

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

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SC Court of Appeals

THE HONORABLE BROOKS P. GOLDSMITH, CIRCUIT JUDGE

Case No. 2017-001775

Mikell M. Henderson, ...Appellant,

vs.

Mikell R. Scarborough, individually and as Personal Representative of the Estate of Mary Ross
Hanahan and Joseph Ross Henderson, ... Defendants,

Of whom Mikell R. Scarborough, individually and as Personal Representative of the Estate of
Mary Ross Hanahan, is the Respondent.

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF CHARLESTON) CASE NO. 2015-CP-10-6502

MIKELL M. HENDERSON,
Petitioner,

vs.

MIKELL R. SCARBOROUGH,
Individually and as Personal
Representative of the Estate of Mary
Ross Hanahan, and Joseph Ross
Henderson,
Respondents.

In Re: Estate of:
Mary Ross Hanahan

**ORDER GRANTING
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT
AS TO PETITIONER'S ACTION
TO TRY TITLE TO REAL ESTATE**

FILED
2017 JUN -1 PM12:09
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER comes before the Court on May 18, 2017, pursuant to Respondent's Motion for Summary Judgment filed on September 13, 2016, as to Petitioner's Action to Try Title to Real Estate. Petitioner was present and represented by Adam Silvernail, Esq. Respondent was present and represented individually by Shirrese B. Brockington, Esq. Respondent Estate is also represented by Joseph Mendelsohn, Esq.; however, Mr. Mendelsohn was not present.

Based upon careful review of the pleadings, Requests to Admit propounded to Petitioner and Petitioner's Responses to Requests to Admit, deposition testimony, exhibits, Memoranda, properly submitted supporting evidence, and arguments of counsel, Respondent's Motion for Summary Judgment as to Petitioner's Action to Try Title to Real Estate is hereby **granted**.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Mary Ross Hanahan, ("Decedent"), mother of Petitioner, Mikell Henderson, and maternal aunt of Respondent, Mikell Scarborough, deceased testate on October 23, 2014. Ms. Hanahan was survived by her son, Petitioner, Mikell Henderson, a second son, J. Ross Henderson, and her nephew, Respondent, Mikell Scarborough. Ms. Hanahan left a Last Will and Testament dated November 2, 1998, and a Codicil dated October 19, 2012, all of which were admitted to probate in the Charleston County Probate Court. Respondent Mikell Scarborough was named Personal Representative in the Codicil and was appointed by the Probate Court to serve in that capacity.

On September 2, 2015, Petitioner Mikell Henderson, filed his Summons and Petition against his cousin naming several causes of action. One was an Action to Try Title to Real Estate relative to the MRH Family, LLC whereby Petitioner sought to have the creation and funding of the LLC declared void, *ab initio*, and the real estate returned to his mother's estate. The Court notes that under the Last Will and Testament of Decedent, Petitioner is the primary beneficiary of his mother's estate.

In support of his position, Petitioner alleges his mother lacked the requisite mental capacity to sign documents on December 30, 2012, creating the MRH Family, LLC, including the Operating Agreement and a deed which transfers title of various tracts of real estate to the LLC. In the alternative, Petitioner alleges that the documents creating and funding the LLC were the product of undue influence by the Respondent on Ms. Hanahan, and thus the LLC should be declared void, *ab initio*, and the real estate returned to his mother's estate. In the twenty (20) months since the filing of the Petition, the parties have engaged in exchange of discovery, including the taking of depositions of Petitioner, Respondent, and several witnesses.

On September 13, 2016, Respondent moved for summary judgment and a hearing was held on May 18, 2017. This Motion was initially supported by the following exhibits: 1) Operating Agreement of MRH Family, LLC prepared by H. Christopher Moss, CPA-Attorney; 2) the recorded Deed from Decedent to the LLC transferring the relevant real estate prepared by Howard Yates, Esq.; 3) a second recorded Deed from Decedent to her son, J. Ross Henderson, transferring separate real estate also prepared by Howard Yates, Esq.; and 4) Statement of Mary Ross Hanahan Concerning 2012 Land Transfers. Respondent later supplemented this Motion by filing the Affidavit of H. Christopher Moss, the CPA-Attorney. Petitioner filed a Motion to Object to consideration of the Affidavit but this Motion was withdrawn by Petitioner at the Summary Judgment motion hearing.

Prior to the hearing Respondent supplemented his Motion with a Supplemental Memorandum in Support of the Creating and Funding of the MRH Family, LLC which included excerpts from deposition testimony of Petitioner, Respondent and witnesses Christopher Moss and Howard Yates. Petitioner also filed a Memorandum in Opposition to Respondent's Motion for Summary Judgment.

STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is a drastic remedy to be "cautiously invoked" so that no person will be improperly deprived of a trial of the dispute factual issues, Baughman v. American Telephone & Telegraph Co., 10 S.E.2d 537 (1991), and should be cautiously granted only when it is shown that there exists "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; See also McNair v. Rainsford, 330 S.C. 332, 342, 499 S.E.2d 488, 493, (Ct. App. 1998). "The Court must construe all ambiguities,

conclusions and inferences arising from the evidence against the moving party; however, the opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue.” City of Columbia v. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). Where the underlying burden of proof is by a preponderance of the evidence, South Carolina courts are clear that the non-moving party need only produce a “mere scintilla” of evidence to withstand summary judgment. Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); Hancock v. Mid-South Management Co., 381 S.C. 326, 330-331, 673 S.E.2d 801, 802-803 (2009). However, in cases involving a heightened burden of proof, something more is required. Turner, 392 S.C. at 122, 708 S.E.2d at 769; Hancock, 381 S.C. at 331, S.E.2d at 803.

**PETITIONER HAS NOT DEMONSTRATED A
GENUINE ISSUE AS TO A MATERIAL FACT**

Petitioner advances two distinct theories in his Action to Try Title to Real Estate as to why the creation and funding of the MRH Family, LLC should be declared void, *ab initio*, and the real estate returned to the Decedent’s estate. The first theory is that Mary Ross Hanahan lacked the requisite mental capacity to understand her acts due to her life-long struggle with mental illness, including bipolar disorder which led to periods of depression and inaction, as well as a diagnosis of dementia in 2005. The second theory is the exertion of undue influence on Ms. Hanahan by her nephew, Respondent, to include him in her estate plan by giving Respondent a 30% interest in the LLC. The Court addresses each of these in turn.

A. As to lack of capacity of the Decedent.

As evidence, Petitioner contends that, for a period of about five (5) years before her death in 2014, Ms. Hanahan was unable to retrieve phone messages, manage her medications, had

stopped reading books, was forgetful, and had written a check to pay a home security alarm servicer which was "nonsensical." Petitioner further cites that Ms. Hanahan did not drive herself places and the family would "need to take the car." On September 6, 2012, Dr. Kay Durst, Ms. Hanahan's regular physician noted "the dementia is reported to have been present for several months. Her mental status appears to be gradually deteriorating."

Petitioner further argues that Mr. Moss and Respondent were longtime social acquaintances, that the idea of the LLC came from Respondent, and Mr. Moss had performed work for Respondent personally and for other family members. At the initial meeting with Mr. Moss on December 6, 2012, Ms. Hanahan did not tell Mr. Moss that she had existing estate planning documents (the Will and Codicil), and there was no discussion with her regarding overall estate plans. Further, there was no discussion regarding Ms. Hanahan's health or capacity and Mr. Moss testified that, had he been aware of the diagnosis of dementia, that he would not have proceeded with the transactions.

Petitioner further argues that Attorney Howard Yates, who prepared the deeds considered Respondent to be his client, that he had not met or spoken with Ms. Hanahan prior to December 30, 2012, when the two deeds and the Statement Concerning Land Transfers was signed, and that the deeds were prepared before Ms. Hanahan saw them. Petitioner further points out that the house and lot owned by his mother were not included in the properties to be placed in the LLC, and that these are the same properties devised to Respondent under the 2012 Codicil, which Petitioner has also challenged.

In response, Respondent presented the documents already cited as well as deposition testimony of Petitioner, Mr. Moss and Attorney Yates which is set forth herein. Respondent

presented also the medical reports of Ms. Hanahan's primary care physician, Dr. Kay Durst, and her psychiatrist, Dr. Piave Lake.

I find that on December 6, 2012, almost two (2) years prior to her death, Ms. Hanahan consulted with CPA-Attorney, H. Christopher Moss, regarding steps that could be taken to reduce her estate tax liability as the estate tax exemption law governing such matters was changing and Ms. Hanahan's estate would be at risk for payment of substantial estate taxes due to her ownership interest in numerous and diverse parcels of real estate. Mr. Moss recommended that a family LLC be created which would take title to various real properties owned by Ms. Hanahan through gift deeds. Valuation of the parcels would be based upon appraisals and then discounted for lack of marketability, thus reducing Ms. Hanahan's taxable estate.

Of particular note, Petitioner's deposition testimony reflects in an email between himself and Respondent that he spoke with his mother and confirmed that she "wanted to go ahead with creating the LLC" and "for Mikell Scarborough to take care of the deeds to her properties." Additionally, on December 6, 2012, Petitioner also spoke with Mr. Moss and Respondent regarding creation of the MRH Family LLC, and discussed a power of attorney that was needed.

Mr. Moss prepared the Power of Attorney on December 6, 2012. Ms. Hanahan appointed Respondent as the sole agent. Ms. Hanahan signed the Power of Attorney before Mr. Moss and a second witness, who also served as notary public. Although Petitioner now alleges that his mother lacked the necessary mental capacity to execute documents relative to the LLC, Petitioner has not challenged the validity of the December 6, 2012 Power of Attorney nor did he contact the second witness on the document with regard to its execution prior to the filing of this action.

There are three (3) members of MRH Family, LLC, to wit, 1) Petitioner, 2) MRSMIE, LLC, an entity created and owned solely by Respondent, and 3) Ms. Hanahan. The Operating Agreement was prepared by Mr. Moss. It is dated December 30, 2012, and was signed by all three members. Petitioner received a 68% interest; MRSMIE, LLC, which Respondent was the sole member received a 30% interest; and Ms. Hanahan retained a 2% interest. The value of the real estate at issue prior to the formation of the LLC was approximately \$6,000,000, based on appraisals, which value was discounted to \$2,914,000, as reflected on the gift tax return.

In granting Respondent's Motion for Summary Judgment and finding that Ms. Hanahan had sufficient mental capacity to execute the Operating Agreement of MRH Family, LLC and its related documents and that such were not the product of undue influence by Respondent, I have considered the following facts.

For the initial meeting of December 6, 2012, Mr. Moss prepared a "Summary 5 Action Steps" Power Point presentation and reviewed it with Ms. Hanahan which explained what steps could be taken to reduce her estate tax liability. As part of the presentation, Mr. Moss had initially suggested a 75%-80% ownership by her son, Mikell Henderson which would result in much less to Respondent. **However, Ms. Hanahan stated to Mr. Moss that Mikell Scarborough was like a son to her and insisted that Mikell Scarborough receive a 30% interest in the family corporation.** Also at that meeting, Mr. Moss informed Ms. Hanahan of his fee of \$5,000, which was not questioned by his client.

Additionally, I find that Mr. Moss prepared the MRH Family, LLC Operating Agreement and went over it extensively with Ms. Hanahan on December 30, 2012, and, significantly, that

she understood the provisions. Further, Ms. Hanahan was aware that, by creating the estate plan, her estate would save a substantial amount on paying very high estate taxes.

I find that Petitioner admits he reviewed the Operating Agreement but had no particular questions regarding it other than noting there were two page fives. Petitioner did not question Mr. Moss about the percentages of ownership or voice any concern about his mother's ability to understand what was going on and did not question Mr. Moss's fee. Petitioner does not dispute his mother signed the document. Further, Petitioner testified that he was fine that his cousin received the 30% interest. Petitioner is a licensed attorney who has practiced law and is an educated man; Petitioner did not seek any independent advice about the formation of the LLC from any other attorney or CPA.

Further, although Petitioner stated he believed that his brother (J. Ross Henderson) would have an ownership interest in the LLC, Petitioner initially did not discuss it with his mother and understood her reluctance in not including him. Petitioner later raised the exclusion of his brother from having an ownership interest in the LLC to his mother but she did not respond to him.

I find that on December 6, 2012, Ms. Hanahan did discuss the issue of giving property to her older son, Ross, with Mr. Moss and with Respondent. Initially, Ms. Hanahan did not want to give any real estate to Ross, but after much discussion, she agreed to convey to Ross the two parcels she planned to bequeath to him in her 1998 Last Will and Testament.

I find that the appropriate deed of transfer to the MRH Family, LLC, of the selected real estate was prepared by real estate attorney, Howard Yates, Esq. and executed by Ms. Hanahan on December 30, 2012. Attorney Yates and Mr. Moss served as witnesses and Attorney Yates served as notary public.

In addition, Attorney Yates prepared a separate deed, also dated December 30, 2012, which Ms. Hanahan executed in favor of her older son, Joseph Ross Henderson, and gifted him the two tracts that were left to him under her Last Will and Testament. The two deeds were recorded on December 31, 2012, within 1 minute of each other. However, it should be noted, that although Petitioner claims Ms. Hanahan did not have capacity to sign documents, Petitioner is not challenging the second deed that conveys the parcels to his brother executed by Ms. Hanahan that same day (December 30, 2012), and recorded within one (1) minute of the LLC deed.

Attorney Yates also prepared a separate Statement of Intent as to Land Transfers signed by Ms. Hanahan by which she acknowledged that she was making the transfers to the LLC to save on estate taxes. Further, the document stated that Ms. Hanahan understood that her nephew, Mikell Scarborough, would benefit from the creation of the LLC. She also acknowledged that she was making the gift of other real estate to her son, Ross, and was signing all documents freely and without undue influence.

I find that Petitioner testified he had no knowledge of how the deeds were executed or where they were signed and had no knowledge of whether or not Respondent was present. Petitioner acknowledges that he did not raise the issue of his mother's alleged lack of mental capacity to sign the documents at the time they were executed in December 2012.

I further find that while Petitioner cites his mother's dementia, mental illness and declining physical health as grounds for his mother's alleged lack of capacity, the September 6, 2012, report of Dr. Kay Durst states that as to Dr. Durst's psychiatric observations of Ms. Hanahan on that day that she (Ms. Hanahan) was "negative for anxiety, depression, and sleep

disturbances” and has “appropriate affect and demeanor, normal speech pattern and grossly normal memory.”

Of further note, in Petitioner’s Responses to Respondent’s First Requests to Admit dated June 13, 2016, Petitioner admits that on October 16, 2012, well after the report of September 6, 2012, that Kay Durst, MD, treating physician of Ms. Hanahan states in her medical records that “she (Ms. Hanahan) is doing well overall” and Ms. Hanahan “states that she feels no issue” and is “in no apparent distress.” **Petitioner did not dispute Dr. Durst’s report in his deposition testimony.**

Additionally, I find that in his Responses to Respondent’s First Requests to Admit dated June 13, 2016, Petitioner admits that on October 18, 2012, that Piave Pitisci Lake, MD, treating psychiatrist of Ms. Hanahan, states in her medical records that “she (Ms. Hanahan) has a neat appearance; her thought process is “normal”, her thought content is “normal”, she has “full orientation as to place, time, person”, her speech is “normal”; her memory is “wnl (within normal limits); she shows “no gross deficit” in either insight or judgment. **Petitioner did not dispute Dr. Lake’s report in his deposition testimony.**

The law is well settled in this State, that a grantor with sufficient mental ability to comprehend what he is doing and understand the nature of the act and its consequences, has capacity to make a deed. Mathias v. Mathias, 206 S.C. 276, 33S.E.2d 626 (S.C. 1945).

I find that while alleging Ms. Hanahan lacked capacity, it is notable that during the course of this case, Petitioner **has not produced**, by affidavit or by deposition testimony of any medical provider or caregiver, **any evidence** that Ms. Hanahan suffered from any mental deficiency or mental or physical defect that would affect her ability to understand the nature of

the creation of the MRH Family, LLC, the Operating Agreement, the pertinent deeds, or the Statement regarding Land Transfers. Conversely, Ms. Hanahan's mental status is stated to be within normal limits as set forth in the two doctors' reports of October 2012, just weeks before the creation and funding of the LLC.

The LLC has been managed by Respondent from its inception and his 5 year term ends in December 2017. Petitioner inherits Ms. Hanahan's 2% interest in the LLC under the terms of her Last Will and Testament. Petitioner admits he received distributions from Respondent from income generated by the LLC of \$10,000 in 2013 and \$8,000 in 2014. Petitioner further admits that Schedule K-1s have been issued for those years and that he has relied on those K-1s in preparation of his own personal tax returns.

Petitioner further acknowledges that, if the LLC were declared void *ab initio* and the real estate in the LLC placed back into his mother's estate, of which Petitioner is the sole beneficiary of the residuary, that the value of the estate would far exceed the tax exemption amount in effect at time of death (in 2014) and that the estate would be taxed on approximately \$3.0 Million. Petitioner states that he would owe taxes and "there is nothing I can do about it." **This would defeat the underlying reason for creation of the MRH Family, LLC and would render null and void Ms. Hanahan's efforts to save her estate and Petitioner from paying millions of dollars in estate taxes.**

In summary, I find that Petitioner participated in the LLC planning discussions in early December 2012. He signed the Operating Agreement and did not express any concern about his mother signing. He was aware that deeds would be needed to transfer title of the properties to the LLC. Petitioner did not raise any question to anyone regarding his mother's capacity. Further, I

find that Petitioner's position is inconsistent. To say that one document conveying title to an entity (the LLC) is not valid and another document that conveys title to an individual, (Petitioner's brother) both executed the same day, before the same witnesses, is not credible and is not legally or factually persuasive.

I conclude that Petitioner has thus failed to create a genuine issue of any material fact as to the lack of capacity of Ms. Hanahan relative to the creation of the MRH Family, LLC and its related documents in December 2012, which include the Operating Agreement of December 30, 2012, the deed conveying the various parcels of real estate into the LLC, and the Statement of Mary Ross Hanahan Concerning Land Transfers. The Court concludes that there exists no triable issue of material fact and Respondent is entitled to judgment as a matter of law. Summary Judgment is thereby granted in favor of Respondent on the Action to Try Title to Real Estate.

B. As to Undue Influence.

Petitioner's second theory is that the creation and funding of the MRH Family, LLC should be declared void, *ab initio*, due to alleged undue influence exerted by Respondent on his aunt. Petitioner points to the confidential relationship that Respondent had with his aunt and the fact that he managed her assets so as to provide sufficient income to meet her needs while Petitioner paid the day-to-day bills in a timely fashion on behalf of his mother. Petitioner alleges that the confidential relationship between Respondent and his aunt gives rise to a presumption of undue influence and such presumption must be rebutted by the alleged influencer.

The Court rejects Petitioner's assertion that Respondent exercised any undue influence on his aunt with regard to the creation and funding of MRH Family, LLC because Respondent was not present when the relevant deeds and Statement of Mary Ross Hanahan Concerning 2012

Land Transfers was signed by his aunt before Mr. Moss and Attorney Yates. I find that Attorney Yates accompanied Respondent to Ms. Hanahan's house on December 30, 2012. Attorney Yates had tax maps with him that day, which are drawings that depict where the properties were located, as was his custom. Mr. Yates met with Ms. Hanahan at the residence and

"had Mikell go out or go away from earshot or sight so that I could talk to her about this and to make sure that I felt comfortable that she had an intent to sign these documents. and she was adamant that this is what she wanted."

Ms. Hanahan, Respondent and Attorney Yates then travelled to Mr. Moss's office for the documents to be executed and Attorney Yates again asked Respondent

"to leave the room and Mikell went in to the hallway outside of the office completely. I wanted to make sure that this was what she wanted to do and that she understood what she was doing....nobody is pushing you... she was adamant. I detected no evidence of incapacity or forgetfulness at all."

I find that Attorney Yates, as well as Mr. Moss, were with Ms. Hanahan a little over 2 hours during these various discussions and execution of the documents in question. Ms. Hanahan signed the deeds and Statement before Mr. Moss and Attorney Yates. In the Statement, Ms. Hanahan acknowledges that she has had the opportunity to consult with Mr. Moss and her nephew, that she wishes to avoid substantial estate taxes, that her nephew would have an interest in the MRH Family, LLC and that she would retain a 2% interest. Ms. Hanahan also acknowledges that she desired to convey certain real property to her son, Ross Henderson. More importantly, Ms. Hanahan states that she has not been placed under any duress or influence by any one and that she was free or not free to sign the document.

At no point did Mr. Moss question Ms. Hanahan's mental capacity and ability to comprehend and understand the documents that she was signing, and, in fact, stated that "She was very sharp that day."

Further, Attorney Yates "*was of the opinion that she was under no disability or constraint or any undue influence. I made doggone certain that; Mikell is not here, this is between us, you don't have to do this if you don't want to.*"

I also find that Attorney Yates was unaware of any diagnosis of dementia of Ms. Hanahan or history of mental illness and saw no evidence of this in his meeting with her. He found Ms. Hanahan to be "vibrant and very congenial." Mr. Yates had no communication with Petitioner at all.

The unanimous decision of the South Carolina Supreme Court in *Russell vs. Wachovia Bank*, 353 S.C. 208, 578 S.E.2d 329 (2003), is remarkably on all fours with the issues relative to the granting of summary judgment in this case. *Russell* states and applies legal concepts, as listed below, that have been applied in numerous other cases. It is particularly significant in the present case that the South Carolina Supreme Court in *Russell* applied these concepts to facts for which there was substantially more evidence to support an attack on a Will, and still held, unanimously, that summary judgment should be granted.

Legal principles stated in *Russell* include the following:

- 1) Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 353 S.C. at 217.
- 2) Since the burden of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment. *Id.* at 218.

- 3) In order for a Will to be void due to undue influence, the contestant must show that the influence was brought directly to bear upon the testamentary act (the making of the Will). *Id.*
- 4) The mere existence of influence is not enough to vitiate a Will. *Id.* at 217.
- 5) For a Will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would have not done if he had been left to his own judgment and volition. *Id.*
- 6) The evidence must show that the free will of the testator was taken over by someone acting on the testator's behalf. *Id.*
- 7) Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker. *Id.*

The Supreme Court found it significant that none of the contestants was present when the Will was discussed or when the Will was executed; this fact, along with application of the cited legal principles, prompted the holding that the Will was the product of the free and unfettered act of the testator. *Id.* at 219.

The South Carolina Supreme Court's holding in *Russell* was thus that the trial judge was correct in ruling that the contestants had not presented unmistakable and convincing evidence that the parties who had allegedly exercised influence had indeed utilized their relationship with the testator to substitute their will for his. *Id.* at 220. The South Carolina Supreme Court affirmed the trial court's granting of summary judgment. *Id.*

In Smith v. Jones, Appellate Case No. 2013-002810, Op. No. 5462, filed 12/21/2016. Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a

matter of law. Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can *reasonably* be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Grimsley v. S.C. Law Enft Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Id.* (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Bennett v. Inv'rs Title Ins. Co.*, 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (Ct. App. 2006). If the moving party is successful, the nonmoving party must then come forward with specific facts showing there is a genuine issue for trial. *Id.*

On August 7, 2013, the circuit court held a hearing on the summary judgment motion. At the hearing, Smith informed the circuit court she had scheduled several depositions for September 11, 2013, and asked the circuit court to grant a continuance and defer summary judgment until she had an opportunity to conduct them. Smith argued the depositions of several of the Testator's caregivers would demonstrate the Testator thought she was going to Lee's office to execute only a healthcare power of attorney and was taken there by Jones's daughter, Becky, "under the guise of a brunch." According to Smith, the evidence would show the Testator would not have allowed Lee to draft a will for her, because she believed Lee improperly handled the will of her deceased son, Wayne. Smith also contended the Testator did not realize she was executing a will, and the Testator told people the Hoefer Will was her will.

The circuit court rejected Smith's request for additional time to conduct depositions, orally granted Jones's summary judgment motion, and requested Jones prepare an order. The

circuit court determined no genuine issue of material fact existed because no affidavits were submitted from caregivers or others demonstrating "there was some type of influence that overcame [the Testator's] will" when she executed the Lee Will.

On August 29, 2013, Smith filed a supplemental memorandum in opposition to summary judgement and an affidavit from her counsel concerning the need for a continuance. In the affidavit, Smith's counsel asserted summary judgement was premature because the parties had not had a full and fair opportunity to complete discovery. According to counsel, the parties initiated discovery as soon as the matter was filed and everyone involved had been diligent in prosecuting the case. Counsel stated the case was filed on April 1, 2013; the first round of depositions was held on May 1, 2013; the second round of depositions was held on May 17, 2013; and the third round of depositions was scheduled for September 11, 2013. Counsel explained that before the September 11, 2013 depositions, he "wanted to have an opportunity to thoroughly review the depositions taken in May and analyze the elements of proof, applicable law[,] and other issues prior to the next round of fact witness [depositions]." Counsel listed the testimony he expected the September 11, 2013 depositions to elicit and explained he expected the scheduled depositions to support Smith's fraudulent inducement claims.

