THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Judge

Appellate Case No. 2017-000095
Court of Common Pleas Case No. 2016-CP-18-1849

IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992,

RICHARD S. HENSON AND VANN KENNETH HENSON,
Respondents,

v.

ALBERT T. HENSON, JR. AND JULIAN REID HENSON,
Respondents in the Court below,

Of whom ALBERT T. HENSON, JR. is the Appellant.

APPELLANT'S RETURN IN OPPOSITION TO RESPONDENTS' MOTION FOR DETERMINATION TO LIFT STAY

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ATTORNEYS FOR APPELLANT

INTRODUCTION

Appellant Albert T. Henson, Jr. (hereinafter "Appellant") submits this Return in Opposition to the Motion for Determination to Lift Stay filed by Respondents Richard S. Henson and Vann K. Henson (hereinafter "Respondents").[1]

Respondents made essentially this same motion to the Probate Court on September 19, 2017, nearly seven months ago. The Probate Court denied the motion on November 15, 2017. *See* "Exhibit A" attached hereto. Respondents took no action thereafter to bring the issue to this Court's attention. Instead, they waited for nearly five months to file the instant motion. During that interval, and despite Petitioner's objections, the special fiduciary appointed by the Probate Court executed yet another extension of the loan and mortgage involving the real property at issue in this lawsuit and placed significantly more debt on the property.

Respondents now claim it is urgent and necessary for this Court to grant their motion because this loan extension and mortgage involving the subject real estate will become due on December 3, 2018 and allegedly "there is a substantial risk that the Subject Property may be lost if a final hearing is not had prior to the December 3, 2018 deadline." *See* Resp. Motion p. 8. Respondents also claim that because of the special fiduciary's "limited authority" she was "forced to accept predatory interest rates from the lenders in consideration for their extension of the note and mortgage" and "[t]he principal balance over the life of the loan has increased from $100,000 to $247,000, and it is

[1] Respondents filed no affidavits or other documents with their motion as required by Rule 240(c)(3), SCACR. The parties previously filed the Record on Appeal and their final briefs in this matter many months ago. Briefing was concluded in August of 2017. Unless otherwise attached as an exhibit hereto, all references in this Return are to the Record on Appeal previously filed with this Court on August 8, 2017.

currently subject to a 30% annual interest rate." *Id.*[2] Respondents lament that there are no guarantees the special fiduciary will be able to obtain further extensions of the loan in the future.

Of course, Respondents' motion conspicuously omits any mention of the fact that Appellant had secured a new lender (Sarah Buxton) who was and is reading, willing, and able to refinance the existing loan on terms substantially more favorable than those imposed by the current lenders, but that Respondents refused to accept those terms. *See* "Exhibit B" attached hereto. Ms. Buxton's terms include a guarantee that the parties in this litigation will be able to secure further loan extensions throughout the pendency of this case if needed, establish a non-default interest rate of 10% per annum, and expressly allow for the loan to be "prepaid, at any time, in whole or in part without penalty of interest beyond [the] date of payoff." *Id.*

Despite these obviously better loan terms, Respondents refused Ms. Buxton's offer and instead requested the special fiduciary to execute another extension with the existing lenders despite their "predatory" terms as part of Respondents' strategy to maintain leverage over Appellant in this litigation. Appellant objected to the special fiduciary's execution of another extension with the existing lenders rather than refinancing the loan with Ms. Buxton and also filed a motion in the Probate Court asking that the special fiduciary be specifically authorized to accept Ms. Buxton's offer in lieu of another extension with the current lenders. *See* "Exhibit C" and "Exhibit D" attached hereto. However, Respondents refused to consent to Appellant's motion and opposed it.

When Appellant was unable to have his motion heard by the Probate Court before the

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[2] The total amount of principal and interest due under the extended loan is actually $321,000.00, which must be paid even if the loan is prepaid before the maturity date on December 3, 2018. *See* "Exhibit F".

deadline was set to expire on which the existing lenders were going to call their loan in default if they were not paid in full or if an extension was not executed with them on the terms they demanded, the special fiduciary executed the second extension with the current lenders despite Appellant's objections. *See* "Exhibit E" and "Exhibit F" attached hereto. Although the existing lenders required Appellant and Respondents to sign a document merely acknowledging that the extension was being granted, Appellant did so only after specifically reserving and refusing to waive his rights and claims in this litigation. *Id.*[3]

The fact that the special fiduciary accepted "predatory interest rates" or other unfavorable terms from the lenders is directly attributable to the Respondents' actions in the litigation. It is a well-worn maxim that "[h]e who seeks equity must do equity" and "[h]e who comes into equity must come with clean hands." *Associated Spring Corp. v. Roy F. Wilson & Avnet, Inc.*, 410 F. Supp. 967, 978 (D.S.C. 1976); *Long v. Robinson*, 432 F.2d 977, 981 (4th Cir. 1970) ("It would seem elementary that a party may not claim equity in his own defaults."); *Norton v. Matthews,* 249 S.C. 71, 152

[3] On October 31, 2017, the parties had entered into a Consent Order in which they each agreed to seek out and obtain proposals for refinancing the existing loan and "to make a good faith effort to reach a mutual agreement on selection" of one of the proposals. *See* "Exhibit G" attached hereto. The parties entered into the Consent Order without prejudice to their positions, claims, and rights in the litigation. Despite the Consent Order and even though Appellant secured an offer from Ms. Buxton with terms far superior to those being offered by the existing lenders or any other lender proposed by Respondents, Respondents refused to "mutually agree" on accepting Ms. Buxton's offer. Respondents refused Ms. Buxton's offer because she is Appellant's friend.

Respondents later asserted that the Consent Order allowed the special fiduciary to execute another loan extension with the existing lenders even without Appellant's consent or despite his objection. Appellant's understanding was that the special fiduciary was authorized to seek out and negotiate another loan extension with the existing lenders if necessary, but that the special fiduciary could not execute any such loan extension without the parties' mutual agreement. *See* "Exhibit C" attached hereto pp. 2-3. Appellant was unable to obtain the Probate Court's ruling on that issue before the existing lenders threatened to put their loan in default and foreclose on their mortgage.

S.E.2d 680 (1967) ("He who seeks equity must do equity."); *First Union Nat. Bank of South Carolina v. Soden,* 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.").

Respondents are asking this Court to grant themselves relief from the very consequences of their own inequitable actions. *Bowman v. Bowman*, 357 S.C. 146, 160, 591 S.E.2d 654, 661 (Ct. App. 2004) ("The courts of this state have recognized that a party cannot complain when it receives the relief for which it has asked." (citation omitted)). They want this Court to rule that further proceedings in the Probate Court are not affected by the appeal which Appellant timely filed in this matter on September 16, 2016, or, in the alternative, to lift the stay resulting from the appeal because "it is becoming increasingly likely that the Subject Property will be forfeited if final resolution of its ownership is not decided before the note's maturity" on December 3, 2018. *See* Resp. Motion p. 8. Of course, Respondents created this purported emergency.

As discussed below, Respondents' motion must be denied because Appellant's appeal divested the Probate Court of jurisdiction to conduct further proceedings in this matter pursuant to Section 62-1-308(h) of the South Carolina Probate Code (SCPC). Additionally, because the Probate Court does not have jurisdiction or authority to proceed with this matter before the appeal is resolved, Rule 241 of the South Carolina Appellate Court Rules (SCACR) cannot be used to give the Probate Court jurisdiction which it otherwise lacks because of the pending appeal. Appellant respectfully requests that Respondents' motion be denied.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation arises from a dispute among three brothers over the ownership of valuable commercial property located at 605 North Main Street, Summerville, South Carolina. Appellant and Respondents are brothers and are the grandchildren of Eunice I. Page, who died on October 6, 1993. (R. pp. 137-38 ¶¶ 2-3). Appellant asserts that he is the owner of the 605 North Main property based on an agreement that he entered into with Mrs. Page in 1988. (R. pp. 138-41 ¶¶ 4-9; pp. 148-51; pp. 152-53 ¶¶ 3-6; p. 154 ¶ 2; p. 158 ¶¶ 4-5; pp. 159-60 ¶ 3). Under that agreement, Appellant has been in exclusive possession of the property since 1988; has continuously possessed and used the property since 1988; has paid the taxes, insurance, and expenses for the property since 1988; has kept his personal property, equipment, and tools on the property since 1988; has made permanent improvements to the property; has leased portions of the property to tenants for many years; and earns his livelihood from the business that he conducts on the property. (R. pp. 142-44, 146 ¶¶ 10-13, 19; pp. 152-53 ¶ 3; pp. 159-60 ¶ 3). The property is Appellant's sole source of income. *Id.*

On January 26, 2015, Appellant's brothers (the Respondents) filed a petition in the Probate Court entitled "Petition to Appoint a Successor Trustee," in which they seek to divest Appellant of ownership of the 605 North Main property. (R. pp. 21-42). Respondents allege in their petition that the property is owned by a Trust EIP created under the Last Will and Testament of Eunice I. Page dated October 14, 1992 ("the EIP Trust"). Id. The EIP Trust named Ann P. Pittillo as Trustee. Mrs. Pittillo is the mother of Appellant and Respondents and is Mrs. Page's daughter. Mrs. Pittillo died on April 20, 2014. Respondents allege that they along with Appellant and Julian R. Henson (Respondent Richard Henson's daughter) are the "sole remaining qualified beneficiaries of the" EIP Trust. According to Respondents' petition, "[Respondents] desire for the Court to appoint

themselves as the successor co-trustees of the Trust for the sole purpose of dissolving the Trust and distributing the [605 North Main property] to its designated beneficiaries." (R. p. 22). Respondents ask the Court to deem the Trust to be the owner of the property, to immediately dissolve the Trust, and to disburse the property (*i.e.*, proceeds from its sale) to themselves and Appellant. *Id.*

On April 2, 2015, Appellant filed an Answer to Respondents' petition and denied that the 605 North Main property is owned by the EIP Trust. (R. pp. 43-46). On May 4, 2015, Appellant filed an Amended Answer, Counterclaims, and Cross-Claim seeking, *inter alia*, a declaratory judgment declaring that Appellant is the rightful owner of the property. (R. pp. 83-90).

On October 12, 2015, before a trial or evidentiary hearing was conducted or any action was taken on Respondents' Petition to Appoint a Successor Trustee or involving Appellant's Counterclaims or Cross-Claim, Respondents then filed a separate "Motion for Appointment of Special Fiduciary as Interim Trustee" under S.C. CODE ANN. § 62-7-704(e). (R. pp. 101-04). Section 62-7-704(e) of Probate Code states that "[w]hether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust." S.C. CODE ANN. § 62-7-704(e). On December 9, 2015, Respondents also moved for an expedited hearing on their Motion for Appointment of Special Fiduciary as Interim Trustee. (R. pp. 105-21).

Respondents' Motion for Appointment of Special Fiduciary as Interim Trustee and their Motion for Expedited Hearing requested that a special fiduciary be appointed with the authorization to immediately have "access to all records concerning the assets of the Trust," "authority over Trust assets," and payment of "reasonable compensation." (R. p. 103). Their motions also asked the Probate Court to alter the *status quo* by authorizing the special fiduciary to have immediate

possession, control, and authority over the 605 North Main property, including "management" of the property, "collection of rents and other income generated by" the property, and potentially selling the property. (R. p. 106). The motions effectively requested the Probate Court to order Appellant to vacate the property and to relinquish ownership and possession of the property to the special fiduciary. The motions also argued that it was imperative that the Probate Court appoint a special fiduciary because Mrs. Pittillo had previously executed a Promissory Note and Mortgage using the 605 North Main property as collateral that was scheduled to become due on December 3, 2016. Respondents did not file any affidavit or evidence to support either of their motions. Instead, they simply relied on the statement in their motions that "[t]he possibility of the Mortgage being foreclosed for non-payment of the Note is a real threat to the Trust's main asset, and immediate measures need to be taken to protect this asset, including the possible sale of the property." *Id.*

On June 29, 2016, Appellant filed an opposition to the Motion for Appointment of Special Fiduciary. (R. pp. 122-36). Appellant simultaneously filed sworn affidavits of Appellant and several witnesses, including Jim Wright, Lee Agnew, Sharon Burbage, and Kane Wright. (R. pp. 137-61). In his opposition to Respondents' motions, Appellant argued that the substance of the motions sought a mandatory injunction against Appellant, that Respondents failed to show that injunctive relief is necessary to preserve the *status quo*, and that the motions improperly sought to alter the *status quo* by appointing a special fiduciary and to require Appellant to immediately turn over and relinquish possession, use, control, and ownership of the 605 North Main property to the special fiduciary, even though the property's ownership is in dispute. Appellant also argued that the Probate Court could not grant the relief requested by Respondents without requiring them to post a bond under S.C. R. CIV. PRO. 65(c), which Respondents had not shown they were capable of providing. Finally, as an

alternative position, Appellant requested that the Probate Court appoint him as the special fiduciary should the Court determine that it is necessary to appoint such a person under § 62-7-704(e).

On June 29, 2016, Associate Probate Judge Molly D. Edwards conducted a hearing on Respondents' motions. (R. pp. 247-96). No testimony was proffered at the hearing.

