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JUN 25 2018

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

James C. Harrison, Jr., Special Referee

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JUN 25 2018

S.C. SUPREME COURT

Unpublished Opinion No. 2018-UP-128 (S.C. Ct. App. Filed Mar. 21, 2018)

Patricia E. King and Robbie King Jones, as representatives  
of W.R. King and Ellen King.....Plaintiffs,

Of whom, Patricia E. King is.....Petitioner,

v.

Margie B. King and Robbie Patricia Ione King, individually,  
and as Co-Representatives of the Estate of Christopher C.  
King (deceased) and Nelson M. King.....Respondents.

PETITION FOR A WRIT OF CERTIORARI

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### CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 24, 2018.

### QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that Petitioner was afforded due process?
2. Did the Court of Appeals err in holding that Respondents were not required to exhaust administrative remedies?

### STATEMENT OF THE CASE

As outlined under the argument portion below, this is a matter involving a substantial constitutional issue, the due process rights of a litigant. Additionally, it involves a ruling by the Court of Appeals inconsistent with *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 191 S.E.2d 761 (1972). Finally, it involves the rights of business owners and has implications important to South Carolina's economy.

This aged case involves the dispute of family members over fractional shares of a funeral home business in Chester, South Carolina—King's Funeral Home. Petitioner Patricia King filed a

complaint in the above-referenced case on or about November 12, 1998. The Complaint alleged causes of action against Respondents for breach of contract, recourse against accommodation party, accounting and distribution of profits, appointment of receiver, injunction, fraudulent conveyance, breach of trust, conversion, failure to pay rent, and ejectment. (App. pp. 000033-000051). Among other things, Petitioner's Complaint asserted that she had a one-ninth ownership interest in King's Funeral Home.

Respondents filed an Answer and Counterclaim on or about December 11, 1998. The Answer raised five defenses and asserted counterclaims against Petitioner for intentional interference with contractual relations, conversion, action for partition of real property, a claim based on constructive trust, and promissory estoppel. (App. pp. 000052-000061). Subsequently, the case was referred to Special Referee James Harrison by Order of Reference signed by the Honorable Lee S. Alford on May 18, 2001 and filed on May 30, 2001. (App. pp. 000006-000007).

During this time, and until he abandoned her case, Petitioner was represented by an attorney Cletus Okpalaeké, who was later disbarred. *See In re Okpalaeké*, 374 S.C. 186, 648 S.E.2d 593 (2007). Subsequent to the 2001 Order of Reference, on August 6, 2004, an order of dismissal signed by Judge Kenneth Goode dismissed Petitioner's complaint and preserved Respondents' counterclaims. By Order filed March 28, 2007, the Court of Appeals affirmed Judge Goode's 2004 Order of dismissal.

The parties subsequently attempted to settle. When settlement attempts proved unsuccessful, Petitioner in January 2010 retained the undersigned to defend against the Respondents' counterclaims. In June 2010, Respondents filed amended counterclaims and Petitioner timely replied. (App. pp. 000062-000071). In their amended counterclaims, the Respondents asserted the following causes of action:

1. Restitution and Disgorgement
2. Accounting
3. Attachment of Property
4. Civil Conspiracy
5. Unjust Enrichment
6. Action for Partition of Real Property
7. Trespass to Land
8. Conversion
9. Intentional Interference with Contractual Relations
10. Constructive Trust
11. Promissory Estoppel
12. Trespass to Chattel
13. Breach of Fiduciary Duty of Care
14. Waste
15. Appointment of Receiver
16. Punitive Damages

*See* Def.'s Am. Countercl., June 11, 2010. (App. pp. 000062-000071). No claim for or related to common law trademark infringement was ever filed or pursued.

