

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
APPEAL FROM PROBATE COURT

IN RE: )

C.A. NO.: 2017-CP-10-4129

THE KENNETH J. BONIFACE )  
IRREVOCABLE INSURANCE TRUST )  
AGREEMENT U/A DATED DECEMBER )  
30, 1994 and )

THE KENNETH J. BONIFACE FAMILY )  
TRUST, A TESTAMENTARY TRUST )  
UNDER WILL DATED APRIL 23, 2002, )  
AS AMENDED BY FIRST CODICIL )  
DATED JUNE 28, 2001, and BY SECOND )  
CODICIL DATED JANUARY 29, 2004. )

Mary E. Boniface and Barbara M. Boniface, )

Appellants )

-versus- )

John L. Boniface, Marian C. Boniface, Anne )  
M. Boniface, Joan Boniface Jindl, and )  
Kenneth J. Boniface, Jr. (deceased), and )  
SOUTH STATE BANK, as Trustee )

Respondents. )

**RECEIVED**  
JUN 08 2018  
SC Court of Appeals

**ORDER DENYING MOTION TO  
RECONSIDERATION, ALTER OR AMEND**

2018 APR 12 PM 12:15  
JULIE J. ARMSTRONGS  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

This matter comes before the Court on March 27, 2018 on Motion to Reconsider, Alter or Amend its Order of January 26, 2018 denying the appeal of appellants to overturn the Order of Judge Condon, which named George L. Garmendia and Hyland Rubby and Garland, LLC CPA, as successor Trustee of the Insurance Trust and Family Trust.

The basis of Mr. Vitollo's Motion to Reconsider is, and he contends, that the Probate Court never ruled on his Rule 59 Motion to Reconsideration Judge Condon's Order of June 17, 2017.

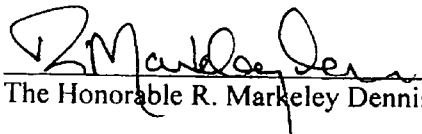
At the hearing on January 12, 2018, the Court had a long discussion with Mr. Vitollo concerning the jurisdiction of the Circuit Court and the hearing of the appeal. Additionally, Mr. Wall, who filed a Motion to Dismiss the Appeal as being premature, withdrew his motion. Mr. Vitollo agreed to go forward with the appeal of his Appeal of the Order of Judge Condon. My Order of January 26, 2018 denied his appeal.

Additionally, since that time, the Court is in receipt of a series of emails between Mr. Vitollo and Robert M. O'Malley, judicial law clerk of the Probate Court. In the emails, Mr. O'Malley set forth the position of Judge Condon that the Court "cannot rule on any matters in [this] case at this time." He goes on to cite S.C. Code Ann. §62-1-308 as the basis for that position. From the above, it is clear that Judge Condon is not going to rule on the Motion filed in Probate Court to reconsider Judge Condon's earlier order. This Court takes the position of the Motion to Reconsider in Probate Court is denied.

Having reconsidered matters before this Court on the appeal and on the matters set forth in the Motion to Reconsider, this Court denies Appellant's Motion to Reconsider, Alter or Amend.

It is further Ordered that the relieved Trustee, South State Bank, immediately turn over the Trusteeship to the New Trustees, George L. Garmendia and Hyland Rubby and Garland, LLC CPA.

AND IT IS SO ORDERED.

  
The Honorable R. Markeley Dennis

Dated this 11 day of April, 2018.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

FILED  
17 AUG 11 PM 4:12  
PROBATE COURT  
CHARLESTON COUNTY

IN THE CIRCUIT COURT  
Appeal from Probate Court for  
Charleston County

CASE NUMBER: 2017 CP 104129

IN RE:

THE KENNETH J. BONIFACE  
IRREVOCABLE INSURANCE TRUST  
AGREEMENT U/A DATED DECEMBER  
30, 1994 and

THE KENNETH J. BONIFACE  
FAMILY TRUST, A TESTAMENTARY  
TRUST UNDER WILL DATED APRIL 23,  
2002, AS AMENDED BY FIRST  
CODICIL DATED JUNE 28, 2002, AND  
BY SECOND CODICIL DATED  
JANUARY 29, 2004.

Mary E. Boniface and Barbara M. Boniface,  
Appellants,

vs.

John L. Boniface, Marian C. Boniface,  
Anne M. Boniface, Joan Boniface Jaindl,  
and Kenneth J. Boniface, Jr. (deceased),  
and  
South State Bank, as Trustee,  
Respondents.

