

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM THE PROBATE COURT  
NINTH JUDICIAL CIRCUIT

Tamara C. Curry, Judge

RECEIVED

OCT 30 2017

S.C. SUPREME COURT

Probate Court Case No. 2013-ES-10-1054

Appellate Case No. 2017-002137

Richard Stein, Sarah Stein, and Nichole Stein Jones..... Respondents,

v.

Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein  
..... Appellant.

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**MOTION TO DISMISS**

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Christy Ford Allen, Esquire  
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ATTORNEYS FOR APPELLANT  
Victoria Martindale Stein, Personal  
Representative of the Estate of Paul J. Stein

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Appellant Victoria Stein as Personal Representative of the Estate of Paul Stein (hereinafter “Stein”) hereby moves to dismiss the Cross-Appeal of Intervening Respondent Marian Stein-Steinfeld on the grounds that the Notice of Cross-Appeal served by mail on October 19, 2017 is untimely. South Carolina Code section 62-1-308 governs appeals from probate court. The statute provides in pertinent part:

A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court.

S.C. Code Ann. § 62-1-308(a). Intervening Respondent Marian Stein-Steinfeld asserted certain claims against Appellant Stein in the underlying probate action. (See Ex. A – Stein-Steinfeld’s Answer and Cross Claim to Amended Petition). The Stein-Steinfeld claims against Appellant Stein were distinct from the claims and counterclaim between the Stein Children (Plaintiffs in probate action) and Stein.<sup>1</sup> (See Ex. B – The Stein Children’s Amended Petition) (Ex. C – Victoria Stein’s Answer to Amended Petition and Counterclaims).

Appellant Stein filed a Motion for Summary Judgment on all of Stein-Steinfeld’s causes of action prior to trial, and the probate court granted Appellant’s Motion for Summary Judgment by reasoned Order dated April 6, 2017. (See Order attached to Notice of Cross- Appeal). Stein-Steinfeld filed a timely Motion to Alter or Amend said Order dismissing all of her claims, which was denied by Order dated September 14, 2017 (and received by all parties on September 15,

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<sup>1</sup> Appellant Stein received the Order denying her Motion to Alter or Amend the court’s judgment on the claims between herself and Respondents the Stein Children on October 9, 2017, and filed her appeal within the 10-day deadline, even though it was filed in the Supreme Court pursuant to section 62-1-308 (l).

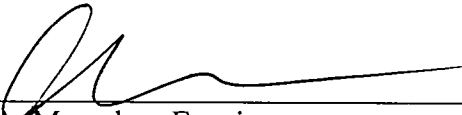
2017). Id. Stein-Steinfeld, therefore, had until September 25, 2017 to appeal from the probate court's orders. She did not do so.

Neither is posturing this Notice of Appeal as a Cross-Appeal appropriate because the judgment from which the original appeal arises did not include Intervening Respondent Stein-Steinfeld or her claims as they had already been summarily dismissed prior to the probate court trial. The court's Order confirms that Stein-Steinfeld did not participate in the trial. (September 14, 2017 Order at p.2).

Based on the plain language of section 62-1-308, the notice of appeal "must be filed" within the ten-day period. See In re Estate of Cretzmeyer, 365 S.C. 12, 615 S.E.2d 116 (2005); citing State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction). Stein-Steinfeld's Notice of Appeal was served thirty-four (34) days after written receipt of the Order denying the Motion to Alter or Amend the judgment dismissing Stein-Steinfeld's claims. Her appeal is not timely.

#### CONCLUSION

Appellant Stein respectfully requests that the court dismiss the Stein-Steinfeld cross-appeal as not timely filed.

  
\_\_\_\_\_  
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ATTORNEYS FOR APPELLANT, Victoria Martindale  
Stein, Personal Representative of the Estate of Paul J. Stein

CHARLESTON, SC  
October 25, 2017

# EXHIBIT “A”

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
IN RE ESTATE OF: )  
PAUL J. STEIN )  
RICHARD STEIN, SARAH STEIN and )  
NICHOLE STEIN JONES, )  
Petitioners, )  
v. )  
VICTORIA MARTINDALE STEIN, )  
Personal Representative of the Estate )  
of PAUL J. STEIN, )  
Respondent, )  
MARIAN STEIN-STEINFELD )  
Intervening Respondent.

IN THE PROBATE COURT  
CASE NO: 2013-ES-10-1054

**ANSWER AND CROSS CLAIM OF  
INTERVENING RESPONDENT  
TO AMENDED PETITION**

Marian Stein-Steinfeld, the Intervening Respondent, answering the Amended Petition herein, and crossclaiming against Respondent Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein, alleges and states as follows:

1. The Intervening Respondent, Marian Stein-Steinfeld, resides in Germany.
2. Intervening Respondent and her sister, Natasha Ewert, are the sole surviving siblings of Paul J. Stein.
3. Paul J. Stein is the grandson of Hanna Bekker vom Rath who lived in Germany her entire life from 1893 until 1983.
4. During her lifetime Hanna Bekker vom Rath acquired and owned an extensive collection of valuable paintings, other works of art, and

furnishings, and also herself produced numerous paintings and works on paper (hereinafter collectively "Hanna's Collection").