On October 8, 2013, Smith submitted to the circuit court copies of the September 11, 2013 examinations under oath (EUOs) of Mary Alice Tompkins, Sharon Graham, Rachell Pringle, Janet Altman, Hoyt Leggette Smith, and Karen Deas McCall. With the EUOs, Smith's attorney submitted a letter explaining his client requested he depose the witnesses even though the circuit court granted Jones's summary judgment motion. The letter stated the EUOs supported the arguments Smith made at the summary judgment hearing. Jones objected to the EUOs:

"Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). "For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition." *Id.* "Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it, the court as a general rule considers the effect of undue influence destroyed." *Id.* at 217, 578 S.E.2d at 333-34. Furthermore, the "mere showing of opportunity or motive does not create an issue of fact regarding undue influence." *Wilson v. Dallas*, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013).

No evidence in the record, including information contained in the EUOs, indicate the Testator was the victim of threats, force, or restricted visitation.¹ Smith indicated she was the primary caregiver for the Testator in October of 2011 as Jones was frequently busy caring for her young grandchildren. While our courts have found a parent and child may have a fiduciary relationship with one another, Jones was not with the Testator when she made the Lee Will and no allegations were made that Jones coerced the Testator or substituted her judgment for that of the Testator. Lee and Sloan both attest to the Testator's willingness and capacity to execute the Lee will, and both attorneys indicate they met privately with the Testator when discussing her will. Additionally, Smith admits the Testator had the opportunity to change the Lee Will had she so desired. Accordingly, we conclude Jones demonstrated the absence of a genuine issue of material fact as to Smith's undue influence claim, and Smith failed to produce contrary evidence beyond mere allegations.

Not all influences are undue, the contestants must show that the influencer has overcome the testator's free will and judgment. See *Calhoun v. Calhoun*, 277 S.C. 527, 531-32, 290 S.E.2d 415, 418 (1982); *In Re: Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, (Ct. App. 2009).

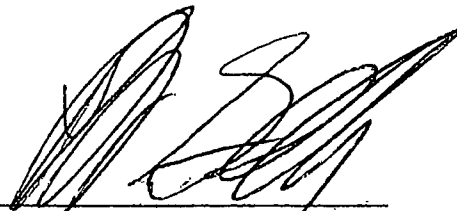
An issue of fact would exist only if Petitioner presented unmistakable and convincing evidence that Respondent Scarborough brought undue influence directly to bear upon his aunt's acts in signing the documents needed for the LLC to be completed and funded. Two independent witnesses, both professionals with either a legal and/or accounting background, are clear in their testimony that Ms. Hanahan understood what she was signing on December 30, 2012 (the MRH Family, LLC Operating Agreement, two deeds, one (1) to the LLC and one (1) to her other son, and the Statement concerning the 2012 Land Transfers), all outside the

presence of Respondent. It is notable that Petitioner has not submitted any affidavits which contradict or refute the affidavit or deposition testimony of Mr. Moss or of Attorney Yates. Petitioner has produced no evidence of any act or action by Respondent that demonstrates Ms. Hanahan was coerced by him, that Respondent destroyed the free agency of his aunt or overtook her free will, or that Respondent otherwise exerted improper influence to get his aunt to sign the LLC documents in question.

In order to survive summary judgment, the law requires Petitioner to produce something more than a scintilla of evidence in support of his allegations of undue influence. However, Petitioner has been unable to carry this burden, citing no specific facts, contested or otherwise, giving rise to a reasonable inference that Respondent overcame his aunt's desire and intention as to the utilization of an LLC for estate tax savings purposes and including Respondent as a member of the entity.

I conclude that, even when viewed in the light most favorably to Petitioner, Petitioner's arguments are supported by little more than his own suspicions and beliefs, and would require the Court to supplement the record with its own speculations. Petitioner has failed to create a genuine issue of any material fact as to the exercise of any undue influence by Respondent on Ms. Hanahan relative to the creation of the MRH Family, LLC and its related documents in December 2012, which include the Operating Agreement of December 30, 2012, the deed conveying the various parcels of real estate into the LLC, and the Statement of Mary Ross Hanahan Concerning Land Transfers. The Court concludes that there exists no triable issue of material fact and Respondent is entitled to judgment as a matter of law. Summary Judgment is hereby granted in favor of Respondent on the Action to Try Title to Real Estate.

AND IT IS SO ORDERED!

A handwritten signature in black ink, appearing to read 'B. Goldsmith', written over a horizontal line.

HON. BROOKS GOLDSMITH
Circuit Court Judge

May 3, 2017

Charleston, SC

STATE OF SOUTH CAROLINA

IN THE CIRCUIT COURT

COUNTY OF CHARLESTON

CASE NO. 2015-CP-10-6502

MIKELL M HENDERSON

Petitioner,

vs

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT

MIKELL R SCARBOROUGH,
Individually and as Personal
Representative of the Estate of Mary
Ross Henderson, and Joseph Ross
Henderson,

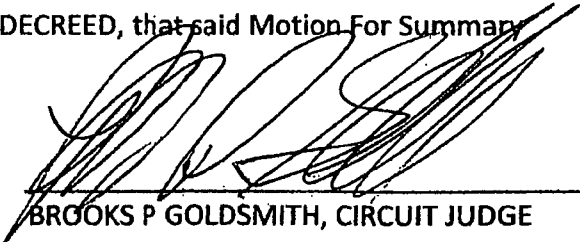
Respondents.

In Re: Estate of
Mary Ross Henderson

This matter comes before the court upon Respondent's Motion For Summary Judgment As To Codicil of October 19, 2012. After considering memorandum submitted by both sides as well as oral argument, I find genuine issues of material fact exist and thus deny said motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that said Motion For Summary Judgment is HEREBY DENIED.

May 30, 2017


BROOKS P GOLDSMITH, CIRCUIT JUDGE

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF CHARLESTON) CASE No. 2015-CP-10-6502

Mikell M. Henderson)
Petitioner)

vs.) ORDER DENYING MOTION
)
)
Mikell R. Scarborough, individually)
And as Personal Representative of)
The Estate of Mary Ross Hanahan,)
And Joseph Ross Henderson)

Respondents.
IN RE: Estate of Mary Ross Henderson

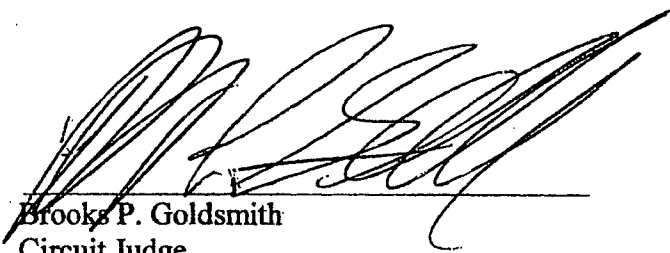
This matter came before the Court upon Plaintiff's Motion To Alter, Amend
And/Or Reconsider Order Granting Respondent's Motion For Summary Judgment As To
Petitioner's Action To Try Title To Real Estate.

The Petitioner and the Respondent, Mikell R. Scarborough, submitted memorandum. The
court decided this matter without oral argument.

After considering the matters raised in Petitioner's Motion I find no reason to alter or
amend the prior order of this court.

ACCORDINGLY, The Motion of Petitioner is hereby DENIED.

July 17, 2017



Brooks P. Goldsmith
Circuit Judge

FILED
2017 JUL 21 AM 11:28
JULIE J. ARMS-TRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mikell M. Henderson,

Petitioner,

vs.

Mikell R. Scarborough, individually and
as Personal Representative of the Estate
of Mary Ross Hanahan, and Joseph Ross
Henderson,

Respondents.

IN RE: Estate of Mary Ross Hanahan

IN THE PROBATE COURT

CASE NO. 2015-ES-10-0351

SUMMONS

(Jury Trial Demanded)

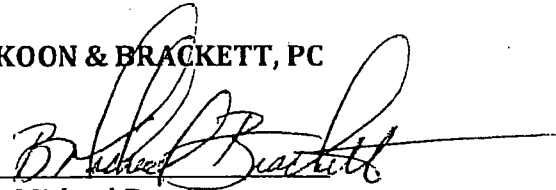
FILE
15 SEP -2 AM 8:51
PROBATE COURT
CHARLESTON COUNTY

To: The above-named Respondents

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscribers at their offices, 1333 Main Street, Sixth Floor, Post Office Box 100261, Columbia, South Carolina 29202-3261, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the Petition within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Petition.

MOSES KOON & BRACKETT, PC

BY:


B. Michael Brackett
Adam T. Silvernail
Moses & Brackett, PC
1333 Main Street, Suite 260
Post Office Box 100261
Columbia, South Carolina 29202-3261
803.461.2328

Attorneys for Petitioner

August 31, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mikell M. Henderson,

Petitioner,

vs.

Mikell R. Scarborough, individually and
as Personal Representative of the Estate
of Mary Ross Hanahan, and Joseph Ross
Henderson,

Respondents.

IN RE: Estate of Mary Ross Hanahan

IN THE PROBATE COURT

CASE NO. 2015-ES-10-0351

PROBATE COURT
CHARLESTON COUNTY

15 SEP -2 AM 8:51

FILE

**Petition for Formal Testacy; to Try Title to Real Estate; for Removal and
Appointment of Personal Representative and/or Appointment of Special
Administrator; for Accounting by Former Attorney-in-Fact; and for Other Relief**

Petitioner Mikell M. Henderson ("Petitioner") would show unto the Court:

1. Mary Ross Hanahan ("Decedent") died testate on October 23, 2014, a resident of Charleston County, South Carolina.

2. Petitioner and Respondent Joseph Ross Henderson are the children of Decedent and the sole devisees under her Last Will and Testament, dated November 2, 1998 (the "Will").

3. Under the Will, Decedent's interest in two tracts of family land is devised to Joseph Ross Henderson, and the rest of Decedent's property is devised to Petitioner.

4. After Decedent's death, Respondent Mikell R. Scarborough ("Scarborough") informed Petitioner of the existence of a purported Codicil, dated October 19, 2012, which devises Decedent's valuable home and adjacent lot to Scarborough and names him as the Personal Representative of her Estate. Neither Decedent nor Scarborough – nor any other

family member – had ever mentioned the existence of any Codicil to Petitioner prior to Decedent's death.

5. Scarborough is Decedent's nephew, and had served as a trusted advisor to Decedent during the last two decades of Decedent's life.

6. Petitioner was designated as Decedent's Attorney-in-Fact under a 1998 power of attorney. Scarborough had nonetheless handled most of Decedent's financial and real estate matters.

7. Decedent suffered from mental illness for at least the last 40 years of her life, and her physical and mental health declined during her last several years. Decedent was diagnosed with dementia in 2005. In summer 2012, Decedent was diagnosed with lung cancer.

8. In 2009, Petitioner accepted a job which required him to relocate to southern Georgia.

9. Petitioner remained in constant contact with his mother even after his move to Georgia. Although Petitioner paid Decedent's monthly bills, Scarborough managed Decedent's investments and real estate.

10. Leading up to 2012, Petitioner expressed concern to Scarborough about Decedent continuing to drive her car, as he believed Decedent posed a safety risk to herself and others. Scarborough refused to take action. In early 2012, Petitioner and his wife intervened and stopped Decedent from continuing to drive.

11. On October 10, 2012, Scarborough arranged for his secretary and a manager of Sette VII restaurant in Mount Pleasant to witness the purported Codicil during one of

Scarborough and Decedent's regular lunches at Sette VII.

12. On information and belief, no attorney other than Scarborough supervised the execution of the Codicil.

13. In or around October of 2012, Scarborough proposed the creation of an LLC, into which Decedent's real estate could be transferred. Scarborough informed Petitioner that doing so would take advantage of certain tax benefits which would expire at the end of 2012.

14. Unbeknownst to Petitioner, Decedent purportedly executed a Durable General Power of Attorney (the "DGPOA") revoking her nomination of Petitioner as Attorney-in-Fact and naming Scarborough as her Attorney-in-Fact on December 6, 2012. No backup Attorney-in-Fact is named in the DGPOA.

15. On information and belief, Scarborough prepared the 2012 DGPOA for Decedent. The circumstances surrounding the execution of the DGPOA remain unknown to Petitioner.

16. After Decedent's death, Petitioner learned that the same DGPOA form had been used for several of Scarborough's family members who have designated him as their Attorney-in-Fact.

17. Petitioner first learned of the existence of the 2012 DGPOA in late 2014, and has never been provided an accounting of Scarborough's actions as Attorney-in-Fact for Decedent.

18. In December 2012, Scarborough facilitated the creation of MRH Family LLC and arranged for Decedent to deed most of her real estate holdings into that entity.

19. Scarborough arranged for Decedent to meet with Chris Moss, CPA, with whom Decedent had no prior relationship. Moss and Scarborough informed both Decedent and Petitioner that these transfers would avoid estate taxes.

20. Joseph H. Yates, Jr., Esquire, prepared the deeds into the LLC. Petitioner does not know whether Yates prepared the MRH Family LLC Operating Agreement or gave any legal advice related to the creation of the LLC and related transfers.

21. MRSMIE, LLC is shown as a 30% owner of MRS Family LLC, and also designated its managing member.

22. On information and belief, "MRSMIE, LLC" is an acronym for "Mikell R. Scarborough, Master-in-Equity, LLC." Scarborough is its registered agent and, on information and belief, the sole owner of MRSMIE, LLC.

23. Decedent's home and adjacent lot were not deeded into the MRH Family LLC.

24. Petitioner was unaware at the creation of the MRH Family LLC that Decedent had purportedly executed the Codicil devising the house and lot to Scarborough or, if he predeceased Decedent, to his eldest son, Mikell R. Scarborough, Jr. Petitioner was never provided with a list of the properties transferred to MRH Family LLC until after Decedent's death.

25. Both Petitioner and Decedent relied on the advice of Scarborough in entering into the transactions creating and funding the LLC.

26. After Decedent's death, Petitioner learned for the first time of the purported Codicil.

27. Responding to Petitioner's inquiries about the purported Codicil, Scarborough

asserted that he did not know who drafted the document. He informed Petitioner that Decedent appeared with the Codicil and insisted on executing it over lunch.

28. Scarborough has further acknowledged that he took possession of the Codicil after its execution, and he was unsure of whether Decedent remembered signing it thereafter.

29. In the years between 2012 and her death, Decedent continued to tell both her children that they would enjoy her home after her death. She never mentioned to either son that Scarborough would inherit the property.

30. Petitioner has made a diligent search for any indication of an attorney other than Scarborough drafting the Codicil, but has found none.

31. Petitioner is informed and believes that Scarborough drafted the Codicil which named him as a fiduciary and devised valuable real estate to him.

32. Scarborough presented the Will and Codicil for probate in the Charleston County Probate Court in March 2015, and he was appointed as Personal Representative in Case No. 2015-ES-10-0351.

33. Responding to Petitioner's concerns about the validity of the Codicil, Scarborough represented to Petitioner that a challenge to the Codicil would have unfavorable tax consequences and/or expose the Estate to additional liability with regard to certain litigation which was pending prior to Decedent's death.

**For a First Cause of Action
(Formal Testacy – Lack of Testamentary Capacity)**

34. All allegations above are incorporated where relevant.

35. On or about October 10, 2012, Decedent lacked testamentary capacity.

36. This cause of action is a "will contest," and this Court has exclusive jurisdiction to hear and decide the matter under S.C. Code Ann. §62-1-302(a)(1).

37. Petitioner is informed and believed that the Codicil of that date was not validly executed and is void as a result of Decedent's lack of capacity, and Plaintiff is entitled to an Order of this Court revoking the informal probate of the Codicil and confirming that the 1998 Will remains in full force and effect.

**For a Second Cause of Action
(Formal Testacy – Undue Influence)**

38. All allegations above are incorporated where relevant.

39. Petitioner is informed and believes that on or about October 10, 2012, Decedent was susceptible to undue influence due to her declining physical health; mental illness; dementia and/or her dependence on others for care.

40. Petitioner is informed and believes that Scarborough was then in a confidential relationship with Decedent, having handled her financial affairs for many years.

41. Petitioner is informed and believes that Scarborough brought undue influence to bear on Decedent for the purpose of coercing Decedent to execute the Codicil, which would favor Scarborough over Decedent's children.

42. Petitioner is informed and believes that the purported Codicil was the result of undue influence, was not validly executed and is void. Petitioner is entitled to a judgment of the Court to that effect.

**For a Third Cause of Action
(Action to Try Title to Real Estate)**

43. All allegations above are incorporated where relevant.

44. The creation and funding of the MRH Family LLC was organized by Scarborough at a time when Decedent did not have capacity to understand the transactions involved and/or was subject to undue influence in entering into said transactions.

45. Further, Scarborough's statements after the creation of the LLC indicate that it may have also been created and funded with the intent to remove assets from Decedent's Estate and divert those assets to Scarborough and/or his immediate family members.

46. Because the creation of the LLC and the deeds transferring Decedent's real estate into the LLC occurred at a time when Decedent lacked capacity and/or was subject to undue influence by Scarborough, both the creation and the funding of the LLC are void *ab initio*, and the Estate is the rightful owner of all property purportedly transferred to the LLC.

47. This Court has jurisdiction to determine title to property in which an Estate may have an interest, pursuant to S.C. Code Ann. §62-1-302(a)(1).

48. For these reasons, Petitioner is entitled to an Order of this Court confirming that the Estate of Mary Ross Hanahan is the rightful owner of all real estate purportedly deeded to the MRH Family LLC, and quieting title thereto.

**For a Fourth Cause of Action
(Removal of Personal Representative)**

49. All allegations above are incorporated where relevant.

50. Scarborough serves as Personal Representative by virtue of his alleged nomination in the Codicil.

51. Further, Scarborough has secured this post for himself through the improper acts set out above.

52. On information and belief, Scarborough will use the substantial assets of the Estate to defend his personal interest in overcoming the challenge to the Codicil herein.

53. This Court has exclusive original jurisdiction over matters involving removal and appointment of Personal Representatives, pursuant to S.C. Code Ann. §62-1-302(a)(1).

54. Petitioner is entitled to an Order removing Scarborough pursuant to S.C. Code Ann. §62-3-611, as removal of Scarborough is in the best interest of the Estate.

55. Alternatively, Petitioner is entitled to an Order removing Scarborough as Personal Representative upon this Court's finding that the Codicil is invalid. As set out in S.C. Code Ann. §62-3-612, the change of testacy status alone will require termination of Scarborough's appointment.

**For a Fifth Cause of Action
(Appointment of Personal Representative)**

56. All allegations above are incorporated where relevant.

57. Petitioner is designated as the primary Personal Representative in Decedent's valid 1998 Will, and he is the primary beneficiary of Decedent's Estate.

58. Upon removal of Scarborough as Personal Representative, Petitioner has first priority to serve under S.C. Code Ann. §62-3-203, and Petitioner respectfully petitions this Court to appoint him as Personal Representative.

**For a Sixth Cause of Action
(Appointment of Special Administrator)**

59. All allegations above are incorporated where relevant.

60. As outlined above, Scarborough has an irreconcilable conflict of interest in acting for the Estate in this proceeding. Scarborough, individually, is the sole beneficiary of

the changes to Decedent's estate plan which were allegedly made in the Codicil.

61. Scarborough is also the claimed owner of 30% of MRH Family LLC, which claims title to the majority of Decedent's substantial real estate holdings. The creation and funding of that LLC are challenged herein, and Scarborough has a conflict in acting both as the Personal Representative and the managing member of MRH Family LLC.

62. For that reason, a neutral Special Administrator should immediately be appointed to administer the Estate, preserve and protect its assets, and act for the Estate in this proceeding.

63. Pursuant to S.C. Code Ann. §62-3-614(2), Scarborough, as Personal Representative cannot and should not act in this proceeding, where he has an irreconcilable conflict of interest. Petitioner asks this Court to immediately appoint a Special Administrator to administer the Estate and participate in this proceeding pending its final outcome.

**For a Seventh Cause of Action
(Accounting by Former Attorney-in-Fact)**

64. All allegations above are incorporated where relevant.

65. Scarborough acted as Attorney-in-Fact for Decedent from December 6, 2012 through her death nearly two years later.

66. No accounting has been rendered by Scarborough for his acts during that time or the lengthy preceding period during which Scarborough acted as Decedent's agent in various transactions, and Petitioner, as the primary beneficiary of the Estate, is entitled to an accounting of all transactions by Scarborough during his service as agent and/or Attorney-in-Fact.

67. Although the Durable General Power of Attorney was purportedly executed during a time when Decedent lacked contractual capacity and/or was subject to undue influence, Scarborough nonetheless acted as Attorney-in-Fact. Regardless of the validity of the DGPOA, Scarborough must account for his actions as Decedent's agent.

68. Pursuant to S.C. Code Ann. §62-5-503, this Court has jurisdiction over subject matter related to the exercise of authority under a Durable General Power of Attorney.

69. Petitioner is entitled to an Order from this Court requiring Scarborough to account for his acts and agent and/or Attorney-in-Fact for Decedent from December 6, 2012 through her date of death.

**For an Eighth Cause of Action
(Attorneys' Fees)**

70. All allegations above are incorporated where relevant.

71. Petitioner has been forced to bring this action to protect his rights in his mother's Estate and property as a result of Scarborough's secret procurement of the purported Codicil.

72. Scarborough has secured for himself the office of Personal Representative, and has taken no action on behalf of the Estate to confirm title to substantial real estate holdings purportedly transferred to the MRH Family LLC.

73. Because issues related to the validity of the Codicil and the true ownership of substantial assets must be addressed in order to properly administer this Estate, Petitioner is entitled to an award of his reasonable attorneys' fees and costs from Scarborough, individually, or, alternatively, from the Estate of Mary Ross Hanahan.

74. Pursuant to S.C. Code Ann. §62-1-111, this Court has the authority to charge the

costs of this action, including attorneys' fees, to Scarborough or to the Estate, and
Petitioner is entitled to an Order granting such an award.

Prayer

WHEREFORE, Petitioner prays that the Court inquire into the matter and issue its
Order as follows:

1. Declaring the purported Codicil dated October 10, 2012 void as a result of
Decedent's lack of testamentary capacity and/or as a result of Scarborough's procurement
of the Codicil through undue influence;
2. Declaring that the MRH Family LLC and the deeds purporting to transfer property
into the MRH Family LLC are void *ab initio* as a result of Decedent's lack of contractual
capacity and/or as a result of Scarborough's procurement of same through undue
influence;
3. Directing Scarborough to account for his actions as Attorney-in-Fact and/or
agent for Decedent;
4. Appointing a neutral Special Administrator to administer the Estate during the
pendency of this action;
5. Removing Scarborough for cause and/or as a result of the voiding of the Codicil
which nominates him;
6. Appointing Petitioner as the permanent Personal Representative of the Estate of
Mary Ross Hanahan;
7. Taxing the costs of this action, including reasonable attorneys' fees, to
Scarborough, individually, or, alternatively, to the Estate of Mary Ross Hanahan; and

8. Granting such other relief as the Court shall deem just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Michael Brackett", with a long horizontal line extending to the right.

B. Michael Brackett
Adam T. Silvernail
Moses & Brackett, PC
P.O. Box 100261
Columbia, SC 29202
803.461.2328 (T)
803.461.2309 (F)
asilvernail@mkb-law.com

*Attorneys for Petitioner Mikell M.
Henderson*

August 31, 2015

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO. 2015-ES-10-0351

MIKELL M. HENDERSON,
Petitioner,

vs.

MIKELL R. SCARBOROUGH,
Individually and as Personal
Representative of the Estate of Mary
Ross Hanahan, and Joseph Ross
Henderson,

Respondents.

In Re: Estate of:
Mary Ross Hanahan

**ANSWER of MIKELL R. SCARBOROUGH
Individually
and COUNTERCLAIM**

15 OCT 30 AM 9:16
CLERK OF COURT
CHARLESTON COUNTY

Respondent Mikell R. Scarborough, Individually, by and through his undersigned counsel, answering the Summons and Petition for Formal Testacy; to Try Title to Real Estate; for Removal and Appointment of Personal Representative and/or Appointment of Special Administrator; for Account by Former Attorney-in-Fact; and for Other Relief, would state and allege as follows:

FOR A FIRST DEFENSE

1. Every allegation not hereinafter specifically admitted, qualified, or explained is hereby specifically deemed denied, and Respondent demands strict proof thereof.
2. Respondent admits the allegations contained in Paragraphs 1, 2, and 3 of the Petition.
3. With regard to the allegations contained in Paragraph 4 of the Petition, Respondent admits the allegations of the first sentence of said Paragraph but does not have sufficient

information regarding any communications that the Decedent may have had with Petitioner regarding the Codicil and therefore denies the same.