On August 31, 2016, Judge Edwards issued an order appointing Ashley Andrews, Esquire "as the special fiduciary to serve as the Interim Trustee." (R. p. 6 ¶ 26). In delineating the special fiduciary's "duties and responsibilities," the order states that "it is important that the Court treads lightly in regards to the duties and responsibilities assigned to a special fiduciary in order to ensure that the *status quo* is maintained in this matter to the greatest extent possible." (R. pp. 6-7 ¶ 32). The order also finds that "[w]hile on the face of the Motion, [Respondents] did not request an injunction, it appears that some of their requested relief would have the consequence of altering the *status quo*" and that "[w]hile injunctive relief was not plead by [Respondents], that would be the effect." (R. p. 7 ¶¶ 33, 38). However, Judge Edwards concluded that the outstanding mortgage taken out on the 605 North Main property by Mrs. Pittillo "poses a major risk to the ownership of this property," thus she ruled that the "appointment of a Special Fiduciary is necessary is order to preserve 605 N. Main Street for all parties and to negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion." (R. p. 8 ¶¶ 41-42). The order authorizes the special fiduciary "[i]n her sole discretion, [to] negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or [to] have the mortgage paid off prior to the December 3, 2016 due date." (R. p. 10). By appointing Ms. Andrews as the special fiduciary, Judge Edwards necessarily denied Appellant's competing request that he be the person appointed to that position. The order also affirmatively requires that Appellant turn over certain records to the

special fiduciary regarding the 605 North Main property. (R. pp. 8, 10). The order further states that the special fiduciary "shall be compensated at $200/hour." (R. p. 9).

Appellant's counsel received written notice of the entry of the order via regular mail on September 6, 2016. On September 16, 2016, Appellant timely filed and served his Notice of Intent to Appeal to the Circuit Court in accordance with S.C. CODE ANN. § 62-1-308. (R. pp. 177-84). On October 21, 2016, Appellant timely served his Statement of Issues on Appeal in the Circuit Court pursuant to S.C. CODE ANN. § 62-1-308(b). (R. pp. 185-87).

On October 26, 2016, Respondents filed a Motion to Dismiss Appeal arguing that the Probate Court's order grants "only temporary relief" and "is not a final order subject to appeal" until there is "a final hearing on the merits" and a resolution of Respondents' separate Petition to Appoint a Successor Trustee and Appellant's Counterclaims and Cross-Claim. (R. pp. 190-91). Respondent filed his opposition to the motion on November 21, 2016, and asserted that the Probate Court's order is appealable because it involves (a) a final order affecting a substantial right made in a special proceeding under S.C. CODE ANN. § 14–3–330(3) and/or (b) an order that grants, continues, or refuses an injunction under § 14–3–330(4). (R. pp. 203-24). Circuit Judge Edgar W. Dickson conducted a hearing on the Respondents' motion on November 21, 2016. (R. pp. 320-62).

On December 12, 2016, Judge Dickson entered an Order granting the Respondents' motion to dismiss Appellant's appeal. (R. pp. 12-20). Appellant's counsel received written notice of entry of the Order on December 15, 2016. On January 12, 2017, Appellant timely served his Notice of Appeal to this Court. (R. pp. 242-46).

Appellant filed the Record on Appeal in this matter on August 8, 2017. Thereafter, the parties filed their final briefs in late August of 2017. Briefing has been completed in this Court for

approximately eight months.

On September 19, 2017, nearly seven months ago, Respondents filed in the Probate Court a Motion for Determination that Further Proceedings are not Affected by the Appeal and, in the Alternative, Verified Motion to Lift Stay. Judge Edwards heard the motion on October 16, 2017.

On November 15, 2017, Judge Edwards entered an Order denying Respondents' motion. *See* "Exhibit A" attached hereto. Respondents took no action thereafter to bring the issue to this Court's attention. Instead, they waited for nearly five months to file the instant motion. During that interval, and despite Petitioner's objections, the special fiduciary appointed by the Probate Court executed yet another extension of the loan and mortgage involving the real estate at issue this lawsuit and placed significantly more debt on the property.[4]

Prior to this second extension, Appellant had secured a new lender (Ms. Buxton) who was and is reading, willing, and able to refinance the existing loan on terms substantially more favorable than those imposed by the current lenders. *See* "Exhibit B" attached hereto. Ms. Buxton's terms include a guarantee that the parties in this litigation will be able to secure further loan extensions throughout the pendency of the litigation if needed, establish a non-default interest rate of 10% per annum, and expressly allow for the loan to be "prepaid, at any time, in whole or in part without penalty of interest beyond [the] date of payoff." *Id.*

Despite these obviously better loan terms, Respondents refused Ms. Buxton's offer and

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[4] The loan's maturity date was extended for one year to December 3, 2018. *See* "Exhibit F". In exchange for the extension, the special fiduciary agreed to increase the principal and interest due under the loan from $247,000.00 to $321,000.00. *Id.* This amount is due even if the loan is prepaid before the maturity date on December 3, 2018. *Id.* The loan has an annual interest rate of 30%. *Id.* The agreement does not provide for any further extensions beyond the December 3, 2018 maturity date.

instead requested the special fiduciary to execute another extension with the existing lenders despite their "predatory" terms. Appellant objected to the special fiduciary's execution of another extension with the existing lenders rather than refinancing the loan with Ms. Buxton and also filed a motion in the Probate Court asking that the special fiduciary be specifically authorized to accept Ms. Buxton's offer in lieu of another extension with the current lenders. *See* "Exhibit C" and "Exhibit D" attached hereto. However, Respondents refused to consent to Appellant's motion and opposed it.

When Appellant was unable to have his motion heard by the Probate Court before the deadline was set to expire on which the existing lenders were going to call their loan in default if they were not paid in full or if an extension was not executed with them on the terms they demanded, the special fiduciary executed the second extension with the current lenders despite Appellant's objections. *See* "Exhibit E" and "Exhibit F" attached hereto. Although the existing lenders required Appellant and Respondents to sign a document merely acknowledging that the extension was being granted, Appellant did so only after specifically reserving and refusing to waive his rights and claims in this litigation. *Id.*

ARGUMENTS

1. Respondent's Appeal Divested the Probate Court of Jurisdiction.

Section 62-1-308(h) of the SCPC mandates that "[w]hen an appeal according to law is taken from any sentence or decree of the probate court, *all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had.*" S.C. CODE ANN. § 62-1-308(h) (emphasis added). The statute evinces a clear legislative intent that "all proceedings" in the Probate Court "in pursuance of" the appealed from order "shall cease" until the appellate court issues its judgment resolving the appeal.

The statute does provide that "[i]f the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken." *Id.* However, no such waiver has occurred in the case at bar.

Section 62-1-308(h) is analogous to SCACR 205. Under that rule, the service of a notice of appeal divests the lower court of jurisdiction over matters affected by the appeal. It states:

> *Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal*; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. *Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.*

Rule 205, SCACR (emphasis added); *see also Wilson v. Walker*, 340 S.C. 531, 539, 532 S.E.2d 19, 23 (Ct. App. 2000) ("[S]erving [a] notice of appeal divests the lower court of jurisdiction over the order appealed, except for matters not affected by the appeal."); *Morris v. Morris*, 295 S.C. 37, 40, 367 S.E.2d 24, 26 (1988) ("This Court has exclusive jurisdiction over an appeal upon the service of a Notice of Intent to Appeal. A lower court has jurisdiction to proceed only 'with matters not affected by the appeal.'").

SCACR 241(a) is a corollary rule that governs the separate issue of whether or not matters are automatically stayed pending an appeal. It provides:

> As a general rule, the service of a *notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.* This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over *matters not affected by the appeal* including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR (emphasis added).

"[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter affected by the appeal' under Rules 205 and 241(a)." *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012); *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) ("[W]hile an appeal is pending, a lower court cannot act on matters affecting the issue on appeal."). Although those rules allow—but do not mandate—the lower court to proceed with matters "not affected by the appeal," the applicable case law demonstrates this is a very narrow exception to the normal rule that an appeal prevents the lower court from proceeding further in the case.

The lower court can only address matters that are not affected or influenced in some way by the issues being appealed. *See, e.g., Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009) (trial court could proceed with summary judgment motion involving plaintiff's defamation claim despite a pending appeal from a contempt order involving defendant's failure to produce certain financial information when the issues on appeal did not affect the defamation claim); *Arnal v. Fraser*, 371 S.C. 512, 641 S.E.2d 419 (2007) (family court retained jurisdiction to enforce certain provisions in a final divorce decree that none of the parties were challenging on appeal); *Andrick Develop. Corp. v. Maccaro*, 280 S.C. 103, 311 S.E.2d 95 (Ct. App. 1984) (circuit court retained jurisdiction over completely separate action involving the parties that was not at issue in the appeal); BLACK'S LAW DICTIONARY 68 (10th ed. 2014) (defining "affect" as "to produce an effect on; to influence in some way" (cited with approval in *Stokes–Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016)).

In *Stokes–Craven Holding Corp.*, the South Carolina Supreme Court addressed the interplay of Rules 205 and 241(a). In that case, a former client brought a legal malpractice case against its

attorney following an adverse jury verdict in another lawsuit. Before filing the malpractice case, the former client had appealed the adverse jury verdict in the other case to the appellate courts, but the verdict was affirmed on appeal. In the subsequent legal malpractice case, the attorney argued that the statute of limitations had expired on the former client's malpractice claim before it was commenced. However, in rejecting this argument and holding that the statute of limitations did not begin to run until the appeals in the prior lawsuit had been exhausted, the Court held "if a client appeals the matter in which the alleged malpractice occurred, any basis for the legal malpractice cause of action is stayed by Rule 241(a) while the appeal is pending." *Stokes–Craven Holding Corp.*, 416 S.C. at 534, 787 S.E.2d at 494. The Court further pointed out that "Rule 205 divests the lower court or administrative tribunal of jurisdiction over 'matters affected by the appeal,' which necessarily would include a legal malpractice cause of action that is based on the outcome of the appealed verdict, judgment, or ruling." *Id.* Because the outcome of the appeal from the adverse jury verdict would "affect" the claims in the separate legal malpractice lawsuit, the Court held that the legal malpractice claim did not accrue until the appeal of the adverse jury verdict was resolved.

In the present case, Appellant has appealed the Probate Court's order appointing a special fiduciary for the Trust EIP and the special fiduciary's actions taken pursuant to that appointment involving the 605 North Main property at issue in this litigation. The Probate Court's order gave the special fiduciary certain authority over the 605 North Main property. The order specifically authorized the special fiduciary "to negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion" and authorized her "[i]n her sole discretion, [to] negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or [to] have the mortgage paid off prior to the December 3, 2016 due date."

(R. pp. 8 ¶¶ 41-42, 10 ¶B.i). Pursuant to the Probate Court's order, the special fiduciary actually exercised the powers given to her and took actions to modify the original loan that became due on December 3, 2016 by increasing the amount due from $190,000 to $247,000 and executed a mortgage modification using the 605 North Main property as security and thereby increased the lien amount against the property by $57,000.[5]

Appellant's appeal contends that he is the rightful owner of the 605 North Main Street property and that he alone has the right to possess, manage, control, borrow against, place debt on, and encumber the property. The appeal involves, *inter alia*, the issues of whether the Probate Court erred by appointing the special fiduciary based on the evidence properly before the Court, whether the Probate Court erred by authorizing the special fiduciary to exercise control over the property (including burdening the property with additional debt and a mortgage), and whether the special fiduciary's actions involving the property are valid. Additionally, to the extent it is determined that the appointment of a special fiduciary was appropriate, Appellant's appeal argues in the alternative that the Probate Court erred in failing to appoint the Appellant to that position, erred in failing to appoint a bank or trust company to that position in accordance with the terms of the Trust EIP, and erred in making the appointment without requiring the special fiduciary or the Respondents to post an adequate bond or other security. None of these issues have been resolved by the appellate courts.

Respondents incorrectly argue that further proceedings in the Probate Court are not "affected"

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[5] Despite Appellants arguments in the Probate Court that the Respondents should be required to give a bond or otherwise indemnify Appellant for any loss he may sustain if it should finally be determined the Probate Court erred in appointing a special fiduciary or giving her authority over the property, the Probate Court did not require either Respondents or the special fiduciary to post a bond of any sort. Appellant's appeal also challenges the Probate Court's failure to require Respondents or the special fiduciary to post a bond.

by Appellant's appeal and would not be "in pursuance of" the order appealed from order. Despite the pending appeal, Respondents now want the Probate Court to conduct a lengthy trial and to resolve the parties' dispute involving the ownership, control, and management of the 605 North Main Street property, which are issues that were directly involved in the Probate Court's prior order that appointed a special fiduciary and authorized that person to exercise authority over the property. As discussed above, Appellant maintains that he owns the 605 North Main Street property and he alone has the right to control and manage the property. In contrast, Respondents assert that the Trust EIP owns the property and thus it has the right to control and manage the property. The Probate Court necessarily determined that the Trust EIP has at least some right to control and encumber the property because it appointed the special fiduciary with the power to negotiate a loan extension involving the property and to place a mortgage or lien on the property. That ruling is directly at issue in Appellant's appeal.

The pending appeal directly involves the issue of who has the right to control and manage the 605 North Main property and whether the Probate Court erred by allowing the special fiduciary to exercise control over that property and to place debt and a mortgage on the property. The resolution of Appellant's appeal from the Probate Court's order will "affect" or influence the remaining issues in this matter. Conducting a final hearing will be in "in pursuance" of the appealed from order because the Probate Court will necessarily have to recognize and enforce the special fiduciary's actions taken with respect to the 605 North Main Street property in order to render a final judgment in this matter. If the special fiduciary's actions are reversed or modified as a result of Appellant's appeal, the ruling will impact and affect the final outcome in the Probate Court. Accordingly, under § 62-1-308(h), the Probate Court lacks jurisdiction to move forward with this matter until the appeal

is resolved. *See Ex parte McFarlin*, 2007 WL 8326605, at *4 (S.C. Ct. App. Feb. 12, 2007) (vacating various probate court orders that were entered after a notice of appeal was served in the case because the probate court lost jurisdiction over matters that were affected by the appeal under § 62-1-308(c), which was later renumbered § 62-1-308(h)).

