

COX FERGUSON & WHAM, LLC

ATTORNEYS AT LAW  
P.O. Box 286  
LAURENS, SOUTH CAROLINA 29360-0286

JOHN R. FERGUSON  
ALLEN M. WHAM

W. REID COX, JR., of counsel

RECEIVED  
PHONE: (864) 984-2126  
FAX: (864) 984-7372  
E-MAIL: jferg@backroads.net

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March 10, 2018

S.C. SUPREME COURT

S.C. Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

Re: Sullivan v. Brown, et al., 2016-002337

Dear Members of the Court:

During oral argument I was asked what the record said about settlement negotiations. I said that I would get back to you on that. There was no objection to this, and opposing counsel in anticipating this letter said that I could look for ten years and not find anything to report. I am accepting that challenge.

Part of the difficulty here is that the case was well underway when I joined it, and I was unsure how I could respond to what transpired before I gained firsthand knowledge. The second issue is that settlement negotiations were not something which Respondents needed to establish for their case, so they introduced little evidence on that point and ordinarily settlement negotiations are not admissible, Rule 408, SCRE. This issue was in fact in the nature of an affirmative defense for Petitioner, so it was his burden to give notice that it was an issue, especially since he understood that his fees were disputed (R. p. 123/3-7). Because he did not do that, there is very little record on settlement issues. It did not really become an issue until after the appeal had begun. Since then Petitioner has attempted to take advantage of the lack of a record by claiming that no record is a favorable record. This is not accurate, and it is grossly unfair to Respondents.

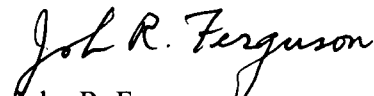
The PR says that the Respondents did not respond to his attempts to settle the case, but the record does not support that. His Exhibit C-11 is a letter to Respondents dated May 2, 2008 seeking to divide the property. On July 31, 2008, the Respondents met with him and Paul Major to discuss that. As the record shows, the Respondents were shocked to discover that what they had understood would be a private meeting was attended by other heirs (R. pp. 244/15-17), and it was counterproductive to have them there (R. pp. 310/17-311/4) (although everyone agreed that the proposal on the table was not acceptable (R. p. 236/16-20)). This ambush reinforced their belief that they could not trust the Personal Representative, but they did stay and discuss the proposal. (Petitioner's counsel has attempted to say that Respondents should have realized that others were coming because the letter to them setting the meeting was copied to the other heirs. This is illogical.)

Later Respondents agreed to mediation. The need for mediation was superceded by the purchaser found by Respondents making a suitable offer to buy the Estate's real estate (R. p. 563, #29). Respondents readily agreed to that sale. The earlier partition action filed by Petitioner (which was never brought to judgment) was to facilitate the sale of a fraction of the real Estate to Charles Copeland, contrary to the terms of the Will's Option to Purchase (R. p. 561). If the PR had won his partition action, most of the land would have remained in the Estate, which would have necessitated either a distribution of land or the continuation of the Estate's probate.

The Respondents profoundly distrusted Petitioner, and this certainly had an impact on their willingness to discuss settlement with him; but they were willing to settle (R. pp. 308/17-23, 309/5-9). It is unfair to place the entirety of the blame for any delay in settlement on them. The testimony of Lisbon Church member, Charles Blackmon, is instructive (R. pp. 469-72). After noting how sensitive the whole Estate matter was within the church and the church's lack of participation in Estate issues (R. p. 470/7-9), Mr. Blackmon stated that the church did not indicate to the PR that it was willing to sell the Estate's real estate (R. pp. 470/20-471/2). As Petitioner was aware (R. p. 236/16-20), this could not be done without a specific proposal voted on by the congregation (R. p. 471/16-21), and that was not done until the sale to Roland Milam was placed before them and they accepted it (R. p. 472/1-5), as did Respondents. It is therefore incorrect for Petitioner to say that only Respondents held up the sale of the real estate. Like Respondents, the Church had reason to question what the PR was up to. See R. p. 833 where the church Session asked for (but never received) a detailed accounting from Mr. Sullivan and R. p. 185/11-16 where Petitioner admits he did not tell any of the heirs what he was paying himself until Respondents forced him to file an accounting.

I hope that this answers the Court's request for enlightenment on the subject of settlement, but if there is any other information you need, please feel free to request it.

Sincerely,

  
John R. Ferguson

JRF/wp  
CC: Daryl Hawkins, Esq.  
Martha Brown  
Mary Moses

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas  
Frank R. Addy, Jr., Circuit Court Judge

In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative  
of the Estate of Marion M. Kay, . . . . Petitioner/Respondent

v.

Martha Brown and Mary Moses, . . . . Respondents/Petitioners

Appellate Case No. 2016-002337

CERTIFICATE OF SERVICE

The undersigned certifies that he is an attorney at Cox Ferguson and Wham LLC and that on the tenth day of March, 2018 she served the letter to the S.C. Supreme Court dated March 10, 2018 herein by depositing a copy of it in the United States Mail, postage prepaid and addressed to:

Daryl G. Hawkins, Esq.  
Attorney at Law  
P.O. Box 11906  
Columbia, SC 29211.

*J. R. Ferguson*

March 10, 2018