4. Respondent admits the allegations contained in Paragraph 5 of the Petition.
5. With regard to the allegations contained in Paragraph 6 of the Petition, Respondent is without sufficient information regarding a 1998 Power of Attorney executed by Decedent by which Petitioner may have been designated as her agent and thus denies the same. The remaining allegations of said Paragraph are admitted.
6. With regard to the allegations contained in Paragraph 7 of the Petition, Respondent would state that he is not a physician and is thus not qualified to render an opinion as to Decedent's alleged "mental illness" and/or dementia and therefore is without sufficient information to admit or deny the same. Respondent admits that the Decedent was diagnosed with lung cancer in September 2013 but that she refused treatment. Respondent would further state that Hospice was contacted and began rendering care approximately 6 weeks prior to Decedent's death.
7. With regard to the allegations contained in Paragraph 8 of the Petition, Respondent is without sufficient information regarding Petitioner's job location requirements but was aware he moved to Georgia. The remainder of said Paragraph requires no response.
8. With regard to the allegations contained in Paragraph 9 of the Petition, Respondent was aware of telephone contact between Petitioner and Decedent but does not have sufficient information regarding the frequency of contact between them nor sufficient information regarding the extent or frequency of in person or physical contact. Further answering said Paragraph, over some period of time, the Decedent expressed to Respondent that she was upset with Petitioner and also expressed to Respondent feelings of abandonment by

Petitioner due to Petitioner's failure to make personal visits to Decedent as frequently as she would like.

9. With regard to the allegations contained in Paragraph 10 of the Petition, Respondent admits that concerns were raised by Petitioner regarding the Decedent continuing to drive her car but denies that Respondent was required to take any action. Respondent denies the remaining allegations of said Paragraph.
10. With regard to the allegations contained in Paragraph 11 of the Petition, Respondent admits that he and the Decedent had regular lunches at Sette VII restaurant. Respondent denies that he made any particular arrangements regarding execution of the Codicil by the witnesses.
11. With regard to the allegations contained in Paragraph 12 of the Petition, Respondent admits that no attorney was present for the execution but denies that he supervised the execution of the Codicil.
12. With regard to the allegations contained in Paragraph 13 of the Petition, Respondent would state that in the late fall of 2012, the parties had a discussion regarding creation of the LLC and possible tax benefits.
13. With regard to the allegations contained in Paragraph 14 of the Petition, Respondent would assert that the terms and scope of the Durable General Power of Attorney executed by Decedent on December 6, 2012, are as set forth in the document itself. Respondent denies the remaining allegations of said Paragraph.
14. With regard to the allegations contained in Paragraph 15 of the Petition, Respondent would state that he assisted in the preparation of the 2012 Durable General Power of Attorney. The remaining allegations do not require a response.

15. With regard to the allegations contained in Paragraph 16 of the Petition, said allegations do not require a response.
16. With regard to the allegations contained in Paragraph 17 of the Petition, Respondent has no knowledge regarding when Petitioner first learned of the 2012 Durable General Power of Attorney but would state that Petitioner was furnished copies and had access to Decedent's various bank accounts and financial investments on a regular basis prior to Decedent's death, however, Petitioner did not raise any questions or concerns to Respondent nor did Petitioner previously seek an Accounting.
17. With regard to the allegations contained in Paragraph 18 of the Petition, Respondent admits that he suggested to both Petitioner and Decedent to create the MRH Family LLC but denies the remainder of said allegations.
18. With regard to the allegations contained in Paragraph 19 of the Petition, Respondent admits that he introduced Decedent to Chris Moss, CPA. Respondent denies that statements were made regarding avoidance of estate taxes but that discussion included reduction of estate taxes.
19. With regard to the allegations contained in Paragraph 20 of the Petition, Respondent admits that Joseph H. Yates, Jr., Esq. did prepare certain deeds for the Decedent and Decedent signed those deeds freely and voluntarily. The remaining allegations do not require a response.
20. Respondent admits the allegations contained in Paragraph 21 of the Petition and would further allege that Petitioner is a 68% owner of the MRH Family LLC and has been since its inception in 2012.

21. With regard to the allegations contained in Paragraph 22 of the Petition, Respondent admits the title is an acronym but denies the remaining allegations of said Paragraph.
22. Respondent admits the allegations contained in Paragraph 23 of the Petition.
23. With regard to the allegations contained in Paragraph 24 of the Petition, Respondent is without sufficient information regarding said allegations and therefore denies the same.
24. With regard to the allegations contained in Paragraph 25 of the Petition, Respondent is without sufficient information regarding whose advice that Petitioner and Decedent may have relied upon with regard to the creating and funding of the LLC and would further allege that both Petitioner and Decedent had sufficient opportunity to seek independent advice of professionals, including accountants and attorneys, regarding any transactions relating to the creating and funding of the MRH Family LLC.
25. Respondent admits the allegations contained in Paragraph 26 of the Petition upon information and belief.
26. Respondent admits the allegations contained in Paragraph 27 of the Petition.
27. With regard to the allegations contained in Paragraph 28 of the Petition, Respondent admits that he took possession of the Codicil after its execution but denies the remaining allegations of said Paragraph.
28. With regard to the allegations contained in Paragraphs 29 and 30 of the Petition, Respondent is without sufficient information regarding said allegations and therefore denies the same.
29. Respondent denies the allegations contained in Paragraph 31 of the Petition.
30. Respondent admits the allegations contained in Paragraph 32.
31. Respondent denies the allegations in Paragraph 33 of the Petition.

32. Answering the allegations of Paragraph 34, Respondent craves reference to Paragraphs 1-31 herein as if set forth verbatim.
33. Answering the allegations of Paragraphs 35, 36 and 37, **First Cause of Action (Formal Testacy – Lack of Testamentary Capacity)**, Respondent craves reference to that Answer and Counterclaim submitted by Respondent as Personal Representative of the Estate of Mary Ross Henderson.
34. Answering the allegations of Paragraph 38, Respondent craves reference to Paragraphs 1-33 herein as if set forth verbatim.
35. Answering the allegations of Paragraphs 39, 40, 41, and 42, **Second Cause of Action (Formal Testacy – Undue Influence)**, Respondent would admit that he enjoyed a confidential relationship with the Decedent for many years and craves reference to that Answer and Counterclaim submitted by Respondent as Personal Representative of the Estate of Mary Ross Henderson.
36. Answering the allegations of Paragraph 43, Respondent craves reference to Paragraphs 1-35 herein as if set forth verbatim.
37. Answering the allegations of Paragraphs 44, 45, 46, 47, and 48, **Third Cause of Action (Action to Try Title to Real Estate)**, Respondent admits that the Probate Court has exclusive original jurisdiction of certain matters related to estates of decedents, under S.C. Code Ann. §62-1-302(a) (1), however, Respondent asserts that the circuit court has concurrent jurisdiction to resolve real estate matters including partition, quiet title, and actions to try title concerning property in which the estate of a decedent has an interest, thus such matter should properly be in the circuit court. All other allegations in said Paragraphs are denied.

38. Further answering said Paragraphs, Respondent would assert that while Petitioner is challenging the conveyance by Decedent of certain real estate into the MRH Family LLC, Petitioner is not challenging conveyances by Decedent during the same time period to her other son, Respondent Joseph Ross Henderson.
39. Answering the allegations of Paragraph 49, Respondent craves reference to Paragraphs 1-38 herein as if set forth verbatim.
40. Answering the allegations of Paragraphs 50, 51, 52, 53, 54, and 55, **Fourth Cause of Action (Removal of Personal Representative)**, Respondent craves reference to that Answer and Counterclaim submitted by Respondent as Personal Representative of the Estate of Mary Ross Henderson.
41. Answering the allegations of Paragraph 56, Respondent craves reference to Paragraphs 1-40 herein as if set forth verbatim.
42. Answering **Fifth Cause of Action (Appointment of Personal Representative)**. Respondent admits the allegations of Paragraph 57 and such portion of Paragraph 58 that if Respondent is removed as Personal Representative that Petitioner has priority to serve as Personal Representative. Respondent denies the remaining allegations of said Paragraph 58 and further craves reference to that Answer and Counterclaim submitted by Respondent as Personal Representative of the Estate of Mary Ross Henderson.
43. Answering the allegations of Paragraph 59, Respondent craves reference to Paragraphs 1-42 herein as if set forth verbatim.
44. With regard to the allegations of Paragraph 60, 61, 62 and 63, **Sixth Cause of Action (Appointment of Special Administrator)**, Respondent craves reference to that Answer

and Counterclaim submitted by Respondent as Personal Representative of the Estate of Mary Ross Henderson.

45. Answering the allegations of Paragraph 64, Respondent craves reference to Paragraphs 1-44 herein as if set forth verbatim.

46. With regard to Paragraphs 65-69, the **Seventh Cause of Action (Accounting by Former Attorney-in-fact)**, Respondent would allege that under S.C. Code Ann. §62-5-503, that the circuit court has concurrent jurisdiction of this matter, along with the probate court, and that accountings of financial matters taken pursuant to a Durable General Power of Attorney should properly be in the circuit court.

47. Respondent admits the allegations of Paragraph 65 of the Petition.

48. Answering Paragraph 66 of the Petition, Respondent admits that no accounting has been rendered by him during his tenure as Decedent's agent and that there were no conveyances of real property made by him under the Durable General Power of Attorney. Further, any accounting to be rendered by Respondent should be limited in scope to the time period of December 6, 2012 through Decedent's date of death.

49. Respondent denies the allegations in Paragraph 67.

50. In response to the allegations of Paragraph 68, Respondent craves reference to Paragraph 46 herein.

51. In response to the allegations of Paragraph 69, Respondent craves reference to Paragraph 48 herein.

52. Answering the allegations of Paragraph 70, Respondent craves reference to Paragraphs 1-51 herein as if set forth verbatim.

53. With regard to the allegations of Paragraph 71, 72, 73 and 74 for the **Eight Cause of Action (Attorney's Fees)**, Respondent craves reference to that Answer and Counterclaim submitted by Respondent as Personal Representative of the Estate of Mary Ross Henderson.

FOR A SECOND DEFENSE AND COUNTERCLAIM
(Request for Attorney's Fees)

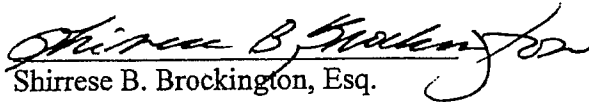
54. Respondent craves reference to Paragraphs 1-53 as if set forth verbatim herein.

55. In further response to Petitioner's Petition and by way of Counterclaim, Respondent alleges that under S.C. Code Ann. §62-1-111, that in a formal proceeding, the court, as justice and equity may require, may award costs and expenses including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. Respondent therefore seeks that payment of all attorney's fees and costs incurred by him personally for defense of this action from the Petitioner or from the estate of Mary Ross Hanahan.

WHEREFORE, having fully answered the Petition herein, Respondent prays that

- 1) the same be dismissed in its entirety; or in the alternative,
- 2) that the **Third Cause of Action (Action to Try Title to Real Estate)** and the **Seventh Cause of Action (Accounting by Former Attorney-in-Fact)** be dismissed from the probate court due to concurrent jurisdiction with the circuit court and that the same be removed to circuit court;

- 3) that costs and attorney's fees be awarded to Respondent personally from the Petitioner pursuant to S.C. Code Ann § 62-1-111 or from the Estate of Mary Ross Hanahan pursuant to S.C. Code Ann § 62-3-720;
- 4) and for such further legal and equitable relief as this Court may deem just and proper.


Shirrese B. Brockington, Esq.
P.O. Box 31312
Charleston, SC 29417
(843) 571-5000

Attorney for Respondent Mikell Scarborough
Individually

Charleston, South Carolina

October 20th, 2015

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO. 2015-ES-10-0351

MIKELL M. HENDERSON,
Petitioner,

vs.

MIKELL R. SCARBOROUGH,
Individually and as Personal
Representative of the Estate of Mary
Ross Hanahan, and Joseph Ross
Henderson,
Respondents.

In Re: Estate of:
Mary Ross Hanahan

**CERTIFICATE OF SERVICE of
ANSWER of MIKELL R. SCARBOROUGH
Individually
and COUNTERCLAIM**

I hereby certify that on the 30th day of October, 2015, I mailed, with first class postage affixed, or mailed by certified mail, return receipt requested, with first class postage affixed, or delivered by hand, the *Answer of Mikell R. Scarborough, Individually and Counterclaim* to the below listed:

R. Michael Brackett, Esq.
Adam T. Silvermail, Esq.
Attorneys for Petitioner

Moses & Brackett, PC
1333 Main Street, Ste. 260
Columbia, SC 29202-3261

Joseph S. Mendelsohn, Esq.
*Attorney for Mikell R. Scarborough, Personal
Representative for Estate of Mary Ross Hanahan,
Respondent*

P.O. Box 250, Charleston, SC 29402


SHIRRESE B. BROCKINGTON, ESQ.
Attorney for Respondent Mikell R. Scarborough,
Individually

Charleston, South Carolina
Dated: OCT 30, 2015

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO. 2015-ES-10-0351

MIKELL M. HENDERSON,)
Petitioner,)

vs.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)
Respondents.)

In Re: Estate of:)
Mary Ross Hanahan)

**ANSWER of MIKELL R. SCARBOROUGH
as Personal Representative for the Estate
of Mary Ross Hanahan
and COUNTERCLAIM**

FILED
15 OCT 30 PM 3:01
CLERK OF COURT
CHARLESTON COUNTY

Respondent Mikell R. Scarborough, as Personal Representative of the Estate of Mary Ross Hanahan, by and through his undersigned counsel, answering the Summons and Petition for Formal Testacy; to Try Title to Real Estate; for Removal and Appointment of Personal Representative and/or Appointment of Special Administrator; for Account by Former Attorney-in-Fact; and for Other Relief, would state and allege as follows:

FOR A FIRST DEFENSE

1. Every allegation not hereinafter specifically admitted, qualified, or explained is hereby specifically deemed denied, and Respondent demands strict proof thereof.
2. Respondent admits the allegations contained in Paragraphs 1, 2, and 3 of the Petition.
3. With regard to the allegations contained in Paragraph 4 of the Petition, Respondent admits the allegations of the first sentence of said Paragraph but does not have sufficient

information regarding any communications that the Decedent may have had with Petitioner regarding the Codicil and therefore denies the same.

4. Respondent admits the allegations contained in Paragraph 5 of the Petition.
5. With regard to the allegations contained in Paragraph 6 of the Petition, Respondent is without sufficient information regarding a 1998 Power of Attorney executed by Decedent by which Petitioner may have been designated as her agent and thus denies the same.

The remaining allegations of said Paragraph are admitted.

6. With regard to the allegations contained in Paragraph 7 of the Petition, Respondent would state that he is not a physician and is thus not qualified to render an opinion as to Decedent's alleged "mental illness" and/or dementia and therefore is without sufficient information to admit or deny the same. Respondent admits that the Decedent was diagnosed with lung cancer in September 2013 but that she refused treatment. Respondent would further state that Hospice was contacted and began rendering care approximately 6 weeks prior to Decedent's death.

7. With regard to the allegations contained in Paragraph 8 of the Petition, Respondent is without sufficient information regarding Petitioner's job location requirements but was aware he moved to Georgia. The remainder of said Paragraph requires no response.
8. With regard to the allegations contained in Paragraph 9 of the Petition, Respondent was aware of telephone contact between Petitioner and Decedent but does not have sufficient information regarding the frequency of contact between them nor sufficient information regarding the extent or frequency of in person or physical contact. Further answering said Paragraph, over some period of time, the Decedent expressed to Respondent that she was upset with Petitioner and also expressed to Respondent feelings of abandonment by

Petitioner due to Petitioner's failure to make personal visits to Decedent as frequently as she would like.

9. With regard to the allegations contained in Paragraph 10 of the Petition, Respondent admits that concerns were raised by Petitioner regarding the Decedent continuing to drive her car but denies that Respondent was required to take any action. Respondent denies the remaining allegations of said Paragraph.
10. With regard to the allegations contained in Paragraph 11 of the Petition, Respondent admits that he and the Decedent had regular lunches at Sette VII restaurant. Respondent denies that he made any particular arrangements regarding execution of the Codicil by the witnesses.
11. With regard to the allegations contained in Paragraph 12 of the Petition, Respondent admits that no attorney was present for the execution but denies that he supervised the execution of the Codicil.
12. With regard to the allegations contained in Paragraph 13 of the Petition, Respondent would state that in the late fall of 2012, the parties had a discussion regarding creation of the LLC and possible tax benefits.
13. With regard to the allegations contained in Paragraph 14 of the Petition, Respondent would assert that the terms and scope of the Durable General Power of Attorney executed by Decedent on December 6, 2012, are as set forth in the document itself. Respondent denies the remaining allegations of said Paragraph.
14. With regard to the allegations contained in Paragraph 15 of the Petition, Respondent admits that he assisted in the preparation of the 2012 Durable General Power of Attorney. The remaining allegations do not require a response.

15. With regard to the allegations contained in Paragraph 16 of the Petition, said allegations do not require a response.
16. With regard to the allegations contained in Paragraph 17 of the Petition, Respondent has no knowledge regarding when Petitioner first learned of the 2012 Durable General Power of Attorney but would state that Petitioner was furnished copies and had access to Decedent's various bank accounts and financial investments on a regular basis prior to Decedent's death, however, Petitioner did not raise any questions or concerns to Respondent nor did Petitioner previously seek an Accounting.
17. With regard to the allegations contained in Paragraph 18 of the Petition, Respondent admits that he suggested to both Petitioner and Decedent to create the MRH Family LLC but denies the remainder of said allegations.
18. With regard to the allegations contained in Paragraph 19 of the Petition, Respondent admits that he introduced Decedent to Chris Moss, CPA. Respondent denies that statements were made regarding avoidance of estate taxes but that discussion included reduction of estate taxes.
19. With regard to the allegations contained in Paragraph 20 of the Petition, Respondent admits that Joseph H. Yates, Jr., Esq. did prepare certain deeds for the Decedent and Decedent signed those deeds freely and voluntarily. The remaining allegations do not require a response.
20. Respondent admits the allegations contained in Paragraph 21 of the Petition and would further allege that Petitioner is a 68% owner of the MRH Family LLC and has been since its inception in 2012.

21. With regard to the allegations contained in Paragraph 22 of the Petition, Respondent admits the title is an acronym but denies the remaining allegations of said Paragraph.
22. Respondent admits the allegations contained in Paragraph 23 of the Petition.
23. With regard to the allegations contained in Paragraph 24 of the Petition, Respondent is without sufficient information regarding said allegations and therefore denies the same.
24. With regard to the allegations contained in Paragraph 25 of the Petition, Respondent is without sufficient information regarding whose advice that Petitioner and Decedent may have relied upon with regard to the creating and funding of the LLC and would further allege that both Petitioner and Decedent had sufficient opportunity to seek independent advice of professionals, including accountants and attorneys, regarding any transactions relating to the creating and funding of the MRH Family LLC.
25. Respondent admits the allegations contained in Paragraph 26 of the Petition upon information and belief.
26. Respondent admits the allegations contained in Paragraph 27 of the Petition.
27. With regard to the allegations contained in Paragraph 28 of the Petition, Respondent admits that he took possession of the Codicil after its execution but denies the remaining allegations of said Paragraph.
28. With regard to the allegations contained in Paragraphs 29 and 30 of the Petition, Respondent is without sufficient information regarding said allegations and therefore denies the same.
29. Respondent denies the allegations contained in Paragraph 31 of the Petition.
30. Respondent admits the allegations contained in Paragraph 32 of the Petition.
31. Respondent denies the allegations in Paragraph 33 of the Petition.

32. Answering the allegations of Paragraph 34, Respondent craves reference to Paragraphs 1-31 herein as if set forth verbatim.
33. Answering the allegations of Paragraphs 35, 36 and 37, **First Cause of Action (Formal Testacy – Lack of Testamentary Capacity)**, Respondent admits that the Probate Court has exclusive original jurisdiction of contest of wills, however, under S.C. Code Ann. §62-1-302(d)(1), that notwithstanding the exclusive jurisdiction of the probate court, that matters involving formal proceedings for probate of wills and construction of wills can be removed to circuit court by motion of a party, or by the court on its own motion, and the circuit court shall proceed upon the matter de novo. Respondent denies all other allegations of said Paragraphs.
34. Answering the allegations of Paragraph 38, Respondent craves reference to Paragraphs 1-33 herein as if set forth verbatim.
35. Answering the allegations of Paragraphs 39, 40, 41, and 42, **Second Cause of Action (Formal Testacy – Undue Influence)**, Respondent would admit that he enjoyed a confidential relationship with the Decedent for many years but denies all other allegations.
36. Answering the allegations of Paragraph 43, Respondent craves reference to Paragraphs 1-35 herein as if set forth verbatim.
37. Answering the allegations of Paragraphs 44, 45, 46, 47, and 48, **Third Cause of Action (Action to Try Title to Real Estate)**, Respondent admits that the Probate Court has exclusive original jurisdiction of certain matters related to estates of decedents, under S.C. Code Ann. §62-1-302(a) (1), however, Respondent asserts that the circuit court has concurrent jurisdiction to resolve real estate matters including partition, quiet title, and

actions to try title concerning property in which the estate of a decedent has an interest, thus such matter should properly be in the circuit court. All other allegations in said Paragraphs are denied.

38. Further answering said Paragraphs, Respondent would assert that while Petitioner is challenging the conveyance by Decedent of certain real estate into the MRH Family LLC, Petitioner is not challenging conveyances by Decedent during the same time period to her other son, Respondent Joseph Ross Henderson.
39. Answering the allegations of Paragraph 49, Respondent craves reference to Paragraphs 1-38 herein as if set forth verbatim.
40. Answering the allegations of Paragraphs 50, 51, 52, 53, 54, and 55, **Fourth Cause of Action (Removal of Personal Representative)**, Respondent admits that he is serving as Personal Representative of Decedent's estate by proper appointment of the court and that removal and appointment of personal representative is governed by S.C. Code Ann. §62-1-302(a)(1). All other allegations in said Paragraphs are denied.
41. Answering the allegations of Paragraph 56, Respondent craves reference to Paragraphs 1-40 herein as if set forth verbatim.
42. Answering **Fifth Cause of Action (Appointment of Personal Representative)**. Respondent admits the allegations of Paragraph 57 and such portion of Paragraph 58 that if Respondent is removed as Personal Representative that Petitioner has priority to serve as Personal Representative. All other allegations are denied.
43. Answering the allegations of Paragraph 59, Respondent craves reference to Paragraphs 1-42 herein as if set forth verbatim.

44. Respondent denies the allegations of Paragraph 60, 61, 62 and 63, **Sixth Cause of Action (Appointment of Special Administrator)**.
45. Answering the allegations of Paragraph 64, Respondent craves reference to Paragraphs 1-44 herein as if set forth verbatim.
46. With regard to Paragraphs 65-69, the **Seventh Cause of Action (Accounting by Former Attorney-in-fact)**, Respondent would allege that under S.C. Code Ann. §62-5-503, that the circuit court has concurrent jurisdiction of this matter, along with the probate court, and that accountings of financial matters taken pursuant to a Durable General Power of Attorney should properly be in the circuit court.
47. Respondent admits the allegations of Paragraph 65 of the Petition.
48. Answering Paragraph 66 of the Petition, Respondent admits that no accounting has been rendered by him during his tenure as Decedent's agent and that there were no conveyances of real property made by him under the Durable General Power of Attorney. Further, any accounting to be rendered by Respondent should be limited in scope to the time period of December 6, 2012 through Decedent's date of death.
49. Respondent denies the allegations in Paragraph 67.
50. In response to the allegations of Paragraph 68, Respondent craves reference to Paragraph 46 herein.
51. In response to the allegations of Paragraph 69, Respondent craves reference to Paragraph 48 herein.
52. Answering the allegations of Paragraph 70, Respondent craves reference to Paragraphs 1-51 herein as if set forth verbatim.

53. Respondent denies the allegations of Paragraph 71, 72, 73 and 74 for the **Eight Cause of Action (Attorney's Fees)**.