The Probate Court—which is in a superior position to understand the various proceedings that have taken place in that Court, to understand the issues and claims being litigated in that Court, and to understand the issues and claims that would need to be resolved as part of a final judgment in that Court—properly denied Respondents' motion and rejected their arguments that further proceedings in the Probate Court are not affected by Appellant's appeal and would not be in pursuance of the order appealed from. Respondents have made no showing which would justify this Court overturning the Probate Court's well-reasoned decision. This Court should not force the Probate Court to proceed with a final hearing in this matter while the appeal is pending.

Finally, even assuming *arguendo* that Respondents are correct that this appeal does not divest the Probate Court of jurisdiction and that the Probate Court could still proceed with a final hearing on the merits if so inclined, the Probate Court's order specifically declined to conduct a final hearing in this matter until the appeal is resolved "as a matter of judicial economy." *See* "Exhibit A" p.5. Nothing in Respondents' motion shows or even argues that the Probate Court erred or abused its discretion in making this ruling. Respondents' motion should be denied.

2. SCACR 241 Does Not Give the Probate Court Authority to Proceed With this Matter Pending the Appeal.

As discussed above, exclusive jurisdiction over this matter now rests in the appellate courts. Because further proceedings in the Probate Court are "affected" by Appellant's appeal and would be

"in pursuance of" the order appealed from, the Probate Court lacks jurisdiction to proceed with the matter. In response, Respondents argue this Court can use SCACR 241 to "lift the stay" resulting from Appellant's appeal and allow this matter to proceed notwithstanding the appeal. However, Respondents misunderstand Rule 241. That rule does *not* authorize the Probate Court to proceed with this matter notwithstanding Appellant's appeal.

As explained by this Court in *Tillman*, the question of whether or not an appeal of a lower court order acts to automatically stay the order is entirely different from the question of whether or not the lower court has jurisdiction to proceed with the matter while the appeal is pending. In *Tillman*, this Court specifically observed that "the absence of a stay does not mean the [lower court] may proceed with the case while one of its orders is on appeal." *Id.* at 254, 728 S.E.2d at 50. As the Court explained:

> When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. **This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may proceed in the lower court while the appeal is pending.**
>
> The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. The rule provides: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . ." **Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal.** The rule states: "Nothing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal." Rule 205, SCACR; *see also* Rule 241(a), SCACR ("The lower court . . . retains jurisdiction over matters not

> affected by the appeal . . . ."). **Thus, the existence or nonexistence of a stay under Rule 241 does not control the [lower court's] power to proceed with the action and address matters not affected by the appeal.** Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter[] affected by the appeal" under Rules 205 and 241(a). *See Arnal v. Fraser,* 371 S.C. 512, 518–19, 641 S.E.2d 419, 422 (2007) (per curiam) (explaining that Rules 205 and 241(a) permit the family court's action on matters not affected by the appeal and prohibit action on matters that are affected by the appeal).
>
> **In deciding whether it could hear Tillman's petition, the family court addressed the wrong question—whether the order was stayed during appeal. The question the court should have addressed is whether the issue raised in the petition was a matter affected by the appeal. . . .**

Id. at 254-56, 728 S.E.2d at 50-51 (emphasis added) (footnotes omitted).

Simply stated, if further proceedings in the Probate Court are "affected" by Appellant's appeal or would be "in pursuance of" the order appealed from, which they would be as explained above, the Probate Court clearly does *not* have jurisdiction or authority to proceed with this matter before the appeal is resolved. SCACR 241 (or any other rule) cannot be used in an attempt to give the Probate Court jurisdiction which it lacks because of the pending appeal.

Respondents have not cited to any case in which our courts have utilized Rule 241 to allow a Probate Court to proceed with a matter even though it was affected by an appeal that was pending in the appellate courts. Respondents do rely upon this Court's unpublished decision in *In re Estate v. Connor*, 2009 WL 9530097, at *2 (S.C. Ct. App. Oct. 29, 2009).[6] However, that case is no support for Respondents' motion. In that case, the Court held that the Probate Court erred by moving forward and granting a special administrator's petition for authorization to sell real property when another party had previously appealed the special administrator's appointment to the Circuit Court

[6] SCACR 268(d)(2) makes clear that "unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."

and that appeal was pending in the Circuit Court.

In dicta, the *Connor* Court observed that the special administrator "could have petitioned for a writ of supersedeas under Rule 241," but he failed to do so. *Id.* "Because [the special administrator's] authority to administer the estate was automatically stayed under Rule 241 but he failed to seek an order lifting the stay, he lacked authority to submit petitions for court action on behalf of the estate" and "the probate court erred in considering the petition to sell real estate . . . ." *Id.* Respondents in the present case apparently hinge their motion on this dicta. However, the Court's dicta in *Connor* does not address the implications of § 62-1-308 or address the Probate Court's jurisdiction to conduct further proceedings "affected" by the appeal or "in pursuance of" the order appealed from. The *Connor* case does not support Respondents' arguments in this case.

3. Granting Relief from the Stay Would Alter—Not Maintain—the *Status Quo*.

Even assuming *arguendo* that SCACR 241 is applicable, which it is not for the reasons discussed above, the Court should still deny the relief requested by Respondents.

Under Rule 241, "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." SCACR 241(a). "This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court." *Id.* There are several exceptions to the general rule providing for an automatic stay, but none of those exceptions apply to the Probate Court's order entered in this case. *See id.* 241(b) (listing exceptions).

By appealing the Probate Court's order, Appellant *automatically* put a hold on the effect of

that order, which had altered the *status quo* by appointing a special fiduciary and gave that person authority over the 605 North Main property. By appealing, Appellant was able to preserve the *status quo ante* to the Probate Court's order—which was that there was no special fiduciary in place and no such person was exercising authority over the 605 North Main property.

Although the general rule is that further appellate proceedings stay an underlying order's effect, the appellate rules provide for a procedure to upset the normal process in certain unusual circumstances. Specifically, under SCACR 241, a party may move for an order lifting the automatic stay imposed under the general rule. *Id.* 241(c)(1) ("After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule."). Such a ruling is not in the regular course and the automatic stay imposed by the rules continues unless and until it is lifted.

This Court's case law make clear that the purpose of lifting a stay is "to preserve the *status quo* pending the determination of the appeal" and "to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." *Graham v. Graham*, 301 S.C. 128, 390 S.E.2d 469, 470 (Ct. App. 1990); *Melton v. Walker*, 209 S.C. 330, 40 S.E.2d 161, 164 (1946) (recognizing that a stay and supersedeas are opposite sides of the same coin and are both meant to preserve *status quo*). The purpose of lifting the stay is not to alter the *status quo*.

There are very few published decisions discussing when a stay or supersedeas should be granted. In *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002), this Court refused to grant a request to lift the automatic stay because there was a legitimate dispute on the merits of the case and the possibility that the opposing party could subsequently prevail:

Because there appears to be a legitimate dispute as to whether [the plaintiffs] were

> misled by [the defendants] into believing that they would be able to vote on any changes in the subdivision restrictions at a subsequent meeting, we deny respondents' request to lift the automatic stay and their request to require the posting of a bond.

567 S.E.2d at 886.

Similarly, in the present action, Appellant could prevail on his appeal from the Probate Court's order and obtain a judgment holding that a special fiduciary should not have been appointed or, alternatively, that Appellant should have been appointed as the special fiduciary with authority over the property at issue in this case (instead of some third person). However, if the stay is lifted, the *status quo ante* to the Probate Court's order will not be maintained. If the special fiduciary (a third party) is continued to be allowed to exercise authority over the 605 North Main property while the appeal is pending, this Court may not be able to undo the actions that will have already taken place with respect to the property by the time Appellant's appeal is resolved.

Respondents' motion makes clear that they are seeking relief from the automatic stay not to preserve the *status quo ante*, but to alter the *status quo*. Respondents are asking this Court to disregard the normal stay and to instead give *immediate* effect to its prior order even while its validity is being challenged on appeal to the appellate courts. Lifting the automatic stay will mean the special fiduciary can exercise authority over the 605 North Main Street property during the pendency of the appeal without Appellant's consent, which will alter the *status quo*. In short, Respondents are improperly attempting to use Rule 241 as a mechanism for altering the *status quo* pending an appeal, not maintaining it.

4. Relief from the Stay Should not be Granted Unless Respondents Post an Adequate Bond.

Respondents' motion omits any discussion of SCACR 241(c)(3), which states that "[t]he

granting of supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate." SCACR 241(c)(3). The purpose of a bond is to protect those who may be prejudiced by lifting the stay pending a final determination of the appeal. The amount of an appeal bond is committed to the sound discretion of the lower court. *See United Dominion Realty trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992).

Whenever a bond is required, the general rules regarding bonds in all judicial proceedings become applicable. *See* S.C. CODE ANN. § 15-1-230 ("The provisions of this section shall apply to bonds given in connection with any appellate proceeding for the purpose of obtaining supersedeas or for any other purpose."). Under these rules, if a party must obtain a bond for any reason, the bond may be may be accepted by any officer or court with the duty to approve the bond so long as a surety company authorized to do business in South Carolina guarantees the bond. *Id.* Alternatively, the party may make a cash deposit in lieu of a bond. *Id.* § 15-1-250 ("Whenever it shall be necessary for a party to any action or proceeding to give a bond or an undertaking with surety or sureties he may, in lieu thereof, deposit with the officer or into the court, as the case may require, money to the amount for which the bond or undertaking is to be given."). The money must be paid to the clerk of court for the court from which the appeal arose. *Id.* § 15-1-260(3) ("Whenever such bond, recognizance or undertaking is required or authorized to be given in any civil proceeding: . . . (3) [i]n the probate courts of this State such sum of money shall be paid to the judge of the court of probate in which the proceeding is pending.").

As discussed above, if the stay is lifted, the special fiduciary will be allowed to pursue further

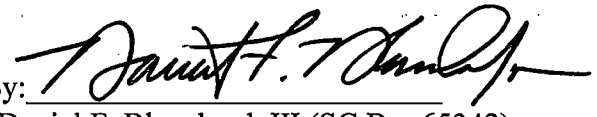
transactions involving the 605 North Main Street property before Appellant's appeal is determined. The appellate courts will not have the ability to grant complete relief to Appellant because the transactions will already have been completed and cannot be undone. Accordingly, as a condition to any order lifting the stay, the Court should require the Respondents to post an adequate bond to protect Appellant from any damage that may be suffered if Appellant's appeal is successful.

CONCLUSION

For the forgoing reasons, Appellant respectfully requests that the Court deny the Respondents' motion or, alternatively, to require Respondents to post an adequate bond as a condition to lifting the stay.

Respectfully submitted,

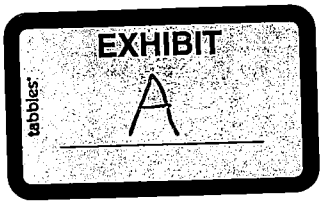
ROSEN, ROSEN & HAGOOD, LLC

By: 

Daniel F. Blanchard, III (SC Bar 65342)
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
ATTORNEYS FOR APPELLANT

April 13, 2018.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 RICHARD S. HENSON and VANN K. HENSON, Petitioners, vs. ALBERT T. HENSON, JR. and JULIAN REID HENSON, Respondents.	IN THE PROBATE COURT CASE NO. 1994-ES-18-00147-2 ORDER



THIS MATTER came before the Court on October 16, 2017 on the Motion for Determination that Further Proceedings are not Affected by the Appeal and, in the Alternative, Verified Motion to Lift Stay filed by Petitioners, Richard S. Henson and Vann K. Henson. Richard S. Henson appeared with his attorneys, Trudy Robertson and Barry Baker. Albert T. Henson, Jr. appeared with his attorney, Frank Blanchard. Vann K. Henson and Julian Reid Henson did not appear.

PROCEDURAL HISTORY

Eunice I. Page passed away on October 6, 1993 with a Last Will and Testament dated October 14, 1992. The Will left all her cash assets to her daughter, Ann P. Pittillo, and the remainder of her estate to a testamentary trust known as Trust EIP. Trust EIP's primary beneficiary was Ann P. Pittillo. At Ann P. Pittillo's death, Trust EIP states that the trust corpus shall be divided into three equal shares, subject to certain adjustments, for the benefit of Eunice I. Page's three grandsons: Albert T. Henson, Jr., Richard S. Henson, and Vann K. Henson. The

11/15/17

sole asset of Trust EIP is a parcel of property located at 605 N. Main Street, Summerville, South Carolina 29483 ("the Subject Property").

On December 4, 2013, Ann P. Pittillo, as Trustee of Trust EIP, executed a Promissory Note to borrow One Hundred Thousand and 00/100 Dollars ($100,000.00) from David Whitfield and Glenn Little in the name of Trust EIP and used the Subject Property as collateral. The Promissory Note required satisfaction of the mortgage by December 3, 2016.

Following Ann P. Pittillo's passing on April 20, 2014, litigation began between the remainder beneficiaries of Trust EIP. Richard S. Henson and Vann K. Henson (collectively referred to as "Petitioners") asserted that Trust EIP owns the Subject Property and requested that the Court appoint a Successor Trustee to distribute the Subject Property pursuant to the terms of Trust EIP and terminate the trust. Conversely, Albert Henson, Jr. ("Respondent Henson") asserted that he purchased the Subject Property from Eunice I. Page in 1988 and that the Subject Property belongs solely to him.

