

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2014-CP-26-7264
Appellate Case No. 2017-000471

RECEIVED
JAN 10 2018
SC Court of Appeals

Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller,.....Appellants,

v.

Geoffrey Duerk, Kristen Duerk and James M. Stewart,.....Respondents.

RECORD ON APPEAL

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Attorney for Respondents Geoffrey Duerk,
and Kristen Duerk

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2607264Jus
#19Gregory Duerk
Deborah Duerk Tiller

Donald L Duerk Jr

Geoffrey Duerk

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: CLERK OF 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

Motion to enjoin transfer resolved see email.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

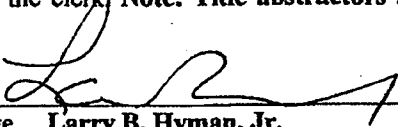
INFORMATION FOR THE JUDGMENT INDEX

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)
N/A	N/A	N/A

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

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


Circuit Court Judge Larry B. Hyman, Jr. 2152 5/5/2015
Judge Code 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:

Thomas C. Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jay Marcus Bultz 417 79Th Ave N Ste A Myrtle Beach, SC
29572-4307

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Teresa Bautz

Melanie Huggins-Ward - 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)

County of Horry)

____ Court of General Sessions

X Court of Common Pleas

Gregory Duerk, et. AL.)

vs.)

Geoffrey Duerk)

Bench Order

Case#: 14-CP-26-726

Plaintiff moved to join in
an additional party Defendant, to
Atty Jim Stewart in Florida. After
hearing Arguments of Counsel, it is

HEREBY Ordered:

- 1) The Motion is denied without prejudice
- 2) The Plaintiffs shall have the right
to take the deposition of Mr. Stewart
without restriction as to attorney-
client privilege upon Defendant's
execution of a Release Allowing
for a lifting of this restriction.

So Ordered

Cabrey, SC

10-26-15



Donald B. Hocker
Circuit Court Judge

#3: #4
1-25-16STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2607264

Gregory Duerk Deborah Duerk Tiller	Donald L Duerk Jr	Geoffrey Duerk
---------------------------------------	-------------------	----------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: <i>Clerk of Court</i>	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

Plaintiff Gregory Duerk Motion to Add Party-GRANTED

Plaintiff Gregory Duerk Motion to Enforce Settlement-CONTINUED motion is premature, must be decided at merits hearing.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

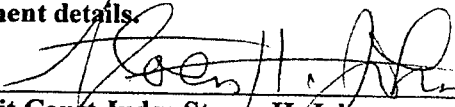
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

RECEIVED
2-5-161562
2/11/16

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


Circuit Court Judge Steven H. John

2129
Judge Code

1/25/2016
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:

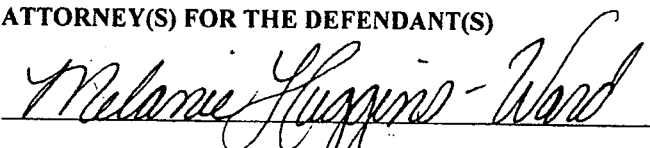
Thomas C. Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jay Marcus Bultz 417 79Th Ave N Ste A Myrtle Beach, SC
29572-4307

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Dixie Eubanks


Melanie Huggins-Ward - 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.



#4 and #5
2-22-16

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2607264

Gregory Duerk
Deborah Duerk Tiller

Donald L Duerk Jr

Geoffrey Duerk

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ 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

Plaintiff Gregory Duerk Motion to join additional parties-GRANTED
Plaintiff Gregory Duerk Motion to Enforce Settlement-GRANTED
Order being prepared by Atty. Thomas C. Brittain

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)
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W H Seals Jr
Circuit Court Judge William H. Seals Jr.

2157
Judge Code

2/22/2016
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:

Thomas C. Brittain 4614 Oleander Dr. Myrtle Beach, SC
29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jay Marcus Bultz 417 79Th Ave N Ste A Myrtle Beach, SC
29572-4307

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Kay Richardson

Melanie Huggins-Ward
Melanie Huggins-Ward - 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
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-7264

Gregory Duerk, et al.
PLAINTIFF(S)

Geoffrey Duerk, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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.
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- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

*Motion to Dismiss by defendant James M. Stewart
for lack of personal jurisdiction is GRANTED.*

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.

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N/A	N/A	\$ N/A

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Benjamin H. Culbertson, Circuit Court Judge

2148

Judge Code

Nov. 9, 2016

Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Thomas C. Brittain

William Alfred Bryan, Jr.

Jay Marcus Bultz

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Natalie Dahl

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.

Copy of Order/ form 4
filed 11-10-16 mailed to all
parties not in default on 11-16-16
Initials 67

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-7264

Gregory Duerk, et al.
PLAINTIFF(S)

Geoffrey Duerk
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

*Plaintiffs' Motion to Reconsider Order of Dismissal
as to Defendant James M. Stewart is DENIED.
(This motion is decided without oral arguments).*

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)
N/A	N/A	\$ N/A
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Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge
SCRPC Form 4C (03/2013)

2148
Judge Code

Jan. 10, 2017
Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Thomas C. Brittain

William A. Bryan, Jr.

Jay M. Bultz

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

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

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) FIFTEENTH JUDICIAL CIRCUIT

)

) C/A No.

)

)

)

)

)

)

)

)

SUMMONS

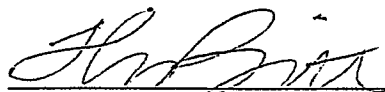
HORRY COUNTY
IN OCT 31 AM 10:23
KELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff's attorney, Thomas C. Brittain, at The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina on the 31st day of October, 2014.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire

4614 Oleander Drive

Myrtle Beach, SC 29577

(843) 449.8562

(843) 497.6124 (Fax)

Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Gregory Duerk, Donald L. Duerk, Jr. and	)	C/A No.
Deborah Duerk Tiller,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Geoffrey Duerk,	)	
	)	
Defendants.	)	

COMPLAINT
(Jury Trial Demanded)

HORRY COUNTY
14 OCT 31 AM 10:23
CLERK OF COURT
JENNIFER WARD

The Plaintiffs, Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller, by and through their undersigned attorney, complaining of the Defendant would allege and show unto the Court the following:

1. That the Plaintiff Gregory Duerk (hereinafter referred to as "Plaintiff Gregory") is a citizen of the State of South Carolina, County of Horry.
2. That the Plaintiff Donald L. Duerk, Jr. (hereinafter referred to as "Plaintiff Donald") is a citizen of the State of South Carolina, County of Horry.
3. That the Plaintiff Deborah Duerk Tiller (hereinafter referred to as "Plaintiff Deborah") is a citizen of the State of South Carolina, County of Horry.
4. That the Defendant Geoffrey Duerk (hereinafter referred to as Defendant") is a citizen of the State of South Carolina, County of Horry.
5. That, upon information and belief, all pertinent and relevant acts that resulted in this action occurred in Horry County, South Carolina.
6. Both Jurisdiction and Venue are proper and appropriate in this Horry County Court of Common Pleas.

FACTS:

7. On or about July 6, 1998, Eileen Ryan, the second cousin of Plaintiffs and Defendant executed a Quitclaim Deed on her property located at 215 Inlet Way, Palm Beach Shores, Florida 33404 naming as grantee Eileen M. Ryan, as to a life estate, and DONALD DUERK, JR., DEBORAH DUERK COLLINS, GREGORY DUERK and GEOFFREY DUERK, as joint tenants with right of survivorship, as to the remainder.

8. On or about September 25, 2007, Eileen Ryan executed her Last Will and Testament wherein she gave "any interest in any home I may own at 215 Inlet Way, Palm Beach Shores, Florida, more particularly described as Lot 31 and the East 1 foot of Lot 12, Palm Beach Shores, according to the Plat thereof on file in Plat Book 23, Page 29, public records of Palm Beach County, Florida to DONALD DUERK, JR., DEBORAH DUERK COLLINS, GREGORY DUERK and GEOFFREY DUERK, as joint tenants with right of survivorship."

9. On or about April 17, 2012, Eileen Ryan by and through her attorney-in-fact, Plaintiff Gregory, sold her home located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta for \$318,000.00.

10. On or about April 17, 2012, Eileen Ryan, Plaintiffs and Defendant, jointly, signed a Warranty Deed, as grantor for the property located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta as grantee; that everyone knew and agreed that a four way distribution of all such funds was due to the Defendant and Plaintiffs.

11. On or about April 27, 2012, Jason and Mindi Paruta, entered into an interest only Mortgage and Promissory Note with Eileen Ryan as the mortgagee wherein they agreed to pay \$1,000.00 per month beginning July 1, 2012 through and until June 1, 2014 at which time the remaining balance or the entire principal balance of \$286,200.00 shall become due.

12. Upon information and belief, approximately a year prior to selling her home, Eileen Ryan moved to Myrtle Beach, South Carolina to be near her cousins where she remained until her death on August 23, 2013.

13. Upon information and belief, on or about May 22, 2014, Defendant was appointed personal representative of Eileen Ryan's estate by Judge John L. Phillips in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

14. Upon information and belief, Defendant inaccurately and fraudulently listed Ms. Ryan's residence at the time of her death as Palm Beach Shores, Florida rather than Myrtle Beach, South Carolina.

15. Upon information and belief, Defendant failed to notify the Florida Circuit Court of his criminal record which more likely than not would have affected his ability to be appointed personal representative of Ms. Ryan's estate.

16. Upon information and belief, on or about June 5, 2014, Defendant signed a Satisfaction of Mortgage evidencing that Jason and Mindi Paruta had, in compliance with the terms and conditions of the Promissory Note, made full and final payment of the entire principal balance on the property located at 215 Inlet Way, Palm Beach Shores, Florida in the amount of \$286,200.00 to the Estate of Eileen Ryan.

17. Upon information and belief, James M. Stewart, Esquire, located at 1211 The Plaza, Singer Island, Florida was involved in preparing and filing the Satisfaction of Mortgage and preparing and mailing a check made payable to the Estate of Eileen Ryan in the amount of \$286,200.00 to Defendant; further that he understood said funds were to be divided evenly between Plaintiffs and Defendant, in compliance with the declarations expressed by Eileen Ryan in her Last Will and Testament.

18. Upon information and belief, Defendant Geoffrey has removed from the estate the sum of approximately \$286,200.00 and wrongfully converted these funds for his personal use.

AS A FIRST CAUSE OF ACTION
(CONVERSION/EQUITABLE DISTRIBUTION/FRAUD)

19. That Plaintiffs reallege each and every allegation of Paragraphs 1-17 as if set forth herein verbatim.

20. That upon applying for appointment of personal representative of Eileen Ryan's estate Defendant Geoffrey fraudulently provided the court with the incorrect County and State of residence for Ms. Ryan at the time of her death (she resided in Horry County).

21. That upon applying for appointment of personal representative of Eileen Ryan's estate Defendant Geoffrey failed to notify the court of his prior criminal record.

22. That Defendant Geoffrey intentionally and deliberately provided inaccurate and/or misleading information to the court in order to have the estate of Eileen Ryan opened in the State of Florida and to have himself appointed as the personal representative.

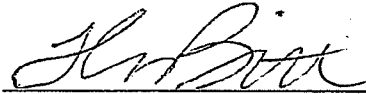
23. That the assets conveyed to Defendant Geoffrey by and through his wrongful conduct as personal representative were the property of the estate of Eileen Ryan and were to be disbursed in accordance with her Last Will and Testament and were instead converted by Defendant for his own personal use.

24. That the conversion of funds from the estate to Defendant for his personal use was without the permission of the Plaintiffs.

25. That the Plaintiffs are entitled to judgment against Defendant for all sums wrongfully removed or converted from the estate of Eileen Ryan; that others may have aided Defendant in this subterfuge.

26. That Plaintiffs are entitled to punitive damages for the wrongful conduct of Defendant.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)

Myrtle Beach, South Carolina

10/31/14, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk, Kristen Duerk and James M.
Stewart,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 14-CP-26-7264

AMENDED SUMMONS

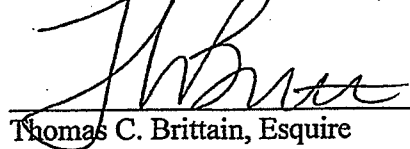
HORRY COUNTY
2016 MAR 28 PM 1:16
MELANIE L. BRITAIN - CLERK
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the Plaintiff's attorney, Thomas C. Brittain, at The Brittain Law Firm, P.A., 4614 Oleander Drive, Myrtle Beach, South Carolina 29577, within thirty (30) days after the service hereof, exclusive of the date of such service and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated at Myrtle Beach, South Carolina on the 22nd day of March, 2016.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk, Kristen Duerk and James M.
Stewart,

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 14-CP-26-7264

) **AMENDED COMPLAINT**
) **(Jury Trial Demanded)**

MELANIE J. HARRIS
CLERK OF COURT
2016 MAR 28 PM 1:16
HORRY COUNTY

The Plaintiffs, Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller, by and through their undersigned attorney, complaining of the Defendant would allege and show unto the Court the following:

1. That the Plaintiff Gregory Duerk (hereinafter referred to as "Plaintiff Gregory") is a citizen of the State of South Carolina, County of Horry.

2. That the Plaintiff Donald L. Duerk, Jr. (hereinafter referred to as "Plaintiff Donald") is a citizen of the State of South Carolina, County of Horry.

3. That the Plaintiff Deborah Duerk Tiller (hereinafter referred to as "Plaintiff Deborah") is a citizen of the State of South Carolina, County of Horry.

4. That the Defendant Geoffrey Duerk (hereinafter referred to as "Defendant Geoffrey") is a citizen of the State of South Carolina, County of Horry.

5. That the Defendant Kristen Duerk (hereinafter referred to as "Defendant Kristen") is a citizen of the State of South Carolina, County of Horry.

6. That the Defendant James M. Stewart (hereinafter referred to as "Defendant Stewart") is an attorney licensed and practicing in the State of Florida, City of West Palm Beach.

7. That, upon information and belief, all pertinent and relevant acts that resulted in this action occurred in Horry County, South Carolina.

8. Both Jurisdiction and Venue are proper and appropriate in this Horry County Court of Common Pleas.

FACTS:

9. On or about July 6, 1998, Eileen Ryan, the second cousin of Plaintiffs and Defendant executed a Quitclaim Deed on her property located at 215 Inlet Way, Palm Beach Shores, Florida 33404 naming as grantee Eileen M. Ryan, as to a life estate, and DONALD DUERK, JR., DEBORAH DUERK COLLINS, GREGORY DUERK and GEOFFREY DUERK, as joint tenants with right of survivorship, as to the remainder.

10. On or about September 25, 2007, Eileen Ryan executed her Last Will and Testament wherein she gave "any interest in any home I may own at 215 Inlet Way, Palm Beach Shores, Florida, more particularly described as Lot 31 and the East 1 foot of Lot 12, Palm Beach Shores, according to the Plat thereof on file in Plat Book 23, Page 29, public records of Palm Beach County, Florida to DONALD DUERK, JR., DEBORAH DUERK COLLINS, GREGORY DUERK and GEOFFREY DUERK, as joint tenants with right of survivorship."

11. On or about April 17, 2012, Eileen Ryan by and through her attorney-in-fact, Plaintiff Gregory, sold her home located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta for \$318,000.00.

12. On or about April 17, 2012, Eileen Ryan, Plaintiffs and Defendant, jointly, signed a Warranty Deed, as grantor for the property located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta as grantee; that everyone knew and agreed that a four way distribution of all such funds was due to the Defendant and Plaintiffs.

13. On or about April 27, 2012, Jason and Mindi Paruta, entered into an interest only Mortgage and Promissory Note with Eileen Ryan as the mortgagee wherein they agreed to pay \$1,000.00 per month beginning July 1, 2012 through and until June 1, 2014 at which time the remaining balance or the entire principal balance of \$286,200.00 shall become due.

14. Upon information and belief, approximately a year prior to selling her home, Eileen Ryan moved to Myrtle Beach, South Carolina to be near her family where she remained until her death on August 23, 2013.

15. Upon information and belief, following the death of Eileen Ryan Plaintiff Gregory was contacted by Defendant Stewart on behalf of the Parutas whom he was representing in their efforts to refinance their mortgage with Eileen Ryan.

16. Upon information and belief, Defendant Stewart advised Plaintiff Gregory that an estate needed to be opened on behalf of the deceased mortgage holder, Eileen Ryan, and, further, Defendant Stewart volunteered to handle opening the estate on Plaintiffs' behalf.

17. Upon information and belief, the Death Certificate of Eileen Ryan listed her residence at the time of her death as Horry County, South Carolina and that, further, Defendant Stewart knew or should have known through his conversations with Plaintiff Gregory that Ms. Ryan was a resident of South Carolina at the time of her death; thereby making Horry County, South Carolina the proper venue for opening the estate not Palm Beach, Florida.

18. Upon information and belief, Plaintiff Gregory, believing that he had retained Defendant Stewart to administer the Estate of Eileen Ryan on behalf of himself and his siblings, mailed to Defendant Stewart the original Will of the decedent.

19. Upon information and belief, upon receiving the Will, Defendant Stewart contacted Defendant Geoffrey to be the Personal Representative of the Estate of Eileen Ryan.

20. Upon information and belief, Defendant Stewart never had any further contact with Defendant Gregroy and, further, never had any contact at all with Plaintiff Donald and/or Plaintiff Deborah.

21. Upon information and belief, on or about May 22, 2014, Defendant Geoffrey was appointed personal representative of Eileen Ryan's estate by Judge John L. Phillips in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

22. Upon information and belief, Defendant Stewart and Defendant Geoffrey inaccurately and fraudulently listed Ms. Ryan's residence at the time of her death as the home in Palm Beach Shores, Florida that she previously sold to the Parutas.

23. Upon information and belief, Defendant Stewart and Defendant Geoffrey failed to notify the Florida Circuit Court of Defendant Geoffrey's criminal record which more likely than not would have affected his ability to be appointed personal representative of Ms. Ryan's estate.

24. Upon information and belief, on or about June 5, 2014, Defendant Geoffrey signed a Satisfaction of Mortgage evidencing that Jason and Mindi Paruta had, in compliance with the terms and conditions of the Promissory Note, made full and final payment of the entire principal balance on the property located at 215 Inlet Way, Palm Beach Shores, Florida in the amount of \$286,200.00 to the Estate of Eileen Ryan.

25. Upon information and belief, Defendant Stewart was involved in preparing and filing the Satisfaction of Mortgage and preparing and mailing a check made payable to the Estate of Eileen Ryan in the amount of \$286,200.00 to Defendant Geoffrey; further that Defendant Stewart and Defendant Geoffrey understood said funds were to be divided evenly between Plaintiffs and Defendant, in compliance with the declarations expressed by Eileen Ryan in her Last Will and Testament.

26. Upon information and belief, Defendant Geoffrey removed from the estate the full sum of approximately \$286,200.00 and negligently divided these funds between himself and his daughter, Defendant Kristen, for their personal use.

27. Upon information and belief, upon the filing of this action, Defendant Geoffrey and Defendant Kristen, through attorney Jay Bultz, agreed to freeze all remaining wrongfully converted funds (approximately \$200,000.00) until the final resolution of this action.

28. Upon information and belief, upon making this agreement both Defendant Geoffrey and Defendant Kristen continued to access and use these funds in direct violation of the agreement.

AS A FIRST CAUSE OF ACTION
(CONVERSION/EQUITABLE DISTRIBUTION/FRAUD)

29. That Plaintiffs reallege each and every allegation of Paragraphs 1-28 as if set forth herein verbatim.

30. That upon applying for appointment of personal representative of Eileen Ryan's estate Defendant Stewart and Defendant Geoffrey fraudulently provided the court with the incorrect County and State of residence for Ms. Ryan at the time of her death.

