar No. 79152
NOSAL & JETER, LLP
852 Gold Hill Road #201
Fort Mill, SC 29709
Phone: (803) 351 – 3597
Fax: (803) 403 – 9515
Email:pete@nosaljeterlaw.com
Attorney for Defendant Courtney Feeley Karp

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	Case No. 2015-GC-46-01409
IN RE: Deborah Dereede Living Trust, Dated December 18, 2013,	)	
Hugh Dereede and Tyre Dealer Network Consultants, Inc.,	)	**MOTION TO RECONSIDER** moving party: **COURTNEY FEELEY-KARP, individually and as TRUSTEE OF THE DEBORAH DEREEDE LIVING TRUST DATED DECEMBER 18, 2013**
Plaintiffs,	)	
vs.	)	
Courtney Feeley-Karp, individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013, and Michael Fehily, as A qualified beneficiary of the Deborah Dereede Living trust Dated December 18, 2013.	)	
Defendants.	)	

FILED-RECEIVED
2016 JUN 22 PM 12: 21
YORK COUNTY, SC

Pursuant to Rule 59(e), SCRCP, Courtney Feeley-Karp, individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013 (hereafter "Trustee") moves this Honorable Court to reconsider its order in this matter dated June 9, 2016, an unfiled of which was received by counsel for Trustee on or about June 10, 2016 via email; the filed copy of the order was received by U.S. mail on or about June 16, 2016. It is respectfully asserted that the Court's order is erroneous for the following reasons.

1. The court lacked subject matter jurisdiction to decide the issues presented in this action.

   The Trust Agreement provided an exclusive remedy for any "disputes, claims or

conflict between beneficiaries[1], . . . and a trustee. . ." Article Three, Section (h). prohibited the filing of any claim in a court of law by anyone unless or until the dispute had first been presented to the Trust Protector for resolution. Article Three, Section 8(h). The Trust Agreement provided for the appointment of a Trust Protector in the event a dispute arose, specifically to prevent the decedent's affairs from being litigated in court and violating her privacy. While not a great deal of the trust agreement is clear, the provisions requiring resolution of a dispute by the Trust Protector, when read in conjunction with the *in terrorem* clause, make it clear the settlor intended all disputes to be resolved through the Trust Protector, or only with her consent as may be granted

2. The plaintiffs lacked standing to bring this action. The Trust Agreement prohibited the filing of any claim in a court of law by anyone[2] unless or until the dispute had first been presented to the Trust Protector for resolution. Article Three, Section 8(h). The Trust Agreement provided for the appointment of a Trust Protector in the event a dispute arose specifically to present the decedent's affairs from being litigated in court and violating her privacy. To the extent any provisions of the Trust Agreement conflicted with any other provision or were ambiguous, the directions provided to the Trustee by

---

[1] It is not clear whether the Court treated TDN as a creditor, a beneficiary, or both. It is undisputed that Plaintiff Dereede is a beneficiary of the trust and his rights and remedies are governed exclusively by the provisions of the Trust Agreement. The Court's order identifies (or treats) TDN as a creditor in certain places, and as a beneficiary in others. This contradicts the pleadings (plaintiffs pled TDN's status as a beneficiary and the trustee acknowledged its status as a beneficiary in her answer). The Court did not permit an amendment of the pleadings to permit treating TDN as a creditor. In its order, the court uses the terms 'payment' and 'distribution' interchangeably. However the order then concludes that the Trustee breached her fiduciary duty to TDN, thereby suggesting TDN was a beneficiary and not a creditor. If TDN was a beneficiary, its right and remedies are also governed exclusively by the provisions of the Trust Agreement, including the *in terrorem* clause. If it was a creditor, TDN would not be subject to the exclusivity provisions of the Trust Agreement.

[2] *See* footnote 1. The use of the term "anyone" is one of many ambiguities in the Trust Agreement. If by the use of the term 'anyone' the settlor intended to bind a creditor, the ability of the settlor to affect the rights of a creditor is unclear.

the Trust Agreement were unclear and prevented the finding of liability to any creditor or beneficiary until the provisions of Article Three, Section 8(h) were complied with.

3. The court erred in determining that the trust document provided clear language evidencing the settlor's intent. Insofar as the ruling was based on an isolated reading of Article Six, Section 4.a and/or Article Five, Section 2, it was erroneous to read those sections in isolation from the other provisions; when read together, the language of Article Six, Section 4.a and Article Five, Section 2 create ambiguous as they conflict with other provisions of the trust, thereby creating uncertainty as to the settlor's intent of the entire trust as a whole. To the extent any provisions of the Trust Agreement conflicted with any other provision or were ambiguous in any way, the directions provided to the Trustee by the Trust Agreement were unclear and required the trustee to rely upon the advice of the trust protector's advice, thereby shielding the trustee from liability.
4. The court erred in determining any provision of the trust created separate priorities among beneficiaries (and/or creditors, depending on what the court intended TDN to be).
5. In determining the trustee "must treat with partiality any beneficiary that the settlor directs be so treated," the court misconstrued the language of the trust and the intent of the settlor and fell prey to the ambiguities throughout the Trust Agreement.
6. The court erred in determining that the distributions directed by Article Five, Section 2 and Article Six of the trust were required to be complied with in a priority fashion, notwithstanding other financial obligations of the trust and/or creditor claims owed by the estate of the deceased settlor and the multiple ambiguities of the Trust Agreement.

7. The court erred in determining that the distributions directed by Article Five, Section 2 and Article Six of the trust were required to be complied with before the expiration of the time for creditor claims to be filed and resolved. Obligations of the estate of the deceased settlor had to be addressed before any trust distributions could be made.
8. The court erred in concluding that the trustee "put [her] interests above those of the settlor, and those the settlor intends to benefit." There is no evidence to support this finding.
9. The court erred in concluding that the trustee should have made distributions to the plaintiffs within six months of death, because Article Five, Section 1 of the Trust Agreement specifically reserved to the settlor during her lifetime the right to make subsequent wills that could alter the distribution of property placed into the trust at the time it was created.
10. The court erred in concluding that the trustee had no sufficient legal reason for withholding a trust distribution to TDN or Dereede and in determining that TDN and Dereede had probable cause to bring this action. Article Four, Section 3 of the trust agreement specifically reserved to the settlor, during her lifetime, the right to amend or revoke any provision of the Trust Agreement and the trustee was obligated to make no distributions of any kind for a reasonable period after death to allow any amendments or revocations to be presented.
11. The court erred in concluding that the trustee had no sufficient legal reason for withholding a trust distribution (and/or payment, to the extent TDN was a creditor) to TDN or Dereede and in determining that TDN and Dereede had probable cause to bring this action. Article Five, Section 1 of the trust agreement specifically reserved to the

settlor a right to make a testamentary general power of appointment, thereby requiring the trustee to provide a reasonable time for such documents of appointment to be presented to insure any particular beneficiary (or creditor) to this Trust Agreement because any such asset could have been disposed of by the settlor differently through a later will. For a six-month period after death, any distribution to TDN or Dereede would have been premature in light of the trustee's obligations to trust beneficiaries and the rights reserved by the settlor unto herself in the Trust Agreement.

12. The court erred in misconstruing S.C. Code Ann. Section 62-7-640(b) insofar as he interpreted it to "allow distributions from revocable trusts sooner than would otherwise be allowed by probate" and in determining it to be mandatory rather than precatory.
13. The court erred in misconstruing S.C. Code Ann. Section 62-7-505(a)(3) insofar as it was interpreted as allowing for avoidance of estate and/or trust creditor obligations.
14. The court erred in determining the Plaintiffs had probable cause for instituting this action and in failing to apply the *in terrorem* clause of the trust to any beneficiary (again highlighting the uncertainty as to the status of TDN as to the trust).
15. The court erred in finding that the trustee breached her fiduciary duty to TDN, if in fact TDN is solely a creditor, because the trustee would not owe any fiduciary duty to an entity that is only a creditor of the trust.
16. The court erred in concluding that the trustee breached her fiduciary duty to Dereede and TDN.
17. The court erred in failing to enforce the *in terrorem* clause to Dereede and thereby divesting him of any distributions from the trust.

18. If TDN was a beneficiary of the trust and was subject to the *in terrorem* clause, the Court erred in not applying the clause to TDN and thereby divesting it of any distribution (or payment) from the trust.

19. The court erred in construing Article Five, Section 2 of the trust to be read separately or to give priority to any distribution, without consideration of other obligations on the trustee set forth in other provisions of the trust. The trustee was subject to all provisions of the trust, not isolated ones and she was required to construe the ambiguous provisions as much in harmony in possible to fully discharge her duties to all beneficiaries.

20. The court erred in awarding judgment in favor of the plaintiff for the reasons set forth herein.

21. The court erred in awarding attorney's fees and costs to the plaintiff pursuant to S.C. Code Section 62-7-1004[3].

22. The court erred in granting judgment against trustee in her individual capacity. There is no evidence that any acts or omissions taken by the trustee were taken by her in her individual capacity.

The plaintiff will submit a memorandum of law at the Court's request or appear for a motion hearing if scheduled.

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[3] Trustee recognizes that an amount of fees has not yet been determined, but the order awarding fees is final, and is therefore subject to reconsideration and appeal.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
COURTNEY FEELEY-KARP, individually
And as TRUSTEE OF THE LIVING
TRUST OF DEBORAH DEREEDE
DATED DECEMBER 18, 2013

June 20, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF YORK)	Case No. 2015-CP-46-01409
)	
IN RE:)	
Deborah Dereede Living Trust,)	
Dated December 18, 2013,)	
)	
Hugh Dereede and Tyre Dealer)	
Network Consultants, Inc.,)	
)	
Plaintiffs,)	**RETURN TO AFFIDAVIT OF ATTORNEY'S FEES AND COSTS**
)	
vs.)	
)	
Courtney Feeley-Karp, individually)	
and as Trustee of the Deborah)	
Dereede Living Trust dated)	
December 18, 2013, and Michael Fehily, as)	
A qualified beneficiary of the Deborah)	
Dereede Living trust Dated December 18,)	
2013.)	
)	
Defendants.)	

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DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

In accordance with the Court's order dated June 9, 2006, defendant Courtney Feeley-Karp, individually and as Trustee of the Deborah Dereede Living Trust dated December 18, 2013 (hereafter "Trustee"), responds to the Affidavit of Attorney Fees and Costs (with attachment) dated June 21, 2016 as follows:

1. Trustee objects to the award of attorney's fees and costs being made at all, for the reasons set forth in the Motion to Reconsider (and Amendment) filed in this matter on June 20, 2016 and June 24, 2016.
2. The trial court's award of attorney fees conflicts with the *in terrorem* clause of the trust agreement.

3. The trial court's award of attorney fees conflicts with Article 10, Section 5, paragraph h of the trust agreement in that no beneficiary has submitted a "request for reimbursement" for postponed distribution as required by the terms of the trust. That provision, even if an award of attorney fees is made, places a cap on the amount of attorney fees that could be awarded from the trust. There is no evidence submitted as to the claimed request being of an amount lower than the "value of the beneficiary's trust at the beginning of the calendar year in which reimbursement is requested" (presumably 2013 at the outset of the dispute).

4. The plaintiffs did not seek recovery of attorney fees pursuant to S.C. Code Section 62-7-1004. The third cause of action which seeks recovery of "litigation costs" appears to seek common law costs, and does not seek statutory attorney fees.

5. The affidavit of attorney fees does not differentiate fees/costs as to Plaintiff Dereede (who is a beneficiary) versus Plaintiff Tyre Dealer Network Consultants, Inc. (who is either a beneficiary or a creditor or both, which factual issue has not been determined). There is no provision of law or contract that permit a creditor to recover attorney fees in a trust dispute.

6. The order for attorney fees does not identify the party (plaintiff) who is awarded attorney fees, nor does it specify whether the fees are awarded to Plaintiff Dereede or Plaintiff Tyre Dealer, whether the recovery is for both, or how it is to be allocated if paid.

7. The order for attorney fees does not set forth a factual basis for an award of attorney fees made pursuant to S.C. Code Ann. Section 62-7-1004, nor does it specify the "equities of the parties" which support an award of attorney fees under these facts.

8. The Affidavit does not support an award of attorney's fees or costs because it does not state that either of the plaintiffs has incurred any attorney's fees, which would be a relevant issue in determining an award of attorney's fees. Additionally, while the Affidavit suggests that this matter was not handled on a contingency basis, the actual method of attorney compensation, if any, is not identified.

9. The Trustee does not take issue with any particular entry in the Affidavit of Attorney Fees, the amount of attorney's fees sought, nor does she dispute the reasonableness of the fees, the standing of counsel, or the suggested analysis of fees charged in the same area. However, she does object to the award being made at all for the reasons set forth above.

10. The Trustee also objects to the filing of an amended affidavit which remedies the omissions set forth herein, on the basis that such an affidavit would be filed after the deadline set forth in the June 9, 2016 order. Plaintiffs, and both of them, have not timely filed an affidavit that accurately details the fact that attorney's fees have been incurred, by whom they have been incurred, the method by which the attorney has been compensated, if at all, and which fees were alleged to be incurred by a beneficiary versus a creditor.

The Trustee would also ask that no action be taken on the Affidavit of Attorney Fees until after the pending Motion to Reconsider is heard and decided.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT COURTNEY FEELEY-KARP, individually and as TRUSTEE OF THE LIVING TRUST OF DEBORAH DEREEDE DATED DECEMBER 18, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF PROBATE
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)

IN RE:
DEBORAH DEREEDE LIVING TRUST
DATED DECEMBER 18, 2013,

HUGH DEREEDE AND TYRE DEALER NETWORK CONSULTANTS, INC.,

PLAINTIFFS,

VS

COURTNEY FEELEY-KARP, INDIVIDUALLY AND AS TRUSTEE OF THE DEBORAH DEREEDE LIVING TRUST DATED DECEMBER 18, 2013 AND MICHAEL FEHILY, AS A QUALIFIED BENEFICIARY OF THE DEBORAH DEREEDE LIVING TRUST DATED DECEMBER 18, 2013,

DEFENDANTS.

CASE NO. 2015-GC-46-01409

TRANSCRIPT OF PROCEEDINGS BEFORE

THE HONORABLE S. JACKSON KIMBALL, III

YORK, SOUTH CAROLINA

APRIL 19, 2016

REPORTER: KELLY L. REITER
DALLAS REPORTING, A HUSEBY COMPANY

Appearances:

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I will do for the ease of reference, but I didn't know how the Court wanted to handle actually the trust being put into evidence.

Judge Kimball - I think the trust has to be in evidence.

Mr. Gettys - All right. So I'll put that in first, and then use exhibits off of that, if the Court's - - -

Judge Kimball - That's fine.

Mr. Gettys - All right. Your Honor, we'd - - -

Judge Kimball - Any objection, Mr. Nosal?

Mr. Nosal - No, Your Honor.

Judge Kimball - All right.

Mr. Gettys - I'll call as my first witness the trustee, Courtney Feeley Karp, please.

Judge Kimball - Ms. Karp - - -

Whereupon, Courtney Feeley Karp, having been first duly sworn, was examined and testified as follows:

Judge Kimball - Have a seat.

DIRECT EXAMINATION

BY MR. GETTYS:

Q Ms. Karp, please tell the Court your full name and address.

A My name is Courtney Feeley Karp. I reside at 42 Hemman Street, Roslindale, Massachusetts, 02131.

Q And you're the trustee of the Deborah Dereede family will trust?
A Correct.
Q Irrevocable family will trust. Is this a copy of that trust?
A Based on the cover, it appears to be.
Q If you will, take a second and look through it.
A Yes, this is.
Q All right. And you don't see any additions or corrections or anything on that that jump out at you? And I know it's a long document.
A Yeah. I was going to say, it's a very long document, but no, it looks like it - - - It pretty much looks like the one that I - - - I have.
Q If it makes you feel any better, I pulled it out of the notebook that your attorneys have provided with it in there, so - - -

Mr. Gettys - With that, Your Honor, I'd enter it, without objection, as Exhibit Number 1.

Judge Kimball - Any objection?

Mr. Nosal - No, Your Honor.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 1.

Mr. Nosal - John, did you say you pulled that out of the notebook that we gave you?

Mr. Gettys - Yes.

Mr. Nosal - Okay. Judge, can I do a bit of housekeeping real quick and give you a copy of our exhibits? Thank you.

Judge Kimball - Okay. I've marked the trust agreement as Plaintiffs' Exhibit Number 1, without objection.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Okay. Ms. Karp, can you please tell us what this is that I'm handing you?

A This is a portion of the trust, specifically Article 6.

Q And it's Pages 61 and 62. Is that correct?

A Correct.

Mr. Gettys - Your Honor, I'd move that we list this as Exhibit 2, without objection.

Judge Kimball - Well, if it's in the trust agreement, there certainly can't be any objection.

Mr. Gettys - All right, sir. Exhibit 2.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 2.

FURTHER EXAMINATION

BY MR. GETTYS:

Q All right. Look at Page 2 of this with me, if you don't mind, Ms. Karp. Do you have any - - - And we're at Article 6, Section 4, Subparagraph A. Do you believe, as trustee, you have any discretion per the terms of your mother's trust not to sell the house at 131 Whispering Pines?

A No.

Q So you are mandated to sell that house, correct?

A It says, my trustee shall sell the house and lot located at 131 Whispering Pines, so it's a yes, I'm required to sell the house.

Q What were you required or mandated to do pursuant to the second sentence of that Subsection A?

A So the section reads, the sales proceeds shall be used first to pay off any mortgage against the property and second to pay off that certain promissory note given by me to Tyre Dealer Network Consultants, Inc.

Q And do you believe that you were mandated to do that per the terms of the trust?

A Again, I'm mandated to req - - - I am required to do what the trust says I am required to do with - - - while at the same time, maintaining all of my fiduciary duties to the trust, its property, and all the beneficiaries.

Q Okay. I'll ask the question again. Do you believe that you're mandated to do what that sentence says in the trust?

A I believe that I'm mandated to do what the trust requires - - -

Judge Kimball - She doesn't have to say that. That's for me to interpret, and I believe that the agreement does require that she sell the property to pay the note.

Mr. Gettys - Your Honor, the trustee has, which we'll get into, a fiduciary duty to - - -

Judge Kimball - It doesn't matter what she thinks. It's how I interpret that provision. We've talked about that.

Mr. Gettys - Okay.

FURTHER EXAMINATION

BY MR. GETTYS:

Q The second sentence - - - The third sentence, Ms. Karp, said promissory - - - And I'll read it for you. Said promissory note at the event - - - at the time of the execution of my trust is the amount of two hundred and fifty thousand dollars, but in no event shall be - - - the amount due exceed one-half of the sales price of the property. Do you disagree with any of that language?

A What do you mean by disagree?
Q Do you think that that - - - Do you find an exception in that sentence of your mother's trust?
A So if we're just looking at this paragraph, I understand what the language is, but I have to enforce the trust in its entirety.
Q All right. My question is, do you find an exception in that sentence to the terms of the trust?
A In that sentence, no.
Q Okay. The next sentence, please read it for the Court.
A After payoff of said mortgage and said note, my trustee shall then distribute one-half of the remaining net sales proceeds to Hugh Dereede, outright and free of trust.
Q Do you believe that you do not have a duty to pay the two hundred and fifty thousand dollars to Hugh Dereede's company, TDN Consultants, Inc., in your reading of that sentence?
A That sentence refers to a distribution to Hugh Dereede, not Tyre Dealer Network Consultants.
Q Well, the first clause of that sentence, let's read that again, if we need to.
A In terms of payoff of the mortgage and the note?
Q Yes. What - - -

A I believe that that's what that sentence requires.
Q And which note is that?
A I would assume it refers to the note in the prior sentence, based on the usage of said note.
Q And that's your interpretation as the trustee?
A Yes.
Q Okay. The next sentence, the other one-half of the remaining net sales proceeds shall be distributed in accordance with the articles that follow. Is that correct?
A Correct.
Q And what article is that?
A That's the article that requires my mother's administrative trust to be split into two shares.

Mr. Gettys - Okay. Your Honor, this will be proffered up as Exhibit 3.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 3.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Okay. Can you identify what this article is?
A This is Article 5.
Q What does it concern itself with?
A So Section 1 refers to my mother's testamentary power of appointment.