While the parties prepare to litigate the merits of the Subject Property's ownership issue, the outstanding mortgage has created an additional concern that the Subject Property will be potentially lost if Trust EIP defaults on the loan. On June 29, 2016, this Court held a hearing on Petitioners' Motion for Appointment of a Special Fiduciary as an Interim Trustee. On August 31, 2016, this Court issued an Order appointing Ashley Andrews, Esquire ("Ms. Andrews") as an Interim Trustee with very limited powers, including the power to "negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or have the mortgage paid off prior to the December 3, 2016 due date." This Order was timely appealed to the Circuit Court by Respondent Henson.

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On December 1, 2016, Judge Edgar W. Dickson dismissed the appeal. With the appeal dismissed, Ms. Andrews renegotiated the terms of the promissory note with David Whitfield and Glenn Little to extend the deadline for satisfaction of the note for another year to December 3, 2017.

At a Status Conference on July 11, 2017, the Court learned that Respondent Henson had appealed Judge Dickson's Order to the Court of Appeals. Following the status conference, the Court informed the parties that it would not move forward with any final hearing pending a decision from the Court of Appeals pursuant to S.C. Code Ann. § 62-1-308(h). With the December 3, 2017 promissory deadline looming again, the Petitioners filed the instant motion to request the Court make a finding that further proceedings are not affected by the appeal to the Court of Appeals, or in the alternative, to lift the stay.

A. Jurisdiction of the Court to Hear Dispositive Motions and a Final Hearing While Respondent Henson's Appeal is Pending

South Carolina Code § 62-1-308(h) states that "when an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had."

Petitioners argue that this Court is not required to stay a hearing on dispositive motions and a final merits hearing in the Probate Court litigation pending a judgment from the Court of Appeal because they would not be "in pursuance of the order" appealed. The Petitioners rely on *Ulmer v. Ulmer*, which states that "Section 62-1-308(c) does not apply to all orders of the probate court concerning the parties. The only proceedings required to cease are those proceedings addressed in the orders from which an appeal was taken." 369 S.C. 486, 492, 632 S.E.2d 858 (2006). The Petitioners' position is that the appealed from Order provided only

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temporary relief to extend the due date or satisfy the promissory note, but did not address the merits of the underlying issue as to who the rightful owner or owners of the Subject Property are. Therefore, the Petitioners assert that the only proceedings required to cease in this case are actions related to the appointment of Ms. Andrews as Interim Trustee.

Conversely, Respondent Henson argues that "[t]he resolution of Respondent's appeal from the Court's order will 'affect' or influence the remaining issues in this matter." Resp't Mem. at 9 (Oct. 16, 2017). Respondent Henson's position is that the Court erred in the appointment of a special fiduciary to serve as Interim Trustee and by allowing her to exercise any control over the Subject Property that he claims is his.

After reviewing the pleadings and listening to the arguments of the parties, the Court finds that a final hearing that will determine the ownership of the Subject Property is a proceeding "in pursuance" of the appealed from Order. It is the understanding of the Court that the essence of Respondent Henson's appeal is a question of whether the Court had the right to appoint someone else to control and indebt the Subject Property. The final hearing being requested by the Petitioners is to decide what party or parties own the Subject Property, and, therefore, have the right to control and indebt the Subject Property.

Furthermore, in the days following the filing of the instant motion, the Petitioners also filed a Motion for Partial Summary Judgment as to the Appointment of a Trustee, wherein the Petitioners request the Court appoint a Trustee for Trust EIP. It is the understanding of the Court that Petitioners would like this Motion heard prior to a final hearing. The appointment of a Trustee for Trust EIP is also a proceeding in pursuance of the appealed from Order, which appointed an Interim Trustee for Trust EIP.

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Finally, as a matter of judicial economy, this Court would like to streamline any and all remaining issues into one final hearing, if possible. If the Court of Appeals remands and/or reverses any portion of the case, it is possible another hearing would be required. All parties involved would benefit by having one final hearing to resolve all the issues at one time rather than handling this in a piecemeal fashion.

The Court understands the Petitioners' position and desire to move on to a final resolution in this matter as the continued delay has resulted in mounting interest debt on this Subject Property. However, until all issues currently appealed are resolved, this Court will not be able to hold a final hearing.

B. Lifting the Stay to Prevent the Loss of the Subject Property

Petitioners argued that if the Court held that this action was stayed and a final hearing could not be heard until Respondent Henson's appeal was resolved, then the Court should lift the stay to prevent loss of the Subject Property, which would make this matter moot, pursuant to Rule 241 of the South Carolina Appellate Court Rules. Petitioners argued that "there appears to be no practically obtainable solution to preserve the Subject Property other than the Court's final resolution of the contested issues on their merits prior to the December 3, 2017 deadline." Pet. Mot. at 6 (Sept. 21, 2017). Alternatively, Respondent Henson argued that the stay should not be lifted unless he, solely, was authorized to renegotiate a loan or unless the Petitioners' post an adequate bond to protect him against any damage.

After hearing the parties' arguments, and since most of the parties were present, the Court encouraged the parties to take time to negotiate a resolution among themselves to either satisfy the loan, secure a new lender, or renegotiate the loan with the current lender. The Court

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informed the parties if they were unable to reach a resolution to this matter, the Court would issue a ruling on whether to lift the stay.

Following negotiations off the record and outside the purview of this Court, the parties informed the Court that they had come to a consent agreement and wished to place the agreement on the record. The terms of the Consent Order were placed on the record and were entered as an Order of the Court on October 31, 2017 upon the Court's receipt of the signed consents by all parties.

As the parties were able to reach a resolution that would allow them to satisfy the loan, secure a new lender, or renegotiate the loan with the current lender, further order or action from this Court is not necessary. The parties have agreed to a process whereby the loan may be extended to protect the Subject Property from loss and prevent the contested issue from becoming moot pending the resolution of the appeal.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that:

A. All dispositive motions and a final hearing in this matter are stayed pending the final resolution of Respondent Henson's outstanding appeal;

B. Based on the October 31, 2017 Consent Order, the lifting of the stay to preserve the Subject Property is no longer necessary; and

IT IS SO ORDERED!

Molly D. Edwards

Hon. Molly D. Edwards
Associate Probate Judge
Dorchester County Probate Court

November 15, 2017
St. George, South Carolina

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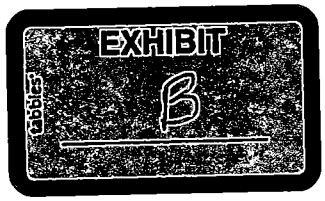
ROSEN | HAGOOD

Daniel F Blanchard, III
dblanchard@rrhlawfirm.com
843-266-8123

November 15, 2017



The Honorable Molly D. Edwards
Associate Probate Judge, County of Dorchester
5200 East Jim Bilton Boulevard
St. George, South Carolina 29477

Re: In re: Trust EIP Created Under the Last Will and Testament of Eunice I. Page dated October 14, 1992
Richard S. Henson and Vann Kenneth Henson v. Albert T. Henson, Jr. and Julian Reid Henson,
Case No. 1994-ES-18-00147-2
In re: Estate of Ann Page Pittillo
Richard Scott Henson, individually and as devisee and Vann Kenneth Henson, individually and as devisee v. Albert T. Henson, Jr., individually and as Personal Representative of the Estate of Ann Page Pittillo,
Case No. 2014-ES-18-00592

Dear Judge Edwards:

During the most recent telephone status conference that you conducted with the parties' counsel on November 3, 2017, I advised the Court and opposing counsel that I would report back to you with any revised loan term sheet that I was able to obtain from Sarah Buxton. Accordingly, I'm enclosing with this letter a copy of the revised term sheet that we received from Ms. Buxton's counsel late yesterday.

As you will see from the enclosed term sheet, Ms. Buxton has agreed to make several revisions to her prior term sheet which make the terms even more favorable to the parties in this litigation. Specifically, her revised term sheet includes a provision guaranteeing that the parties will be able to obtain loan extensions throughout the pendency of this litigation (see paragraph 3), a provision lowering the normal interest rate from 11% to 10% per annum (see paragraph 4), and a provision removing the prior requirement of a $7,000.00 loan fee (see paragraph 5). The terms in her revised term sheet are obviously much better to the parties than the terms under the current Whitfield/Little loan.

I am also sending a copy of this revised term sheet to Barry Baker and Trudy Robertson for their consideration. Of course, if I can provide any additional information for the Court, please do not hesitate to let me know.

With best regards, I am

Sincerely,

Daniel F. Blanchard, III

DFB/db

Encl.

Cc: Barry I. Baker, Esquire (w/ encl.)
Trudy H. Robertson, Esquire (w/ encl.)
Mr. Albert T. Henson, Jr. (w/ encl.)

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November 9, 2017

Frank Blanchard, Esquire
Rosen Hagood
151 Meeting Street, Ste. 400
Charleston, SC 29401

RE: Buxton Loan Commitment to Henson, et al

Dear Mr. Blanchard:

Please accept this letter as confirmation that I represent Sarah Buxton, and that Ms. Buxton has approved the Henson loan subject to the following terms and conditions:

1. **Borrowers:** Albert T. Henson, Richard Scott Henson, Vann Kenneth Henson, Ashley Andrews, as Special Trustee of Trust EIP and Albert T. Henson, as Personal Representative of the Estate of Ann P. Pittillo

2. **Loan Amount:** Two Hundred Fifty-three Thousand and no/100 ($253,000.00) Dollars, plus future advances for interest and renewal fees.

3. **Terms:** All principal and interest shall be due one year from closing ("Maturity Date"). Thirty (30) days prior to the Maturity Date, Borrowers shall have the option to extend the term one (1) year from Maturity Date. This option to extend the Maturity Date one (1) year shall be available to Borrowers each year so long as South Carolina Case 1994-ES-18-00147-2 and South Carolina Case 2014-ES-18-00592 are pending. Upon the dismissal or settlement of both South Carolina Case 1994-ES-18-00147-2 and South Carolina Case 2014-ES-18-00592 , Borrowers shall no longer have the option to extend the Maturity Date for an additional one (1) year period. Should Borrowers exercise the option, Ms. Buxton will increase the Loan Amount by the interest amount that accrued for that one (1) year period, plus a renewal fee of one (1%) percent of the principal balance. There is no grace period for any reason. Payment must be received by Ms. Buxton on or before the Maturity Date or Borrowers shall be in default and subject to the default rate. Interest shall be charged on any payment of interest not paid when due.

4. **Interest Rate:** Ten (10%) percent per annum on a 360 day year basis. Default rate of interest shall be eighteen (18%) percent.

5. **Loan Fee**: No loan fee.

6. **Prepayment**: The loan may be prepaid, at any time, in whole or in part without penalty of interest beyond date of payoff.

7. **Collateral**: A first mortgage lien, with title insurance approved by Ms. Buxton, together with an Assignment of Leases, Rents and Profits on real property located on 605 North Main Street, Summerville, SC 29483, TMS No. 137-04-01-001.

8. **Insurance**: Ms. Buxton shall be named as first loss payee on policies, with Ms. Buxton's approval of insurer and coverages.

9. **Costs**: Borrower shall be responsible for all costs.

10. **Acceptance**: Please indicate your acceptance of this commitment by signing below and returning an executed copy to the following address:

    Ms. Buxton, c/o M. Anthony Stith, Jr.
    Dodds Hennessy & Stith, LLP
    973 Houston Northcutt Blvd., Ste. 101
    Mt. Pleasant, SC 29464

    This commitment must be accepted and acknowledged by 5:00 p.m., November ___, 2017. TIME IS OF THE ESSENCE.

11. **Purpose**: Refinance existing debt in the amount of Two Hundred Fifty-three Thousand and no/100 ($253,000.00) Dollars

12 **Closing Attorney**: Lender's choice.

13. **Wire Service Fee**: If the closing attorney requests that funds be wired, an additional Thirty ($30.00) Dollar wire service fee shall be paid to Ms. Buxton.

14. **Duration**: Terms of this commitment shall survive closing.

15. **Borrowers' Representation**: Ms. Buxton has relied upon the accuracy of information provided by the Borrowers. Any misrepresentation, in the sole and exclusive opinion of Ms. Buxton, shall void this commitment.

If you should have any questions or concerns, please do not hesitate to give me a call.

Sincerely yours,

M. Anthony Stiles, Jr.

Confirmed by Ms. Buxton:

Sarah Buxton

Sarah Buxton

Agreed to and accepted by:

_____

Frank Blanchard, Esq., Attorney for Albert T. Henson, individual and as Personal Representative

_____

Barry I. Baker, Esq., Attorney for Richard Scott Henson and Vann Kenneth Henson

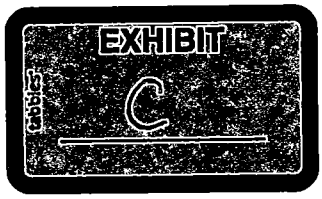
_____

Ashley Andrews, as Special Trustee of Trust EIP

ROSEN | HAGOOD

Daniel F Blanchard, III
dblanchard@rrhlawfirm.com
843-266-8123

November 22, 2017



VIA E-MAIL AND U.S. MAIL:
The Honorable Molly D. Edwards
Associate Probate Judge, County of Dorchester
5200 East Jim Bilton Boulevard
St. George, South Carolina 29477

Re: In re: Trust EIP Created Under the Last Will and Testament of Eunice I. Page dated October 14, 1992
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Case No. 1994-ES-18-00147-2
In re: Estate of Ann Page Pittillo
Richard Scott Henson, individually and as devisee and Vann Kenneth Henson, individually and as devisee v. Albert T. Henson, Jr., individually and as Personal Representative of the Estate of Ann Page Pittillo,
Case No. 2014-ES-18-00592

Dear Judge Edwards:

As you know, I represent Albert T. Henson, Jr. individually and as Personal Representative of the Estate of Ann Page Pittillo. I received your e-mail from this past Monday as well as the response e-mails from Barry Baker and Ashley Andrews concerning the status of the loan from David Whitfield and Glenn Little (hereinafter the Whitfield/Little loan). I am writing so that my client's positon in these matters is clear and to avoid any misunderstandings.

