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JUN 18 2018

SC Court of Appeals  
IN THE PROBATE COURT  
CASE NO. 2014-ES-21-00134

ORDER

J. MURFORD SCOTT, JR.  
JUDGE PROBATE CT.  
FLORENCE COUNTY, S.C.

2016 NOV 29 PM 2:47

FILED

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE  
IN THE MATTER OF THE ESTATE  
OF: THOMAS G. MOORE

The Decedent in this matter Thomas G. Moore died on December 20, 2013. He left a will dated September 27, 1999 in which he named his son Michael Dennis Moore as Personal Representative. This will was admitted to probate in the Florence County Probate Court on February 20, 2014 and Michael D. Moore was appointed Personal Representative on that date. The Decedent was survived by three sons, Thomas Paul Moore, Phillip Fredrick Moore and Michael Dennis Moore and two daughters Francine Laura Lawhon and Linda Kaye Moore. The Original Inventory and Appraisement for this Estate was filed on April 24, 2014. On April 8, 2015 the Personal Representative was informed by this Court that nine months has elapsed since his appointment and that it was necessary for him to file an accounting with this Court. A date of April 20, 2015 was set for the Personal Representative to come in with his accounting. The Personal Representative did not respond in any way to the Court.

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This matter came before the Court with the consent of all interested parties for a hearing to approve Estate closing documents on December 22, 2015, and subsequently on July 27, 2016. Extensive testimony and documentary evidence was received. A number of matters were raised in these hearings including determining: (1) whether a separate writing found with the Decedent's Last Will and Testament should be integrated into the Will to address issues related to certain real property located in Richland County ( here in after the "Church Property"); (2) whether any of the heirs are entitled to an additional one-sixth share of the Estate pursuant to the caretaking clause in the Last Will and Testament of the Decedent; (3) whether the proceeds from

the sale of a Mercedes purchased with the Decedent's money should be included in the value of the Estate; (4) whether the Decedent had a vested interest in a real estate contract for the sale of certain property located on Cypress Avenue in Garden City, South Carolina; (5) whether or not the Personal Representative's commission should be reduced or eliminated due to the Personal Representative's failure to properly marshal and safeguard the assets of the Estate; (6) whether there was cash and jewelry in the safe of the Decedent at the date of his death in excess of that reported by the Personal Representative and (7) whether the value of checks written by the Decedent to the Personal Representative or his business should be added to the Estate. For the reasons set forth below, the Court makes the following findings of fact and conclusions of law.

CHURCH PROPERTY

The first issue here to be decided is whether a separate writing found in a safe belonging to the Decedent with the Decedent's last will, in an envelope bearing the Decedent's business' letterhead should be integrated into and become a part of the Deceased last will and testament. On the front of the envelope, written by hand were the words, "Give to Thomas Paul about Church." The document identified real property owned by the Decedent and included testamentary language bequeathing any interest the Decedent had in the property to his oldest son, Thomas P. Moore. Thomas P. Moore has asserted that the document located with the will of the Decedent, should be integrated into the will as a part of the Last Will and Testament of the Decedent. Thomas P. Moore has asserted that his father intended for him to receive his father's interest in the Church Property because of Thomas P. Moore's longstanding relationship in that church as an assistant pastor.

The doctrine of integration has been utilized by courts across the United States. "The doctrine of integration of two or more writings, executed at different times and in different

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that "we cannot add to the requisites of the statute, by requiring indispensably that each sheet of a will, that as a whole has been properly executed, shall be either signed by the testator, tied to the paper upon which the attestation is written, or authenticated by any other formality which the statute has not presented."<sup>14</sup> Importantly, it is a question of fact as to whether or not the documents purported to be the will are in fact the will of the testator, and as such, the findings of fact are conclusive on the issue of what constitutes the testator's will.<sup>15</sup>

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Here, while the document was not physically attached to the will, there is an inherent continuity between the two documents. First, the document disposes of the testator's property with language common to any testamentary instrument. The document includes testamentary language clearly indicating intent on the part of the Decedent that this document be part of his Last Will. It states that the Decedent "bequeaths his half INTEREST OR OWNERSHIP to go to Thomas P. Moore" upon the Decedent's death. The specific language chosen alludes to a continuation of the provisions of the will. This letter does not conflict with the provisions of the will, but rather complements it by providing a well-reasoned explanation for bequeathing to one son specific property, not otherwise specifically disposed of by the will.