On August 16, 2010, the Special Referee held an evidentiary hearing to determine whether the Respondents were entitled to an accounting of the business named King's Funeral Home. At the August 16, 2010 evidentiary hearing, counsel for Respondents called three witnesses: Respondent Robbie Patricia Ione King, John R. Christopher King, and tax attorney David Siddons. Petitioner called three witnesses: funeral director Moses Caldwell, tax preparer George Ledbetter, and Petitioner Patricia King. (App. pp. 000072-000494). After reviewing the testimony of the witnesses and the documents admitted into evidence, the Special Referee denied Respondents' counterclaim for an accounting. (App. pp. 000008-000020).

Subsequently, Respondents appealed and the South Carolina Court of Appeals upheld the Special Referee's Order. *See King v. King*, 2012-UP-365 (Ct. App. June 20, 2012). Finally, the Court denied Respondents' petition for writ of certiorari and the Court of Appeals remanded the case to the Special Referee.

Petitioner moved for summary judgment as to Respondents' remaining counterclaims. In their brief, the Respondents conceded the following counterclaims to be moot: Accounting, Attachment of Property, Action for Partition of Real Property, and Breach of Fiduciary Duty of Care. Upon hearing the motion for summary judgment, the Special Referee issued an Order filed on March 9, 2015, holding that punitive damages is an element of damages and not a separate tort claim, and holding that the remaining counterclaims for final hearing in this case were:

1. Restitution and Disgorgement,
2. Civil Conspiracy,
3. Unjust Enrichment,
4. Trespass to Land,
5. Conversion,
6. Intentional Interference with Contractual Relations,
7. Constructive Trust,
8. Promissory Estoppel,
9. Trespass to Chattel, and
10. Waste.

(App. pp. 000021-000022).

On April 29, 2015, the lower court held an evidentiary hearing on these remaining counterclaims. At the hearing, Respondents presented the testimony of Alexander Cornwell, Seymour Wilder, John R. C. King, Nelson M. King, and Robbie King Boyd. Petitioner presented the testimony of Patricia King. (App. pp. 000495-000797). Additionally, all testimony and documents admitted into evidence during the August 2010 hearing were included in the lower court's consideration.

At the close of the evidence offered by Respondents, the trial court granted Petitioner's directed verdict motions dismissing the following counterclaims: Constructive Trust, Trespass to Land, Intentional Interference with Contractual Relations, Trespass to Chattel, and Waste. The court denied Petitioner's motions for directed verdict as to the following claims:

1. Unjust Enrichment / Restitution and Disgorgement<sup>1</sup>
2. Civil Conspiracy
3. Conversion
4. Promissory Estoppel

At the close of Petitioner's case, Rather than hearing closing arguments, the Special Referee requested each side submit proposed orders. In Respondents' Proposed Order, Respondents conceded that they failed to establish their claims for conversion and promissory estoppel. (App. pp. 792-799). Therefore, only two causes of action remained for the Special Referee to address in his final order: Unjust Enrichment and Conversion.

After receiving the transcript of the hearing and reviewing proposed orders from both sides, the Special Referee issued his Final Order, which was filed September 21, 2015. (App. pp. 000023-000030). Petitioner filed a Motion to Alter or Amend pursuant to Rule 59(e) on September 28, 2015. The Special Referee granted in part and denied in part Petitioner's Motion to Alter or Amend. (App. pp. 000031-000032). Petitioner received notice of the entry of this order via email on October 7, 2015. On November 5, 2015, Petitioner timely filed her Notice of Appeal as to the Orders referenced above. Petitioner filed the Notice of Appeal on a limited issue: whether the trial court erred in granting relief which the Respondents did not seek, the name King's Funeral Home. The Court of Appeals affirmed the trial court's order. Petitioner now brings this Petition for Writ of Certiorari.