As you may recall from prior correspondence, hearings, and status conferences in this matter, the loan currently outstanding to Whitfield/Little will become due on December 3, 2017. The total principal and interest due under that loan is $247,000.00. I previously sent to the Court and opposing counsel a loan term sheet from Sarah Buxton in which she agrees to make a new loan that can be used to pay off the existing loan to Whitfield/Little. The terms offered by Ms. Buxton are significantly better than the terms which Barry Baker's and Trudy Robertson's clients were able to obtain from Charleston Capital Corporation (CCC). Ms. Buxton's term sheet includes a guarantee that the parties in this litigation will be able to obtain loan extensions throughout the pendency of this litigation, establishes a non-default interest rate of 10% per annum, does not require any loan origination fees, and expressly allows for the loan to be "prepaid, at any time, in whole or in part without penalty of interest beyond [the] date of payoff." Under Ms. Buxton's proposal, it will cost $24,700.00 to finance the loan for one year from December 2017 to December 2018.

Last Friday, November 17, Ms. Andrews advised us that she negotiated a commitment from Whitfield/Little to extend their current loan for one additional year. However, the Whitfield/Little terms are much less favorable than Ms. Buxton's terms. Whitfield/Little are again demanding an interest rate of 30% per annum for the extension. Under their proposal, it will cost $74,100.00 to finance the loan for one year from December 2017 to December 2018. Compared to Ms. Buxton's proposal, the Whitfield/Little proposal will cost nearly $50,000.00 more ($74,100.00 - $24,700.00 = $49,400.00). Additionally, the document which Ms. Andrews provided to us for the proposed Whitfield/Little extension includes a provision stating: "Borrower reserves the right to prepay in whole at any time, however, if Borrower prepays it shall be required to pay interest for 360 days, making the final payoff Three Hundred Twenty-One Thousand One Hundred and no/100 ($321,100.00) Dollars." (underlining added). In other words, even if the loan is prepaid before December 4, 2018, the entire $74,100.00 in interest must still be paid to Whitfield/Little. If the loan is prepaid, the effective annual interest rate is in excess of 30%.

My understanding is that Ms. Andrews has not negotiated any extension beyond one year with Whitfield/Little, thus it is highly probable the parties will be facing this same situation again next year if the Whitfield/Little extension is accepted. Even assuming Whitfield/Little would be willing to extend the loan for one more year in December of 2018 under the same terms (30% interest), it would cost another $96,330.00 in interest for that additional year ($321,100.00 x .30 = $96,330.00) and the total principal and interest would then be $417,430.00 ($321,100.00 + $96,330.00 = $417,430.00). You may recall that the amount of the original loan from Whitfield/Little is only $100,000.00. By continuing to do deals with Whitfield/Little, we are fast approaching the point at which the debt is no longer sustainable.

Despite the significantly higher loan costs being demanded by Whitfield/Little, Mr. Baker and Ms. Robertson both want Ms. Andrews to go ahead and execute a loan extension and mortgage modification with Whitfield/Little. My client wishes to state for the record that he objects to the execution of any new loan documents or loan extension with Whitfield/Little. He requests that Ms. Andrews be authorized to accept and execute Ms. Buxton's offer instead. The Court may authorize the special fiduciary to take appropriate action whenever the Court considers the appointment necessary for the administration of the trust. See S.C. CODE ANN. § 62-7-704(e), -1001(b). We respectfully submit that preventing the unnecessary waste of trust assets is a proper purpose for such an appointment.

In addition to the substantially higher loan costs as discussed above, my client also objects to the Whitfield/Little proposal for the following reasons.

First, we do not believe the Consent Order filed on October 31, 2017 authorizes Ms. Andrews to execute new loan documents with Whitfield/Little. Instead, under the terms of the Consent Order, Ms. Andrews is only specifically authorized to "discuss and negotiate with Whitfield/Little an extension of the Modification of Note and Modification of Mortgage to avoid a default on December 3, 2017." See Order filed 10.31.17 p.3 ¶ 5.d. Although Ms. Andrews may "discuss and negotiate" an extension of the loan, the Consent Order does not specifically authorize her to *execute* an extension of the current loan with Whitfield/Little or to *execute and*

deliver any new loan documents (promissory note, mortgage, etc.). Id. p.3 ¶ 5.c. Obviously, the authority to "discuss and negotiate" loan terms is different from the authority to execute a new note or mortgage.

The Consent Order directs and authorizes Ms. Andrews to execute and deliver loan documents only if a "mutual agreement" is reached by the parties regarding a lender, which has not yet occurred. Id. The Consent Order also states that Ms. Andrews "shall have no other or further power, responsibility, or authority as Special Trustee for the Trust EIP except as specifically and expressly set forth herein." Id. p.3 (emphasis added). In sum, we believe Ms. Andrews is not authorized to execute a new promissory note or mortgage with Whitfield/Little and she would be exceeding her authorization by executing and delivering new loan documents. See Ballou v. Young, 20 S.E. 84, 86 (S.C. 1894) (Even though the trustee was expressly empowered to execute a mortgage, Court held such power did not include the power to execute a promissory note because they are separate and distinct.).

Second, even putting aside the lack of authorization in the Consent Order for Ms. Andrews to execute and deliver any new promissory note or mortgage with Whitfield/Little, we also believe Ms. Andrews's fiduciary duties preclude her from accepting the Whitfield/Little proposal when significantly better terms are available from Ms. Buxton. Ms. Andrews is serving as an Interim Trustee for the Trust EIP and, as such, she owes fiduciary duties to the beneficiaries. Under well-established law, "as to his [or her] discretionary acts, a trustee must exercise the reasonable care, prudence, and diligence in the management of trust assets as a reasonably prudent [person] would do with relation to his [or her] own affairs." Cartee v. Lesley, 290 S.C. 333, 336, 350 S.E.2d 388, 390 (1986); see also Davis v. Walker, 655 S.E.2d 634, 637-38 (Ga. Ct. App. 2007) ("[I]n incurring debt on behalf of the trust to make repairs and improvements to trust property, a trustee is held to the standard of a reasonably prudent person.").

"One of the fundamental common-law duties of a trustee is to preserve and maintain trust assets." 76 AM. JUR. 2d Trusts § 402 (2017). "A trustee has the right and duty to safeguard, preserve, or protect the trust assets and the safety of the principal" and "[t]o perform this duty, the trustee . . . must not suffer the estate to waste or diminish or fall out of repair." Id. Stated simply, a trustee cannot allow the waste of trust assets. See Kahn v. Britt, 765 S.E.2d 446, 456 (Ga. Ct. App. 2014) (In holding that a question of fact existed as whether a trustee breached his fiduciary duty in authorizing the sale of a trust asset which resulted in the asset being sold for less than fair market value, the Court held that "[a] trustee has a duty to sell a trust's property for the highest price possible."); see also Johnson v. Witkowski, 573 N.E.2d 513, 519 (Mass. App. Ct. 1991) ("A trustee's first duty is the protection of the trust estate."). My client objects to Ms. Andrews executing documents that will unnecessarily allow the waste of assets of nearly $50,000.00.

Based on my recent discussion with Ms. Andrews, I understand she would agree to accept Ms. Buxton's proposal if the Court authorized her to do so. Ms. Buxton would be willing

to make the loan as set forth in her term sheet if Ms. Andrews and my client are authorized to execute a mortgage in her favor, even if my client's brothers refuse to also execute the mortgage.

The Consent Order specifically requires my client's brothers to make a "good faith effort" to reach a mutual agreement with my client regarding a loan. As was discussed during the most recent telephone conference that we conducted with you on November 3, Mr. Baker and Ms. Robertson assured me during our discussions at the courthouse on October 16 that if my client was able to obtain a term sheet offering loan terms which are the same as or equal to the loan terms their clients were able to obtain, then their clients will agree to go forward with the term sheet my client obtained. Although Ms. Buxton's proposal clearly offers better financial terms than the CCC proposal, my client's brothers have ignored their obligations under the Consent Order as well as the assurances their counsel gave to us on October 16 and have refused to accept Ms. Buxton's offer. We believe my client's brothers are acting in bad faith, have violated the terms of the Consent Order, and my client intends to hold them responsible in damages and/or to surcharge their interest in the Trust for any waste of assets their actions may cause.

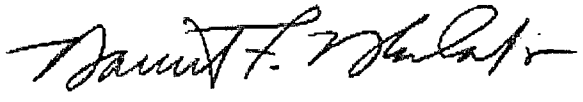
In conclusion, for the reasons summarized above, my client does not consent to—and specifically objects to—the execution of any new loan documents or loan extension with Whitfield/Little based on the terms negotiated by Ms. Andrews. Although my understanding from Ms. Andrews is that Whitfield/Little are not requiring my client or his brothers to execute any documentation as part of or as a condition to their extension of the current loan, my client will not and cannot execute or deliver any such documentation if requested by Whitfield/Little because the extension with them would be a waste of assets and would violate my client's duties as personal representative.

As always, I thank you for your attention to this matter. Of course, if the Court has any questions about the above or needs additional information, I will respond as quickly as possible.

I wish you and your family the best for a Happy Thanksgiving holiday.

With kindest regards, I am

Sincerely,



Daniel F. Blanchard, III

DFB/db
Cc: Ashley Andrews, Esquire
Barry I. Baker, Esquire
Trudy H. Robertson, Esquire
Mr. Albert T. Henson, Jr.

ROSEN | HAGOOD

Daniel F Blanchard, III
dblanchard@rrhlawfirm.com
843-266-8123

November 30, 2017

VIA E-MAIL AND HAND DELIVERY:
The Honorable Mary L. Blunt
Probate Judge, County of Dorchester
5200 East Jim Bilton Boulevard
St. George, South Carolina 29477

Re: *In re: Trust EIP Created Under the Last Will and Testament of Eunice I. Page dated October 14, 1992*
Richard S. Henson and Vann Kenneth Henson v. Albert T. Henson, Jr. and Julian Reid Henson, Case No. 2014-ES-18-00147-2
In re: Estate of Ann Page Pittillo
Richard Scott Henson, individually and as devisee and Vann Kenneth Henson, individually and as devisee v. Albert T. Henson, Jr., individually and as Personal Representative of the Estate of Ann Page Pittillo, Case No. 2014-ES-18-00592

Dear Judge Blunt:

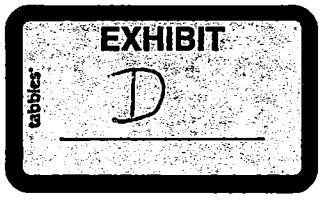
Please find enclosed two duplicate originals and one copy of the Motion to Authorize Special Fiduciary to Accept and Execute Loan Documents with Sarah Buxton and For Expedited Hearing that we are filing in both of the above-referenced cases. We would greatly appreciate your filing these on our behalf and returning a clocked-in copy in the enclosed self-addressed return envelope. I will certainly make myself available for a telephone conference or will travel to St. George should Your Honor wish to discuss this matter with the parties' counsel in that fashion. I thank you in advance for your assistance with this matter.

With kindest regards, I am

Sincerely,

Daniel F. Blanchard, III

DFB/dfb
Encl.
Cc: Ashley Andrews, Esquire (w/ encl.)
Barry I. Baker, Esquire (w/ encl.)
Trudy H. Robertson, Esquire (w/ encl.)
Mr. Albert T. Henson, Jr. (w/ encl.)



STATE OF SOUTH CAROLINA COUNTY DORCHESTER	) IN THE PROBATE COURT))	
IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 RICHARD S. HENSON AND VANN K. HENSON, Petitioners, v. ALBERT T. HENSON, JR., AND JULIAN REID HENSON, Respondents.	) Case No. 1994-ES-18-00147-2))))))))))))))	**MOTION TO AUTHORIZE SPECIAL FIDUCIARY TO ACCEPT AND EXECUTE LOAN DOCUMENTS WITH SARAH BUXTON AND FOR EXPEDITED HEARING**
IN RE: ESTATE OF ANN PAGE PITTILLO RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee, Petitioners, v. ALBERT THEODORE HENSON, JR. individually and as Personal Representative of the Estate of Ann Page Pittillo, Respondents.	)) Case No: 2014-ES-18-0592))))))))))	

TO: THE ABOVE NAMED PETITIONERS:

PLEASE TAKE NOTICE that Respondent Albert T. Henson, Jr., individually and as Personal Representative of the Estate of Ann Page Pittillo (hereinafter "Respondent"), through his undersigned counsel, hereby moves this Honorable Court to authorize Ashley Andrews, as

the Interim Trustee, to accept, enter into, execute, and deliver a loan agreement, promissory note, mortgage, and related documents with Sarah Buxton for the purpose of securing a loan to pay the outstanding loan presently owed to David Whitfield and Glenn Little (hereinafter the "Whitfield/Little loan"). Because of the impending deadline of December 3, 2017 under the present loan documents with Whitfield/Little, Respondent also moves the Court for an expedited hearing on this motion. In support of the motion, Respondent shows the following:

1. Eunice I. Page died on October 6, 1993. Her Last Will and Testament dated October 14, 1992 named her daughter, Ann P. Pittillo, as Trustee of the Trust EIP ("the Trust EIP"). Respondent and Petitioners Richard Scott Henson and Vann Kenneth Henson are brothers, are the children of Ann P. Pittillo, and are the grandchildren of Eunice I. Page.