NOTICE OF INTENT TO APPEAL  
TO CIRCUIT COURT

FILED  
2017 AUG 11 PM 4:10  
JULIE J. ANASTROPOUS  
CLERK OF COURT

Pursuant to SCPC § 62-1-308, Appellants hereby provide their Notice of Appellants' Intent to Appeal the Order of the Probate Court dated June 27, 2017. Said Order was placed in the mail to the Appellants on August 4, 2017, said Order was received by the undersigned counsel for the Appellants by mail on August 7, 2017, and pursuant to SCRCR R. 6(e), the time prescribed for the Appellants to file their Notice of Appellants' Intent to Appeal and other necessary filings is to be extended by five days. A copy of said Final Order is attached.

Respectfully submitted by,

VITOLLO LAW FIRM, LLC



---

Timothy J. Vitollo, Esq.  
Post Office Box 42282  
North Charleston, SC 29423  
803-628-8350 (direct)  
854-444-2931 (facsimile)  
tim@vitollolawfirm.com  
*Attorney for the Respondents.*

North Charleston, South Carolina

August 11, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

**FILED**  
IN THE CIRCUIT COURT  
17 AUG 11 PM 4:12  
APPEAL FROM PROBATE COURT FOR  
CHARLESTON COUNTY  
PROBATE COURT  
CHARLESTON COUNTY  
CASE NUMBER: 2017 CP 10 4129

IN RE:

THE KENNETH J. BONIFACE  
IRREVOCABLE INSURANCE TRUST  
AGREEMENT U/A DATED DECEMBER  
30, 1994 and

**NOTICE OF INTENT TO APPEAL  
TO CIRCUIT COURT**

THE KENNETH J. BONIFACE  
FAMILY TRUST, A TESTAMENTARY  
TRUST UNDER WILL DATED APRIL 23,  
2002, AS AMENDED BY FIRST  
CODICIL DATED JUNE 28, 2002, AND  
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Mary E. Boniface and Barbara M. Boniface,  
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vs.

John L. Boniface, Marian C. Boniface,  
Anne M. Boniface, Joan Boniface Jaendl,  
and Kenneth J. Boniface, Jr. (deceased),  
and  
South State Bank, as Trustee,  
Respondents.

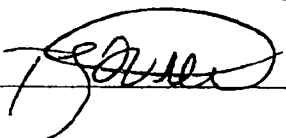
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2017 AUG 11 PM 4:10  
JULIE J. ARMSTRONG  
CLERK OF COURT

**CERTIFICATE OF SERVICE**

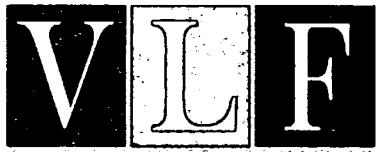
I, Timothy J. Nidda, the undersigned employee of Vitollo Law Firm, LLC, do hereby certify that on the date indicated below I served **Notice of Intent to Appeal to Circuit Court** on the parties addressed below, by personal service upon him/her, his/her clerk, or other person in charge at the address below:

Andrew W. Chandler, Esq.  
Evans Carter Kunes & Bennett, P.A.  
115 Church Street  
Charleston, SC 29401

Mark H. Wall, Esq.  
Wall Templeton & Haldrup, P.A.  
145 King Street, #300  
Charleston, SC 29401



Summerville, South Carolina  
August 11, 2017



CHARLESTON, SOUTH CAROLINA

# VITOLLO LAW FIRM, LLC

Estate Planning · Family Law · Estate Litigation  
Probate · Tax Law · Real Estate

Timothy J. Vitollo, *J.D., LL.M.*  
Licensed in South Carolina

Office: (843) 225-3800  
Mobile: (843) 371-7264  
Facsimile: (854) 444-2931  
tim@vitollolawfirm.com

June 5, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RECEIVED

JUN 08 2018

RE: **Mary E. Boniface and Barbara M. Boniface, Appellants, versus South State Bank, et al., Respondents, Appellate Case No. 2018-000932**

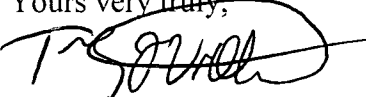
SC Court of Appeals

Dear Ms. Kitchings:

I am contacting you about the caption of the above case, as requested in your letter dated May 22, 2018. In regards to the caption shown in the order being appealed, which was entered by the Charleston County Court of Common Pleas on January 26, 2018, I would respectfully suggest that the caption is in error.

I have enclosed a copy of a subsequent order issued in the case, an "Order Denying Motion to Reconsideration, Alter or Amend" entered on April 12, 2018, which contains substantially the same information as that contained in the Notice of Appeal filed with this Court and shows the same Respondents as the Notice of Appeal. I have also enclosed other documents that may be helpful to you, including the first page of the order dated January 26, 2018, the first page of a "Return of the Respondents" filed on October 11, 2017, as well as a full copy of the "Notice of Intent to Appeal to Circuit Court" filed on August 11, 2017.