### **FACTUAL BACKGROUND**

W. R. King, deceased, was the patriarch of the King family. He and his wife, Ellen N. King, deceased, owned and operated King's Funeral Home from the 1940's until the death of W. R. King in 1975. W. R. and Ellen King's funeral home was located at 127 Cemetery Street in Chester, was never incorporated, and was operated as a sole proprietorship. During the time that W. R. King and

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<sup>1</sup> While Respondents in their Amended Counterclaims pled these as two separate causes of action, they agreed at the 4/29/2015 hearing that this is a cause of action for Unjust Enrichment seeking the

Ellen King owned and operated the funeral home, a number of their children worked as employees of the business, including both Patricia King and Christopher C. King.

W. R. King and Ellen King had nine children. Among those children were Petitioner Patricia E. King as well as Christopher C. King, deceased, the husband and father of Respondents. In 1975, W. R. King died intestate. Prior to 1980 and during the life of Ellen King, Christopher King ran a business named "King's Funeral Home" at 127 Cemetery Street as a sole proprietor (hereinafter "Christopher's KFH"). (App. pp. 000012-000015).

In September 1997, Christopher King died of cancer. After his death, Christopher's KFH located at 135 Cemetery Street was run by his widow, Respondent Margie King, and his surviving children, Respondent Robbie Patricia Ione King, Respondent Nelson M. King, and John R. Christopher King. (App. pp. 000015-000016). The family of Christopher King continued to operate this business, located at 135 Cemetery Street, until December 1998. On December 8, 1998, the family of Christopher vacated the premises. (App. p. 000016). On the same day, someone simultaneously removed from the building most of the operating assets of Christopher's KFH, including vehicles, caskets, embalming table and supplies, pews and other items. (App. p. 000015). On that day, John King opened a new business named "Christopher King's Funeral Home," located at 703 Old York Road in Chester, South Carolina. (App. p. 000016). He kept the telephone number of Christopher's KFH which was owned and operated by Christopher King, (803)377-1144. (App. p. 000016). Respondents kept the BB&T bank account for Christopher's KFH which was owned and operated by Christopher King and removed Petitioner's name from the account. (App. p. 000402, lines 3-4). Upon information and belief, the family of Christopher King still operates this funeral home.

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remedy of Restitution and Disgorgement. (App. p. 000700, line 2).

After the family of Christopher King vacated Patricia King's property located at 135 Cemetery Street, Petitioner Patricia King began operating in her building and on her property a sole proprietorship named "King's Funeral Home" (hereinafter "Patricia's KFH). (App. p. 000016). None of the assets owned by the previous occupant—the funeral home business run by Christopher King and his family—were available to Petitioner. (App. p. 000016). To date, Petitioner Patricia King operates her funeral home in the building and on the property located at 135 Cemetery Street in Chester, South Carolina. Additionally, Petitioner owns and operates a North Carolina business entity named "King's Funeral Home."

Throughout the twenty-year litigation of this ancient case, Respondents did not seek the lower court to award the use of the name "King's Funeral Home."

## ARGUMENTS

### **I. THE TRIAL COURT GRANTED RELIEF THAT RESPONDENTS DID NOT SEEK, AND, THEREFORE, THE PETITIONER WAS DENIED DUE PROCESS.**

Due process demands "that a litigant must be given an opportunity to meet an issue before an adverse determination is made." *Lowndes Products, Inc. v. Brower*, 259 S.C. 322, 338, 191 S.E.2d 761, 770 (1972). "Procedural due process mandates that a litigant be placed on notice of the issues which the court is to consider." *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565 (Ct.App. 2002). "It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard...." *Id.*

#### **A. The Trial Court granted relief of its own volition, without notice to either party.**

Petitioner had no notice that Respondents could be awarded the name King's Funeral Home. Throughout the twenty-year course of litigation—pleadings, amended pleadings, countless hearings, nearly a dozen attorneys, two merits hearings, discovery, and multiple appeals—Respondents never sought the name King's Funeral Home. After the final hearing, Respondents submitted a Proposed Order

in which they listed everything they believed they were entitled to receive. (App. p. 000798-000805). Respondents' proposed order is devoid of any reference to the name of the business. Rather, the Special Referee reached this conclusion of his own volition, without notice to either party. In fact, the Special Referee's Order contains the following: "The Court is aware of the fact that [Respondents] have not specifically requested *in specie* restitution, but I find that this remedy is reasonably pled by [Respondents] in their prayer 'for other and further relief as is equitable in the circumstances and (as) this Court deems just and appropriate.'" (App. p. 000029, ¶ 5).