FOR A SECOND DEFENSE AND COUNTERCLAIM
(Request for Attorney's Fees)

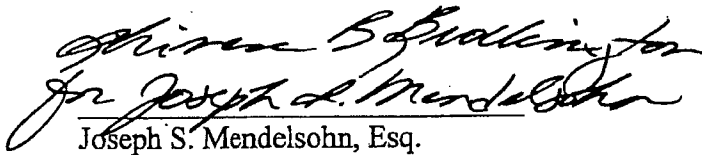
54. Respondent craves reference to Paragraphs 1-53 as if set forth verbatim herein.

55. In further response to Petitioner's Petition and by way of Counterclaim, Respondent alleges that under S.C. Code Ann. §62-3-720, that if a personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred. Respondent therefore seeks that payment of all attorney's fees and costs incurred by him as Personal Representative for defense of this action from the estate of Mary Ross Hanahan.

WHEREFORE, having fully answered the Petition herein, Respondent prays that

- 1) the same be dismissed in its entirety; or in the alternative,
- 2) that the **Third Cause of Action (Action to Try Title to Real Estate)** and the **Seventh Cause of Action (Accounting by Former Attorney-in-Fact)** be dismissed from the probate court due to concurrent jurisdiction with the circuit court and that the same be removed to circuit court;
- 3) that costs and attorney's fees be awarded to Respondent as Personal Representative from the Estate of Mary Ross Hanahan pursuant to S.C. Code Ann § 62-3-720;

4) and for such further legal and equitable relief as this Court may deem just and proper.


Joseph S. Mendelsohn, Esq.

P.O. Box 250

Charleston, SC 29402

(843) 577-7210

Attorney for Respondent Mikell Scarborough
as Personal Representative for the
Estate of Mary Ross Hanahan

Charleston, South Carolina

October 30, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT

CASE NO. 2015-ES-10-0351

FILED
15 OCT 30 PM 3:01
CLERK OF COURT
CHARLESTON COUNTY

MIKELL M. HENDERSON,)
)
Petitioner,)

vs.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)

Respondents.)

In Re: Estate of:)
Mary Ross Hanahan)

**CERTIFICATE OF SERVICE of
ANSWER of MIKELL R. SCARBOROUGH
as Personal Representative of the Estate of
Mary Ross Hanahan
and COUNTERCLAIM**

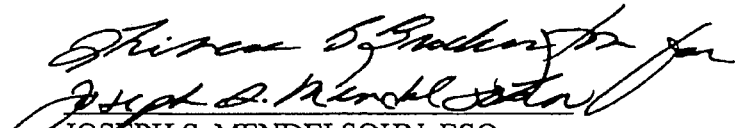
I hereby certify that on the 30th day of Oct, 2015, I mailed, with first class postage affixed, or mailed by certified mail, return receipt requested, with first class postage affixed, or delivered by hand, the *Answer of Mikell R. Scarborough, as Personal Representative of the Estate of Mary Ross Hanahan and Counterclaim* to the below listed:

R. Michael Brackett, Esq.
Adam T. Silvernail, Esq.
Attorneys for Petitioner

Moses & Brackett, PC
1333 Main Street, Ste. 260
Columbia, SC 29202-3261

Shirrese B. Brockington, Esq.
*Attorney for Mikell R. Scarborough, Individually
Respondent*

764 St. Andrews Blvd., Charleston, SC 29407


JOSEPH S. MENDELSON, ESQ.
Attorney for Respondent Mikell R. Scarborough, as
Personal Representative for Estate of Mary Ross
Hanahan

Charleston, South Carolina
Dated: Oct 30, 2015

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF CHARLESTON) CASE NO. 2015-CP-10-6502

MIKELL M. HENDERSON,)

Petitioner,)

vs.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)

Respondents.)

In Re: Estate of:)
Mary Ross Hanahan)

NOTICE OF MOTION AND
MOTION FOR
SUMMARY JUDGMENT

FILED
2016 SEP 13 PM 2:17
JULIE J. ARMSTRONG
CLERK OF COURT

TO: **ADAM SILVERNAIL, ESQ. AND MICHAEL BRACKETT, ESQ.,**
Attorneys for Petitioner

PLEASE TAKE NOTICE that Respondent Mikell R. Scarborough, Individually, and as Personal Representative for the Estate of Mary Ross Hanahan by and through his undersigned counsel, will move before the Court of Common Pleas of the Ninth Judicial Circuit at Charleston, South Carolina, on such day and at such time as the Court may appoint, more than ten (10) days after the service hereof, for an Order in the above-captioned action for summary judgment in Respondent's favor under the provisions of Rule 56, *South Carolina Rules of Civil Procedure* on the grounds that there are no genuine issues of material fact and Respondent is entitled to judgment as a matter of law.

Petitioner's Petition states eight (8) causes of action including: 1) Formal Testacy - Lack of Testamentary Capacity; 2) Formal Testacy - Undue Influence; and 3) Action to Try Title to Real Estate. The Lack of Testamentary claim alleges that the Decedent did not have sufficient mental capacity to execute the Codicil dated October 10 (sp), 2012". The Undue Influence claim alleges that the Decedent was susceptible to undue influence due to her declining physical health, mental illness, dementia and/or her dependence on others for care. Further, that Respondent enjoyed a confidential relationship with the Decedent due to handling the financial affairs of the Decedent for many years, and thus exerted his influence to have her execute the Codicil dated October 19, 2012 in his favor.

In the Action to Try Title to Real Estate claim, the Petitioner alleges that when the MRH Family LLC was organized in December 2012, that the Decedent did not have the capacity to understand the transactions involved and/or was subject to undue influence with regard to the transactions. Further, that the Respondent intended to remove assets from the Decedent's estate and divert those assets to himself. Petitioner seeks to have the creation and funding of the MRH Family LLC declared void *ab initio* and to have the assets of the LLC returned to the estate of the Decedent which would then pass fully to the Petitioner.

This case has been pending for over a year and discovery has been ongoing between the parties. The following facts are undisputed:

- 1) In the fall of 2012, the Decedent, Mrs. Hanahan, consulted with a CPA and attorney, Christopher Moss, with regard to her estate planning needs and possible estate tax exposure due to changes in the estate tax laws which would be effective beginning January 1, 2013. The consultation resulted in creation and funding of the MRH Family LLC;

- 2) Petitioner and Respondent as well as Mrs. Hanahan participated in the discussions regarding creation of the LLC, its members, the determination of the members' ownership interest, and the tax benefits of creating the LLC;
- 3) Petitioner received individual ownership of a 68% interest in the LLC, Respondent by and through a separate LLC known as the MRSMIE, LLC received a 30% interest, and Mrs. Hanahan retained a 2% interest as shown by the Operating Agreement attached hereto as Exhibit 1;
- 4) Mrs. Hanahan obtained the services of a separate attorney, J. Howard Yates, Jr., Esq., to prepare the deed which transferred her interest in certain parcels of real estate to the LLC on December 30, 2012, as shown by the Deed attached hereto as Exhibit 2;
- 5) Mrs. Hanahan had Attorney Yates prepare a second deed by which she conveyed two separate and additional parcels of real estate to her son, Joseph Ross Henderson, on December 30, 2012, as shown by the Deed attached hereto as Exhibit 3, *which Deed is not challenged by Petitioner*;
- 6) Additionally, Attorney Yates prepared a Statement signed by Mrs. Hanahan on December 30, 2012, concerning the 2012 Land Transfers which acknowledges that she had the opportunity to consult with Mr. Moss and Respondent regarding changes to the 2013 estate tax laws, that the creation of the MRH Family LLC was being done to avoid substantial estate taxes, that she was aware her nephew, Respondent, would have an interest in an LLC which would be a member of the MRH Family LLC and that she would hold a 2% interest. Further, Mrs. Hanahan acknowledges that she would be deeding her interest in certain properties to her son, J. Ross Henderson. She

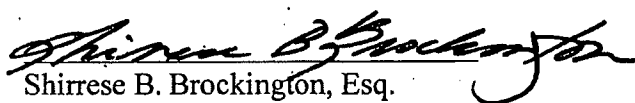
states that she is not under any duress or influence. The Statement is attached hereto as Exhibit 4.

- 7) Since its inception in December 2012, Petitioner has participated in the ongoing business of the MRH Family LLC, has received K-1s, and has not raised any challenge to his mother's capacity to create the LLC until after her death.

There is no evidence in the record that supports a finding of lack of capacity of Mrs. Hanahan to create and fund the MRH Family LLC or that the Respondent exercised undue influence over Mrs. Hanahan to include an entity in which Respondent was a member in the MRH Family LLC.

Thus, there is no genuine issue as to any material fact with regard to the Action to Try Title to Real Estate and Respondent is entitled to judgment as a matter of law.

Please be present to defend this Motion if so minded.


Shirrese B. Brockington, Esq.
P.O. Box 31312
Charleston, SC 29417
(843) 571-5000

Attorney for Respondent Mikell R. Scarborough,
Individually

AND

Joseph S. Mendelsohn, Esq.
P.O. Box 250
Charleston, SC 29402
(843) 577-7210

Charleston, South Carolina
September 12, 2016

Attorney for Respondent Mikell Scarborough
as Personal Representative for the
Estate of Mary Ross Hanahan

MRH FAMILY LLC Operating Agreement

This Operating Agreement ("Agreement") is made and entered into as of December 30th 2012 by and among MRH FAMILY LLC, a South Carolina limited liability company (the partnership) and, Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC (the partnership) and individually, the members.

WHEREAS, the parties desire to form a limited liability company under South Carolina law to protect and unify the partnership in operating a Land Development and Investment business and for all additional purposes hereinafter set forth. NOW, THEREFORE, the partnership having given good and valuable consideration, the partnership and members hereto have agreed and do hereby agree as follows:

1. Definitions

- 1.1 "Act" shall mean the South Carolina Uniform Limited Liability the partnership Act of 1996 of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- 1.2 "Action of the partnership" and any reference to an action taken, or to be taken, by the partnership shall mean any action properly approved by the members.
- 1.3 "Agreement" shall mean this Operating Agreement and any amendments made thereto from time to time. "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the partnership was organized as a South Carolina limited liability company

pursuant to the Act.

- 1.4 "Capital Account" shall mean the account established and maintained for each Member on the books of the partnership.
- 1.5 "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- 1.6 "The partnership" shall mean MRH FAMILY LLC, a South Carolina limited liability company and its members Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC.
- 1.7 "The partnership Liability" shall mean any enforceable debt or obligation for which the partnership is liable or which is secured by any the partnership Property.
- 1.8 "The partnership Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the partnership,
- 1.9 "Manager" shall mean any member of the partnership who is the Manager.
- 1.10 "Member" shall mean the parties to this Agreement.
- 1.11 "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

2 Purpose

MRH FAMILY LLC shall be in the business of preserving partnership assets, operating the partnership as a land development company, and protecting the partnership assets from harm.

2.1 Powers Subject to the provisions of this Agreement, the partnership shall have the same powers as an individual to do all things necessary or convenient to carry on its and affair including but not limited to the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of

its obligations by a mortgage on or a security interest in any of its property, franchises, or income;

(f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the partnership, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

3. Members

3.1 Initial Members. The members are Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC.

3.2 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any

action taken pursuant to such power of attorney shall be valid for all purposes.

3.3 Voting Rights of Members. All members will have the right to vote their membership interest. Majority vote will prevail except for the Amendment of this Operating Agreement which will require unanimous consent of all members.

4 Member Meetings

4.1 Place of meetings. All meetings of the Members shall be held at the partnership's principal place of business or at such other place designated by the Managing Member.

4.2 Time of Meeting. Meetings of the Members may be called at any time and any place by the Managing Partner. The Purpose of the meetings will be to explore new investments for the partnership, and to review the overall policy of the partnership and any other lawful purposes allowed by this Agreement.

5 Management

5.1 The members shall manage the partnership at all times and have the right to select a member to assist in the management the partnership,

(a) Tenure and Qualifications. The partnership elects member manager, MRSMIE LLC to help assist in the management of the partnership for a term of five (5) years.

(b) Removal. MRSMIE LLC can be removed as manager at any time after the expiration of its five (5) year term by majority vote of the members.

- (c) Resignation. A designated member manager may resign at any time.

6. Duties of Members

6.1 Duty of Loyalty. The members have a duty of loyalty to the partnership as follows:

- (a) To account to the partnership and to hold as trustee for the partnership any property and profit.
- (b) To refrain from dealing with a party having an interest adverse to the partnership; and
- (c) To refrain from competing with the partnership.

6.2 Duty of Care. The members have a duty of care to the partnership.

6.3 Fiduciary Duties. The Members shall discharge their duties and exercise any of these duties consistently with the obligation of good faith and fair dealing which they as members owe to each other

6.4 Duty of Confidentiality. The Members hereby warrants, covenants and agree that they will not furnish, divulge, communicate, or use to the detriment of the partnership any of the partnerships confidential information.

7 Capital Accounts and Accounting

7.1 Capital Accounts. The partnership shall establish for each Member a Capital Account.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Members.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the partnership's taxable and fiscal years shall be the calendar year, and the books of account of the partnership shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the partnership under the Code shall be made by the Members.

7.4 Tax Returns. Not later than the time required by law, the members shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the partnership.

7.5 Tax Elections.

(a) The partnership shall make the following elections for federal income tax purposes: (1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense; and (2) To deduct expenses incurred in organizing the partnership ratably over a sixty (60) month

period as provided in Section 709 of the Code.

(b) In the event of a distribution of the partnership Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the partnership shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the partnership pursuant to Sections 734 and 743 of the Code.

7.6 Tax Matters Member

MRSMIE LLC is designated the tax matters partner of the partnership, as defined in Section 6231(a) (7) of the Code. The members may designate a new tax matters member from time to time.

8 Dissolution, Winding Up, and Termination

8.1 Dissolution. The partnership shall dissolve, its affairs shall be wound up, and the partnership shall terminate upon the unanimous written consent of all the members

9 Restrictions on Transfer and Buy-Sell Provisions

9.1 Restrictions on Transfer No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written unanimous consent of all members; The reason being that the primary goal of the partnership is to

keep the assets of the partnership intact and preserved for generations to come.

9.2 Right to Buy. A member may purchase the shares of another member with unanimous consent of all members. A nonmember may purchase shares of a member with unanimous consent of all members.

10. Miscellaneous

10.1 Time of Essence. Time is of the essence with regards to this Agreement.

10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability the partnership Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

10.3 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law.

10.4 Counterparts. This Agreement may be executed in more than one counterpart, and all parties to this Agreement do not have to be present together in order for this Agreement to become effective.

10.5 Entire Agreement. This Agreement embodies the entire understanding and

agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

10.6 Binding Effect. This Agreement shall be binding upon, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns.

Wherefore Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC, have read this Agreement and are committed to the operation of the MRH FAMILY LLC family, to protect and keep the assets safe, we hereby sign this Agreement as members on this 30th day of December 2012.

	% Ownership
Mary Ross Hanahan <u>Mary Ross Hanahan</u>	2
Mikell Milton Henderson <u>Mikell Milton Henderson</u>	68
MRSMIE LLC <u>By [Signature]</u> <u>Its Manager</u>	30
<u>TOTAL</u>	<u>100</u>



BP0300995

RMC BK 0300 Pg 995 : pg 1 *

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

WHEREAS, It is the intent of Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, to convey all of her interest in the properties described below to MRH Family, LLC in which she will hold a membership interest.

KNOW ALL MEN BY THEE PRESENTS, THAT I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, in the State aforesaid for and in consideration of the sum of \$10.00 and the above recital to me in hand paid at and before the sealing of these presents by MRH Family, LLC in the State aforesaid, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said MRH Family, LLC, all of my entire interest in the following real property to wit:

FOR LEGAL DESCRIPTION, SEE ATTACHED EXHIBIT "A"

GRANTEE'S ADDRESS:

70 Chadwick Dr.
Charleston, SC 29407

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said MRH Family, LLC, its successors and assigns forever.

AND, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, do hereby bind myself, my heirs and assigns to warrant and forever defend all and singular, the said premises unto the said MRH Family, LLC its successors and assigns, against me and my heirs and those lawfully claiming through me and against no others.

WITNESS my Hand and Seal this 30 day of December, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

1

EXHIBIT "2"

73

Joseph H. Yates Jr

Christopher Mon

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Mary Ross Hanahan,
formerly Mary Ross Han-
ahan Henderson

Mary Ross Hanahan, formerly known
as Mary Ross Hanahan Henderson

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she
saw the within named Mary Ross Hanahan, formerly known as Mary Ross Hanahan
Henderson, sign, seal and as her act and deed, deliver the with deed and that he/she with
the other witness witnessed the execution thereof.

Sworn to before me this 30TH day of
December, 2012.

Joseph H. Yates Jr
Notary Public for S. C.

My Commission Expires: 8-8-2015

Christopher Mon

~~Mary Ross Hanahan, formerly
known as Mary Ross Hanahan
Henderson~~

Subscribing witness

EXHIBIT "A", LEGAL DESCRIPTION

TRACT 1

All that piece, parcel of tract of land, situate, lying and being in St. Andrews Parish, Charleston County, shown and designated as *Block "D"* as shown on a plat prepared by H. Exo Hilton, R.L.S., dated May-July, 1981, entitled, *"Plat of 2,094.0 Acres, Tract "C" Portion of Millbrook Plantation, Property of W. O. Hanahan, Sr. Divided as Shown Above,"* Said plat which is incorporated herein by reference, was recorded on July 22, 1982 in Plat Book AV at Pages 156 and 157 in the R.M.C. Office for Charleston County.

This property is also shown on a plat entitled *"Boundary Survey of Block "D" of Tract "C" Portion of Millbrook Plantation, Now Owned by Mary Ross Hanahan, Located in St. Andrews Parish, Charleston County, South Carolina,"* prepared by Robert L. Frank, P. L. S., dated July 25, 2003, revised October 7, 2003 and recorded October 10, 2003 in Plat Book EG at Page 666.

ALSO, all rights of way, including all rights of access to Block "D" whether prescriptive, appurtenant, commercial or established by covenant and/or grant held by the late W. O. Hanahan, Sr. in and to all roads and avenues shown on the above referenced plat, including rights of access across roads not shown on said plat but discoverable upon an on-site inspection. Including all rights of access to the extent assignable across connecting roads on land formerly of J. Ross Hanahan, Jr. and Maria Grayson Carter and across any roads extending from S.C. Highway 61 to Block "D".

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection.

The interest of Mary Ross Hanahan was conveyed to her by Deed of Distribution from Wachovia Bank, N.A., Personal Representative of the Estate of William O. Hanahan, Sr. dated March 25, 1999 and recorded April 1, 1999 in Book R-323 at Page 083 in the Charleston County R.M.C. Office.

TMS #301-00-00-022

ALSO

TRACT 2

All that certain piece, parcel or tract of land, situate, lying and being in St. Paul's School District, Charleston County, South Carolina composed of Lot No. 1 as shown on a *"Map of a Portion of Fairview Plantation Containing 99.81 Acres Owned by Raymond Hunter, Situate: West of Hwy. 174 and South of Avenue,"* prepared by A. L. Glen, Reg. P.E. & L.S., dated May 20, 1964 and recorded July 31, 1964 in Plat Book R-144; and composed

of Lot 1-A as shown on a "Map of That Portion of Fairview Plantation Designated on Map by J. P. Gaillard, Dated June, 1922 As Mrs. T. G. Legare Portion, Situate South of Toogoodoo Creek, West from Hwy. 174, Charleston County, South Carolina," dated March 29, 1965 and recorded April 23, 1965 in Plat Book S at Page 128.

BUTTING AND BOUNDING as follows: To the North by lands now or formerly of Ramond Hunter, Branch of Toogoodoo Creek and Bank, being a part of the Moffett Tract; To the East by S.C. Highway 174 and by lands now or formerly of Raymond Hunter; to the South by land conveyed to Frances G. Hanahan and to the West by lands nor or formerly of W. W. Allston.

SUBJECT to all applicable easements, covenants restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection.

This property was originally found to contain 120.7 acres, but upon a plat of resurvey by H. Exo Hilton, Reg. Land Surveyor, dated June, 1975 and recorded September 30, 1975 in Plat Book AF at Page 032, it was found to contain 131.35 acres.

Being a portion of the property conveyed to Mary Ross Hanahan by deed of J. P. Sanders, dated April 23, 1965 and recorded April 23, 1965 in Deed Book T-82 at Page 225 in the Charleston County R. M. C. Office; and to Mary Ross Hanahan Henderson, (who is also known as Mary Ross Hanahan) by deed from Raymond V. Hunter dated July 31, 1964 and recorded July 31, 1964 in Book X-80 at Page 254.

TMS #061-00-00-019

ALSO

TRACT 3

ALL that certain piece, parcel or tract of land situate, lying and being in the County of Charleston, State of South, and shown as *Tract D* containing 9.75 acres on a plat prepared by H. Exo Hilton, entitled, "A Plat of 39.00 Acres, A Part of Millbrook Plantation, Property of W.O. Hanahan, Sr., Divided as Shown Above," dated May, 1972 and recorded in Plat Book AB at Page 51 in the R. M. C. Office for Charleston County. The said property hereby conveyed butting to the Northeast partially on the Ashley River and to the Southwest on S.C. Highway No. 61 and having such boundaries, metes, courses and distances as are delineated on said plat.

SUBJECT to all applicable easements, conditions, restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection.

This being the same property conveyed to Mary Ross Hanahan Henderson, now known as Mary Ross Hanahan, by deed of William O. Hanahan dated September 6, 1972 and recorded September 7, 1972 in Book A-100 at Page 327 in the Charleston County R. M. C. Office.

364-00-00-005

ALSO

TRACT 4.

All of my interest, being a one-fifth (1/5) interest in and to all that piece, parcel or tract of land, situate, lying and being in St. Andrews Parish, Charleston County, shown and designated as Block "E" as shown prepared by H. Exo Hilton, R.L.S., dated May-July, 1981, entitled, "Plat of 2,094.0 Acres, Tract "C" Portion of Millbrook Plantation, Property of W. O. Hanahan, Sr. Divided as Shown Above," Said plat which is incorporated herein by reference, was recorded on July 22, 1982 in Plat Book AV at Pages 156 and 157 in the R.M.C. Office for Charleston County.

ALSO, all rights of way, including all rights of access to Block "E" whether prescriptive, appurtenant, commercial or established by covenant or grant held by the late W. O. Hanahan, Sr. in and to all roads and avenues shown on the above referenced plat, including rights of access across roads not shown on said plat but discoverable upon an on-site inspection. Including all rights of access to the extent assignable across connecting roads on land formerly of J. Ross Hanahan, Jr. and Maria Grayson Carter and across any roads extending from S.C. Highway 61 to Block "E".

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The interest of Mary Ross Hanahan was conveyed to her by Deed of Distribution from Wachovia Bank, N.A., Personal Representative of the Estate of William O. Hanahan, Sr. dated March 25, 1999 and recorded April 1, 1999 in Book R-323 at Page 090 in the Charleston County R.M.C. Office.

TMS #301-00-00-004

ALSO

TRACT 5

All of one-fifth (1/5th) interest in that piece, parcel or tract of land with any improvements there on and being in St. Andrews Parish, Charleston County, shown and designated as Tract E-1 as more fully shown on a plat entitled, "A Boundary Survey of a Portion of the Lands of Mary Ross Hanahan, Elizabeth Hanahan Clark, Buist Lucas Hanahan, Frances G. Hanahan and the Heirs of W. O. Hanahan, Located in St. Andrews Parish, Charleston County, South Carolina," prepared by Robert L. Frank, P.L.S., dated February 11, 2004, Revised February 12, 2004 and recorded February 13, 2004 in Plat Book EG at Page 902 in the Charleston County R. M. C. Office.

ALSO, all rights of way, including all rights of access to Block "E" and Tract "E-1" whether prescriptive, appurtenant, commercial or established by covenant or grant held by the late W. O. Hanahan, Sr. in and to all roads and avenues shown on the above referenced plat, including rights of access across roads not shown on said plat but discoverable upon an on-site inspection. Including all rights of access to the extent assignable across connecting roads on land formerly of J. Ross Hanahan, Jr. and Maria Grayson Carter and across any roads extending from S.C. Highway 61 to Block "E".

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The interest of Mary Ross Hanahan was conveyed to her by Deed of Distribution from Wachovia Bank, N.A., Personal Representative of the Estate of William O. Hanahan, Sr. dated March 25, 1999 and recorded April 1, 1999 in Book R-323 at Page 090 in the Charleston County R.M.C. Office.