Q Okay. And Section 2?
A It makes reference to specific devises, which is this article that we just read.
Q Would you read for the Court the first sentence?
A As soon as practicable after my death, my trustee shall make certain distributions from my trust estate in the manner and amounts and to the persons and/or entities specified in Article 6 of my trust agreement.
Q So in the language of this sentence, does your mother make a distinction between a person and an entity?
A I think that's ambiguous. I'm not sure how to interpret the and/or. I mean, I think what it mentions is that there are beneficiaries designated in Article 6, and the terms of Article 6 will be - - - It references those distributions that Article 6 will further detail, which is what we just read.
Q Okay. And knowing that you've just read Article 6, is there a person mentioned in Article 6 and an entity?
A There are both. There are Hugh Dereede and Tyre Dealer Network Consultants, Inc., are both referenced in Article 6.
Q The next sentence of Section 2 then states that - - - What does the next sentence of Section 2, Article 5,

require the trustee to do, in your opinion?
A So then I take the remainder of the trust estate and administer and distribute it as set forth in Section 3.
Q And what is the remainder of that estate?
A It would be whatever Article 6 does not otherwise provide for.
Q And what is that?
A So essentially one-half of the net proceeds of the house.
Q Okay. So one-half of the net proceeds of the house would fall into Section 3 of Article 5, correct?
A Correct.
Q And then Section 3, the preamble or the first sentence of that, upon my death, my trust estate, including any additions thereto by reason of my death, shall thereafter be known as the administrative trust. My trustee shall, correct?
A (Indicating yes)
Q And your mother had a will, correct?
A Correct.
Q And that's basically called what kind of will?
A A pour-over will.
Q A pour-over will. Is this a copy of that pour-over will?

A Yes, it is.
Q And what assets poured over to your mother's estate, per this will?
A Everything.

Mr. Gettys - Okay. Your Honor, I'd move to enter this as Exhibit 4.

Judge Kimball - Any objection?

Mr. Nosal - No objection.

Judge Kimball - All right.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 4.

FURTHER EXAMINATION

BY MR. GETTYS:

Q When you say everything else, is everything else cited on your supplementary inventory and appraisement?
A Yes. These were the assets of her pro - - - her probate estate.

Mr. Gettys - Okay. And, Your Honor, I'd move that we enter this as 5, Plaintiffs' 5.

Judge Kimball - Any objection?

Mr. Nosal - No, Your Honor.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 5.

FURTHER EXAMINATION

BY MR. GETTYS:

Q All right. So what assets went from your mother's estate, pursuant to Article 5, Section 3, into this administrative trust?

A So the - - - essentially the - - - the assets that she owned as property, the two houses, the one located in New Hampshire and the one located in Arizona; and a couple of bank accounts; and the two vehicles; and the boat.

Q And the fifty-three some odd thousand dollars, which was half the proceeds - - -

Judge Kimball - But isn't the answer to the question, everything?

Mr. Gettys - Yes.

Judge Kimball - Okay.

Mr. Gettys - And then I changed it and asked, what would that entail?

FURTHER EXAMINATION

BY MR. GETTYS:

Q And it would include the one-half of the net proceeds after the payment required until Article 6, correct?

A No. That's not part of the probate estate. That's part of the trust estate.

Q All right. Do we need to go back? I think Article 5 said - - - Well, let's look at it. Go back to

Article 5, which is Exhibit 3, I believe. The second sentence, the remainder of my trust - - - After doing Paragraph 6, the first sentence. The remainder of my trust estate, after all distributions shall have been made under Article 6, shall go through Section 3 of this article, correct?

A Right, but I believe your question was - - -

Q All right.

A Whether the fifty-three thousand was included among the inventory and appraisement. It would not - - -

Q No. This - - -

A Be the - - -

Q No. My question was going to the administrative trust.

Judge Kimball - One person talk at a time.

Mr. Gettys - I'm sorry.

Judge Kimball - Let her finish her answer.

A Okay. I understood your question to be, did this - - - You asked me what this included. I explained it included the two properties, the three - - - the two vehicles, and the boat. You said, does this also include the fifty-three thousand? And I said, no, because that is not a part of the probate estate. It is, of course, part of the trust. So it was part of - - - It is part of Article 5 - - - Sorry. It is

part of Section 6, which makes it part of the trust. Article 5 in the section that you're talking about is the remainder of her trust estate, which would include the things from the probate estate.

Q And - - -

A And the fifty-three thousand that comes through Article 6.

Q Okay, perfect. We got where we needed to go. I'm sorry for the confusion I created. So in Section 3 of Article 5, the administrative trust includes all the assets of your mother's probate estate and the fifty-three thousand dollars that was one-half of the proceeds of the sale of the property, correct?

A Correct.

Q And Section A of Section 3 states that the trustee should do what?

A Section A says that all expenses, debts, and claims, and taxes from the administrative trust as provided in Section 4.

Q All right. So my trustee shall pay all expenses, debts, claims, and taxes from the administrative trust as provided in Section 4 of this article, correct?

A Correct.

Q And Section 4, which is on the next page, states what

those payments - - - what debts, claims, taxes, or other expenses should be paid from this administrative trust, correct?

A Correct.

Q And what are those?

A Final medical expenses, funeral costs, legally enforceable claims, expenses of the trust - - -

Judge Kimball - There's no need for her reading all of that into the record.

Mr. Gettys - Okay.

Judge Kimball - I can read it. If there's one you want to ask her about, ask her about it.

Mr. Gettys - Well, I just wanted to make sure it's all in there, Your Honor. Thank you.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 6.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Okay. You testified to it, but just so we get it on the record. The property at 131 Whispering Pines did sell, correct?

A Correct.

Q And this is a copy of the settlement statement that you signed as the trustee, correct?

A Correct.

Q And it shows a net check payable to you, as trustee, in the amount of how much at the bottom right corner of the first page?
A Three hundred and fifty-six thousand two hundred and forty-two dollars and eighty-six cents.
Q Okay. And this includes, to get to the net - - - The property sold for six hundred and sixteen thousand dollars, correct?
A (No response)
Q Or fifteen thousand?
A Sorry. I missed the - - - Could you repeat the question?
Q The sales price of the property?
A Is six hundred and fifteen thousand, yes.
Q Okay. And from that sales price, the payoff of the mortgage and note to a third party were paid?
A Yes. Bank of America had recorded a mortgage in the amount of two hundred and four thousand three hundred and twenty-eight dollars and twenty cents..
Q But the note due TDN, or Tyre - - - TND, Tyre National Dealers or Tyre Dealer Nationals, had not been paid from these proceeds, correct?
A The only thing paid from these proceeds was a recorded interest.
Q And the closing costs?

A Yes. I would have liked to have avoided the realtor fee, but you know, that's how it goes.

Q Yeah, fair enough. Do you agree that your mother's trust language required you to treat 131 Whispering Pines different from the other assets of hers by the language of the trust?

A So I think that the trust estate, as defined by the trust, included upon her death all of the properties, the three properties, including the two cars - - - the three - - - the three real properties, the two cars, and the boat. That was the entire corpus of the trust estate as defined by the trust itself. The trust then made provisions - - - Since the house at 131 Whispering Pines was the only property entitled in the trust, it is therefore different in that sense, and also was subject to Article 6. But in essence, everything that was part of my mother's probate estate, plus the house at Whispering Pines, constituted the trust estate. So in that sense, they were the same. However, there was a specific provision for Article 6 on how to address the proceeds from the sale. So I'm not sure if that answers your question, but that's how I see the situation.

Q Okay. And based upon your analysis of that, what

would you say was the purpose of the Deborah Dereede Trust?

A I don't know what the purpose was.

Q As a trustee, do you not believe that you're bound to uphold the purpose of a trust?

A I mean, I'm bound to uphold the terms of it. But if you want me to ask (sic) why my mother created it, I'm not sure I can specifically give you her intent based on what it was. I can tell you what the document says I'm supposed to do. I'm not sure what you mean by purpose - - -

Q Okay.

A If you mean purpose as in how to effectuate the trust, or if you mean intent as in why it was created. If you will, just clarify.

Q Well, your mother created a trust. She put an asset in the trust?

A Correct.

Q Do you understand or do you have a belief as to why she prepared a trust? What was the purpose of the trust, as a trustee?

A She, at one point, informed me that there were tax implications that required her to put it in a trust. That's all I know.

Q Okay. And in handling the assets of the trust, she

differentiated an asset that she acquired after marriage with the assets - - - or assets she acquired after marriage to Mr. Dereede with - - - than with assets that she owned prior to her marriage with Mr. Dereede, correct?

A Well, she did not put the other houses into the trust, i.e. they were not - - - the titles were not conveyed to the trust. And again, because I don't believe the tax issues would have been implicated in those properties, but they were implicated in this property. So her rationale for creating the trust was only relevant to the 131 Whispering Pines.

Q Okay. I'm handing you a page from the trust. At the bottom, can you identify the page number?

A Excuse me. The page number is 14-21.

Q And on that page of the trust, if you will, look at Paragraph O, at trustee's discretion, the - - - And without having you read the whole paragraph, at the - - - Well, I'll just read it. The term discretion - - - And please tell me if I misread this. The term discretion with regards to a trustee means such trustee's sole but reasonable judgment. In exercising any discretionary power with respect to my trust, my trustee shall at all times act in accordance with fiduciary principles and shall act

reasonably under the circumstances and not in bad faith, or in disregard of the purposes of my trust. So the purposes, you're bound by duty in using discretion not to disregard the purposes that your mother put into that trust. Do you have - - - And you may not have thought about. But do you have an opinion as to what the purposes of her trust are?

A I'll just say for - - - I mean, the purpose of the trust with respect to 131 Whispering Pines was to provide direction on how to sell the property and distribute the proceeds.

Q Yes, ma'am. But that doesn't say it in Article 6. It says, of my trust?

A Right. I mean, I'm saying that the - - - The house was the only asset in the trust, and then to the extent that everything after her death was poured over into the trust, then the purpose of the trust there was to manage the trust, create the shares, and distribute them to the remaining beneficiaries.

Q All right. Is that her - - - And I'm not trying to split hairs here.

Mr. Nosal - Your Honor, I'm going to - - - Judge Kimball - Asked and answered. She's answered it to the best of her knowledge. Does the trust agreement specify the purpose of the

trust?

Mr. Gettys - Your Honor, I - - -

Judge Kimball - Does the trust agreement specify the purpose of the trust?

Mr. Gettys - I'm not sure that it does.

Judge Kimball - Let's move on.

Mr. Gettys - Your Honor, I don't know if I entered that into evidence, so I'll need to make sure that it - - -

Judge Kimball - It will be marked as Plaintiffs' Exhibit Number 7 - - - Without objection?

Mr. Nosal - No objection.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 7.

Mr. Gettys - Your Honor, I would move to add this in as Article 8 - - - or excuse me. It's Article 13, Powers of the Trustee, as Plaintiffs' 8.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 8.

FURTHER EXAMINATION

BY MR. GETTYS:

Q The language in this trust, about middle of the first paragraph, I believe it says, all powers shall be exercised only in a fiduciary capacity?

A Correct.
Q Any dispute with that?
A No.
Q All right.

Judge Kimball - While he looks through that - - - Well, he's through. Go ahead.

Mr. Gettys - Your Honor, go ahead.

Judge Kimball - I was going to get you to tell me what your educational background and work experience is, Ms. Karp.

A I'm an attorney, Your Honor. I graduated from Northeastern University School of Law in Boston, Massachusetts. I worked for the Commonwealth of Massachusetts for ten years, and now, I'm in private practice.

Judge Kimball - Thank you.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Ms. Karp, do you know if 131 Whispering Pines was purchased with a loan from Tyre Dealer Network?
A No. My - - - When my mother was alive, she informed me - - -

Mr. Gettys - Objection, Your Honor. It's hearsay.

Judge Kimball - What's the question?

Mr. Gettys - The question was, do you know if the loan - - - if Hugh Dereede's company provided a loan to your mother to purchase the property?

Judge Kimball - Well, you want her to answer yes or no based on something she was told. How can she not say it then? How would she know it, unless she was told?

Mr. Gettys - I don't disagree with that, but the language that her mother told her, I don't - - - I believe it's hearsay and can't come in. Whether she knows or not that it was, is the question.

Judge Kimball - Well, I'm going to let her explain any answer that you require her to give.

Mr. Gettys - Yes, Your Honor.

Judge Kimball - She's being treated as a, in quotes, hostile witness since she's an adverse party. Now, you can ask the question again.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Do you have knowledge whether the house at 131 Whispering Pines was purchased with the help of a loan from the plaintiff, Tyre Dealer Network Consultants, Inc.?

A No. When my mother told me that she and Hugh were moving from Canada to - - -

Judge Kimball - Well, the answer was no, so you don't need to explain. You didn't know, right?

A My answer was, it was not my belief it was a loan.

Judge Kimball - No. Your answer was no.

A The answer is no.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 9.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Okay. Ms. Karp, do you believe that by seeking payment of - - - pursuant to Article 6 of the trust, that Mr. Dereede violated the no contest clause?

A Sorry. Could you repeat the question, please?

Q Do you believe that, by Mr. Dereede seeking repayment or payment pursuant to the plain language of Article 6 of the trust agreement, that he and/or his company triggered the no contest clause found in the trust of your mother?

A I believe that in objecting to my interpretation of the trust agreement and my proposal to not immediately distribute the proceeds that, yes, the actions taken both in objecting to my proposal via email, through letters, and the lawsuit, that the no

contest clause was triggered.

Q And do you believe that your decision in that regard is based upon your - - - is within - - - or is made with your fiduciary principles in mind?

A My interpretation of the trust and my decision in proposed actions, yes, I believe I was acting in my fiduciary capacity as trustee.

Q Okay.

A In accordance with South Carolina law.

Q Okay. So you examined South Carolina law, as well as the trust? Is that - - -

Judge Kimball - Let me stop you for a second.

Mr. Gettys - Yes, Your Honor?

Judge Kimball - I've got Plaintiffs' Exhibit 7 was the same page as Plaintiffs' Exhibit 9, but you've added more to it or something? Is that what you did?

Mr. Gettys - 7 - - -

A Yeah, there's extra pages.

Mr. Gettys - Your Honor, 7 was handed up for the Paragraph O - - -

Judge Kimball - Yes.

Mr. Gettys - Which is above.

Judge Kimball - Yes.

Mr. Gettys - 9 is handed up for Section 21,

which is below that. Section - - - Subparagraph O was 7. 9 is Section 21.

Judge Kimball - All right.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Do you - - - I'm sorry. I forgot where I was.

A You were asking me whether I believed the no contest clause was triggered.

Q Yes. Would you repeat your answer? I'm sorry.

A I said, yes, I believe that I was acting - - - Well, I'll answer both of the questions again. I believe that in challenging my interpretation and construction of the trust and objecting to my proposed actions, that the no contest clause was triggered. I believe that my interpretation and proposed actions and actions were made in good faith in line with my fiduciary responsibilities as trustee.

Q And who profits if the Court finds that the no contest was triggered as to both Tyre Dealer and Hugh Dereede?

A So the no contest clause requires - - - It says if any of the following events, including the issues that I made - - - that I mentioned, if any devisee, legatee, beneficiary under the trust objects in any

manner or to any action taken or proposed to be taken, or objects to any construction or interpretation of the trust, which either of those things were proposed in good faith by my trustee and the good faith is later adjudicated by a court of competent jurisdiction and the objections were invalid, then those - - - that particular devisee, legatee, or beneficiary shall - - - shall be specifically disinherited. And also to legatee's requests, devises, and interest given to such person or persons are - - -

Judge Kimball - Ask the question again. I understand she's just reading the provision of the trust. What's the question?

A And, I mean, my answer is that the no contest - - -

Judge Kimball - Let him ask the question.

A Sorry, Your Honor.

Q Do you believe that by seeking protection from this Court that Mr. Dereede and Tyre Dealer Network Consultants violated or triggered the no contest clause?

A Sorry. That was not the question I was answering. The question you had asked just prior to my answer was, what happens if the no - - - if the Court finds the no contest clause applies? And what happens is -

- -

Judge Kimball - I can read the trust. You don't need to read the trust.

A Okay. What happens is, is the assets are forfeited. My mother's trust requires they be specifically disinherited. They're forfeited, and they're treated as if that person - - -

Judge Kimball - Ms. Karp, I am perfectly capable of reading the trust. Just answer his question.

Q And I think the actual - - -

A It goes - - - I mean, it goes into the remainder of the trust.

Q Right.

A I mean, it goes - - - So those specific devisees no longer exist.

Q Right. But I think my question really was, who profits from a finding, if the Court does so find, that the no contest provision was triggered by the interpret - - - seeking the interpretation - - -

Judge Kimball - It's clear that the plaintiff loses his interest, whatever it may be.

Mr. Gettys - The question is, who profits?

Judge Kimball - Well, the remainder of the people.

FURTHER EXAMINATION

BY MR. GETTYS:

Q And who are they?

A It's - - -

Judge Kimball - Well, that - - - I can read that. I can - - - Look, it's apparent from the documents who that is. That's - - - We don't need to ask that. I know who profits. It's not a profit, as a matter of fact. It's just - - -

Mr. Gettys - Who benefits - - -

Judge Kimball - Increasing what they get, the benefits.

Mr. Gettys - Who benefits from the forfeiture?

Judge Kimball - Well, the other people.

FURTHER EXAMINATION

BY MR. GETTYS:

Q And what role does one of those other people have - - -

Judge Kimball - I don't answer questions.

Mr. Gettys - I'm not asking you the question. I'm asking the witness on the stand.

FURTHER EXAMINATION

BY MR. GETTYS:

Q And what role does one of those people play in the administration of this trust?

A So the two beneficiaries of my mother's trust - - -

Q What role does one of the beneficiaries play in the administration of the trust?
A So I am - - -
Q What duty - - -
A The trustee.
Q Do you have?
A I am the trustee.
Q And what duty do you have?
A I have a fiduciary duty.
Q To whom?
A To all the beneficiaries.
Q And who are all of the beneficiaries?
A The specific beneficiaries are Hugh Dereede and Tyre. The beneficiaries of the remainder of the estate are my brother and myself, as my mother's children.
Q And do you see a conflict of interest, when you occupy a position of a fiduciary duty, making a decision that will, by a forfeiture if it is so found by this Court, profit you?
A No, I do not.

Judge Kimball - What is she supposed to do? Resign?

Mr. Gettys - Yes. If you're asking me the question, yes, that's exactly - - -

Judge Kimball - I am asking you the question.

Mr. Gettys - Yes, sir. That's what she should have done, in my opinion.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Your concern in not distributing the proceeds after the sale of the property immediately or therewith at the sale of the property was those - - - was why?

A Could you restate the question? I'm sorry.

Q Yeah, I'm sorry. It was a bad question. What was your concern and reason for not distributing the proceeds immediately after the sale of the house?

A So at the time of the sale of the house, my mother's probate estate had zero cash in it. There were claims against it. There were costs associated with the estate, including the maintenance of three houses, the preparing for the sale of the other two houses, among other things. The sale of the house at Whispering Pines was - - - represented the first cash assets that would be available to address these concerns. As a fiduciary - - - Because I am also the personal representative of the probate estate, so I have obligations there as well. I was trying to manage all of the assets that would ultimately comprise my mother's trust estate to their full value to the benefit of all beneficiaries. The house in

Arizona had two mortgages and was in pre-foreclosure. I was trying to manage, how do I address all of the claims against the estate and all the claims that I didn't yet know about? I - - - This was only a few months into my - - - after my mother's death. The claims period would run until June. I did not yet know what claims would come in. As I explained to Mr. Dereede, that I felt I had a fiduciary responsibility to all of the beneficiaries, to the management of the estate, and any unknown and known creditors to not make any distributions until I could appropriately account for all of the assets and the claims relative to both the probate and trust estate.

Q Okay. So the unknown creditors was your big one? Well, you knew of Tyre Dealer Network as a creditor. You knew of Hugh Dereede as a beneficiary, and you knew of you and your brother as beneficiaries. You knew of other assets that were in the probate estate that poured into the administrative trust. So the real question is the unknown creditors? Is that what really had you concerned and the reason not to distribute the proceeds pursuant to the letter of the - - - the plain language of the trust agreement?

A I was concerned with maintaining my fiduciary responsibilities as both the personal representative

and the trustee and appropriately managing both estates. Those were my concerns.

Q Yes.

A Those concerns included, among other things, managing the assets appropriately so that they could be sold for their full value, i.e. selling the house in Arizona not in a foreclosure sale; addressing the claims I did know about; and ensuring that, if there were other creditors' claims that came forward, which they did, that there would be assets available to pay those as well so that I would be acting appropriately as a fiduciary.

Q And what other debts were there that showed up later in the process?

A There were credit card debts. There were medical bills. There were just the expenses of the houses, selling the house. Your pretty typical estate management type expenses.

Q All right. So the credit cards, were those the ones that actually filed claims in the estate?

A The credit cards? Sorry.

Q Yes.

A Yes. There were credit cards that filed claims.

Q Were there other credit cards?

A There were other credit cards.

Q And what was the balance due on those credit cards?
A The total balance? There was at least one credit card balance that had a high balance of fourteen thousand dollars and change. There was one that a couple hundred - - - a couple - - - The rest of them were about a couple hundred dollars each.
Q And were these the ones that filed in the estate as creditors, or were these additional to that?
A To - - - The fourteen thousand dollar Bank of America credit card filed a claim. A two hundred and fifty dollar claim filed by - - - It was a Home Depot credit card. I forget who the credit card company was. They filed a claim. There were a couple of other credit cards that contacted me directly as the personal representative.
Q And how much was owed on those couple of others?
A Like I said, a couple hundred dollars each.
Q Each? So - - -
A Yeah.
Q Okay. And what other debts did your mother have that arose or that you knew about as the trustee?
A So there was the continuing maintenance cost of the three properties. There were - - - As you are aware, she was seeking treatment for breast cancer at Dana-Farber. There were bills that were associated with

the unpaid parts of her deductible from the chemo treatments.