In *Lowndes Products, Inc. v. Brower*, the Court addressed the significance of the fact that due process requires courts afford the parties an opportunity to be heard on all issues. In that case, one of the issues before the Court was the fact that the plaintiffs were directed to pay the defendants' attorney fees, when in fact, the defendants in their pleadings had not asked for an award of attorney fees. The Court held that due process requires "that a litigant must be given an opportunity to meet an issue before an adverse determination is made," and because the master reached the conclusion on his own accord and the defendant was not given an opportunity to meet the issue, the Court found that the master committed error in directing the plaintiffs pay the defendants' attorneys fees, and that the trial judge perpetuated the master's error. *Id.*

The same analysis applies in the case at hand. Though they could have pled for such relief in their Counterclaims or Amended Counterclaims, though they could have brought a trademark infringement cause of action, and though they could have argued for such relief at multiple hearings throughout the twenty year history of this litigation, at no point did the Respondents request an award of the name King's Funeral Home or seek to enjoin Petitioner from using that name. Instead, the Special Referee found that a vague prayer for relief covered a very specific injunctive remedy. In doing so, the trial court relied on Rule 54(c) as interpreted by *Battery Homeowners Ass'n v. Lincoln Fin. Res., Inc.*,

309 S.C. 247, 251, 422 S.E.2d 93, 96 (1992). The *Battery Homeowners* court permitted the trial court to grant remedies in excess of what the plaintiffs pled because the defendant “Lincoln was put on notice that the Association was seeking penalties and did not object, or move for a continuance.” *Id.* In the case at hand, Petitioner had no notice that the Special Referee might award the name to the Respondents, and therefore this case is distinguishable:

The trial court also cited *Perry v. Smalls*, 308 S.C. 259, 417 S.E.2d 611 (Ct. App. 1992). In *Perry*, the court awarded \$12,000 instead of the \$10,000 asked for in the complaint. *Perry* is distinguishable because monetary damages were sought and the court permitted an increase of value based on expert testimony. Unlike the case at hand, the *Perry* defendant had notice of the relief being sought and the opportunity to cross-examine the witness that established the increase in monetary damages.

In affirming the lower court’s order, the Court of Appeals cites *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565 (Ct. App. 2002). In order to interpret *Blanton* and Rule 54(c), S.C.R.C.P., the Court of Appeals relied upon *Robinson v. Lorillard Corp.*, 444 F.2d 791, 803 (4th Cir. 1971). The facts of the *Robinson* case are distinct from this appeal, but the *Robinson* case’s analysis of exceptions to the general rule are applicable.

The *Robinson* case “is a class action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.” *Id.* at 794. The lower court, *inter alia*, awarded the plaintiffs back pay, even though “[t]he complaint filed by the plaintiffs in the District Court did not specifically request an award of back pay.” *Id.* at 802. Back pay was not sought by plaintiffs prior to or during the trial of the case. *Id.* at 803. However, “after trial of the case, though *before the judge had entered a decision*... a request was made [by plaintiffs] for additional relief in the form of back pay for the class.” *Id.* (emphasis added).