TMS #301-00-00-353

ALSO

TRACT 6

ALL of my undivided interest in that piece, parcel or tract of land, containing 449.7 acres, more or less, situate, lying and being in St. Paul's Parish, Charleston County, S.C., being a part of Dungannon Plantation and know as designated as Tract B on a plat by H. Exo Hilton, Reg. L. S. dated August, 1974 and entitled, "Plat of 3,096.2 Acres, Dungannon Plantation, Property of W. O. Hanahan, Sr.," and recorded in Plat Book Q at Page 154 in the R. M. C. Office for Charleston County, S.C. Said property having such location, butts, bounds, measurements, courses and distances as will by reference to said plat more fully appear.

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The interest of Mary Ross Hanahan was acquired by the following deeds from William O. Hanahan: Deed dated and recorded March 21, 1979 in Book P-118 at Page 316, Deed dated and recorded August 6, 1980 in Book B-123 at Page 83, Deed dated and recorded August 6, 1980 in Book F-193 at Page 264.

TMS #225-00-00-003

STATE OF SOUTH CAROLINA }
 COUNTY OF Charleston }

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property was transferred by MARY ROSS HANAHAN, FORMERLY KNOWN AS MARY ROSS HANAHAN HENDERSON to MRH FAMILY, LLC on DECEMBER 30, 2012

3. Check one of the following: The deed is

- (A) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- (C) ☒ exempt from the deed recording fee because (See Information section of affidavit): #8 to LLC (Explanation required)
 (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):

- (A) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
- (B) ☐ The fee is computed on the fair market value of the realty which is _____
- (C) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____

6. The deed recording fee is computed as follows:

- (A) Place the amount listed in item 4 above here: _____
- (B) Place the amount listed in item 5 above here: _____
 (If no amount is listed, place zero here.)
- (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Mary Ross Hanahan, formerly Mary Ross Henderson

Responsible Person Connected with the Transaction

MARY ROSS HANAHAN FORMERLY

Print or Type Name Here

KNOWN AS MARY ROSS HANAHAN HENDERSON

Sworn this 30TH day of DEC 2012

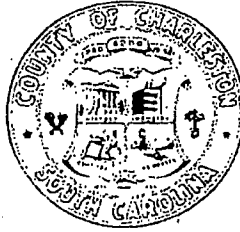
Joseph H. Yates Jr.
 Notary Public for _____

My Commission Expires: _____, 20____

My Commission Expires
 August 3, 2015

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

HOWARD YATES

42 BROAD ST.
CHARLESTON SC 29401

MAKER:

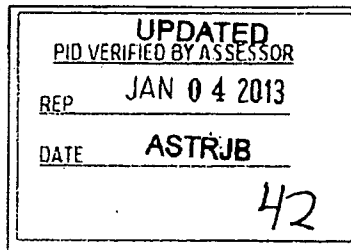
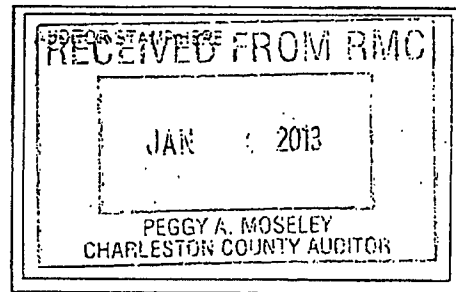
HANAHAN MARY R AL

RECIPIENT:

MRH FAMILY LLC

Original Book:

Original Page:



RECORDED

Date: December 31, 2012

Time: 2:45:01 PM

Book

Page

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0300

995

Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 8

Recording Fee	\$ 10.00
State Fee	\$ -
County Fee	\$ -
Extra Pages	\$ 3.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 13.00

DRAWER 2
CLERK SLW



0300
Book



995
Page



12/31/2012
Recorded Date



8
Pgs



Original Book



Original Page



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Recorded Time



BP0300993

RMC BK 0300 Pg 993 : pg 1 *

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

WHEREAS, It is the intent of Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, to convey all of her interest in the properties described below to her son, J. Ross Henderson.

KNOW ALL MEN BY THEE PRESENTS, THAT I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, in the State aforesaid for and in consideration of the sum of \$10.00, Love and Affection for my son, to me in hand paid at and before the sealing of these presents by J. Ross Henderson, in the State aforesaid, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection, unto the said J. Ross Henderson, all of my interest in the following real property"

FOR LEGAL DESCRIPTION, SEE ATTACHED EXHIBIT "A"

GRANTEE'S ADDRESS: 5594 Katy Hill Rd.
Wadmalaw Is, SC 29487

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said J. Ross Henderson, his and assigns forever.

AND, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, do hereby bind myself, my heirs and assigns to warrant and forever defended all and singular, the said premises unto the said J. Ross Henderson, his and assigns, against me and my heirs and those lawfully claiming through me and against no others.

WITNESS my Hand and Seal this 30th day of December, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson

RMC BK 0300 Pg 993 : Pg 2 *

Joseph H. Yates Jr.
Christopher Moss

Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, sign, seal and as her act and deed, deliver the with deed and that he/she with the other witness witnessed the execution thereof.

Sworn to before me this 30TH day of December, 2012.

Christopher Moss

Joseph H. Yates Jr.
Notary Public for S. C.
My Commission Expires:

My Commission Expires
August 8, 2015

LEGAL DESCRIPTION, EXHIBIT "A"

TRACT 1

ALL of my one-half (1/2) interest in that parcel or tract of land, situate, lying and being on the South side of the Seaboard Air Line Railroad in St. Paul's Parish, County of Charleston, State aforesaid, containing 80 acres, more or less and being shown as the Southeastern tract on a *Plat of Moffet Hill Plantation*, prepared by the Robert F. Knoth & Co., dated August, 1947 and recorded in Plat Book G at Page 37.

BUTTING AND BOUNDING: Northwardly on the right of way of the Seaboard Air Line Railroad Company; Eastwardly on lands now or formerly of Aston; Southwardly on land now or formerly of Allston; and Westwardly on lands now or formerly of Jackson.

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The grantor's one-half interest in the above tract was conveyed to her by deed of J. P. Sanders dated March 9, 1964 and recorded March 14, 1964 in Book U-79 at Page 263 in the Charleston County R. M. C. Office.

TMS #061-00-00-023

ALSO

TRACT 2

All of my one-half (1/2) interest in that parcel or tract of land, situate, lying and being on the South side of the Seaboard Air Line Railroad in St. Paul's Parish, County of Charleston, State aforesaid, containing Thirty (30) acres, more or less and more fully shown as the Southwestern tract on a *Plat of Moffet Hill Plantation*, prepared by the Robert F. Knoth & Co., dated August, 1947 and recorded in Plat Book G at Page 37.

BUTTING AND BOUNDING: Northwardly on the right of way of the Seaboard Air Line Railroad Company; Eastwardly on land now or formerly of Jackson; Southwardly on lands of J. P. Sanders; and Westwardly on lands of J. P. Sanders.

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

THE ABOVE DESCRIBED ONE HUNDRED TEN (110) ACRES is comprised of Lots 22 and 23, and parts of Lots 24 and 25 of the Moffett Tract.

The Grantor's one-half interest in the above tract was acquired by deed from J. P.

Sanders dated March 9, 1964 and recorded March 14, 1964 in Book U-79 at Page 263 in the Charleston County R. M. C. Office.

TMS #038-00-00-012

RMC BK 0300 Pg 993 : pg 4 *

STATE OF SOUTH CAROLINA }
COUNTY OF Charleston } AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property was transferred by MARY ROSS HANAHAN, FORMERLY KNOWN AS MARY ROSS HANAHAN HENDERSON
to J. ROSS HENDERSON on DECEMBER 30, 2012

3. Check one of the following: The deed is

- (A) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- (C) ☒ exempt from the deed recording fee because (See Information section of affidavit): Gift #1 (Explanation required)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):

- (A) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
- (B) ☐ The fee is computed on the fair market value of the realty which is _____.
- (C) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:

- (A) Place the amount listed in item 4 above here: _____
- (B) Place the amount listed in item 5 above here: _____
- (If no amount is listed, place zero here.)
- (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as:

GRANTOR

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Mary Ross Hanahan ^{FORMERLY}
Mary Ross Hanahan Henderson ^{AKA}
Responsible Person Connected with the Transaction

Print or Type Name Here

Sworn this 36 day of DEC 2012
Joseph H. Yates
Notary Public for SC
My Commission Expires: 20 2015

My Commission Expires
August 3, 2015

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



RECORDED		
Date:	December 31, 2012	
Time:	2:44:24 PM	
<u>Book</u>	<u>Page</u>	<u>DocType</u>
0300	993	Deed
Charlie Lybrand, Register Charleston County, SC		

Filed By:

HOWARD YATES

42 BROAD ST.
CHARLESTON SC 29401

MAKER:

HANAHAN MARY R AL

RECIPIENT:

HENDERSON J ROSS

Note:

Original Book:

Original Page:

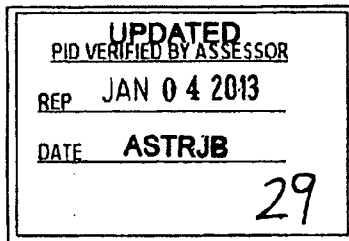
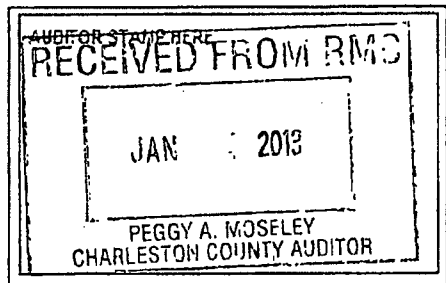
of Pages:

6

Recording Fee	\$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	\$ 1.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 11.00

DRAWER
CLERK

Drawer 2
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0300
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993
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

STATEMENT OF MARY ROSS HANAHAN
CONCERNING 2012 LAND TRANSFERS

I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, acknowledge and state as follows:

I have had the opportunity to consult with Chris Moss, CPA and my nephew, Mikell Scarborough, concerning my assets and the 2013 estate tax changes. I am aware that without planning, my estate taxes could be very high.

To avoid substantial estate taxes, it is my desire to convey the properties described in the deed from me to MRH Family, LLC. I am aware that Mikell Scarborough will have an interest in a limited liability company that is a member of MRH Family, LLC. I am aware that this conveyance will be for nominal consideration, that being my membership in MRH Family, LLC. I am aware that I will hold a two (2%) interest in it.

It is my desire to convey to my son, J. Ross Henderson, my one-half interest in the property described in the deed to him. This property is identified as tax map numbers 061-00-00-023 and 038-00-00-012, being the 30 and 80 acre parcels in the Moffet Hill Plantation Tract.

In signing this deed, I have not been placed under any duress or influence by any one. Howard Yates has been asked to prepare the deed for me and has not rendered tax advice. He has advised me that I am free to sign or not to sign this document.

Witness my Hand and Seal this 30th day of December, 2012.

Mary Ross Hanahan

Mary Ross Hanahan, formerly
Known as Mary Ross Hanahan
Henderson

Witnesses *Joseph H. Yates Jr.*
Witnesses *Christy Moss*

EXHIBIT "4"

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE CIRCUIT COURT
CASE NO. 2015-CP-10-6502

MIKELL M. HENDERSON,)

Petitioner,)

v.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)

Respondents.)

CERTIFICATE OF SERVICE

FILED
2016 SEP 13 PM 2:17
JULIE J. ARMSTRONG
CLERK OF COURT

I hereby certify that on the 13th day of September, 2016, I emailed or mailed with first class postage affixed, or mailed by certified mail, return receipt requested, with first class postage affixed, *Motion and Order Information Form and Coversheet and Notice of Motion and Motion for Summary Judgment* to the below listed:

ADAM T. SILVERNAIL, ESQ.

R. MICHAEL BRACKETT, ESQ.

Attorneys for Mikell M. Henderson

P.O. Box 100261 Columbia, SC 29202

adam@silvernaillawfirm.com

Moses & Brackett, PC

1333 Main St., Ste 260, Columbia, SC 29202-3261

mbrackett@mkb-law.com

JOS. S. MENDELSON, ESQ.

*Attorney for Mikell R. Scarborough, as Personal
Representative for the Estate of Mary Ross Hanahan*

P.O. Box 250, Charleston, SC 29402

joem250@gmail.com



SHIRRESE B. BROCKINGTON, ESQ.

Attorney for Mikell R. Scarborough, Individually

Charleston, South Carolina

Dated: September 13, 2016

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF CHARLESTON) CASE NO. 2015-CP-10-6502

MIKELL M. HENDERSON,)
Petitioner,)

vs.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)

Respondents.)

In Re: Estate of:)
Mary Ross Hanahan)

**MEMORANDUM SUBMITTED
ON BEHALF OF RESPONDENT
IN SUPPORT OF MOTIONS FOR
SUMMARY JUDGMENT**

FILED
2017 APR 19 PM 2:51
JULIE J. ARMSTRONG
CLERK OF COURT

TO: HON. J.C. NICHOLSON, JR., CIRCUIT COURT JUDGE, NINTH
JUDICIAL CIRCUIT

BACKGROUND

Mary Ross Hanahan, mother of Petitioner, Mikell Henderson, and aunt of Respondent, Mikell Scarborough, deceased testate on October 23, 2014. Ms. Hanahan left a Last Will and Testament dated November 2, 1998. The Will devises the majority of her substantial estate to her son, Mikell Henderson, and names Petitioner as Personal Representative. In addition, Ms. Hanahan left a cash bequest of \$5,000 to the SPCA and devised two tracts of real estate to her older son, Joseph Ross Henderson.

On October 19, 2012, Ms. Hanahan executed a Codicil to the Will that devises her residence in Mt. Pleasant, SC, and an adjacent vacant lot to Respondent, with whom she had had a life-long close and loving relationship. Ms. Hanahan also named her nephew, Mikell

Scarborough, as her primary Personal Representative and her son, Petitioner, as the alternate Personal Representative.

In early December 2012, approximately two and one-half (2 1/2) months later, Ms. Hanahan consulted with a CPA-Attorney, Christopher Moss, Esq., regarding steps that could be taken to reduce her estate tax liability as the tax law governing such matters was changing and Ms. Hanahan's estate would be at risk for payment of substantial estate taxes due to her ownership interest in numerous and diverse parcels of real estate. Ms. Hanahan also consulted with her son, Mikell, and her nephew. It was determined that a family LLC should be created which would take title to various real properties through gift deeds. Valuation of the parcels would be based upon appraisals and then discounted for lack of marketability, thus reducing Ms. Hanahan's taxable estate.

The MRH Family, LLC was created in December 2012, and its Operating Agreement of December 30, 2012, was signed by all three members. Petitioner received a 68% interest, a separate LLC known as the MRSMIE, LLC, in which Respondent was the sole member received a 30% interest, and Ms. Hanahan retained a 2% interest. The value of the real estate at issue prior to the formation of the LLC was approximately \$6,000,000. The value of the real estate at issue was discounted to \$2,914,000, as reflected on the gift tax return.

The appropriate deed of transfer of the selected real estate to the MRH Family, LLC, was prepared by real estate attorney, Howard Yates, Esq. and executed by Ms. Hanahan on December 30, 2012. Attorney Yates and Mr. Moss served as witnesses and Attorney Yates served as notary public. In addition, Attorney Yates prepared a separate deed, also dated December 30, 2012, which Ms. Hanahan executed in favor of her older son, Joseph Ross

Henderson, and gifted him the two tracts that were left to him under her Last Will and Testament. The two deeds were recorded on December 31, 2012, within 1 minute of each other.

Attorney Yates also prepared a separate Statement of Intent as to Land Transfers signed by Ms. Hanahan by which she acknowledged that she was making the transfers to the LLC to save on estate taxes. Further, that Ms. Hanahan understood that her nephew, Mikell Scarborough, would benefit from the creation of the LLC. She also acknowledged that she was making the gift of other real estate to her son, Ross, and was signing all documents freely and without undue influence.

Petitioner, Mikell Henderson, filed his Summons and Petition against his cousin on September 2, 2015, stating eight (8) causes of action, including 1) Formal Testacy due to alleged Lack of Capacity; 2) Formal Testacy due to Undue Influence; and 3) Action to Try Title to Real Estate relative to the MRH Family, LLC and alleging lack of capacity and undue influence. In the approximately nineteen (19) months since the filing of the Petition, the parties have engaged in exchange of discovery and depositions. In addition, a settlement was reached at mediation held in September 2016, but the terms could not be carried out. The case was restored to the docket on February 9, 2017 by Consent Order signed by the parties.

Prior to the mediation, Respondent filed a Summary Judgment Motion (Motion #1) on September 13, 2016 as to Petitioner's Action to Try Title to Real Estate relative to the MRH Family, LLC. Petitioner did not file a response, however, as stated, the case went to mediation on September 15, 2016 and presumably was settled. Motion #1 has now been restored to the docket.

On February 15, 2017, Respondent filed a second Summary Judgment Motion (Motion #2) as to the two Formal Testacy actions regarding the Codicil. No response has been filed by Petitioner as to the second Summary Judgment motion. Depositions were held April 17, and 18, 2017 which included January O'Neale, a witness and notary to the Codicil signed on October 19, 2012, Respondent Mikell Scarborough, Petitioner's father, Joseph Henderson, and Petitioner Mikell Henderson. No other depositions are scheduled, although Petitioner's counsel wishes to depose Christopher Moss. Both Motions are scheduled to be heard on April 24, 2017. Upon information and belief, Petitioner will seek a continuance of the hearing.

FORMAL TESTACY AS TO THE CODICIL - LACK OF CAPACITY

Petitioner's first cause of action as to the Codicil of October 19, 2012, seeks formal testacy and alleges lack of capacity of his mother. Petitioner further alleges that the Codicil was not validly executed and is void as a result of Decedent's lack of capacity. Petitioner seeks to have the court revoke the informal probate of the Codicil and confirm that the 1998 Will remains in full force and effect.

While the 1998 Will of Ms. Hanahan is not at issue, a cause of action to challenge the execution of a Codicil, which is an amendment of a Will, is equivalent to a cause of action to challenge the execution of a Last Will and Testament of a decedent. *South Carolina Code of Laws*, §62-2-502 states that every will shall be 1) in writing; 2) signed by the testator ... and 3) signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature of the will. Ordinarily, proof of a writing purporting to be a will and signed and witnessed raises a presumption that the testator knew the contents thereof, and the burden is on the contestant to show the contrary. *Ex Parte McKie*, 107 S.C. 57, 91 S.E. 978, (S.C. 1917).

Uncontroverted deposition testimony of Respondent shows that Respondent took his aunt to lunch at the Sette VII restaurant in Mt. Pleasant, SC, as was his custom. Ms. Hanahan carried a manila folder with her to the luncheon. At the end of luncheon, Ms. Hanahan produced the Codicil which devises her residence and adjacent lot to her nephew. In the event of her nephew predeceasing her, Ms. Hanahan devises the property to her great-nephew, Mikell Ross Scarborough, Jr. In addition, Respondent is named as her primary Personal Representative and her son, Petitioner, is named as the alternate Personal Representative. Respondent did not prepare the Codicil nor direct anyone to do so.

After review of the Codicil, Respondent told his aunt that the document "was a bad idea" and that he felt it would create controversy between himself and his cousin. Ms. Hanahan stated she wished to go forward. Respondent then contacted January E. O'Neale, an employee in his office and asked her to come to the restaurant to serve as a witness and notary. Ms. O'Neale arrived approximately within 30 minutes of the call. Upon the arrival of Ms. O'Neale at the restaurant, Respondent got up and left the table.

Uncontroverted deposition testimony of January E. O'Neale shows that Ms. O'Neale had known Ms. Hanahan for a number of years and had seen her many times with Respondent. Ms. O'Neale described Ms. Hanahan, as a stoic person, but was "sharp" and "knew what she was doing." Ms. O'Neale testified that she did not prepare the Codicil.

After her arrival, Ms. O'Neale reviewed the Codicil and testified that Ms. Hanahan looked over the document. An employee of the restaurant, Christopher W. Martin, was called over to serve as a second witness. The Codicil was then initialed and signed by Ms. Hanahan in the presence of Christopher W. Martin and January E. O'Neale. Ms. O'Neale also served as notary public. After the signing, Ms. O'Neale left.

At his deposition, while Petitioner testified that he believed that his cousin had procured the Codicil, Petitioner had no evidence to support his allegation. Petitioner testified that he did speak with Mr. Martin, the second witness to the execution of the Codicil, however, it is notable that Petitioner will not be taking Mr. Martin's deposition nor has Petitioner obtained any affidavit of Mr. Martin that contradicts the testimony of Ms. O'Neale or Respondent.

Petitioner did not contradict the testimony of Ms. O'Neale. Rather, Petitioner testified that he did not have any evidence that would show that the signing of the Codicil did not take place in the presence of his mother as well as Ms. O'Neale and Mr. Martin in accordance with South Carolina law. Thus, the Codicil is valid on its face.

While Petitioner cites his mother's dementia, mental illness and declining physical health in the Second Cause of Action regarding his allegations of undue influence, these ailments were also cited by him in regard to her alleged lack of capacity during his deposition.

Yet, in his Responses to Respondent's First Requests to Admit dated June 13, 2016, Petitioner admits that on October 16, 2012, three (3) days prior to execution of the Codicil, that Kay Durst, MD, treating physician of Ms. Hanahan states in her medical records that "she (Ms. Hanahan) is doing well overall" and Ms. Hanahan "states that she feels no issue" and is "in no apparent distress." (Copy attached) **During his deposition, Petitioner testified that he did not dispute Dr. Durst's report.**

Additionally, in his Responses to Respondent's First Requests to Admit dated June 13, 2016, Petitioner admits that on October 18, 2012, one (1) day prior to execution of the Codicil, that Piave Pitisci Lake, MD, treating psychiatrist of Ms. Hanahan, states her medical records that "she (Ms. Hanahan) has a neat appearance; her thought process is "normal", her thought

content is "normal" she has "full orientation as to place, time, person", her speech is "normal"; her memory is "wnl (within normal limits); she shows "no gross deficit" in either insight or judgment. (Copy attached) **During his deposition, Petitioner testified that he did not dispute Dr. Lake's report.**

Further, during his deposition, Petitioner did not dispute the Daily Charting notes taken by caregivers/sitters provided by Care For Life, an at home health care provider, that his mother was alert and oriented during the relevant time period. (Copies attached)

While alleging lack of capacity, it is notable that during the course of this case, Petitioner has not produced, by affidavit or by deposition testimony of any medical provider or caregiver, any evidence that Ms. Hanahan suffered from any mental deficiency or mental or physical defect that would affect her ability to understand the nature of the contents of the Codicil and its effect on distribution of her estate.

Based on the above, Petitioner has failed to create a genuine issue of any material fact as to the lack of capacity of his mother in regard to the signing of the Codicil of October 19, 2012, or its invalid execution. Summary Judgment should thus be granted in favor of Respondent on this cause of action.

FORMAL TESTACY AS TO THE CODICIL - UNDUE INFLUENCE

Petitioner's second cause of action, Formal Testacy and Undue Influence, is based on the allegation that "on or about October 10 (sp), 2012, the Decedent was susceptible to undue influence due to her declining physical health, mental illness, dementia and/or her dependence on others for care." Petitioner believes that the Respondent used his confidential relationship with

the decedent to exercise undue influence “for the purpose of coercing Decedent to execute the Codicil, which would favor Scarborough over Decedent’s children.” Further, Petitioner alleges that the Codicil was not validly executed and is void.”

The unanimous decision of the South Carolina Supreme Court in *Russell vs. Wachovia Bank*, 353 S.C. 208, 578 S.E.2d 329 (2003), is remarkably on all fours with the issues relative to the granting of summary judgment in this case. *Russell* states and applies legal concepts, as listed below, that have been applied in numerous other cases. It is particularly significant in the present case that the South Carolina Supreme Court in *Russell* applied these concepts to facts for which there was substantially more evidence to support an attack on a Will, and still held, unanimously, that summary judgment should be granted.

Legal principles stated in *Russell* include the following:

- 1) Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 353 S.C. at 217.
- 2) Since the burden of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment. *Id.* at 218.
- 3) In order for a Will to be void due to undue influence, the contestant must show that the influence was brought directly to bear upon the testamentary act (the making of the Will). *Id.*
- 4) The mere existence of influence is not enough to vitiate a Will. *Id.* at 217.
- 5) For a Will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would have not done if he had been left to his own judgment and volition. *Id.*
- 6) The evidence must show that the free will of the testator was taken over by someone acting on the testator’s behalf. *Id.*

- 7) Undue influence is demonstrated where the will of the influencer is substituted for the will of the maker. *Id.*

The Supreme Court found it significant that none of the contestants was present when the Will was discussed or when the Will was executed; this fact, along with application of the cited legal principles, prompted the holding that the Will was the product of the free and unfettered act of the testator. *Id.* at 219.