Second, the document was found in the safe with the will. This evidence was uncontested. The document could have been stored anywhere, but in this instance, the Decedent chose to place it in a secure place where anyone searching for the will would also find the document. This evidences the testator's intent that the will as a whole include the provisions set forth in the document. Being found together and exhibiting internal coherence, an inference is raised that the document was present at the time of execution and that it was intended to be part of the will. No evidence was put forth that the document was not part of the will or that the

<sup>14</sup> *Martin v. Hamlin's Ex'rs*, 35 S.C.L. 188, 4 Strob. 188, 11850 WL 2884, 53 Am. Dec. 673 (1850).

<sup>15</sup> *Goethe v. Browning*, 146 S.C. 7, 143 S.E. 362 (1928).

testator did not intend for it to be part of the will. As such, taken together the documents as a whole bear a oneness and completeness of the Decedent's testamentary intent and scheme. Once integrated into the Decedent's will the document becomes a part of that will and can only be revoked by a subsequent will or codicil.

As such, I find that it was the intent of the Decedent that the document regarding disposition of the Church Property be part of the Decedent's will and should be integrated therein. Therefore, the Personal Representative is ordered to issue a deed of distribution of the Decedent's interest in the Church Property to Thomas P. Moore within ten days of the date of this Order. This disposition is in addition to the one-fifth division of the Estate pursuant to the will.

**THE 1/6<sup>TH</sup> DIVISION PURSUANT TO THE CARETAKING CLAUSE**

The cardinal rule of will construction is to determine the intent of the testator as gleaned from the written instrument itself.<sup>16</sup> The primary source for interpretation must be the words used by the testator where they are clear and unambiguous.<sup>17</sup> "[The court] must give [the] words their ordinary, plain meaning unless it is clear the testator intended a different sense, or unless the meaning would lead to an inconsistency with the testator's declared intention."<sup>18</sup>

Significant evidence was presented to the court regarding Dennis Moore's and other individuals' care of the Decedent in his final years. There is no question that Dennis Moore was engaged in significant efforts to care for his father. However, over the years, other family members, as well as other paid employees, also provided care for the Decedent and for his wife in their final years. The will is very specific regarding its requirements for anyone to receive an

<sup>16</sup> *NationsBank of South Carolina v. Greenwood*, 321 S.C. 386, 468 S.E.2d 658 (Ct. App. 1996).

<sup>17</sup> *Wise v. Poston*, 281 S.C. 574, 316 S.E.2d 412 (Ct. App. 1984).

<sup>18</sup> *In re Estate of Fabian*, 326 S.C. 349, 353, 483 S.E.2d 474, 476 (Ct. App. 1997).

additional one-sixth share of the estate for taking care of the Decedent. The language of the will states

I will ask, if it is possible, for one of my children and/or grandchildren to *come in and live in my home and take care of me* in my old age... whoever does so until I am deceased, will at the time of my death receive 1/6 of all of my estate which I have at the time of my death. This bequest represents 1/6 of my estate which is to be shared equally with a 1/6 bequest to my other five children. In the event none of the children or grandchildren are able to take care of me in such a manner, then I will request that my son, Dennis Moore, the Personal Representative of the estate, to hire someone to keep my home and look after me and be paid a reasonable amount weekly from what is identified as estate funds and this will eliminate the six way division of my estate.<sup>19</sup>

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Dennis Moore fails to meet those requirements, as do all other children and grandchildren of the Decedent. The evidence is undisputed that Dennis Moore never lived in the Decedent's home, as required by the plain language of the will and I so find. Further, as described in the will, Dennis Moore and the Decedent hired Tammy Jackson and Elizabeth Little to stay with the Decedent for significant amounts of time and paid them for their services. It is also undisputed that Dennis Moore was paid for a significant portion of the time he spent with his father. Under the terms of the will, hiring such help eliminates the six way division of the estate. While Dennis Moore, and other individuals, did in fact expend significant time taking care of the Decedent, under a plain construction of the terms of the will, the requirements set forth in the will, which would provide for a six-way division of the estate, are not satisfied. As such, it is ordered that the six-way provision is of no effect and that the estate should be divided five ways with each child taking a one-fifth portion of the Decedent's estate, subject to the remaining findings of this order.