2. On or about December 4, 2013, Ann P. Pittillo, as Trustee of the Trust EIP, executed a Promissory Note and Mortgage of Real Estate in favor of David Whitfield and Glenn Little, as lenders (hereinafter "Whitfield/Little"), for the original principal amount of $100,000.00 with an initial maturity date of December 3, 2016. The instruments purport to create a lien or mortgage on certain real estate in Dorchester County presently titled in the name of the Trust EIP, which property is generally referred to as 605 North Main Street, Summerville, South Carolina (hereinafter "605 North Main"). However, Respondent maintains that he is the rightful owner of the 605 North Main property by virtue of an agreement he entered into with Eunice I. Page in 1988. Pursuant to that agreement, Respondent has continuously possessed and used the property since 1988; has paid the taxes, insurance, and expenses for the property since 1988; has kept his personal property, equipment, and tools on the property since 1988; has leased portions of the property to tenants for many years; and earns his livelihood from the business that he conducts on the property. The property is Respondent's sole source of income.

3. Ann P. Pittillo died on April 20, 2014. A Successor Trustee has not been appointed for the Trust EIP.

4. On August 31, 2016, this Court entered an Order appointing Ashley Andrews, Esquire, as Interim Trustee for the Trust EIP. Thereafter, on December 3, 2016, Ms. Andrews, in her capacity as Interim Trustee, executed a Modification of Note and Modification of Mortgage in favor of Whitfield/Little, as lenders. The terms of those documents extend the maturity date of the original Note and Mortgage to December 3, 2017, and increase the principal amount of the loan to $190,000.00. The total principal and interest due on December 3, 2017 will be $247,000.00.

5. The extended maturity date of December 3, 2017 for the Modification of Note and

Modification of Mortgage is fast approaching and will be reached before the claims, counterclaims, and defenses in above-captioned litigation are finally resolved. It is in the best interests of the parties and the Trust EIP to prevent a default from occurring under the terms of the Modification of Note and Modification of Mortgage and to protect the 605 North Main Street from being forfeited to Whitfield/Little, or lost to foreclosure or subject to a foreclosure claim.

6. On October 31, 2017, the Court entered a Consent Order holding in pertinent part as follows:

a. By October 30, 2017, the Petitioners and Respondent will exchange any written term sheets that they have been able to obtain from third party lenders with respect to a new loan or financing of the Modification of Note and Modification of Mortgage held by Whitfield/Little;

b. By November 1, 2017, the Petitioners and Respondent will each discuss and review those written term sheets exchanged on or before October 30, 2017 and will each make a good faith effort to reach a mutual agreement on selection of one of the written term sheets and complete or close said mutually agreed upon loan, financing, lien, mortgage, or security interest with the agreed upon third party lender to satisfy the Modification of Note and Modification of Mortgage prior to or on the maturity date of December 3, 2017;

c. Upon mutual agreement of the Petitioners and Respondent as set forth in 6.b. above, Ashley Andrews is directed and authorized, as an Interim Trustee, to execute and deliver any loan documents, promissory notes, mortgages, security agreements, or other instruments or documents that may be necessary to complete or close the agreed upon loan, financing, lien, mortgage, or security interest and, further, Respondent Al Henson is authorized to execute and deliver the same, to the extent necessary, as a Personal Representative of the Estate of Ann Page Pittillo, and Petitioners and Respondent agree to execute and deliver the same in each of their individual capacities, to the extent necessary, to complete the agreed upon third party financing;

d. In the event there is no agreement between the Petitioners and Respondent as set forth in paragraph 6.b. above, then the Parties consent to, and this Court hereby directs and authorizes, Ashley Andrews, beginning on November 2, 2017, to discuss and negotiate with Whitfield/Little an extension of the Modification of Note and Modification of Mortgage to avoid a default on December 3, 2017. Ms. Andrews shall have no authority to discuss or secure any third party lender financing outside of Whitfield/Little, but rather shall be limited to efforts, beginning on November 2, 2017, to securing an extension of the Modification of Note and Modification of Mortgage.

e. By consenting and agreeing to the Consent Order, the Parties do not waive and expressly reserve any and all claims, counterclaims, defenses, motions and rights asserted or which could be asserted in this litigation and nothing herein shall

be construed or deemed as a waiver, relinquishment, or abandonment of any claims, counterclaims, defenses, or rights by any Party existing as of the date of this Order.

f. Ashley Andrews shall have no other or further power, responsibility, or authority as Special Trustee for the Trust EIP except as specifically and expressly set forth in the Consent Order.

7. Since the Consent Order was entered, Respondent and Petitioners obtained proposals from lenders to refinance the Whitfield/Little loan. Respondent obtained a proposal from Sarah Buxton and Petitioners obtained a proposal from Charleston Capital Corporation ("CCC"). True and correct copies of the term sheets received from Ms. Buxton and CCC are attached hereto as "Exhibit A" and Exhibit B," respectively.

8. The terms offered by Ms. Buxton are significantly better than the terms offered by CCC. Ms. Buxton's term sheet includes a guarantee that the parties in this litigation will be able to obtain loan extensions throughout the pendency of this litigation, establishes a normal interest rate of only 10% per annum, and does not require any loan origination fees. All of those terms are more favorable than the terms in CCC's proposal. Ms. Buxton's proposal also expressly allows for the loan to be "prepaid, at any time, in whole or in part without penalty of interest beyond [the] date of payoff." Under Ms. Buxton's proposal, it will cost $24,700.00 to finance the loan for one year from December 2017 to December 2018.

9. Although Ms. Buxton's proposal offers the best financial terms, the parties have not been able to reach a mutual agreement with respect to the loan proposal to be accepted. Thus far the Petitioners have refused to agree for Ms. Buxton's offer to be accepted.

10. Respondent is informed that Ms. Andrews has contacted Whitfield/Little and discussed and negotiated a potential extension of the loan with them. Upon information and belief, Ms. Andrews was able to negotiate a commitment from Whitfield/Little to extend their current loan for one additional year. However, the Whitfield/Little terms are much less favorable than Ms. Buxton's terms. Whitfield/Little are again demanding an interest rate of 30% per annum for the extension. Under their proposal, it will cost $74,100.00 to finance the loan for one year from December 2017 to December 2018. Compared to Ms. Buxton's proposal, the Whitfield/Little proposal will cost nearly $50,000.00 more ($74,100.00 - $24,700.00 = $49,400.00). Additionally, the document which Ms. Andrews provided to the parties for the proposed Whitfield/Little extension includes a provision stating: "Borrower reserves the right to prepay in whole at any time, however, if Borrower prepays it shall be required to pay interest for 360 days, making the final payoff Three Hundred Twenty-One Thousand One Hundred and no/100 ($321,100.00) Dollars." Even if the loan is prepaid before December 4, 2018, the entire $74,100.00 in interest must still be paid to Whitfield/Little.

11. Upon information and belief, Ms. Andrews has not negotiated any extension beyond one year with Whitfield/Little, thus it is highly probable the parties will be facing this same situation again next year if the Whitfield/Little extension is accepted.

12. Under the Consent Order entered on October 31, 2017, Ms. Andrews is only specifically authorized to "discuss and negotiate with Whitfield/Little an extension of the Modification of Note and Modification of Mortgage to avoid a default on December 3, 2017." See Order filed 10.31.17 p.3 ¶ 5.d. Although Ms. Andrews may "discuss and negotiate" an extension of the loan, the Consent Order does not specifically authorize her to execute an extension of the current loan with Whitfield/Little or to execute and deliver any new loan documents (promissory note, mortgage, etc.). Id. p.3 ¶ 5.c. The authority to "discuss and negotiate" loan terms is different from and more limited than the authority to execute a new note or mortgage.

13. The Consent Order directs and authorizes Ms. Andrews to execute and deliver loan documents only if a "mutual agreement" is reached by the parties regarding a lender, which has not yet occurred. Id. The Consent Order also states that Ms. Andrews "shall have no other or further power, responsibility, or authority as Special Trustee for the Trust EIP except as specifically and expressly set forth herein." Id. p.3 (emphasis added).

14. In addition to the absence of express authorization in the current Consent Order for Ms. Andrews to execute any new loan with Whitfield/Little in the absence of a mutual agreement between the parties, Respondent respectfully submits that Ms. Andrews's fiduciary duties preclude her from accepting the Whitfield/Little proposal when much better loan terms are available from Ms. Buxton. Ms. Andrews is serving as an Interim Trustee for the Trust EIP and, as such, she owes fiduciary duties to the beneficiaries. Under well-established law, "as to his [or her] discretionary acts, a trustee must exercise the reasonable care, prudence, and diligence in the management of trust assets as a reasonably prudent [person] would do with relation to his [or her] own affairs." Cartee v. Lesley, 290 S.C. 333, 336, 350 S.E.2d 388, 390 (1986); see also Davis v. Walker, 655 S.E.2d 634, 637-38 (Ga. Ct. App. 2007) ("[I]n incurring debt on behalf of the trust to make repairs and improvements to trust property, a trustee is held to the standard of a reasonably prudent person.").

15. "One of the fundamental common-law duties of a trustee is to preserve and maintain trust assets." 76 AM. JUR. 2d Trusts § 402 (2017). "A trustee has the right and duty to safeguard, preserve, or protect the trust assets and the safety of the principal" and "[t]o perform this duty, the trustee . . . must not suffer the estate to waste or diminish or fall out of repair." Id. Stated simply, a trustee cannot allow the waste of trust assets. See Kahn v. Britt, 765 S.E.2d 446, 456 (Ga. Ct. App. 2014) (In holding that a question of fact existed as whether a trustee breached his fiduciary duty in authorizing the sale of a trust asset which resulted in the asset being sold for less than fair market value, the Court held that "[a] trustee has a duty

to sell a trust's property for the highest price possible."); see also Johnson v. Witkowski, 573 N.E.2d 513, 519 (Mass. App. Ct. 1991) ("A trustee's first duty is the protection of the trust estate."). My client objects to Ms. Andrews executing documents that will unnecessarily allow the waste of assets of nearly $50,000.00.

16. Respondent is informed and believes that Ms. Andrews would agree to accept Ms. Buxton's proposal if the Court authorizes her to do so. Respondent is further informed that Ms. Buxton would be willing to make the loan as set forth in her term sheet if Ms. Andrews and Respondent are authorized to execute a mortgage in Ms. Buxton's favor.

17. Respondent is informed and believes the Court may authorize a special fiduciary to take appropriate action whenever the Court considers the appointment necessary for the administration of the trust. See S.C. CODE ANN. § 62-7-704(e), -1001(b). Preventing the unnecessary waste of trust assets is a proper purpose for such an appointment.

18. In view of the better loan terms offered by Ms. Buxton and Ms. Andrews's fiduciary duty to avoid the waste of trust assets, she should be authorized to refinance the existing loan on the terms offered by Ms. Buxton, which are the best terms available. Ms. Andrews should not be forced or permitted to waste trust assets simply because Petitioners refuse to agree to the best loan terms.

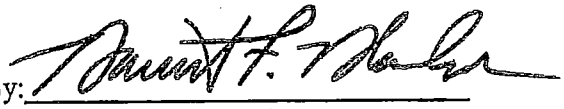
Based on the forgoing, Respondent respectfully requests an Order from the Court authorizing and directing Ms. Andrews, as an Interim Trustee, to accept the loan terms proposed by Ms. Buxton and to execute and deliver any loan documents, promissory notes, mortgages, security agreements, or other instruments or documents that may be necessary to complete or close the loan proposed by Ms. Buxton and further authorizing and directing Respondent to execute and deliver the same, to the extent necessary, as a Personal Representative of the Estate of Ann Page Pittillo.

Because of the impending deadline of December 3, 2017 under the present loan documents with Whitfield/Little, Respondent also moves the Court for an expedited hearing.

WHEREFORE, the Respondent moves this Court for an expedited hearing and for an Order authorizing and directing Ashley Andrews, as an Interim Trustee, to accept the loan terms proposed by Sarah Buxton and to execute and deliver any loan documents, promissory notes,

mortgages, security agreements, or other instruments or documents that may be necessary to complete or close the loan proposed by Ms. Buxton and further authorizing and directing Respondent to execute and deliver the same, to the extent necessary, as a Personal Representative of the Estate of Ann Page Pittillo, and for such other and further relief as the Court may deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC

By: 

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ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
November 30, 2017.

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November 9, 2017

Frank Blanchard, Esquire
Rosen Hagood
151 Meeting Street, Ste. 400
Charleston, SC 29401

RE: Buxton Loan Commitment to Henson, et al.

Dear Mr. Blanchard:

Please accept this letter as confirmation that I represent Sarah Buxton, and that Ms. Buxton has approved the Henson loan subject to the following terms and conditions:

1. **Borrowers:** Albert T. Henson, Richard Scott Henson, Vann Kenneth Henson, Ashley Andrews, as Special Trustee of Trust EIP and Albert T. Henson, as Personal Representative of the Estate of Ann P. Pittillo

2. **Loan Amount:** Two Hundred Fifty-three Thousand and no/100 ($253,000.00) Dollars, plus future advances for interest and renewal fees.