5. At the time of his death Paul J. Stein had in his possession an extensive number of items from Hanna's Collection.
6. At the time of her death Hanna Bekker vom Rath had two surviving children, Barbara Rawling and Maximiliane Kraft. Barbara Rawling is the mother of Natasha Ewert, Intervening Respondent, and Paul J. Stein.
7. Hanna Bekker vom Rath duly executed and recorded her last will and testament in Germany.
8. In her last will and testament, Hanna Bekker vom Rath directed the disposition of Hanna's Collection.
9. The laws of Germany control the interpretation and legal effect of the terms of the last will and testament of Hanna Bekker vom Rath.
10. Under the terms of her last will and testament, Hanna Bekker vom Rath directed that each of her three grandchildren - Natasha Ewert, Intervening Respondent, and Paul Stein - was a final beneficiary and legatee of Hanna's Collection, but only if he or she survived the death of one of her two children - Barbara Rawling and Maximiliane Kraft. Until the deaths of Barbara Rawling or Maximiliane Kraft, each of the three grandchildren had only a contingent remainder interest in Hanna's Collection, subject to the responsibilities of final beneficiaries to each other under German law.
11. Because Paul J. Stein predeceased Barbara Rawling and Maximiliane Kraft, his contingent remainder interest in Hanna's Collection never vested

and expired. Upon his death he lost any and all interest in Hanna's Collection under the last will and testament of Hanna Bekker vom Rath.

12. No legal title to the portions of Hanna's Collection remaining in his possession at the time of his death ever vested in Paul J. Stein.
13. Neither Paul J. Stein, nor his personal representative, nor his heirs and legatees have legal title to the items in Hanna's Collection that were in Paul J Stein's possession, custody, and control at the time of his death and are now in the possession of Respondent.
14. Respondent has no legal or equitable title to the items in Hanna's Collection that were in the possession, custody, or control of Paul J. Stein at the time of his death that are now in her possession and are the subject of the Amended Petition brought herein.

**FOR A FIRST DEFENSE TO THE AMENDED PETITION**

15. Each and every allegation of the Amended Petition not hereinafter admitted, qualified, or explained, is deemed to be denied.
16. Intervening Respondent admits the allegations of paragraphs 1, 2, 3, 4, 5, and 6 of the Amended Petition.
17. Intervening Respondent lacks sufficient information and knowledge to admit or deny the allegations of paragraph 7 of the Amended Petition.
18. As to the allegations of paragraph 8 of the Amended Petition Intervening Respondent refers to the specific terms of Paul J. Stein's last will and testament, and denies any allegations inconsistent therewith.

19. As to the allegations of paragraph 9 of the Amended Petition, Intervening Respondent admits the referenced emails and spreadsheet show Decedent's specific intent to have the items described in the emails and spreadsheet bequeathed to Petitioners.
20. The allegations of paragraphs 10 of the Amended Petition express a conclusion of law that the Intervening Respondent is required neither to admit nor deny.
21. Intervening Respondent admits, upon information and belief, the allegations of paragraph 11 of the Amended Petition.
22. Intervening Respondent admits, upon information and belief, the allegations of paragraph 12 of the Amended Petition.
23. Intervening Respondent lacks sufficient information and knowledge to admit or deny the allegations of paragraph 13 of the Amended Petition.
24. The allegations of paragraph 14 of the Amended Petition express a conclusion of law that the Intervening Respondent is required neither to admit nor deny.
25. Paragraph 15 of the Amended Petition expresses a request for relief and does not allege any facts to be admitted or denied.

**FOR A SECOND DEFENSE AND A  
CROSSCLAIM AGAINST RESPONDENT**

26. Intervening Respondent realleges her previous allegations as if fully set forth herein.
27. Upon information and belief, at the time of his death, the numerous items of Hanna's Collection in the possession, custody, and control of Paul J.

Stein included, but may not be limited to, those on the list attached as Exhibit 1 hereto.

28. Under the last will and testament of Hanna Bekker vom Rath and her accompanying, enforceable memorandum elaborating on her devise of Hanna's Collection, Hanna Bekker vom Rath granted a life estate to Barbara Rawling (Mother of Intervening Respondent and Paul J. Stein) in and to those specific items of Hanna's Collection that were in the possession, custody, and control of Paul J. Stein.
29. The contingent remainder interest of Paul J. Stein in Hanna's Collection expired upon his death and never vested.
30. Intervening Respondent has a contingent remainder interest in the items from Hanna's Collection that were in the possession, custody, or control of Paul J. Stein, and has an equitable interest in the form of a final remainder interest that will vest and evolve to legal title if she survives the death of Barbara Rawling or Maximiliane Kraft.
31. Intervening Respondent is entitled to a declaration of this court: (1) that Respondent has no right, title, or interest in or to the items of Hanna's Collection that were in the possession, custody, or control of Paul Stein upon his death and are now in her possession, custody, or control; (2) that Barbara Rawling has a life interest in those items; and (3) that Intervening Respondent has a contingent remainder interest in those items.

**FOR A THIRD DEFENSE AND A  
SECOND CROSSCLAIM AGAINST RESPONDENT**

32. Intervening Respondent is entitled to recover for herself and for the benefit of Barbara Rawling, her mother, the items in Hanna's Collection that were in the possession, custody, and control of Paul J. Stein, and are now in the possession, custody, or control of Respondent as personal representative of the estate of Paul J. Stein.
33. Intervening Respondent is entitled to an order of replevin requiring Respondent to deliver to Intervening Respondent for herself and for the benefit of Barbara Rawling, her mother, all items in Hanna's Collection in her possession, possession, or control.

**FOR A FOURTH DEFENSE AND A  
THIRD CROSSCLAIM AGAINST RESPONDENT**

34. Intervening Respondent realleges her previous allegations as if fully set forth herein.
35. Intervening Respondent will suffer irreparable harm if Respondent transfers, sells, or otherwise disposes of any of the items of Hanna's Collection that are in Respondent's possession, custody, or control.
36. Intervening Respondent does not have an adequate remedy at law.
37. Intervening Respondent is entitled to an injunction prohibiting the transfer, sale, or other disposition of the items of Hanna's Collection in the possession, custody, or control of Respondent.