Therefore, in the *Robinson* case, the lower court granted relief which was specifically requested by the plaintiffs prior to issuance of the order granting the relief specifically sought. In the case at hand, Respondents never, at any point, made any request for the relief granted by the Special Referee. Even in the *Robinson* case, the appellant was afforded the opportunity to respond to the specific request prior to the lower court's grant of relief. No such right was afforded the undersigned petitioner. Furthermore, as set forth below, the *Robinson* defendants were also afforded additional opportunity to contest individual claims for back pay after the subject back pay was awarded by the lower court. *Id.*

Though the facts of the case are distinguishable, the rule as fully set forth by *Robinson* applies to this case. The *Robinson* case sets forth a general rule and multiple exceptions to the general rule. The general rule is articulated as follows: "[Rule 54(c)] has been liberally construed, leaving no question that it is the court's duty to grant whatever relief is appropriate in the case on the basis of the facts proved." *Robinson* at 803. But there are two exceptions to the general rule outlined in the *Robinson* case and important to its holding:

The first is that **a remedy desired by none of the parties should not be forced upon them.** *Mercury Oil Refining Co. v. Oil Workers Int'l Union*, 187 F.2d 980, 983 (10th Cir. 1951); *International Nikoh Corp. v. H. K. Porter Co.*, 358 F.2d 284, 290 (7th Cir. 1966) (dictum). **But that is not our case.** Although the plaintiffs initially indicated that they were not seeking back pay, prior to the entry of judgment they added a request that back pay be awarded the class. Clearly it was not forced upon them against their will.

The one other limiting principle which might assist defendants' case is expressed in the following manner by *Rental Development Corporation of America v. Lavery*, 304 F.2d 839, 842 (9th Cir. 1962): **If, however, it is made to appear that the failure to ask for particular relief substantially prejudiced the opposing party, Rule 54(c) does not sanction the granting of relief not prayed for in the pleadings.**

In our case, because the obligation to provide back pay stems from the same source as the obligation to reform the seniority system, any general defenses relevant to the back pay award were equally relevant to the suit for injunctive relief. Any specific defenses related only to computation of back pay may be raised during the process of

assessing individual back pay claims, possibly before a special master. The defendants have in no way been prejudiced by the belated claim.

*Id.* at 803. (emphasis added).

The substantial prejudice exception applies to Petitioner. Respondents' failure to seek the particular relief substantially prejudices Petitioner because all of her defenses against damages were directed toward the monetary damages sought by Respondents. Since Petitioner did not have notice of the issue, she was not able to offer evidence which might have swayed the court as to the proper owner of the name, such as whether the Respondents ever sought to register the name with the South Carolina Secretary of State, whether Respondents ever abandoned a trademark with the United States Patent and Trademark Office, what business filings may have been completed by the parties at pertinent times, or other defenses unique to the specialized area of law associated with trademark claims. In the cross-examination of Respondents' witnesses and in the direct examination of Petitioner, Petitioner successfully defended against the claims pursued by Respondents and the remedy that is customary to Respondents' claims—a monetary award. Therefore, Petitioner has been substantially prejudiced, and "Rule 54(c) does not sanction the granting of relief not prayed for in the pleadings." *Id.* at 803.

As for the other *Robinson* exception, the Respondents have indicated no desire for the remedy ordered by the Special Referee, therefore the order should not be enforced. The record before this Court establishes the following: (1) Respondents did not plead the remedy awarded during the twenty years of this litigation; (2) Respondents did not seek the remedy awarded at any of the multitude of motions hearings and merit hearings during the twenty years of litigation; (3) Respondents did not offer testimony at any hearing about entitlement to the remedy; (4) Respondents specifically referenced all remedies they were seeking in their proposed order submitted subsequent to the final hearing, and that proposed order is devoid of any reference to the

remedy awarded; and (5) Respondents have made no response in this Appeal which is entirely limited to the remedy awarded by the Special Referee.

Petitioner was able to defend against the monetary award Respondents sought because Petitioner was on notice of the issue to be tried. Petitioner, however, was not on notice of the remedy eventually awarded by the Special Referee. Therefore, since Petitioner is prejudiced by the remedy awarded and since the Respondents have expressed no desire for that remedy, Petitioner respectfully requests the Court reconsider its Opinion.