<sup>19</sup> Decedent's Last Testament and Will; emphasis added.

MERCEDES

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The evidence presented showed that Dennis Moore, the Personal Representative, converted to his own use, cash funds belonging to Thomas P. Moore just before his death. Dennis Moore physically conducted a transaction to purchase a Mercedes automobile using one of the Decedent's personal checks. Subsequently, title to the Mercedes was put into Dennis Moore's name individually using DMV forms prepared by Dennis Moore. Dennis Moore then sold the vehicle; however the Estate has yet to realize any proceeds from the sale of the Mercedes, which was paid for using the Decedent's funds. There was no satisfactory evidence presented that the Mercedes was a gift to Dennis Moore.

A constructive trust is a means by which the court may compel the conveyance of a property interest from one who holds the title unfairly to another to whom it rightly belongs.<sup>20</sup>

"A constructive trust arises when the circumstances under which property was acquired make it inequitable that it should be retained by the one holding legal title."<sup>21</sup> "A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust."<sup>22</sup> A constructive trust may be imposed when "...one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy."<sup>23</sup>

<sup>20</sup> See *Chapman v. Citizens & S. Nat'l Bank of S.C.*, 302 S.C. 469, 395 S.E.2d 446 (1990).

<sup>21</sup> *Halbersberg v. Berry*, 302 S.C. 97, 106, 394 S.E.2d 7, 13 (Ct. App. 1990).

<sup>22</sup> *Chapman*, 302 S.C. 469, 480, 395 S.E.2d 446, 453 (Ct. App. 1990).

<sup>23</sup> *Halbersberg*, 302 S.C. at 106, 394 S.E.2d at 13 (Ct. App. 1990).

9

“The abuse of a confidential relationship is recognized by our Supreme Court as the basis of the imposition of a constructive trust by a court of equity.”<sup>24</sup> Notably, a fiduciary relationship exists between each heir or beneficiary of a Decedent’s estate and the Personal Representative.<sup>25</sup> “In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between parties.”<sup>26</sup> Actual fraud is not required to establish a constructive trust.<sup>27</sup> In the context of constructive trusts, “fraud” means generally reprehensible conduct rather than a misrepresentation of fact.<sup>28</sup>

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To impose a constructive trust, it is not necessary to establish legal wrongdoing or a wrongful or malicious intent on the part of the unjustly enriched party.<sup>29</sup> “Rather, the touchstone for imposition of a constructive trust is injustice or unfairness, which may take the form or be the product of fraud (actual or constructive), abuse of a fiduciary or confidential relationship, undue influence, or unjust enrichment.”<sup>30</sup> “[T]he constructive trust is a fluid, flexible device which may be employed to remedy many different types of injustice.”<sup>31</sup>

A confidential relationship existed between Dennis Moore and the beneficiaries of the Decedent’s estate because of his position as Personal Representative. The evidence was clear that funds belonging to the Decedent purchased the Mercedes at issue. There was great debate at the hearing over the use of the term “bought,” as to whether that meant who was physically at an

<sup>24</sup> *Chapman*, 302 S.C. at 479, 395 S.E.2d at 453 (Ct. App. 1990).

<sup>25</sup> *Ex Parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (2009); see also S.C. CODE ANN. §62-3-703 (2016).

<sup>26</sup> *Chapman*, 302 S.C. at 476, 395 S.E.2d at 450 (Ct. App. 1990).

<sup>27</sup> *Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 529, 520 S.E.2d 339, 352 (Ct. App. 1999).

<sup>28</sup> *Chapman*, 302 S.C. at 479, 395 S.E.2d at 452 (Ct. App. 1990).

<sup>29</sup> See *Sharp v. Kosmalski*, 40 N.Y.2d 119, 121, 351 N.E.2d 721 (1976) (holding a constructive trust was appropriate to remedy the unfair outcome despite the fact that the property transferred was a gift from the plaintiff and there was no evidence of fraud or a promise on the part of the defendant).