Q About how much were they?

A A couple thousand. I think it was a three or five thousand dollar deductible. I can't remember.

Q All right. And the maintenance of the two houses?

A Three houses.

Q Three houses, I'm sorry. Well, one sold. After you sold Whispering Pines.

A No. You asked me what my concerns were up until the sale. So from the time of mother's death up until that time, these were the concerns that led to that decision.

Q So subsequent to the sale, what other carrying costs or costs did you have relative to the other two properties?

A So the maintenance cost of two properties, trying to get the houses ready for sale.

Q And about how much was that?

A The utility bills every month for both houses. I - - - On a monthly basis, I mean, a couple - - - a few hundred dollars each month. A couple thousand.

Q Mortgage payments?

A Yeah.

Q How much?

A The mortgages in Arizona, it was about a hundred and twenty thousand dollars. It was two sixty thousand dollar mortgages. One payment was over a thousand dollars. I mean, probably some - - - I would say twelve hundred dollars, fifteen hundred dollars.

Q Between the two together - - -

A Yeah.

Q For the property? Nothing on the New Hampshire house?

A There was no mortgage, but I had to make some repairs and do some other work on the house before it could be listed.

Q And how much did that run?

A Again, a few hundred dollars, a thousand.

Q Okay. And were those - - -

A Some plumbing.

Q Were those - - - I'm sorry for cutting you off. Were those paid at closing, or were they paid by you out of pocket?

A Some of the costs were paid by me out of pocket. Some of the costs were paid at closing, and some were paid out of the estate eventually. The house in Arizona sold before the house in New Hampshire, so then there were - - -

Q Additional funds?

A Additional funds.
Q So were there other costs that you knew might come up, other than those that you've testified so far, that happened before my client requested his payment and then the subsequent carrying costs after the sale of Whispering Pines?
A Well, there were other additional expenses that had been made, including the cost of the funeral, that had to be paid as well. So those were prior expenses that needed - - - you know, that had been incurred before, but needed to be paid. You know, at the time, I was still collecting all the data I had with respect - - - As you may be aware, my mother lived in a number of states over the course of the years. Particularly in the last ten years of her life, she lived in five different locations, two countries. She went by Deborah Feeley, Deborah Feeley-Whiton, Deborah Whiton, and then Deborah Dereede. Her wallet, you know, if the FBI saw it, they would probably die laughing with credit cards in four different names, but - - - So, you know, when I had to forward her mail, it took four cards because they said I had to use every name that could conceivably have mail. So, you know, my concern was I did not know if I had all the information, both in collecting

bank accounts from my mother - - - There may have been other assets, and I was trying to collect that. My mother was a very private person when it came to her finances.

Q Right.

A And trying to piece this together was an exercise in detective work.

Q But did you have knowledge of any other potential creditors out there?

A No. But, I mean, this was the unknown creditor period. I was waiting to see what creditors would come forward.

Q And so upon the sale of the house, Whispering Pines, there was money that would come into the administrative trust, exclusive of what Mr. Dereede felt he and his company were due for reimbursement, correct?

A You're saying in addition to what sections as provided went to Hugh and Tyre, there would have been one-half of the net proceeds, the fifty-three thousand, that would have come into the administrative trust, correct.

Q And there was also a property in New Hampshire?

A Right.

Q And property in Arizona?

A Right.
Q And a car and a boat and another car, theoretically, but I think it had been taken care of before passing. So there were assets that you had control over, as trustee of the trust, including some fifty-three thousand dollars in cash, correct?
A There were assets. Well, I mean, the - - - the car and the boat were under Section 6 as well, in addition to the 131 Whispering Pines. There were assets that I was in the process of attempting to convert to cash, but had not yet done so.
Q But at the sale of the house, with the proceeds of the sale of the house you converted or would have converted, even with paying Mr. Dereede and his company, some fifty-three thousand dollars in cash, correct?
A Correct.
Q And did - - -

Judge Kimball - I'm sorry. Ask that again, please.

Q Upon the sale of the property of 131 Whispering Pines, if the trustee had paid Tyre Dealer Network and paid Mr. Dereede the monies that we argue should have been paid, there would have still been some fifty-three thousand dollars payable to the

administrative trust for the cost and expenses of the estate, correct?

A Correct.

Q Okay. And does your summation of all the costs you've just gone through exceed that amount?

A Based on expenses already incurred, based on mortgage payments due, based on all of the utilities of the houses, and based on the costs of things moving forward, yes.

Q Well, no. You just gave me two answers there, based upon what had been incurred and then moving forward. So what, moving forward, are you grouping into that category? What costs?

A Maintaining the properties.

Q Okay. You believe that repaying you and your husband for the funeral bill; the credit cards that you testified to, the other small ones; the other little bit of work done on the houses as you've testified to, some you paid out of pocket, some were paid at closing; and the mortgage payments which were roughly twelve hundred dollars a month until sale, all of that added up exceeded fifty-three thousand dollars?

A It would have been close. I don't have the exact figure, but it certainly would have been close.

Q All right. But you had other assets? You actually

had possession of the Cadillac, correct?
A Yes.
Q And you sold the Cadillac, correct?
A In September of 2015.
Q You sold the Cadillac?
A After I reached an agreement with Mr. Dereede to sell the Cadillac - - -
Judge Kimball - Please answer the question - - -
A Yes.
Judge Kimball - And then you can explain it.
A Yes.
Q And how much did you sell the Cadillac for?
A Seventeen thousand.
Q And how much was the Cadillac worth, in your opinion?
A About seventeen thousand.
Q Who did you sell it to?
A A Cadillac dealership.
Q Okay. When we talked a minute ago about - - - And I'm sorry, I don't remember what item or what exhibit the no contest clause - - - Was that 9?
Judge Kimball - Yes.
Q About the no contest clause, you believe it was triggered. Do you believe that that was triggered even as to Tyre Dealer Network Consultants?
A They are listed as a devisee of Section 6, so this no

contest clause applies to all devisees, legatees, or beneficiaries of the trust.

Q Okay. Do you not believe that that is a creditor based upon the reading of the language in Section 6 relating to Tyre Dealer Network?

A So in my role as trustee - - -

Judge Kimball - Ask that question again.

Q Do you not believe that Tyre Dealer Network Consultants, Inc. is a creditor based upon the reading of the language that your mother put in that trust agreement?

A No, I do not believe they're a creditor.

Q Why do you not believe they're a creditor?

A So I believe - - - You know, in reading the trust, if they were a creditor, they would not need to be in the trust. They could file a claim with the promissory note as a creditor. They're in the trust, providing for a specific devise. You may go back to Article 6. It talks about, the trustee shall administer these specific distributions in accordance - - - Sorry. The specific distribution recipient shall bear all the expenses, claims, liens, encumbrances, and taxes relative to this distribution.

Q Okay. Let's go back to Article 6 then. I think that

was Plaintiffs' 2. The language that says, to pay off that certain promissory note given by me to Tyre Dealer Network Consultants, Inc., is the language, correct - - -

A That is the language.

Q Which is my question?

A Yes.

Q And you do not believe that that makes Tyre a creditor?

A I don't believe they're a creditor. I believe they were listed here as an entity that was - - - You know, I think we all know that this is the not the most well-drafted section of the documents, and I think that that - - - There is ambiguous language about what you do with that, given the fact that the note does not exist, so - - -

Q Well, no - - -

Judge Kimball - Ms. Karp, the question was, do you not believe that Tyre, whatever it is, Dealer - - -

Mr. Gettys - It's Tyre Dealer Network Consultants.

Judge Kimball - Tyre Dealer Network Consultants was a creditor?

A I believe that, without the note, they were not a

creditor.

Q You don't believe that your mother in this trust is stating that there - - - that you, as the trustee, is to pay off that certain promissory note establishes that there is a promissory note?

A No. If - - - If there - - - Why would she reference a note, unless the document existed?

Q Exactly.

A So the note would need to exist in order - - -

Q Exactly.

A For it to be referenced.

Q Exactly. And - - -

A But there is no note.

Q So the absence of you having a copy of the note changes whether this is a creditor or not?

A I said - - - My original statement was, if there was a promissory note signed by my mother, that individual document would create a claim under the terms of the note. The question is, whether under the terms of the trust in and of itself, are they a creditor? I don't believe, in just looking at this, they are indeed a creditor.

Q So you want to go outside the four corners of the trust?

A The four corners of the trust references a separate

document. It references - - - It says, said promissory note. It references a separate document. That document does not, in fact, exist.

Q Do you believe it never existed?

A I don't believe there was ever a note signed by my mother, saying that she owed Tyre Dealer two hundred and fifty thousand dollars.

Q And what do you base that opinion on?

A The discovery that admitted that there was no note.

Q No, I don't believe so. You have control over all of your mother's papers, all of her possessions and all, as trustee, correct?

A To those that I have - - - am in possession of, yes.

Q Okay. And you've never found a note?

A Correct.

Q And because you can't find a note, you believe that your mother writing in this document that there is a note to be repaid is, in fact, something she made up?

A No.

Q So do you believe that your mother thought there was a note?

A I don't know. I'm saying I - - -

Q Do you think - - -

A As trustee, I am charged with enforcing this division - - -

Judge Kimball - This has become an argument.

Let's move on.

Q Isn't it true that, if you read this trust provision as it being a - - - there being a valid debt due Tyre Dealer Network under - - - because of the promissory note reference, that that note would be exempt from the no contest clause?

A If Tyre Dealer was a valid creditor, then as a creditor, they - - - the no contest clause applies - - - does not apply. Sorry. Is that your question?

Q The question is, if your mother confirms a note and it is a note, does that creation of - - - If it's recognized that Tyre Dealer is a creditor of your mother's, then she - - - then it would not be subject to your ability to cancel it under the no contest clause provision, correct?

A The no contest clause applies to devisees, legatees, and beneficiaries.

Q And not creditors, correct?

A And not creditors.

Q And so you read this language as not making Tyre Dealer a creditor, correct?

A That was - - - Yes.

Q And that, lo and behold, makes it subject - - - your interpretation makes it subject to this note, this

debt subject to the no contest clause?

A As I said, if I had a note, this would be a different conversation. I'm looking at the terms of the trust. Most creditors are not listed as being provided something in the trust. This was a provision governing distributions, and it talked about this note.

Q Right. Your mother's - - -

A So - - -

Q Trust, she thought enough to put that in the trust.

Mr. Nosal - Your Honor, the trust says what it says.

Judge Kimball - I agree.

Mr. Gettys - It does.

FURTHER EXAMINATION

BY MR. GETTYS:

Q I mean, is it your - - -

Judge Kimball - Listen. Let's move on.

Mr. Gettys - Okay. I'm sorry.

Judge Kimball - It's been asked and answer, enough for me at least.

Mr. Gettys - Okay. Thank you, Your Honor.

FURTHER EXAMINATION

BY MR. GETTYS:

Q So you believe that Tyre Dealer, if they felt they

were due a debt, should have filed a claim with the estate, correct?

A I'm saying that the existing probate process provides different processes for creditors and beneficiaries, and that if you are one or the other, you should follow that process.

Q Okay. I'll ask it again. So you - - -

Judge Kimball - That's an answer. Move on.

Q Isn't it true that if Tyre Dealer or Hugh Dereede on behalf of Tyre Dealer had filed a claim in the estate, that it would have subjected that debt to the no contest clause?

Judge Kimball - Ask that again.

Q If Hugh Dereede on behalf of Tyre Dealer Networks had filed a claim in the estate, which is where - - - I thought I heard - - -

Judge Kimball - The note.

Q Based on the note - - -

Judge Kimball - The claim for the debt.

Q The claim for the debt - - -

Judge Kimball - Keep going.

Q Would have subjected Tyre Dealer's claim then to the no contest clause?

A I think what you're referring to is - - -

Judge Kimball - No, ma'am.

Q That's not - - -

Judge Kimball - Just listen to the question and answer the question. Ask the question again.

A If it - - - If a - - -

Judge Kimball - I'm not ask - - - Let him ask the question again.

A Okay.

Q Do you think Section 21, Page 14-22, Subparagraph E would have made a claim filed by Tyre Dealer subject to - - - in the probate estate, subject to the credit - - - the no contest clause?

A If Tyre Dealer - - -

Judge Kimball - Answer the question yes or no, and then you may explain.

A Yes. If Tyre Dealer is indeed a devisee or beneficiary, filing a creditor's claim would - - - filing a creditor's claim that a Court found to be an invalid creditor's claim would trigger the no contest clause. If it was a valid creditor's claim, it would not trigger the no contest clause.

Q You would have issued - - - Would you have acted, in your trustee capacity, to trigger the no contest clause had a claim been filed? I know adjudication - - -

A As the trustee - - -

Q Happens after the fact.
A I cannot trigger the no contest clause. Only the actions of beneficiaries can trigger the no contest clause.
Q Had Tyre Dealer filed a claim in the estate, would it be your opinion that their action would have triggered the no contest clause?
A Sorry. Can you repeat the question? If Tyre had done what?
Q Filed a claim against the estate - - -
A As a creditor?
Q Based upon that - - - As a creditor, based upon that promissory note, would have triggered the no contest clause?

Mr. Nosal - Your Honor, it's stated - - -

Judge Kimball - That's a fair question. Answer the question.

Mr. Gettys - Thank you.

A I think if Tyre Dealer had filed a creditor's claim - - -

Judge Kimball - Answer yes or no, and then you may explain.

A So could you - - - I need to know what the yes or no is again. Can you repeat the question? I'm sorry.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Had - - -

Judge Kimball - Pardon?

Q I'm sorry. Had Tyre Dealer filed a claim in the probate estate on the promissory note, would that have triggered the no contest clause?

Judge Kimball - As to Tyre?

Q As to Tyre. I'm sorry. As to Tyre.

A I don't know. I'm not sure how to answer yes or no. Because my answer would be, if that had happened, I would have sought counsel from the trust protector on how to interpret both the creditor's claim in Article 6 and seek advice on how to pay.

Q Okay. Why didn't you do that before filing this action?

A I didn't file this action. You did.

Q Why didn't you do that before filing your answer where you asserted the no contest clause?

A I'm sorry. So the question was what? Why didn't I do what?

Q Why didn't you consult the trust protector? As you said you would have done at that time, why did you not consult the trust protector at this time before filing your answer asserting the no contest - - - the protections of the no contest clause? I'm - - - I'm

right here.

A So I believe at that point once the - - - once Mr. Dereede had filed the lawsuit, I was focusing on addressing the lawsuit and was not sure what role the trust protector would have at that point, unless the Court decided to order us to go see one.

Q Okay. But your - - -

A To appoint one.

Q Your answer a minute ago is inconsistent with that. Your answer a minute ago is, if they had filed a claim, you would have immediately - - - maybe not immediately, but you would have consulted a trust protector. My answer is, well, if that's the case, why didn't you do it at this point in time? Why did you not consult a trust protector?

A They're not inconsistent. Your - - - Your original question was, if they had simply filed a creditor's claim, i.e. not involving a court action, I would have sought consultation with a trust protector. Because at that moment, the only issue would be how, as the trustee, I continue to interpret the document.

Q All right.

A What I then said is, by the initiation of the court action, I was unsure at that point if that court action - - - what role the trust protector would play

unless the Court said, you should appoint a trust protector to resolve this issue. So the answer wasn't addressing the action that had been filed against me at that point. I was figuring if the Court wanted the trust protector to be involved, it certainly has the authority to appoint one.

Q We appreciate you interpreting that, but the question really was had my client's company filed a creditor's claim in the estate. Your answer was, I would have first consulted a trust protector.

A I would have sought appointment of the trust protector as a - - -

Q And then my next - - -

A Question of interpretation.

Q I'm sorry. And then - - -

A And - - -

Q I'm sorry. I'm sorry. Go ahead.

A So your question was, what would I have done in that instance with that action? So in that moment, I would have said, well, we now have an issue of how to interpret whether Tyre is a creditor or whether it is a beneficiary and how does the trust treat them and what do I do? Which is exactly the type of instance when a trust protector should be appointed. So had that happened, I would have sought the appointment of

a trust protector to help answer those questions.

Q And my question was, why didn't you do that? When you said earlier that my client's emails and all gave you rise to him contradicting your opinion as trustee and that possibly triggering the no contest clause, why did you not seek a trust protector at that time?

A Why didn't I seek a trust protector at what time for what reason?

Q As to whether or not an interpretation of this language in question should have been looked at by an independent third party and advise you accordingly, as you say you would do if Tyre had filed a creditor's claim?

A So at that time, what I was doing was acting in my role at trustee as a fiduciary. I had a reasonable, good faith interpretation of the trust that I was effectuating. I knew what I wanted to do, based on the facts before me. I didn't have a - - - I didn't have any question within myself of what would - - - the appropriate action was. What I'm saying is, to your question, if a creditor's claim had been filed, that would have presented me with the question of, is Tyre a creditor, or is it a beneficiary? I'm looking at a document that treats it as a devisee, but now, a creditor's claim has been filed. So regardless of

the no contest clause and the implications for it, I would have sought counsel on whether it was a creditor or a beneficiary.

Q And - - -

A But that's a very different circumstance than the one that you were talking about.

Q And - - -

A And I think they're all wholly - - - my actions have been wholly consistent in that regard.

Q And so you do not believe there's any other interpretation other than yours relative to the promissory note due Tyre Dealer under six - - - Page 60?

A I think there's probably many interpretations.

Judge Kimball - Let's move on.

Q All right.

Judge Kimball - It's become argumentative.

Q I'm sorry. As we've been going through this case, we've had the ability to review Code Section 62-7-604. Is this a copy - - -

Mr. Gettys - I'm sorry. Before we do that, this is in the Court's file, but I'll put it into evidence.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 10.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Well, this is a copy of your motion for removal and answer in this case, correct? I'm sorry. I hadn't handed it to you yet. Here you go.

A This is the motion for removal, yes.

Q Okay. And in this answer, did you actually request the Court to interpret - - - As trustee, did you ask the Court to interpret the questions before it, as filed in the lawsuit on behalf of the plaintiffs?

A I'm sorry. Can you clarify the question? I don't understand it.

Q As trustee, when you answered this, did you actually ask the Court to interpret the provision, the questions?

A I'm - - - This is a motion to remove to circuit court, so this document contains a motion to remove to the Court. So I'm not sure why I would have asked for interpretations to the document in such a motion.

Q Okay. Let's read the title, so we're talking about the same document.

Judge Kimball - Look, the complaint asks for an interpretation. This is an answer to the complaint. Let's move on.

Q The answer - - -

Judge Kimball - The issue was presented.

Mr. Gettys - Thank you.

FURTHER EXAMINATION

BY MR. GETTYS:

Q What other answers, other than the interpretation that was requested by the plaintiffs, what other actions did you take in this document as the trustee relative to Hugh Dereede and Tyre Dealer Network Consultants?

A So - - -

Q The - - - I'm sorry.

A I'm not sure, again, I understand the question. So this is a motion to remove. It raises affirmative defenses and answers.

Q And answers. So the answer for the second - - - the third affirmative defense is an answer, and you allege in this answer what?

A So the third affirmative defense is one of unjust enrichment.

Q And it states that the trust mistakenly paid sums to the plaintiffs and conferred a benefit upon the plaintiffs, which the trust had received no benefit in return?

A Yes.

Q How is that?

A That my mother in her non-probate assets, specifically the 401(k) and life insurance, had intended those benefits to go through - - - either to her children directly or through the trust, the remainder of the trust. Due to operation of law, those went to her surviving spouse.

Q All right. Now, it's true, though, the beneficiary of the life insurance policy was Hugh Dereede, correct?

A I was informed that, as the surviving spouse, he was the beneficiary.

Q Okay. There's a document that says - - - Well, let me find the document.

Mr. Gettys - Your Honor, I apologize. I didn't - - - I've only got one copy of this. So I'll mark it, and then I'll hand it - - - Or I would ask - - -

Judge Kimball - Do you know what it is?

Mr. Nosal - I would like a copy of it.

Judge Kimball - Show it to him.

Mr. Gettys - Yeah, I don't have a copy. If you will, look at it. It's the 401(k).

Mr. Nosal - Your Honor, it - - - I mean, it says what it says. I - - -

Judge Kimball - What is it, and do you object to

it?

Mr. Nosal - It - - - Your Honor, I object to it on the grounds that I don't know exactly what it is. I have never - - -

Judge Kimball - Well, let's let the witness see if she - - -

Mr. Nosal - Seen this document before, and I - - -

Judge Kimball - The first thing that has to happen is, the witness needs to identify it, if she can.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Do you have any idea what this letter is?