Additionally, the procedural history of the case further establishes that Petitioner was not on notice of the remedy awarded. The Special Referee's 2011 Order as to Accounting found that Petitioner is the sole proprietor of the business King's Funeral Home. That Order holds that "[t]he funeral home business that Patricia has been operating since 1998 is a new business entity that Patricia started. . . . [T]hat business is a separate entity and not a continuation of the business operated by Chris." (App. p. 000019). The testimony of the August 16, 2011 hearing and the exhibits admitted into evidence during that hearing establish that Patricia E. King is the sole proprietor and rightful owner of the King's Funeral Home. The order further held that the assets required to operate a funeral home were removed from the building prior to Petitioner's starting her sole proprietorship. (App. p. 000015).

After Respondents failed to establish any ownership right to Petitioner's business, the ownership of the business and its assets was no longer before the court. When the trial court found that Patricia King is the rightful owner of the business currently operating as King's Funeral Home, by reasonable inference, any and all assets of that business are necessarily Petitioner's. There could be no notice that the Special Referee might subsequently award a particular asset of the business—the name of the business—to another party to the action.

This Court need look no further than Respondents' proposed Order where Respondents clarified the relief they were seeking under the unjust enrichment claim: the monetary value of "the goodwill of King's Funeral Home which Chris King had developed over seventeen years as sole proprietor." (App. p. 000803). The Special Referee rightly held that Respondents failed to establish any monetary value of that claim. (App. p. 000029).

Therefore, Petitioner lacked the requisite notice of the relief to be granted by the Special Referee.

**B. The relief sought by respondents did not put Petitioner on notice of the relief granted by the Trial Court.**

During the pendency of this litigation, Respondents sought monetary damages associated with the business King's Funeral Home. They attempted to establish that they were entitled to proceeds based upon an alleged fractional interest in the business run by Patricia King. After failing to establish any ownership interest in Petitioner's business, Respondents attempted to establish an entitlement to the monetary value associated with the goodwill of King's Funeral Home cultivated by Chris King.

Thus, Petitioner was on notice that Respondents sought monetary damages. Therefore, at trial, Petitioner put forth evidence defending against this claim. On Schedule E of the Inventory and Appraisal which Respondents filed on behalf of the estate of Christopher King (App. p. 000430-000436), they specifically listed King's Funeral Home as an asset. (App. p. 000432). The value Respondents assigned to the business was zero. (App. p. 000430). Respondents' own admission is the only evidence in the record establishing the monetary value of the claim they sought—zero. As a result, the Special Referee held that Respondents failed to establish any monetary value of their only remaining claim.

For the reasons stated *supra*, therefore, since the Petitioner did not have notice of the issue, she was not provided the opportunity to offer evidence which could have swayed the court against the

injunctive relief awarded. The Special Referee spontaneously injected and granted a new remedy not sought by the parties and one which the Petitioner did not have the opportunity to defend. Although the Special Referee finds that ordering Patricia King to cease using the name King's Funeral Home is an equitable remedy, equity does not yield to her legal rights and constitutional right of due process for the opportunity to defend against a claim that resulted in an adverse ruling. The evidence established that the name "King's Funeral Home" has been in the King family since W.R. and Ellen King started a business approximately 75 years ago. Such an award should not be made without Petitioner having the opportunity to defend against it.

**II. EVEN IF THE OWNERSHIP OF THE NAME HAD BEEN BEFORE THE TRIAL COURT, THE RELIEF GRANTED IS IMPROPER.**

Even if Respondents had brought a claim for trademark infringement and had sought the ownership of the name, the relief granted is improper because the Respondents failed to exhaust statutory administrative remedies necessary to obtain the name "King's Funeral Home."

The general rule in South Carolina is that "administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Hyde v. South Carolina Dept. of Mental Health*, 314 S.C. 207, 422 S.E.2d 582 (1994).