31. That upon applying for appointment of personal representative of Eileen Ryan's estate Defendant Stewart and Defendant Geoffrey failed to notify the court of Defendant Geoffrey's prior criminal record.

32. That Defendant Stewart and Defendant Geoffrey intentionally and deliberately provided inaccurate and/or misleading information to the court in order to have the estate of Eileen Ryan opened in the State of Florida and to have Defendant Geoffrey appointed as the personal representative.

33. That the assets conveyed to Defendant Geoffrey and Defendant Kristen by and through the wrongful conduct of Defendant Stewart and Defendant Geoffrey were to be disbursed in accordance with her Last Will and Testament and were instead converted by Defendant Geoffrey for his and Defendant Kristen's own personal use.

34. That the wrongful conversion of these funds from the estate to Defendant Geoffrey and Defendant Kristen was without the permission of the Plaintiffs and in direct contradiction to the Last Will and Testament of Eileen Ryan.

35. That, upon initiating this action and filing a Motion to Enjoin, Plaintiffs were contacted by attorney Jay Bultz who promised Plaintiffs if they dropped their motion Defendant Geoffrey and Defendant Kristen would agree to freeze all remaining funds (approximately \$200,000.00) until the final resolution of this action.

36. That, based upon the assurances, Plaintiffs withdrew their Motion to Enjoin and later learned that Defendant Geoffrey and Defendant Kristen were continuing to access and use these funds in direct violation of their agreement.

37. That the Plaintiffs are entitled to judgment against Defendants for all sums wrongfully removed or converted from the estate of Eileen Ryan.

38. That Plaintiffs are entitled to punitive damages for the wrongful conduct of Defendants.

FOR A SECOND CAUSE OF ACTION
(CONFLICT OF INTEREST/MISREPRESENTATION/BREACH OF FIDUCIARY DUTY)

39. That Plaintiffs reallege each and every allegation of Paragraphs 1-38 as if set forth herein verbatim.

40. That Defendant Stewart, in his capacity as counsel for Mr. and Mrs. Paruta, contacted Plaintiff Gregory to assist his clients (the Parutas) in refinancing their mortgage with Eileen Ryan.

41. That Defendant Stewart negligently misrepresented himself to Plaintiff Gregory when he volunteered to handle opening the Estate of Eileen Ryan.

42. That a conflict of interest existed in representing all interested parties to this mortgage.

43. That Defendant Stewart disregarded this conflict and volunteered to represent the Estate of Eileen Ryan, the mortgator, after being retained as counsel for Mr. and Mrs. Paruta, the mortgagees.

44. That Defendant Stewart misrepresented to Plaintiff Gregory his interest in opening the Estate of Eileen Ryan and intentionally misled Plaintiff Gregory into believing that Defendant Stewart would be acting in the best interest of the Plaintiffs in this regard.

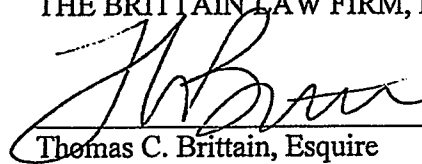
45. That, in doing so, Defendant Stewart breached his fiduciary duty to Plaintiffs.

46. That Plaintiffs had a right to rely on Defendant Stewart's representations and suffered monetary damages as a direct result of these misrepresentations.

47. That Plaintiffs are entitled to judgment against Defendant Stewart for all sums wrongfully removed or converted from the estate of Eileen Ryan.

48. That Plaintiffs are entitled to punitive damages for the wrongful conduct of Defendant Stewart.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)

Myrtle Beach, South Carolina
March 22, 2016

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2014-CP-26-7264

3 MOTION

4 **B E F O R E:** The Honorable William Seals
5 June 7, 2016

6
7 GREGORY DUERK, DONALD L. DUERK and DEBORAH D. TILLER,
8 Plaintiffs,
9 vs.
10 GEOFFREY DUERK, KRISTEN DUERK and JAMES M. STEWART,
11 Defendants.
12 -----

13 APPEARANCES:

14 Thomas C. Brittain, Esq.
15 For the Plaintiffs.

 **ORIGINAL**

16
17 Jay Bultz, Esq.
18 For the Defendants.
19
20
21
22
23
24
25

P-R-O-C-E-E-D-I-N-G-S

MR. BULTZ: This is mine, Your Honor. If I may approach?

(A brief pause in the proceedings.)

MR. BULTZ: I handed up two orders already in the file, and that is the issue here. There was the -- Mr. Brittain filed two motions in one. One was to add a party, and the other one was to enforce a settlement agreement. We had gone to court and argued the motion to enforce the settlement agreement. The motion to add a party is really kind of a moot point at this point. But at any rate, we were in front of Judge John on the motion to enforce the settlement agreement, and Judge John ruled on that motion. His ruling is right there in front of you and basically said that the motion was premature and it had to be heard in the merits hearing. They put the words "continued," but clearly his intent, as expressed by his ruling, was that it would be continued over to the merits hearing, that it had to be heard at the merits hearing for the reasons that he espoused.

So the motion to add the party came up a little bit later, and at that point we decided that we were not going to oppose that motion. We could not consent to it, but we were not going to oppose it at that

1 point. But for some reason, on the roster, the motion
2 to enforce the settlement was back on the roster. I
3 can understand the clerk seeing the words there in all
4 caps "continued" and putting it on the next roster,
5 like what you just did five minutes ago. I asked my
6 paralegal to call and check, and she reports to me it
7 is not supposed to be on the roster, so I didn't show
8 up to the roster.

9 Mr. Brittain showed up and achieved his motion to
10 add a party, and that party's attorney is here in
11 court today, Mr. Brian. At any rate, Mr. -- I have a
12 transcript here. Mr. Brittain left the courtroom and
13 you apparently said, Wait a minute, there is another
14 motion here. So you asked the bailiff or someone to
15 call back Mr. Brittain. Mr. Brittain came back in,
16 and you said there is a motion to enforce settlement.
17 I guess Mr. Brittain did not communicate to you that
18 it already had been ruled upon, and so you ruled on
19 it. And, you know, since I was not here to oppose it,
20 because my understanding was it had been continued
21 over to the merits hearing.

22 So what we have now is two rulings on the same
23 motion, and so my motion for reconsideration -- or
24 actually motion under the rules, that is technically
25 not a motion, but the motion under Rule 60 would ask

1 that you withdraw the second order since the first
2 order by Judge John was the original ruling.

3 THE COURT: All right. Mr. Brittain.

4 MR. BRITTAIN: Yes, Your Honor. This is a sad
5 duty for me here. We're in this situation because Mr.
6 Bultz didn't do what he told me he would do with
7 respect to the funds. I never had to say that in this
8 courtroom in 38 years practicing law here.

9 To go back to the beginning, his client took
10 \$286,000 --

11 MR. BULTZ: I object to rearguing the motion that
12 has been argued before. This is not before the Court.
13 Rearguing this motion all over again, we'll spend the
14 next two hours rearguing this motion. It has been
15 argued before and ruled upon by Judge John.

16 MR. BRITTAIN: That is not true, again. That is
17 not true.

18 THE COURT: Give me 10 minutes and tell me what
19 you have.

20 MR. BRITTAIN: It will take me about five
21 minutes.

22 THE COURT: That will work.

23 MR. BRITTAIN: So what we did with the money
24 hanging out there between all the siblings, I went to
25 Mr. Bultz and filed a motion to freeze those funds,

1 explained to my clients and told them that we had the
2 motion, talked to Mr. Bultz about it. He
3 essentially -- and I showed you this last time --
4 agreed to do that. And as my custom, I sent him a
5 consent order, he never would sign it. So a little
6 bit longer he said we spent some of the money. So I
7 had to go back and explain to my clients that even
8 though we had an agreement with Mr. Bultz to keep
9 those funds available, they hadn't done it.

10 So he's right, we argued a motion to enforce an
11 agreement and for sanctions with Judge John. Judge
12 John was -- happened to be the judge that day, just
13 like you are. He didn't retain jurisdiction over this
14 case at all. He refused to hear that motion. He said
15 in his opinion it was untimely and was not going to
16 hear it, and he did not rule on it.

17 Now, I didn't press the matter. I came to court
18 that day for another motion and was present, and just
19 like Mr. Bultz said, this other one came up. I was
20 walking down the hall, one of the ladies came to me
21 and presented me with this circumstance. She said
22 this case, this motion, is pending here on this
23 roster. I sent you, when you made the ruling --
24 unlike the way he's handled it, I sent you an E-mail,
25 and here is what it said: I'm enclosing a short order

1 on this case in response to the motion hearing on
2 Monday. As the Court would recall, I had left the
3 courtroom and was asked to return based on the fact
4 that a motion to enforce an agreement was pending
5 before the Court. Several weeks earlier, Judge John
6 refused to hear the motion, it was at that point in
7 time we added parties to the case. I'm attaching the
8 proposed order, which I think is fair and true -- all
9 this order does is keep whatever money is left, and he
10 said they spent hundreds of thousands of it, but I
11 don't know how much they spent, from spending the rest
12 of it. This is not an order for sanctions, which will
13 come later when both of us get sued -- however, I
14 wanted the Court to be aware that Mr. Bultz might have
15 been under the impression that the motion to enforce
16 the agreement was still pending. He has access to the
17 roster like everyone else. Judge John did not reserve
18 jurisdiction over the issue, and as far as I'm
19 concerned it's fair for it to have been heard, and I
20 assure the Court as I did Monday that what is in this
21 order is fair, honest and true. Nevertheless, I
22 wanted to make sure the Court knew this motion
23 appeared on this roster several weeks ago and Judge
24 John refused to hear it at that time.

25 So I have not tried to, in any way, take

1 advantage of those circumstances, but I'll be dog gone
2 when he doesn't show up and he's done this to me and
3 my clients, I'm not going to argue his case for him,
4 I'm just not going to do it. I made the Court aware
5 of the circumstances. I think without Judge John
6 retaining jurisdiction over this case, he didn't rule
7 on the motion, the clerk put it back on there because
8 it was continued, I showed up and I was honest with
9 the Court, and the Court made a ruling.

10 All I'm doing now is making a record. If you
11 want to reconsider based on what Judge John did and
12 withdraw it, that is fine with me. I'm making a
13 record about who has done what on this case because I
14 know what is coming, and it should be coming. Those
15 are the facts; that is true. I don't know that Judge
16 John can decide that if this motion can never be
17 heard, if he passes on it, unless he retains
18 jurisdiction. He has been a friend of mine since we
19 were little boys, I'm not against him on this, don't
20 get me wrong. But I'm not making any legal
21 concessions in this case. I'm putting up the facts
22 before the Court. I'm under the gun here because of
23 trusting Mr. Bultz, and I want everything to be done
24 according and whole. I'll live with the decisions
25 that are made, but I'm not going to be in here being

1 real generous to him on his failure to come here. He
2 says he can read a roster, well he needs to read it
3 more carefully. I don't have his -- I'm not going to
4 represent him and his clients, especially a man that
5 won't tell me the truth. So this is where we are, and
6 I want the facts to be laid out, Court make a ruling
7 and move on down the road.

8 THE COURT: I'll take it under advisement and
9 rule on it this afternoon.

10 MR. BULTZ: May I make a brief response?

11 THE COURT: Sure.

12 MR. BULTZ: My comment in the email was not that
13 I could read a roster, my comment was that I could
14 read a judge's ruling, and the ruling is very clear.
15 Just so we're straight on the facts, at the end of a
16 deposition, Mr. Brittain asked -- and he states this
17 in a follow-up letter -- that would my clients be
18 willing to sign a consent order freezing the funds,
19 and I told him how much was in their accounts, not my
20 account. I was not holding the money. I never had
21 the money, and I don't have the money now. And so my
22 clients agreed to that, and I said, yes. Well, it
23 took a month-and-a-half before we finally got the
24 consent order, and once I got the consent order, I
25 called my clients in to sign and they said we don't

1 have a hundred thousand each, we have like 75, 80,
2 somewhere in there. So when I informed Mr. Brittain
3 of that, said if you want to change the consent order
4 we'll sign it for the 75, 85, whatever is left in
5 there, and we'll be glad to do that. Well, he got
6 very upset about it, and this litigation just kind of
7 got rancorous after that.

8 But I never had control of the money, didn't
9 control the money. We did agree to sign a consent
10 order, but after a month-and-a-half my clients spent
11 some of the money, but they agreed again to sign a
12 consent order, and I asked him to change it, and he
13 didn't change it.

14 MR. BRITTAIN: None of that is true. Just as he
15 said right here, I can show you his email to you: Not
16 only can I read a roster, but I can damn sure read a
17 court order, that is exactly what he said in his
18 email.

19 THE COURT: I understand. Thank you. You have a
20 good afternoon.

21 (Whereupon, the proceedings concluded.)
22
23
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25

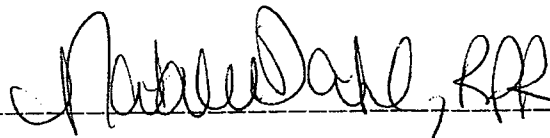
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript
of Record of the proceedings had and evidence
introduced in the proceedings of the captioned case,
relative to appeal, in the Court of Common Pleas for
Horry County, South Carolina, on the 7th day of June,
2016.

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

July 12, 2016.



Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF HORRY) CASE NO: 2014-CP-26-7264

MOTIONS

B E F O R E: The Honorable Benjamin Culbertson
November 8, 2016

GREGORY DUERK, DONALD L. DUERK, JR., DEBORAH DUERK
TILLER,

Plaintiffs,

vs.

GEOFFREY DUERK, KRISTIN DUERK, JAMES STEWART,
Defendants.

APPEARANCES:

Thomas "Tommy" Brittain, Esq.
Appearing for the Plaintiffs.

William A. Bryan, Esq.
Appearing for the Defendants.

Court Reporter:
Natalie N. Dahl, RPR

P-R-O-C-E-E-D-I-N-G-S

1
2
3 THE COURT: This is Duerk vs. Duerk. And I
4 apologize, I know I got an E-mail late Friday
5 afternoon, but I haven't even had time to look at that
6 E-mail and address whatever the request was, and to be
7 honest with you, I can't even remember what the
8 request was.

9 MR. BRYAN: The E-mail was to bring to Your
10 Honor's attention that this case, which is old and has
11 been put on next week's trial roster, my client got
12 brought into this case by amendment several months
13 ago. We filed a motion to dismiss, and we have not
14 yet answered, so here we are looking at a trial next
15 week. My client has this motion pending, and it
16 hasn't even been answered. I'll have to answer, and
17 I've done no discovery --

18 THE COURT: So that just had to do with the trial
19 with the case being on the roster for next week?

20 MR. BRYAN: And we also voided Your Honor's
21 scheduling order, you know, to put in place, you know,
22 reasonable deadlines to carry this case through the
23 end.

24 THE COURT: So what you are telling me is if I
25 grant the motion to dismiss, I don't have to deal with

1 any of that (laughing)? I'm just kidding.

2 MR. BRYAN: That is true.

3 MR. BRITTAIN: That is not the way to look at it,
4 Judge (laughing). This motion was up a month ago and
5 Will was in trial.

6 THE COURT: I got you.

7 MR. BRITTAIN: So it got continued. To give you
8 background, not to go into the issues, but everything
9 was done accordingly, and when these issues arose, my
10 clients made a motion to add a party. There was some
11 objection to it by Bultz. Eventually it was agreed to
12 and --

13 MR. BRYAN: Not by my client.

14 MR. BRITTAIN: Not by your client, but you
15 represent Stewart, the lawyer.

16 MR. BRYAN: Yes.

17 MR. BRITTAIN: So it finally found its way in the
18 wheel, and these are the issues now. I told Will we
19 would agree to any scheduling order that gives him a
20 chance to go forth.

21 THE COURT: All right. Mr. Bryan, I'll hear from
22 you on your motion.

23 MR. BRYAN: Your Honor, it is a motion to
24 dismiss, and we have three parts. The first is
25 jurisdictional defense, there is no personal

1 jurisdiction over Mr. Stewart, a Florida resident.
2 Second, if the Court finds there is jurisdiction over
3 Mr. Stewart, the second part of the motion looks at
4 the amended complaint itself under a 12(b)(6) analysis
5 and asks the Court to look to see whether or not the
6 causes of action are pled properly.

7 The third component, which is somewhat cured
8 because at the time the case was -- at the time the
9 amended complaint was filed bringing in my client,
10 Mr. Stewart, a lawyer, there was no affidavit filed
11 with it, and so the third component of my motion to
12 dismiss was plaintiffs' failure to comply with the
13 statute requiring the filing of an affidavit from an
14 expert witness. Mr. Brittain has since then filed an
15 affidavit within, I think, 30 days or 60 days. I
16 think that part is cured, so we're left with the first
17 two parts.

18 Your Honor, if I may approach, I have a copy of
19 my memorandum as well as a couple of cases we'll rely
20 upon. We have a memorandum followed by a couple
21 jurisdictional cases.

22 MR. BRITTAIN: This is our response.

23 MR. BRYAN: For the record, I'm Will Bryan with
24 Collins and Lacey. I represent James Stewart,
25 defendant. Like I mentioned, the first component --

1 the thrust of our motion to dismiss -- is based on the
2 lack of personal jurisdiction. Mr. Stewart is a
3 resident of Florida. He lives in Florida. He doesn't
4 live in South Carolina. He is -- practices law in
5 Florida. Florida is the only state in which he holds
6 a license and the only state which he practices law.
7 Mr. Stewart happened to probate the estate over which
8 the Duerk siblings are fighting over in Horry County.
9 So as a result of that, he finds himself being brought
10 into Horry County litigation at the 11th hour. Your
11 Honor, it is well --

12 THE COURT: So the estate was probated in
13 Florida?

14 MR. BRYAN: Correct. Mr. Stewart didn't prepare
15 any documents or file any documents in South Carolina.
16 He didn't prepare any documents to be filed in South
17 Carolina. Everything he did was in connection with
18 this Florida estate and probating that estate in
19 Florida, which is -- I'll tell you, it was really as a
20 courtesy. Mr. Stewart represented the Parudas
21 (phonetic). The Parudas bought the house that the
22 Duerk siblings are fighting over. This house was
23 owned by their aunt or cousin who was without child,
24 and the four or five Duerk siblings thought they would
25 all share in it. In any event, it got sold during her

1 lifetime to the Parudas. Their agreement was with the
2 aunt -- what is her name?

3 MR. BRITTAIN: I can't remember -- Eileen Ryan.

4 MR. BRYAN: So the Parudas were going to pay
5 interest only, and at the end of two years, it was
6 like a balloon payment to finish the whole deal. In
7 the interim, Ms. Eileen Ryan, she dies. So my client,
8 Mr. Stewart, who is representing the Parudas, is
9 trying to figure out how to get title back, who to pay
10 the balloon payment to. He finds out that Ms. Eileen
11 Ryan has died, so he ends up probating the estate in
12 Florida. That is how he gets involved.

13 THE COURT: But where is the property located?

14 MR. BRYAN: Florida. As a threshold matter, it
15 is well settled in South Carolina that a party seeking
16 to invoke personal jurisdiction over a none-resident
17 has the burden of establishing that jurisdiction is
18 proper under the Long Arm Statute. We submit that
19 Mr. Stewart does not have the sufficient minimum
20 contacts to satisfy due process. There is a number of
21 cases that have gone through the due process, and I
22 know you've been through it as well, but in essence
23 the plaintiff would have to show that there are
24 jurisdictionally significant contacts.