A No, I've never seen it before. It's a letter from Continental Tire, my mother's employer, addressed to Hugh Dereede.

Q Okay. Did you not see that document - - -

Judge Kimball - She doesn't know what it is. You can't question her about it. It's not an exhibit.

Mr. Gettys - I was - - -

Judge Kimball - It can't be an exhibit. Somebody's got to identify it.

Mr. Gettys - Your Honor, if I can have just one

question - - -

FURTHER EXAMINATION

BY MR. GETTYS:

Q Did you not see that document yesterday?

A No.

Q Okay. I'm sorry. I thought you did. I'll bring it up with Hugh. So your third affirmative defense, unjust enrichment, lists assets of life insurance and a 401(k) passed outside of the probate estate and outside the trust to a beneficiary, other than the trust or the estate, and you believe that that passing of those assets outside of the trust estate or probate estate somehow unjustly enriched the plaintiffs?

A I - - - I believe in where our statement is correct is that, if we're talking here about what the intent of the settlor was, that there was an intent that those funds not go to her surviving spouse. I completely understand - - -

Judge Kimball - I thought you didn't know the intent.

A Of my mother?

Judge Kimball - Yes.

A For those two things?

Judge Kimball - You already testified that you

didn't know what her intent was.

A I didn't know what her intent was in creating the trust, so I - - -

Judge Kimball - That's what I'm talking about.

A I'm speaking of her intent for those specific assets.

Whereupon - Mr. Gettys brings a glass of water to the witness.

A Thank you.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Those particular assets were, according to you, her - - - Your mother's intent relative to these assets was what?

A For them to go to her children.

Q And how do you know that?

A Her original 401(k) beneficiary form that she filed when she started as an employee of Continental listed my brother and I as the two beneficiaries of her 401(k). The only reason it didn't come to us was her subsequent marriage to Mr. Dereede, and she was not informed that, under federal law, she would need a spousal waiver in order for him not to inherit the 401(k).

Q And you know that for sure?

A I know that in speaking to Continental Tire's human

resources department, the beneficiary form they have on - - -

Mr. Gettys - Your Honor, object for the - - -

Judge Kimball - And I sustain the objection.

You don't know as a fact on your own, do you?

A I know based on what my mother told me.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Do you have documentation to that effect?

Judge Kimball - Look, the documents are what they are. She's alleged it's a mistake. There's no evidence that it was a mistake.

Mr. Gettys - Thank you.

FURTHER EXAMINATION

BY MR. GETTYS:

Q The fifth affirmative defense is unclean hands. In this, you allege the plaintiffs complain that defendants' actions were the cause of their loss, but its claims are subject to dismissal under the doctrine of unclean hands. And what has either Tyre Dealer or Hugh Dereede done that would give them unclean hands? The fifth down within this doctrine.

A Your Honor, may I consult my counsel?

Judge Kimball - About what? No, ma'am. You need to answer the question.

A (No response)
Judge Kimball - You can't consult with your counsel while you're a witness sworn to testify and on the witness stand in South Carolina.
A Could you repeat the question?
Q What actions do you know of or believe that Hugh Dereede or Tyre Dealer Network Consultants, Inc. gave rise to them falling under the doctrine of unclean hands, and therefore, should not be awarded the relief they seek in this court?
A I don't know how to answer that. I don't know how to - - - I don't know.
Q Fair enough. How about the next one, estoppel? Plaintiffs are estopped from pursuing this claim pursuant to an underlying - - - the underlying agreement between the parties. What agreement is that?
A The trust document.
Q Okay. Can you explain what you mean by that being a defense?
A So here, the plaintiff was seeking to assert rights under the trust agreement as a beneficiary of the agreement. That document, in the form of appointing a trust protector as one example, provided for ways in which to resolve those disputes that had not been

taken prior to this action being filed.
Q And is it your position that the beneficiary had the duty to hire a trust protector?
A No. The beneficiary had the duty to inform the trustee that they wished to seek appointment of the trust protector to resolve a dispute between the trustee and a beneficiary - - -
Q But - - -
A As provided for in the trust document.
Q Do you believe that the beneficiary informed you, the trustee, that he disputed your interpretation of the trust language?
A In filing this lawsuit? Yes.
Q No. Prior to the filing of this lawsuit?
A I think the beneficiary disagreed with my interpretation of the trust at various stages.
Q So yes?
A Yes.
Q Okay. And his objecting to your interpretation of the trust did not give rise to you to consider bringing in a trust protector?
A So as I already stated, I believe that, as the trustee and as the fiduciary, I was making a good faith, reasonable decision on how to interpret the trust. I don't believe that any time the trust - - -

a beneficiary disagrees with the trustee, a trust protector needs to be appointed. I think there are instances where they should be appointed. If Mr. Dereede was considering filing a lawsuit, that is an example of where the trust protector provision is included to prevent unnecessary lawsuits. So if his intent was to file a lawsuit as a means of expressing his disagreement with my interpretation, then at that point I think it was incumbent upon him as the beneficiary to say, let's resolve this with a trust protector.

Q So you don't think it was incumbent upon you, as the trustee, to do that?

A No.

Q Okay.

Judge Kimball - And which provision - - - Which defense are we talking about?

Mr. Gettys - This is estoppel.

Judge Kimball - Okay.

FURTHER EXAMINATION

BY MR. GETTYS:

Q The next defense, the defendants have formed their beliefs and, therefore, alleges plaintiffs have failed to mitigate their damages, and their claims and causes of action are or should be barred. Why is

that?

A Well, I believe if they believed that they were a creditor and they were trying to enforce a promissory note, they could have produced it.

Q Okay. So the language - - -

Mr. Gettys - I'm sorry, Judge. I'm sorry.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Okay. I'm showing you an email dated December 11th, 2014 to Hugh Dereede from you. Do you recognize this email?

A Yes.

Q Did it come from you?

A Yes.

Q Was it to Hugh Dereede?

A Yes.

Mr. Gettys - Your Honor, I'd move that we enter this into evidence as the next consecutive number.

Judge Kimball - Any objection?

Mr. Nosal - No, Your Honor.

Judge Kimball - Number 11.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 11.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Okay. And is this your response to Mr. Dereede's request that you pay him from the proceeds of the sale of the house?

A Yes, it is.

Q And your opinion, as itemized in this email response, would be inconsistent with his opinion, correct?

A Correct.

Q And you're then on notice that y'all disagree as to this occurs?

A Correct.

Q And that a sale is forthcoming?

A (No response)

Q Selling the property is forthcoming?

A (Indicating yes)

Q And there will be proceeds of that sale forthcoming, and you, as trustee, do not believe at that time your duty would have been to hire a trust protector if you disagreed?

A No. I believe my duty as the trust (sic) was to administer the trust - - - as trustee, was to administer the trust in a fiduciarily responsible manner. That is what I was doing. So as long as my decisions were done in good faith and in a fiduciary capacity, those were my decisions as the trustee.

Q Okay.
A I'm sure it's not the first time a beneficiary has disagreed with a trustee in any case.
Q Okay. So you made it in good faith? You believe you were acting in good faith?
A Correct.

Mr. Gettys - And, Your Honor, I'd like to have this marked. I'm sorry.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 12.

FURTHER EXAMINATION

BY MR. GETTYS:

Q You previously, in this - - - You're aware, as trustee, we've had many hearings for judgment on the pleadings and a motion to - - - for summary judgment, and an amended motion for summary judgment, the second amended motion for summary judgment. In those, one of those documents, there was a statement made as to how to define good faith. So I've provided that, which comes from - - - Well, I'll just ask. Do you disagree that that definition of good faith is a fair definition of good faith?
A Can you provide the document?

Judge Kimball - Is it the statutory definition? It doesn't matter whether she thinks it's fair

or not.
Mr. Gettys - Well, it is the definition cited in her memorandum of law for their judgment of pleadings.
Mr. Nosal - Your Honor, what are we talking about on this page?
Judge Kimball - I'm not sure.
Mr. Gettys - I - - -
Judge Kimball - I think we're talking about a code section that references - - -
Mr. Gettys - No, it's the paragraph above. I'm sorry, Your Honor. It's the definition of good faith as defined by Black's Law Dictionary.
Judge Kimball - And you're asking her what about that? Whether that's - - -
Mr. Gettys - If she believes that that's a fair definition of her understanding of good faith.
Judge Kimball - This thing hasn't been introduced into evidence yet.
Mr. Gettys - Well, I'd move that we introduce it into evidence.
Judge Kimball - Any objection?
Mr. Nosal - I - - - No, Your Honor. She can read it and answer his question.
Judge Kimball - I'm not going to let her read

it. I can read it.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Do you have it before you?

A No.

Q I'm sorry. Excuse me.

Judge Kimball - All right. Without objection, it will be marked as Plaintiffs' Exhibit 12. It says what it says. It's a definition apparently quoted from Black's Law Dictionary.

A Yes, this is a fair definition of good faith that - - -

Judge Kimball - It is up to me to determine what the law is that's applied to this case as to what is good faith. So it doesn't matter what she thinks about the definition. She may have a different way of expressing it. Move on.

Mr. Gettys - Okay.

Judge Kimball - That's my problem with this, as we discussed in chambers. Most of this, really, is simply my job to interpret the documents and apply the law to it. At the end of the day, I'm not sure it matters what she thinks.

Mr. Gettys - Your Honor, if I - - -

Judge Kimball - In any of these areas.

Mr. Gettys - If I could respond, and maybe then if you - - - If you don't find my argument persuasive, then it helps me out as well. But the trustee on the stand has stated that she made her decisions based upon, not only reading the language in the trust, but her belief as to what good faith required her to do. That presupposes she has a definition of good faith that we, as a beneficiary, should know and be able to hold her accountable for.

Judge Kimball - And I am going to apply what the law says is good faith to her, not what she thinks.

Mr. Gettys - Yes, Your Honor. Yes, Your Honor. But this is a statement that she, through her counsel, cited - - -

Judge Kimball - I'm not - - -

Mr. Gettys - In her brief.

Judge Kimball - I'm simply not going to hear questions based on a brief submitted in a motion I heard on an issue that I have got to decide.

Mr. Gettys - Yes, Your Honor.

FURTHER EXAMINATION

BY MR. GETTYS:

Q You testified earlier that you had read the South

Carolina probate code - - - or trust code, excuse me, in addition to reading the trust in question. I'm assuming you did that so that you could perform your duties as you believe are required, correct?

A Correct.

Q Do you believe, under 62-7-605, that Mr. Dereede's belief that the language says what it says and should be interpreted as much is not probable cause for a determination to be had by the Court?

A I don't believe it's probable cause.

Q Okay. Do you believe that you have a duty to administer the trust in good faith, pursuant to 62-7-801?

Judge Kimball - It doesn't matter whether she believes it or not.

Mr. Nosal - Your Honor, the facts are what they are at this point. The trust says what it says.

Judge Kimball - It doesn't matter what she believes she ought to do, if the statute tells her what she must do. I'm not going to hear testimony about it.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Have you provided information to the beneficiaries of the trust, as is required by the South Carolina code?

A Could you be more specific, please?
Q Under Section 62-7-813, you have a duty to inform and report, correct?
Mr. Nosal - Your Honor, I object to this. The terms of the trust - - -
Judge Kimball - It's a fair question. She has a duty under the statute - - -
Mr. Nosal - Does she have - - -
Judge Kimball - To provide information. To me, the question is a good one. Answer the question.
A Can I see the language of the statute?

FURTHER EXAMINATION

BY MR. GETTYS:
Q Oh, absolutely.
A So I can answer the question.
Q I'm sorry. Okay. 62-7-813, Duty to Inform and Report.
A The statute says that the terms of the trust shall provide what duties I have to inform and report. So as trustee, I would enforce the terms of the trust with respect to reporting.
Q Okay. Let's look at 62-7-813(c).
A Okay. What - - - What is your question?
Q Unless - - -

Mr. Gettys - And I'm sorry to read, Your Honor. I'm not sure if you have it in front of you.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Unless the terms of a trust expressly provide otherwise, a trustee who accepts a trusteeship or undertakes the administration of an irrevocable trust created on or after the effective date of this article, or of a revocable trust which becomes irrevocable on or after the effective date of this article, shall have a continuing duty to - - - And there's 1(A), reasonably inform the beneficiaries as to the administration of the trust.

A So, again, I don't - - - The statute says the same thing, which unless - - -

Judge Kimball - The proper question is - - - The legal duty is what it is. The question is, did she provide the information?

Mr. Gettys - That's the question.

Judge Kimball - That's what the original question was, and then it - - -

A So the legal - - -

Judge Kimball - Evolved into this.

Mr. Gettys - Sorry about that.

A So the terms of the trust provide that I provide an

accounting or otherwise report on the status of the trust when requested by a beneficiary, specifically an incumbent beneficiary.

Judge Kimball - The question was, did you provide information to the beneficiaries of the trust? Your original answer was, can you be more specific?

A So my brother, as a beneficiary - - - Yes. The answer is yes. My brother, as a beneficiary, requested an accounting of the trust, to which I provided to him upon his request.

FURTHER EXAMINATION

BY MR. GETTYS:

Q All right. This duty, as I'm citing in (c)(B) says also, send annually a written report of the trust property to others. Did you do that?

A The trust document did not require me to do that, so no.

Q But the clause up there does say, unless it provides otherwise?

A So it did provide otherwise.

Q All right. Do you believe you complied with the duties of prudent administration?

A Yes.

Mr. Gettys - All right. Your Honor, I've got

nothing further.

Judge Kimball - All right. We're going to take a break. Going by the clock on the wall, we will fire back up at 11:15, principally because anybody that has to use the bathroom has to go across the street.

Whereupon - A brief discussion was held off the record which was not reported.

Judge Kimball - And, Ms. Karp, you are not permitted to discuss your case in any manner with your lawyer while you are still on the witness stand.

A I understand, Your Honor.

Judge Kimball - You can talk about the weather, how hot it is in this room, or how hot it is outside. We are now in recess.

Whereupon - A recess was taken.

Judge Kimball - All right. Mr. Gettys? No, you finished.

Mr. Gettys - Yes, Your Honor.

Judge Kimball - You finished. Mr. Nosal?

Mr. Nosal - All right.

CROSS EXAMINATION

BY MR. NOSAL:

Q Courtney, during this time, at least in December of

2014 and including up through today, have you ever felt bullied or urged to make a quick decision?

A Yes.

Q Okay. Mr. Gettys went over a few of the trust provisions with you. I would like you to turn to - - - It's Plaintiffs' Exhibit 3, which is Article 5 of the trust.

A All right. Yes.

Q Mr. Gettys had you look at Section 2. He did not have you look at Section 1. I'm not going to make you read Section 1. But isn't it true that Section 1 is a testamentary power of appointment where the settlor reserved the right to appoint her entire trust estate to another beneficiary, and that as the trustee, you had to wait six months before you could distribute anything in case another beneficiary came in and said, this is my trust property?

A Yes. That is correct.

Mr. Gettys - Objection, Your Honor. She's being asked to interpret the law.

Judge Kimball - Didn't you?

Mr. Gettys - Yes.

FURTHER EXAMINATION

BY MR. NOSAL:

Q Isn't it true that the testamentary power of

appointment, outlined and explained in Section 1, includes the property that is to be distributed per the terms of Section 2?

A Yes.

Q So in December of 2014 - - - You know, I know you've - - - I'm not going to make you go through all of these emails. I'll have you go to defense - - - or to Plaintiffs' Exhibit 11.

Judge Kimball - And while she does that, tell me, I don't recall and I don't see it in any document I've seen yet, the date of death.

A August 15th, 2014.

Mr. Nosal - Yes.

Judge Kimball - Okay. 2014, August 5th?

A 15, one five.

Judge Kimball - 15th, 2014.

FURTHER EXAMINATION

BY MR. NOSAL:

Q What was the date that this lawsuit was filed?

A December 23rd, 2014.

Q How long was the trustee instructed to be mindful of a codicil, a will, or some other writing that exercised the settlor's power of appointment?

A Six months.

Q Had the six months expired on December 23rd, 2014?

A No, it had not.
Q So was Hugh Dereede and Tyre, had their - - - Were their rights as beneficiaries, were they subject to that testament at that time?
A Yes.
Q Do you think that if you had paid that money on December 23rd, and all of a sudden a day later, somebody had brought a will to you, do you think Hugh Dereede would have sent that money back from Canada?
A No.
Q These emails say what they say. Tell me, during your questioning, they were asking you about the specific devise outlined in Article 6. Said promissory note at the time of the execution of my trust is - - -

Judge Kimball - Which exhibit is it, please?

Mr. Nosal - That is Exhibit 2, Your Honor.

Judge Kimball - Thank you.

FURTHER EXAMINATION

BY MR. NOSAL:

Q During the month of December in 2014, had Tyre ever made a written demand to the trust, producing the note that it held?
A No.
Q Did it ever give you any terms of the note, the interest rate, the state where - - - the laws in

which it was governed?

A No. I received no information about this note.

Q Did you know anything about this note?

A As I said, I - - - I had never received anything from Tyre. I had no knowledge of it.

Q What was the date of your mother's trust? When was it executed?

A December 18th, 2013.

Q And all of a sudden, there were demands on you to - - - in regards to this note. Did anybody ever say, this is the balance of the note at this time?

A No. I - - -

Q Did you know anything about this note at the time?

A (Inaudible response)

Court Reporter - I'm sorry. What was that?

A Sorry. What? No.

Court Reporter - No. Thank you.

Judge Kimball - Give me the date, the December date again in 2013.

A December 18th, one eight.

Judge Kimball - The 18th. Thank you.

FURTHER EXAMINATION

BY MR. NOSAL:

Q Do you think it would have been a wise and prudent decision to make a distribution that was subject to

be given to somebody else up until two more months after December? Would it have been wise to make that distribution to the beneficiary that it might not actually belong to?

A No, it would not have been.

Q Okay. We went over, I guess - - - In your testimony, they asked you why you did not consult or appoint a trust protector before you filed your answer. Is that correct?

A That question was asked, yes.

Q On what day did the sale of this house - - - What day did it close?

A December 19th, a Friday.

Q On what day did the funds actually come into the trust?

A It was closed later in the afternoon, so the wire did not officially go into the trust until that following Monday, the 22nd.

Q On what day were you sued?

A The next day.

Q And at some point, they asked you why you didn't appoint a trust protector. Can you turn to - - - Do you have a copy of the trust?

A No, just pieces of it on the - - - (No further response)

Q Okay. The first tab of that binder is the trust. Will you turn to Page 3-3? I think it's Article 3, Section 8, the trust protector provisions.
A Yes.
Q Had you read those provisions before?
A Yes.
Q Will you turn to Page 3-7 of the trust?
A Yes.
Q Does the trust anticipate that there may be disputes between beneficiaries, between a beneficiary and the trustee?
A Yes. It has a section that dictates how a dispute should be resolved.
Q Read the first line of Paragraph 2 under Section H.
A No one may file or instigate a claim in a court of law without first submitting the claim to the trust protector for resolution, together with details of supporting information and the details supporting the memorandum of law.
Q Was there a trust protector serving at the time this lawsuit was filed?
A There was not.
Q Does the trust anticipate that there might be a need to appoint a trust protector?
A Yes, it does.

Q Will you turn to Page 3-3?
A Yes.
Q Section 8, Paragraph A.
A The paragraph says that in the event a trust protector is needed to act, in this instance to resolve a dispute, the first successor trustee who is independent shall serve as trust protector. If no one is available, a majority of the successor trustees shall have the right to designate by written instrument a trust protector who is qualified as further defined.
Q Do you have any idea if Hugh Dereede submitted a written memorandum of law to himself?
A No.
Q Was Hugh Dereede serving as the trust protector at that time, that you know of?
A No. He was not independent.
Judge Kimball - What? Say it again, please.
A He - - - The successor trustee has to be independent in order to serve as trust protector, but as a beneficiary, he would have not been independent.
Q Would his independence also have been affected by the fact that he was the one who had a dispute with you?
A Yes.
Q Why do you think that he didn't - - - Do you think

that Hugh read this provision of the trust?

A Yes. He had a copy of the trust.

Q Do you think he read the provision with regard to the testamentary power of appointment?

Mr. Gettys - Objection, Your Honor. Calls for speculation.

Judge Kimball - Well, it depends on whether she knows or not.

A (No response)

FURTHER EXAMINATION

BY MR. NOSAL:

Q Did you have any reason to believe - - -

Judge Kimball - No, she hasn't answered the question.

A I - - - I believe he read the trust.

FURTHER EXAMINATION

BY MR. NOSAL:

Q Is there anything that happened to you, prior to December of 2014, that led you to believe that Hugh Dereede had read seemingly obscure provisions of this trust?

A Yes.

Q What was - - - Why?

A At one point in September, Hugh Dereede sent me an email citing a specific provision of the trust,

attempting to assert a right to live in the Phoenix house for six months out of the year.

Q That Phoenix house, was that part of the trust property?

A No.

Q So why would he send you an email asserting the right to live in trust property where the property wasn't in the trust?