**FOR A FIFTH DEFENSE AND A  
FOURTH CROSSCLAIM AGAINST RESPONDENT**

38. Intervening Respondent realleges her previous allegations as if fully set forth herein.
39. Paul J. Stein received and procured the numerous works from Hanna's Collection within the confidential, fiduciary, family relationship among the other family members who were life or contingent final beneficiaries of Hanna's Collection under her will.
40. Respondent would be unjustly enriched by her continued retention and possession of the items from Hanna's Collection.
41. Intervening Respondent is entitled to a determination that Respondent holds the items of Hanna's Collection in her possession, custody, or control, in a constructive trust for the benefit of Barbara Rawling and Intervening Respondent.

WHEREFORE, Intervening Respondent prays that the court enter judgment in her favor for the various forms of relief alleged herein, and for such further and other relief as is just and proper.

PRATT-THOMAS EPTING & WALKER, P.A.



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Tel: 843.727.2200  
Email: [gtw@p-tw.com](mailto:gtw@p-tw.com)

ATTORNEYS FOR  
INTERVENING RESPONDENT

November 18, 2014

Charleston, South Carolina

CERTIFICATE OF SERVICE

Undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand, or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 18th day of November, 2014, in Charleston, South Carolina.

Wanda Sue Dennis

# EXHIBIT “B”

STATE OF SOUTH CAROLINA ) IN THE PROBATE COURT  
COUNTY OF CHARLESTON ) Case No.: 2013-ES-10-1054  
2014 OCT -7 AM 10: 14  
IN RE ESTATE OF: )  
PAUL J. STEIN )  
PROBATE COURT  
CHARLESTON COUNTY )  
RICHARD STEIN, SARAH STEIN and )  
NICHOLE STEIN JONES, )  
) )  
Petitioners, )  
) )  
v. ) AMENDED PETITION  
) )  
VICTORIA MARTINDALE STEIN, )  
Personal Representative of the Estate of )  
PAUL J. STEIN, )  
Respondent, )  
) )  
MARIAN STEIN- STEINFELD, )  
Intervening Respondent, )

**TO: ALL INTERESTED PARTIES OF THE ABOVE-NAMED ACTION**

The Petitioners, Richard Stein, Sarah Stein and Nichole Stein Jones, hereby petition the Court as follows:

1. That the parties to this action and subject matter are properly before the Probate Court of Charleston County and that this Court has jurisdiction over the parties and subject matter herein.
2. That the Decedent, Paul J. Stein, died on or about July 2, 2013 at the Medical University of South Carolina. At the time of his death, decedent was a resident of Charleston County, South Carolina.
3. That Petitioners, Richard Stein, Sarah Stein and Nichole Stein Jones, are the natural born children of Paul J. Stein, whose estate is being administered in the Charleston County Probate Court, Case No. 2013-ES-10-1054.

4. That by order dated July 16, 2013, the Probate Court for Charleston County previously appointed Respondent Victoria Martindale Stein as the Personal Representative for the Estate of Paul J. Stein and she is currently serving in such capacity.

5. That the Intervening Respondent Marian Stein-Steinfeld is the sister of the Decedent and claims an interest in the property or transactions that are the subject matters of this action.

6. That on February 20, 2013 Decedent, Paul Stein, signed, sent, and transmitted to his sister, Marian Stein-Steinfeld, a personal e-mail stating his intention with regards to the disposition of certain personal property, including artwork and other property, that he possessed and/or owned at the time of his death. The e-mail states in pertinent part as follows:

“So I explained to Sarah that my solicitor suggestion was to catalog the art and itemize the furniture pieces to whom I want to be the recipient. The furniture was an easy task since there are only 4 major pieces. The art on the other hand has been daunting because he also wanted appraised values for each piece. What I did to simplify the issue was to list the art pieces that Tori and I have collected together and listed them, all remaining art, sculptures (wood, stone & bronze) and the contents of the two grey cabinets will belong to the HBvR estate which is to be passed on to my three children. Should a question arise as to whether a certain piece is in fact part of the HBvR estate that you would be the mediator.”

A copy of the email is attached hereto as “Exhibit A” and is incorporated herein by reference.

7. That on March 28, 2013 Decedent, Paul Stein also presented and transmitted a list, via personal e-mail to his daughter, Nichole Stein Jones, which contained an excel spread

sheet entitled, "Art bought by Paul & Tori." The e-mail also included a notation by the Decedent stating:

*"Collection of Art from Hanna Bekker vom Rath (HBvR) are to be divided between Richard, Nichole & Sarah Heirlooms from HvBR such as Frankfurter Cabinet, 3 chairs, and chest are to be given to Richard, Nichole and Sarah All stamp and coin collection to be given to Sarah"*

Copies of the email and spreadsheet are attached hereto as "Exhibit B" and are incorporated herein by reference.

8. That as provided in Article II of Decedent's Last Will and Testament dated November 24, 2008, which was previously filed with the Court, any written statement or lists disposing of certain items of the Decedent's tangible personal property shall be considered determinative with respect to all gifts made therein.

9. That pursuant to South Carolina Probate Code § 62-2-512, the above-referenced emails and spreadsheet show Decedent's specific intent to have the items described in the emails and spreadsheet bequeathed to Petitioners, Richard Stein, Sarah Stein and Nichole Stein Jones.

10. That the emails and spreadsheet constitute a written statement and/or list of tangible personal property referred to in the Decedent's Last Will and Testament as provided by and within the meaning of South Carolina Probate Code § 62-2-512.

11. Upon information and belief, the email, a copy of which is set out as "Exhibit A" and is attached herein, was sent by the Decedent to Respondent Marian Stein-Steinfeld on February 20, 2013, from his personal computer.

12. That the email, a copy of which is set out as "Exhibit B" and is attached herein, was sent to Petitioners, from their father (Decedent) on March 28, 2013, from his personal laptop

computer, while he was hospitalized at the Medical University of South Carolina and where Decedent ultimately remained until the time of his death on July 2, 2013.