25 In fact, our courts have held that the minimum

1 contacts only exist if the defendant has purposefully
2 availed himself of the privilege of conducting
3 activities within the State of South Carolina, thus
4 invoking the benefits and protections of the foreign
5 state laws. Here, we submit that Mr. Stewart has not
6 purposefully availed himself of the privilege of doing
7 business in the State of South Carolina. He is not --
8 nothing he has done would give him a reasonable
9 expectation that he would be hauled into court in
10 South Carolina.

11 As I mentioned, he is from Florida. He practices
12 in Florida. He does not practice in South Carolina.
13 He did not file any paperwork in South Carolina. He
14 does not have any offices, employees or he doesn't
15 maintain a mailing address or telephone number in
16 South Carolina. He doesn't have an E-mail that
17 targets people in South Carolina.

18 THE COURT: Were any of these parties South
19 Carolina residents when he was representing them?

20 MR. BRYAN: He represented the PR.

21 THE COURT: Of the estate? The estate was
22 probated in Florida?

23 MR. BRYAN: Correct.

24 THE COURT: Where was the residency of the
25 personal representative?

1 MR. BRYAN: They are all from South Carolina, but
2 he's the PR. I don't know if that changes his
3 residency or not.

4 THE COURT: I don't know either, but I guess what
5 I'm -- the only contact with South Carolina is the PR
6 of the estate?

7 MR. BRYAN: To be honest, when this first
8 started, remember I was telling you Mr. Stewart was
9 trying to figure out where Eileen Ryan was, because
10 the checks his clients were paying to her were not
11 being cashed. They were like, What's going on, and
12 that is when he finds out that she was deceased.

13 So the first contact he had was not with the
14 personal representative. He said please send me the
15 will. As soon as he gets the will, he figures out who
16 the personal representative is, and from that point
17 on, his only contact is with the PR, Jeff Duerk, and
18 that is alleged even in the complaint. I think it is
19 Paragraph 20 in the amended complaint, that after a
20 certain time -- after he got the will and identified
21 Geoffrey Duerk, who is the personal representative,
22 there is no other further contact with Greg Duerk or
23 any other plaintiffs.

24 So to answer your question, there was some
25 contact at the very beginning to figure what is what,

1 and once we got the will and found out who the PR was,
2 no further contact. There was never any
3 attorney/client relationship between my client and Mr.
4 Brittain's clients, it was only between my client and
5 the PR.

6 We submit, Your Honor, that based on the
7 circumstances here, you know, Mr. Stewart's
8 involvement does not give rise to personal
9 jurisdiction over him. He would not have a reasonable
10 expectation to expect to be held in court here. There
11 is no -- I'm thinking about general jurisdiction --
12 there is no continuous or substantial contacts between
13 Mr. Stewart and the State of South Carolina for
14 specific jurisdiction. There are no contacts to
15 satisfy the specific jurisdiction prong out there.

16 Sort of the second prong under the due process
17 analysis, even if there were sufficient contacts, we
18 submit that it would not be fair to invoke personal
19 jurisdiction over Mr. Stewart. The contacts he had
20 with the state were minimal, they were brief. He is
21 from Florida. He has no contact, no nexus with the
22 State of South Carolina. Requiring him to appear in
23 South Carolina would be burdensome and inconvenient.

24 I know that one of the factors the Court is to
25 consider is the State's interest in adjudicating this

1 case, but the courts have availed it in cases like
2 this where there was no business done in South
3 Carolina, the state's interest in trying the case is
4 lessened, so I'll bring that to the Court's attention.

5 Again, Judge, we have provided to the Court a
6 number of cases sited in our memorandum. I have
7 handed you specifically two cases that may be
8 noteworthy. One is the Power Products case, and the
9 other is Sullivan versus Hocker Beachcraft. They both
10 provide good discussion of the due process analysis in
11 the context of personal jurisdiction.

12 Second, if you find there is sufficient contacts
13 to subject Mr. Stewart to personal jurisdiction in
14 South Carolina, we would then turn our motion to a
15 12(b)(6) analysis and look at the cause of action
16 against Mr. Stewart. Your Honor, I believe the
17 amended complaint is part of the defendants'
18 memorandum. You have the affidavit from Mr. Stewart
19 establishing what his contacts here were and what they
20 were not.

21 Mr. Brittain has pled sort of a hybrid -- I guess
22 you call it a hybrid -- cause of action where he
23 alleges a single cause of action -- it is a second
24 cause of action, and underneath it, it is labeled,
25 Conflict of Interest, slash, Misrepresentation, slash,

1 Breach of Fiduciary Duty. That is Page 6 of the
2 amended complaint. I have an extra copy.

3 THE COURT: I have it right here.

4 MR. BRYAN: Page 6, the second cause of action,
5 which is the only alleged cause of action against Mr.
6 Stewart, it is sort of a hodgepodge of everything. In
7 our view, it doesn't really adequately allege
8 anything. For starters, we'll start with negligent
9 misrepresentation, Judge. The courts found when
10 looking at a negligent misrep claim, they found that
11 plaintiff must assert the factual allegations of
12 negligence, duty breach and that sort of thing. Here,
13 Judge, there is no allegation in the amended complaint
14 of a duty. There is no evidence in the amended
15 complaint in the second cause of action of a false
16 statement made by Mr. Stewart, which you obviously
17 need to present a cause of action for negligent
18 misrepresentation. On that basis, we would submit
19 that to the extent the second cause of action attempts
20 to assert a negligent misrep claim, we submit it
21 should be dismissed.

22 Second, Judge, addressing that part of the second
23 cause of action that sets forth what purports to be a
24 cause of action for conflict of interest. I'll just
25 tell you, Judge, I don't believe that conflict of

1 interest is a cause of action recognized in South
2 Carolina. The Rules of Professional Conduct obviously
3 address conflicts, but they do not give rise to an
4 independent cause of action. It is -- conflict of
5 interest can be relevant in the context of a legal
6 malpractice action, which is what I think Mr. Brittain
7 was trying to do initially when he was trying to avoid
8 the duties to file his expert affidavit.

9 So if we look at the conflict of interest cause
10 of action as really an attorney malpractice cause of
11 action, you still have to have those elements, the
12 existence of an attorney/client relationship, breach
13 of a duty by the attorney, damages to the client and
14 proximate cause of client's damages by the breach.
15 Here, Judge, taking the first element, existence of an
16 attorney/client relationship, there is none. There is
17 no allegation, there was never an attorney/client
18 relationship between any of the plaintiffs and my
19 client. So in our view, the analysis stops there.

20 But if you look at the other three elements of
21 legal malpractice, those elements are not pled in the
22 second cause of action either. So we submit, like
23 negligent misrep, conflict of interest, if you look at
24 it as legal malpractice, should also be dismissed.

25 Finally, the last component of the second cause

1 of action is what Mr. Brittain has styled, Breach of
2 fiduciary duty. Looking at it again to withstand the
3 12(b)(6) scrutiny, plaintiffs' amended complaint
4 should allege existence of a fiduciary relationship, a
5 duty arising out of the relationship, and then a
6 breach of that duty. Here again, Judge, like the
7 legal malpractice cause of action, there is no
8 allegation of a fiduciary relationship. There is no
9 allegation of a duty owed by Mr. Stewart to the
10 plaintiffs. There are no factual allegations to
11 support really any of the causes of action alleged
12 against Mr. Stewart.

13 So, Judge, if you get past personal jurisdiction,
14 if you find there is enough contacts to exercise
15 personal jurisdiction over Mr. Stewart, we submit the
16 complaint as pled is improper and should be dismissed.
17 Thank you, Judge.

18 MR. BRITTAIN: Let's talk about what happened
19 here and back our way in to the pleading. There may
20 be -- let me tell you what happened here. My clients
21 are four of the five siblings of the Duerk family.
22 Eileen Ryan was their aunt, a great lady. She owned
23 property in Florida that was very, very valuable. She
24 got very sick. My client, Greg Duerk, brought her
25 back to South Carolina to care for her in her failing

1 days. She had very early on executed a document
2 leaving her home in Florida to the siblings. While
3 she was in her sad days struggling, and my clients
4 were paying for her excesses over Medicare, the house
5 in Florida went up for sale to help pay for her
6 expenses. Everybody agreed to it, including Geoff
7 Duerk, who is the defendant in the underlying case.
8 He has a history of a criminal background and all
9 sorts of stuff, not necessarily relevant today. But
10 this fellow Stewart was involved in representing the
11 buyers of the house down there in Florida. He got
12 talking to my client. They arranged a sale of that
13 property, which would help Ms. Ryan pay for her
14 expenses up here in Myrtle Beach. All of that worked
15 out fine. Stewart then started calling my client and
16 saying, After she dies, what are you going to do with
17 the estate? Well, I would like to have someone
18 resolve everything.

19 Now, here is the ringer. She had put in her will
20 that all of these siblings would share equally in the
21 value of the house, but based on what Stewart did, to
22 sell it with a note, when she died, there was no
23 house, it was just an obligation. So without telling
24 Duerk, my Duerk, he says let me handle this, the
25 probate for you. Sure, be happy to do it, let me know

1 what you are charging me. He never contacts my
2 clients again. He determines that since the house
3 wasn't in existence, without notifying us of any
4 hearing dates or anything, even though my client
5 engaged him over the phone numerous times and thought
6 he was representing him, representing us, he goes into
7 court and claims that since there was no house, that
8 was really an obligation, it passes under the general
9 clause of the will and takes everything away from my
10 siblings and gives it to this Geoff Duerk, who was the
11 PR, with no notice, no nothing. So we -- and this is
12 all alleged and pled -- felt like he was representing
13 them. Not only did he not represent them, he didn't
14 even tell them they had a right to the show up and
15 object to his now new way to present this case on
16 behalf of somebody else that wasn't part of their
17 conversations with him. He had numerous contacts
18 here. Everyone in this case is a citizen of South
19 Carolina except Stewart.

20 THE COURT: But what was his contact in South
21 Carolina?

22 MR. BRITTAIN: He got documents from here. He
23 called here. He solicited business from here. Judge,
24 I don't know how much of this comes before you. The
25 general context here and jurisprudence in the country,

1 we are done with these arguments. We're done with
2 them. There is no appellant court that is going to
3 take and dice up some, hey, you live in Florida. When
4 you are on the phone, when you are conducting
5 business, when you are asking for this, when you get
6 paid, those issues are done. The Long Arm Statute was
7 always that way. We're clearly within the Long Arm
8 Statute, but I would suggest to you that in this day
9 where we're going, there is no appellant court that is
10 recognizing these limitations. We are past all of
11 that.

12 We have lawyers that are advertising across
13 regions. The second they do that -- the second a
14 lawyer reaches out and talks to a South Carolinian and
15 gets paperwork from them -- it is all in our
16 documents -- and seeks that information and makes
17 determinations based on the information they are
18 getting, there is no jurisdictional issue. That is
19 gone, and it will be gone forever, and we face that.
20 Those barriers, those technical arguments, I think we
21 make them under the Long Arm Statute anyway, but I
22 would suggest to the Court that those are the gone.

23 This is a man that took into -- took my clients'
24 confidence in. My clients, regular old people,
25 thought he was looking out for their interest. He was

1 sticking it to them. He not only took the information
2 he gave him, but used it against them and cut them out
3 of \$200,000. Not only did he not say, hey, I talked
4 to you, I can't represent you, I'm taking your
5 information, guess what, too bad for you, I have a
6 jurisdictional lawyer representing me, I'm going to
7 get out of this and I'm going to take your
8 information, use it against you, help your other guy
9 and cut you out of it, and that is what happened. He
10 took their information. We fed him everything he
11 wanted. He never notified us of a thing. It is all
12 in here. He walked into that court in Florida, and we
13 didn't even know. We thought he was representing us.
14 He went in and represented the other side and got it
15 done. Listen, that is wrong.

16 We are here in a motion to dismiss. You can't
17 allow that sort of thing. He had all the contacts of
18 this case. Every person other than him is a resident
19 of South Carolina. He called, got information, led my
20 guy to believe that he was representing -- it is all
21 in here. It is not a motion to dismiss.

22 THE COURT: How did he lead your guy to believe
23 he was representing?

24 MR. BRITTAIN: Send me the stuff, I'll take care
25 of it, it is all in there.

1 THE COURT: Where?

2 MR. BRITTAIN: The memorandums and stuff I gave
3 you. It is in the depositions. There is an issue of
4 fact, and I'm sure Mr. Stewart -- we haven't been that
5 far down the road yet, but he may have a different
6 view, but my clients say that he contacted them, and
7 in fairness to him, he was involved in the sale of the
8 house. He was involved in the sale of the house down
9 here, but this led to a conversation between my guy,
10 Greg Duerk, and Mr. Stewart, which was this sort of
11 thing, Can you hassle the probate? Yes, I can.
12 Great. How about handling this for you, be happy to
13 do it, send me this or send me that. So my point is
14 under the Long Arm Statute, it is clear. He's
15 engaging in a business enterprise through the
16 telephone and normal conversations to do business, and
17 there is nothing wrong with that, it is fairly
18 typical, but it certainly subjects him to jurisdiction
19 as far as the Long Arm Statute is concerned. You are
20 here on a motion to dismiss, and this is a motion to
21 dismiss, so we do that. We send him what he wants
22 thinking he's representing our interest, which all
23 we're looking for is a complete division between these
24 siblings, which is what Ms. Ryan wanted.

25 Here is the irony. Stewart starts to apply the

1 analogy, Wait a minute, technically when she died,
2 there was a note in place, not a home. So I'm going
3 to stick it to you, Greg Duerk, and the rest of you
4 and present to the probate court that this is not the
5 home she promised you all to split, it changed into a
6 note; therefore, it passes under some other.

7 THE COURT: How did she promise it to them? You
8 say she promised the home.

9 MR. BRITTAIN: There was a will.

10 THE COURT: But that doesn't take effect until
11 she dies.

12 MR. BRITTAIN: Right. But my point is these were
13 complicated issues, and my client sought Mr. Stewart
14 to help them resolve them in their favor, and he
15 turned around and started doing that and ended up
16 doing it for the other people. Like I said, I don't
17 think this is a jurisdictional case. I think there is
18 a lot to be resolved here. He may win, but it
19 certainly is not a case to be dismissed at this stage,
20 in my view. I've done the best I can in my memoranda
21 to apprise you of the circumstances that I think you
22 should consider.

23 THE COURT: Anything in reply?

24 MR. BRYAN: Yes, sir. To answer your question,
25 how did she give it to them, to give you a big

1 picture, Eileen Ryan during her lifetime deeded the
2 property to all the siblings her life estate, and so
3 the siblings had it all. Greg Duerk, I think
4 Mr. Brittain's point of contact, he was power of
5 attorney over Ryan. So when her home was sold, it was
6 sold by Greg Duerk, Mr. Brittain's client. It wasn't
7 sold by my client, it was sold by Mr. Gregory as the
8 power of attorney for Eileen Ryan. The other thing --

9 THE COURT: How did he transfer more than a life
10 estate interest if all she had was a life estate?

11 MR. BRYAN: She had life estate. I guess they
12 had the property, she just had the remainder for a
13 life term, but then I guess to finance her -- finance
14 Eileen Ryan's nursing home or whatever, the Duerks
15 sold the property. So in the will there is one
16 provision like in Paragraph 5 that says the siblings
17 will share equally in this house. Paragraph 6 says
18 Geoff Duerk, the one sibling who is not a plaintiff,
19 and his daughter shall receive and share the
20 remainder. And so once the Duerks sell the property,
21 Mr. Stewart is asked to probate in Florida, he's
22 looking at what is left, and the will says if there is
23 a house, the Duerks share it. There is no more house
24 because they sold it. So what is left is money that
25 goes to one Duerk and his daughter, leaving the other

1 four upset. That is how we got here. The only role
2 my client had was probating the estate in Florida.
3 They asked if he can do that for them. He didn't call
4 them for the purpose of --

5 THE COURT: Mr. Brittain is saying he contacted
6 them soliciting the business.

7 MR. BRYAN: He contacted them because the
8 Parudas' monthly checks to Ms. Ryan were not being
9 cashed, so he's trying to figure out what is going on,
10 that is when he realizes she's deceased. He didn't
11 call asking for business. She's deceased, they need
12 the estate probated, and they asked Mr. Stewart, hey,
13 can you handle this, and he said, well, whatever, I
14 can do it in Florida. He didn't call South Carolina
15 looking for this business. He is a probate attorney
16 in, like, Fort Lauderdale. That's all he does. He
17 doesn't call South Carolina or any other state looking
18 for business. He just happened to have the Parudas,
19 who had dealings with the Duerks, and during this
20 conversation the Duerks said, We need this probated.

21 Before he can decide how it is going to be done,
22 he needs the will. He asked for a copy of the will,
23 the will identifies Geoff Duerk as the PR, and from
24 that point forward his only contact is with the PR,
25 Geoff Duerk, and none -- I don't think my client ever

1 talked to anyone other than Geoff and Greg Duerk. But
2 in any of the conversations it was always about
3 property in Florida and probating an estate in
4 Florida. Unlike Mr. Brittain, I believe the
5 jurisdiction is an important process.

6 MR. BRITTAIN: Will is a great guy and friend of
7 mine, and his father too, but he just hasn't been up
8 to speed on this. You look at what is provided to
9 you. Stewart certainly sought this business, and
10 somewhere along the line he realized the people he
11 talked to and the people he was working with, he was
12 getting ready to take a position against them, which
13 is exactly what happened. They were never even
14 notified of the hearing in Florida. Argue what you
15 want to about personal jurisdiction. Every contact
16 under the Schumaker case, all the cases are clear.
17 This man sought business here, he dealt with people
18 here.

19 THE COURT: That is the dispute. According to
20 Mr. Bryan, he did not seek business, he is doing an
21 estate in Florida with property that is in Florida,
22 but he is not advertising for business or soliciting
23 business in South Carolina.

24 MR. BRITTAIN: Sure. That should be litigated.
25 I mean, you've got the claim from the Duerks that he

1 did; Will says he didn't. I don't know where that is.
2 There is certainly a time later in the process of this
3 case, but I don't think you have the evidence before
4 you today to determine that he has not availed himself
5 to the jurisdiction of South Carolina. I would say
6 the general case law now is, in this world we live
7 in -- it used to be when I was first a lawyer, you
8 didn't do anything unless you were involved with
9 anyone, you didn't talk to them, you associated with
10 someone, I think that is an issue -- anyway, Judge, if
11 you will consider everything we've said, we respect
12 your opinion on this matter.

13 THE COURT: I'll take it under advisement and
14 read the memorandums.

15 MR. BRYAN: What do we do about next week's
16 trial?

17 THE COURT: I'll make a decision this afternoon.
18 I just want to read the memorandum. I have your
19 E-mail, and I'll take a look at it.
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the proceedings of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 8th day of November, 2016.

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

March 18, 2017.

Natalie Dahl, RPR

Natalie Dahl, RPR

Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF HORRY

THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

3 C/A NO: 2014-CP-26-7264

4 GREGORY DUERK, DONALD L. DUERK, JR.,
5 and DEBORAH DUERK TILLER,

6 Plaintiffs,

7 vs.

8 GEOFFREY DUERK,

9 Defendant.

10 _____/
11 1211 Plaza Circle
12 Singer Island, FL
13 Tuesday, 2:00 P.M.
14 December 1, 2015

15 DEPOSITION OF James M. Stewart, Esquire

16 Taken on behalf of the Plaintiff before June S.
17 Sandberg, Notary Public in and for the State of Florida
18 at Large, pursuant to Plaintiff's Notice of Taking
19 Deposition in the above cause.
20
21
22
23
24
25

1 Thereupon:

2 James Stewart, Esq.

3 Was called as a witness and, having been first duly
4 sworn and responding, "Yes", was examined and testified
5 as follows:

6 EXAMINATION BY MR. BRITTIAN:

7 Q Would you state your name, sir?

8 A James Stewart.

9 Q Where do you live, please, Mr. Stewart?

10 A Palm Beach Gardens, Florida.

11 Q What do you do for a living?

12 A I practice law.

13 Q How long have you been doing that, sir?

14 A This is year 35.

15 Q Have you had occasion in connection with your
16 legal practice to have any conversations with members of
17 the Duerk family?