A I don't know.

Q But you thought that he, at least, read the trust?

A Yes.

Q Was he prone to make mistakes in his interpretation of the trust?

A In - - - (No further response)

Q In your opinion?

A Yes.

Q Okay. You mentioned during your testimony that part of the - - - You know, you had other responsibilities while you were administering the estate. I think Mr. Gettys said to you that if there were claims, you could have sold assets to pay those claims. Was there anything else going on in your life while you were trying to sell three properties, be the administer of the estate, the administer of the trust?

A Yes. I mean, like most people serving as a trustee of a family member's estate, I had my own life going on. I was attempting - - - I had had a child in June of 2014, who was born at twenty-six weeks gestation, weighing just one pound six ounces. She was still in the neonatal intensive care unit when my mom collapsed and passed away, and was still in the NICU while I began administering this trust. So I was tending to her care, her medical needs, as well as attempting to go back to work. I had been on unpaid leave since I'd had our daughter, Lucy, and so was also attempting to manage the trust at the same time. Again, like most people trying to work these responsibilities into your regular life, my regular life just had some unique circumstances associated with it.

Mr. Nosal - Your Honor, I have no further questions.

Judge Kimball - Any redirect?

Mr. Gettys - Just a couple of questions.

REDIRECT EXAMINATION

BY MR. GETTYS:

Q Ms. Karp, was there a joint account with you and your mother?

A No.

Judge Kimball - That's not redirect. Nobody has asked that question - - -

Mr. Gettys - No further questions, Your Honor.

Judge Kimball - On cross examination.

Mr. Gettys - No further questions. I'm sorry.

Judge Kimball - Give me just a minute. Let me - - -

FURTHER EXAMINATION

BY JUDGE KIMBALL:

Q Ms. Karp, Article 6, Section 4, Sub A, which talks about the property and payment this dispute is all about, it's pretty specific about paying those items. I'm not going to call them a debt or a claim or whatever. Paying those items. How did you envision protecting the specific direction of the trust in respect to other claims of either creditors or beneficiaries? In other words, the amount of money to be paid is clearly defined in that article. So what happened? What would be your situation if that wasn't paid, and suddenly, there wasn't enough money to pay them?

A You're saying, so had a bunch of creditors' claims come in that exceeded the - - -

Q It's a real simple question. What would be your position if you had those specific obligations to

pay, but there wasn't enough money to pay them after waiting this period of time?

A I think, you know, at that time as trustee, I would have consulted with my attorney helping me administer the estate to - - - to affirm what my fiduciary obligations are to both creditors and beneficiaries and how to distribute the funds that were in existence, both to creditors and to beneficiaries.

Q But you would have let it get to that point? Did you think you had a duty to protect the specific amounts that are mentioned in here?

A Yes. I think my - - - my intent was to ascertain all the known debts, all - - -

Q That isn't what this says.

A Excuse me? I was - - -

Q That isn't what Article 6, Section 2 - - - What is it, 2A or 4A, says. It just directs a payment in a specific amount as soon as practicable after my death. I mean, I'll grant you it doesn't say when you have to do it. Practicable is a term of art, but I'm - - - The thought that went through my mind is, where are we if the claims against the estate prevent you from paying these amounts - - -

A So I think - - -

Q When you could have at some other point in time?

A Again, I'm sorry, Your Honor. I'm not trying to - - - Is the question - - - I'm trying to understand the question. Is the question, what was my plan, or was the question, what would have happened?

Q Why would it happen?

A I mean, so - - - I'm not sure I know how to answer the question, other than my goal was to establish - - -

Q That's all right.

A What was known, and then to figure out what to do then if that became an issue.

Q Okay.

A But if your question - - - I certainly wouldn't have just paid out claims in excess of what was owed without figuring that out first, because I do have a duty to the specific beneficiaries.

Judge Kimball - Okay. If I have - - - Well, let me see if I have any others. Hold on a second. All right. If I have generated any questions by either side, feel free to ask them now. Mr. Gettys, you go first - - -

Mr. Gettys - Thank you, Your Honor.

Judge Kimball - Since she is your witness.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Ms. Karp, if the property had sold for four hundred and ninety thousand dollars, how much would have been due to the trustee - - - or to Tyre Dealer Network Consultants?

A You know I'm a lawyer, right? I don't do math.

Q Two hundred and forty-five thousand dollars?

A So - - - Yes. So the require - - - The requirement of the trust document says that the note is in - - - that the payment should be for two hundred and fifty thousand dollars unless the - - - that two hundred and fifty thousand dollars exceeds one-half of the sales price. It doesn't expressly say that you pay one-half of the sales price, but - - -

Q Let's say it sold for two fifty.

A Yeah.

Q So if it sold for two fifty then - - - I'm sorry. Then the net would have been - - - If the net would have been five hundred thousand, the proceeds - - - The net proceeds would have been five hundred thousand dollars, then the amount due Tyre Dealer Network would have been how much?

A So after the mortgage was paid, you're saying - - -

Q Yes.

A Instead of three fifty, it was five hundred thousand dollars?

FURTHER EXAMINATION

BY MR. NOSAL:

Q Provided a loan for the purchase of the home and is a beneficiary of the trust. In your answer, you admit that. The reason we are here today, we are not disputing that - - -

Judge Kimball - Is this arguments, or is this - - -

Mr. Nosal - No, I'm sorry. I'm sorry, Judge.

Judge Kimball - In the form of a question, or what?

Mr. Nosal - I apologize.

FURTHER EXAMINATION

BY MR. NOSAL:

Q Courtney, I will try to make this as simple of an explanation - - - as an example as I possibly can. If the house sold for five hundred thousand dollars, you've already admitted that Tyre provided a loan - - -

A Yes.

Q And that Tyre is a beneficiary? If the house sold for five hundred thousand dollars, there is an additional two hundred thousand dollars that came into the estate, so - - - into the trust. So there is a total of seven hundred thousand dollars in the

trust. There is five hundred thousand dollars of claims against the estate. How much would Tyre get paid if five hundred thousand dollars went to - - - Sorry. If five hundred thousand dollars went to pay claims?

A I'm not sure - - -

Q Where did - - -

A I'm not sure I can - - -

Q Where did the claims get - - -

A Accurately answer that.

Q Where did the claims get paid from first, the administrative trust or the specific devise?

A The administrative trust.

Q Right. So do you understand that if the claims equal the amount that was in the administrative trust, do you understand that you and your brother would have been disinherited first?

A Yes.

Mr. Nosal - Okay. I think that's what y'all were trying to ask her.

Judge Kimball - Thank you, ma'am. You may step down.

Mr. Gettys - Your Honor, I'll call Hugh Dereede to the stand, please.

Ms. Karp - Thank you, Your Honor.

Q Were you aware there was a trust prior to your wife entering into the hospital?
A Well, there's - - - Yes, and if I may explain.
Q Please.
A I was told there was a trust that the house had been put in. Because in South Carolina, there was a ruling on property taxes. That if it's perceived that the house is being rented out to somebody, the tax changes from like two thousand to eight thousand, almost fourfold. When we purchased the house, Deborah had not changed her name fully to Dereede.
Q Right.
A And she actually bought the house as Feeley-Whiton. That was the reason for the South Carolina tax people to charge us the eight thousand instead of the two thousand. She then went to a lawyer in Lake Wylie, and he advised that we put this house in a trust.
Q Okay.
A So when I did that, I was told by the lawyer the note, that that was null and void, my - - - Well, maybe not null and void, but that no longer - - - The promissory note was no longer necessary.
Q Okay. The property in Lake Wylie, Whispering Pines, 131 Whispering Pines, did you help buy that property?
A Correct.

Q Explain what you mean. How did y'all buy that property?
A It was agreed between the two of us that we wanted a house just for the two of us, and we would each own fifty percent of it. So I would come up with two hundred and fifty thousand, and she would come up with two fifty.
Q And was she able to come up with two fifty in time to buy the house when you did?
A Well, in principal, she thought she was, and - - - But it turned out that there was a hiccup at the very last day, which meant we were actually short another quarter of a million dollars.
Q Right. So you had your two fifty, but she had a problem with her bank to get her two fifty, so to speak?
A And that wasn't her fault. The bank had told her that she would get a mortgage. Then twenty-four hours before the closing of it, of the deal, they advised her that that mortgage was null and void that they had promised her, because her income had been made in Canada as opposed to the United States.
Q The conversion rate played a difference in there?
A No. The fact that she earned - - - had earnings in another country made the difference.

Q Okay. I'm sorry.
A Because she paid taxes in that country instead of this one.
Q All right. Well, y'all were running up on a time to - - - where your contract would become void?
A What do - - -
Q If you did not close, would the contract fall through?
A Oh. If - - - If that had been the case, the owner would have probably raised the price, the selling price, because it was a non-sale at that point.
Q Okay. And so what did you do? What did you and your wife do?
A Well, I was in - - - I was in Toronto. She was in South Carolina, in Fort Mill. She let me know twenty-four hours before closing that, all of a sudden, we didn't - - - we didn't have a house unless I came up with another quarter of a million dollars.
Q And - - -
A So I - - - I did.
Q Okay. And to protect that quarter of a million dollars that was her responsibility, what did y'all agree to do for your benefit, for your company's benefit?
A For the company's benefit was that there would be a

promissory note in place, which was dictated by the equivalent of your IRS, or Revenue Canada, and that I could take money from the company provided there was a percentage of interest applied to it over a period of time.

Q And the note qualified?

A And the note qualified, that I was to be - - - The lowest amount was one percent. That amount got disputed by her lawyer when she went to do the trust, and they asked if I would waive that one percent. So I told them that I can't waive it, but I can pay it. So that was my decision, that she didn't have to pay it, but I would have to pay it to the government.

Q Okay.

A So - - - (No further response)

Q So there was a note that was - - - Your testimony is that there was a note, that it was a note because your wife had to borrow her share of the proceeds of the house, correct?

A Correct.

Q And why was there no - - - Why did that note disappear, go away?

A It went away when - - - after the house was put in the trust. I was told by the lawyer and by Deborah that that now takes care of that note, because it was

going to be dealt with in the trust. So I accepted that.

Q All right. And did you hold the note, or did she hold the note?

A No, she held the note.

Q Okay. Did you have any interest in the New Hampshire property?

A No, sir.

Q Did you help - - - Did she own it before you were married?

A Correct.

Q Did you loan any money on that property?

A No. I helped her pay some renovation work out there.

Q Right. But this was her property, correct?

A Yes. This was her property, not mine.

Q All right. Did you have any interest in the Phoenix, Arizona property?

A No, sir.

Q Did she own it before marriage?

A Yes.

Q Did you loan her any money on that property?

A No, but I gave her some.

Q And that was her property as well, correct?

A Correct.

Q What about the Lake Wylie property?

A The Lake Wylie property was fifty-fifty.
Q Y'all purchased it while - - - Why did you buy a property on Lake Wylie?
A She was - - - She was the VP of sales for Continental Tire in Canada, and then - - - She had a three-year working visa in Canada, and that working visa was up. She was asked by her corporate company in Fort Mill here that she needed to come back to this area, and she chose to live in Lake Wylie.
Q In River Hills, correct?
A In River Hills.
Q Okay. And I'll ask you this question. What do you think the purpose of your wife's - - - Well, first, let me ask you this. Did you and your wife - - - At least in your opinion, did you and your wife have an understanding how either of your assets would pass after you got married, if some - - - when something would happen to one of the two of you?
A Yes. In 2013, we had a sit-down in July, that month. We had discussed what we were going to do with our wills and how they would read. At that time, the answer was that, if she died before me, I would inherit everything except the kids each would get fifty thousand dollars. Upon my death, the kids would get the rest of everything in the United

A It's to distribute the funds to the beneficiaries or creditors, whatever name you label them as, in a fair manner.
Q All right. And what asset did the trust own prior to your wife passing away?
A Well, that's - - - I mean, half the house.
Q Yeah. The house was actually deeded into her name as trustee of the trust, correct?
A Yeah. Everything that I paid for was all in Deborah's name at the recommendation of my accountants in Canada, and Revenue Canada is - - - It's to not own property because it would make it more difficult for taxes in Canada.
Q Okay. So - - -

Mr. Gettys - This is a copy of the deed, Your Honor.

Whereupon - A document was marked as Plaintiffs' Exhibit Number 13.

FURTHER EXAMINATION

BY MR. GETTYS:

Q So this is a copy of the deed, I believe, where your wife transferred the real property to herself as trustee, correct?
A I've never seen this before.
Q All right. I'm sorry. I thought you had. Would you

look at the first paragraph, the grantor? Is this your wife right here, the - - -

Mr. Nosal - Your Honor, I object. He just said he's never seen this before.

Judge Kimball - Well, it's a matter of public record.

Mr. Gettys - Public record, right.

Judge Kimball - I'll take judicial notice of it, but the question I have is - - - And maybe I misunderstood. I thought the house was jointly owned.

A In - - - In theory, it is, but it's - - - The deed was in her name.

Judge Kimball - So it would be that he - - -

Mr. Gettys - Yes, sir.

Judge Kimball - The plaintiff never held any title to the property?

Mr. Gettys - No.

A Which is why I had the promissory note.

Mr. Gettys - Please, if I could - - -

FURTHER EXAMINATION

BY MR. GETTYS:

Q Why was your name never on the title to the property?

A I explained to you, that that was - - - could have been an issue for me, for my business in Canada from

the revenue point of view, tax point of view.
Q Right.
A So it was recommended that I would put this money into the house, but protect myself with a promissory note in the event of death or divorce, whether - - -
Q Right.
A It could happen.
Q So to summarize, you and your wife contributed evenly thereabouts to a purchase price of the home, but the home was placed solely in her name initially, correct?
A That's correct.
Q And the security you had was what?
A The promissory note.
Q Okay. And then subsequent to that, you have in front of you a deed recorded December 18th, 2013 wherein your wife transferred this house in Lake Wylie to herself as trustee, correct?
A That's what I was told.
Q Right. And your understanding of why that happened was what again? Just to be - - -
A It was to protect us from being charged the higher property taxes, and apparently, this would make that go away. Because it was now written into a trust, as me as a beneficiary or a creditor, it's basically

null and void. It's a - - - The promissory note.
Q The need for the note?
A The need for the note.
Q And you heard that from whom?
A From Deborah and our lawyer.
Q Okay. So this is the only asset that was within the trust prior to your wife's passing away, to your - - - to your knowledge, correct?
A Yeah. Well, technically everything I - - - Yes.
Q Right.
A But technically everything I owned in the U.S., because I'm a visitor here - - -
Q Right.
A Was all in Deborah's name in good faith.
Q Right. And what would that be?
A Well, I had transferred my Canadian car to her. I bought a brand new car, which subsequently was sold later. The - - - The furniture in the house came from my house in Canada. We bought the boat. Never got to use the boat, but we bought it.
Q Right.
A And it was never transferred into anybody's name, as a matter of fact. It was meant to go onto her name because, of course, all the same reasons.
Q Right. And so when your wife had the trust drafted,

did she provide for all of the assets you had purchased but were in her name?

A No, no, no. I was still under the impression that we would be dealing with her will, as we always did. So this was a surprise to me when it came about.

Q When it came about later?

A Yeah.

Q And once you found out that your wife had made a decision contrary to what you understood y'all's agreement to be, what did you do?

A Well, under normal circum - - - circumstances, I probably would have gotten very mad, but I didn't because of the circumstances that we were in. When Roy told me what it was, I accepted it for what - - - the way it was written, because it was written by her. So I accepted it.

Q So you didn't challenge the validity of the trust as a breach of contract, have you?

A At no time.

Q You haven't challenged the validity of the trust by some type of claim of undue influence, have you?

A No.

Q You haven't disputed anything that the trust has said - - - that the language of the trust as it says, do you?

A No, I just interpreted it in layman's terms. After, there was a misunderstanding between what was explained to me and what I thought. I was advised by Canadian lawyers to talk to an American lawyer, which ended up being you.

Q Okay. And you had email conversations with the trustee in the fall of 2014 - - - '15?

A Yeah, it was November - - -

Q 2014?

A November, December.

Q Yes. Requesting - - - Or disputing her interpretation of the trust provision, the question before the Court today, correct?

A Correct.

Q And - - -

A I was advised by my lawyers in Canada that I should - - - They weren't talking about a lawsuit, per se. They said, you need to get a ruling as to when you're entitled to your money.

Q Right.

A Which is - - - Which now has turned into a lawsuit.

Q Right. So your interpretation of what you were seeking at the time is what again?

A That I was to be given the money as soon as possible after the sale of the house.

Q All right. So that the language would be interpreted?
A Yeah. It was probably the easiest page in the whole trust.
Q All right. But there's no dispute that you levied or intimated as to anything other than when you would get your sales proceeds, correct?
A Correct.
Q Do you believe that these monies, the two hundred and fifty thousand dollars, is a bequest to you or payment of a debt?
A Payment of a debt.
Q Why do you believe that?
A Because it was covered by a promissory note, and later put into the trust accordingly, referring to the promissory note.
Q Did your company lend two hundred and fifty thousand dollars?
A Yes, sir.
Q And what was that money used to do?
A Buy half of the house.
Q Okay. And the house was purchased?
A Correct.
Q And then the language of that trust, if the house had sold for less than five hundred thousand dollars, if

the net would have been less than five hundred thousand dollars, who would have taken the loss on that, according to your understanding?

A Well, based on the way it reads, I would have taken the hit to protect the beneficiaries, or her kids.

Q Okay. And if it were sold for more than five hundred thousand dollars, who would get the benefit of that?

A According to the trust, I would, or the company would.

Q The company would get their two hundred and fifty thousand dollars?

A Plus the difference between buying and selling.

Q So the profit, so to speak, would be split between who?

A Between Courtney and Michael and TDN, or Hugh Dereede.

Q All right. So you and her children?

A Correct.

Q And is it your understanding, from your reading of that, that you would get half of the profit, and they would split the other half of the profit?

A Yes, sir.

Q Did they put anything into this house?

A No, sir.

Q Did they have any responsibility for this house?

A No. They've never even been there.
Q All right. And after your wife passed away, did you have a chance to visit this house?
A Yeah. I had to - - - I was - - - I was still living there from time-to-time, because - - - The house was on the market at the time, but on one of my visits back, all of the power had been cut off. It was - - - Apparently, the bills weren't paid, and traditionally, the bills were paid by Deborah for utilities. I assumed, which was obviously not correct, that the trustee would be responsible for continuing paying those bills. However, we didn't - - - It wasn't done, so I had to reinstate the power and - - - and I did. I paid for it. I didn't re - - - I didn't ask the trust to pay for it. I paid for it.
Q Right. And it was because the property was up for sale?
A Yeah.
Q Can you sell a piece of property without the power on, do you think?
A No.
Q It would be awfully hard.
A And there were several other things that had to be done, which I had first paid for. Then later, we

decided to subtract it from the sales price at the end of the - - - the closing. That way, it would have been by the trust and by me.

Q All right. And did you get that? Did you authorize that work to be done?

A I don't know if it was actually - - - Yes. I - - - Courtney has to authorize it as the trustee, and I agreed that it should be done.

Q Did the real estate agent representing the sale of the property contact you relative to any of this?

A Yeah. He would talk to me relative - - - relatively often, at least once a week.

Q Giving you updates?

A Giving me update because he was - - -

Judge Kimball - Does any of this matter?

Mr. Gettys - No, probably not, Your Honor. I'm sorry.

A I'm sorry.

FURTHER EXAMINATION

BY MR. GETTYS:

Q And you did inform the trustee of your expectation that you would be paid from the sales proceeds of the property, correct?

A Correct.

Q Why not just wait until the creditors' period expired

to get your money like she said she would do?
A Well, the answer I received back on that request wasn't - - - didn't refer to any creditor period, and I - - - Out of - - - Out of ignorance, out of not knowing in the U.S. that there is a waiting period for creditors to claim their - - - I wasn't told then. So if somebody had said to me, hey, we can't do anything until June of the following year when this period expires, I would have just sucked it up and gone with it.
Q Instead, what kind of responses did you feel like you got?
A Well, it was interpreted that, first of all, maybe I - - - it was questioning - - - I read it was in question that I would even get it, because it was supposedly gifted. I didn't look at this as a gift. Consequently, I wanted to get a ruling, and consequently, I - - - I decided to get advice from a South Carolina lawyer.
Q And did you begin to feel that there was some hostility directed towards you in - - - when you were trying to follow through with this?
A They weren't necessarily friendly, but they were - - - But no, I wouldn't go that far.
Q Okay. Did you know that there was some concern about

some benefits you received from your wife that they believed - - - or that the trustee and her brother believed that they should have received?