Thank you for your attention to this matter, and please do not hesitate to contact me if I can be of further assistance to you.

Yours very truly,  
  
Timothy J. Vitollo, Esq.

Enclosure(s)

cc: C. Pierce Campbell  
Mark H. Wall

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 IN RE: )  
 )  
 THE KENNETH J. BONIFACE )  
 IRREVOCABLE INSURANCE TRUST )  
 AGREEMENT U/A DATED DECEMBER )  
 30, 1994 and )  
 )  
 THE KENNETH J. BONIFACE )  
 FAMILY TRUST, A TESTAMENTARY )  
 TRUST UNDER WILL DATED APRIL 23, )  
 2002, AS AMENDED BY FIRST )  
 CODICIL DATED JUNE 28, 2002, AND )  
 BY SECOND CODICIL DATED )  
 JANUARY 29, 2004. )  
 )  
 South State Bank, as Trustee, )  
 )  
 Petitioner, )  
 )  
 John L. Boniface, Marian C. Boniface, Anne M. )  
 Boniface, Kenneth J. Boniface, Jr., Joan )  
 Boniface Jindel, Mary E. Boniface and Barbara )  
 M. Boniface, )  
 )  
 Respondents. )

IN THE PROBATE COURT  
 CASE NO. 2004-ES-10-00395

ORDER

RECEIVED  
 JUN 08 2018  
 SC Court of Appeals

Hearing Date: March 1, 2017  
 Presiding Judge: Irvin G. Condon  
 Petitioner: South State Bank  
 Petitioner's Attorney: Andrew W. Chandler, Esq.  
 Respondents: John L. Boniface, Marian C. Boniface, Anne M. Boniface, Kenneth J. Boniface, Jr., and Joan Boniface Jindel  
 Respondents' Attorney: Mark H. Wall, Esq.  
 Respondents: Mary E. Boniface and Barbara M. Boniface  
 Respondents' Attorney: Timothy J. Vitollo, Esq.  
 Court Reporter: Priscilla Nay, CSR

THIS MATTER comes before me on Petition for Instructions by the Trustee, South State Bank ("SSB") as successor Trustee to Wachovia, the original corporate

*Handwritten initials/signature*

Trustee. In that Petition, SSB requests to be relieved as Trustee, the appointment of a successor Trustee and the approval of its accounting.

There are two (2) sets of Respondents who replied to the Petition. They are the majority beneficiaries: John L. Boniface, Marian C. Boniface, Anne M. Boniface, Kenneth J. Boniface, Jr., and Joan Boniface Jindel. The remaining Respondents are the minority beneficiaries: Mary E. Boniface and Barbara M. Boniface. Both sets of Respondents filed pleadings with the Court requesting certain matters raised by SSB's Petition and objecting to matters raised by the Petition including substitution of Trustees and acceptance of the SSB accounting.

This matter came before me for hearing on March 1, 2017 and all parties were represented by Counsel and represented by some of the actual parties. Additionally, a transcript of the Hearing has been prepared and is available.

Based upon the arguments of counsel and the testimony before the Court, I find as follows:

1. This Court has jurisdiction of the parties;
2. That SSB should hereby relieved as Trustee for the Irrevocable Trust Agreement and Testamentary Trust set up by Kenneth J. Boniface;
3. I find that there are irreconcilable differences between the positions of the majority beneficiaries and the minority beneficiaries which may be fought in future litigation in the Court of Common Pleas;
4. I find that George L. Garmedia, CPA was properly appointed as Trustee pursuant to the Boniface Irrevocable Insurance Trust and has been voted on by the Beneficiaries to be the Trustee of the Testamentary Trust, as set forth in the Second Codicil to the Will setting

*Handwritten initials*

up the Testamentary Trust; and

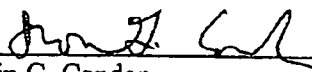
5. I further find that the Trustee of the above mentioned Trusts may be a "nominal" party to any lawsuits that is not a "necessary" party which must participate and take a position. As such I find that George L. Garmedia, CPA, with Hyland Ruddy & Garbett, CPAs, LLC, is an appropriate Trustee of both Trusts;
6. I find that because of the disputes set forth in testimony before the Court, that it would be inappropriate to relieve South State Bank of any liability for its term as Trustee and as such do not accept as "final" its accounting delivered to this Court.


Based upon the foregoing, it is therefore:

**ORDERED, ADJUDGED AND DECREED** that South State Bank is released as Trustee, that George L. Garmedia, is hereby appointed Trustee of the Trusts and that South State Bank's accounting is not discharged from its duty to account for its term as Trustee.