18 A Yes, two members.

19 Q Which two members have you had conversations
20 with?

21 A Greg and Jeffrey.

22 Q Who did you first have a conversation with?

23 A Gregory.

24 Q What was that about?

25 A A mortgage payoff.

1 Q What, if anything, did you do for Jeffrey
2 Duerk?

3 A He was my contact person. My clients were
4 refinancing their home in order to pay off the Duerk
5 mortgage or the Ryan mortgage, excuse me, and when I got
6 with my clients to get the contact person to get a
7 mortgage estoppel letter, I was given Gregory's name and
8 that's how I got in touch with him.

9 Q So you were representing other parties in
10 connection with the sale of a home?

11 A No, with a refinance of the mortgage. It was
12 the Ryan mortgage that had a balloon payment or it
13 matured in, I think June of 2013 or excuse me, '14, and
14 they were getting institutional financing so I needed a
15 written estoppel letter for the payoff of that mortgage.

16 Q Alright, sir. This is the home at 215 Inlet
17 Way, Palm Beach Shores, Florida?

18 A Yes.

19 Q Your clients at that time were Jason and Mindy
20 Paruta or some bank?

21 A The Parutas.

22 Q As part of that process did anything else arise
23 concerning what Duerk might have needed in connection
24 with the transaction?

25 A First, I was inquiring about Eileen Ryan but I

1 A The Parutas.

2 Q Did Greg Duerk ever ask you whether or not you
3 could handle the administration of this estate for him?

4 A I don't recall that, no.

5 Q You don't recall it. Now let's get down to it.
6 Are you saying it did not happen or are you saying you
7 don't recall it?

8 A It didn't happen. I didn't have any
9 representation of anybody other than the personal
10 representative once I found out about the will.

11 Q You never even talked to Jeff Duerk until after
12 you had talked to Greg Duerk about all this, did you?

13 A That's probably true. I didn't need to talk
14 to --

15 Q Is it probably true or is it true, sir?

16 A It's true. Greg was my contact and we were
17 trying to sort out how we were going to get this loan
18 satisfied.

19 Q The administration of this estate issue?

20 A Yes.

21 Q That's different than the Parutas. We are now
22 talking about somebody going into probate court in
23 Florida and administering the estate of Eileen Ryan,
24 right?

25 A Yes.

1 Q You did that, didn't you?

2 A Yes.

3 Q So did Greg Duerk ever ask you about whether or
4 not you could do it?

5 A We talked about administering the estate but I
6 explained to him he has nothing to do with it; that's
7 where I got with Jeffrey and he gave me Jeffrey's
8 information. I said this has to do with Jeffrey.

9 Q Is that where you got Jeffrey's information,
10 you got it from Greg Duerk?

11 A Yes, he gave me Jeffrey's information.

12 Q Have you ever advised Greg Duerk that he and
13 his siblings needed a lawyer to protect themselves in
14 connection with this matter?

15 A I don't recall having that conversation.

16 Q Isn't it true, sir, that Greg Duerk felt like
17 you were acting in the best interest of all of the
18 parties in this situation with respect to the
19 administration of the estate of Eileen Ryan?

20 MR. BULTZ: Objection to the form of the
21 question.

22 Q The way it works up here is, so we don't have
23 to come back to you, Mr. Stewart, is some judge will
24 review Mr. Bultz's objection but in this setting you
25 still answer that question.

1 MR. BRITTIAN: Jay, do you agree with that?

2 MR. BULTZ: Yes.

3 MR. BRITTIAN: So he still answers the question
4 and it maybe determined later that that was a
5 improper question and your answer would be stricken,
6 but for expedience purposes, we go ahead and answer
7 those questions.

8 MR. BRITTIAN:

9 Q Here's the question to go back to it and this
10 is really the essence of the whole thing:

11 In the midst of this, your first contact with
12 the Duerks was Greg; isn't that true?

13 A Yes.

14 Q You didn't know Jeff Duerk at the time, did
15 you?

16 A No.

17 Q Greg Duerk asked you to come into contact with
18 you in connection with this matter if you could just
19 handle the administration of Eileen Ryan's estate?

20 A Repeat the question.

21 Q Greg Duerk had come into contact with you based
22 on your involvement with the Parutas in this matter,
23 asked you if you could handle the administration of the
24 estate of Eileen Ryan?

25 A I think I was the one that pointed out to him

11
1 that her estate needed to be administered so he wouldn't
2 have asked me that question.

3 Q So in other words, let me get this straight:

4 Based on your answer, Mr. Stewart, it's not
5 even that Greg Duerk asked you to do it, you put
6 yourself into the situation and said it needs to happen
7 and you volunteered to do it; is that true?

8 A You've got to ask me a question.

9 Q I'm putting to you, I don't have to answer your
10 question sir, I just state a fact and you can tell me
11 whether that's true or not?

12 A Okay, state a fact.

13 Q First, I asked you if Greg Duerk asked you if
14 you could administer the estate of Eileen Ryan and you
15 said no, that you brought it up; so is that true or not:
16 Did you bring it up?

17 A In my evaluation, yes, I must have brought it
18 up. I was trying to get this matter resolved and I
19 said, you're going to have to find a will. So we
20 scurried around looking for a will and then I saw who
21 was involved in the will. That's where I said you're no
22 longer involved any more, I need to talk to your
23 brother, he's the one that's the administrator. That's
24 as far as it went; that's the long and short of it.

25 Q There was a time there when you and Greg Duerk

1 him did he have a lawyer.

2 Q Did he tell you who it was?

3 A Off the top of my head I couldn't tell you, no.

4 Q You would never have heard of Jeff Duerk if you
5 hadn't talked to Greg Duerk; isn't that true?

6 A Correct, that's true.

7 Q You were looking for documents from Greg Duerk
8 to finalize this matter; isn't that true?

9 A We were trying to locate last will and
10 testament because we couldn't find a way around
11 probating her estate to get the payoff accomplished.

12 Q You know that Mrs. Ryan left the house at 215
13 Inlet Way, Palm Beach Shores to all four of these
14 siblings?

15 A That was in the last will and testament, yes.

16 Q You understand that Mrs. Ryan wanted the Duerk
17 siblings, and that includes Deborah Duerk Collins to
18 share equally in the 215 Inlet Way, Palm Beach Shores,
19 Florida home; didn't you understand that?

20 A I can say what's stated in her will. It said
21 if I may own any interest in this property, yes, she
22 gave it away four ways or five ways, whatever it was.
23 But I don't know her intention after 2007 when she made
24 the will; that's what she did in 2007.

25 Q Is it a fact that Jeff Duerk and his siblings

1 were involved in the sale of that property subject to
2 that will?

3 A Yes, and they is all signed on the deed along
4 with their spouses.

5 Q Did you have any conversations with them during
6 that process?

7 A I didn't have anything to do with it; I
8 represented the Parutas.

9 Q How about while that process was unfolding; you
10 said you had some conversations with Greg Duerk about
11 this?

12 A Are you talking about when she sold her house
13 down here? That was in 2012. I had nothing to do with
14 the Duerks.

15 Q I am talking about when the situation arose
16 where you needed to figure out how the checks were going
17 to be administered?

18 A My client was concerned, I don't think she
19 knew -- When her checks weren't being cashed that's when
20 she got concerned. I think that is when she found out
21 about Eileen Ryan's and that's when we got busy trying
22 to figure out how we're going to get an estoppel letter.

23 Q Just so you know, Greg Duerk claims that he
24 consulted with you on legal matters and got advice from
25 you; is that true or not?

1 A Not true. Did he ever get a bill from me?

2 Does he have any correspondence from me?

3 Q No, I am talking about his testimony. It is
4 your testimony that you told him you could never
5 represent him and he needed to get another lawyer in
6 Florida?

7 A I never put it that way to him, no. I don't
8 recall that.

9 Q Do you realize that Jeff Duerk had taken all
10 the proceeds from this house and had given it to himself
11 and his daughter?

12 A I don't know what he did with the proceeds,
13 sir.

14 Q Did you have a conversation with me telling me
15 that this money should be divided equally among the
16 siblings?

17 A I had a conversation with you?

18 Q Yes?

19 A And I stated that?

20 Q Yes?

21 A I don't recall that. I know you called me in
22 September of --

23 Q What did I say?

24 A I don't know. You asked me something about the
25 estate. I didn't take any extensive notes on it.

1 Q Did you ever tell Greg Duerk if he wanted to
2 get any part of the proceeds of this sale he needed to
3 get a lawyer to go into probate court in Florida and
4 protect him and his three siblings?

5 A I never told him that.

6 MR. BRITTIAN: I have no further questions.

7 A (Continuing) I didn't think I had to tell
8 Gregory anything. He had a power of attorney and he was
9 managing all her affairs. He had possession of her last
10 will and testament and he was the attorney in fact
11 before she died. He could have done anything he wanted
12 with that mortgage and note; he could have assigned it
13 to his four kids. I don't know what they were thinking.
14 All I know is I was trying to get one thing
15 accomplished, the satisfaction. So I knew I had to have
16 a personal representative appointed and that's all we
17 accomplished.

18 Q Mr. Stewart, I have follow-up questions to your
19 answer.

20 A Alright.

21 Q Did you have any conversations involving legal
22 matters concerning the administration of the estate of
23 Mrs. Ryan with Greg Duerk?

24 A At the point where I got the will I got a hold
25 of Greg and I said, this is your brother's business now.

1 paper as the regular, white copy paper and I flipped
2 through here twice and I saw, call it a half a dozen
3 phone messages, telephone conferences; nothing in
4 detail, though.

5 Q You had six conversations with him?

6 A Yes, I'd say so.

7 Q At any time in there did you say, hey look,
8 you'd better get a lawyer down here, if I'm going to
9 represent the estate as a personal representative you're
10 not going to get any money?

11 A I never said that.

12 Q You never told him to get another lawyer, did
13 you?

14 A I wouldn't have any reason to tell him to get
15 another lawyer that I know of.

16 Q He asked you legal questions and you answered
17 them, didn't you?

18 A I didn't feel that he was asking legal
19 questions. I was asking, do you have the original will
20 and then I asked him about the death certificate. It
21 said Palm Beach County, because I thought she was living
22 up there, probated up there, but he must have talked to
23 somebody because we ended up down here. I thought it
24 was a personal property, a mortgage is chattel, so if
25 they had an estate proceeding up there the person who

1 represented him up there could have simply signed it
2 without having an ancillary here in Florida. But for
3 whatever reason, that didn't work out.

4 Initially, I thought it should have been
5 probated up there until we got down to where she filed
6 her taxes last; those types of things. I don't know if
7 she had an id but it was concluded that she was a Palm
8 Beach County resident at the time of her death.

9 Q But your opinion is it should have been
10 probated in Horry County in South Carolina, right?

11 A I didn't see any reason -- You just have to
12 explain away where she resided at the time of her death;
13 where she was domiciled, is what we say here in Florida.

14 Q You knew she had been up here for quite some
15 time?

16 A I don't know. I think he said she came up
17 there to visit and then she took ill or something and
18 then she just, that's where she ended up dying. So I
19 don't know the specifics of that.

20 Q Greg Duerk has many valid legal positions put
21 forward in the process to determine where it should have
22 been administered and what the circumstances of the
23 transactions were.

24 A Is that a statement or a question?

25 Q Isn't that true, sir?

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) FIFTEENTH JUDICIAL CIRCUIT

)

) C/A No.

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**NOTICE OF MOTION AND
MOTION TO ENJOIN
TRANSFER OF ASSETS**

TO: THE HONORABLE COURT AND THE ABOVE-NAMED DEFENDANT:

Now comes Thomas C. Brittain, Esquire on behalf of Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller ("Plaintiffs") seeking an Order to Enjoin Transfer of Assets.

Based upon the foregoing Complaint, Plaintiffs hereby request that this Honorable Court enjoin Geoffrey Duerk ("Defendant") from disbursing any and all assets of the Estate of Eileen Ryan from the sale of her home located at 215 Inlet Way, Palm Beach Shores, Florida 33404 until such time as the Court has been able to determine the rightful ownership of these assets.

Plaintiffs request that an emergency hearing be scheduled due to the time sensitivity of this matter and the high risk that Defendant will disburse these contested funds in the absence of an Order Enjoining Transfer of Assets.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)
Attorneys for the Plaintiffs

HORRY COUNTY
14 OCT 31 AM 10:26
JANELLE HUGGINS-WARD
CLERK OF COURT

October 31, 2014
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) FIFTEENTH JUDICIAL CIRCUIT

)

) C/A No. 2014-CP-26-7264

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NOTICE OF MOTION AND MOTION
TO JOIN ADDITIONAL PARTIES

HORRY COUNTY
2015 SEP 10 AM 8:20
JULIA CLERK OF COURT

TO: THE DEFENDANT AND HIS ATTORNEY JAY M. BULTZ, ESQUIRE:

PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned attorneys, will move this Court on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order allowing Plaintiffs to join James M. Stewart, Esquire as a party in this action.

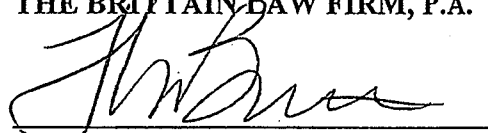
Plaintiffs make this Motion pursuant to Rule 19(a) of the South Carolina Rules of Civil Procedure and based upon relevant deposition testimony and documents produced through the discovery process pertaining to James M. Stewart, an attorney licensed and practicing in the State of Florida whose office is located at 1211 The Plaza, Singer Island, Florida 33404. Upon information and belief, both Plaintiff Gregory Duerk and Defendant Geoffrey Duerk believed James Stewart to be representing their interests with regards to the Estate of Eileen Ryan and, in that regard, James Stewart may have had a conflict of interest that he did not disclose and or discuss with the interested parties. Further, Plaintiffs believe that in the absence of joining James M.

Stewart as a Defendant in this action complete relief cannot be accorded among those already parties.

Based upon the foregoing, Plaintiffs respectfully request this Court grant an Order to join attorney James M. Stewart as a Defendant in this action.

Respectfully submitted by,

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain
T. Case Brittain, Jr.
4614 Oleander Drive
Myrtle Beach, S.C. 29577
(843)-449-8562 (Phone)
Attorneys for the Plaintiffs

Myrtle Beach, South Carolina
September 9, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) FIFTEENTH JUDICIAL CIRCUIT

)

) C/A No.

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**NOTICE OF MOTION AND
MOTION TO ENFORCE
AGREEMENT
(SANCTIONS)**

TO: THE HONORABLE COURT AND THE ABOVE-NAMED DEFENDANT:

Now comes Thomas C. Brittain, Esquire on behalf of Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller ("Plaintiffs") seeking an Order to Enforce Agreement in the above-referenced case involving the misappropriation of over \$200,000.00 by Defendant and his daughter.

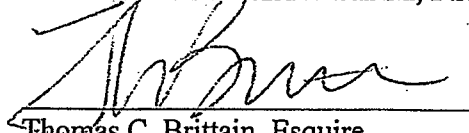
Early on in the case it was learned by the Plaintiffs that Defendant and his daughter had taken funds that belonged to Plaintiffs.

Attorney for the Plaintiffs filed a Motion to Enjoin Transfer of Assets in order to prohibit the transfer of any of those funds. Jay Bultz, on behalf of the Defendant and the Defendant's daughter, agreed to preserve those funds inviolate and keep them intact and available to the availing parties in the case. A consent order was mailed to attorney Bultz in connection with this verbal agreement, various excuses were provided for not signing it but with continued assurances that such an agreement was there and thereafter Jay Bultz advised Thomas C. Brittain that they had decided not to keep all of that money in there despite the earlier promises they had made (see attached as "Exhibit A" all correspondence, e-mails, etc. evidencing this agreement)

This is in violation of the rules of court, it's in violation of a promise and a valid one made by a lawyer that binds his clients. These Plaintiffs seek sanctions and an order from this Court

requiring the money to be returned to an account and preserved in accordance with the earlier agreement.

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain, Esquire
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449.8562
(843) 497.6124 (Fax)
Attorneys for the Plaintiffs

November 2, 2015
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) FIFTEENTH JUDICIAL CIRCUIT

)

) C/A No. 2014-CP-26-7264

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**NOTICE OF MOTION AND MOTION
TO JOIN ADDITIONAL PARTIES**

TO: THE DEFENDANT AND HIS ATTORNEY JAY M. BULTZ, ESQUIRE:

PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned attorneys, will move this Court on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order allowing Plaintiffs to join James M. Stewart, Esquire as a party in this action.

Plaintiffs make this Motion pursuant to Rule 19(a) of the South Carolina Rules of Civil Procedure and based upon relevant deposition testimony and documents produced through the discovery process pertaining to James M. Stewart, an attorney licensed and practicing in the State of Florida whose office is located at 1211 The Plaza, Singer Island, Florida 33404. Upon information and belief, both Plaintiff Gregory Duerk and Defendant Geoffrey Duerk believed James Stewart to be representing their interests with regards to the Estate of Eileen Ryan and, in that regard, James Stewart may have had a conflict of interest that he did not disclose and or discuss with the interested parties. Further, Plaintiffs believe that in the absence of joining James M.

2014-CP-26-7264

FILED
CLERK OF COURT
JAN 19 PM 4:09
JANE HUGHES
WARD

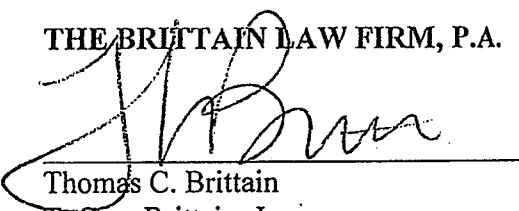
Page 1

Stewart as a Defendant in this action complete relief cannot be accorded among those already parties.

Based upon the foregoing, Plaintiffs respectfully request this Court grant an Order to join attorney James M. Stewart as a Defendant in this action.

Respectfully submitted by,

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain
T. Case Brittain, Jr.
4614 Oleander Drive
Myrtle Beach, S.C. 29577
(843)-449-8562 (Phone)
Attorneys for the Plaintiffs

Myrtle Beach, South Carolina
Jan 19, 2016

COPY

FILED
HORRY COUNTY IN THE COURT OF COMMON PLEAS
2016 JAN 19 PM 4:10
FIFTEENTH JUDICIAL CIRCUIT

GREGORY DUEK, DONALD L. DUEK, JR. and DEBORAH DUEK TILLER, PLAINTIFFS
C/A No. 2014-CP-26-7264

Plaintiffs,)

v.)

Geoffrey Duerk,)

Defendants.)

MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION
TO JOIN ADDITIONAL PARTIES

TO: THIS HONORABLE COURT AND JAY M. BULTZ ESQUIRE, ATTORNEY
FOR DEFENDANT:

The Plaintiffs, Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller, ("Plaintiffs") by and through their undersigned attorney, hereby submits this Memorandum in Support of Plaintiffs' Motion for Summary Judgment, and in support thereof, would show the following:

STATEMENT OF THE FACTS

On July 6, 1998, Eileen Ryan, the second cousin of Plaintiffs and Defendant executed a Quitclaim Deed on her property located at 215 Inlet Way, Palm Beach Shores, Florida 33404 naming as grantee Eileen M. Ryan, as to a life estate, and DONALD DUEK, JR., DEBORAH DUEK COLLINS, GREGORY DUEK and GEOFFREY DUEK, as joint tenants with right of survivorship, as to the remainder. On September 25, 2007, Eileen Ryan executed her Last Will and Testament wherein she gave "any interest in any home I may own at 215 Inlet Way, Palm Beach Shores, Florida, more particularly described as Lot 31 and the East 1 foot of Lot 12, Palm Beach Shores, according to the Plat thereof on file in Plat Book 23, Page 29, public records of Palm Beach County, Florida to DONALD DUEK, JR., DEBORAH DUEK COLLINS, GREGORY DUEK and GEOFFREY DUEK, as joint tenants with right of survivorship."