A Well, yes, is the question to that - - - the answer to that. However, since the 22nd of December, the trustee, Courtney, has not talked to me or written to me. So the only communication I've had was by her brother, Mike in Texas. He sent me an email, followed by a phone call, saying that he and his sister thought that Deborah had promised them to get the 401(k). Well, that contradicted what I was told. So I said, well, you know, that's not what I understand. I agreed, however, after - - - after checking in with Continental Tire, that there could have been a request to change that over and make the kids the beneficiary. But because that was never done for whatever reason - - - I thought it was because we got married, but however, that's not the case. It was not signed into reality to be - - - for it to be reflected upon the death of Deborah. So that's how I ended up with the money.

Q That's the 401(k)?

A That's the 401(k), and - - - And to finish the story, Michael asked me if I would consider giving it back. I then said, okay, if you need it that bad, I'll give

you half of it. So I sent it back to him.

Q Okay. Life insurance?

A The life insurance was issued to me in my name by - - - by Continental, which is an ordinary thing to do when you've worked for a large company. You - - - You know, you either give it to your kids, or you give it to your husband.

Q But you understood that the kids didn't think that this is what their mom wanted? That's what they told you, correct?

A Well, obviously, that is also hearsay because I don't know what Deborah told the kids. I know - - - only know what she told me, and I - - - I really brought that across.

Q Okay. And do you believe that the trustee has treated you fairly in her interpretation of the trust?

A No. I would say no.

Q What about your company?

A The same issue.

Q Do you believe that your company is a creditor?

A Well, I mean, it - - - it is. I mean, it only - - - People with promissory notes are in a position of creditors.

Mr. Gettys - All right. No further questions,

Your Honor. That's all I have.

Judge Kimball - Cross examination?

CROSS EXAMINATION

BY MR. NOSAL:

Q Mr. Dereede - - -

A Yes, sir.

Q If your company is a creditor, why did you plead in your lawsuit filed December 23rd, 2014 that it was a beneficiary?

A Because it's written up as a beneficiary into the trust.

Q Okay. So it's a beneficiary. You said in good faith - - -

A No, no, no. I didn't say that.

Q Everything - - -

A That's what you - - -

Judge Kimball - Wait a minute. He didn't finish his answer.

A I didn't say that. You said that.

Q You just said it's a beneficiary. Okay. Why did you plead that it was a beneficiary in your complaint?

A Because that's what I read in the trust, is what I said.

Q Okay.

A The - - - The trust deals with TDN, the - - - TDN

Consultants and Hugh Dereede in one sentence.
Q And the trust says that you are a bene - - - Tyre is a beneficiary?
A If that's the interpretation.
Q So Deborah believed that you were a beneficiary?
A No, that's not what it says. You're putting words into my mouth.
Q Well, no. You said, if the trust says that you were a beneficiary, that's Deborah's trust. Deborah is not here anymore. The trust speaks for her.
A No. I'm a creditor then, if you want to know the answer.
Q Why did you plead that you were a beneficiary?
A I don't remember pleading as a beneficiary.
Q Okay. Do you remember pleading that on December 23rd, 2014 in the second paragraph, 18 - - -
A What - - -
Q During the time of this fiduciary relationship and by failing to distribute said funds as required, Defendant Courtney Feeley Karp has violated her duty of good faith, loyalty, honesty, and fair dealing to the beneficiaries.
A And what year is that?
Q The day you filed the lawsuit, December 23rd, 2014.
A And it says what?

Judge Kimball - That's your only responsibility.

A Yes, sir.

FURTHER EXAMINATION

BY MR. NOSAL:

Q You've mentioned that, in good faith - - - And I don't want to put words in your mouth, because I was trying to - - - I believe you said, in good faith, everything you owned in the States was in Deborah's name?

A Correct.

Q Why?

A Well, I explained to you - - -

Q And I'm just asking, why?

A Oh. You want me to repeat what I said already?

Q Yes.

A Okay. It was done for tax reasons.

Q And what were the tax reasons?

A That my accountant advised me not to open up another branch in the U.S., open up - - - earn any money or pay any taxes in the U.S., because I strictly was a visitor. I don't have a green card.

Q So visitors don't have any liability to pay taxes to the IRS?

A Correct.

Q But if you owned property in the U.S., you would have

a liability to pay taxes?

A Correct. Although, the law states that you only really have to pay in one country if you - - -

Q So that's - - -

A If you file.

Q So that's the real reason behind this trust, is that if your name was on the deed and you owned half of this property, you would be liable for taxes upon its sale?

A No. It was only - - -

Q Oh, you - - -

A It was only there to protect me in the form of a promissory note.

Q But had you owned half the house in your name - - -

A But I didn't.

Q Well, I'm saying that's why we're here, is because you didn't want to pay taxes in America?

A No. I was advised not to do that, so I would have to pay in both countries, which is a normal thing.

Q So you were advised by Canadian lawyers not to pay taxes in America?

Mr. Gettys - Objection, Your Honor.

Q Okay. Well, and that's what - - -

A But no, let me - - -

Q He said.

A Just let - - - I'm going - - - I file U.S. taxes every year because a lot of my income comes from the United States.

Judge Kimball - Let's move on.

A Thank you.

Mr. Nosal - Judge, I would just like you to take judicial notice of FIRPTA and - - -

Judge Kimball - Of what?

Mr. Nosal - FIRPTA. It is a tax code that says that if a foreign citizen owns land in America, upon the sale of that land, there is a significant withholding that the buyer is responsible to make prior to sending proceeds to the foreign person.

Judge Kimball - I'm familiar with that.

Mr. Nosal - And it seems to me that he's saying that he was operating in good faith by keeping everything in his wife's name. My point is that, if good faith means trying to avoid paying the IRS, then I may have a different idea of - - -

Judge Kimball - That law does not say that he pays the IRS a nickel. It just has to do with when the funds are paid to the seller, who may be a nonresident.

A I file as - - -

Mr. Nosal - But there's withholding - - -

Judge Kimball - That's enough.

Mr. Nosal - All right.

Judge Kimball - We're going to talk about something else.

A Thank you.

FURTHER EXAMINATION

BY MR. NOSAL:

Q So on December 23rd, 2014, did you have an absolute right to this property?

A Correct.

Mr. Nosal - All right. No further questions.

Judge Kimball - Redirect?

Mr. Gettys - None, Your Honor.

Judge Kimball - Okay. Thank you, sir. You may step down.

A Thank you.

Mr. Gettys - Your Honor, at this time, I have an expert that I'd like to call, but I understand the Court's position today. So he's being called to testify - - -

Judge Kimball - What about my position gives you pause about that?

Mr. Gettys - Well, no. It's just that you're

Medlin is an expert - - -

Mr. Gettys - Thank you.

Judge Kimball - In what?

Mr. Gettys - In his interpretation of trust - - -

Judge Kimball - No. I'm not going to say he's an expert in his interpretation.

Mr. Gettys - I'm sorry.

Judge Kimball - No, sir.

Mr. Gettys - I know, and I'm sorry. That's a great question. I can frame that best for the Court's purposes. Based upon his education, his - - -

Judge Kimball - Maybe just ask him the questions. That will be the easy way to do it.

Mr. Gettys - That will be good.

DIRECT EXAMINATION

BY MR. GETTYS:

Q Professor Medlin, can you please tell the Court what you do for a living and where you reside?

A I teach at the University of South Carolina School of Law, where I've taught property and wills and trust related courses since 1985. I have a home at 1713 Phelps Street, Columbia, South Carolina, 29205.

Q And you have been - - - You graduated and became a

certain rights under the trust we're here about today?

A I prepared an affidavit at your request.

Q Okay. And what did you base your analysis of the Dereede trust on?

Judge Kimball - Well, let's deal with whether there's any objection to his qualification as an expert in trusts and estate law and practice.

Mr. Gettys - Yes, sir. I'm sorry.

Judge Kimball - Any objection? Any questions you want to ask him about that?

Mr. Jeter - Your Honor, I don't think I ever formally introduced myself this morning. I'm Thomas Jeter. I'm co-counsel with Pete Nosal. I do not have any questions for Mister - - - for Professor Medlin. Me and Mr. Nosal both had him as a professor in law school, and I'm sure he's one hundred percent qualified to testify in this matter.

Judge Kimball - All right. I find that Professor Medlin is qualified as an expert on trusts and estate law and practice - - -

Mr. Gettys - Thank you, Your Honor.

Judge Kimball - In the State of South Carolina

Mr. Gettys - I'm sorry. I - - -

Your Honor, I didn't know the settlor. I don't know the parties. So I can only use the documents to try to come to a conclusion about what I think the intent and purpose would be. Based on that, it seems to me that she wanted TDN, if I may call it that, and Mr. Dereede to be preferred under the trust by way of payments and distributions. It's pretty clear from the language, to me, both in Article 5 and in Article 6 that she wanted them paid as soon as practicable. Although, there is language in the heading that says, immediately. I don't try to put a whole lot of stock in just one word here and there in the document.

Judge Kimball - Where is immediately in the document? I don't remember that.

A It's in a heading, Your Honor, I think in Article 5, Section 2, the heading, if I'm recalling correctly.

Judge Kimball - Okay. Hang on a second.

A I think the word is immediate, not immediately.

Judge Kimball - Excuse me?

A The word is immediate, Your Honor, not immediately. I'm editorializing there. I'm sorry.

FURTHER EXAMINATION

BY MR. GETTYS:

Q And what I'm going to do for your ease of reference, Professor Medlin, is hand you a copy of the trust for

your reference.

A Thank you.

Q I'm sorry. I should have handed that to you before. That's Exhibit 1, I believe, Your Honor.

Judge Kimball - Yes.

A The heading to Article 5, which is headed Trust Administration at my Death - - -

Judge Kimball - Yes, sir.

A Section - - -

Judge Kimball - Oh, I see what you - - - Section 2?

A Yes, sir.

Judge Kimball - I got it. The heading to Section 2. All right.

A But again, I don't put, Mr. Gettys, a whole lot of stock in a word here and there.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Yes, sir.

A I try to get the context as a whole. Based on language like immediate, based on language like as soon as practicable, based on the structuring and the ordering and the tiering of the payments, it seems to me that the settlor wanted TDN to get repaid and wanted to get Mr. Dereede his share of the remainder

of the house, which is to be split with his - - - I guess they're - - -

Q Stepchildren.

A Stepchildren - - - Or maybe no longer legally stepchildren, but they were his stepchildren. Before anyone else received any benefits from the trust.

Q Okay. And is this something that is allowable under the South Carolina trust code, in your opinion?

A Well, certainly, it's allowable, and I think it's particularly the case with respect to TDN for reasons that I can get into now.

Q Please. What reasons are those?

A Well, the concern that I've heard expressed is - - - and by looking at the pleadings, is that the trustee might be personally liable for distributing assets before the probate creditors' claims period that expired in - - - And if I may argue a little bit with the date given earlier. I think the appropriate date would actually be one year from the date of death. It would be clearer for every possible claim. So the section in the trust code, Section 7-505(a)(3) that subjects assets of a revocable trust to the claims of probate estate creditors allows - - - allows the settlor to direct priority of payments and where the payments would be coming from. So it strikes me

that, assuming in my analysis that TDN is a creditor - - - Because I don't know why you'd refer to notes in a document and paying back if the settlor intends that to just be a beneficiary. My analysis wouldn't change a whole lot, by the way, if that were the case. But assuming that the corporation is a creditor, then the settlor has the right to prioritize the payment. It seems to me that that's the only way you don't put TDN in a Catch-22 situation. I assume it could have gone and filed a claim with the probate estate. It wouldn't need to do so, it seems to me, because that debt is already taken care of specifically in the trust, which is certainly allowable for a settlor to do. Otherwise, if you could do both, if you could file a claim as TDN as a creditor and be a beneficiary, maybe he gets paid twice. I don't think that's the intent that I'm discerning from that. So it seems to be that the settlor, even if there was a concern about 7-505(a)(3) has said, of all the creditors, this is the one who's going to be the most protected. That certainly ripples through the document as well, as I just described.

Q Right. In your reading of that trust provision, you discussed the - - - Would you say that us an

acknowledgment of a promissory note or an acknowledgment of a debt?

A Again, John, I can only look at the language, but I don't know why somebody says, pay this note, if the settlor doesn't intend for that to be a payment of a note.

Q Thank you. Does a trustee have a duty to follow the directions of a settlor or initial trustee?

A Well, the trustee has a duty to follow the directions of a settlor and to protect beneficiaries as well.

Q Does a trustee have a duty to treat with partiality any beneficiary that the settlor treated with partiality?

A Certainly. Normally, we assume that the trustee will treat all - - -

Judge Kimball - I'm sorry. Ask that again, please.

Q Does the trustee have a duty to treat with partiality a beneficiary that, according to the terms of the trust, the settlor appears to have treated with partiality?

A Thank you, Your Honor. Certainly. The trustee usually, without direction to the contrary, should treat all beneficiaries impartially. It doesn't mean that it's equal. It means it's fair to everyone.

But when the settlor expresses a preference for certain payments or beneficiaries, then the trustee should follow the direction of the settlor and treat those recipients as preferred, partial.

Q And if a trustee did not want to do that, what is the remedy to the trustee?

A Well, a trustee doesn't have to serve. A trustee, particularly a trustee who apparently is a very intelligent, competent lawyer, can look at the document and say, I don't want to do this. The choice isn't, I'm going to disregard the intent of the settlor even if it causes problems. The choice is to not accept. In which case, as I understand the document, Mr. Dereede would have become the successor trustee, if he had accepted.

Q And if he had accepted and there were any concerns of creditors or anything like that, whose problem would that have become?

A It would become Mr. Dereede's.

Q Okay. And if a trustee willingly accepts the trusteeship, do you believe that they must follow the directions and priorities of the settlor?

A I do. Also, that's tempered with a concern if the trustee has some conflicting interest. In this case, I think there's an obvious conflicting interest. The

trustee also wears a beneficiary hat in this case, and she stands to benefit in an individual capacity, separate and apart from her role as trustee. That should not affect her decision-making as a trustee. If anything, she should go the other way and not try to benefit herself. But in reality, you just should be fair. If you don't think you can be fair, if you think your interests are conflicted, then don't accept the position or resign when it becomes apparent that you have a conflict.

Q All right. You've heard testimony today that TDN, through Mr. Dereede, loaned two hundred and fifty thousand dollars to the settlor to purchase this house at Whispering Pines. Does the language in this trust seem to be consistent to you in that regard? The language of the settlor and how she wrote the trust, does that seem to be consistent with the testimony you heard from Mr. Dereede?

A It's certainly consistent, and it gives me additional reason to believe that she wanted to prefer TDN particularly. Because the asset, based on what I understand, wouldn't have been purchased, wouldn't have ended up in the trust, if it weren't for the loan from TDN. I'm not sure. There may even be an argument that TDN has got an equitable lien, so

that's just another reason to have a higher priority in protecting the payment by TDN.

Q When looking at the probate estate as it pours over into the trust and after the repayment of the note, the profit, let's call it, of the sale of 131 Whispering Pines, what benefit does Mr. Dereede actually get from this trust?

A He gets, based on my understanding of the facts, about another additional fifty-three thousand dollars.

Q Right. So of all the trust - - - all the probate assets, all the trust assets, after repaying the - - - After paying off the lien on the property and if the Court sees fit as the creditor's lien, if it's characterized that way, truly the only asset, the only benefit - - - Other than the cars and the boat, the only benefit to Mr. Dereede of the entire probate and trust estate is approximately fifty-three thousand dollars?

A Right. Now again, of course, I didn't mention the personal property.

Q All right.

A I thought you were talking about what he would get in the proceeds of the sale.

Q Okay. South Carolina Trust Section 62-7-604(b), I'm

construe intent from the document. That note was to be afforded the highest priority of payment. So because 7-505 - - - 62-7-505(a)(3) allows a direction of where payment should be made, that should be the most protected payment. Forget the equitable lien possibility. The settlor has directed that that's where that payment is going to come from, so that TDN note would be the first to be paid, even if we had to get into the revocable trust assets.

Q The TDN - - -

Judge Kimball - Can I ask another question?

Q I'm sorry. Please.

Judge Kimball - Is the defendant the P.R. as well, or was she the P.R.?

Mr. Gettys - Yes. That's correct.

Mr. Jeter - Yes, sir.

Judge Kimball - Okay.

FURTHER EXAMINATION

BY MR. GETTYS:

Q So your understanding, based upon your experience of 62-7-604, is there is no liability to the trustee if she complied with the terms of the trust written by Deborah Dereede as it relates to TDN and Hugh Dereede?

A In this situation, I don't think that would happen.

Q Is there anything that makes you qualify that in any way?

A Well, in my reading of the trust code, as I've already explained, I think any creditor who eventually had a right to go after trust assets could follow the assets. I'm not aware whether there is a particular right for the creditor to go after the trustee. But as I said, in this case, it really doesn't matter because 62-7-505(a)(3) allows the settlor to direct where the payment is going to be made. She's already indicated her intent that this creditor is going to be paid first, no matter what.

Q Right. Do you believe that, based upon your understanding of the probate estate and its lack of cash assets immediately after the passing of the decedent, is that a reason to refuse distribution of these sales proceeds to the - - -

Judge Kimball - I'm sorry. Ask that again.

Q I'm sorry. There was testimony earlier today by the trustee that there were really no liquid assets, no cash in the estate, subsequent to her mother passing away. Do you believe that that, in and of itself, is a reason for her to refuse distribution based upon the plain reading of the Section 6(a) - - - 64(a) - - -

A Well, again - - -
Q Article 6.
A If I don't think she's personally liable, then I don't think that would be a reason, in and of itself, to refuse to make the payments that were preferred by the settlor. I also understand that there was at least fifty-three thousand dollars in cash, separate and apart from what would go to Mr. Dereede, in the estate as well as other assets that could have been dealt with in compliance with the settlor's intent, such as putting a mortgage on one of the houses or selling it or figuring out some other way to have sufficient liquidity. Now I understand in hindsight, we think maybe there was plenty of liquidity. I do appreciate the trustee's concern - - -
Q Sure.
A Of having sufficient liquidity. Again, if the trustee thinks that that's going to subject the trustee to personal liability, the trustee has a choice, and that is, let the next trustee serve.
Q Okay.

Judge Kimball - May I ask him another question, please?

Mr. Gettys - Yes, please.

Judge Kimball - It's on my mind. It's helpful

for me to get it in my head now. The statute, 604(b), says what it says. But that doesn't - - - Well, let me ask it in another - - - Let me not make it a leading question. Does that, in any way, mitigate the trustee's fiduciary - - - or the trustee's responsibility as a fiduciary, as it may otherwise be questioned about making distributions? Do you see what I mean? In other words, there are two parallel things going on. One is, the trustee can make these distributions under the statute. Of course, that's got something to do with whether or not anything like that could be a breach of duty. But is there overriding all of this, still nevertheless, the question of fiduciary duty?

A Well, certainly there's a question of fiduciary duty. I've been focusing mostly on the question of the individual - - -

Judge Kimball - The statutory question.

A The individual liability - - -

Judge Kimball - Yes.

A Potential, which I - - - I don't understand there to be. I do understand the argument made by the other side, which we can get to or not later. I'm sure I'm going to be asked. But it doesn't, in any way,

change the fiduciary duty requirement. The trustee needs to worry about what the trustee is supposed to be doing to follow the settlor's direction and to honor the rights of the beneficiaries. Practically, trustees are concerned about getting sued, and I understand that in the great matrix, as a question of reasonableness. But in this case, I don't see the trustee being successfully sued by a creditor.

Judge Kimball - Thank you.

Mr. Gettys - Yes, Your Honor.

FURTHER EXAMINATION

BY MR. GETTYS:

Q Based upon what we've talked about in dealing with the responsibilities of a trustee, the language in the trust, do you have an opinion, a legal opinion, as to the trustee's ability to have made these payments and distributions from the proceeds of sale?

A I believe the trustee should have made those distributions sooner than one year from the date of death, based on the comments that I've already made. If the trustee is concerned about personal liability, I think the trustee can take that into account, but that's secondary in importance in carrying out the settlor's intent and protecting the rights of the beneficiaries. In this case, if the trustee were

concerned about that, she could have refused to accept the position to begin with, or resigned and let someone take on that concern. She also has, as I pointed out earlier, a conflict, and it - - - I certainly don't have any reason to think that Ms. Feeley Karp - - - or Karp? I'm sorry. Had any sinister motive. I wouldn't know. But in any event, when a fiduciary has a conflict of interest situation, maybe step down; maybe you ask for the appointment of a trust protector; maybe you ask for the appointment of a special trustee to make those kinds of decisions that your own personal interests wouldn't also impact. In this case, of course, by saying that the no contest clause is triggered, then she indirectly benefits because she'll end up getting more.

Q Do you have a legal opinion about whether she could have distributed funds without waiting for the probate creditors' claim time period to expire and without incurring personal liability?

A I believe she could have. I believe she should have.

Q All right. Moving on to the no contest provision that you just spoke about. Do you believe - - - When do you believe that the trustee absolutely, even taking into consideration her opinions, should have

distributed the assets to TDN and Hugh Dereede?