13. That Petitioners have presented copies of the above-referenced emails and spreadsheet to Decedent's Personal Representative, Victoria Martindale Stein, and requested that she abide by their father's written statements, and she, as Personal Representative, has refused to do so.

14. Petitioners bring this action pursuant to S.C. CODE ANN. § 15-53-30. An actual and justiciable controversy has arisen and now exists between the Petitioners and the Respondent as to whether the emails and spreadsheet above-referenced constitute a written statement and/or list of tangible personal property referred to in the Decedent's Last Will and Testament as provided by and within the meaning of South Carolina Probate Code § 62-2-512. Petitioners are entitled to a declaratory judgment declaring that the emails and spreadsheet above-referenced constitute a written statement and/or list of tangible personal property referred to and as provided in Article II of the Decedent's Last Will and Testament and under Section 62-2-512 of the South Carolina Probate Code.

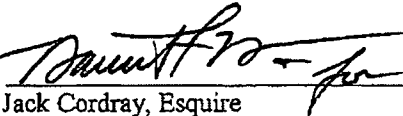
15. Pursuant to S.C. CODE ANN. § 62-1-111, Petitioners request an award of costs and expenses, including reasonable attorney's fees.

WHEREFORE, Petitioners, Richard Stein, Sarah Stein and Nichole Stein Jones hereby pray for an Order:

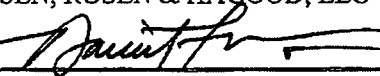
(a) Declaring, considering, and authorizing Decedent's emails and spreadsheet above-referenced to be a written statement or list disposing of items of tangible personal property as provided in Article II of the Decedent's Last Will and Testament and under Section 62-2-512 of the South Carolina Probate Code;

- (b) Awarding them attorneys' fees, costs, and expenses incurred in in this action; and
- (c) Awarding them such other legal and equitable relief as to the Court seems necessary and proper.

CORDRAY LAW FIRM

By:   
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Cordray Law Firm  
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Charleston, SC 29413-2857

ROSEN, ROSEN & HAGOOD, LLC

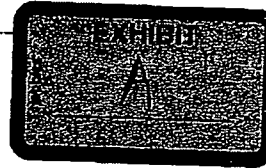
By:   
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(843) 577-6726

ATTORNEY FOR PETITIONERS

Charleston, South Carolina  
October 7, 2014.

Von: Paul Stein paul@abi.comcastbiz.net  
Betreff: Update  
Datum: 20. Februar 2013 23:26  
An: Marian Stein-Steinfeld Marian.Stein-Steinfeld@gmx.net

February 12, 2013



Dear Marian,

Thank you for your kind words of encouragement in your resent email. Word does get around fast with the internet. I am in good spirits although once in a while I feel used and worn out. Thank you for thinking of Tori also; she was delighted with your consideration. This letter will be disjointed because I started and stop the letter several times

Before I go on I can't remember if I thanked you for the catalog so I maybe repeating myself none the less I can't thank you enough. Many thanks for the "Phanomen Expressionismus" catalog; it arrived in a plastic sleeve; somewhere in transit your letter was exposed to water and your written note was not discernible. However the stamps and catalog survived. I will be taking it with me to Largo this weekend and leave it with Barbara to read at her leisure. Sarah has taken some time from work and will accompany me on the drive; I am so delighted with her company.

Last Thursday (Feb. 8<sup>th</sup>) we had our first real rain fall since the beginning of the New Year. Normally by this time of the year we would have had 160 cm of rain. 50 cm of rain fell last Thursday; yesterday, Monday another 50 cm of rain fell to the ground and today it appears that an additional 60 cm is accumulating on the ground. The skies have been gray for the past two days unloading their liquid elixir.

The garden is in ready for spring; forsythia bush is in full bloom with it small yellow leafy peddles; the crabapple tree has opened its blooms; the 20 camellias are all covered in their various hue blossoms and the azaleas have multi-color early bloomers. It's a wonderful sight to see and enjoy the spring time festive colors so early.

2/19/2013

I had originally thought that I would finish this letter in Largo but after we arrived I developed a fever and had to start taking antibiotic to combat a cold over all I felt gloomy. Our visit was a very brief short visit mid-day Friday retuning at 4:30 to take her out to dinner; Saturday was the same; always

keeping a distance with the hope of not introducing my cold to her. About four weeks ago Barbara had a fall while walking home from the dining area one evening. No broken bones or teeth just contusions on her knees, hands and nose. Looking at her during our visit there was no tell-tail signs of her mishap. Her friends jokingly told me she was racing one of the golf carts and tripped.

We stayed at the same Hampton Inn that we stayed at for Barbara's 91<sup>st</sup> birthday. Sunday we departed for Charleston early morning arriving in Charleston before 6 PM. Sarah was a tremendous help by driving both ways solo while I dozed waking up at key moments with directions. In between my dozing we would talk through many topics; one topic of concern was how the remaining pieces from the HBvR estate would convey to them (my children).

So I explained to Sarah that my solicitor suggestion was to catalog the art and itemize the furniture pieces to whom I want to be the recipient. The furniture was an easy task since there are only 4 major pieces. The art on the other hand has been daunting because he also wanted appraised values for each piece. What I did to simplify the issue was to list the art pieces that Tori and I have collected together and listed them, all remaining art, sculptures (wood, stone & bronze) and the contents of the two grey cabinets will belong to the HBvR estate which is to be passed on to my three children. Should a question arise as to whether a certain piece is in fact part of the HBvR estate that you would be the mediator.

Once while Nichole was visiting I downloaded a copy of my photo catalog files which has been sitting in my computer because I lacked the talent to organize it into a finish product.