On or about April 17, 2012, Eileen Ryan by and through her attorney-in-fact, Plaintiff Gregory, sold her home located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta for \$318,000.00. That same day Eileen Ryan, Plaintiffs and Defendant, jointly, signed a Warranty Deed, as grantor for the property located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta as grantee; that everyone knew and agreed that a four way distribution of all such funds was due to the Defendant and Plaintiffs.

On or about April 27, 2012, Jason and Mindi Paruta, entered into an interest only Mortgage and Promissory Note with Eileen Ryan as the mortgagee wherein they agreed to pay \$1,000.00 per month beginning July 1, 2012 through and until June 1, 2014 at which time the remaining balance or the entire principal balance of \$286,200.00 shall become due. That, as the mortgage holder, Eileen Ryan along with Plaintiffs and Defendant maintained a legal interest in said property.

Approximately a year prior to selling her home, Eileen Ryan moved to Myrtle Beach, South Carolina to be near her cousins where she remained until her death on August 23, 2013. Each of the monthly mortgage payments on the home she sold in Florida came to her Myrtle Beach address and were deposited by Plaintiff Gregory Duerk, as her POA. Following her death, Plaintiff Gregory Duerk was contacted by James Stewart, an attorney in Florida, who was representing Mr. and Mrs. Paruta, the couple that had purchased the Florida home, and were trying to refinance their mortgage. During this conversation between James Stewart and Gregory Duerk, James Stewart agreed to handle the administration of Ms. Ryan's estate, which had not yet been opened, and Gregory Duerk mailed to him the original Will of Ms. Ryan. James Stewart had no further contact with Gregory Duerk from that point forward and, instead, corresponded only with Defendant Geoffrey Duerk.

On May 22, 2014, Defendant was appointed personal representative of Eileen Ryan's estate by Judge John L. Phillips in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. Defendant inaccurately and fraudulently listed Ms. Ryan's residence at the time of her death as her home in Palm Beach Shores, Florida rather than Myrtle Beach, South Carolina. Further, attorney James Stewart, who was handling the administration of this Estate was well aware that Ms. Ryan did not reside at this address at the time of her death and was, in fact, domiciled in the State of South Carolina. Defendant also failed to notify the Florida Circuit Court of his criminal record which more likely than not would have affected his ability to be appointed personal representative of Ms. Ryan's estate.

On or about June 5, 2014, Defendant signed a Satisfaction of Mortgage evidencing that Jason and Mindi Paruta had, in compliance with the terms and conditions of the Promissory Note, made full and final payment of the entire principal balance on the property located at 215 Inlet Way, Palm Beach Shores, Florida in the amount of \$286,200.00 to the Estate of Eileen Ryan. James M. Stewart, who was representing both the Parutas and the Estate of Eileen Ryan, was involved in preparing and filing the Satisfaction of Mortgage and preparing and mailing a check made payable to the Estate of Eileen Ryan in the amount of \$286,200.00 to Defendant. Upon information and belief, James Stewart did not contact any of the Plaintiffs prior to disbursing these funds to Defendant even though he knew or should have known said funds were to be divided evenly between Plaintiffs and Defendant, in compliance with the declarations expressed by Eileen Ryan in her Last Will and Testament. Defendant has removed from the estate the sum of approximately \$286,200.00 and wrongfully converted these funds for his and his daughter's personal use.

Upon the filing of this action Plaintiffs also filed a Motion to Enjoin Transfer of Assets. Upon information and belief, Defendant and his daughter, Kristen Duerk, each hold an account containing \$100,000.00 in proceeds from the final balloon payment on Ms. Ryan's home. Shortly before Plaintiffs' Motion for Enjoin was heard counsel for Defendant, Jay Bultz, contacted Plaintiffs' counsel and advised his client and Kristen Durek had both agreed not touch these funds until this matter had been resolved. Upon this assurance, Plaintiffs dismissed their Motion to Enjoin and forwarded to Jay Bultz a Consent Order to Enjoin Funds to be signed by both Defendant and Kristen Duerk. After several assurances that the document would be signed pending some revisions to the document, Defendant's counsel then informed Plaintiffs' counsel that Defendant and Kristen Duerk were not going to sign and, further, were removing money from these accounts despite their earlier assurance that this would not occur.

STANDARD OF REVIEW

Rule 19(a) of the South Carolina Rules of Civil Procedure states that, "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if in his absence complete relief cannot be accorded among those already parties". In this matter, both James Stewart and Kristen Duerk are parties that must be added in order for Plaintiffs to be accorded complete relief.

ARGUMENT

I. Plaintiffs are entitled to Join Kristen Duerk as a Defendant

As discussed above, Kristen Duerk, who is the daughter of Defendant received from the Estate of Eileen Ryan ½ of the proceeds from the final balloon mortgage payment on Ms. Ryan's home (which was jointly owned by Eileen Ryan, Plaintiffs and Defendant). Plaintiffs are unable to enjoin Kristen Duerk from accessing and spending these funds without her being joined as a

Defendant in this action. Plaintiffs attempted to resolve this issue amicably with Defendant and his daughter by reaching a mutual agreement to freeze these funds until the final resolution of this action. The day before Plaintiff's Motion to Enjoin against Defendant was to be heard Jay Bultz contacted Plaintiffs' counsel and advised both Defendant and Kristen Duerk we agreeable to this. In response, Plaintiffs' counsel notified the Court that the Motion to Enjoin was resolved (see Exhibit A).

On June 16, 2015, a proposed Consent Order was e-mailed to Jay Bultz to be signed by Defendant and Kristen Duerk. By e-mail dated June 18, 2015, Mr. Bultz's office advised that he was 'reviewing and revising' the proposed Consent Order (see Exhibit B). However, after a long delay, Jay Bultz advised Plaintiffs that both Defendant and Kristen were accessing these funds for their personal use. As such, Plaintiffs only recourse at this point is to join Kristen Duerk as a party to this action.

II. Plaintiffs are entitled to Join James Stewart as a Defendant

Plaintiffs previously filed a Motion to Join James Stewart as a party to this action on September 10, 2015. The motion was heard on October 26, 2015 before the Honorable Donald B. Hocker who ordered that Plaintiffs' motion was denied without prejudice and, further, that Plaintiffs had the right to depose James Stewart without restriction as to attorney-client privilege (see Exhibit C).

On December 1, 2015, Plaintiffs conducted the telephone deposition of James Stewart. During his deposition he provided the following testimony:

Page 4 Lines 16-23

- Q: Have you had occasion in connection with your legal practice to have any conversations with members of the Duerk family?
A: Yes, two members...Greg and Jeffrey.
Q: Who did you first have a conversation with?
A: Gregory.

Page 5 Lines 3-21

- A: My clients were refinancing their home in order to pay off the Duerk mortgage or the Ryan mortgage, excuse me, and when I got with my clients to get the contact person to get a mortgage estoppel letter, I was given Gregory's name and that's how I got in touch with him.
- Q: Your clients at that time were Jason and Mindy Paruta or the bank?
- A: The Parutas.

Page 8 Line 11-Page 9 Line 2

- Q: You never even talked to Jeff Duerk until after you had talked to Greg Duerk about all this, did you?
- A: That's...true. Greg was my contact and we were trying to sort out how we were going to get this loan satisfied.
- Q: The administration of the estate issue?
- A: Yes.
- Q: That's different than the Parutas. We are now talking about somebody going into probate court in Florida and administering the estate of Eileen Ryan, right?
- A: Yes.
- Q: You did that, didn't you?
- A: Yes.

Page 9 Lines 12-15

- Q: Have you ever advised Greg Duerk that he and his siblings needed a lawyer to protect themselves in connection with this matter?
- A: I don't recall having that conversation.

Page 10 Line 21-Page 11 Line 18

- Q: Greg Duerk had come into contact with you based on your involvement with the Parutas in this matter, asked you if you could handle the administration of the estate of Eileen Ryan?
- A: I think I was the one that pointed out to him that her estate needed to be administered so he wouldn't have asked me that question.
- Q: So...it's not even that Greg Duerk asked you to do it, you put yourself into the situation and said it needs to happen and you volunteered to do it; is that true?
- A: ...In my evaluation, yes, I must have brought it up.

Page 14 Line 12-Page 15 Line 8

- Q: You know that Ms. Ryan left the house at 215 Inlet Way, Palm Beach Shores to all four of these siblings?
- A: That was in the last will and testament, yes...It said if I may own any interest in this property, yes, she gave it away four ways or five ways, whatever it is.
- Q: Is it a fact that Jeff Duerk and his siblings were involved in the sale of that property subject to that will?
- A: Yes, and they...all signed on the deed with their spouses.

Q: Did you have any conversations with them during that process?

A: I didn't have anything to do with it; I represented the Parutas.

Page 16 Lines 9-13

Q: Do you realize that Jeff Duerk had taken all the proceeds from this house and had given it to himself and his daughter?

A: I don't know what he did with the proceeds, sir.

Page 17 Lines 14-17

A: All I know is I was trying to get one thing accomplished, the satisfaction. So I knew I had to have a personal representative appointed and that's all we accomplished.

Page 21 Line 21-Page 22 Line 20

A: I though [Ms. Ryan] was living up there [in Myrtle Beach, South Carolina], probated up there, but [Greg] must have talked to somebody because we ended up down here.

Q: You have been talking about the fact that maybe it shouldn't have even been probated down there [in Florida]. She was up here, she had been up here for a while, you knew that, so there's even a jurisdictional issue about where the estate should have been probated.

A: Sometimes, there's a gray area, you could have probably made an argument; who's going to object to it.

Mr. Stewart, through his deposition testimony, confirmed that he was the one who contacted Plaintiff Greg Duerk, on behalf of his clients the Parutas, regarding their mortgage with Eileen Ryan who had recently passed away. During his conversation with Plaintiff Greg Duerk, Mr. Stewart volunteered his services to probate the Last Will and Testament of Eileen Ryan in order to assist his clients, the Parutas, in accomplishing a satisfaction of the mortgage. In doing this, Mr. Stewart, put himself into a situation where he had a very real conflict of interest between the parties he was now representing.

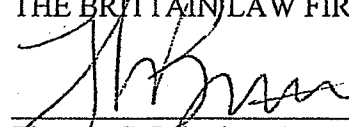
Mr. Stewart further made it clear in his deposition that he did not ensure that the Personal Representative of the Estate of Eileen Ryan, Geoffrey Duerk properly distributed the proceeds from the balloon mortgage payment received into the estate by the Parutas in accordance with the Last Will and Testament of Eileen Ryan or that he even had proper jurisdiction to open the Estate in Florida. He admitted, under oath, that even though he was the attorney responsible for the administration of the estate he didn't know what Defendant Geoffrey Durek did with the proceeds.

He even went on to make it clear that his sole purpose in soliciting the Duerks to represent the Estate of Eileen Ryan was to get the satisfaction accomplished on behalf of his original clients, the Partuas.

CONCLUSION

For the above-stated reasons Plaintiffs respectfully requests that this Court Grant their Motions to Join Additional Parties in this action, and in doing so, any further action as this Court deems necessary, just, and proper.

THE BRITTAIN LAW FIRM



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Attorney for Plaintiffs

January 19, 2016
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

vs.

Geoffrey Duerk, Kristen Duerk and James
M. Stewart,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-26-7264

**DEFENDANT JAMES M. STEWART'S
MOTION TO DISMISS**

Defendant James M. Stewart ("Defendant") hereby moves for an order dismissing Plaintiffs' claims with prejudice on the following grounds:

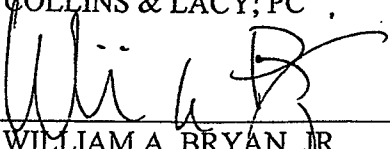
- I. Lack of personal jurisdiction;
- II. Plaintiffs' Amended Complaint fails to set forth sufficient facts to constitute a cause of action against Defendant; and
- III. Plaintiffs' failure to comply with the pre-suit requirements under S.C. Code Ann. § 15-36-100.

In support of this motion, Defendant relies on the pleadings, the Memorandum of Law filed herewith, the applicable statutory and common law, and such oral argument as the Court may hear.

[Signature Page to Follow]

Respectfully Submitted,

COLLINS & LACY, PC

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ATTORNEYS FOR DEFENDANT
JAMES M. STEWART

**DEFENDANT JAMES M. STEWART'S
MOTION TO DISMISS**

Murrells Inlet, South Carolina
June 10, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

VS.

Geoffrey Duerk, Kristen Duerk and
James M. Stewart,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-26-7264

**DEFENDANT JAMES M. STEWART'S
MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS**

Defendant James M. Stewart (hereinafter, "Stewart" or "Defendant Stewart") hereby moves for an Order dismissing Plaintiffs' Amended Complaint against Stewart for lack of personal jurisdiction and, alternatively, on the further grounds that Plaintiffs failed to state facts sufficient to constitute a cause of action under Rule 12(b)(6) and failed to satisfy pre-suit filing requirements under S.C. Code Ann. § 15-36-100. Defendant respectfully submits this memorandum in support of his motion.

INTRODUCTION

This is a dispute between siblings over assets from the estate of their cousin, Eileen Ryan. Plaintiffs allege they were beneficiaries under the Last Will and Testament of Eileen Ryan and that Defendants Geoffrey Duerk and Kristen Duerk converted funds from Ryan's estate for their own benefit. Defendant James M. Stewart, an attorney licensed exclusively in the State of Florida, was hired by the Personal Representative, Geoffrey Duerk, to probate Ryan's estate which was accomplished in Florida. There is no basis for exercising personal jurisdiction over Stewart.

BACKGROUND

A. Allegations and Parties

This is a dispute between siblings over assets passing from the estate of their cousin Eileen Ryan. Ryan's Last Will and Testament, executed in 2007, provided that any interest she had in property at 215 Inlet Way, Palm Beach Shores, Florida, would pass to the Plaintiffs and to Geoffrey Duerk. (Ex. A, Amended Complaint, ¶ 10). Ryan had previously deeded the same property to the Duerk siblings as joint tenants with right of survivorship, reserving a life estate for herself. (Ex. A, ¶ 9).

In 2012, Ryan – through her attorney-in-fact Gregory Duerk - sold her home in Florida to Jason and Mindi Paruta. (Ex. A, ¶ 11). Ryan, along with the three Plaintiffs and Geoffrey Duerk, signed a warranty deed on April 17, 2012 deeding the property to the Parutas. (Ex. A, ¶ 12). The Parutas then entered into an interest only Mortgage and Promissory Note with Ryan as the Mortgagee wherein the Parutas agreed to make monthly payments to \$1,000 from July 1, 2012 to June 1, 2014 at which time the remaining balance of \$286,200.00 would become due. (Ex. A, ¶ 13). Eileen Ryan died on August 23, 2013. (Ex. A, ¶ 14).

Ryan's will named Geoffrey Duerk Personal Representative of her estate and made two bequests that are material to the instant litigation. In Paragraph 5, Ryan "[gave] any interest in any home I may own at 215 Inlet Way, Palm Beach Shores, Florida... to Donald Duerk, Jr., Deborah Duerk Collins, Gregory Duerk and Geoffrey Duerk, as joint tenants with right of survivorship". In Paragraph Six of Ryan's Will, she "[gave] all the rest, residue and remainder of my estate, of whatsoever kind and wheresoever situate, which I may own or have the right to dispose of at the time of my death" to Geoffrey Duerk and Kristen Duerk, in equal parts.

After Ryan's death, Personal Representative Geoffrey Duerk hired Florida attorney James M. Stewart to probate Ryan's estate. (Ex. B, Stewart Affidavit, ¶ 9). Ryan's estate was opened and probated in Palm Beach County, Florida. (Ex. B, ¶ 10).

Pursuant to the Mortgage and Promissory Note discussed above, the Parutas made full and final payment of the balance owed which became part of Ryan's estate. (Ex. A, ¶ 24). Because the property at 215 Inlet Way was sold prior to Ryan's death, her estate did not include a house. The remaining assets of the estate, including proceeds from the sale of the home at 215 Inlet Way, passed under Paragraph Six of the Will to Geoffrey and Kristen Duerk. Plaintiffs allege the proceeds from the sale of Ryan's home should have distributed between the four Duerk siblings but were instead converted by Defendants Geoffrey Duerk and Kristen Duerk.

Plaintiffs filed the original Summons and Complaint against Geoffrey Duerk and Kristen Duerk on October 31, 2014. The original action asserted one cause of action against Geoffrey Duerk and Kristen Duerk labeled Conversion/Equitable Distribution/Fraud. Plaintiffs alleged Geoffrey Duerk and Kristen Duerk converted assets from Ryan's estate that were intended to be distributed evenly between the three Plaintiffs and Geoffrey Duerk. Although Ryan's home at 215 Inlet Way in Palm Beach Shores was sold before Ryan's death, Plaintiffs allege they were entitled to a cash distribution from the residuary equal to the interest they previously held.

Plaintiffs filed an Amended Complaint on March 28, 2016 asserting a single cause of action (labeled Conflict of Interest/Misrepresentation/Breach of Fiduciary Duty) against Stewart. The claims asserted against Stewart are defective for a number of reasons. First, Plaintiffs allege no facts giving rise to personal jurisdiction over Stewart in South Carolina. They do not plead any facts sufficient to bring Defendant Stewart within the provisions of the South Carolina long-

arm statute or that would satisfy the Due Process Clause of the Fourteenth Amendment. Second, the claims against Stewart do not state facts sufficient to constitute a cause of action. Finally, if the Court finds the claims are sufficiently pled to withstand a motion under Rule 12(b)(6), the claims should nevertheless be dismissed due to Plaintiffs' failure to comply with the pre-suit filing requirements under S.C. Code Ann. § 15-36-100. The remainder of Defendant Stewart's Memorandum addresses the three grounds for dismissal.

LEGAL ARGUMENT AND AUTHORITY

I. Personal Jurisdiction Over Defendant Stewart is Lacking.

The Amended Complaint contains no allegations that Defendant had any jurisdictionally significant contacts with this State. In fact, the Amended Complaint is completely devoid of any factual allegations that demonstrate Defendant has, or had, sufficient contacts with the State of South Carolina to confer personal jurisdiction to this Court.

A. Legal Standard: Lack of Personal Jurisdiction.

"The determination of whether a court may exercise personal jurisdiction over a nonresident involves a two-step analysis." Sullivan v. Hawker Beechcraft Corp., 723 S.E.2d 835, 839 (S.C. Ct. App. 2011). First, the Court must determine whether the South Carolina long-arm statute applies. Id. Second, the Court must determine whether the nonresident's contacts with South Carolina satisfy due process. Id. Plaintiffs have the burden of proving personal jurisdiction. See, e.g., Coggeshall v. Reproductive Endocrine Assocs. of Charlotte, 655 S.E.2d 476, 478 (S.C. 2007); Sullivan, 723 S.E.2d at 839. As explained below, Plaintiffs have not carried this burden.

The South Carolina long-arm statute provides for the exercise of personal jurisdiction over nonresidents that have an "enduring relationship" with the State (S.C. Code. § 36-2-802) or

that directed their activities to South Carolina and the cause of action arises out of or relates to those activities. S.C. Code § 36-2-803(A). Notably, South Carolina's long-arm statute has been construed to extend to the outer limits of the Due Process Clause. State v. NV Sumatra Tobacco Trading Co., 666 S.E.2d 218, 222 (S.C. 2008) (citation omitted). For this reason, South Carolina courts have held that, "[b]ecause South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process." Id. (citation omitted).