The South Carolina Board of Funeral Service, which is administered by the Department of Labor, Licensing, and Regulation, oversees and regulates the funeral service industry. If Respondents wished to pursue the use of the name and license for King's Funeral Home, the proper place for such pursuit would be with the South Carolina Board of Funeral Service, where the business is licensed and the name is registered. If an adverse determination were made, South Carolina Code Annotated § 40-1-160 provides that "a person aggrieved by a final action of a board may appeal the decision to the Administrative Law Court . . . ."

While Petitioner was not afforded the opportunity to set forth a defense as to the Special Referee's award, the testimony at trial, nonetheless, establishes that Respondents failed to exhaust administrative remedies. While testifying as to the forming and registration of the business named Christopher King's Funeral Home, the son of Christopher King, John R. C. King testified as follows:

17 Q. And when you register your business with LLR, did  
18 you attempt to register as -- what name?

19 A. Christopher King's Funeral Home that --  
20 Christopher King's Funeral Home is -- is the name of my  
21 business. Because I -- I used my -- the court-ordered  
22 changed name-thing.

23 Q. Yes, sir. Did you attempt to register as "King's  
24 Funeral Home"?

25 A. To be honest with you, I don't remember. I may  
1 have, and they told me that I could not use the same name  
2 that my father and my mother and them had used, because  
3 people would get confused. So that's when I said, "Well,  
4 I'll just use Christopher King's Funeral Home, because  
5 that's part of my name."

...

17 Q. Did you -- did you call LLR at any point for the  
18 -- the funeral home board, and notify them that King's  
19 Funeral Home was closing or moving?

20 A. No, I could -- I could not do that, because I was  
21 not the owner of King's Funeral Home.

(App. p. 000589, line 17 – p. 000590, line 5; p. 000590 lines 17-21).

Right before the close of trial, the Special Referee questioned Petitioner about the license number associated with King's Funeral Home. Petitioner Patricia King testified as follows:

14 Q. The question was that you were able -- you were  
15 able to maintain the license, the same license that your  
16 grandparents had --

17 A. No. My mother and father.

18 Q. Your mother and -- I'm sorry. I'm sorry. I'm  
19 sorry. I'm sorry. That your mother and father, W.R. and  
20 Ellen King --

21 A. Uh-huh.

22 Q. -- had gotten back 40 years before.

23 A. I suppose so. It's still on the wall.  
24 Q. And it's still on the wall today?  
25 A. Yes, sir.  
1 Q. And, Ms. King, was that the end of that  
2 discussion with the state board, that you kept that license  
3 number, and you kept the name King Funeral Home?  
4 A. Uh-huh. 'Cause they called me two or three  
5 times. John Richard tried to get the name, and they told -  
6 - it was three times they called. He used -- he tried to  
7 get the name one time, and I think it was indicated he  
8 couldn't do that. And then he tried to do another name,  
9 and he already testified he had to go and change his name  
10 to Christopher -- John Richard Christopher King.  
...  
24 Q. The name is King, K-i-n-g, Funeral Home? Or  
25 King's --  
1 A. Yeah, and the apostrophe S.  
2 Q. King's Funeral Home. And in your discussions  
3 with the board, after your brother's death, did you -- did  
4 you ever apply for another name?  
5 A. I didn't have no reason to; the board had  
6 approved that.  
7 Q. Didn't apply for a new --  
8 A. 'Cause I'm a King myself.  
9 Q. Didn't apply for a new number, either.  
10 A. No. Because the board had granted us that.  
11 Q. And your -- the funeral home in Charlotte -- the  
12 funeral home in Charlotte, that your brother Sonny started,  
13 was also known as King's --  
14 A. That's correct.

(App. p. 000756, line 14 – p. 000759, line 10; p. 000760, line 24 – p. 000761, line 14).