<sup>30</sup> *Brown v. Brown*, 152 S.W.3d 911, 918 (Mo. Ct. App. 2005); See also *Chapman*, 302 S.C. at 479, 395 S.E.2d at 446 (Ct. App. 1990) (Abuse of a confidential relationship is recognized as a basis for imposition of constructive trusts by courts of equity).

<sup>31</sup> *Brown*, 152 S.W.3d at 918 (Mo. Ct. App. 2005).

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auction or whose funds actually paid for the transaction. However, it is undisputed that the funds involved in the transaction originated with the Decedent. It is also undisputed that the title to the vehicle, through several successive documents, filed with the South Carolina Department of Motor Vehicles, methodically transferred title into the name of Dennis Moore, individually. Dennis Moore subsequently sold the Mercedes for \$63,000.00. Because the funds purchasing the vehicle belonged to the Decedent, such a transfer to Dennis Moore either had to be a gift from the Decedent or Dennis Moore took the vehicle improperly. No sufficient evidence has ever been presented that this transaction was a gift. Thus, Dennis Moore violated his fiduciary duty, abused his confidential relationship, and was unjustly enriched when he used funds out of the Estate of the Decedent to purchase the Mercedes for himself. Therefore, the Estate has a right to the proceeds of the sale, which have been held by Dennis Moore in a constructive trust.

I find that the Personal Representative used the Decedent's funds to purchase the Mercedes, ultimately titled in his own name. The Personal Representative was unjustly enriched. For these reasons, this Court imposes a constructive trust on the proceeds of the sale of the Mercedes in favor of the Estate. It is ordered that the \$63,000.00 value of the Mercedes at issue be paid by the Personal Representative into the Estate and should be added to the funds held in trust by Porter Stewart within ten days of the date of this order.

#### CYPRESS AVENUE HOUSE

The Decedent and Personal Representative Dennis Moore owned the property located on Cypress Avenue in Garden City as joint tenants with right-of-survivorship. This property was purchased long before the Decedent's death. The evidence is undisputed that a contract to sell this property for \$324,500 was entered into in November 2013, well before the death of the Decedent. The actual closing occurred December 27, 2013, seven days after the Decedent's

death. There was no debt on the property and Dennis Moore received all of the proceeds. Throughout the process, Dennis Moore represented himself as being the one entitled to the proceeds. He did not report the property or proceeds on the inventory.

In South Carolina, an interest in real property is effectively encumbered to a third party or parties, if all the joint tenants who own said real property in joint tenancy join in an encumbrance.<sup>32</sup> The South Carolina Court of Appeals expounded on this statute in *South Carolina Federal Savings Bank v. San-a-Bel Corporation*. There the Court held that a purchaser under an executory contract for the purchase and sale of real property has an equitable lien on the property in the amount paid for the purchase price. This equitable interest arises from payment of money and does not depend on purchaser's taking possession of real estate.<sup>33</sup>

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In this case, the sales contract entered into prior to the Decedent's death simultaneously encumbered the property entitling the purchaser to possession of the property upon payment of the agreed price and entitling the Decedent to one-half of the proceeds of the closing. The Decedent's right to the proceeds from the sale of the property arose long before the Decedent's death. The fact that the Decedent's signature was not listed on the closing documents, due to his death, did not nullify his right to proceeds from the sale of the property. Similarly, Dennis Moore's testimony that the deed was not prepared prior to the Decedent's death, does not invalidate the Decedent's rights to the proceeds. Neither of these factors nullifies the binding nature of the prior sales contract.

I find that the joint tenancy with rights of survivorship was effectively defeated by the contract of sale on this property. I find that under South Carolina Code §27-7-40 the parties had jointly encumbered their interest in the real estate and effectively created a lien against the

<sup>32</sup> S.C. CODE ANN. §27-7-40 (2016).

<sup>33</sup> See *South Carolina Federal Savings Bank v. San-A-Bel Corporation*, 413 S.E. 2d 852, 307 S.C. 76 (Ct. App. 1992).

property in favor of the purchaser by entering into an enforceable contract to purchase.<sup>34</sup> As such, the Decedent's estate is entitled to one-half of the proceeds because the contract had been entered into and was simply waiting for the closing to be completed at the time of death.