The CT-scan that was performed last Monday the 11<sup>th</sup> displayed some to no reduction in size of the internal lymph nodes. The periportal and periaortic nodes (these are near the kidneys) have increased in size by as much as .5 cm. I was scheduled to have the T-cell infusion On March 1<sup>st</sup> but it has been changed to March 15<sup>th</sup> (at my request) and today I learned that the date my change to March 22<sup>nd</sup>; I will learn in the morrow a final date. There is a lot of coordination behind the scenes that occur to dovetail the many schedules involved.

Yesterday I had a consultation with a radiation oncologist and today I spent several hours in a prone position while oncologist physics measured me from head to toe, fingertip to fingertip in addition to my thick and thin areas in preparation

for a Total Body Irradiation (TBI).

February 20, 2013

I thought I would wait until I could provide you with a firm date of the T-cell infusion before sending this off to you and it just arrive so I will make it an attachment to this email.

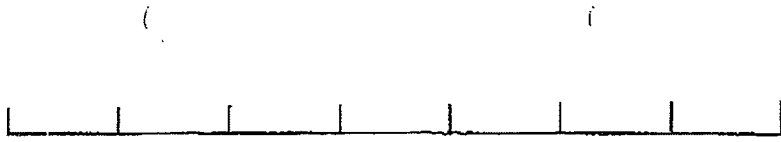
Love,

Paul

843.452.6981 US

011.49.1512.058.7404 Germany

March 2013						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22 PICC line placement	23
24 Hollings Infusion 10:30 Admit to ART 5 West	25 Day -4 Fludarabine	26 Day -3 Fludarabine	27 Day -2 Fludarabine	28 Day -1 TBI	29 Day 0 Transplant	30 Day +1 Possible Discharge
31						

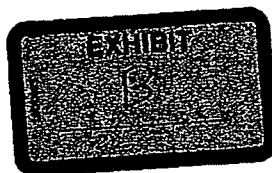


From: Paul Stein <ps@bath.com>  
Subject: Art bought by Paul & Tori  
Date: March 21, 2013 2:03:15 PM CDT  
To: "Nichole Stein (nichole.stein@gmail.com)" <nichole.stein@gmail.com>



• Attached: 13/03

Art bought... 13/03



Behrens, Howard	<i>Roof Top Garden (Mexico)</i> Giclee on paper	2003	30 x 37 1/2 inches
Chihuly, Dale	<i>Ikebana Geysers</i> Intaglio/Lithograph with handwork	106/175	25 x 37 inches
Godard, Michael	<i>Ganster Martini (2 shots &amp; a splash)</i> Giclee on canvas	2007	28 x 37 1/2 inches
Nechita, Alexandra	<i>Winning Together</i> Lithograph	96/175	24 x 19 inches
Simbari, Nicola	<i>Caribbean Fruit</i> Sergraph	330/2500	31 x 43 inches
Sutzkever, Rina	<i>Untamed Beauty</i> Embellished lithograph on board	168/175	28 x 20 inches
Dr. Seuss	<i>Horton Line Drawing</i> Pigment Print on Somerset Enhanced Satin Paper	2003	15 x 21 inches
	<i>Horton Hears A Who</i> Line Drawing	159/850	9 x 12 inches
	<i>They've Prayed They Are Persons</i>	1285/2500	

		9 x 12 inches
	1443/2500	
	<i>Artist Worrying About His Next Book</i>	
		11 1/4 x 15 1/4 inches
	CP28/155	
Nakisa, Seika	<i>Romantic Escape</i>	
	Giclee on silver foil	
		12 x 16 inches
	44/195	
Steynovitz, Zamy	<i>The Wedding II</i>	
	Serigraph	
	1995	
		6 1/2 x 4 7/8 inches
	16/300	
	<i>Shabbat Bouquet</i>	
	Serigraph	
	1995	
		4 3/4 x 6 3/8 inches
	A/P	
Walt Disney	Anamation	
	<i>Bambi</i>	
	Serigraph	
		11 3/4 x 8 1/8 inches
	Anamation	
	<i>How to Play Golf</i>	
	Serigraph	
		11 3/4 x 8 inches

Life Insurance on Paul Stein

Jefferson-Pilot	JP5241675	\$ 500,000.00		To the Estate of
State Farm	1973-5678	\$ 750,000.00	Term	To the Estate of
State Farm	1934-2832	\$ 250,000.00	Universal Life	To the Estate of
State Farm	2283-8363	\$ 280,000.00	Term	Tori
		<u>\$ 1,780,000.00</u>		

		Tori		
		1780	\$ 400,000.00	
Jefferson-Pilot	JP5241675	LI/ est of	\$ 125,000.00	
State Farm	1973-5678	LI/ est of	\$ 187,000.00	
State Farm	1934-2832	LI/ est of	\$ 62,500.00	
State Farm	2283-8363	Tori	\$ 280,000.00	
			<u>\$ 1,054,500.00</u>	

			Richard	Nichole	Sarah
Jefferson-Pilot	JP5241675	LI/ est of	\$ 125,000.00	\$ 125,000.00	\$ 125,000.00
State Farm	1973-5678	LI/ est of	\$ 162,500.00	\$ 162,500.00	\$ 162,500.00
State Farm	1934-2832	LI/ est of	\$ 62,500.00	\$ 62,500.00	\$ 62,500.00
			\$ 350,000.00	\$ 350,000.00	\$ 350,000.00
		cash	\$ 333,333.00	\$ 333,333.00	\$ 333,333.00
			<u>\$ 683,333.00</u>	<u>\$ 683,333.00</u>	<u>\$ 683,333.00</u>

Collection of Art from Hanna Bekker vom Rath (HBvR) are to be divided between Richard, Nichole & Sarah  
 Heirlooms from HBvR such as Frankfurter Cabinet, 3 chairs, and chest are to be given to Richard, Nichole & Sarah  
 All stamp and coin collection to be given to Sarah

	Alex
\$	100,000.00
\$	-
	<u>0</u>
\$	100,000.00

STATE OF SOUTH CAROLINA  
COUNTY OF: CHARLESTON

IN THE PROBATE COURT  
PROOF OF DELIVERY

IN THE MATTER OF: Estate of Paul J. Stein

2014 OCT -7 AM 10:13  
CASE NUMBER: 2013-ES-10-01054

PROBATE COURT  
CHARLESTON COUNTY

On the 7<sup>th</sup> day of October, 2014, I mailed or delivered the following document, Amended Summons and Amended Petition with Exhibits A and B.