3. **Terms:** All principal and interest shall be due one year from closing ("Maturity Date"). Thirty (30) days prior to the Maturity Date, Borrowers shall have the option to extend the term one (1) year from Maturity Date. This option to extend the Maturity Date one (1) year shall be available to Borrowers each year so long as South Carolina Case 1994-ES-18-00147-2 and South Carolina Case 2014-ES-18-00592 are pending. Upon the dismissal or settlement of both South Carolina Case 1994-ES-18-00147-2 and South Carolina Case 2014-ES-18-00592 , Borrowers shall no longer have the option to extend the Maturity Date for an additional one (1) year period. Should Borrowers exercise the option, Ms. Buxton will increase the Loan Amount by the interest amount that accrued for that one (1) year period, plus a renewal fee of one (1%) percent of the principal balance. There is no grace period for any reason. Payment must be received by Ms. Buxton on or before the Maturity Date or Borrowers shall be in default and subject to the default rate. Interest shall be charged on any payment of interest not paid when due.

4. **Interest Rate:** Ten (10%) percent per annum on a 360 day year basis. Default rate of interest shall be eighteen (18%) percent.

EXHIBIT
A

5. **Loan Fee:** No loan fee.

6. **Prepayment:** The loan may be prepaid, at any time, in whole or in part without penalty of interest beyond date of payoff.

7. **Collateral:** A first mortgage lien, with title insurance approved by Ms. Buxton, together with an Assignment of Leases, Rents and Profits on real property located on 605 North Main Street, Summerville, SC 29483, TMS No. 137-04-01-001.

8. **Insurance:** Ms. Buxton shall be named as first loss payee on policies, with Ms. Buxton's approval of insurer and coverages.

9. **Costs:** Borrower shall be responsible for all costs.

10. **Acceptance:** Please indicate your acceptance of this commitment by signing below and returning an executed copy to the following address:

    Ms. Buxton, c/o M. Anthony Stith, Jr.
    Dodds Hennessy & Stith, LLP
    973 Houston Northcutt Blvd., Ste. 101
    Mt. Pleasant, SC 29464

    This commitment must be accepted and acknowledged by 5:00 p.m., November ___, 2017. TIME IS OF THE ESSENCE.

11. **Purpose:** Refinance existing debt in the amount of Two Hundred Fifty-three Thousand and no/100 ($253,000.00) Dollars

12 **Closing Attorney:** Lender's choice.

13. **Wire Service Fee:** If the closing attorney requests that funds be wired, an additional Thirty ($30.00) Dollar wire service fee shall be paid to Ms. Buxton.

14. **Duration:** Terms of this commitment shall survive closing.

15. **Borrowers' Representation:** Ms. Buxton has relied upon the accuracy of information provided by the Borrowers. Any misrepresentation, in the sole and exclusive opinion of Ms. Buxton, shall void this commitment.

If you should have any questions or concerns, please do not hesitate to give me a call.

Sincerely yours,

M. Anthony Stith, Jr.

Confirmed by Ms. Buxton:

Sarah Buxton

Sarah Buxton

Agreed to and accepted by:

_____

Frank Blanchard, Esq., Attorney for Albert T. Henson, individual and as Personal Representative

_____

Barry I. Baker, Esq., Attorney for Richard Scott Henson and Vann Kenneth Henson

_____

Ashley Andrews, as Special Trustee of Trust EIP

CHARLESTON CAPITAL CORPORATION

56 Queen Street · Post Office Box 328 (29402)
Charleston · South Carolina 29401
Tel. (843)723.6464 · FAX (843)723.1228 · Email: yaschik@bellsouth.net

October 26, 2017

Barry I. Baker
Attorney At Law
One Carriage Lane, Bldg. H
PO Box 31265
Charleston, SC 29417-1265

Re: Loan Commitment

Dear Mr. Baker:

I am pleased to inform you that Charleston Capital Corporation (CCC) has approved your loan request subject to the following terms and conditions:

1. **BORROWER(S):** Estate of Ann P. Pittillo; Ashley Andrews as Special Trustee of Trust EIP, created under the Last Will and Testament of Eunice I. Page; Albert T. Henson, Jr.; Scott Henson and Ken Henson.

2. **AMOUNT:** Two Hundred Sixty Thousand ($260,000.00) and no/100 Dollars, plus future advances for interest and renewal fees.

3. **TERMS:** All principal and interest is due one year from date of closing. Upon request of Borrower, to be received no later than thirty days prior to maturity date, Lender will make a principal advance in an amount equal to interest accrued for one year plus a renewal fee of one percent of the existing principal balance and will extend the maturity date one year. Upon request of Borrower, to be received no later than thirty days prior to the modified maturity date, Lender will make a principal advance in an amount equal to interest accrued for the prior year plus a renewal fee of one percent of the existing principal balance and will extend the maturity date one year. No further options to extend will be made.
There is no grace period for any reason. Payment must be received by CCC on or before the due date or a late fee will be assessed. Interest shall be charged on any payment of interest not paid when due.

4. **INTEREST RATE:** Eleven (11%) percent per annum on a 360 day year basis. Default rate of interest shall be eighteen percent.

5. **LOAN FEE:** Seven Thousand ($7,000.00) and no/100 Dollars.

~~6. **GUARANTEED RETURN** N/A.~~

7. **PREPAYMENT:** The loan may be prepaid at any time in whole or in part without penalty of interest beyond date of payoff.

EXHIBIT
tabbies
B

8. **COLLATERAL:** A first mortgage lien with title insurance as approved by CCC, together with an Assignment of Rents, Leases and Profits on 605 North Main Street, Summerville, SC 29483, known as Dorchester County Tax Map Parcel 137-04-01-001.

9. **CASUALTY INSURANCE:** Lender shall be named as first loss payee on policies with Lender approval of insurer and coverages.

10. **COSTS:** All costs shall be borne by Borrower.

11. **ACCEPTANCE:** Please indicate your acceptance of this commitment by signing below and returning one executed copy to Charleston Capital Corporation at 56 Queen Street, Charleston, SC 29401. This commitment must be accepted and acknowledged by 5:00 pm, November 3, 2017 and closed by 5:00 pm, November 30, 2017, or it shall be void and with no further force or effect, time being of the essence.

12. **PURPOSE:** Refinance existing debt $253,000.00, Loan fee $7,000.00.

13. **CLOSING ATTORNEY:** Borrower's choice.

14. **WIRE SERVICE FEE:** If the closing attorney request that funds be wired, an additional $30.00 wire service fee shall be paid to CCC.

15. **DURATION:** Terms of this commitment shall survive closing.

~~16. **SPECIAL STIPULATION:** N/A~~

17. **REPRESENTATION:** CCC has relied upon the accuracy of information provided by the Borrower. Any misrepresentation, in the sole opinion of Lender, shall void this commitment.

Thank you for allowing us to be of service. If I can be of further assistance, please call me at 843-723-6464.

Very truly yours,

Thomas M. Ervin
President

Agreed to and Accepted by:

_____ _____
Barry I. Baker Date
Attorney for Borrower(s).

CERTIFICATE OF SERVICE

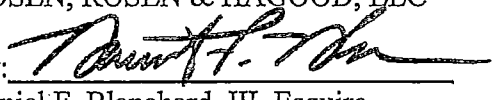
I hereby certify that on November 30, 2017, a true and correct copy of the foregoing was deposited in the U.S. mail with sufficient postage affixed thereto and addressed to:

Barry I. Baker, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

Ashley G. Andrews, Esquire
Lafond Law Group, PA
544 Savannah Highway
Charleston, SC 29407

ROSEN, ROSEN & HAGOOD, LLC

By: 

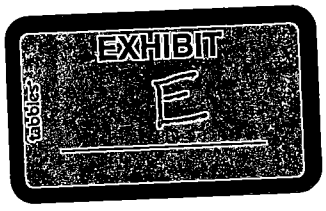
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

ROSEN | HAGOOD

Daniel F Blanchard, III
dblanchard@rrhlawfirm.com
843-266-8123

December 5, 2017

VIA E-MAIL AND U.S. MAIL:
Barry I. Baker, Esquire
Post Office Box 31265
Charleston, SC 29417



Trudy Hartzog Robertson, Esq.
Moore & Van Allen PLLC
78 Wentworth Street
Charleston, SC 29401

Re: In re: Trust EIP Created Under the Last Will and Testament of Eunice I. Page dated October 14, 1992
Richard S. Henson and Vann Kenneth Henson v. Albert T. Henson, Jr. and Julian Reid Henson,
Case No. 1994-ES-18-00147-2
In re: Estate of Ann Page Pittillo
Richard Scott Henson, individually and as devisee and Vann Kenneth Henson, individually and as devisee v. Albert T. Henson, Jr., individually and as Personal Representative of the Estate of Ann Page Pittillo,
Case No. 2014-ES-18-00592

Dear Barry and Trudy:

Since Judge Edwards conducted a telephone status conference with us yesterday afternoon, my understanding from Ashley Andrews is that she has communicated with David Whitfield and Glenn Little and informed them that the Judge has scheduled a hearing for next Monday, December 11, 2017, at 3pm, involving my client's pending Motion to Authorize Special Fiduciary to Accept and Execute Loan Documents with Sarah Buxton. I also understand she requested that Whitfield/Little agree to give us a 7-day grace period to allow the Judge sufficient time to conduct this hearing before the loan will become due.

Ms. Andrews has advised that Whitfield and Little denied her request, although I am not privy to their reasons for doing so. My understanding is they told her that by 5pm today either (a) they must be paid the full $247,000.00 or (b) they must receive the signed paperwork from Ms. Andrews for another 1-year extension of the loan at 30% per annum interest as well as the other terms they are requiring. Ms. Andrews previously informed me that Whitfield/Little were not requiring our clients to sign any paperwork in order for the extension to be granted. However, she advised me last Friday that they are now again requiring our clients to sign an "Acknowledgement of Loan Terms."

As you know, I have written several letters and also filed a motion imploring your clients to allow Sarah Buxton's loan offer to be accepted. Ms. Buxton has offered the best loan terms that any of our clients were able to secure to be used to pay off the existing debt to Whitfield/Little. Ms. Buxton literally has a bank check for $247,000.00 made payable to Whitfield/Little that can be delivered to Whitfield/Little today. In exchange for making this loan, Ms. Buxton simply requested a mortgage on the property and interest at 10% per annum. If accepted, those loan terms would save at least $49,400.00 when compared to the terms being demanded by Whitfield/Little for another 1-year extension. Although you have not even attempted to assert that the terms offered by Whitfield/Little are better than the terms offered by Ms. Buxton, you nevertheless have refused to accept Ms. Buxton's offer (even though you previously assured me that the loan terms obtained by my client would be accepted if the same as or equal to the loan terms your clients obtained). Instead, you are insisting that Ms. Andrews be allowed to accept the Whitfield/Little extension at considerable loss to my client.

Unfortunately, the current situation is that my client will not have the opportunity to obtain the Judge's ruling on his motion before the Whitfield/Little loan will be called at 5pm later today and a default declared by them. Although I have attempted to explore alternatives for giving Ms. Buxton the security she needs in order to agree to make a loan, Ms. Buxton is unwilling to pay the $247,000.00 to Whitfield/Little without being granted a mortgage on the property. I understand from you that you will not agree to grant Ms. Buxton a mortgage on the property, thus Ms. Buxton will not make the loan. Because of your clients' refusal to accept Ms. Buxton's loan proposal, we are unable to pay the $247,000.00 to Whitfield/Little by today at 5pm. I regret that your client's refusal to accept Ms. Buxton's offer has caused this situation.

As a result, the only choices we have at this point are to allow the Whitfield/Little loan to go into default (and risk losing the property altogether) or to accept the Whitfield/Little extension at substantially less favorable terms than Ms. Buxton's offer. It is very obvious that my client has no real choice under the circumstances. He has signed the acknowledgement form only because he has no other choice. I am transmitting it to Ms. Andrews under cover of this letter. The terms of the form expressly state that my client reserves and does not waive any rights and claims in this litigation. Please be advised that my client fully intends to pursue claims against your clients to hold them responsible in damages and/or to surcharge their interest in the Trust for the waste of assets which their actions have caused.

Sincerely,

Frank B

Daniel F. Blanchard, III

DFB/db
Encl.
Cc: Ashley Andrews, Esquire (w/ encl.)

Acknowledgement of Loan Terms

Borrower:	Trust EIP a/k/a EIP Trust
Lender	David Whitfield and Glenn Little
Principal due as of 12/4/17:	$247,000.00
Interest Rate for 12/4/17 to 12/3/17:	30.00% per annum
Maturity Date:	December 4, 2018
Total Payoff due on or before 12/3/17:	$321,100.00

The undersigned acknowledge that Ashley Andrews, as Interim Trustee for Trust EIP a/k/a EIP Trust, has negotiated with David Whitfield and Glenn Little to extend the maturity date of the original note and mortgage dated December 4, 2013 for one (1) year pursuant to the terms listed above. The undersigned reserve and do not waive rights and claims, if any, arising out of Dorchester County Probate Case No. 1994-ES-18-000147-2 and Dorchester County Probate Case No. 2014-ES-18-00592.

Signed this 5th day of December, 2017.

Witness to Albert T. Henson, Jr.

Albert T. Henson, Jr.

Signed this ___ day of December, 2017.

Witness to Richard S. Henson

Richard S. Henson

Signed this ___ day of December, 2017.