Dennis Moore is ordered to pay \$162,500.00 (reduced by one-half of any documented closing costs of the seller) to the estate to be distributed to the beneficiaries, pursuant to the will. The funds should be paid to Porter Stewart's trust account within ten days of the date of this order.

**PERSONAL REPRESENTATIVE COMMISSION**

South Carolina Code Section 62-3-719(a) provides:

Unless otherwise approved by the court for extraordinary services, a personal representative shall receive for his care in the execution of his duties a sum from the probate estate funds not to exceed five percent of the appraised value of the personal property of the probate estate plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or by proper court order, except upon sales to the personal representative as purchaser. The minimum commission payable is fifty dollars, regardless of the value of the personal property of the estate.

The five percent commission for personal representatives is not a fixed amount rather it is a maximum commission. The only fixed commission is the \$50 minimum commission provided by the statute. The amount of commissions due to a personal representative is within the discretion of the probate court based on the care in the execution of his duties demonstrated by the personal representative.

Throughout the probate of the Decedent's estate, the beneficiaries repeatedly requested bank checks and statements, bank records, bank statements of the estate account, and other financial records of the estate and Decedent. The Personal Representative, Dennis Moore, informed the beneficiaries that they would need to get a lawyer if they wanted any of the

<sup>34</sup> *Id.*

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requested records. Two of the beneficiaries did in fact retain attorneys. The Personal Representative has caused disputes that required court intervention. Additionally, there was undisputed testimony that the Personal Representative neglected to list or collect two debts owed to Decedent's estate.

Finally, it is undisputed that the Personal Representative failed to carry out orders of the court costing the beneficiaries substantial sums in attorneys' fees to enforce the court orders. The Personal Representative failed to provide the beneficiaries with a list of all personal property in the estate, in direct violation of a court order to do so. As a result, the beneficiaries had to create the list themselves. Additionally, the Personal Representative himself testified that he failed to provide the beneficiaries with bank statements, which was mandated in a court order. The beneficiaries had to hire attorneys to subpoena those records. The Personal Representative has made a claim for a full commission of five percent.

Pursuant to the South Carolina Code, "a Personal Representative is a fiduciary who shall observe the standards of care described by Section 62-7-804."<sup>35</sup> The duties of the Personal Representative include: (1) a duty to settle and distribute the estate of the Decedent in accordance with the terms of a probated and effective will and this code, and (2) to do so as expeditiously and efficiently as is consistent with the best interests of the estate.<sup>36</sup> The Personal representative must use the authority conferred upon him by the South Carolina Code, the terms of the Decedent's will, and any court order for the best interests of successors to the estate.<sup>37</sup>

This Court finds that the Personal Representative was derelict in his duties of notifying heirs and carrying out orders of this court, and in timely fulfilling the statutory requirements of that office.

<sup>35</sup> S.C. CODE ANN. § 62-3-703 (2016).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

The Personal Representative's commission is reduced to \$50 due to the Personal Representative's failure to properly marshal and safeguard the assets of the estate, failure to inform beneficiaries of various requested information, failure to provide bank statements as needed, failure to collect on two outstanding loans of the estate, failure to properly account for personal property as directed by the court, and for causing disputes and necessitating enforcement of court orders. The attorneys for Thomas P. Moore and Philip Moore submitted affidavits of their legal fees for services rendered to complete certain tasks that the Personal Representative should have completed. As such, those should have been estate expenses. Porter Stewart shall issue checks from the Estate funds in his trust account to the attorney for Thomas P. Moore for \$2,774.50 and the attorney for Philip Moore for \$3,042.02. These amounts shall be paid within ten days of the date of this order and before the division of the estate into five shares.

**CASH IN SAFE**

The Personal Representative of the estate testified that the amount of cash in the safe at the time of the Decedent's death was approximately fourteen thousand dollars and no/100 (\$14,000.00). This is the same amount reported when the Personal Representative was first appointed. The Personal Representative stated that \$5,618.65 was used to pay estate related expenses, leaving \$8,381.35 to be deposited in the estate. Testimony by the Personal Representative was that instead of only depositing the \$8,381.35, he deposited an even \$8,400 into the estate's account.