- A copy of which is attached hereto and incorporated herein, or
- The original of which is on file with the court and incorporated herein,

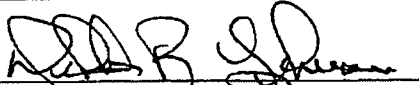
Delivery was accomplished by the following method (check appropriate box):

- personal delivery
- ordinary first class mail
- certified mail
- registered mail

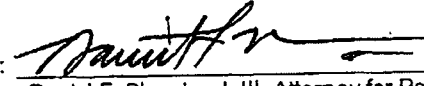
to each of the following persons at the address shown:

NAME	ADDRESS
John Massalon, Esquire and Christie Ford Allen, Esquire	Wills, Massalon & Allen, LLC, P.O. Box 859, Charleston, SC 29402
Stephen M. Slotchiver, Esquire	Slotchiver & Slotchiver, LLP, 44 State Street, Charleston, SC 29401
G. Trenholm Walker, Esquire	Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403

SWORN to before me this 7<sup>th</sup> day of October, 2014



Notary Public for South Carolina  
My Commission Expires: March 0, 2017

Signature: 

Name: Daniel F. Blanchard, III, Attorney for Petitioners

Address: Rosen Rosen & Hagood, LLC  
151 Meeting Street, Suite 400  
Charleston, South Carolina 29401

Telephone (O): (843) 577-6726

(H):

E-mail:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone (O): \_\_\_\_\_

(H): \_\_\_\_\_

E-mail: \_\_\_\_\_

# EXHIBIT “C”

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE PROBATE COURT  
Case No.: 2013-ES-10-1054

IN RE ESTATE OF: )  
PAUL J. STEIN )

RICHARD STEIN, SARAH STEIN, )  
and NICHOLE STEIN JONES, )

Petitioners, )

v. )

VICTORIA MARTINDALE STEIN, )  
Personal Representative of the )  
Estate of PAUL J. STEIN, )

Respondent. )

ANSWER TO AMENDED PETITION  
AND COUNTERCLAIMS

2014 OCT 27 PM 3:25  
PROBATE COURT  
CHARLESTON COUNTY

Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein, by and through its undersigned counsel, and responding to the Petition, hereby alleges and states as follows:

1. Each and every allegation not hereinafter specifically admitted is denied.
2. In response to Paragraph 1, jurisdiction and venue are proper, and those allegations are admitted.
3. The allegations of Paragraph 2 are admitted.
4. The allegations of Paragraphs 3-5 are admitted.
5. Respondent is without sufficient information or belief to either admit or deny the allegations of Paragraphs 6-7, other than by the contents of said emails as produced by the Petitioners in this matter. Therefore, the remaining allegations are denied.
6. Answering Paragraph 8, Respondent refers to and incorporates herein the express terms of

the Paul Stein's Will, and denies any allegation inconsistent with the terms of said documents.

7. The allegations of Paragraph 9 are denied.
8. The allegation of Paragraph 10 is a conclusion of law, which requires no answer. To the extent that those allegations constitute allegations of fact, they are denied for lack of information and belief.
9. Respondent is without sufficient information or belief to either admit or deny the allegations of Paragraph 11-12, other than the presumed existence of the referenced email record on the computer of Paul Stein. Therefore, the remaining allegations are denied.
10. Answering the allegations of Paragraph 13, Respondent admits that Petitioners presented said email to her, and admits that she has declined to recognize the email as a valid writing pursuant to the referenced statute. The remaining allegations are denied.
11. The allegations of Paragraph 14 are denied.
12. The allegations of Paragraph 15 are denied.

**FOR AN AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

13. Further answering the Petition and as a defense thereto, Respondent alleges and says that the Petition fails to state sufficient facts to state the causes of action alleged therein and the Petition should therefore be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR AN AFFIRMATIVE DEFENSE**

**(Dead Man's Statute)**

14. Further answering the Petition and as an affirmative defense thereto, Respondent alleges

and says that the Petition is barred by the South Carolina Dead Man's Statute, S.C. Code Ann. § 19-11-20 which provides, in pertinent part:

[N]o party to an action or proceeding, no person who has a legal or equitable interest which may be affected by the event of the action or proceeding . . . shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic as a witness against a party then prosecuting or defending the action . . . when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him. . . .

**FOR AN AFFIRMATIVE DEFENSE**

**(Probate Code § 62-2-512)**

15. Further answering the Petition and as an affirmative defense thereto, Respondent alleges and says that the Petition is barred by Probate Code section 62-5-512, which provides:

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title (as defined in Section 36-1-201(15)), securities (as defined in Section 36-8-102(1)(A)), and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

**FOR AN AFFIRMATIVE DEFENSE**

**(Unjust Enrichment)**

16. Further answering the Petition and as an affirmative defense thereto, Respondent alleges and says that the Petition is barred as the requested relief would constitute unjust enrichment to Petitioners and would otherwise violate principles of equity.