Federal due process is satisfied if: (1) the nonresident defendant has established minimum contacts with the forum state, and (2) the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. Walden, 134 S. Ct. 1115, 1121 (2014); NV Sumatra Tobacco Trading Co., 666 S.E.2d at 222, Cribb v. Spatholt, 676 S.E.2d 714, 719 (S.C. Ct. App. 2009). As the United States Supreme Court has emphasized: "However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that state that are a prerequisite to its exercise of power over him." Walden, 134 S. Ct. at 1122 (internal quotation marks omitted) (quoting Hanson v. Deckla, 357 U.S. 235, 251 (1958)); see also Cribb, 676 S.E.2d at 719 (explaining that, without minimum contacts, "the court does not have the 'power' to adjudicate the action.").

Minimum contacts exist if the defendant "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Cribb, 676 S.E.2d at 719 (quoting Moosally v. W.W. Norton & Co., Inc., 594 S.E.2d 878, 884 (S.C. Ct. App. 2004)). The nonresident defendant's "purposeful availment" must be "such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); Power Prods. and Servs. Co., Inc. v. Kozma,

665 S.E.2d 660, 665 (S.C. Ct. App. 2008). Indeed, this purposeful availment requirement “ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts” (Power Prods. and Servs. Co., Inc., 665 S.E.2d at 665), or “the unilateral activity of another party.” Leggett v. Smith, 686 S.E.2d 699, 705 (S.C. Ct. App. 2009) (citation omitted).

Even if a nonresident defendant has purposefully availed itself of the privileges of doing business in the forum state, courts must still determine whether maintenance of a suit comports with “traditional notions of fair play and substantial justice.” NV Sumatra Tobacco Trading Co., 666 S.E.2d at 222; Cribb, 676 S.E.2d at 719. To do so, courts must look to the relationship between the nonresident defendant and the forum. World-Wide Volkswagen Corp., 444 U.S. at 292. This relationship must be such that the exercise of personal jurisdiction over the defendant is reasonable and fair. Power Prods. and Servs. Co., Inc., 665 S.E.2d at 665. Implicit in this reasonableness determination is the weighing of certain factors, including, *inter alia*, the duration of the activity of the nonresident with the state, the character and circumstances of the commission of the nonresident’s acts, the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident, and the State’s interest in exercising jurisdiction. Id. (citation omitted).

“Endeavoring to give specific content to the ‘fair play and substantial justice’ concept, the Court in International Shoe classified cases involving out-of-state corporate defendants” as those falling within the categories of either “general” or “specific” jurisdiction. Goodyear Dunlop Tires Operations, SA v. Brown, 131 S. Ct. 2846, 2853 (2011). Specific jurisdiction exists when a nonresident defendant is subject to personal jurisdiction in a suit arising out of or relating to the nonresident’s purposeful contacts with the forum state. Coggeshall, 655 S.E.2d at

478. General jurisdiction exists if a nonresident defendant has an “enduring relationship” with the State; the defendant may be sued in the State even if the cause of action did not arise in South Carolina. See Cribb, 676 S.E.2d at 718. Because this case falls into neither category, the exercise of personal jurisdiction over Defendant Stewart would violate the protections afforded to him by the United States and South Carolina Constitutions.

B. Defendant lacks the requisite “minimum contacts” with South Carolina to satisfy due process.

1. Plaintiffs cannot establish specific jurisdiction over Defendant.

Plaintiffs have not established that this Court should exercise specific jurisdiction over Defendant Stewart. “The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation.” Walden, 134 S. Ct. at 1121 (internal quotation marks omitted). In order for specific jurisdiction to exist, the Court must find that the defendant “directed his activities to residents of South Carolina and that the cause of action arises out of or relates to those activities.” Cribb, 676 S.E.2d at 719. Plaintiffs cannot make this showing with regard to Defendant.

As established above, Defendant has not directed any of his business activities to South Carolina. Mr. Stewart is not licensed to practice law in South Carolina and has never practiced law or conducted any business in South Carolina. (Ex. B, ¶¶ 2, 4). He owns no real or personal property in South Carolina. (Ex. B, ¶ 6). He has no offices, employees, or agents in South Carolina. (Ex. B, ¶ 5). Mr. Stewart does not maintain a mailing address or telephone number in South Carolina. (Ex. B, ¶ 7). Stewart has never visited South Carolina for a business purpose or any purpose other than to purchase gas while traveling. (Ex. B, ¶ 13). Everything Stewart did in connection with the Duerks was done from the State of Florida. (Ex. B, ¶¶ 10, 11).

Mr. Stewart did not file any documents or prepare any documents to be filed in any court in South Carolina. (Ex. B, ¶ 12).

Simply put, at no point did Defendant Stewart seek to avail himself of the protection of South Carolina laws for any purpose. See *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011); *Burger King Corp. v. Rudzewicz*, 417 U.S. 462, 474 (1985); *Hanson*, 357 U.S. at 253. This is simply not a case where “the defendant’s conduct and connection with the forum State are such that [the defendant] should reasonably anticipate being haled into court there.” *World-Wide Volkswagen*, 444 U.S. at 297. Accordingly, there is no basis for this Court to exercise specific jurisdiction over Defendant Stewart.

2. Plaintiffs cannot establish general jurisdiction over Defendant.

Plaintiffs cannot establish general jurisdiction over Defendant. For general jurisdiction, the nonresident defendant must have an “enduring relationship” with the State. See *Cribb*, 676 S.E.2d at 718. To satisfy the “enduring relationship” requirement, the defendant’s contacts must be “continuous and systematic.” *Id.* (citing, *inter alia*, *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)); see also *Goodyear*, 131 S. Ct. at 2854. A proponent of general jurisdiction carries a heavy burden. The proponent must prove that the foreign defendant’s activities rise to the level of making the forum its “home.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014) (citing *Goodyear*, 131 S. Ct. at 2851). Moreover, to satisfy the requirement that the nonresident defendant’s contacts be “continuous and systematic,” the defendant’s contacts with the State must be “so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities.”

As discussed above, Defendant Stewart has no contacts with South Carolina, much less contacts that could be considered “continuous and systematic.” Accordingly, even if Plaintiffs had alleged general jurisdiction, they have not – and cannot – carry their heavy burden to establish this Court should exercise general personal jurisdiction over Defendant.

3. The exercise of personal jurisdiction over Defendant is unreasonable.

Even if this Court determines that sufficient contacts existed between Defendant and South Carolina to support specific or general jurisdiction, it should nevertheless decline to exercise personal jurisdiction over Defendant to avoid offending “traditional notions of fair play and substantial justice.” NV Sumatra Tobacco Trading Co., 666 S.E.2d at 222; Cribb, 676 S.E.2d at 719. In determining whether the exercise of personal jurisdiction comports with the traditional notions of fair play and substantial justice, courts consider (1) the duration of the activity of the nonresident with the State; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State’s interest in exercising jurisdiction. Power Prods. and Servs. Co., Inc., 665 S.E.2d at 665. A court should not exercise personal jurisdiction if it would be unreasonable to do so in light of all relevant factors. To be sure, the United States Supreme Court confirms that “jurisdictional rules may not be employed in such a way as to make litigation so gravely difficult and inconvenient that a party unfairly is at a severe disadvantage in comparison to his opponent.” Burger King, 471 U.S. at 478 (internal quotation marks omitted) (citations omitted).

The exercise of jurisdiction over Defendant undoubtedly would be unreasonable and would not comport with “fair play and substantial justice” under the circumstances. Stewart’s contacts with South Carolina were minimal; the duration of those contacts was similarly brief.

Although a single act may support jurisdiction, it must create a “substantial connection” with the forum. Burger King, *supra*. Defendant Stewart’s activities do not indicate that he purposefully availed himself of jurisdiction nor do they create a substantial connection with South Carolina. In regard to the character and circumstances of his acts, there is no allegation or evidence that Stewart conducted any business in South Carolina. Everything he did in connection with the Duerks was done in Florida. Invoking jurisdiction over Stewart, whose entire practice, personnel, and documents are in Florida, would be burdensome. Geographic distance, coupled with the lack of any connection to South Carolina, add to the hardship associated with the litigation. While South Carolina has an interest in providing redress for its citizens, that interest is diminished in circumstances like the present case where no business was transacted in South Carolina. See Aviation Assocs. & Consultants, Inc. v. Jet Time, 303 S.C. 502, 509, 402 S.C. 2d 177, 181 (1991).

Under these circumstances, invoking personal jurisdiction over Stewart would offend traditional notions of fair play and substantial justice. The claims against Stewart should therefore be dismissed.

II. Plaintiffs’ Amended Complaint Fails to State Facts Sufficient to Constitute a Cause of Action.

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. Baird v. Charleston Cnty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Id.* If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. *Id.* “The question is whether, in

the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). A Court will deny a motion to dismiss pursuant to Rule 12(b)(6), SCRPC, if the facts alleged and inferences reasonably deducible there from would entitle the plaintiff to any relief on any theory of the case. Food Lion, Inc. v. United Food & Commercial Workers Intern. Union, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002)

Rule 8(a), of the South Carolina Rules of Civil Procedure requires Plaintiff to set forth a short and plain statement of the facts showing he is entitled to relief. Rule 8(a)(2), SCRPC.

Plaintiffs’ Amended Complaint fails to state claims for negligent misrepresentation, breach of fiduciary duty, and conflict of interest under Rules 8(a) and 12(b)(6), SCRPC because the allegations are bereft of factual content such that the Court cannot draw any inferences, let alone a reasonable one, that Plaintiffs are entitled to the relief sought. Therefore, the claims against Defendant Stewart should be dismissed pursuant to Rule 12(b)(6), SCRPC.

A. Plaintiffs’ Amended Complaint Fails to State a Claim for Negligent Misrepresentation.

To prove a cause of action for negligent misrepresentation, Plaintiff must establish the following elements: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation. See Allegro, Inc. v. Scully, 309 S.C. 392, 418, 762 S.E.2d 54, 68 (Ct. App. 2014). The elements of “false misrepresentation cannot be premised upon an omission or silence of a party. Id. “The failure to prove any element of fraud or misrepresentation is fatal to the

claim.” Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) (quoting Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007)).

A complaint alleging a cause of action for negligent misrepresentation must assert factual allegations of negligence. An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001).

A complaint must sufficiently state the elements of a cause of action. The pleading rules in South Carolina require that facts be pled to support each element of the cause of action. Moore v. City of Columbia, 284 S.C. 278, 283, 326 S.E.2d 157, 160 (Ct. App. 1985) (finding complaint adequate when “it informs the defendant of the ultimate facts supporting each element of the cause of action.”) (emphasis added). In other words, facts showing the existence of all elements of the cause of action must be pled. Rule 8(a), SCRPC.

Plaintiffs’ Amended Complaint merely alleges the following with regard to negligent misrepresentation:

40. That Defendant Stewart, in his capacity as counsel for Mr. and Mrs. Paruta, contacted Plaintiff Gregory to assist his clients (the Parutas) in refinancing their mortgage with Eileen Ryan.

41. That Defendant Stewart negligently misrepresented himself to Plaintiff Gregory when he volunteered to handle opening the Estate of Eileen Ryan.

42. That a conflict of interest existed in representing all interested parties to this mortgage.

43. That Defendant Stewart disregarded this conflict and volunteered to represent the Estate of Eileen Ryan, the mortgator, after being retained as counsel for Mr. and Mrs. Paruta, the mortgagees.

44. That Defendant Stewart misrepresented to Plaintiff Gregory his interest in opening the Estate of Eileen Ryan and intentionally misled Plaintiff

Gregory into believing that Defendant Stewart would be acting in the best interest of the Plaintiffs in this regard.

(Amended Complaint, ¶¶ 40-44).

Even assuming the allegations above were true and viewed in a light most favorable to Plaintiffs, no reasonable inference can be made from the allegations that Defendant Stewart made a false statement. Plaintiffs fail to directly plead a false statement and it cannot be inferred by the allegations pled. Allegro, 309 S.C. at 418, 762 S.E.2d at 68. Indeed, Plaintiff merely states that Defendant Stewart negligently misrepresented himself to Plaintiff Gregory when he volunteered to handle opening the Estate of Eileen Ryan. (Ex. A, ¶ 41). Nothing in paragraph 41 of the Amended Complaint indicates Stewart made a false statement.

To the extent Plaintiffs contend Defendant Stewart failed to disclose information, such allegations cannot be the basis of a claim for negligent misrepresentation. See Id. (stating negligent misrepresentation cannot be premised on an omission by defendant).

Furthermore, there are no allegations to support the other elements of misrepresentation. The Amended Complaint does not allege a pecuniary interest or that Stewart owed a duty of care to Plaintiffs or that Stewart breached a duty owed to Plaintiffs by failing to exercise due care. Accordingly, Plaintiffs' misrepresentation cause of action should be dismissed pursuant to Rule 12(b)(6).

B. Amended Complaint Fails to State a Claim for Conflict of Interest.

Conflict of interest is not a recognized cause of action in South Carolina. The Rules of Professional Conduct address conflict of interest and identify circumstances when representation of a client is prohibited by a conflict and when it is permitted. The Rules of Professional Conduct, however, do not give rise to an independent cause of action. The Rules of Professional Conduct are relevant in assessing an attorney's legal duty in the context of a legal malpractice

action. See Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920, 927 (2011). Plaintiffs' "conflict of interest" claim should therefore be evaluated for sufficiency as a legal malpractice action.

The elements of a legal malpractice claim include: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. See Brown v. Theos, 345 S.C. 626, 629, 550 S.E.2d 304, 306 (2001); Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 656 (Ct. App. 2002).

The Amended Complaint contains insufficient facts to establish an attorney-client relationship existed between Stewart and any of the Plaintiffs. Plaintiffs repeatedly assert that Defendant Stewart was counsel for the Parutas but fail to plead facts sufficient to establish an attorney-client relationship existed between Defendant Stewart and Plaintiffs. See Brown, 345 S.C. at 629, 550 S.E.2d at 306.

Additionally, the Amended Complaint contains no allegations satisfying the remaining elements of a malpractice action. Plaintiffs fail to allege a breach of duty by Stewart. Plaintiffs similarly fail to allege damages proximately caused by Stewart's breach of duty. Without pleading facts supporting the elements of the cause of action, Plaintiffs' malpractice claim, described as "conflict of interest," is not colorable and should be dismissed.

C. Amended Complaint Fails to State a Claim for Breach of Fiduciary Duty.

Plaintiffs' Second Cause of Action also fails to state a claim for breach of fiduciary duty. To withstand dismissal under Rule 12(b)(6), Plaintiffs' Amended Complaint should include allegations establishing the existence of a fiduciary relationship, a duty arising from that relationship, the breach of the duty and damages proximately resulting from the Defendant's breach. In this case, as discussed previously, Plaintiffs have failed to state facts sufficient to establish the existence of a fiduciary relationship between Stewart and any of the Plaintiffs.

Plaintiffs' assertion of rights as beneficiaries under Ryan's will do not create a fiduciary relationship with Defendant Stewart. See Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011).

The Amended Complaint is additionally defective inasmuch as it fails to allege damages suffered by Plaintiffs as a result of Defendant's breach. The damages Plaintiffs are seeking in the Second Cause of Action are the same damages being sought in the conversion cause of action against Co-Defendants Geoffrey Duerk and Kristen Duerk. Plaintiffs have failed to allege a separate loss resulting from a breach of fiduciary duty by Stewart. This claim should therefore be dismissed.

III. Plaintiffs' Claims Against Stewart Should be Dismissed for Failing to Provide an Expert Affidavit as Required By S.C. Code Ann. § 15-36-100.

If the Court finds Plaintiffs' second cause of action includes sufficient facts establishing an attorney-client relationship with Stewart and a fiduciary duty breached by Stewart, the cause of action against Stewart should nevertheless be dismissed for Plaintiffs' failure to comply with the pre-suit filing requirements under S.C. Code Ann. § 15-36-100. In particular, Plaintiffs filed the Amended Complaint without an affidavit of an expert witness establishing the standard of care and Defendant Stewart's breach. Accordingly, Plaintiffs' claims against Defendant Stewart should be dismissed for failing to comply with S.C. Code Ann. § 15-36-100.

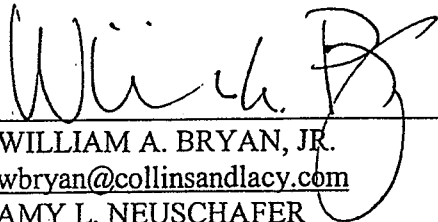
CONCLUSION

Defendant respectfully requests the Court grant the Motion to Dismiss for Lack of Personal Jurisdiction. In the alternative, Defendant submits the claims asserted against him should be dismissed under Rule 12(b)(6) for failure to state a cause of action as well as for

Plaintiffs' failure to comply with the pre-suit filing requirements under S.C. Code Ann.
§ 15-36-100.

Respectfully Submitted,

COLLINS & LACY, PC

By: 

WILLIAM A. BRYAN, JR.

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AMY L. NEUSCHAFER

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ATTORNEYS FOR DEFENDANT
JAMES M. STEWART

Murrells Inlet, South Carolina
June 10, 2016

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Gregory Duerk, Donald L. Duerk, Jr. and
Deborah Duerk Tiller,

Plaintiffs,

v.

Geoffrey Duerk, Kristen Duerk and James M.
Stewart

Defendants.

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 2014-CP-26-7264

) **MEMORANDUM IN OPPOSITION**
) **TO DEFENDANT JAMES M. STEWART'S**
) **MOTION TO DISMISS**

TO: THIS HONORABLE COURT AND WILLIAM A. BRYAN, JR. ESQUIRE,
ATTORNEY FOR DEFENDANT:

The Plaintiffs, Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller, ("Plaintiffs") by and through their undersigned attorney, hereby submits this Memorandum in Opposition to Defendant James M. Stewart's Motion to Dismiss and in support thereof, would show the following:

STATEMENT OF THE FACTS

On July 6, 1998, Eileen Ryan, the second cousin of Plaintiffs and Defendant Geoffrey Duerk executed a Quitclaim Deed on her property located at 215 Inlet Way, Palm Beach Shores, Florida 33404 naming as grantee Eileen M. Ryan, as to a life estate, and DONALD DUERK, JR., DEBORAH DUERK COLLINS, GREGORY DUERK and GEOFFREY DUERK, as joint tenants with right of survivorship, as to the remainder. On September 25, 2007, Eileen Ryan executed her Last Will and Testament wherein she gave "any interest in any home I may own at 215 Inlet Way, Palm Beach Shores, Florida, more particularly described as Lot 31 and the East 1 foot of Lot 12, Palm Beach Shores, according to the Plat thereof on file in Plat Book 23, Page 29, public records

of Palm Beach County, Florida to DONALD DUERK, JR., DEBORAH DUERK COLLINS, GREGORY DUERK and GEOFFREY DUERK, as joint tenants with right of survivorship.”

On or about April 17, 2012, Eileen Ryan by and through her attorney-in-fact, Plaintiff Gregory, sold her home located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta for \$318,000.00. That same day Eileen Ryan, Plaintiffs and Defendant Geoffrey Duerk, jointly, signed a Warranty Deed, as grantor for the property located at 215 Inlet Way, Palm Beach Shores, Florida to Jason and Mindi Paruta as grantee; that everyone knew and agreed that a four way distribution of all such funds was due to the Defendant Geoffrey Duerk and Plaintiffs.