Petitioners testified that at the time of Decedent's death, there had to be more cash in the safe, because while Decedent was still alive they had each seen what appeared to be more cash in the safe than fourteen thousand dollars and no/100 (\$14,000.00). Petitioner Phillip Moore also testified that his view of the contents occurred when the safe was opened by the Decedent,

between March and May of 2012, least one (1) year and seven (7) months before the Decedent's death. Petitioner Thomas Moore stated on the record that there appeared to be more than \$14,000.00 in the safe but did not know exactly how much was in the safe.

Testimony was also heard stating that a money bag with an accounting of more than twenty five thousand dollars and no/100 (\$25,000.00) cash was in the safe. This accounting was done by the Decedent at some point before his death. It is impossible for the Court to be certain that the amount listed on the money bag was still in the safe at the time of the Decedent's death. Finally, the Court is unable to be certain that any other individual who had access to the home did not remove cash from the safe prior to the Personal Representative retrieving and accounting of the items in the safe.

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Generally, in order for damages to be recoverable, evidence should be such as to enable court or jury to determine the amount thereof with reasonable certainty or accuracy.<sup>38</sup> Neither the existence, causation, nor amount of damages can be left to conjecture, guess, or speculation.<sup>39</sup> No sufficient proof has been provided to show how much, if any additional cash was in the Decedent's safe above the amount specified by the Personal Representative. The testimony and evidence submitted provided nothing more than speculation as to the amount of cash in the safe at the time of the Decedent's death. Therefore, this Court finds that the amount of cash in the safe when the Personal Representative opened the safe after the Decedent's death was \$14,000.00, as initially represented by the Personal Representative.

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<sup>38</sup>See *Whisenant v. James Island Corps.*, 277 S.C. 10 281 S.E. 794 (1981)

<sup>39</sup>See *Gray v. Southern Facilities, Inc.* 256 S.C. 558, 183 S.E. 2d 438 (1971)

**JEWELRY**

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Petitioners testified that Decedent's wife, who predeceased the Decedent, owned and wore several pieces of jewelry, and that the Decedent owned and wore jewelry as well. The Personal Representative testified that all pieces of jewelry found were accounted for and presented to the other parties. Petitioners testified that they believed there was more jewelry than the Personal Representative listed. There was testimony that Mrs. Moore had on jewelry at her funeral and that a nephew was sent to retrieve the jewelry. However, there was no testimony provided by the nephew or any other party as to what happened to such jewelry. No evidence was presented to show that at the time of the Decedent's death, there was any jewelry found in the home, safe, or anywhere else other than the pieces the Personal Representative discovered in the safe, and presented to the other members of the family. There was also no evidence provided that the Personal Representative retrieved, sold, destroyed, or disposed of any jewelry belonging to the Estate.

Evidence presented must be sufficient to enable the factfinder to make a determination with reasonable certainty or accuracy as to any damages sustained.<sup>40</sup> Neither the existence, causation, nor amount of damages can be left to conjecture, guess, or speculation.<sup>41</sup> Without any specific evidence as to what jewelry other than that reported by the Personal Representative existed at the date of the Decedent's death this Court finds that all jewelry has discovered and accounted for by the Personal Representative.

<sup>40</sup> See *Carlyle v. Tuomey Hosp.* 305 S.C. 187, 407 S.E. 2d 630 (1991)

<sup>41</sup> See *Gray v. Southern Facilities, Inc.* 256 S.C. 558, 183 S.E. 2d 438 (1971)

### DISPOSITIONS OF CHECKS

Decedent's son, Phillip Moore, contends the Personal Representative failed to account to the Court for all of the assets owned by the Decedent at the time of his death. First, Phillip Moore alleges that the Decedent made multiple personal loans to Tammy Jackson ("Jackson"). However, the Personal Representative failed to disclose the loans on the Inventory or account to the Court for monies received when a vehicle purchased with Decedent's money was sold after Dennis Moore repossessed it due to Jackson's failure to pay the loan owed to Decedent. Phillip Moore also contends the Decedent loaned money to Dennis Moore and Dennis Moore's business, Moore's Cars, LLC. These loans were not disclosed to the Probate Court nor has Dennis Moore accounted for or repaid the loans. Lastly, Phillip Moore questions whether Dennis Moore has properly and fully accounted for monies held in the last bank account opened by Decedent before his death. The Court will address these allegations in turn.