**FOR AN AFFIRMATIVE DEFENSE**

**(Costs and Expenses, Including Attorneys' Fees**

**Pursuant to Probate Code § 62-1-111)**

17. Further answering the Petition and as an affirmative defense thereto, Respondent alleges and says that the Respondent is entitled to an award of costs and expenses, including reasonable attorney's fee in defending this Petition. S.C. Code Ann. § 62-1-111( S.C. Law Co-op. 2014) (stating that in a formal proceeding, 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 estate that is the subject of the controversy.)

**AS TO THE COUNTERCLAIMS**

18. This Defendant/Counterclaim Plaintiff Victoria Martindale Stein, Personal Representative of the Estate of Paul Stein (PR of Estate) re-alleges Paragraphs 1 – 17 of her Answer to the Amended Petition and Counterclaim as if fully repeated herein verbatim.

19. The PR of the Estate is the duly appointed personal representative of the Estate of Paul Stein.

20. The Plaintiffs/Counterclaim Defendants are the children of the late Paul Stein (Stein Children), whose estate is being administered in Charleston County Probate Court, Case No 2013-ES-10-1054.

21. That on August 8, 1983, Paul Stein's maternal grandmother died testate in Germany, and her two daughters, Barbara Rawlings and Maximialiane Kraft, received a collection of art pursuant to her Will as probated in Germany.

22. Both Barbara and Maximialiane are living. Barbara lives in Florida and is the biological mother of Paul Stein, Natasha Ewert, and Marian Stein-Steinfeld. Maximialiane lives in

- Germany and Marian grew up and lived with with Maximiliane in Germany.
23. That sometime prior to the mid-1990s, Barbara and Maximiliane divided up their mother's art collection. Approximately half of the art collection was brought by Barbara to Florida, and Maximiliane took over her half of the art collection in Germany.
  24. That in the mid-1990s, Barbara Rawling gave the art to Paul and Natasha and they divided up the art between the two of them.
  25. That over the years since the mid-1990s and up until his death, Paul Stein sold several pieces of his art collection. In 2010, both Paul Stein and Natasha Ewert arranged to sell certain pieces from their respective collections and attested that each was the rightful and sole owner of the respective art pieces. They each sold art. They each kept the proceeds. They each presumably paid the income taxes resulting from the sale.
  26. That in 2012, Mr. Stein was diagnosed with cancer.
  27. In late 2012, Mr. Stein consulted with his long-time accountant regarding his perceived need for a substantial sum of cash to pre-pay for significant medical treatment and surgery, and his plan to sell one valuable piece of his art collection for that specific purpose. As part of said consultation, Mr. Stein requested tax projections on the sale of art.
  28. That on or about February 5, 2013, Mr. Stein sold an additional piece from his collection painted by Jawlensky, via an auction held at Sotheby's Impressionist and Modern Art Evening Sale for £1,450,00 (\$2,271,303 US Dollars). After the Sotheby's commission was deducted, Mr. Stein received \$2,104,476 on or about March 14, 2013.
  29. On or about February 13, 2013, Mr. Stein opened an investment account at the Charleston office of Merrill Lynch for the purpose of receiving and holding said monies ( hereinafter "Art Account"), and Mr. Stein titled the account as owned by himself, payable on death to

the Petitioners Richard Stein, Sarah Stein, and Nichole Stein Jones.

30. Upon information and belief, Mr. Stein promised that his children would receive the funds remaining in said Art Account, *after* the funds were used to pay off the mortgage on his home, pay medical bills then due, pay the income taxes arising from the February 5, 2013 sale, and to pay for the cancer treatment and surgery he was about to undergo.
31. On or about March 14, 2013, said monies were actually wired into the Art Account.
32. On March 15, 2013, Mr. Stein withdrew \$230,000 from the Art Account, and on March 19, 2013, Mr. Stein paid off two home mortgage loans.
33. On March 25, 2013, Mr. Stein arranged to be able to transfer funds from the Art Account to his account at TD Bank NA.
34. On April and May, 2013, Mr. Stein did in fact transfer \$16,000 from the Art Account to his personal account at TD Bank to cover other expenses.
35. On June 25, 2013, Mr. Stein transferred \$20,000 to an account belonging to Mrs. Stein at First Federal Savings & Loan for the purpose of paying/reimbursing their home owners' insurance premium, two month's health insurance premiums, life insurance premiums, and approximately \$2500 in medical and drug bills. By June 30, 2014, Mr. Stein had purchased approximately \$600,000 in mutual funds and stock, and the remaining \$1.2 million was held in cash in the Art Account.
36. Mr. Stein was admitted for cancer treatments and surgery off and on throughout the spring of 2013, and by June 2013, his prognosis was terminal.
37. Mr. Stein passed away on July 2, 2013.
38. Between July 3, 2013 and August 8, 2013, the remaining monies from the art sale in the amount of approximately \$1,840,500 US Dollars were paid directly, by combination of

security and cash transfer to the Stein children. The Stein children took control of the funds, but did not set aside the approximate amount of \$800,000 to cover the taxes and outstanding medical claims.

39. Prior to April 15, 2014, the PR of the Estate demanded that the Stein Children pay the taxes from sale of the art and the medical bills.

40. On April 15, 2014, the PR of Estate did in fact pay the income taxes resulting from the February 5, 2013 sale of the art in the amount of \$736,265, and the medical providers have submitted claims to the Estate in the amount of \$52,632.51

**FOR A FIRST COUNTERCLAIM**  
**(CONSTRUCTIVE TRUST)**

41. The Stein Children had a confidential or fiduciary relationship with their father.

42. Mr. Stein promised that the children would receive the funds from the Art Account *which remained after (1) payoff of his home mortgage loans; (2) payoff of certain medical bills already incurred, (3) payment of the income taxes arising from the sale of the Art; and (4) payment of the medical bills arising from his cancer treatment and surgery.*

43. Mr. Stein placed those funds into an account payable upon his death to the children in reliance that they would comply with this promise.