Petitioner was not present at the signing of the Codicil on October 19, 2012. As stated above, Petitioner has chosen not to depose Christopher Martin, an independent witness, to the signing of the Codicil by Ms. Hanahan, nor has he obtained any affidavit from Mr. Martin regarding the circumstances surrounding the signing. Nor has Petitioner identified anyone else who would have some knowledge of the events that transpired on that day.

In the case at hand, the undisputed testimony of Respondent is that he exited the room when his aunt signed the Codicil in his favor and named him as the primary fiduciary. Since Respondent Scarborough was not present at the signing, Respondent thus could not, and did not, exercise any action that would have affected the free and unfettered act of his aunt relative to her signing of the document.

The South Carolina Supreme Court's holding in *Russell* was thus that the trial judge was correct in ruling that the contestants had not presented unmistakable and convincing evidence that the parties who had allegedly exercised influence had indeed utilized their relationship with the testator to substitute their will for his. *Id.* at 220. The South Carolina Supreme Court affirmed the trial court's granting of summary judgment. *Id.*

An issue of fact would exist only if Petitioner presented evidence that Respondent Scarborough brought undue influence directly to bear upon his aunt's testamentary act, the

making of the Codicil. It is appropriate to review the evidence from Petitioner to determine whether Petitioner have presented unmistakable and convincing evidence that the Respondent brought undue influence directly to bear on the making of the Codicil. Respondent submits there is no such evidence and that Petitioner was well aware that his mother was considering making some changes to her estate plan several months before she did so.

In his Responses to Respondent's First Requests to Admit dated June 13, 2016, Petitioner admits that an email dated June 7, 2012, exists between him and Respondent *four months before the Codicil is executed*, in which Respondent states "as to estate planning, we should gift some this year and the implement for the future.... She has spoken of a codicil to her will...." Further, Petitioner agrees with this and says "As to estate planning, I agree a lot of that can wait a little while but I think the idea of gifting some this year would be wise." Respondent further expresses concern over his brother (Ross) having to sell any property he inherits since he could not afford the taxes " But that is up to Mom and Ross." (Copy attached)

In contrast, Respondent has submitted the affidavit of January O'Neale, which makes it abundantly clear that based upon Ms. Hanahan's appearance, demeanor, conversation, instructions, and independent decision to execute the document on October 19, 2012 that Ms. Hanahan was of sound mind, was not under any duress or coercion, and that she freely and voluntarily executed the Codicil which is at issue before Ms. O'Neale.

In *In re Last Will and Testament of Smoak*, 286 S.C. 419, 334 S.E.2d 806 (1979), the South Carolina Supreme Court noted that the contestant had no personal knowledge of the circumstances under which the Will was executed. The main evidence of the contestant was that of a physician who was well acquainted with the testator. The physician testified that in his opinion, the Will was the result of undue influence. The Supreme Court rejected this conclusion,

stating that the physician's opinion was not based on any evidence. The Court concluded that "[a] jury issue is not created by an inference, only by a reasonable inference. To reach the conclusion that the evidence is susceptible of more than one reasonable inference, one must supplement the record with his imagination." 334 S.E.2d at 811. The Court thus concluded that the trial court was correct in ruling that there was no issue presented.

In *Calhoun v. Calhoun*, 277 S.E. 527, 290 S.E.2d. 415 (1982), the South Carolina Supreme Court unanimously held that the trial court had erred in submitting the issue of undue influence to a jury. The Court noted that the evidence submitted in favor of undue influence consisted of the following: the testator was physically feeble; the testator was temporarily confused during a period of hospitalization a year before the testator executed the Will; approximately two months after the testator executed the Will, he was disoriented; the primary beneficiary visited the testator in the nursing home almost every day; the testator sometimes would "fuss" at the primary beneficiary when the testator was frustrated; the testator once was overheard to say that the primary beneficiary wanted it all; the primary beneficiary asked a physician to examine the testator before the testator made some changes in his Will; and the primary beneficiary drove the testator to his attorney's office to prepare the Will. 290 S.E.2d at 418-419.

The South Carolina Supreme Court noted that the primary beneficiary was not present during any of the testator's conferences with his attorney, nor was the primary beneficiary physically present when the Will was executed. The primary beneficiary did not have possession of the Will after its execution. A subscribing witness testified that on the date of the execution of the Will, the testator was rational, was not rushed into signing the Will, and seemed satisfied with it. *Id.* at 419. The Court noted that the record was devoid of any evidence that the primary

beneficiary interfered with the making of the Will. She may have been interested in the Will and may have had more opportunities for persuasion than others. However, that did not constitute undue influence.

In *Hembree v. Hembree*, 311 S.C. 192, 428 S.E.2d 3 (1993), the South Carolina Supreme Court held *per curiam* that the trial court had correctly refused to submit the issue of undue influence to a jury. The Court relied heavily on the fact that the beneficiaries were not present either when the testator first met with the attorney who made the Will or when the Will was executed. *Id.* at 5.

An additional ground for the South Carolina Supreme Court's holding in *Russell* was that where a testator has an unhampered opportunity to revoke a Will subsequent to the operation of undue influence, but does not change the Will, the Court will as a general rule consider the effect of the undue influence destroyed. 353 S.C. at 217. The South Carolina Supreme Court reached this same holding in *Calhoun, supra*, and *Hembree, supra*.

In the case before the Court, the Codicil was executed October 19, 2012. Ms. Hanahan lived two (2) more years and then died on October 23, 2014. Petitioner and Respondent remained involved with Ms. Hanahan and both assisted her with her finances until her death. Ms. Hanahan could have changed the Codicil as well as her Will at any time before her death but did not.

Petitioner has presented no evidence whatsoever to show that Respondent Scarborough destroyed the free agency of his aunt and imposed his own will on her actions. In conclusion, even had Petitioner created a genuine issue of material fact as to the exercise of undue influence, that would have been negated by the fact that the testator had ample

opportunity to change the contested Codicil after she executed it and she made no effort to make any changes. Petitioner has thus failed to create a genuine issue of any material fact as to the existence of undue influence by the Respondent. Summary Judgment should thus be granted in favor of Respondent on this cause of action.

ACTION TO TRY TITLE – LACK OF CAPACITY AND UNDUE INFLUENCE

Petitioner seeks to have the Court declare that the creation of the MRH Family, LLC and related documents should be declared void *ab initio*, due to his mother's lack of capacity and undue influence exercised by Respondent. These documents would include the Operating Agreement and the deed conveying the real estate to the LLC, both signed on December 30, 2012, by Ms. Hanahan before independent witnesses.

At his deposition, Petitioner testified that he spoke with Christopher Moss, CPA-Attorney, as well as Respondent, regarding the need to create the LLC and thus reduce his mother's taxable estate before the end of 2012. Discussions were had as to the ability of Mr. Moss to utilize a Durable Power of Attorney that Ms. Hanahan had signed in November 1998 by which she had named her son, Mikell, as the sole agent. Petitioner agreed that if it could not be used, that he approved of Respondent being named as an agent on a new power of attorney. **However, more importantly, Petitioner spoke with his mother and confirmed that she "wanted to go ahead with creating the LLC" and "for Mikell Scarborough to take care of the deeds to her properties."** See email dated December 5, 2012. (Copy attached)

The MRH Family, LLC was created in December 2012. The Operating Agreement of December 30, 2012, was signed by all three members, including Petitioner who received a 68% interest, a separate LLC known as the MRSMIE, LLC, in which Respondent was the sole

member received a 30% interest, and Ms. Hanahan retained a 2% interest. The LLC has been managed by Respondent from its inception and his 5 year term ends in December 2017. Petitioner inherits Ms. Hanahan's 2% interest under the terms of her Last Will and Testament.

The LLC holds real estate which produces income from hunting leases and sales of timber. Petitioner admits he received distributions of \$10,000 in 2013 and \$8,000 in 2014. Further, Petitioner admits that Schedule K-1s have been issued for those years and testified that he has relied on those K-1s in preparation of his own personal tax returns. If Petitioner believed his mother did not have the requisite capacity to understand what was going on in December 2012, then why did he not raise that issue at the time? Or at any time prior to her death?

Petitioner now alleges that his mother lacked capacity to sign the LLC documents, including the Deed which transferred the title of various parcels to the LLC. Of particular note, Petitioner has not challenged the second Deed his mother signed on the same day, and recorded within 1 minute of each other, that conveys two tracts to his brother and is not seeking to have it declared void. To say that one document conveying title to an entity is not valid and another document that conveys title to an individual, both executed the same day, before the same witnesses, is an oxymoron and is not legally or factually persuasive.

In addition to the documents submitted upon the filing of the Motion for Summary Judgment, Respondent supplements his Motion by submitting the Affidavit of Christopher Moss which addresses the facts leading up to the creation of the LLC of the three principal members. (Copy attached) It is notable that Petitioner has not submitted any affidavits which contradict or refute the affidavit of Mr. Moss.

If Petitioner were successful on this cause of action, it would result in the real estate currently held by the LLC to be pulled back into his mother's estate and would cause its value to be approximately \$8,000,000. The tax exemption amount at time of death was approximately \$5,340,000. This would cause the estate to owe excessive estate taxes which was the exact result that Ms. Hanahan worked to avoid for the benefit of her family and in which Petitioner concurred. (See email of June 6, 2012)

The matter of Petitioner's mother's clear mental capacity as confirmed by her physicians has been fully addressed in the discussion outlined above. Ms. Hanahan's capacity to understand legal instruments, to sign documents related to her estate planning, and to execute the same did not change in the short few weeks between her signing the Codicil of October 19, 2012 and her signing the LLC Operating Agreement, two deeds and the Statement concerning the 2012 Land Transfers on December 30, 2012. Nor has Petitioner produced any evidence of any action by Respondent that demonstrates she was coerced by him or that Respondent otherwise exerted improper influence to get his aunt to include him in her overall estate plan.

Petitioner has thus failed to create a genuine issue of any material fact as to the lack of capacity of Ms. Hanahan or as to the exercise of undue influence by the Respondent relative to the creation of the MRH Family, LLC and its related documents. Summary Judgment should thus be granted in favor of Respondent on this cause of action.

ANTICIPATED MOTION FOR CONTINUANCE

Respondent anticipates that Petitioner will seek a continuance of the hearing regarding the motions for Summary Judgment and submits that the same should be denied as set forth below.

In Smith v. Jones, Appellate Case No. 2013-002810, Op. No. 5462, 12/21/2016. Rule 56(c) states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law. Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can *reasonably* be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Grimsley v. S.C. Law Enft Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Id.* (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Bennett v. Inv'rs Title Ins. Co.*, 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (Ct. App. 2006). If the moving party is successful, the nonmoving party must then come forward with specific facts showing there is a genuine issue for trial. *Id.*

On August 7, 2013, the circuit court held a hearing on the summary judgment motion. At the hearing, Smith informed the circuit court she had scheduled several depositions for September 11, 2013, and asked the circuit court to grant a continuance and defer summary judgment until she had an opportunity to conduct them. Smith argued the depositions of several of the Testator's caregivers would demonstrate the Testator thought she was going to Lee's office to execute only a healthcare power of attorney and was taken there by Jones's daughter, Becky, "under the guise of a brunch." According to Smith, the evidence would show the Testator would not have allowed Lee to draft a will for her, because she believed Lee improperly handled the

will of her deceased son, Wayne. Smith also contended the Testator did not realize she was executing a will, and the Testator told people the Hoefer Will was her will.

The circuit court rejected Smith's request for additional time to conduct depositions, orally granted Jones's summary judgment motion, and requested Jones prepare an order. The circuit court determined no genuine issue of material fact existed because no affidavits were submitted from caregivers or others demonstrating "there was some type of influence that overcame [the Testator's] will" when she executed the Lee Will.

On August 29, 2013, Smith filed a supplemental memorandum in opposition to summary judgement and an affidavit from her counsel concerning the need for a continuance. In the affidavit, Smith's counsel asserted summary judgement was premature because the parties had not had a full and fair opportunity to complete discovery. According to counsel, the parties initiated discovery as soon as the matter was filed and everyone involved had been diligent in prosecuting the case. Counsel stated the case was filed on April 1, 2013; the first round of depositions was held on May 1, 2013; the second round of depositions was held on May 17, 2013; and the third round of depositions was scheduled for September 11, 2013. Counsel explained that before the September 11, 2013 depositions, he "wanted to have an opportunity to thoroughly review the depositions taken in May and analyze the elements of proof, applicable law[,] and other issues prior to the next round of fact witness [depositions]." Counsel listed the testimony he expected the September 11, 2013 depositions to elicit and explained he expected the scheduled depositions to support Smith's fraudulent inducement claims.

On October 8, 2013, Smith submitted to the circuit court copies of the September 11, 2013 examinations under oath (EUOs) of Mary Alice Tompkins, Sharon Graham, Rachell Pringle, Janet Altman, Hoyt Leggette Smith, and Karen Deas McCall. With the EUOs, Smith's attorney submitted a letter explaining his client requested he depose the witnesses even though the circuit court granted Jones's summary judgment motion. The letter stated the EUOs supported the arguments Smith made at the summary judgment hearing. Jones objected to the EUOs

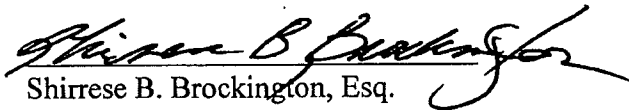
"Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). "For a will to be invalidated for undue influence, the influence must be the kind of mental coercion which destroys the free agency of the creator and constrains him to do things which are against his free will, and that he would not have done if he had been left to his own judgment and volition." *Id.* "Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it, the court as a general rule considers the effect of undue influence destroyed." *Id.* at 217, 578 S.E.2d at 333-34. Furthermore, the "mere showing of opportunity or motive does not create an issue of fact regarding undue influence." *Wilson v. Dallas*, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013).

No evidence in the record, including information contained in the EUOs, indicate the Testator was the victim of threats, force, or restricted visitation.¹ Smith indicated she was the primary caregiver for the Testator in October of 2011 as Jones was frequently busy caring for her young grandchildren. While our courts have found a parent and child may have a fiduciary relationship with one another, Jones was not with the Testator when she made the Lee Will and no allegations were made that Jones coerced the Testator or substituted her judgment for that of the Testator. Lee and Sloan both attest to the Testator's willingness and capacity to execute the Lee will, and both attorneys indicate they met privately with the Testator when discussing her will. Additionally, Smith admits the Testator had the opportunity to change the Lee Will had she so desired. Accordingly, we conclude Jones demonstrated the absence of a genuine issue of material fact as to Smith's undue influence claim, and Smith failed to produce contrary evidence beyond mere allegations.

Discovery has been ongoing since the inception of the case and resumed in February 2017, after the case was restored to the docket. The only uncompleted matter of discovery is the deposition of one witness. **Petitioner has not submitted any affidavits from any lay witness or physician in opposition to the motions or in support of his causes of action claiming lack of capacity or undue influence as set forth in his Petition, has stated that he will not be deposing the second witness to the execution of the Codicil at issue, any physicians who treated Ms. Hanahan, nor the attorney who prepared and oversaw the execution of the deeds of conveyance and the Statement regarding the land transfers.**

Under *Smith v. Jones*, the fact that discovery has not been completed is not sufficient grounds to continue the hearing or to deny the granting of the Motions for Summary Judgment. Respondent respectfully requests that the hearing on the motions go forward as scheduled and that Summary Judgment be granted in Respondent's favor as to the three causes of action as there is no genuine issue as to any material fact and Respondent is entitled to judgment as a matter of law.

Respectfully submitted,



Shirrese B. Brockington, Esq.

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(843) 737-5278

Attorney for Respondent Mikell R. Scarborough,
Individually

AND

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Shirley B. Mendelsohn

Joseph S. Mendelsohn, Esq.

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Charleston, South Carolina
April 19, 2017

Attorney for Respondent Mikell Scarborough
as Personal Representative for the
Estate of Mary Ross Hanahan

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE CIRCUIT COURT
CASE NO. 2015-CP-10-6502

MIKELL M. HENDERSON,)
Petitioner,)

v.)

MIKELL R. SCARBOROUGH,)
Individually and as Personal)
Representative of the Estate of Mary)
Ross Hanahan, and Joseph Ross)
Henderson,)
Respondents.)

CERTIFICATE OF SERVICE

FILED
2017 APR 19 PM 2:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that on the 19th day of April, 2017, I emailed or mailed with first class postage affixed, or mailed by certified mail, return receipt requested, with first class postage affixed, *Memorandum Submitted on Behalf of Respondent Scarborough in Support of Motions for Summary Judgment with Exhibits, including original Affidavit of Christopher Moss* to the below listed:

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SHIRRESE B. BROCKINGTON, ESQ.
Attorney for Mikell R. Scarborough, Individually

Charleston, South Carolina

Dated: April 19, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mikell M. Henderson,

Petitioner,

vs.

Mikell R. Scarborough, individually and
as Personal Representative of the Estate
of Mary Ross Hanahan, and Joseph Ross
Henderson,

Respondents.

IN RE: Estate of Mary Ross Hanahan

IN THE CIRCUIT COURT

CASE NO. 2015-CP-10-6502

PETITIONER'S RESPONSES TO
RESPONDENT'S FIRST REQUESTS
TO ADMIT

1. That the General Power of Attorney executed by Ms. Mary Ross Hanahan on November 2, 1998 in favor of Petitioner Mikell M. Henderson was never recorded at the Charleston County RMC office. (copy attached).

ANSWER: Petitioner lacks sufficient information on which to form a belief as to the request, but acknowledges that the document attached does not bear a recording mark.

2. That on April 28, 2012, Respondent Joseph Ross Henderson informed his brother, Petitioner Mikell Henderson, that Ms. Hanahan's "memory is better."

ANSWER: Petitioner does not specifically recall such a conversation, but can neither admit nor deny that it took place.

3. That by email dated June 8, 2012, from Respondent Mikell Scarborough to Petitioner Mikell Henderson, Respondent informed Petitioner that Ms. Hanahan was considering executing a Codicil to her will.

ANSWER: Petitioner admits that an email exists between the stated parties on the stated date

which indicates that Decedent had mentioned a codicil to Respondent and, further.

4. That on October 16, 2012, three (3) days prior to execution of the Codicil signed by Ms. Mary Ross Hanahan on October 19, 2012, that Kay Durst, MD, treating physician of Ms. Mary Ross Hanahan, states in her medical records that "she (Ms. Hanahan) is doing well overall" and Ms. Hanahan "states she feels no issue" and is "in no apparent distress." (Copy attached)

ANSWER: Petitioner admits that the attached document contains the quoted language.

5. That on October 18, 2012, one (1) day prior to the execution of the Codicil signed by Ms. Mary Ross Hanahan on October 19, 2012, that Piave Pitisci Lake, MD, treating psychiatrist of Ms. Mary Ross Hanahan, states in her medical records that Ms. Hanahan has a neat appearance; her thought process is "normal"; her thought content is "normal" she has "full orientation as to place, time, person"; her speech is "normal"; her memory is "wnl" (within normal limits); she shows "no gross deficit" in either insight or judgment. (copy attached)

ANSWER: Petitioner admits that the attached document contains the quoted language.

6. That on October 23, 2012, Ms. Hanahan refused to accept care at the MUSC Radiology Department.

ANSWER: Admitted.

7. That Ms. Hanahan was upset and expressed her unhappiness with her son, Petitioner Mikell Henderson, during the year 2012 when Petitioner was seeking to keep Ms. Hanahan from driving her own car.

ANSWER: Petitioner admits that Decedent wished to continue driving her car, but expressly denies the implication that he was alone in trying to stop her driving. That effort was made jointly and agreed upon by Petitioner and Respondent Scarborough.

8. That by email dated December 5, 2012 from Petitioner Mikell Henderson to H. Christopher Moss and copied to Respondent, Petitioner attached a copy of the General POA for his mother and left Respondent a message to contact him back regarding a durable or limited POA for Petitioner to sign allowing him to handle the deeds and matters associated with the LLC. Petitioner further confirms that he had spoken to his mother regarding the LLC and "she stated she wanted to go ahead with creating the LLC and that she would agree for Respondent to "take care of the deeds to her properties." Further, Petitioner advised he told his mother "that in my opinion that this course of action would save both myself and potentially my brother an amount well in excess of your fee." (Copy attached)

ANSWER: Petitioner admits the content of the email, but notes that the terms of the alleged LLC were unknown to him at the time (including that Scarborough would receive a substantial portion of the property), as was the existence of the October 2012 codicil.

9. That Petitioner Mikell Henderson was fully informed by H. Christopher Moss and willingly participated in the determination of all members' interests in MRH Family, LLC prior to and after its formation in December 2012, including Ms. Hanahan's retention of 2% interest in the MRH Family, LLC, a 68% interest to Petitioner, and a 30% interest to MRSMIE, LLC.

ANSWER: Denied.

10. That Ms. Hanahan funded the MRH Family, LLC by transferring to it her interest in various parcels of land by Deed dated December 30, 2012 and recorded on December 31, 2012, at 2:45 pm in the Charleston County RMC Office in Book 0300, Page 995 which Deed was witnessed by Joseph H. Yates, Jr. and H. Christopher Moss and notarized by Joseph H. Yates, Jr. (copy enclosed).

ANSWER: Petitioner admits the authenticity of the copy attached, as well as the identity of the

witnesses and recording information, but denies that Ms. Hanahan had the requisite intent and understanding to complete the transfer of the property.

11. That Ms. Hanahan signed a statement on December 30, 2012 acknowledging that she was aware that she was conveying to Respondent Mikell Scarborough, through the MRSMIE, LLC, an interest in her estate and that she was not under any duress or influence by anyone at the time of conveyance of the interest in the LLC or the property interest owned by the LLC. (copy attached)

ANSWER: Admitted as to the stated content of the document.

12. That the existence of the MRH Family, LLC has been continuing and ongoing since its formation in December 2012, and Petitioner Mikell Henderson has received and accepted distributions of \$10,000 in December 2013, and \$8,000 in August 2014 from the MRH Family, LLC and has raised no prior concerns regarding said distributions.

ANSWER: Petitioner admits that he has received distributions from MRH Family, LLC, but lacks sufficient information to know whether the entity has been "continuing and ongoing" as a result of not having received any accountings during the period since December 2012.

13. That Petitioner Mikell Henderson has brought no action challenging the Deed executed by their mother, Ms. Hanahan, to his brother, Respondent Ross Henderson which Deed is dated December 30, 2012 and recorded on December 31, 2012, at 2:44 pm in Book 0300, Page 993 for those conveyances of real estate consisting of a one-half (1/2) interest in 80 acres, in St. Paul's Parish, TMS# 061-00-00-023 and a one-half (1/2) interest in 30 acres, in St. Paul's Parish, TMS# 038-00-00-012 which Deed was witnessed by Joseph H. Yates, Jr. and H. Christopher Moss and notarized by Joseph H. Yates, Jr. (copy attached)

ANSWER: Admitted.

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Attorneys for Petitioner

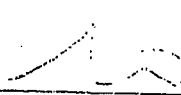
June 13, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of June, 2016, he has served the foregoing document on counsel for Respondent Mikell M. Scarborough, individually and as Personal Representative, by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

Joseph S. Mendelsohn, Esquire
P.O. Box 250
Charleston, SC 29402-0250
Attorney for Respondent

Shirrese B. Brockington, Esquire
764 Saint Andrews Blvd.
Charleston, SC 29407
Attorney for Respondent


Adam T. Silvernail

HANAHAN, MARY 10/10/1940

Office/Outpatient Visit

Visit Date: Tue, Oct 16, 2012 12:30 pm

Provider: Kay Durst, MD (Assistant: Natasha Smith)

Location: Carolina Family Care

Electronically signed by Kay Durst, MD on 10/16/2012 10:36:09 PM
Printed on 01/02/2016 at 1:36 pm.

SUBJECTIVE:

CC:

Ms. HANAHAN is a 72 year old White female. She is here for the following lab work: urinalysis.

HPI:

pt here to go over results and to give urine. She is doing well overall.

she states she feel no issue.

she had mri which showed. compression deformity.

pt states that her left hand got red after eating hamburger. She denies hitting it. After further inquiry she states her dog did bite her there.

ROS:

CONSTITUTIONAL: Negative for chills, fatigue, fever, and weight change.

CARDIOVASCULAR: Negative for chest pain, palpitations, tachycardia, orthopnea, and edema.

RESPIRATORY: Negative for cough, dyspnea, and hemoptysis.

GENITOURINARY: Positive for **bladder prolapse..**

MUSCULOSKELETAL: Positive for **back feel better.**

INTEGUMENTARY/BREAST: Positive for **left hand with red.**

PSYCHIATRIC: Negative for anxiety, depression, and sleep disturbances.