On August 19, 2013, approximately four months before Decedent's death, Decedent wrote a check for \$6,500.00 to Dennis Moore. The reference line notes "04 Gray Jaguar." Phillip Moore testified that the money was a loan to Jackson to assist in the purchase of the Jaguar and was used by Dennis Moore to purchase the car. According to Phillip Moore, the vehicle was purchased and delivered to Jackson. Jackson, however, never made payments on the loan. As a result of her failure to make payments, Dennis Moore repossessed the Jaguar and sold it. None of the proceeds of the sale of the vehicle were ever accounted for and deposited in the Estate account. Beginning July 5, 2012, the Decedent made other loans to Jackson as reflected by copies of seven checks produced by Phillip Moore. Each check is payable directly to Jackson and on each check, the Decedent specifically noted the monies were a loan. One of the checks,

dated May 18, 2012, was a loan for \$5,000.00 with the notation stating "[f]his check was loaned-  
to Tammy Jackson -to buy 2003 Honda Blue - vin#016077 - Moore's Cars- Thomas G. Moore  
Lien put on title. According to Philip Moore, Jackson still has possession of this vehicle but there  
is no evidence that any payments for the loan were received by Decedent before his death. Nor,  
has the Estate received any payment for the loan. The Personal Representative has failed to  
account for any of the loan proceeds or pursue repossession of the vehicle. Based upon the  
uncontested evidence presented to the Court, it is clear that the Estate assets should include these  
funds. Based upon the undisputed value of the checks, the total sum that the Estate has lost as a  
result of Personal Representative's actions or failure to act is at least \$19,838.00. Philip Moore  
testified that in 2003, the Decedent closed down Moore's Cars, LLC. Dennis Moore then  
incorporated a new entity under the name Moore's Car, LLC. The owner of Moore's Cars, LLC,  
from that time up until the death of the Decedent was Dennis Moore. According to Philip  
Moore, although the Decedent no longer owned the business, he still maintained an account in  
the pseudonym of Moore's Cars, LLC, and still bought and sold cars under the dealer license of  
Dennis Moore. Decedent was continuing this practice as recently as May, 2011. Philip Moore  
admitted ten checks which he contends evidences monies provided to Dennis Moore or his LLC  
to purchase cars. On each of the checks, Decedent made a note that the funds were a "loan" for  
Moore's Cars, LLC. Even more compelling is the Decedent's notes on checks dated January 18,  
2012 and August 8, 2012. On these particular checks, the Decedent wrote "[m]oney put in  
Anderson Bank for Moore's Cars, LLC - buy cars" and "[l]oan Moore's cars to buy cars -  
Aycock Auction - Dennis." It is clear to the Court that the Decedent was loaning his personal  
funds to Dennis Moore to purchase cars for his LLC. The Court finds that these references to a  
loan to Moore's Cars, LLC, demonstrate loans to Dennis Moore as owner of Moore's Cars, LLC.

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Dennis Moore argues that most of these checks are merely the Decedent moving money from one of his bank accounts to another of his bank accounts. The problem with this argument is that the only bank account in the Decedent's name listed on the Estate inventory is a First Citizens checking account containing \$37,052.25. Although no cash is listed on the inventory filed by the Personal Representative testimony revealed that there was \$14,000 of cash in the Decedent's safe at his death. These two assets fall far short of the total of the amount of checks written by the Decedent and do not support Dennis Moore's theory. No evidence has been presented to demonstrate that any of these funds have been repaid to the Decedent or to his Estate. Based on the evidence presented, the Court holds that for the period of May 10, 2011, through June 11, 2013, Dennis Moore, as the owner of Moore's Cars, LLC, received funds totaling \$454,640.00 from the Decedent.