Witness to Vann K. Henson

Vann K. Henson

MARGARET L BAILEY
DORCHESTER COUNTY
REGISTER OF DEEDS

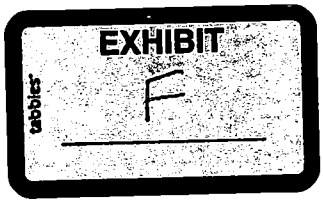
201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

Instrument #:	2018002318		
Receipt Number:	39447	**Return To:**	LAFOND LAW GROUP
Recorded As:	MODIFICATION		
Recorded On:	January 31, 2018		
Recorded At:	10:03:15 AM	**Received From:**	LAFOND LAW GROUP
Recorded By:	NW	**Parties:**	
Book/Page:	RB 11201: 36 - 40	Direct- EIP TRUST	
Total Pages:	5	Indirect- WHITFIELD, DAVID	

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee:	$15.00
Tax Charge:	$0.00



Margaret Bailey

Margaret Bailey - Register of Deeds

FILED/RECORDED
January 31, 2018
DORCHESTER COUNTY
REGISTER OF DEEDS

LaFond Law Group, PA
544 Savannah Highway
Charleston, SC 29407-7210

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

MODIFICATION OF MORTGAGE

WHEREAS, EIP TRUST a/k/a TRUST EIP is the borrower (hereinafter "Borrower") under that certain Mortgage from EIP TRUST in favor of DAVID WHITFIELD AND GLENN LITTLE (hereinafter "Lender") dated December 4, 2013 in the original principal amount of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS recorded on December 9, 2013 in the Register of Deeds Office for Dorchester County in Mortgage Book 9110 at Page 292 and modified by the instrument dated December 6, 2016 and recorded on January 5, 2017 in Mortgage Book 10602 at Page 263, and secured by property known as 605 N. Main Street, Summerville, SC 29483 ("Mortgage"); and

WHEREAS, both Borrower and Lender wish to extend the maturity date of the Mortgage and Note of even date.

NOW THEREFORE the parties hereto do agree as follows:

1. The above recitals are incorporated by reference into this Item 1 as if repeated herein verbatim.

2. The current amount due under the Note as of December 4, 2017 is Two Hundred Forty-Seven Thousand and no/100 ($247,000.00) dollars.

3. The maturity date of the Mortgage, and Note of even date, is hereby extended to December 3, 2018 at which time the total amount due shall be Three Hundred Twenty-One Thousand One Hundred and no/100 ($321,100.00) Dollars.

4. The effective date of this Modification of Mortgage shall be December 4, 2017.

5. The Mortgage dated December 4, 2013 shall retain full force and effect as its lien and in all other respects remain unchanged except as herein modified.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 11th day of December, 2017.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness 1

Witness 2/Notary

BORROWER:

(Seal)
EIP Trust
By: Ashley Andrews
It's: Interim Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

ACKNOWLEDGMENT

Ashley G. Andrews, Interim Trustee for EIP Trust, acknowledged the foregoing instrument before me this 11th day of December, 2017.

Name: Katherine D Cotton
Notary Public for South Carolina
My commission expires: 7/9/25

KATHERINE D. COTTON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires
07-09-2025

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness 1

Witness 2/Notary

LENDER:

David Whitfield (Seal)

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF DORCHESTER)

David Whitfield acknowledged the foregoing instrument before me this November 30, 2017.

Benjamin A. Lafond
Notary Public for South Carolina
My commission expires: 12/13/19

BENJAMIN A. LAFOND
Notary Public, South Carolina
My Commission Expires
December 13, 2019

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness 1

Witness 2/Notary

LENDER:

Glenn Little (Seal)
Glenn Little

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

ACKNOWLEDGMENT

Glenn Little acknowledged the foregoing instrument before me this 30th day of November, 2017.

Name: BENJAMIN A. LAFOND
Notary Public for South Carolina
My commission expires: 12/13/19

BENJAMIN A. LAFOND
Notary Public South Carolina
My Commission Expires
December 13, 2019

STATE OF SOUTH CAROLINA COUNTY DORCHESTER	) IN THE PROBATE COURT))	
IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 RICHARD S. HENSON AND VANN K. HENSON, Petitioners, v. ALBERT T. HENSON, JR., AND JULIAN REID HENSON, Respondents.	) Case No. 1994-ES-18-00147-2)))))))))))))	
IN RE: ESTATE OF ANN PAGE PITTILLO RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee, Petitioners, v. ALBERT THEODORE HENSON, JR. individually and as Personal Representative of the Estate of Ann Page Pittillo, Respondents.	) Case No: 2014-ES-18-0592))))))))))))	

PROBATE JUDGE
DORCHESTER COUNTY
2017 OCT 31 PM 4:04

EXHIBIT
G

CONSENT ORDER

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, Petitioners Richard S. ("Scott") Henson and Vann K. ("Ken") Henson (hereinafter "Petitioners") and Respondent Albert T. ("Al") Henson, Jr. (hereinafter "Respondent"), collectively referred to

1 VMC
10/31/17

herein as "the Parties," hereby agree, stipulate, and consent to this Consent Order in the above-referenced cases, which have been consolidated at this time for discovery purposes only, based on the following:

1. Eunice I. Page died on October 6, 1993. On or about December 4, 2013, Ann P. Pittillo, as Trustee of the Trust EIP created under the Last Will and Testament of Eunice I. Page dated October 14, 1992 ("the Trust EIP"), executed a Promissory Note and Mortgage of Real Estate in favor of David Whitfield and Glenn Little, as lenders (hereinafter "Whitfield/Little"), for the original principal amount of $100,000.00 with an initial maturity date of December 3, 2016. The instruments purport to create a lien or mortgage on certain real estate in Dorchester County titled in the name of the Trust EIP, which property is generally referred to as 605 North Main Street, Summerville, South Carolina (hereinafter "605 North Main").

2. Ann P. Pittillo died on April 20, 2014. A Successor Trustee has not been appointed for the Trust EIP.

3. Effective on December 3, 2016, the Interim Trustee, Ashley Andrews, appointed by this Court's Order on August 31, 2016, executed a Modification of Note and Modification of Mortgage in favor of Whitfield/Little, as lenders. The terms of the Modification of Note and Modification of Mortgage extend the maturity date of the original Note and Mortgage to December 3, 2017, and increase the principal amount of the loan to $190,000.00.

4. The Parties recognize that the extended maturity date of December 3, 2017 for the above-referenced Modification of Note and Modification of Mortgage is approaching and could be reached before the claims, counterclaims, and defenses in above-captioned litigation are finally resolved. The Parties mutually agree that it is in all of their best interests to try to prevent a default from occurring under the terms of the Modification of Note and Modification of Mortgage and to protect the 605 North Main Street from being forfeited to Whitfield/Little, or lost to foreclosure or subject to a foreclosure claim.

5. The Parties hereby agree as follows and as was placed on the record before the Court on October 16, 2017:

   a. By October 30, 2017, the Petitioners and Respondent will exchange any written term sheets that they have been able to obtain from third party lenders with respect to a new loan or financing of the Modification of Note and Modification of Mortgage held by Whitfield/Little;

   b. By November 1, 2017, the Petitioners and Respondent will each discuss and review those written term sheets exchanged on or before October 30, 2017 and will each make a good faith effort to reach a mutual agreement on selection of one of the written term sheets and complete or close said mutually agreed upon loan, financing, lien, mortgage, or security interest with the agreed upon third party lender to satisfy the Modification of Note and Modification of Mortgage prior to or

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10/31/17

on the maturity date of December 3, 2017;

c. Upon mutual agreement of the Petitioners and Respondent as set forth in 5.b. above, Ashley Andrews is directed and authorized, as an Interim Trustee, to execute and deliver any loan documents, promissory notes, mortgages, security agreements, or other instruments or documents that may be necessary to complete or close the agreed upon loan, financing, lien, mortgage, or security interest and, further, Respondent Al Henson is authorized to execute and deliver the same, to the extent necessary, as a Personal Representative of the Estate of Ann Page Pittillo, and Petitioners and Respondent agree to execute and deliver the same in each of their individual capacities, to the extent necessary, to complete the agreed upon third party financing;

d. In the event there is no agreement between the Petitioners and Respondent as set forth in paragraph 5.b. above, then the Parties consent to, and this Court hereby directs and authorizes, Ashley Andrews, beginning on November 2, 2017, to discuss and negotiate with Whitfield/Little an extension of the Modification of Note and Modification of Mortgage to avoid a default on December 3, 2017. Ms. Andrews shall have no authority to discuss or secure any third party lender financing outside of Whitfield/Little, but rather shall be limited to efforts, beginning on November 2, 2017, to securing an extension of the Modification of Note and Modification of Mortgage.

6. Pursuant to the above, the Parties desire for and hereby consent to the Court's entry of this Order authorizing the relief stated herein. However, by consenting and agreeing to this Consent Order, the Parties do not waive and expressly reserve any and all claims, counterclaims, defenses, motions and rights asserted or which could be asserted in this litigation and nothing herein shall be construed or deemed as a waiver, relinquishment, or abandonment of any claims, counterclaims, defenses, or rights by any Party existing as of the date of this Order.

Accordingly, based on the agreement and consent of the Parties, it is hereby ORDERED as provided herein above. And, it is

FURTHER ORDERED that Ashley Andrews shall have no other or further power, responsibility, or authority as Special Trustee for the Trust EIP except as specifically and expressly set forth herein; and

FURTHER ORDERED that any third party dealing with the Petitioners, Respondent, or Ms. Andrews, may rely upon and treat as correct any action taken by the Parties or Ms. Andrews pursuant to this Order and need not inquire concerning the necessity or validity of any such act; and

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10/31/17

FURTHER ORDERED that Ms. Andrews shall be compensated for the acts described herein in the same manner as provided in this Court's Order on August 31, 2016; and

FURTHER ORDERED that nothing herein shall be construed or deemed as a waiver, relinquishment, or abandonment of any claims, counterclaims, defenses, motions or rights asserted or which could be asserted as of this date by any Party or the Parties in this litigation and same are hereby expressly reserved.

AND IT IS SO ORDERED.

Molly D. Edwards

Molly D. Edwards
Associate Judge, Dorchester County
Probate Court

St. George, South Carolina

October 31, 2017.

MDE
10/31/17

WE CONSENT AND STIPULATE:

Trudy H. Robertson with permission for

Barry I. Baker, Esquire
Kyle Varner, Esquire
Post Office Box 31265
Charleston, SC 29417
ATTORNEYS FOR PETITIONERS

Trudy H. Robertson

Trudy H. Robertson, Esquire
Paul M. Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828
ATTORNEYS FOR PETITIONERS

Trudy H. Robertson with permission for

Daniel F. Blanchard, III, Esquire
ROSEN, ROSEN & HAGOOD, LLC
155 Meeting Street, Suite 400
Charleston, SC 29402
ATTORNEYS FOR RESPONDENT

5 HHG
10/31/17

ACKNOWLEDGED:

Ashley G. Andrews, Esquire
Lafond Law Group, PA
544 Savannah Highway
Charleston, SC 29407
SPECIAL FIDUCIARY AS INTERIM TRUSTEE

6 AMG
10/31/17

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Judge

Appellate Case No. 2017-000095
Court of Common Pleas Case No. 2016-CP-18-1849

IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992,

RICHARD S. HENSON AND VANN KENNETH HENSON,
Respondents,

v.

ALBERT T. HENSON, JR. AND JULIAN REID HENSON,
Respondents in the Court below,

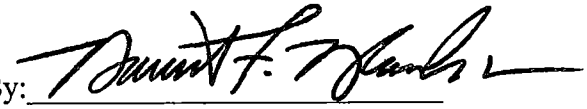
Of whom ALBERT T. HENSON, JR. IS the Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's Return in Opposition to Respondents' Motion for Determination to Lift Stay on the Respondents by mailing a copy to their attorneys of record on April 13, 2018, via first-class mail, postage prepaid, and addressed as follows:

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
E. Brandon Gaskins, Esquire
Moore & Van Allen, PLLC
78 Wentworth Street
Charleston, SC 29401

ROSEN, ROSEN & HAGOOD, LLC

By: 

Daniel F. Blanchard, III (SC Bar 65342)
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
ATTORNEYS FOR APPELLANT

April 13, 2018.

ROSEN | HAGOOD

Daniel F Blanchard, III
dblanchard@rrhlawfirm.com
843-266-8123

April 13, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *In re: Trust EIP Created Under the Last Will and Testament of Eunice I. Page dated October 14, 1992*
Richard S. Henson and Vann Kenneth Henson v. Albert T. Henson, Jr. and Julian Reid Henson,
Court of Common Pleas Case No. 2016-CP-18-1849
Appellate Case No. 2017-000095

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced case are:

[1] The original and seven copies of the Appellant's Return in Opposition to Respondents' Motion for Determination to Lift Stay, and
[2] The original and one copy of the Proof of Service.

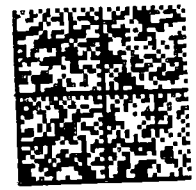
We would greatly appreciate your filing these documents and returning date-stamped copies to us in the self-addressed return envelope enclosed herewith. Under copy of this cover letter, we are hereby serving copies of these documents on other counsel of record. Thank you for your assistance with this matter.

Sincerely,

Daniel F. Blanchard, III

DFB/db
Encls.

Cc: Trudy H. Robertson, Esquire (w/ encl.)
Paul Lynch, Esquire (w/ encl.)
E. Brandon Gaskins, Esquire (w/ encl.)
Mr. Albert T. Henson, Jr. (w/o encl.)



US POSTAGE
$ 10.40
Mailed From 29401
04/13/2018
031A 0004181664

9634.000 DFB

ROSEN | HAGOOD

151 Meeting Street, Suite 400
Charleston, South Carolina 29401

RECEIVED
APR 17 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211