PMH/FMH/SH:

Past Medical History: bi-polar, demntia. right hip broken four and 1/2 years ago, left upper lobe lung cancer lesion. seeing oncology at musc

Surgical History: hysterectomy- bleeding, tonsills,

Family History: brother with esposhgeal cancer, gf- with lung cancer- 90s.

Social History: lives alone and son- and daughter in low- lives in brunswick., she has two children. she has caregiver with her.

Tobacco/Alcohol/Supplements:

Tobacco: She has a past history of cigarette smoking; quit date: 15. Non-drinker

Current Problems:

Abdominal pain

Acquired hypothyroidism

Constipation

COPD

Dementia

Hyperkalemia

Hyperlipidemia

Lung cancer

Numbness

Uterine prolapse

mmunizations:

None

Allergies:

Last Reviewed on 6/19/2012 11:33:52 AM by Durst, Kay
Codeine Phosphate:

Current Medications:

Oxybutynin Chloride 5mg Tablet Take 1 tablet(s) by mouth bid
Depakote
Effexor
Lipitor
Lorazepam 0.5mg Tablet Take 1 tab(s) by mouth bid prn
Symbicort
Synthroid

OBJECTIVE:

Vitals:

Current: 10/16/2012 12:31:47 PM
Ht: 5 ft, 3 in; Wt: 152 lbs; BMI: 26.9
T: 98.1 F; BP: 153/65 mm Hg; P: 69 bpm

Exams:

PHYSICAL EXAM:

GENERAL: well developed and nourished; appropriately groomed; in no apparent distress;
RESPIRATORY: lungs clear to auscultation and percussion; symmetric expansion; no dyspnea;
CARDIOVASCULAR: regular rate and rhythm; normal S1, S2; no murmur, rub, or gallop; normal PMI;
BREAST/INTEGUMENT: left hand with bruising;
MUSCULOSKELETAL: gait: **affected by a limp**; left hand with bruising and small lesion slight pink
PSYCHIATRIC: appropriate affect and demeanor; normal speech pattern; grossly normal memory;

Lab/Test Results:

LABORATORY RESULTS:

Urinalysis: (-) glucose, (-) bilirubin, (-) ketones, S.G. 1.005, (-) blood, pH 6.5, (-) protein, normal (0.2-1 EU)
urobilinogen, (-) nitrite, **trace** leukocyte esterase;

ASSESSMENT:

618.1 Uterine prolapse
599.0 Pyuria
782.7 Bruising
805.2 T12 compression fracture
782.1 Rash

ORDERS:

Lab Orders:

Urinalysis, automated, without microscopy (In-House)
Urine culture ID (Send-Out)

Procedures Ordered:

Urologist Referral (Send-Out)
Neurosurgeon Referral (Send-Out)

PLAN:

Uterine prolapse

REFERRALS: Referral initiated to a urologist.

Orders:

Urologist Referral (Send-Out)

Pyuria

Orders:

Urinalysis, automated, without microscopy (In-House)
Urine culture ID (Send-Out)

Bruising pt with bruising and small lesion. apply small amount of mucopription area then dressed and call if worse

T12 compression fracture

RADIOLOGY: I have ordered ct scan of thoracic and lumbar to be done today.
REFERRALS: Referral initiated to a neurosurgeon.

Orders:

Neurosurgeon Referral (Send-Out)

CPT® is a registered trademark of the American Medical Association

Piave Pitisci Lake, M.D., LLC

409 Coleman Boulevard
Mt. Pleasant, SC 29464

Hannan, Mary Riis

PN, 10/18/12, 1245-1315

Was mentioned.

Appearance:

disheveled neat neat+

Motor: retarded no agitated
tremor, tic, mannerisms

Mood:

depressed euthymic euphoric
despairing, irritable, angry, guilty
anxious, frightened, confused

Thought Process: normal

blocked, slow, fast, racing, FOI
illogical, obsessional
circumstantial, tangential

Perceptual Disturbance: none

halluc: AH, VH, OH, GH, TH
illusions, déjà vu

Alertness:

diminished no enhanced

Orientation: full

place, time, person

Speech: normal, dysarthric

slow fast

latency pressure

soft loud

Affect:

congruent incongruent

blunted stable labile

restricted expansive

tearful, hostile, intense

Thought Content: normal

delusions, LOA, paranoia,
magical thinking, violence,
suicidality

Memory: good, baseline

poor good

Insight:

poor no gross deficit

Judgment:

poor no gross deficit

Meds

lorazepam 0.5mg BID
Dep ER 520mg TID *reports taking*
Effexor XR 31.5mg qam *1 x 31.5mg*
Syntroid *due to previous*
shortage.

- Track to H x 2nd

Meds Aes

0 R/B/L's discussed

NO

Therapeutic Work

- ☐ Extension of history
- ☐ Exploration of symptoms
- ☐ Exploration of dynamics
- ☐ Alliance building
- ☐ Transferential work
- ☐ Self work
- ☐ Relational work
- ☐ Boundary work
- ☐ Grief work
- ☐ Dream work
- ☐ Imagery work/relaxation

Support

- ☐ Psychoeducation
- ☐ Cognitive restructuring
- ☐ Conflict management
- ☐ Crisis/transition management
- ☐ Stress management
- ☐ Anger management
- ☒ Medication management
- ☐ Self-care strategies
- ☐ Lab review
- ☐ Other

- S: "I'm 80-90." "I'm still trying to adjust to living a*
recluse."
- Goes back to sleep in a.m. after taking a.m. meds. ^{sleeps} ~~uses~~*
from 0730/0800 - 1030/1100. Discussed not taking lorazepam
- Has had a trial night when couldn't sleep well. ^{part}
Has happened over last a couple of years. Last night was
one.
 - Sleeps a bit during the day. Reading a book about. In bed more*
on days 3 with. Gets up in a.m. in sitting position.
Wants to take dog for a ride & go out for lunch.
 - Seems to be adjusting a little better (in better spirits today).*
 - Discussed pt. walking outside & helper.*

1p. Bipolar I DO, dem. Anx NOS, Cognitive impairment - Pt's
mood a little better. "So-so" instead of depressed. Reading
some recently. No hypomania/hypomania. Spends a lot of time
in bed b/c she feels she doesn't have much to do.
Cont cur med 2 R/C 4-6/10.

P. W. MD 10/18/12

CARE FOR LIFE, INC. DAILY CHARTING

FAX 10/21/12

CIRCLE DIET TYPE	
Regular	Diabetic
Pureed	Low Sodium
Renal	Mechanical Soft
NPO (Tube Feeding)	

Client Name: Mary Hanahan

Employee Name: Laura McGuire

Chart Below

- Date Meal Eaten
- Which Meal Eaten & % Eaten
- Chart food if <60% Eaten
- Chewing/Swallowing Problems

	Date: <u>10/16/12</u>	Date: <u>10/20/12</u>	Date: <u>10/16/12</u> Menu
	Time-In: <u>8 am</u>	Time-In: <u>8 am</u>	BF %
	Time-Out: <u>4 pm</u>	Time-Out: <u>4 pm</u>	
ABBREVIATIONS SBA (Stand by assist) MIN (Minimal assist) MAX (Maximum assist)	Use the abbr. from abbreviations box at left to complete columns below. <i>If care not provided, put a line through blank spaces.</i>		NA Lunch % <u>60</u>
Bath/shower/tub/sponge/bed	---	---	
Oral hygiene/Denture	<u>SBA</u>	<u>SBA</u>	Supper %
Skin care	---	<u>SBA</u>	
Shampoo	---	---	NA
Comb Hair	<u>SBA</u>	---	
Nail care	<u>MAX</u>	---	Date: <u>10/20/12</u> Menu
Shave	---	---	BF %
Dressing	<u>MIN</u>	<u>MIN</u>	NA
Personal hygiene	<u>SBA</u>	<u>SBA</u>	
Incontinent care	---	---	
Turn & position	---	---	Lunch % <u>90</u>
Transfer	<u>SBA</u>	<u>SBA</u>	
Ambulation/mobility	<u>MIN</u>	<u>MIN</u>	
Daily physical activities	---	---	
Meal preparation/meal set-up	---	---	Supper %
Feeding	<u>SBA</u>	<u>SBA</u>	
Urination # of times	<u>2X</u>	<u>2X</u>	NA
BM # of times	<u>0X</u>	<u>1X</u>	
If services Provided below, put CG initials, otherwise draw line in space			Date: Menu
Medication Reminder	<u>SM</u>	<u>SM</u>	BF %
Cleaning	<u>SM</u>	<u>SM</u>	
Laundry	<u>SM</u>	<u>SM</u>	
Change bed linens	---	<u>SM</u>	
Clean bathroom/bedside commode	---	<u>SM</u>	Lunch %
Errands/shopping	<u>SM</u>	<u>SM</u>	
Transportation	<u>SM</u>	<u>SM</u>	
Conversation/stimulation	<u>SM</u>	<u>SM</u>	
Answers telephone	<u>SM</u>	---	Supper %
Other: <u>Pet Care</u>	<u>SM</u>	<u>SM</u>	
Put All Letters That Apply In Columns Below			
A (Alert) O (Oriented) C (Confused)	<u>AO</u>	<u>AO</u>	
F (Forgetful) AG (Agitated) CB (Combative)	---	---	

Guidelines: Document cognitive stimulation activities performed with client for ex: Read newspaper, arts & crafts, puzzle, games, music etc. Document MD appointments, mood swings, wandering episodes, misplaced items, and conversations with family. Document all assistive devices used ex: walker, cane, wc, etc.

Shift Summary

CLT in bed ^{resting} when I arrived. She told me she had left a shopping list and cash in the kitchen and asked me to go to Publix and shop which I did. I returned & brought in groceries and put them away, leaving change and receipt on kitchen counter. I swept LR and washed dishes. I did laundry. CLT has dark mark on L hand which I reported to CFL. I took CLT to 12pm appt. Dr. Dwyer. We went to Lehigh at Ca Blvd, Denver. CLT has appt at 1:30. Name w/ went well.

Employee Signature Laura McQuire

Date 10/15/12

Shift Summary

CLT in bed sleeping when I arrived. I did some cleaning in bathroom and kitchen. CLT awoke & sent me out shopping @ Publix. I returned and did laundry and put fresh linens on bed. CLT's dog and I played "fetch" in backyard. I took CLT out to lunch at Gilligan's. All went well.

Employee Signature Laura McQuire

Date 10/20/12

Shift Summary

Employee Signature _____

Date _____

Supervisor's Signature Karen Moore, LCSW

Date 11/5/12

CARE FOR LIFE, INC. DAILY CHARTING

CIRCLE DIET TYPE

☒ Regular
☐ Diabetic
☐ Pureed
☐ Low Sodium
☐ Renal
☐ Mechanical Soft
☐ NPO (Tube Feeding)

Client Name: Mary Hanabusa

Employee Name: Henrietta Wise

Chart Below

- Date Meal Eaten
- Which Meal Eaten & % Eaten
- Chart food if <60% Eaten
- Chewing/Swallowing Problems

Date: <u>10-18-12</u>		Date: <u>10-18-12</u>	
Time-In: <u>8a</u>		Menu	
Time-Out: <u>4p</u>		BF % <u>100</u> %	
ABBREVIATIONS			
SBA (Stand by assist)			
MIN (Minimal assist)			
MAX (Maximum assist)			
Use the abbr. from abbreviations box at left to complete columns below. If care not provided, put a line through blank spaces.			
Bath/shower/tub/sponge/bed			
Oral hygiene/Denture			
Skin care			
Shampoo			
Comb Hair			
Nail care			
Shave			
Dressing			
Personal hygiene			
Incontinent care			
Turn & position			
Transfer			
Ambulation/mobility	<u>SBA</u>		
Daily physical activities			
Meal preparation/meal set-up			
Feeding			
Urination # of times	<u>3</u>		
BM # of times	<u>1</u>		
If services Provided below, put CG initials, otherwise draw line in space			
Medication Reminder	<u>H.W.</u>		
Cleaning	<u>H.W.</u>		
Laundry	<u>H.W.</u>		
Change bed linens			
Clean bathroom/bedside commode	<u>H.W.</u>		
Errands/shopping	<u>H.W.</u>		
Transportation			
Conversation/stimulation	<u>H.W.</u>		
Answers telephone			
Other:			
Put All Letters That Apply In Columns Below			
A (Alert) O (Oriented) C (Confused)	<u>A</u>		
F (Forgetful) AG (Agitated) CB (Combative)	<u>F</u>		

- 7 Guidelines: Document cognitive stimulation activities performed with client for ex: Read newspaper, arts & crafts, puzzle, games, music etc. Document MD appointments, mood swings, wandering episodes, misplaced items, and conversations with family. Document all assistive devices used ex: walker, cane, wc, etc.

Shift Summary

Upon arrival, Clt was in bed and asleep. I let her no 2 was they. Later she got up, dress, and ready for the day. Clt then sat down and had breakfast. Clt watch the midday news, before we leave to go to the Bank and to an appt that Clt had with Dr. Lake. We returned home from the appt, but later went out to Boulevard Jines, where Clt had lunch & clean the kitchen, swept and a little laundry, and clean the bathroom.

Employee Signature Hennetta Wise

Date 10-18-12

Shift Summary

Employee Signature _____

Date _____

Shift Summary

Employee Signature _____

Date _____

Supervisor's Signature Ken: Mary, Lash

Date 11/1/12

Mikell Scarborough

From: Mikell Scarborough
Sent: Wednesday, June 06, 2012 2:13 PM
To: 'Henderson, Mikell M'
Subject: RE: Dede's Biopsy

Importance: Low

Expires: Monday, December 03, 2012 12:00 AM

I'm on the phone with KAT.
Getting the scoop.
I am on board with all this.
Mikell

From: Henderson, Mikell M [REDACTED]
Sent: Wednesday, June 06, 2012 1:59 PM
To: Mikell Scarborough
Cc: [REDACTED]
Subject: Dede's Biopsy

Mikell,

Kat called and spoke with the radiologist today. He confirmed that the tumor is malignant. The official report will be sent to Dr. Durst. Mom does NOT know yet. I do not recommend we tell her yet for two reasons. First, Kat and I would like to be there and I imagine you would prefer to be there too. Also, I don't want Mom finding this out and not having family around. I am not sure what your schedule is for this weekend or next week. I believe Kat has made an appointment with Dr. Durst for sometime next week or the week after. She is going to email me the date. The only people that know about the cancer are Kat, me, my Dad, and you. I specifically told my Dad not to tell Ross or anyone else in our family (even his side) about the cancer diagnosis. Ross and Mom are not on good terms to begin with and I doubt Ross can handle the news or keep it to himself. I will tell him when the time is appropriate but certainly not before Mom is told.

I would recommend you call Kat for the details from the radiologist. However, my understanding is that Mom's personal physician is going to have to refer her for further tests to determine the extent or grade of the cancer. It may be that it has been caught early and there is a good prognosis for recovery. On the other hand, Mom seems convinced she had cancer and that it has spread throughout her body. Obviously if that is the case we need to discuss a number of different plans soon.

I certainly hope that the cancer has been detected early and can be treated. However, one item Bright Star brought up was that we need to see if Mom's Living Will indicated that she did not want life-saving treatment (a Do Not Resuscitate) in the event she were to suffer some incident in her own home, as opposed to the DNR she would have at the hospital. I will have to check the Living Will that Demal Mattson did for her previously. Pete Brown only did the Health Care POA. We may need to add that to the Living Will or revise it for that purpose but we need to talk to Mom about it first and check the existing Living Will.

Also, this may give Mom the incentive to do some estate planning. I would prefer that she include Ross in her Will but right now she is not happy with him. However, this could provide the opportunity for her to create a support trust for Ross for his future and possibly educational trusts for Will and Connor. At least with a Support Trust for Ross we can tell her she can control Ross from the grave. She might like that idea. Mom told Kat she wanted to sell her acreage at Big Millbrook and that Mom thought she needed the money? Depending on the treatment and health care costs, she may very well need the money in the future. However, I don't want her to just sell property if she does not have to yet. At the very least, we can look at planning for her medical and health care costs in the future and to arrange her estate to minimize inheritance taxes.

I am in my office this afternoon but have a pretty full day tomorrow. Call or email me if you have time later today.

Mike

Mike Henderson

Attorney/Advisor

Legal Division

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mikell Scarborough

From: Henderson, Mikell M [REDACTED]
Sent: Wednesday, December 05, 2012 3:39 PM
To: [REDACTED]
Cc: Mikell Scarborough
Subject: General POA for Mary Ross "Dede" Hanahan
Attachments: General Power of Attorney.pdf

Chris,

Thank you for talking to me this afternoon. Attached is a .pdf file copy of the General POA I have for my mother. I left a message for Mikell Scarborough to contact me back regarding a durable or limited POA for me to sign allowing him to handle the deeds and matters associated with the LLC.

I just spoke to my mother on the phone as well. I went over the details of what you and I discussed. She stated she wanted to go ahead with creating the LLC and that she would agree to me or her signing a limited or durable POA for Mikell Scarborough to take care of the deeds to her properties.

If Mikell Scarborough and I speak this evening, I will try to cover the additional details of a name for the LLC and making sure he can get the durable or limited POA as soon as possible. I also mentioned the issue of your fee to my mother but did not mention the specific amount. I did tell her that in my opinion that this course of action would save both myself and potentially my brother an amount well in excess of your fee. Thank you for your assistance and I will do whatever I can to assist in accomplishing this task within the short time period we have left. I can be reached via my cell number [REDACTED] I usually have the phone with me all day. My home email address is [REDACTED] and it is probably better to email at that address since I also get emails on my cell phone.

With kind regards,

Mike

<<General Power of Attorney.pdf>>

Mike Henderson

Attorney/Advisor

Legal Division

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF CHARLESTON) CASE NO. 2015-CP-10-6502

MIKELL M. HENDERSON,
Petitioner,

vs.

MIKELL R. SCARBOROUGH,
Individually and as Personal
Representative of the Estate of Mary
Ross Hanahan, and Joseph Ross
Henderson,

Respondents.

In Re: Estate of:
Mary Ross Hanahan

**SUPPLEMENTAL
MEMORANDUM SUBMITTED
ON BEHALF OF RESPONDENT
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT
AS TO CREATION OF
MRH FAMILY, LLC AND
RELATED DOCUMENTS**

FILED
2017 MAY 16 PM 2:40
JULIE J ARMSTRONG
CLERK OF COURT

**TO: HON. BROOKS P. GOLDSMITH, CIRCUIT COURT JUDGE, NINTH
JUDICIAL CIRCUIT**

SUPPLEMENTAL INFORMATION

Respondent Mikell Scarborough filed a Memorandum on April 19, 2017 in support of his Motion for Summary Judgment regarding the denial of Petitioner's Action to Try Title to Real Estate, for Petitioner's failing to provide evidence that Mary Ross Hanahan lacked the capacity to sign documents creating the MRH Family, LLC, including execution of deeds which transferred real property, on December 30, 2012, or that the documents were the product of undue influence by the Respondent.

Respondent supplements the original Memorandum with excerpts from deposition testimony of Petitioner and two witnesses to the relevant documents which support Respondent's

position that there is no genuine issue of fact as to the testamentary capacity of Ms. Hanahan, the lack of undue influence by Respondent, or that the LLC documents, deeds, and other relevant documents in question are valid and should be upheld by the Court.

DENIAL OF ACTION TO TRY TITLE BASED ON

ALLEGATIONS OF LACK OF CAPACITY AND UNDUE INFLUENCE

In early December 2012, Mary Ross Hanahan, along with Respondent, met with Christopher Moss, CPA-Attorney, in order to review what steps could be taken to reduce possible estate taxes for Ms. Hanahan's sizable estate due to changes in the estate tax exemption laws. Ms. Hanahan also consulted with her son, Petitioner herein, in regard to this matter. Petitioner also communicated with Mr. Moss and Respondent. At his deposition taken on April 17, 2017, Petitioner testified to the following:

- 1) **Petitioner spoke with his mother and confirmed that she "wanted to go ahead with creating the LLC" and "for Mikell Scarborough to take care of the deeds to her properties." **See EXHIBIT 1 and 1(1)**
- 2) Petitioner also spoke with Christopher Moss, CPA-Attorney, and Respondent, regarding creation of the MRH Family LLC, as well as a power of attorney that was needed. Mr. Moss prepared the Power of Attorney. Ms. Hanahan appointed Respondent as the sole agent. Ms. Hanahan signed the Power of Attorney on December 6, 2012, before Mr. Moss and a second witness, who also served as notary public.

Although Petitioner now alleges that his mother lacked the necessary mental capacity to execute documents relative to the LLC, Petitioner has not challenged

the validity of the Power of Attorney nor did he contact the second witness on the document with regard to its execution prior to the filing of this action.

**See EXHIBIT 2 and 2(1)

- 3) There were three (3) members of the MRH Family, LLC, with ownership interests as follows: 1) Petitioner - 68% interest; 2) a separate LLC known as the MRSMIE, LLC, in which Respondent was the sole member - 30% interest; and 3) Ms. Hanahan - 2% interest.

The Operating Agreement of MRH Family, LLC was prepared by Mr. Moss. It was signed on December 30, by all three members. Petitioner reviewed the Operating Agreement but had no particular questions regarding it other than noting there were two page fives. Petitioner does not dispute his mother signed the document. Further, Petitioner testified that he was fine that his cousin received the 30% interest. Petitioner is an attorney and an educated man; Petitioner did not seek any independent advice about the formation of the LLC from any attorney or CPA. **See EXHIBIT 3 and 3(1)

- 4) Petitioner believed that his brother would have an ownership interest in the LLC but initially did not discuss it with his mother and understood her reluctance in not including him. Petitioner later raised the exclusion of his brother from having an ownership interest in the LLC to his mother but she did not respond to him. **See EXHIBIT 4

- 5) In addition to the Operating Agreement of MRH Family, LLC, Ms. Hanahan also signed the deed conveying various real estate to the LLC, and a Statement of Intent to

Transfer Land on December 30, 2012. These documents were prepared by Attorney Howard Yates, Esq. **See EXHIBIT 5(1) and 5(2)

- 6) In addition to the deed conveying property to the LLC, Attorney Yates prepared a second deed that transferred Ms. Hanahan's interest in two parcels she owned to her older son, Ross Henderson. Both deeds were signed at the same time. However, it should be noted, that although Petitioner claims Ms. Hanahan did not have capacity to sign documents, Petitioner is not challenging the second deed that conveys the parcels to his brother executed by Ms. Hanahan that same day (December 30, 2012), and recorded within one (1) minute of the LLC deed.

**See EXHIBIT 6 and 6(1)

- 7) Petitioner testified he had no knowledge of how the deeds were executed or where they were signed and had no knowledge of whether or not Respondent was present.

**See EXHIBIT 7

- 8) Petitioner did not raise the issue of his mother's now alleged lack of mental capacity to sign the documents in December 2012. **See EXHIBIT 8

- 9) Petitioner has no statements or reports from any medical or health care provider during the relevant time period regarding Ms. Hanahan's alleged lack of mental capacity. Conversely, Ms. Hanahan's mental status is within normal limits as set forth in the Supplemental Summary Judgment Memorandum relative to the Codicil she executed on October 19, 2012, just weeks before the creation and funding of the LLC. **See Supplemental Summary Judgment Memorandum filed herein

10) After formation of the LLC, Petitioner admits he received distributions of \$10,000 in 2013 and \$8,000 in 2014. Petitioner further admits that Schedule K-1s have been issued for those years and that he has relied on those K-1s in preparation of his own personal tax returns. **See EXHIBIT 9

11) Inexplicably, Petitioner acknowledges that if the LLC were declared void *ab initio*, and the real estate in the LLC placed back into his mother's estate, of which Petitioner is the sole beneficiary of the residuary, that the value of the estate would exceed the tax exemption amount in effect at time of death (in 2014) and that the estate would be taxed on approximately \$3.0 Million. Petitioner states that he would owe taxes and "there is nothing I can do about it." **This would defeat the underlying reason for creation of the MRH Family, LLC and would render null and void Ms. Hanahan's efforts to save her estate and Petitioner from paying millions of dollars in estate taxes.** **See EXHIBIT 10

In further support of Respondent's Motion for Summary Judgment that Ms. Hanahan had sufficient mental capacity to execute the Operating Agreement of MRH Family, LLC and its related documents and that such were not the product of undue influence by Respondent, Respondent submits deposition testimony of Christopher Moss, CPA-Attorney and of J. Howard Yates, Esq. which was taken on May 5, 2017.