Finally, on April 5, 2013, the Decedent opened an account at First Bank. It is undisputed that the First Bank account was solely owned by Decedent with no other person or persons depositing any funds into the account. From April 5, 2013, until the date of Decedent's death on December 20, 2013, the Decedent deposited \$217,875.00 into this account. Each deposit represented proceeds from the sale of a car. However, there is no accounting for these funds and Philip Moore contends these funds should be included in the assets of the account. Philip Moore also offered an exhibit he prepared that offered scenarios of possible explanations as to where the money was spent. However, there is insufficient evidence for the Court to determine with certainty whether the Personal Representative has failed to properly account for the funds deposited into the First Bank account.

Based upon the foregoing, the Court finds that Personal Representative has failed to report and account for a substantial sum of money in the following instances: (1) failure to

pursue payment for loans made by Decedent to Tammy Jackson; (2) failure to account for funds received for the repossession and sale of the 2004 Jaguar; and (3) failure to account for loans to Moore's Cars, LLC. Accordingly, the Court finds that Dennis Moore is indebted to the estate in the amount of \$473,838.00.

### CONCLUSION

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It appears that the amounts ordered for Dennis Moore to repay the Estate exceed the one-fifth share which Dennis Moore would otherwise be entitled to receive. As such, the 1/5 share of the estate that would otherwise be payable to Dennis Moore shall be subtracted from the amount he is obligated to repay and he shall pay the difference. The other four beneficiaries would then split the Estate four ways. The Personal Representative is ordered to present new estate closing documents that comply with this order within thirty days of the date of this order. The only other appropriate estate attorneys' fees are those to be paid to S. Porter Stewart's as attorney for the estate. Any fees due to David M. Smith, Esq. shall be paid by Dennis Moore and not by Estate funds.

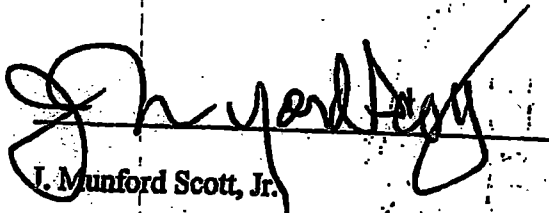
**ORDER**

It is therefore *ordered and decreed* as follows:

- (21)
1. Porter Stewart, as attorney for the Estate, shall adjust the closing documents of the estate by preparing a deed of distribution for the Richland County Church Property to Thomas P. Moore.
  2. No additional share of the estate shall be provided to any party for live in care of the Decedent.
  3. Porter Stewart, as attorney for the estate, shall add to the assets of the estate an amount due from Dennis Moore of Sixty Three Thousand (\$63,000.00) Dollars which represents the proceeds from the sale of a Mercedes automobile purchased with the Decedent's funds.
  4. Porter Stewart, as attorney for the estate, shall add to the estate assets an amount due from Dennis Moore of One Hundred Sixty Two Thousand Five Hundred (\$162,500.00) Dollars less one half (1/2) of the closing costs for this sale of the property located on Cyprus Ave. in Garden City South Carolina.
  5. Porter Stewart, as attorney for the estate, shall amend the final accounting to show a Personal Representative commission due of Fifty (\$50.00) Dollars.
  6. Porter Stewart, as attorney for the estate, shall not adjust the amount of cash nor the jewelry reported by the Personal Representative.
  7. Porter Stewart, as attorney for the estate, shall add to the assets of the estate an amount due from Dennis Moore of Four Hundred Seventy Three Thousand Eight Hundred and Thirty Eight (\$473,838) dollars representing loans made by the Decedent to Dennis Moore or his LLC.

8. Porter Stewart as attorney for the estate shall issue checks from the Estate funds in his trust account to the attorney for Thomas P. Moore for \$2,774.50 and the attorney for Philip Moore for \$3,042.02. These amounts shall be paid within ten days of the date of this order and before the division of the estate into five shares.
9. Dennis Moore shall repay to the Estate the sum of Six Hundred Ninety Nine Thousand Three Hundred Thirty Eight (\$699,388.00) Dollars less one half of the closing cost associated with the sale of the Cyprus Ave. property and less the one fifth (1/5) share of the estate to which he would otherwise be entitled within thirty days of this order.

Executed this 28<sup>th</sup> day of November



J. Munford Scott, Jr.

Florence County Probate Judge

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