A Well, to TDN, I think there would be no real reason to wait much longer after the closing. There may be a slightly different argument for Mr. Dereede's share. That is not something that I was asked to address in my affidavit. It would be impacted by some of the questioning by Mr. Nosal about the testamentary power of appointment. That is a maze, which I'll be happy to explain now, or I have a feeling Mr. Nosal may ask me about that.

Q Okay.

A But at the very worst, I think that maybe Mr. Dereede's payment could have been delayed six months. I'm not sure that was necessary, but at the very worst, his payment could have been delayed six months based on that section.

Q What's your opinion related to the trustee's contention that TDN and Hugh Dereede forfeited their rights pursuant to Article 14, Section 21, the no contest clause? Do you think it's supportable?

A No, I don't think it's supportable. First of all, because I'm not even sure if it's an objection or a contest. Arguably, it is. Arguably, it's not. Mr. Dereede's asked for a declaratory judgment. He's asking for a construction. So if you look at the

overall picture, I would argue it's not an objection that would trigger it. If you get into some of the specific language of the complaint, maybe so. Assuming that it even raises the specter of a no contest clause, my analysis would bifurcate that. Again, TDN would be treated separately. TDN is a creditor. You can't no contest clause your way out of a debt. So if TDN is, in fact, a creditor, the no contest clause is not going to apply. In fact, the language, it doesn't say any person. It doesn't say anybody. It doesn't say creditor. It says devisee, legatee, beneficiary. I don't see, based on the language that the settlor chose to use, that she treated the creditor the same as other beneficiaries. So I don't think the no contest clause analysis should even apply to the debt. Even if it did, under my reasoning of what should happen, the beneficial payment to TDN, if it were in fact that, would be treated the same as Mr. Dereede's beneficial payment.

Q That would be the higher-priority payment that you - - -

A That's correct, Mr. Gettys. To me, there are two steps to the analysis. Number one - - - Again, assuming this is even something that would be an objection that would raise the issue of the no

long as the direct, Your Honor.

Judge Kimball - All right. Well, that answers my question. What we're going to do now is take a break for lunch. Be back here at two o'clock, by the clock on the wall. Professor Medlin, you know all the rules about talking to the lawyers about the case. I don't need to tell you that.

A I do, Your Honor.

Judge Kimball - All right. We'll stand in recess.

Mr. Gettys - Thank you, Your Honor.

Whereupon - A lunch recess was taken at 12:53 p.m. The hearing went back on the record at 1:56 p.m.

Judge Kimball - All right. Cross examination.

CROSS EXAMINATION

BY MR. JETER:

Q Good afternoon, Mr. Medlin. Good to see you again. Do you have the trust document in front of you? I'm providing you a binder of the defendants' exhibits, but Number 1 of that is a copy of the trust. So as you've previously testified, and also was in your affidavit, that you had read the caption of Article 5, Section 2, Immediate Distribution of Specific Devises. That's on Page 5-1. You read that in

conjunction with the as soon as practicable after my death to help - - - to help formulate your opinion on the testator's - - - on the settlor's intent. Is that correct?

A I would have given that very little weight in determining the settlor's intent. I just pointed out that the word was there, and I didn't focus on individual words.

Q Okay.

A The only - - -

Q Well, in your affidavit, you did write that - - - With the word, immediate distribution, you did add the - - - your emphasis added with the - - - putting that in italics on that affidavit. So there was some weight given to it?

A No. I was pointing out that there was the word, immediate, there.

Q Okay. Well - - -

A And, Thomas, I'm not saying that I didn't take that into account. I looked at this as a macro. The fact that the word, immediate, is in there didn't make me think that she wanted it to be done immediately. I think the clearer sense is, she wanted it to be done as soon as practicable.

Q Okay. And that's what I was getting at, and just to

this place.

Ms. Kennedy - Yes, Your Honor.

Judge Kimball - Thank you very much.

FURTHER EXAMINATION

BY MR. JETER:

Q And in Paragraph 6 of your affidavit, you stated a statement here. While a trustee is entitled to protect herself, a trustee should not put her interests above those of the settlor and those who the settlor intends to benefit. Is that a true statement?

A Yes.

Q Okay, good. Can you turn to Page 5-1 of the trust?

A Okay.

Q And I believe you referenced that I was likely going to ask you about this, but just so - - - Section 1 of that article is titled, Testamentary Power of Appointment, and does reserve - - - The settlor does reserve a testamentary general power of appointment to all assets in the trust. Is that correct?

A That's my understanding of Section 1, yes.

Q Okay. And this testamentary power of appointment would allow the settlor, through a will or a codicil, to appoint the assets in the trust to go to beneficiaries that were not named in the trust, if

she - - - if she chose to exercise that. Is that your understanding of that provision?

A That's my understanding of that provision. Without that provision, she would have had the same right. She could have revoked the trust under her will and left property to different beneficiaries - - -

Q Okay.

A Even without that section.

Q Yes, she certainly could have done that.

A Yeah.

Q But if she had exercised that power of appointment, she could have distributed the plaintiffs' share, the two fifty and the share from the house, she could have given that to somebody else, couldn't she?

A She could have done that. She could have changed her revocable trust while she was alive. She could have changed her revocable trust under her will without the power of appointment. She could have done all of that.

Q Okay. And again, I don't want to spend a lot of time having you read the document, but if you could, just read the last sentence of Section 1, starting with, if my trustee receives no notice.

Judge Kimball - Let me just read it.

Mr. Jeter - Okay.

Judge Kimball - I can read it as well. All right.

FURTHER EXAMINATION

BY MR. JETER:

Q So is it your understanding that, after looking at that provision, that this says that the trustee needs to wait at least six months to see if any testamentary - - - any wills or codicils exercising that testamentary power of appointment arises, before making any distributions to the beneficiaries named in the trust?

A That's a possibility. That's not necessarily my understanding. As I referred to it in my earlier testimony, I think this provision is a maze. I think, when you look at this in the context of everything else, that may or may not be the point. First of all, you start in Section 1 with subject to any payments required under Section 3 of this article. Section 3 doesn't even get funded until the payments are made under Section 2 to the specific devise of - - - to Mr. Dereede, if it is a specific devise, and the appointment of - - -

Q Well, wouldn't it be reasonable to - - -

Judge Kimball - Well, wait.

Mr. Jeter - Okay.

Judge Kimball - Let him finish his answer.

Mr. Jeter - Okay. I'm - - - All right.

Continue, sir. I apologize.

A First of all, I answered your question. I said it's a possibility. I'm not saying that's unreasonable at all.

FURTHER EXAMINATION

BY MR. JETER:

Q Okay.

A I'm just saying I think there are other ways to look at this, and I don't know the answer. The point being that, by making it subject to Section 3, the provisions of Section 3 would control this entire Section 1 that contains the sentence that you wanted me to opine about.

Q Right.

A So I have to look at the broader context here, to tell you that there are other ways that I could read this. Section 3 doesn't get created, or doesn't get funded, until after the payments under Section 2, referring to Article 6. Section 3 requires all debts, expenses, and claims to be paid as provided in Section 4 of this article. Section 4 says, legally enforceable claims against me. So at least as to the TDN claim, which I've already testified I believe is

a claim and not a devise, I don't think the power of appointment section has a whole lot of control over that. Because I think, if you sort of work your way through that, there is an argument that the claims need to be paid regardless, because of that initial clause in Section 1. As I read it, the settlor is saying if, as a testator, I make a testament or a power of appointment, then it's subject to what I've also set out in Section 3, which includes the payment of legal claims.

Q Okay.

A All right. Now, that's not my only concern about this being a maze. Again, I'm not saying that's not a reasonable belief. In fact, in my earlier testimony, I said I think waiting six months would have been - - - not an act of bad faith, because of this section. I'm just not sure it would be required. We've got Section 62-7-604, which even under an opposing belief about what that section does, would say that a trustee can distribute assets and isn't later personally liable if that trust is later found to be invalidated.

Q Can I stop you there, or - - -

A I'd really rather keep going on, because I'll forget.

Q Okay.

valid will. All of that being said, I think one could reasonably wait six months because of Section 1 and the sentence you referred to.

Q Okay. Do you think it would be reasonable for the trustee to reply upon that section to not - - - to not make the distributions as demanded by the plaintiffs, when demanded by the plaintiffs, prior to the six months time period?

A Well, I don't think it shows an absence of bad faith. I think it's reasonable to read that sentence the way you want me to read it. I think - - -

Judge Kimball - You mean in absence of good faith?

A I'm sorry. Thank you, Your Honor. I appreciate that. The other point, though, is that we have what is effectively a creditor's claim. Even if we had appointed the property somewhere else, we're still going to have that creditor's claim. It's just that TDN would have - - -

Q Well, let's - - -

A Gone down to the probate court and filed it, right?

Q Well, we can jump ahead to the creditor's claim. The code 62-3-804 requires a creditor to actually file a written statement of claim on the form prescribed by the rule, as according to the statute. TDN or Mister

- - - Or I guess TDN, if that's who you're saying is the creditor, didn't - - - They didn't file that claim, did they?

A No, they didn't. So are you saying that your client fooled him into not having to do it? He's got that in the trust. He understands that that's going to take care of his claim. Why would he separately file the claim?

Q Well, wouldn't one example be to preserve his - - - to preserve his claim status in the event a testamentary power - - - another will does surface where it exercises the testamentary power of appointment where she gave that distribution to somebody else?

A And six months later if that had happened, he could have done that, but that didn't happen, right?

Q Correct. But we're talking about at the time he filed the lawsuit, whether he had probable cause to do so. That's what all of this relates back to.

A Well, I don't see any certain answers that he didn't, for all of the things that we're talking about.

Q So he - - - So your answer is, that a testamentary power of appointment did not - - - That the six-month requirement of - - - would not - - - That he still would have had probable cause to file the lawsuit in

A I'm - - - I'm not sure I understand - - -
Q If - - - If a creditor - - -
A Your question, Thomas.
Q If a decedent owed someone money and they were a creditor of their estate, to seek payment of that claim, they would file a claim with the probate court in that estate, a written statement of claim?
A That is correct, to collect against the probate assets.
Q And property in a trust can be used to pay the claims of a probate if the probate assets are insufficient, correct?
A Assuming it's a revocable trust.
Q Okay. Yeah, that's - - -
A Yes.
Q Yeah, assuming that it's the type of trust that we're talking about here.
A Yes.
Q And is it also one of the purposes of that written statement or claim, is so the executor or trustee can verify the debt and know, this is the balance that's owed?
A That's one of the reasons, yes.
Q Right.
A But like seeing it in a trust, it couldn't be spelled

out more clearly.

Q Well, let's look at that provision again. It's on 6-2. Now, the trust says - - - You know, assuming there is a note, the trust says, at the time - - - said promissory note at the time of the execution of the trust, which the amount of the note was two hundred and fifty thousand dollars. But it doesn't say what's the outstanding balance owed upon the date of her death. It doesn't say whether she's made payments on that note, does it?

Judge Kimball - I'm sorry. Are you reading from Article 6-4(e)?

Mr. Jeter - Yes, sir, Your Honor, or I'll - - -

Judge Kimball - On Page 6-2? Okay. I've got it.

Mr. Jeter - Yes, sir. Where it says - - -

Judge Kimball - I've got it.

Mr. Jeter - Okay.

Judge Kimball - Go ahead.

FURTHER EXAMINATION

BY MR. JETER:

Q I was saying that this just says, this is the amount that was owed at the time the trust was created, but it doesn't say what's the amount owed upon her death, whether it was - - - Was there interest accrued on

A I don't think she should have raised the no contest clause, myself. So that's a - - - sort of a bootstrap question. If you assume that she should have raised the no contest clause issue, then at that point, I think fairly she wouldn't make the payment.

Q Well, in looking at the document as a whole, I mean, wouldn't - - - couldn't you also infer that the settlor's intent - - - intended the no contest clause to be in the trust?

A Well, certainly, she has a no contest clause in the trust.

Q And when - - -

A But when you read the language of the no contest clause, it doesn't talk about claims. So I don't think the trustee could fairly take the position that the payment of a debt is subject to a no contest clause. I would like to be able to do that, because I would pass my estate debt-free to all of my heirs because I don't have to pay my creditors. I'll just put in the trust, I'm going to pay my creditors, and then tell my trustee not to pay them. And if anybody contests that, then they don't get paid. If that worked, that would be a wonderful system.

Q Well, I mean, that's what the claims filing statute does, is to protect the creditors and that - - - to

complaint.

Mr. Jeter - Okay.

Judge Kimball - It's not a verified complaint. It doesn't bind anybody. People could amend it according to a - - - a change in the proof, to conform to the proof in the file. I'm not interested in going over the complaint.

Mr. Jeter - All right. Well, we'll move on from that.

FURTHER EXAMINATION

BY MR. JETER:

Q So in getting back - - - And I know that you've talked a lot about the 62-7-604(b), and that the trustee could have made distributions early and would have been personally protected. But that doesn't necessarily mean it would have been a - - - that they should have, or that it would have been a prudent decision of the trustee to do that?

A Well, first of all, I think it's - - - As you may have pointed out in some pleadings somewhere, it actually says, may. It doesn't say, must.

Q Right.

A So let's start with that. But when you look at the terms of the trust, again, it appears to me that she clearly meant to get that note paid and that fifty-

Q Well, that's what a provision - - - Is that not what that provision says? That the - - -
A Well, again, let's - - - Let's don't read that provision in isolation. As I understand it, in order to appoint a trust protector, you had to have people who are successor trustees, the majority of them, decide who is going to be the trust protector.
Q Correct.
A She may well have anticipated, I don't know that she did, that there might not be a trust protector appointed, as there wasn't for a long time here. Because you've got the two successor trustees who are disqualified from being trust protectors by the terms of the trust - - -
Q Correct.
A Agreeing on a trust protector. So if - - -
Q But - - -
A If there were a trust protector, yes, she wanted the dispute - - -
Q Would that provision not - - -
A To be resolved by the - - -
Judge Kimball - Let him finish his answer.
Mr. Jeter - Okay. I'm sorry, Professor Medlin.
A That's all right. I'm finished. Sorry.
FURTHER EXAMINATION

you have it in front of you?

A I do, Your Honor.

Judge Kimball - In a broad sense, this seems to give to the trust protector the authority of a - - - to analogize it, of an arbitrator to just decide and that stands, like binding arbitration of sorts. I mean, is that a fair - - -

A I think that's a fair reading of the language. Now under the trust code, a trust protector is a fiduciary, so - - -

Judge Kimball - So you just can't be arbitrary about it - - -

A You have to follow - - -

Judge Kimball - Or favor somebody.

A Fiduciary duties, yes.

Judge Kimball - Yeah, okay. So under the umbrella of acting as - - - of conforming to the duties of a fiduciary, the trust protector has absolute right under this document to, in good faith - - - assume to be acting in good faith to decide any of these claims?

A I would think that's a perfect way of putting it, Your Honor.

Judge Kimball - All right. Excuse me. Go ahead. Well, Mr. Nosal, you started to stand up

had a duty to act prudently. She had a duty to - - - as - - -

Judge Kimball - I think we're all better served if I just deal with all of this in an order that deals with this, that specifies findings of fact.

Mr. Gettys - Thank you, Your Honor.

Judge Kimball - Your motion is on the record.

Mr. Nosal - Your Honor, we call Cathy Kennedy.

Judge Kimball - Ms. Kennedy? Kathy with a K, or - - -

Ms. Kennedy - C.

Judge Kimball - C. Thank you.

Whereupon, Cathy Kennedy, having been first duly sworn, was examined and testified as follows:

Judge Kimball - All right. Have a seat.

A Thank you.

DIRECT EXAMINATION

BY MR. JETER:

Q Good afternoon, Ms. Kennedy. Will you please state your full name?

A Catherine Hood Kennedy.

Q What is your profession?

A I'm an attorney, a certified specialist in estate planning and probate.

Q And are you a member of the South Carolina Bar?
A I am.
Q Where is your office located at?
A In Columbia, on Main Street.
Q And what's the general nature of your practice?
A Basically, all I do is probate and trust matters, litigation, administration. I do some mediation in the area as well. I'm a certified mediator and a certified arbitrator.
Q And your experience and accomplishments in this area of law?
A From 1987 until 1999, I was the probate judge in Richland County. Thereafter, I retired, did not run for reelection, and determined that I wanted to practice in this area. I brought myself back up to speed on tax law, estate tax, gift tax, generation-skipping tax, income tax. I started practicing law with Nelson, Mullins, Riley, and Scarborough. I practiced law there for nine years. During that time, I was certified as a specialist by the South Carolina Supreme Court. I left there and went to practice at Turner Padget, and I've been there six or seven years. I'm a member of the American College of Trust and Estate Counsel, which is an invitation-only organization for attorneys who have excelled in this

area of law.

Q And did you also chair the committee for the South Carolina Bar for the changes to the probate code in 2014?

A Yes. I was actually - - - I was on the trust code committee, chairing Article 4, when it was enacted in 2005 and served on the full committee to consider all of the amendments to the trust code. Thereafter, I served on the summons committee when we went through the trust code to determine when a summons was needed. During the course of that study of the probate code, we determined that we needed to really go through the whole trust code. Regretfully, I volunteered to chair the committee, and that took about seven years of my life, to go through the trust code and determine what needed to be done. So Professor Medlin and I were there at every meeting. I think he may have missed one. I'm not sure if I missed any. But that went on for two-and-a-half years, and it took us several years to get it through the legislature.

Q And as a reward for your service, Professor Medlin actually gave you a plaque to that effect. Is that correct?

A Well, it was presented by the probate and trust

section to me for meritorious service in the field.
Q And in your private practice, do you routinely advise trustees and executors in the administration of trusts and estates?
A Yes, I do.
Q And do you also, in private practice, draft estate-planning documents such as the living trust that's in dispute today?
A I would not have drafted this trust, but yes, I do draft revocable trusts - - -
Q Okay.
A Or living trusts.
Q And how did you get involved with this litigation?
A I was asked to be the trust protector, and again maybe regretfully, I agreed to do so. Mr. Gettys and Mr. Nosal signed a consent, having me appointed in that capacity.
Q And after - - -
A And I have been subpoenaed to be here today.
Q And after being appointed as trust protector, what did you do from there? What was your - - - What did they ask you to do as trust protector?
A I reviewed the pleadings that had been filed, the trust itself, and South Carolina law involved in the area.

Q Were you asked to make a determination and advisement in regards to whether - - -

A I viewed the - - - the trust. That was my duty as the trust protector, was to advise the trustee as to what I thought she should do in this circumstance.

Q And did you speak personally with the trustee as well?

A Yes, I did.

Q And did she explain the - - - her facts and reasoning for why she did what she did?

A Yes. Most of that actually came from Mr. Nosal, but I heard from Ms. Feeley Karp as well. I spoke to Mr. Gettys as well.

Q And you submitted a written report to - - - to all parties of this - - -

A I did.

Q As well? And what conclusions did you draw from that report, in regards to whether the trustee acted in good faith?

Judge Kimball - Are you wanting - - -

A I - - -

Judge Kimball - Are you wanting to have Ms. Kennedy testify as an expert?

Mr. Jeter - Yes, Your Honor.

Judge Kimball - Do you have any questions about

her qualifications, Mr. Gettys?

Mr. Gettys - Your Honor, I have no questions about her qualifications. However, she was hired as the trust protector in this case, Your Honor, and I don't believe she was cited as a potential legal expert in this matter. The Court may not think that that's a distinction worth entertaining, but I certainly would proffer that before the Court.

Mr. Jeter - Well, Your Honor, she - - - My thought, Your Honor, is that she was hired as the trust protector based on her skill and experience by mutual consent of both parties. She was asked to give an opinion in a written report, and I think - - -

Judge Kimball - Let me say it this way. Her qualifications to be here today can hardly be disputed, whether she's an expert or not. If she's not been listed as an expert, we just won't treat her that way, but she's certainly qualified to say anything she wants to say about the subject. Let's go ahead.

Mr. Gettys - Thank you, Your Honor.

FURTHER EXAMINATION

BY MR. JETER:

Q Ms. Kennedy, after investigating this matter, did you reach a conclusion whether you believe the trustee acted in good faith?
A I did reach a conclusion that I personally thought the trustee acted in good faith, as - - - as I believe Professor Medlin did as well.
Q And what specific facts and circumstances led you to that conclusion in regards to her decision to not pay the claim immediately when demanded?
A I'm not certain it's a claim, but in - - - In any event, the facts that I understood, that her mother had lived in a number of different states. It was going to be very difficult to figure out where all of the creditors were. There was property in other states. Her mother used a number of different names. So again, tracking down creditors and making certain that she had ascertained all of the creditors, I thought, was a very difficult position for her to be in. She said her mother was a very private person. It wasn't as though she had been handling her mother's affairs for a long period of time and knew what creditors were out there. The trust was not particularly artfully drafted. No promissory note had ever been provided to her, so she could figure out what was owed on the debt. The trust itself

seems to say to pay one-half of the proceeds, or not more than one-half of the proceeds in payment of the promissory note, but you need to know how much is owed on the note in order to know - - - You know, you've got a cap there of about three hundred and seven thousand dollars being one-half of the proceeds, as I recall. So you've got a cap there on how much you can pay, but you don't know, within the two hundred fifty that was owed at the time the trust was created, to - - - You know, have payments been made? Has interest accrued? You know, you know the maximum amount you're going to pay, but you don't know the amount underneath that that may have to be paid. Additionally, she explained to me that she had a premature child who was in the - - - in NICU, the neonatal intensive care unit, and that her child was in critical condition at the time that the property sold. So considering all of that and the direction in the trust to pay it as soon as practicable, meaning feasible, considering everything that was going on in her life and with the uncertainty of administering the estate and trust, I think she acted in good faith.