On or about April 27, 2012, Jason and Mindi Paruta, entered into an interest only Mortgage and Promissory Note with Eileen Ryan as the mortgagee wherein they agreed to pay \$1,000.00 per month beginning July 1, 2012 through and until June 1, 2014 at which time the remaining balance or the entire principal balance of \$286,200.00 shall become due. That, as the mortgage holder, Eileen Ryan along with Plaintiffs and Defendant Geoffrey Duerk maintained a legal interest in said property.

Approximately a year prior to selling her home, Eileen Ryan moved to Myrtle Beach, South Carolina to be near her cousins where she remained until her death on August 23, 2013. Each of the monthly mortgage payments on the home she sold in Florida came to her Myrtle Beach address and were deposited by Plaintiff Gregory Duerk, as her POA. Following her death, Plaintiff Gregory Duerk was contacted by Defendant James Stewart, an attorney in Florida, who was representing Mr. and Mrs. Paruta, the couple that had purchased the Florida home, and were trying to refinance their mortgage. During this conversation between Defendant James Stewart and Plaintiff Gregory Duerk, Defendant James Stewart agreed to handle the administration of Ms. Ryan’s estate, which had not yet been opened, and Plaintiff Gregory Duerk mailed to him the

original Will of Ms. Ryan. Defendant James Stewart had no further contact with Plaintiff Gregory Duerk from that point forward and, instead, corresponded only with Defendant Geoffrey Duerk.

On May 22, 2014, Defendant Geoffrey Duerk was appointed personal representative of Eileen Ryan's estate by Judge John L. Phillips in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. Defendants James Stewart and Geoffrey Duerk inaccurately listed Ms. Ryan's residence at the time of her death as her home in Palm Beach Shores, Florida when they knew or should have known that Ms. Ryan did not reside at this address at the time of her death and was, in fact, domiciled in the State of South Carolina. Further, Plaintiffs were not listed as interested persons by Defendants James Stewart and Geoffrey Duerk and therefore did not receive notice from the probate court of important events in the administration of Ms. Ryan's estate. Defendant Geoffrey Duerk also failed to notify the Florida Circuit Court of his criminal record which more likely than not would have affected his ability to be appointed personal representative of Ms. Ryan's estate.

On or about June 5, 2014, Defendant Geoffrey Duerk signed a Satisfaction of Mortgage evidencing that Jason and Mindi Paruta had, in compliance with the terms and conditions of the Promissory Note, made full and final payment of the entire principal balance on the property located at 215 Inlet Way, Palm Beach Shores, Florida in the amount of \$286,200.00 to the Estate of Eileen Ryan. Defendant James Stewart, who was representing both the Parutas and the Estate of Eileen Ryan, was involved in preparing and filing the Satisfaction of Mortgage and preparing and mailing a check made payable to the Estate of Eileen Ryan in the amount of \$286,200.00 to Defendant Geoffrey Duerk. Upon information and belief, Defendant James Stewart did not contact any of the Plaintiffs prior to disbursing these funds to Defendant Geoffrey Duerk even though he knew or should have known said funds were to be divided evenly between Plaintiffs and Defendant

Geoffrey Duerk, in compliance with the declarations expressed by Eileen Ryan in her Last Will and Testament. Further, Plaintiffs were clearly interested parties under Florida law.

On September 10, 2015, Plaintiffs filed a Motion to Join James Stewart as a party to this action. The motion was heard by The Honorable Donald B. Hocker on October 26, 2015 at which time he ordered that Plaintiff's motion be denied with prejudice and that Plaintiffs shall have the right to depose Mr. Stewart without restriction as to attorney-client privilege upon Defendant Geoffrey Duerk's execution of a Release allowing for a lifting of this restriction.

On December 1, 2015, counsel for Plaintiffs conducted the telephone deposition of Defendant James Stewart and thereafter, on January 19, 2016, refiled their Motion to Join Additional Parties with Memorandum in Support. On February 22, 2016, Plaintiff's motion was heard before The Honorable William H. Seals, Jr. who, upon considering Plaintiff's motion and supporting documents, together with oral arguments from counsel, granted the motion to join Defendant James Stewart as a party to this action. Plaintiffs filed their Amended Complaint on March 28, 2016.

ARGUMENT

I. Lack of Personal Jurisdiction

Defendant James Stewart's claim that this Court lack's jurisdiction over the subject matter of this action is baseless and without merit. All parties other than Defendant James Stewart reside in Horry County as did the decedent, Eileen Ryan at the time of her death.

The South Carolina long-arm statute (S.C. Code §36-2-803) provides that:

A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's:

- (1) transacting any business in this State;

- (2) contracting to supply services or things in the State;
- (3) commission of a tortious act in whole or in part in this State;
- (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
- (5) having an interest in, using, or possessing real property in this State;
- (6) contracting to insure any person, property, or risk located within this State at the time of contracting;
- (7) entry into a contract to be performed in whole or in part by either party in this State; or
- (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

Defendant James Stewart's act of contacting Plaintiff Gregory Duerk and offering his legal services with regards to Plaintiffs' recently deceased aunt, Eileen Ryan, certainly qualifies as a cause of action under which the long-arm statute applies.

At the time Defendant James Stewart contacted Plaintiff Gregory Duerk he was representing the Parutas who had purchased Ms. Ryan's home from Plaintiffs and Defendant Geoffrey Duerk. Therefore, he knew or should have known that Eileen Ryan's address as listed on her death certificate as well as on the Florida Probate Forms was inaccurate since this was the same residence in which his original clients, the Parutas, were residing.

In addition to the long-arm statute, Plaintiffs has also satisfied the criteria for due process in that the nonresident defendant established minimum contacts within The State of South Carolina when he initially reached out and contacted Plaintiff Gregory Duerk regarding his aunt, Eileen Ryan. Plaintiffs did not seek out and/or contact Defendant James Stewart; he contacted them and

offered his services to probate the Last Will and Testament of Eileen Ryan. By doing so, Defendant James Stewart established "minimum contacts" within the State of South Carolina as are a prerequisite to its exercise of power of him as required under Cribb v. Spatholt, 676 S.E.2d 714, 719 (S.C. Ct. App. 2009).

Further, The Honorable William H. Seals, Jr., upon motion of Plaintiffs, ordered that Defendant James Stewart was, in fact, a proper party to this action filed in the Common Pleas Court of Horry County South Carolina. As such, jurisdiction is proper.

II. Failure to set forth sufficient facts to constitute a cause of action

Defendant James Stewart's claim that Plaintiffs' Amended Complaint fails to sets forth sufficient facts to constitute a cause of action against him is baseless and without merit.

Plaintiffs' Amended Complaint establishes all elements required by all applicable statutes and case law in order to prove a cause of action for negligent representation, conflict of interest and breach of fiduciary duty.

III. Failure to Provide an Expert Affidavit as Required by S.C. Code Ann. §15-36-100

At the time Plaintiffs filed their Amended Complaint an expert witness had not yet been retained to review the relevant documents and proffer and Expert Affidavit.

In accordance with SC Code Ann. §15-36-100(E), plaintiffs are allowed thirty days to cure the alleged defect from the date plaintiffs are served with defendant's motion to dismiss based on the alleged defect.

Plaintiffs were served with Defendant James Stewart's Motion to Dismiss on June 13, 2016. Accordingly, at this time Plaintiffs are attaching hereto as Exhibit A the original Affidavit of Plaintiff's Expert Witness Clifford H. Tall.

CONCLUSION

Plaintiffs respectfully requests that this Court deny, in full, Defendants' Motion to Dismiss and, in doing so, any further action as this Court deems necessary, just, and proper.

THE BRITTAIN LAW FIRM



Thomas C. Brittain
4614 Oleander Drive
Myrtle Beach, South Carolina 29577
843-449-8562 (Telephone)
843-497-6124 (Facsimile)
Attorney for Plaintiffs

July 12, 2016
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Gregory Duerk, Donald L. Duerk, Jr. and	)	C/A No. 14-CP-26-7264
Deborah Duerk Tiller,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Geoffrey Duerk, Kristen Duerk and James M.	)	
Stewart,	)	
	)	
Defendants.	)	

**MOTION TO RECONSIDER
ORDER OF DISMISSAL
AS TO DEFENDANT
JAMES M. STEWART**

2016 NOV 8 PM 1:38
HORRY COUNTY
CLERK OF COURT

**TO: THE HONORABLE BENJAMIN H. CULBERTSON AND WILLIAM A. BRYAN,
ESQUIRE, ATTORNEY FOR DEFENDANT JAMES M. STEWART:**

Now comes attorney for Plaintiffs Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller ("Plaintiffs") and moves this Court to reconsider its previous Order of Dismissal as to Defendant James M. Stewart for lack of personal jurisdiction.

Defendant James M. Stewart's ("Defendant Stewart") Motion to Dismiss was heard before the Honorable Benjamin H. Culbertson on November 8, 2016 at which time oral arguments were made by attorneys for Plaintiff and Defendant Stewart.

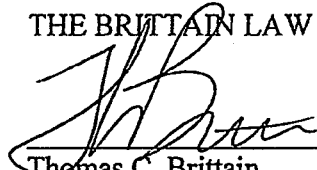
Attorney for Defendant Stewart argued, in part, that Plaintiffs lacked personal jurisdiction to bring the action against Defendant Stewart who practices law and resides in Florida.

Attorney for Plaintiffs set forth that Defendant Stewart sought to represent Plaintiffs; sought pertinent information from them using the phone and mail in enabling said relationship. The Court is "relying" on the representations of counsel on a matter of significance. Failure to include Stewart insures an unjust result (Bultz and his clients have spent the money in contradiction of an agreement). In this day of internet contacts, wide use of phone contact, these personal jurisdiction arguments are unjustly obstructive. How can this case be fairly resolved without the

man who "promised to handle it"; then switched sides without notice to Plaintiffs? The Long-Arm statute of South Carolina supports in this day and time inclusion of all involved parties.

On November 18, 2016, attorney for Plaintiffs received by U.S. mail a clocked-in copy of the Form 4 Order Granting Defendant Stewart's Motion to Dismiss signed by The Honorable Benjamin H. Culbertson. In response, Plaintiff hereby submits this Motion to Reconsider the Order granting Defendant's Motion to Dismiss for the above-listed reasons. Further, Plaintiffs reiterate any and all statements, evidence, case law, etc. contained in their previous memorandums of law and/or affidavits filed in relation to this action.

THE BRITTAIN LAW FIRM



Thomas C. Brittain
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Attorney for Plaintiffs

November 22, 2016
Myrtle Beach, South Carolina

 COPY

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2014-CP-26-7264

RECEIVED

FEB 17 2017

SC Court of Appeals

Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller,.....Appellants,

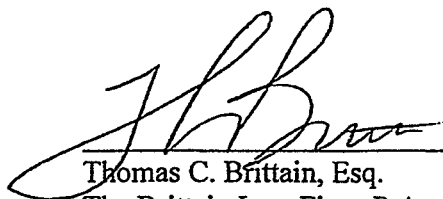
v.

Geoffrey Duerk, Kristen Duerk and James M. Stewart,.....Respondents.

NOTICE OF APPEAL

Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller hereby appeal the Order Denying Motion to Reconsider Order Granting Defendant's Motion to Dismiss of the Honorable Benjamin H. Culbertson dated January 10, 2017. Appellants received written notice of entry of this Order on January 17, 2017.

February 14, 2017



Thomas C. Brittain, Esq.
The Brittain Law Firm, P.A.
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843-449-8562
Attorney for Appellant

Other Counsel of Record:

William A. Bryan, Jr.

Collins & Lacy, P.C.

11945 Grandhaven Drive, Suite D

Murrells Inlet, SC 29576

Attorney for Respondent James M. Stewart

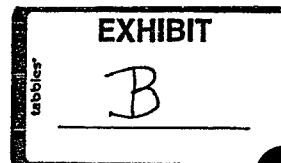
Jay M. Bultz

Bultz Law Offices, PA

417 79th Avenue North, Suite A

Myrtle Beach, SC 29572

Attorney for Respondents Geoffrey Duerk and Kristen Duerk



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Gregory Duerk, Donald L. Duerk, Jr. and	)	Civil Action No.: 2014-CP-26-7264
Deborah Duerk Tiller,	)	
	)	
Plaintiff	)	
	)	
vs.	)	AFFIDAVIT OF
	)	JAMES M. STEWART
	)	
Geoffrey Duerk, Kristen Duerk and James	)	
M. Stewart,	)	
	)	
Defendant.	)	
	)	
	)	

PERSONALLY APPEARED BEFORE ME, the undersigned, who after being duly sworn,
deposes and says:

1. I am a resident of Palm Beach County, Florida, am over the age of 18 and have personal knowledge of the matters stated below.
2. I have been licensed to practice law in the State of Florida since 1981. I am not licensed to practice law in the state of South Carolina or any other state besides Florida.
3. My principal and only place of business for more than 30 years is 1211 Plaza Circle, Singer Island, in Palm Beach County, Florida.
4. I am not registered to do business in South Carolina and have never done business in South Carolina.
5. I have never had offices, employees, or agents located in South Carolina.
6. I do not own real or personal property in South Carolina.
7. I do not maintain a mailing address or telephone number in South Carolina.
8. I do not have a website and I do not solicit business in South Carolina.

9. I was engaged to probate the estate of Eileen Ryan by Geoffrey Duerk, who was identified as Personal Representative the Last Will and Testament of Eileen Ryan, which was executed in the State of Florida.

10. The estate of Eileen Ryan was opened in Palm Beach County, Florida.

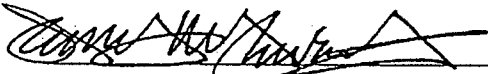
11. All filings in connection with the estate of Eileen Ryan were filed in Palm Beach County, Florida.

12. I did not file or prepare documents to be filed in any court in South Carolina.

13. I have never visited South Carolina for business purposes.

14. I have never entered into an attorney-client relationship with Plaintiffs Gregory Duerk, Donald L. Duerk, or Deborah Duerk Tiller.

FURTHER, YOUR AFFILIANT SAYETH NAUGHT.

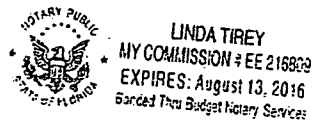

James M. Stewart, Esq.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9th DAY OF JUNE 2016.

Linda Tirey

NOTARY PUBLIC FOR FLORIDA
My Commission Expires: 08/13/2016



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Gregory Duerk, Donald L. Duerk, Jr. and	)	C/A No. 14-CP-26-7264
Deborah Duerk Tiller,	)	
	)	
Plaintiffs,	)	AFFIDAVIT
	)	
v.	)	
	)	
Geoffrey Duerk and Kristen Duerk,	)	
	)	
Defendants.	)	
	)	

I am Clifford H. Tall, an attorney licensed in both South Carolina and Florida, and have as a major concentration, in my 33 years of civil law practice, the fields of Estate Planning and Estate Administration. I have practiced both in Florida and in South Carolina.

I have been asked, associated with §15-36-100 of the South Carolina Code of Laws, to offer expert opinion regarding allegations of negligent act or omission against attorney James M. Stewart, who is now proposed as an additional party Defendant in the subject case. My status as expert, I believe, is related to subsection (A) (2) (b) (i) of the statute, outlining active practice in the area of specialty for at least three of the last five years.

In offering opinion in this matter, I have reviewed the parties' pleadings, legal memoranda, copies of deposition transcripts, and also related statutes and reported court cases. I have been asked to opine about Plaintiffs' desire to include attorney James M. Stewart as a new party Defendant, with allegations that they have suffered damages as a result of Mr. Stewart's professional actions. I have reviewed Mr. Stewart's position that there are insufficient allegations to justify his inclusion as a party Defendant.

My understanding of facts include a 1998 Deed for Eileen M. Ryan's home in Palm Beach County, Florida, and also Ms. Ryan's 2007 Last Will and Testament, which declares, in Item Fifth, Ms. Ryan's desire that any interests in said home be distributed unto Plaintiffs, and also unto Defendant Geoffrey Duerk. These four devisees, listed in her Will, are the same grantees on the 1998 Deed, where Ms. Ryan made a gift conveyance, and then also reserved, for herself, a life estate in the Palm Beach County home.

Plaintiffs seek relief against Mr. Stewart, associated with his contacts, first, with Plaintiff Gregory Duerk, and later, with his actions to direct the Florida administration of Ms. Ryan's 2007 Last Will and Testament, where Defendant Geoffrey Duerk served as Personal Representative.

The states of Florida and South Carolina both have probate laws designed to determine, and to carry out, the wishes of persons who have died and left a Last Will and Testament. Through her specific actions with a Deed, and also with a 2007 Will, Ms. Ryan expressed her clear wish that the three Plaintiffs and Defendant Geoffrey Duerk, equally receive title to, and value of, Ms. Ryan's Palm Beach County, Florida home.

This case involves how, following Ms. Ryan's passing, none of the three Plaintiffs received any value associated with Ms. Ryan's home. The case involves how this result occurred, and whether this is consistent with Ms. Ryan's intent, and with the law.

Shortly before Ms. Ryan's passing, and at a time when she was living in South Carolina, and not mentally alert, Ms. Ryan's home was sold, with a sales price of \$318,000.00, so that sale proceeds could be used to support her. Plaintiff Gregory Duerk, who served as agent under Ms. Ryan's 2010 durable financial power of attorney, saw to the April 2012 sales closing, and signed the sales deed to purchasers on Ms. Ryan's behalf. Gregory Duerk, the other two Plaintiffs, and also Defendant Geoffrey Duerk,

signed the same deed, individually, as all of these parties were, at the time, title owners, together with Ms. Ryan.

Trouble, which these parties now experience, may have a lot to do with the way that, in the April 2012 sale, arrangements were made for purchase money owner financing. Purchasers, Jason and Mindi Paruta, offered a Promissory Note and Mortgage for some temporary owner financing, in the amount of \$286,200.00. The record shows that the Parutas' attorney prepared a purchase money Promissory Note and Mortgage, listing only Eileen M. Ryan as the secured payee/mortgagee. Four other home owners (the three Plaintiffs and Defendant Geoffrey Duerk) were not listed in either the Parutas' Promissory Note or Mortgage.

In 2014, new counsel for the Parutas (not the same attorney who once prepared the 2012 Promissory Note and Mortgage used in connection with the Parutas' home purchase), attorney James M. Stewart, contacted Plaintiff Gregory Duerk to learn about a Note payoff amount, and to secure a Mortgage Satisfaction. The Parutas proposed to have new financing for the home they purchased. James M. Stewart informed of his awareness how Geoffrey Duerk had been in charge of receiving Paruta payments, and because of Eileen M. Ryan's passing, how new steps needed to be taken regarding these payments.

During their communications Gregory Duerk says that he made James M. Stewart aware of Plaintiffs' expectations that Note payoff proceeds, from the Parutas, would be split in four ways, reflecting how four parties once owned the Palm Beach County home; reflecting also how Ms. Ryan's Will made provision for these same four parties. During their communications, James M. Stewart explained that, following Ms. Ryan's passing, an Estate administrator was required in order to provide Mr. and Mrs. Paruta with a Mortgage Satisfaction, and that the Mortgage Satisfaction would be a necessary part of the Parutas' Note payoff.

Gregory Duerk had possession of Eileen M. Ryan's original Will, and James M. Stewart asked that it be provided to him for action. Although James M. Stewart was representing Mr. and Mrs. Paruta, at the time, it appeared that no conflict would exist, if Mr. Stewart stepped forward to represent Ms. Ryan's Estate, and take action through the Estate, to secure the Parutas' Note payoff and the recorded Mortgage Satisfaction. Geoffrey Duerk forwarded Eileen M. Ryan's Will to Mr. Stewart, as Mr. Stewart had requested. As it so happened, Defendant Geoffrey Duerk was named under Ms. Ryan's Will to serve as Personal Representative, and ultimately Geoffrey worked with James M. Stewart, to administer Ms. Ryan's Estate, and to complete the Parutas' Note payoff.