44. The Stein Children have acquired the funds in the Art Account under such circumstances that they may not in good conscience retain the beneficial interest of those monies until the income tax and medical bills obligation are paid in full with those funds.

45. Said monies were paid over to the Stein Children by accident or mistake, and counter to Mr. Stein's desires .

46. The Stein Children hold the right to the funds which were placed into the Art Account they

ought not in equity and good conscience hold and enjoy.

47. As a result, equity converts the Stein children into trustees for the benefit of the Estate of Paul Stein until such time as the disposition of those funds comports with the intentions of the original owner of said property.
48. Regardless of where those funds are located at present, a constructive trust arises and it follows the funds.

**FOR A SECOND COUNTERCLAIM**

**(UNJUST ENRICHMENT/QUANTUM MERUIT)**

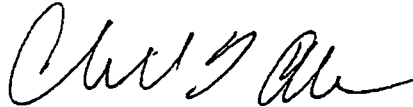
49. The benefit of the funds in the Art Account was conferred upon the Stein Children on the date of Mr. Stein's death.
50. The Stein Children received and took control of said funds.
51. The Stein Children's acceptance of said funds and retention of said funds, without setting aside monies sufficient to cover the taxes arising from the art sale and medical claims under the circumstances reference herein, make it inequitable for them to retain said benefit.
52. As result, the Stein Children have been unjustly enriched to the detriment of the Estate of Paul Stein.

WHEREFORE, the Defendant/Counterclaim Plaintiff Mrs. Victoria Stein prays this Court to issue its Order granting judgment to her against the Plaintiffs/Counterclaim Defendants for the following relief:

1. For an order requiring the imposition of a constructive trust in favor of the Estate of Paul Stein, consisting of all funds sufficient to satisfy the taxes and medicals claims referenced herein, to prevent unjust enrichment to Plaintiffs/Counterclaim Defendants,

and order that such monies be paid over and transferred in full to the Estate of Paul Stein;

2. For an order declaring that the Counterclaim Defendants have been unjustly enriched to the detriment of the Estate of Paul Stein in the amount of approximately \$800,000, and that said monies should be remitted to the Estate.
3. For an award of reasonable attorneys' fees and costs,
4. For an award of prejudgment interest of the sum due; and
5. For all such other relief as is just and proper.



---

Christy Ford Allen, SC Bar No. 0015649  
John A. Massalon, SC Bar No. 0010279  
WILLS MASSALON & ALLEN LLC  
Post Office Box 859  
Charleston, South Carolina 29402  
(843) 727-1144

ATTORNEYS FOR VICTORIA MARTINDALE STEIN

and

Stephen M. Slotchiver, Esquire  
Slotchiver & Slotchiver, LLP  
44 State Street  
Charleston, South Carolina 29401  
(843) 224-6633  
[steve@slotchiverlaw.com](mailto:steve@slotchiverlaw.com)

ATTORNEYS FOR VICTORIA MARTINDALE STEIN,  
AS PERSONAL REPRESENTATIVE OF THE  
ESTATE OF PAUL J. STEIN

CHARLESTON, SC  
October 27, 2014

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 27, 2014, a copy of the attached pleading/discovery has been served upon the following via:

X	United States Postal Service
	Hand Delivery

Jack D. Cordray, Esquire  
Cordray Law Firm  
Post Office Drawer 22857  
Charleston, SC 29413

Richard S. Rosen  
Daniel F. Blanchard, III  
Rosen, Rosen & Hagood, LLC  
Post Office Box 893  
Charleston, SC 29402

**ATTORNEYS FOR PETITIONERS**

G. Trenholm Walker, Esquire  
Pratt-Thomas Walker, PA  
Post Office Drawer 22247  
Charleston, SC 29403-2247

**ATTORNEYS FOR INTERVENING RESPONDENT  
MARIAN STEIN-STEINFELD**

  
WILLS MASSALON & ALLEN LLC

2014 OCT 27 PM 3:25  
CLERK OF COURT  
CHARLESTON, SOUTH CAROLINA

RECEIVED  
OCT 30 2017  
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM THE PROBATE COURT  
NINTH JUDICIAL CIRCUIT

Tamara C. Curry, Judge

Probate Court Case No. 2013-ES-10-1054

Richard Stein, Sarah Stein, and Nichole Stein Jones..... Respondents,

v.

Victoria Martindale Stein, Personal Representative of the Estate of Paul J. Stein  
..... Appellant.

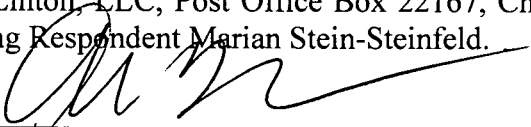
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**PROOF OF SERVICE**

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I certify that I have served the Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2017, addressed to Jack D. Cordray, Esquire, Cordray Law Firm, Post Office Drawer 22857, Charleston, South Carolina 29413, Richard S. Rosen, Esquire and Daniel F. Blanchard, III, Esquire, Rosen, Rosen & Hagood, LLC, Post Office Box 893 Charleston, South Carolina 29402, Attorneys for Respondents, and upon G. Trenholm Walker, Esquire, Walker Gressette Freeman & Linton, LLC, Post Office Box 22167, Charleston, South Carolina 29413, Attorneys for Intervening Respondent Marian Stein-Steinfeld.

October 25, 2017



---

John A. Massalon, Esquire  
Christy Ford Allen, Esquire  
WILLS MASSALON & ALLEN LLC  
Post Office Box 859  
Charleston, South Carolina 29402  
(843) 727-1144  
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[callen@wmalawfirm.net](mailto:callen@wmalawfirm.net)

ATTORNEYS FOR APPELLANT  
Victoria Martindale Stein, Personal  
Representative of the Estate of Paul J. Stein