**AND IT IS SO ORDERED.**

This 27<sup>th</sup> day of June 2017  
Charleston, South Carolina

  
Irvin G. Condon  
Judge of Probate  
Charleston County, South Carolina

  
Attest A True Copy  
Clerk Probate Court  
Charleston County, South Carolina

PKB

6

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Appeal From Probate Court  
Of Charleston County

Case Number: 2017-CP-10-04129

IN RE:  
The KENNETH J. BONIFACE )  
IRREVOCABLE INSURANCE )  
TRUST AGREEMENT U/A )  
DATED DECEMBER 30, 1994 and )  
 )  
THE KENNETH J. BONIFACE )  
FAMILY TRUST, A TESTAMENTARY )  
TRUST UNDER WILL DATED APRIL 23, )  
2001, AS AMENDED BY FIRST )  
CODICIL DATED JUNE 28, 2002, AND )  
BY SECOND CODICIL DATED )  
JANUARY 29, 2004. )  
 )  
MARY E. BONIFACE and BARBARA )  
M. BONIFACE, )  
 )  
Appellants, )  
 )  
South State Bank as Trustee, )  
 )  
 )  
Petitioner )

ORDER

2018 JAN 26 PM 4:04  
JULIA J. HARRIS  
CLERK OF COURT  
BY \_\_\_\_\_

RECEIVED  
JUN 08 2018  
SC Court of Appeals

This matter came before the Court on January 12, 2018, for a hearing on Appellants' appeal from the Probate Court's order regarding the Petition filed by Respondent South State Bank ("Bank") requesting to be relieved as Trustee. After considering oral arguments and written briefs, the Court finds the probate court acted within its discretion and properly appointed George L. Garmendia as trustee for the Kenneth J. Boniface Irrevocable Insurance Trust and the Kenneth J. Boniface Family Trust and dismisses the appeal.

The appeal involves the estate of Kenneth J. Boniface, and specifically the administration of two Trusts. The Kenneth J. Boniface Irrevocable Insurance Trust was established on December

*R. Wolf*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Appeal From Probate Court  
Of Charleston County

Case Number: 2017-CP-10-04129

IN RE:  
The KENNETH J. BONIFACE )  
IRREVOCABLE INSURANCE )  
TRUST AGREEMENT U/A )  
DATED DECEMBER 30, 1994 and )

THE KENNETH J. BONIFACE )  
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2001, AS AMENDED BY FIRST )  
CODICIL DATED JUNE 28, 2002, AND )  
BY SECOND CODICIL DATED )  
JANUARY 29, 2004. )

MARY E. BONIFACE and BARBARA )  
M. BONIFACE, )

Appellants, )

JOHN L. BONIFACE, MARIAN C. )  
BONIFACE, ANNE M. BONIFACE, )  
JOAN BONIFACE JINDEL and )  
KENNETH J. BONIFACE, JR. )  
(deceased) and SOUTH STATE BANK, )  
as Trustee, )

Respondents )

**RETURN  
OF  
THE RESPONDENTS**

**FILED**  
2017 OCT 11 PM 2:23  
JULIE J. ANDERSON  
CLERK OF COURT

The Respondents, John L. Boniface, Marian C. Boniface, Anne M. Boniface, Joan Boniface Jindel and Kenneth J. Boniface, Jr., (deceased), hereinafter called "Majority Beneficiaries", hereby respond to Appellants Statement of Issues on Appeal as follows:

**ONE:** The Trustee, South State Bank, requested the Probate Court to be relieved as Trustee.

**TWO:** Although the documents suggest that any successor Trustee be a . . . "bank or trust

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mary E. Boniface and Barbara M. Boniface (Appellants)

17 AUG 11 PM 4:12 Plaintiff(s)

vs.

CHARLESTON COUNTY

John L. Boniface, Marian C. Boniface, Anne M. Boniface, Joan Boniface Jandl, and Kenneth J. Boniface, Jr. (deceased), and South State Bank, as Trustee (Respondents)

Defendant(s)

Submitted By: Timothy J. Vitollo

Address: Post Office Box 42282, North Charleston, SC 29423

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 10 - 4129

04-395

SC Bar #: 76170

Telephone #: 803-628-8350

Fax #: 854-444-2931

Other:

E-mail: tim@vidollolawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.

This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.

This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)

- Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI-, Notice/ File Med Mal (230), Other (299)

- Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Label (380), Other (399)

- Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

- Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)

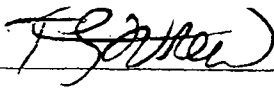
- Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)

- Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)

- Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)

- Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Permanent Restraining Order (680), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670)

Submitting Party Signaturr



Date:

8/11/2017

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**Effective January 1, 2016,** Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

VITOLLO LAW FIRM, LLC  
Post Office Box 42282  
North Charleston, SC 29423

**CPU**



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**RECEIVED**  
JUN 08 2018  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