Contrary to assurances which Gregory Duerk says he received from his brother Geoffrey Duerk, the Note payoff proceeds from Mr. and Mrs. Paruta were not distributed in equal shares among Plaintiffs and Defendant Geoffrey Duerk. Plaintiffs learned that Defendant Geoffrey Duerk took steps to distribute these proceeds only to himself and to Defendant Kristen Duerk, Geoffrey Duerk's daughter.

The subject Note payoff proceeds distribution was contrary to financial expectations which Gregory Duerk relied upon, associated with his understanding of facts, including Eileen M. Ryan's intentions. Greg Duerk says that he also relied upon his communications with Attorney James M. Stewart, and with the cooperation Gregory Duerk had offered to Mr. Stewart, in forwarding the original of Ms. Ryan's Will for administration. Although Plaintiff Gregory Duerk, without any formal engagement document, cannot establish that he is the party who hired James M. Stewart to represent him, Plaintiffs, nonetheless, assert that they had reason to rely upon Mr. Stewart. Mr. Stewart proposed actions to settle the Parutas' Note payoff, and was informed about Plaintiffs' financial expectations. Attorney Stewart made clear, Plaintiffs assert, the need for Estate action to assist Gregory Duerk and the Duerk family.

The defense offered by James M. Stewart to Plaintiffs' allegations include that Mr. Stewart only established Defendant Geoffrey Duerk as a client, and that Mr. Stewart faithfully administered Ms. Ryan's

Will according to its specific terms. Whether Plaintiffs recognized it or not, the Parutas' Promissory Note became an asset of Ms. Ryan's estate, and was not governed by Item Fifth of Ms. Ryan's Will. Item Fifth only pertained to a home, if it existed as part of Ms. Ryan's estate. Proper distribution of the Paruta Note payoff was governed by Item Sixth of Ms. Ryan's Will, and this residuary Estate provision called for equal distribution, only, to Defendants Geoffrey Duerk and Kristen Duerk.

Is this case, then, as simple as Mr. Stewart suggests in his defense? Do we have a case which simply reflects that Plaintiffs, long ago, became entitled to no financial expectations once Ms. Ryan's home was sold, and once Gregory Duerk, while working under Ms. Ryan's Power of Attorney, accepted how the Parutas' 2012 attorney prepared a Promissory Note and Mortgage? Did all become lost for Plaintiffs long before Ms. Ryan died, and James M. Stewart became involved? Upon the Parutas' purchase, there was no home to be governed by Item Fifth of Ms. Ryan's Will. Upon the Parutas' purchase, Plaintiffs became record owners neither of any home nor of any Promissory Note.

My analysis includes how it appears that Plaintiffs were not much involved with the opening and closing of Estate administration for Eileen M. Ryan's Will. Probate administration records show that Plaintiffs were never identified as being what the law calls "interested persons", parties who should receive notice of important events in Ms. Ryan's Estate administration. Particularly because of this lack of "interested persons" status, Geoffrey Duerk appears to have received, without notice to Plaintiffs, the blessings of a Circuit Court Order, to Defendant's distribution plan; a plan which Plaintiffs claim betrayed what Geoffrey Duerk had once promised to them.

Suppose, if Plaintiffs had actually been recognized as "interested persons" in Eileen M. Ryan's Estate administration. Suppose, according to law, if Plaintiffs had been given timely notice of Defendant Geoffrey Duerk's intentions to distribute the Parutas' Note payoff proceeds, only to himself and his daughter. Would Plaintiffs have had any valuable opportunity to assist themselves? Any valuable

opportunity to assist in carrying out what they assert were Eileen M. Ryan's financial intentions? I believe that Plaintiffs would, with proper notice, have been given very valuable opportunities.

How persuasive could it have been for a Circuit Judge, prior to Estate closure, to hear the following from Gregory Duerk?

1. Our cousin Eileen M. Ryan relocated to South Carolina prior to her passing, so that I and my family could look after her.

2. Our cousin Eileen M. Ryan expressed, through both a deed and her last Will, that upon her passing, the value of her home should be shared, equally, among myself and my three siblings.

3. In order to financially assist Eileen M. Ryan, at a time of her extreme disability, I took steps, in 2012, to sell her Palm Beach County Home, upon the best terms I could negotiate.

4. In selling Eileen M. Ryan's home, which I accomplished through authority under my cousin's 2010 durable power of attorney, I made a mistake. The purchaser's attorney prepared a Promissory Note and Mortgage in such a way that it interfered with Eileen M. Ryan's financial wishes. I could have, but I did not object, when the purchasers' attorney failed to list all deed grantors as co-payees and co-mortgagees on the Promissory Note and Mortgage which was used for purchase money owner financing.

5. At no time, following her execution of Deed, Will and Power of Attorney, did Eileen M. Ryan change her intentions about having the value of her home, when she died, being shared with myself and my three siblings. At no time, in connection with the 2012 sale and owner financing of Eileen M. Ryan's home, did I and my siblings intend to reconvey to Ms. Ryan, by gift or other means, the title to her home which Mr. Ryan had long ago deeded to us.

6. Had I insisted, as was my right to insist, that the Parutas' Promissory Note and Mortgage list five parties as payees and mortgagees, we would likely have avoided trouble in these

matters. Ms. Ryan's financial intentions would have been respected, and Geoffrey Duerk would not have had opportunity to promise one thing, and then harm us, by doing a very different thing.

7. I, and the other Plaintiffs in this case relied upon our brother Geoffrey Duerk, when he encouraged us to believe that there was nothing to worry about. Whether or not five names should have been listed on the Parutas' Promissory Note and Mortgage, to match the five names of Grantors on the Parutas' deed, it was no worry. Geoffrey Duerk agreed with us, and intended a four way split of Note payoff proceeds.

8. Five owners sold a home to Mr. and Mrs. Paruta, and all five owners should have received value from Mr. and Mrs. Parutas' purchase money Note payoff. Not only is this a fair result, it was the very result which matched Eileen M. Ryan's financial intentions, and it was the very result which was promised to Plaintiffs by the Estate's administrator, Defendant Geoffrey Duerk.

9. In my initial contacts with Attorney James M. Stewart, I was led to believe that we only had one ethics issue- whether Mr. Stewart could represent debtors (the Parutas), and also the family they owed money to? I was never informed about a second ethics trouble- whether Mr. Stewart could assist my brother Geoffrey against me and Geoffrey's other siblings.

Reflecting upon his initial contacts with Geoffrey Duerk, should James M. Stewart have ever accepted engagement to assist Defendant Geoffrey Duerk with his Eileen M. Ryan Estate administration efforts? Florida Rules of Professional Conflict, Rule 4-1.7 declares that there is conflict, and a lawyer must not represent a new party, if there is substantial risk that the representation will be materially limited by the lawyer's "responsibilities to...a third person". Even if Geoffrey Duerk did not formally become Mr. Stewart's client, is he, nonetheless, a person to whom Mr. Stewart had responsibility?

Initially, when first contacting the Duerk family, James M. Stewart was representing, only, debtors/mortgagors, Mr. and Mrs. Paruta. It was Mr. Stewart who pursued Gregory Duerk, and it was Mr.

Stewart who explained to Gregory Duerk the importance of an Estate administration, so that Note payoff proceeds could be paid from his clients, the Parutas. During this communication, Gregory Duerk says he made clear, to Mr. Stewart, family expectations that the Parutas' Note payoff proceeds were going to be split four ways.

Did Mr. Stewart, when he solicited, from Gregory Duerk, the original of Eileen M. Ryan's Will, have responsibility to explain terms of this Will; terms which Mr. Stewart clearly saw as conflicting with Gregory Duerk's financial expectations? May a case be made that James M. Stewart helped create, with Gregory Duerk, an impression that Mr. Stewart would be helpful; assisting Gregory Duerk and his family, with financial expectations that Gregory Duerk says he clearly expressed?

When James M. Stewart read Ms. Ryan's Will, and together with Geoffrey Duerk, decided that Gregory Duerk held very faulty financial expectations, was Mr. Stewart free to assist Geoffrey Duerk with a plan that challenged Gregory Duerk's financial expectations; expectations from the same person who had provided Mr. Stewart with the original Will, because this person thought Mr. Stewart had offered to be of assistance to Gregory Duerk and his family? I, myself, would have felt ethically bound, if I was in Mr. Stewart's position, to inform Gregory Duerk that the Will which he had offered to me for assistance, was the very document that may prove to challenge Gregory Duerk's financial expectations. Remain silent with Gregory Duerk, and simply move on to assist Geoffrey Duerk's conflicting financial plan? I, for one, do not believe that Rules would have permitted this course of action.

For the moment, however, let's set aside whether Mr. Tall and Mr. Stewart would have ethically disagreed with the meaning of Rule 4-1.7 in these matters. Let's focus, instead, upon obligations of the Estate of Eileen M. Ryan, to provide proper notice to "interested persons" of the Estate.

Section 731.201 of the Florida statutes defines an Estate's interested persons as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved".

Under Mr. Stewart's direction, the Florida Court was informed that only Geoffrey Duerk and Kristen Duerk were interested persons. Excluding Plaintiffs from interested person status, meant that Estate administration, and its closure, were successfully pursued without notice to Plaintiffs. Was it proper for James M. Stewart to inform his Circuit Judge that only Geoffrey Duerk and Kristen Duerk were interested in the outcome of Estate proceedings?

Curiously, I am aware that Eileen M. Ryan died in South Carolina, and Plaintiffs assert that Ms. Ryan was a South Carolina domiciliary at the time of her death. Should South Carolina have been the place for probate? Did Defendant Geoffrey Duerk participate in forum shopping? Would any of this have mattered?

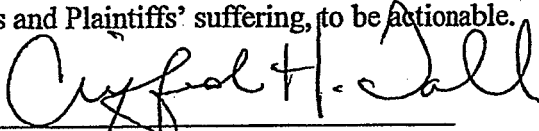
Suppose an argument could be made, with Florida statute definitions – that Plaintiffs were not entitled to notice, not entitled, as interested persons, to make the arguments listed on pages 6 and 7, herein, to the Florida Judge. This is because, according to a rules interpretation, Plaintiffs couldn't be affected by how an Estate is distributed, when no home of Ms. Ryan was in existence at the time of her passing. No home, and therefore, no Item Fifth applicability to Plaintiffs. This argument would not have been supported by South Carolina's definition of "interested persons". In South Carolina, if you are listed for a gift in the decedent's Will (as Plaintiffs are in Item Fifth of Eileen M. Ryan's Will) you are recognized as a "devisee". Devisees are, by definition, interested persons, and all interested persons are entitled to notice of accountings and final Estate distribution proposals.

With a South Carolina Estate administration, Plaintiffs would have been on notice. They would have had a chance for persuasive argument, prior to Geoffrey Duerk receiving judicial blessings for a

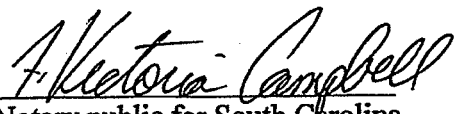
financial distribution plan which excluded Plaintiffs' sharing. With Florida Estate administration, and the less specific Florida definition of the term, "interested persons", the Estate was apparently more free to take action which excluded Plaintiffs' participation in proceedings. While I say, here, that the Estate was more free to take these actions, I don't believe these actions are at all condoned. Even with Florida statutory language, the Estate, in my view, would be using very narrow and wrongful interpretations. The Estate has somehow rationalized that Plaintiffs, who were named to receive gifts in Ms. Ryan's Will, were not what the law describes as "interested persons."

I have considered how it is claimed that James M. Stewart was aware of facts in this case. Based upon this awareness, it is my opinion that James M. Stewart had obligation to alert Gregory Duerk about exclusionary distribution plans which the Estate (an Estate which commenced with Gregory Duerk's assistance) decided to adopt. In my opinion, both Mr. Stewart and the Ryan Estate were not free to exclude Plaintiffs, from the concept of "interested persons" who are entitled to financial notices, prior to Estate closure. In my view, this conclusion has support of both the Florida and South Carolina statutes.

Based upon facts, as presented to me, and as summarized above, I consider James M. Stewart's actions, in these matters, as they relate to Plaintiffs' rights and Plaintiffs' suffering, to be actionable.


Clifford H. Tall

Sworn to me this
10th day of July, 2016.


Notary public for South Carolina
Commission Expires 5-14-17

Allison Lazar

From: Johnson, Linda <Johnson@HorryCounty.org>
Sent: Tuesday, May 5, 2015 7:50 AM
To: Allison Lazar
Subject: Re: Duerk v. Durerk/CA No: 2014CP267264

Thanks

From: Allison Lazar <allison@brittainlawfirm.com>
Sent: Monday, May 4, 2015 5:16 PM
To: Hyman, Larry B. Law Clerk ; Johnson, Linda
Cc: 'Kristin Proud'
Subject: Duerk v. Durerk/CA No: 2014CP267264

Plaintiff's Motion to Enjoin which is currently on the May 5, 2015 CPNJ Motions Roster before Judge Hyman has been resolved and, therefore, may be removed from the roster.

We will be submitting a proposed Consent Order to the Court on this matter in the near future. Thank you.

Allison Lazar
Legal Assistant to Thomas C. Brittain
THE BRITTAİN LAW FIRM, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449-8562
(843) 497-6124
allison@brittainlawfirm.com



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THOMAS C. BRITTAİN
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A. PRESTON BRITTAİN
T. CASE BRITTAİN, JR.

843-449-8562
FAX 843-497-6124
www.brittainlawfirm.com

May 15, 2015

By E-mail and U.S. First Class Mail

Jay M. Bultz, Esq.
Bultz Law Offices, PA
417 79th Avenue North, Suite A
Myrtle Beach, SC 29572

RE: Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller v. Geoffrey
Duerk
CA No: 14-CP-26-7264

Dear Mr. Bultz:

I wanted to follow up with you in response to our previous conversation wherein Geoffrey and his daughter have agreed to maintain the \$100,000.00 they each hold in an interest bearing account until this matter is resolved.

However, since that conversation I realized that the amount of the final balloon payment on the home, received by Geoffrey, was \$286,200.00. If you divide that amount by 4, each sibling would be entitled to \$71,550; that means together my clients would be entitled to \$214,650.00 if the court rules in our favor. If those figures are correct, please let me know if your client intends to add an additional \$14,650.00 to the current amount he is holding (with his daughter) during the pendency of this action.

If you have any information showing that Geoffrey actually received less than this amount please let me know as soon as possible.

Yours truly,

THE BRITTAİN LAW FIRM, P.A.


Thomas C. Brittain
TCB/all

Allison Lazar

From: Allison Lazar <allison@brittainlawfirm.com>
Sent: Tuesday, June 16, 2015 3:03 PM
To: 'Kristin Proud'
Subject: Duerk b. Duerk
Attachments: doc20150616151356.pdf

Attached please find Tommy's proposed Consent Order in this case for Mr. Bultz's review.

If Mr. Bultz is agreeable to this Order as written please have him sign, as well as Kristen Duerk and then return the executed Order to our office to submit to the court.

Thanks!

Allison Lazar
Legal Assistant to Thomas C. Brittain
THE BRITTAIN LAW FIRM, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
(843) 449-8562
(843) 497-6124
allison@brittainlawfirm.com

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 2014-CP-26-7264

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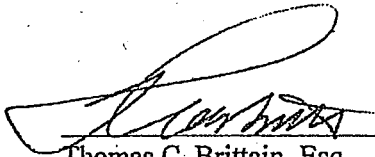
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It is hereby ORDERED, ADJUDGED AND DECREED, that these funds shall remain enjoined until the final resolution of this action.

IT IS SO ORDERED this _____ day of _____, 2015.

Honorable Steven H. John
Chief Administrative Judge,
Horry County Court of Common Pleas

I SO MOVE:



Thomas C. Brittain, Esq.
4614 Oleander Drive
Myrtle Beach, SC 29577
Phone: (843) 449-8562
Facsimile: (843) 497-6124
Attorney for the Plaintiff

WE SO CONSENT:

Jay M. Bultz
Bultz Law Offices, PA
417 79th Avenue North, Suite A
Myrtle Beach, SC 29572
Phone: (843) 626-2006
Facsimile: (843) 839-9496
Attorney for the Defendant

Kristen Duerk,
An interested person who is not
currently a party to this action

Allison Lazar

From: Kristin Proud <bultzassistant@gmail.com>
Sent: Thursday, June 18, 2015 4:08 PM
To: Allison Lazar
Subject: Re: Duerk b. Duerk

Jay is still reviewing and revising... I will get it back to you with his changes as soon as he is finished.

In addition, pursuant to the Notice of Deposition duces Tecum to Gregory, he was to provide bank statements and a copy of the POA at the time of deposition, and the associate attorney stated he was going to go back to the office and fax Jay a copy. He has not yet received these. He would like to send someone over to pick up a copy tomorrow afternoon. Can you confirm that these will be ready to pick up, or can be faxed to us?

Thanks!

Kristin A. Proud
Paralegal to Jay M. Bultz

Bultz Law Offices, PA
417 79th Avenue North, Suite A
Myrtle Beach, South Carolina 29572
Phone: (843) 626-2006
Fax: (843) 839-9496

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On Tue, Jun 16, 2015 at 3:03 PM, Allison Lazar <allison@brittainlawfirm.com> wrote:

Attached please find Tommy's proposed Consent Order in this case for Mr. Bultz's review.

If Mr. Bultz is agreeable to this Order as written please have him sign, as well as Kristen Duerk and then return the executed Order to our office to submit to the court.

Thanks!

Allison Lazar
Legal Assistant to Thomas C. Brittain
THE BRITTAIN LAW FIRM, P.A.
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(843) 449-8562
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allison@brittainlawfirm.com



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Allison Lazar

From: Allison Lazar <allison@brittainlawfirm.com>
Sent: Thursday, August 6, 2015 12:31 PM
To: 'Kristin Proud Sr. Paralegal'
Subject: RE: Duerk b. Duerk
Attachments: doc20150806124659.pdf; doc20150806124720.pdf

Yes on the POA but no on the bank records. I will follow up again with the client on those.

Has Mr. Bultz finished making changes to our proposed consent order with regards to the funds that are to be frozen during the duration of this action?

Thanks,

Allison Lazar

From: Kristin Proud Sr. Paralegal [mailto:bultzassistant@gmail.com]
Sent: Thursday, August 6, 2015 11:41 AM
To: Allison Lazar <allison@brittainlawfirm.com>
Subject: Re: Duerk b. Duerk

Allison -

Any update on the POA? It has been quite some time...

As to the bank statements, they are those that were requested on the Notice of Deposition Duces Tecum for Gregory. I've attached a copy so you don't have to pull the file.

Thanks!

Kristin A. Proud
Paralegal to Jay M. Bultz

Bultz Law Offices, PA
417 79th Avenue North, Suite A
Myrtle Beach, South Carolina 29572
Phone: (843) 626-2006
Fax: (843) 839-9496

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2014-CP-26-7264
Appellate Case No. 2017-000471

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SC Court of Appeals

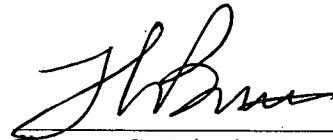
Gregory Duerk, Donald L. Duerk, Jr. and Deborah Duerk Tiller,.....Appellants,

v.

Geoffrey Duerk, Kristen Duerk and James M. Stewart,.....Respondents.

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all materials designated to be included
by any of the parties and not any other material.



Thomas C. Brittain, Esquire (SC Bar #893)

The Brittain Law Firm, P.A.

4614 Oleander Drive

Myrtle Beach, SC 29577

843-449-8562 Telephone

843-497-6124 Facsimile

Attorney for Appellant