Even though Petitioner was not afforded the opportunity to defend against the relief awarded, the evidence in the Record establishes that Respondents attempted to register the name “King’s Funeral Home” with the Board, and that the Board instructed that they could not use that name. There is evidence in the record that Appellant Patricia King followed appropriate formalities with the Board in maintaining the license of King’s Funeral Home. To the extent that this division of LLR denied Respondents the right to use the name King’s Funeral Home, the same should have been appealed to the

Administrative Law Court consistent with SC Code § 40-1-160, as that is where any dispute over use of the name King's Funeral Home arose and that is the court which may have appropriate jurisdiction to address such issues.

Respondents' failure to exhaust administrative remedies after contacting the Board serves as further indication that Respondents were not seeking to enjoin Petitioner from use of the name King's Funeral Home during the pendency of this litigation. Had they engaged in the administrative remedy process, Appellant would have had notice and opportunity to defend against such a claim, as she is the proprietor of the business registered with the Board as King's Funeral Home.

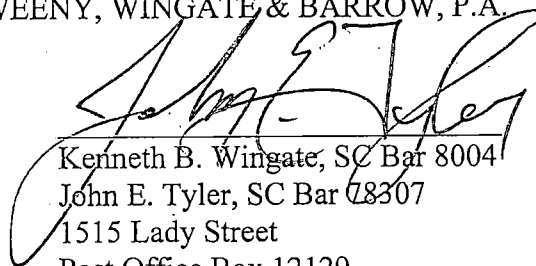
Therefore, the Special Referee's holding for Patricia E. King to cease the use of the name "King's Funeral Home" was improper because the Respondents failed to exhaust statutory administrative remedies prior to bringing an action with the lower court. Furthermore and related to arguments raised *supra*, the Respondents' failure to exhaust administrative remedies is further evidence that they were not seeking the use of the name King's Funeral Home in the first place.

### CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition of writ of certiorari. The decision of the Court of Appeals and the Orders of the trial court should be reversed.

Respectfully Submitted,

SWEENEY, WINGATE & BARROW, P.A.



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**Attorneys for Petitioner Patricia King**

June 25, 2018

RECEIVED

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

JUN 23 2018

S.C. SUPREME COURT

APPEAL FROM CHESTER COUNTY  
Court of Common Pleas

James C. Harrison, Jr., Special Referee

Unpublished Opinion No. 2018-UP-128 (S.C. Ct. App. Filed Mar. 21, 2018)

Patricia E. King and Robbie King Jones, as representatives  
of W.R. King and Ellen King.....Plaintiffs,

Of whom, Patricia E. King is.....Petitioner,

v.

Margie B. King and Robbie Patricia Ione King, individually,  
and as Co-Representatives of the Estate of Christopher C.  
King (deceased) and Nelson M. King.....Respondents.

APPENDIX

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Rock Hill, South Carolina 29732  
**Respondent, pro se**

**APPENDIX INDEX**

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# S·W·B

SWEENEY WINGATE & BARROW P.A.

June 25, 2018

Reply to: Main Office

John E. Tyler  
(803) 256-2233 x7110  
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**VIA HAND-DELIVERY**

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Post Office Box 11629  
Columbia, South Carolina 29202

**RECEIVED**

JUN 25 2018

SC Court of Appeals

RE: Margie B. King v. Patricia King  
Case No.: 1998-CP-12-00325/Appellate-2015-002289  
Our File: 4022-7231

Dear Ms. Kitchings:

Enclosed for filing please find an original and one copy of Appellant's **Petition for Writ of Certiorari and Cover Page and Index to Appendix of Petition for a Writ of Certiorari**. The Writ and Appendix have been filed with the South Carolina Supreme Court in the above-referenced matter. Please file the original and return the additional copy to me with the Courier.

Thank you for your assistance in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

  
John E. Tyler

JET/smt

Enclosures

cc: Margie B. King  
Robbie P.I. King  
Nelson M. King  
Robbie King Jones