Q And could you please explain the statement in your report where you said, in December of 2014, the

trustee would have been foolish, if not in breach of her fiduciary duties, to immediately distribute the net proceeds received from the sale of Lake Wylie, which is the house that was in question in this matter?

A Well, there is a provision in 62-7-505 that Professor Medlin had talked about, and honestly, he's much better at quoting code sections than I am. That talks about the assets in the revocable trust being secondarily liable for the creditors' claims if the probate estate is insufficient. As I understand what was in the probate estate, there was some personal property that was left specifically under the terms of the trust to Mr. Dereede. So, you know, those assets would have had to have been sold last to pay creditors' claims under the order of abatement. So there were two pieces of real estate that would have been sold to pay creditors' claims. The one in Arizona, again as I understand the facts, had two mortgages on it, and some of them had not been paid, if not both. It was headed to foreclosure, whether any funds would ever have been received from that. There was also some problems with that property. It - - - That it needed some repairs. There was no cash to make the repairs. So, you know, do you let it go

to foreclosure? Do you use the money that came in from the sale to fix it? Those were issues. It was mid-winter. Selling property in New Hampshire in mid-winter isn't the most ideal time. People are having a hard time just getting around, much less looking for real estate. So considering all of that, I think the trust - - - Oh, another thing I wanted to point out is, there is a direction in the trust for the trustee to pay claims, funeral expenses specifically, and so she - - - She is directed to do that. I certainly agree with Professor Medlin that there was a scheme set out by the settlor as to what assets were to be used to pay the claims first. Of course, it was the probate assets that were to be used, by law. Then if anything flowed from the probate estate into the trust, then anything that was to fall into the residue, or the amount that was to go to Ms. Feeley Karp and her brother, was to be used first to pay the claims. These were protected. They - - - They did have a priority. The amount to be paid to Tyre and the amount to be paid to Mr. Dereede were - - - were the last things. Again, we've got an abatement situation that's set forth in the trust. But frankly, she didn't have any cash to deal with all of the other expenses. So that's why I said I

think she would have been foolish to get rid of the cash that she had, because it just didn't seem to be practicable to do it at that point. She was only supposed to pay this as soon as practicable.

Q Okay. And do you believe that the - - - And you've reviewed the trust in full as well, correct?

A Yes, I did.

Q Professor Medlin may disagree, but do you believe that the Article 5, the general testamentary power of appointment, that that - - - that the language of that trust provision says that the settlor could have given all of the beneficiaries' share to someone else if she had exercised that power of appointment in a will?

A Yes, but I differ ever so slightly in what Professor Medlin said. Yes, I certainly agree it was a revocable trust. She could have exercised that and done a trust amendment, but at least the trust amendment would have been done as of the date of her death and there wasn't any real time frame to deal with that. Whereas, this one did set forth a six-month time frame, after which the trustee was presumed to be acting in good faith if she went ahead and distributed everything. Not unlike what you see with a personal property memorandum usually in - - -

in wills. But there's a time frame that says, okay, after six months, you're free and clear to go ahead and distribute. But during that six-month period, again, I think she would have - - - Not knowing her mother's affairs, knowing whether there was another will out there - - - Surely, I agree with Professor Medlin, that in filing the Form 300 to open the estate, she had to say, do you believe that this is the valid last will and testament? Yes, she did. What we've seen many times - - - I mean, I've supervised in my twelve years as the probate judge about thirty-five hundred estates opened every year. Many times, wills would come in after the first will came in that, you know, the family didn't know anything about. Oftentimes, it was the caregiver who procured that will. You know, it would be unusual circumstances. Sometimes, people would open the estate without a will, saying we believe it's in intestate. Then later on, a will would come in. So merely because you state that it is, you know, to the best of your knowledge the valid last will and testament doesn't mean that something else couldn't come in to overrule that. She's got some protection here in that particular article, saying wait that six months. Then basically, you've acted in good faith

in making distributions, and you're protected.

Q But would she have been protected if she had made the distribution when requested by the plaintiff within the six months, and a valid testamentary power of appointment was produced after that?

A I don't think so, but let me actually read the - - - the document. I mean, this says, be conclusively presumed to have acted in good faith, even if a valid will or codicil exercising this power is thereafter discovered.

Judge Kimball - What are you reading from, please, ma'am?

A I'm sorry. It's on Page 5-1.

Q That's Article 5 - - -

A Article 5, Section 1, the last sentence. If my trustee receives no notice, and then it goes on, within six months. So I think, with that safe harbor in there, if I had been advising the trustee, I would have said, you've got a safe harbor. That if you wait the six months, you're conclusively presumed to have acted in good faith, even if a will later on comes in. I would have said, you know, we're only two months away from that six months. Let's wait two more months and - - - and make certain that you're there. Plus, the situation becomes more clear at

that point. It - - - You also have an opportunity to figure out what's owed on the promissory note. Prior to the closing, you don't really know what the proceeds are. So is it really necessary to determine how much to pay Tyre, when you don't even know what you're getting until you get down to the closing and everything is prorated as of the date? So then it becomes incumbent to find out how much is owed on the promissory note, and - - - And perhaps the creditor's claim situation becomes a little more clear in two months. Perhaps, the daughter's situation, you know, becomes - - - You know, her personal situation becomes better.

Q And you've sat here today and heard testimony where there's been dispute over whether Tyre was a creditor or a beneficiary. If Tyre was a creditor, would they have had to file a claim in the estate?

A A personal representative has the ability to pay creditors, if they want to.

Q Would the statement of claim that - - - If a creditor did file a claim, would that not state the actual balance that's owed, if it was a claim for a promissory note?

A It should.

Q So what - - - From your reading of the trust and

discussion with the parties, what would lead you to believe that Tyre was a beneficiary and not a creditor?

A Well, they're specifically mentioned in the document. The pleading that was filed stated that Tyre was a qualified beneficiary. That's a term of art under the probate code. A qualified beneficiary is someone who is entitled to immediate payment, among other things. So they specifically pled in - - - in their complaint, in their petition that was filed, that Tyre was a qualified beneficiary of the trust. Are they a creditor? I don't know. I've never seen the promissory note to know are they a creditor. Mr. Dereede testified earlier that the note went away when the trust was - - - was drafted. So I'm presuming that the note was satisfied, or torn up, or whatever it was. If there was a note, I've not seen one.

Q So the fact that a note or contract was referenced in that specific - - - in Section 4, Article 6, that doesn't replace the need for a note to have been produced?

A No, I didn't exactly say that. I'm just saying that she indicated, at least on the date that this trust was executed, that there was a note. Did that note

still exist on the date of death? I don't know. I don't know if the trustee knows.

Q Okay.

A So if I were Tyre, you know, maybe you do the belt-and-suspenders approach. You know, if I'm not a creditor, then I'm a beneficiary. If I'm a beneficiary - - - If I'm not a beneficiary, then I'm a creditor. I don't know. She just - - - She doesn't give a specific amount to be paid to Tyre. It says, pay them what's due on the note at my death, and sets a cap on what they will be paid. Not a floor. So I - - - I think it's very difficult for the trustee to know. Everybody seems to assume it's two hundred and fifty thousand dollars. Mr. Dereede testified earlier that there was an interest rate of one percent that was on this. So perhaps it's more than two fifty. Perhaps she made some payments on it. I was a little confused about his testimony of he put up two fifty, and then because the loan fell through to her, then he advanced her another two fifty, which meant he would have put in five hundred. So I'm not exactly sure - - -

Q Okay. Let's move on from that.

A Of all of that.

Q So after the plaintiffs filed this lawsuit, the

trustee raised as a defense the no contest clause that's listed in the trust. Do you think her also being a beneficiary precluded her from making that defense?

A No, I don't, and I'm honestly not - - - It does - - - The no contest clause does require some determinations by the Court, but when you read it - - - And, Your Honor, this is on - - - starting on Page 14-21 of the trust.

Judge Kimball - Yes, ma'am. All right.

A It says that if any devisee, legatee, or beneficiary - - - And I understand there's a question as to Tyre. No question as to Mr. Dereede, that he is a beneficiary. Does any of the following, then in that event, I specifically disinherit such persons. So it seems to be almost a self-executing language, that the person is disinherited, and that is a dispositive provision of the trust. The question is, of course, have they done any of these things? You get to particularly B, objects in any manner to any action taken or proposed to be taken in good faith by my trustee under my trust agreement. You've had an expert witness - - - And again, I have the utmost respect for Professor Medlin. He testified that he thought she didn't act, what did he say, not in bad

faith. Does that mean she took action in good faith? I think she did, considering all of the facts and circumstances. You've got someone who files a lawsuit questioning what they did. I realize it's couched as a declaratory judgment, but when you ask for damages against the person, it seems to me like that's serious objections. Now, it goes on to say, if such action is later adjudicated by a court of competent jurisdiction to have been taken in good faith - - - And that's what I referenced in my trust protector report, is that you've got to have a court make that determination. It wasn't up to me. Merely because I think it was done in good faith didn't mean I could decide this. It, to me, has to be decided by the Court as to whether she acted in good faith, and we were all - - - You all were already in court, and - - -

Q Right.

A That seemed to be the way it needed to go.

Q And that is what your report said. Do you believe that the plaintiffs were first obligated to seek the appointment of a trust protector prior to filing suit? Knowing that there wasn't one appointed at the time. There wasn't one serving at the time.

A Personally, I think it would have been a prudent

thing to do, to have at least asked, can - - - You know, I understand that there was a dispute ongoing between the beneficiary and the trustee. Would it have been of any use? I can't say that it would have been, but it was Mr. Dereede and Ms. Feeley Karp who had the authority jointly to appoint a trust protector. I would have been a little concerned. It says that a suit can't be brought without the trust protector's okay. There wasn't a trust protector. How do you get an okay? I guess I would have at least said, what should we do about a trust protector, since I need that to file suit? And, you know, it's - - - This is on Page 3-7. No one may file or instigate a claim in a court of law without first submitting the claim to the trust protector for resolution, da, da, da, da, da. So I think I probably - - - You know, if I had been representing a beneficiary who was concerned about this, I probably would have at least written a letter and said, can we agree to the appointment of a trust protector to try to resolve the dispute? Would that have resolved the dispute? Not necessary. And the trust protector can grant authority for somebody to bring a contest. I think it would have been something to be explored. I don't - - -

Q Okay.
A I don't know that it was explored. I think, to the best of my knowledge, it was not.
Q And based on the facts surrounding the timing of this lawsuit, when the settlor died on August 15th of 2014 and the suit was brought on December 23rd of that same year, do you believe that the plaintiffs had probable cause to bring the suit that soon?
A I think that's for the Court to determine.
Q Okay. Would you have advised them to bring - - - If you represented the plaintiffs, would you have advised them to bring the suit when they did?
A No. But each attorney exercises independent legal judgment. I have a suit right now that I've brought, and there's a no contest clause in the will. I advised my clients that I don't think we're violating the no contest clause. So, you know, different attorneys advise their clients different ways, depending upon the terms and, you know, what they're bringing. So I - - - I'm not going to second-guess someone else's judgment, but would I have advised Mr. Dereede to do it? No, I would not.

Mr. Jeter - Okay. Ms. Kennedy, I appreciate your time, and I apologize for keeping you, holding you over.

A That's okay. I'm missing a dental appointment, so it's probably fine.

Mr. Jeter - No further questions, Your Honor.

Judge Kimball - Cross examination?

Mr. Gettys - Thank you, Your Honor.

Judge Kimball - Ms. Kennedy, do you need a break?

Mr. Gettys - I'm sorry.

A I'm fine.

Judge Kimball - Okay.

CROSS EXAMINATION

BY MR. GETTYS:

Q Ms. Kennedy, there are two issues before the Court, I guess, based upon your report. That is, number one, you believe that the trustee acted in good faith, and the second would be whether Mr. Dereede and Tyre Dealer Network, or TDN, had probable cause, correct?

A Yes, sir. I totally agree with that assessment.

Q And you, in your report, made no finding. In fact, you specifically stated, I make no finding as to probable cause; correct?

A That's correct. Yes, sir.

Q And you, in your report, did make - - - or provided your information, provided your opinion as trust protector as to whether the trustee acted in good

faith?
A Yes, sir.
Q And you testified earlier as to the documents you read, your experience, and all of that. But the one thing that wasn't clear to me in your report is, did you in your analysis at that time make a distinction between a creditor and a beneficiary, in regards to the no contest clause?
A I guess I based my determination as to the status of both Mr. Dereede - - - Is it Dereede or Dereede?
Q Dereede.
A Dereede.
Q Yes, ma'am.
A And Tyre on your pleadings.
Q Yes, ma'am.
A In that you indicated they were qualified beneficiaries. I took what you put in your pleadings - - -
Q Yes, ma'am.
A To be how you viewed yourself, and so I - - - As I said, I differ from Professor Medlin that it's clearly a creditor. I'm not sure exactly what Tyre is.
Q Right. But in your analysis, your analysis was based upon my representation of both parties as a

beneficiary or a recipient of a gift to some degree, correct?

A Yes. And indeed, the no contest clause only applies to people - - -

Q Yes, ma'am.

A Who are beneficiaries, using that term broadly.

Q Right. And it does not apply to creditors?

A That's correct.

Q Okay. And Article 6 - - - Do you have the trust in front of you? I'm sorry.

A I do.

Q Okay. Article 6 - - -

A How about tell me what page that's on?

Q Yes, ma'am. It's 6-1.

A Okay. Yes, sir.

Q Now, Article 6, when reading the trust, my - - - Section 4 deals with specific distributions of trust property, correct?

A (Indicating yes)

Q And 4(a), the heading, again is specific distributions of real estate and the like?

A Yes, sir.

Q So the trust itself refers to both parties as a beneficiary devisee, correct?

A I don't disagree with that.

Q And did - - -
A And that's why I'm saying I was differing from Professor Medlin, that they were - - - they were strictly creditors. I'm not sure exactly what they are. I think they are a beneficiary.
Q Well, I'm just - - - I'm not asking if they are that yet.
A Okay.
Q But I'm asking, this is the language in the trust - - -
A Yes.
Q That we have to go by?
A Yes.
Q And if you go to Article - - -
A I will agree with you.
Q Yes, ma'am. Article 5, Section 2, which is Page 5-1, I'm sorry.
A Yes.
Q The heading on that, Immediate Distribution of Specific Devises - - -
A Yes, sir.
Q Correct?
A Yes, sir.
Q And it talks about, after - - - Again, as soon as practicable after my death, after handling the

specific distributions under Article 6, then you come back to Article 5 to deal with the business of the trust, so to speak, correct?

A (Indicating yes)

Q And if you flip - - - And I'm sorry to have you flipping all around.

A That's okay.

Q But if you flip all the way to the no contest provision, 14-22, Subsection E, if you file a creditor's claim, then you are in contravention of the - - -

A No, I - - -

Q No contest clause?

A I disagree with that.

Q Well, please tell me why.

A Because if you file a creditor's claim that's later adjudicated to be an invalid claim - - - So merely filing a claim is - - - does not invoke the no contest clause. The claim would have to be disallowed. You'd have to come to court to prove the claim, and then the Court determines that it's an invalid claim. But it is a risk.

Q But you'd have to establish that there had been a breach for the Court to make that determination of the no contest clause? It's similar to (b) and (c).

Those also require, under the code, probable cause. So you triggered the no contest provision, but it still has to come before the Court for the determination as to whether in (b), as it says, if the trustee acted in good faith or (c), as it says, whether that is an invalid objection. So the same argument that you make as to why (e) doesn't apply really is in (b) and (c) as well, correct?

A Well, there - - - there is a distinction in - - - In (b), it's the trustee's action that's determined to have been taken in good faith. Whereas, (c) and (e) is, it's the beneficiary's action that's determined by the Court. So there is a distinction. But yes, I certainly agree with you that the Court has to make a determination, does the no contest clause apply?

Q Right. And in 14-16 - - - And I'm not sure what page that is. I am sure. That's - - - I think it is Page 14-16. As opposing counsel pointed out, Section 13, captions aren't to be interpreted as - - - no significance in the construction or interpretation of my trust agreement. So how they - - - these people were defined in the trust agreement by the captions, and therefore how they were pled to be consistent with that, really doesn't have much legal significance, does it?

A Well, the term devise means, under the probate code, something that's left under the terms of a will.
Q Right.
A So when you asked me where that - - - or I'm sorry. Mr. Jeter asked me, would I have drafted this document?
Q Right.
A No. I would not have called it a specific devise. I would have at least said specific distributions, because that's what you have under a trust, not a devise. So I certainly agree the captions are not to be interpreted, but it does say, make distributions of my trust assets. So there is a distribution to be made to Tyre. As I said, I'm not sure what Tyre is. I'm just not as comfortable, as Professor Medlin was, in saying they're strictly a creditor.
Q Okay. So do you disagree with the fact that they could be a creditor?
A They didn't file a claim.
Q Which, again, if they had filed a claim and they weren't a creditor, they would have triggered the no contest clause?
A If the Court determined that they weren't, I would think that they're - - - At least there's some presumption that there's some validity to their claim

because - - -

Q It's in the trust?

A The settlor mentions that they are a creditor's claim.

Q And if I - - -

A And it's kind of a Catch-22.

Q It is, and - - -

Judge Kimball - You don't need to talk about that anymore.

Q I know. But in fact - - -

Judge Kimball - Let's move on.

Mr. Gettys - I'm sorry, Your Honor.

FURTHER EXAMINATION

BY MR. GETTYS:

Q In fact, in interpreting this trust, you have to look at the settlor's intent, correct?

A Certainly, yes.

Q Okay. So in your determination initially about whether there was - - - Well, I'm sorry. I'm not going to go back there. After the sale of the property - - - And I remember your language was, it would have been foolish, if not breach of her fiduciary duty, to immediately distribute. But after the sale of the property, had the trustee read - - -

Judge Kimball - Which property are we talking

A Well, I think I said - - -
Q Or close to - - -
A I said it's difficult to know how much needs to be paid until you know how much you've got, but I guess - - - You know, certainly Mr. Dereede and Tyre could have provided something to the trustee and said, here's the note, here's our calculation, and they could have done that.
Q And the trustee could have requested same?
A Yeah.
Q Yes, okay.
A I guess the trustee could have requested it.
Q So as to probable cause, you've expressed no opinion in your report?
A I have not.

Mr. Gettys - Okay. Thank you very much. No further questions.

Judge Kimball - Ms. Kennedy, let me look through my questions. Hang on a second.

A (Indicating yes)

FURTHER EXAMINATION

BY JUDGE KIMBALL:

Q As trust protector, please tell me, what is the current status of the trust?
A I honestly don't know.

Q You don't know what assets, or claims, or claims against the estate - - -
A (Indicating no)
Q You don't even know what the status of the claims are or anything like that?
A No, sir, Your Honor. I think that's an appropriate question to ask the trustee, but I do not know the answer.
Q So you don't know what you're protecting?
A I'm protecting the interest of the beneficiaries and of the settlor and what she set up.
Q For the purposes of this case and what I've got to do as the ultimate interpreter of the document, what is it about the drafting of this trust that makes you say you wouldn't have drafted it, as it pertains to what's going on here today?
A Professor Medlin called it a maze. It is.
Q All right.
A I certainly don't put pages in my document such as Page 9-1, Article 9, Marital Trust, that says there shall be no marital trust.
Q Well, I don't - - -
A And some of the - - -
Q That doesn't affect what we're doing.
A No, sir.

Q I'm - - -
A It doesn't affect this.
Q I'm trying to focus on what I need to decide.
A It's - - - It's very confusing. I think it could have been better stated. Certainly, I think if you read through the dispositive provisions, you do find that these are preferred distributees, to use that term. Tyre and Mr. Dereede are preferred distributees. As soon as practicable is not exactly a term of art. It requires some discretion. It might have been better to have said, but no earlier than. Because there is - - -
Q Or no later than?
A A provision in there that the trustee shall pay - - - And this is on Page 5-2. Shall pay final medical expenses, legally enforceable claims against me, expenses of administration of trust, and - - - You know, taxes, I don't think was an issue here. But there is a requirement that the trustee is to pay these. Well - - -
Q That would be so in any event, wouldn't it?
A It's - - - It's some - - -
Q If you had the money to do it?
A Yes, and it's secondarily the trustee's responsibility. It says, unless other provisions for