Christopher Moss, CPA-Attorney testified that for the initial meeting of December 6, 2012, he prepared a Summary 5 Action Steps Power Point presentation and reviewed it with Ms. Hanahan which explained what steps could be taken to reduce her estate tax liability. As part of

the presentation, Mr. Moss had initially suggested a 75%-80% ownership by her son, Mikell Henderson which would result in much less to Respondent. **However, Ms. Hanahan stated that Mikell Scarborough was like a son to her and insisted that Mikell Scarborough receive a 30% interest.**

On December 6, 2012, there was a list of all the real estate and Ms. Hanahan wanted to give all that she could into the LLC. Initially, Ms. Hanahan did not want to give any real estate to her other son, Ross Henderson, but after much heated discussion, she agreed to convey two parcels to son, Ross. Mr. Moss also informed Ms. Hanahan of his fee of \$5,000 which was not questioned by his client. **See EXHIBIT 11 and 11(1).

Mr. Moss testified that he prepared the MRH Family, LLC Operating Agreement and went over it extensively with Ms. Hanahan on December 30, 2012, and that she understood the provisions. Further, Ms. Hanahan was aware that by creating the estate plan that her estate would save on paying very high estate taxes. **See EXHIBIT 11 and 3(1).

Mr. Moss testified that Petitioner did not question Mr. Moss about the percentages of ownership or any concern about his mother's ability to understand what was going on. **See EXHIBIT 11

Mr. Moss further testified that the meeting on December 30, 2012, took place at his office and lasted between 2-3 hours. He was present, along with Ms. Hanahan and Howard Yates, Esq. **Of particular note, is that Respondent was not present when the deeds and Statement of Mary Ross Hanahan Concerning 2012 Land Transfers was signed by his aunt before Mr. Moss and Attorney Yates.** Ms. Hanahan acknowledges that she has had the opportunity to consult with Mr. Moss and her nephew, that she wishes to avoid substantial estate taxes, that her

nephew would have an interest in the MRH Family, LLC and that she would retain a 2% interest. Ms. Hanahan also acknowledges that she desires to convey certain property to her son, Ross Henderson. **More importantly, Ms. Hanahan states that she has not been placed under any duress or influence by any one and that she was free or not free to sign the document.**

****See EXHIBIT 11 and 5(2).**

At no point did Mr. Moss question Ms. Hanahan's mental capacity and ability to comprehend and understand the documents that she was signing. "She was very sharp that day."

****See EXHIBIT 11**

Howard Yates, Esq. testified that he was contacted by Respondent to prepare the necessary deeds, one to convey real estate to the LLC and one to convey property to Ross Henderson. In addition, Attorney Yates prepared the Statement of Mary Ross Hanahan Concerning 2012 Land Transfers. **** See Exhibit 12, 5(1), 6(1) and 5(2)**

Attorney Yates accompanied Respondent to Ms. Hanahan's house on December 30, 2012. He met with Ms. Hanahan at the residence and

"had Mikell go out or go away from earshot or sight so that I could talk to her about this and to make sure that I felt comfortable that she had an intent to sign these documents. and she was adamant that this is what she wanted." They then travelled to Mr. Moss's office and Attorney Yates again asked Respondent "to leave the room and Mikell went in to the hallway outside of the office completely. I wanted to make sure that this was what she wanted to do and that she understood what she was doing....nobody is pushing you.. she was adamant. I detected no evidence of incapacity or forgetfulness at all."

Attorney Yates was with Ms. Hanahan a little over 2 hours during these various discussions and execution of the documents in question.

Attorney Yates believes that he had tax maps with him that day which are drawings that depict where the properties were located, as was his custom. Ms. Hanahan signed the deeds and Statement before Mr. Moss and Attorney Yates and Mr. Yates *"was of the opinion that she was under no disability or constraint or any undue influence. I made doggone certain that; Mikell is not here, this is between us, you don't have to do this if you don't want to."*

Attorney Yates testified that he was unaware of any diagnosis of dementia of Ms. Hanahan or history of mental illness but if he had been made aware, then he would have required more specifics and investigated it further. However, he found Ms. Hanahan to be "vibrant and very congenial." There has been no communication with Petitioner at all. ** See Exhibit 12

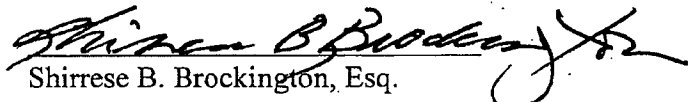
In summary, Petitioner participated in the LLC planning discussions in early December 2012. He signed the Operating Agreement and did not express any concern about his mother signing. He was aware that deeds were needed to transfer title of the properties to the LLC. Petitioner did not raise any question to anyone regarding his mother's capacity. If Petitioner believed his mother did not have the requisite capacity to understand what was going on in December 2012, then why did he not raise that issue at the time? Or at any time prior to her death?

Further, Petitioner's position is inconsistent to say the least. To say that one document conveying title to an entity is not valid and another document that conveys title to an individual, (Petitioner's brother) both executed the same day, before the same witnesses, is not credible and is not legally or factually persuasive.

Two independent witnesses are clear in their testimony that Ms. Hanahan understood what she was signing on December 30, 2012 (the MRH Family, LLC Operating Agreement, two deeds and the Statement concerning the 2012 Land Transfers), **all outside the presence of Respondent.** Petitioner has produced no evidence of any act or action by Respondent that demonstrates Ms. Hanahan was coerced by him or that Respondent otherwise exerted improper influence to get his aunt to include him in her overall estate plan.

Petitioner has thus failed to create a genuine issue of any material fact as to the lack of capacity of Ms. Hanahan in December 2012 or as to the exercise of undue influence by the Respondent relative to the creation of the MRH Family, LLC and its related documents. Summary Judgment should thus be granted in favor of Respondent on this cause of action.

Respectfully submitted,


Shirrese B. Brockington, Esq.
P.O. Box 31312
Charleston, SC 29417
(843) 737-5278

Attorney for Respondent Mikell R. Scarborough,
Individually

AND

Joseph S. Mendelsohn, Esq.
P.O. Box 250
Charleston, SC 29402
(843) 577-7210

Charleston, South Carolina
May 15, 2017

Attorney for Respondent Mikell Scarborough
as Personal Representative for the
Estate of Mary Ross Hanahan

**** EXHIBIT 1**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

1 **MIKELL M. HENDERSON**, having been duly sworn, deposes
2 and testifies as follows:

3 **MR. HENDERSON - EXAMINATION BY MS. BROCKINGTON:**

4 Q: Mr. Henderson?

5 A: Yes, ma'am.

6 Q: I'm attorney Shirrese Brockington, as you know.

7 I represent your cousin, Mikell Scarborough,

8 individually in this lawsuit that you've

9 brought against him.

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22 Q: And tell me about who was engaged in the initial

23 conversation with you and Mr. Moss. Was it just

24 the two of y'all on the phone or did you

25 conference in Mikell Scarborough?

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1 A: I don't recall if Mikell Scarborough was

2 conferenced in or not.

3 Q: Okay.

4 A: He may have been, but I don't recall that.

5 Q: Between the November date, which we're not sure

6 of the exact date.

7 A: Yes.

8 Q: Trough December 31st of 2012, how many times did

9 you communicate on the phone with Chris Moss?

10 A: I don't know if it was two, three times maybe.

11 Q: Okay. How about via email? Did you have

12 communications with him via email?

13 A: Yes. I think he called me on December 5th,

14 either he or Mikell Scarborough, and it was

15 regarding the general power of attorney. And

16 there was discussions about that. And then, I

17 think, one of the emails that was provided

18 yesterday, had some information about the --

19 confirming that I had talked to my mother about

20 this LLC and that based on what she had been

21 told, she wanted to go forward with it.

Page 113

21 A: Yes, ma'am. The Exhibit 12, or what's marked

22 Respondent's 12.

23 Q: Yes, thank you. And what communication did you

24 get back from Mr. Moss relative to that power of

25 attorney?

Page 114

1 A: I don't believe he responded back to me at all.

2 Q: All right. Well what about the next statement?

3 You say, I left a message for Mikell Scarborough

4 to contact me back regarding a durable or

5 limited POA for me to sign allowing him to

6 handle the deeds and matters associated with the

7 LLC.

8 A: Yes. Mikell Scarborough had talked to me and

9 indicated he was not sure whether the general

10 power of attorney was sufficient. And then,

11 that there may be a need for a power of attorney

12 for the purpose of handling the deeds.

13 Q: Okay. And would you read into the record that

14 next short paragraph please?

15 A: "I just spoke to my mother on the phone as well.

16 I went over the details of what you and I

17 discussed. She stated she wanted to go ahead

18 with creating the LLC and that she would agree

19 to me or her signing a limited or durable power

20 of attorney for Mikell Scarborough to take care

21 of the deeds to her properties."

22 Q: All right. Tell me about that conversation with

23 your mom.

24 A: I asked her if she had met with Chris Moss, and

25 she indicated that she had, and Mikell

Page 115

1 Scarborough. I indicated if she -- I asked her

2 if she understood based on what Chris Moss had

3 told me, that creating the LLC would limit the

4 potential inheritance tax, and limit the

5 inheritance tax certainly for her estate

6 depending on what properties were put in it.

7 Q: And did your mom confirm that that was her

8 understanding as well?

9 A: Yes, she did. We didn't discuss the -- she

10 didn't mention, and I certainly wasn't going to

11 mention ownership interest or anything like that

12 with her because she was contributing all of the

13 property to create an LLC. So, no, nothing

14 else.

15 Q: All right. How was the ownership interest

16 determined in the LLC?

17 A: Well, according to what Mikell Scarborough said

18 yesterday, Chris Moss or my mother came up with

19 it.

20 Q: Do you have reason to doubt that?

21 A: I -- no, if that's what he says.
22 Q: All right. What input did you have, Mr.
23 Henderson?
24 A: I don't believe I had any other than approving
25 what was sent.

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1 Q: Well, what is the percentage of ownership you
2 have?
3 A: I have 68 percent ownership, my mother had 2
4 percent, and Mikell Scarborough had 30 percent.
5 Q: And it's your testimony that you had no input
6 whatsoever into that 68 percent ---
7 A: I didn't come up ---
8 Q: --- determination?
9 A: I didn't come up with that calculation, no.
10 Q: When did you first hear of that calculation?
11 A: December 30th of 2012, when he emailed it with
12 operating agreement that Chris Moss sent.
13 Q: Did you question it?
14 A: I did.
15 Q: Who did you talk to about it?
16 A: I talked to Mikell Scarborough about my mother
17 having a two percent interest in a LLC that she
18 was contributing 100 percent of assets to, and
19 questioning how she was going to live off of 2
20 percent.
21 Q: What was his response?
22 A: All the proceeds, and profits, and revenues from
23 the LLC would go toward her care and
24 maintenance.
25 Q: Was that agreeable to you?

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1 A: I -- as long as my mother was provided for, I
2 was -- that was my primary concern.
3 Q: Okay. And who received the other thirty
4 percent?
5 A: Mikell Scarborough did.
6 Q: Individually or through some other means?
7 A: Through the MRSMIE LLC, of which he was the sole
8 owner at the time.
9 Q: Did that surprise you?
10 A: That he was the sole owner?
11 Q: No, sir. That he was receiving 30 percent?
12 A: Yes.
13 Q: Did you make any comments to him about it or
14 express any concerns?
15 A: No, ma'am.

16 Q: Why not?

17 A: At the time I was not sure what my mother's

18 intentions were with regards to his 30 percent.

19 You know, based on assumptions, if she wanted to

20 provide something for him besides the car, I

21 didn't know. And it was -- what time was this,

22 3:30 on December 5th -- or no, I'm sorry. When

23 the operating agreement came, it was on December

24 30th, and I think the conditions for the --

25 creating the LLC expired the next night at

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1 midnight.

2 Q: All right. So let me make sure I understand

3 your testimony. On December 5th, you talked to

4 your mom about the creation of the LLC.

5 A: Yes, ma'am.

6 Q: Is that right?

7 A: Yes, ma'am.

8 Q: And she confirms that's what she wants to do.

9 Correct?

10 A: Yes, ma'am. She said based on her conversations

11 with Mikell Scarborough, that's what she wanted

12 to do.

13 Q: And that was because of the tax exemption

14 changing and dropping. Is that right?

15 A: Yes, ma'am.

16 Q: You did not discuss with her what properties

17 were going into the LLC?

18 A: No, ma'am.

19 Q: Okay. Did you discuss who would be drafting the

20 documents with her?

21 A: No, ma'am.

22 Q: What did you see your role as at this point, on

23 December 5th?

24 A: My role was almost the same as her last will and

25 testament. I was a beneficiary of whatever she

Page 119

1 was going to be doing potentially. If --

2 depending on what ownership interest I had.

3 Q: And you were going to inherit the two percent

4 that she retained. Is that right?

5 A: Found out, yes. Yeah, at the time, but that

6 didn't occur to me.

7 Q: I'm sorry. What did not occur to you?

8 A: It didn't occur to me at the time it was created

9 that I would end up inheriting her two percent.

10 Q: Where did you think it would ---

11 A: I just never thought about that.
12 Q: --- go?
13 A: I didn't think about where it would go.
14 Q: Okay.
15 A: I didn't.
16 Q: But you were clearly the sole beneficiary of the
17 68 percent. Right?
18 A: Yes, in creating the LLC.
19 Q: Okay. Your wife is not involved?
20 A: No, ma'am.
21 Q: Your children are not involved, they're minors
22 of course, but they're not involved.
23 A: Yes. No, no.
24 Q: Okay. All right. Let's look at -- back to
25 number thirteen. The next paragraph, you're

Page 120

1 talking about if you and Mikell Scarborough
2 speak, you'll try to cover additional details of
3 a name for the LLC.
4 A: Yes, ma'am.
5 Q: Why were you tasked with coming up with a name?
6 A: He had asked me what kind of a name we wanted to
7 have for it, because he had several other LLCs
8 or been involved with several other family LLCs.
9 Q: And that was Mikell Scarborough who was saying
10 to you, Mike, we need to come up with a name?
11 A: Yes.
12 Q: Okay. Who did come up with that name?
13 A: I believe he did.
14 Q: All right. And making sure he can get the
15 durable or limited POA as soon as possible. So
16 you were aware that there was a need for a
17 second power of attorney. Is that right, Mr.
18 Henderson?
19 A: No, that was the same one that's referred to in
20 the first paragraph.
21 Q: Okay.
22 A: And then it goes on to talk about the course of
23 action would help save both myself, and
24 potentially my brother an amount well in excess
25 of Mr. Moss's fee.

Page 121

1 Q: What was the fee Mr. Moss was going to charge?
2 A: I don't recall what the fee was. At the time,
3 I believe if the LLC was going to be created my
4 brother would've had a ownership interest.
5 Q: What led you to think that?
6 A: My discussions with Mikell Scarborough.
7 Q: How about discussions with your mom?
8 A: I had not discussed it with my mom yet. I

9 didn't discuss it with her.
10 Q: Did it surprise you when the operating agreement
11 was provided to you that Ross was not included?
12 A: I believe between December 5th and whenever I
13 received the operating agreement on the 30th,
14 Mikell Scarborough made clear to me my mother
15 did not want to give my brother any interest, is
16 what he told me.
17 Q: Did you understand her reluctance to do that?
18 A: Yes. I didn't respect it, but I understood it.
19 Q: Why did she not include Ross, to your knowledge?
20 A: You'd have to ask her. I don't ---
21 Q: I can't ask her.
22 A: --- I -- well I can't ---
23 Q: Mr. Henderson, I'm asking you.
24 A: --- neither can I. There's a lot of things I'd
25 liked to ask her now.

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1 Q: You didn't talk to her about including Ross or
2 not including Ross?
3 A: I, at some point, yes. I told her before this
4 that if we were going to make an estate change,
5 that she should include my brother.
6 Q: And what was her response to that?
7 A: No response. She didn't talk to me about that.
8 She wouldn't respond to it.
9 Q: Well, when you saw the operating agreement on
10 Oc- -- excuse me, on December 30th of 2012, did
11 you call your mom?
12 A: I don't believe I did, no.
13 Q: So you didn't talk to her about your 68 percent
14 interest and the fact Ross was not included?
15 A: No, because Mikell Scarborough had already told
16 me that my mother did not want my brother to
17 have any interest whatsoever and that all she
18 wanted to do was give him those two pieces of
19 property.
20 Q: Did you feel that there was a need to verify
21 this separately and independently from talking
22 to Mikell Scarborough?
23 A: No.

EXHIBIT 1A

Mikell Scarborough

From: Henderson, Mikell M <[REDACTED]>
Sent: Wednesday, December 05, 2012 3:39 PM
To: [REDACTED]
Cc: Mikell Scarborough
Subject: General POA for Mary Ross "Dede" Hanahan
Attachments: General Power of Attorney.pdf

Chris,

Thank you for talking to me this afternoon. Attached is a .pdf file copy of the General POA I have for my mother. I left a message for Mikell Scarborough to contact me back regarding a durable or limited POA for me to sign allowing him to handle the deeds and matters associated with the LLC.

I just spoke to my mother on the phone as well. I went over the details of what you and I discussed. She stated she wanted to go ahead with creating the LLC and that she would agree to me or her signing a limited or durable POA for Mikell Scarborough to take care of the deeds to her properties.

If Mikell Scarborough and I speak this evening, I will try to cover the additional details of a name for the LLC and making sure he can get the durable or limited POA as soon as possible. I also mentioned the issue of your fee to my mother but did not mention the specific amount. I did tell her that in my opinion that this course of action would save both myself and potentially my brother an amount well in excess of your fee. Thank you for your assistance and I will do whatever I can to assist in accomplishing this task within the short time period we have left. I can be reached via my cell number a [REDACTED] I usually have the phone with me all day. My home email address is [REDACTED] and it is probably better to email at that address since I also get emails on my cell phone.

With kind regards,

Mike

<<General Power of Attorney.pdf>>

Mike Henderson

Attorney/Advisor

**** EXHIBIT 2**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 123

15 Q: Do you recognize this Durable Power of Attorney?

16 A: Yes, ma'am. I do.

17 Q: All right. Who is the grantor -- or excuse me,
18 the principal in this power of attorney?

19 A: Mary Ross Hanahan, my mother.

20 Q: Okay. And who is the agent that's named?

21 A: Mikell R. Scarborough.

22 Q: Anybody else?

23 A: No, ma'am.

24 Q: And what was the purpose of this power of
25 attorney?

Page 124

1 A: I couldn't tell you what the purpose of it was.

2 I didn't have anything to do with drafting it --

3 -

4 Q: Okay.

5 A: --- or executing it.

6 Q: Let's look at page two. What day was it signed?

7 A: December 6th of 2012.

8 Q: Is that your mom's signature?

9 A: Yes, ma'am.

10 Q: No doubt about it?

11 A: I don't have any reason to doubt that one.

12 Q: Okay. And look at page three.

13 A: Yes.

14 Q: Who are the witnesses?

15 A: Christopher Moss and I cannot make out the name,

16 Preeanne or Brianne.

17 Q: Okay. Have you talked with Christopher Moss

18 about this power of attorney?

19 A: No. Christopher Moss has not returned any calls

20 I've made to him.

21 Q: Okay. How about the second witness, did you try

22 to get hold of the witness/notary on this

23 document?

24 A: She's not the notary, Chris Moss is the notary,

25 but I -- the second witness I did not try to get

Page 125

1 in touch with. Oh, I'm sorry.

2 Q: I'm sorry I have to clarify for you.

3 A: No, she's -- no, you're correct. She is the

4 notary. Miss -- is it Brianne or Preeanne? No.

5 I did not try to get in touch with her.

6 Q: Do you know how she pronounces --- go off the
7 record a second.

8 (Off the record discussion.)

9 A: No, I did not try and contact Ms Perranoe.

EXHIBIT 240



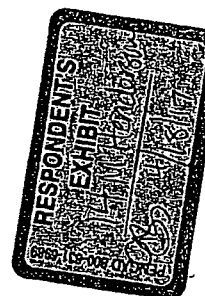
BP0295614

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, Mary Ross Hanahan of the County of Charleston, State of South Carolina, do hereby appoint Mikell R. Scarborough, of the County of Charleston, State of South Carolina, as my Attorney for me and in my name to endorse, cash or deposit checks made payable to my order; to deposit and withdraw monies from my checking or savings accounts; to open and close checking or savings accounts; to have entry to safety deposit boxes leased to myself and deal with the contents thereof; to ask, demand, sue for, collect, recover, and receive all sums of money, debts, dues, accounts, legacies, bequests, interest, dividends, annuities and demands whatsoever as are now or shall hereafter become due and owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise, and to compromise and agree for the same, for me, and in my name to make, seal and deliver; to bargain, contract, agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods and merchandise, chooses in action, and other property, in possession or in actions, and to release mortgages on lands or chattels, and to make, do and transact all and every kind of business of whatsoever kind and nature. Also, to bargain, contract, agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seizing and possession of all lands and all deeds and other assurances, and to lease, let, demise, bargain, sell, release, convey, execute a proper deed of conveyance, as he/she/they shall think fit and also for me and in my name and as my act and deed to sign, seal, delivery and execute and



MRH

acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, certificates of deposit and other negotiable instruments, receipts, evidences of debts, and such other instruments in writing of whatsoever kind or nature as may be necessary or proper in the premises, giving and granting unto my said Attorney(s) and his/her/their substitute or substitutes, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as I might or could do if personally present. I hereby ratify and confirm all that my said Attorney(s), or his/her/their substitute or substitutes, shall lawfully do or cause to be done by virtue of these premises. **This Power hereby revokes any previous Power of Attorney granted.**

THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY PHYSICAL DISABILITY OR MENTAL INCOMPETENCE OF THE PRINCIPAL WHICH RENDERS THE PRINCIPAL INCAPABLE OF MANAGING HIS/HER OWN ESTATE.

Only one (1) signature shall be required to execute any and all necessary documents under this Power of Attorney.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 6th day of December, 2012, A.D.

Mary Ross Hanahan {L.S.}

MARY ROSS HANAHAN

SIGNED, SEALED, PUBLISHED AND DECLARED by the above
named Mary Ross Hanahan as and for HIS/HER POWER OF
ATTORNEY, in the presence of us, who, at her request and in her presence and in
the presence of each other, all present together, have hereunto subscribed our
names as witnesses hereto.

Christy Moss of Mt Pleasant SC
(Witness #1)

RB Lirame of Mt. Pleasant SC
(Witness #2 or Notary)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made
oath that (s)he saw the within named Mary Ross Hanahan sign,
seal, and as her act and deed, deliver the within Power of
Attorney, and that (s)he with the other witness above witnessed the execution
thereof.

Christy Moss
Witness #1

SWORN to before me this
6 day of December, 2012

RB Lirame
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: May 30, 2016

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

MIKELL R SCARBOROUGH

RECORDED

Date: December 6, 2012

Time: 12:28:54 PM

Book

Page

DocType

0295

614

PI/Atty

Charlie Lybrand, Register
Charleston County, SC

MAKER:

HANAHAN MARY R

of Sats:

of Pages: 4

of References:

Note:

RECIPIENT:

SCARBOROUGH MIKELL R

Original Book:

Original Page:

Recording Fee \$ 15.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 15.00

DRAWER
CLERK

Drawer 1
KLH



0295,
Book



614
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Original Book



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**** EXHIBIT 3**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 127

9 Q: Mr. Henderson, we're back on the record.
10 A: Yes, ma'am.
11 Q: All right. What I'm handing you, or what you're
12 looking at is Respondent's Exhibit Number 16 and
13 it is the MRH Family LLC Operating Agreement.
14 At the top is a handwritten notation, December
15 the 30th of 2012. Is that your writing, sir?
16 A: Yes, ma'am, that is.
17 Q: Okay. And looking through each of the pages,
18 are those your initials on each and every page?
19 A: Yes, ma'am.
20 Q: Okay. Is this the same document that was sent
21 to you by Chris Moss?
22 A: Yes, ma'am.
23 Q: And it was sent to you December 30th, is that
24 Right?
25 A: Yes, ma'am.

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1 Q: Okay.
2 A: And Mr. Moss asked me to sign the last page and
3 return it to him, but I signed every page and
4 returned the entire document to him.
5 Q: And when did you return it to him? Do you
6 recall what time?
7 A: It would've been -- it was either on the 30th or
8 the 31st. I forget.
9 Q: Did you read over the document, Mr. Henderson?
10 A: I looked at it, yes, I did.
11 Q: Did you have any questions about the document?
12 A: I noted that there were duplicate page fives at
13 the time, but other than that, no, I didn't have
14 any questions.

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15 Q: All right. Looking at page ten ---
16 A: Yes, ma'am.
17 Q: --- of this document with the signatures.
18 A: Yes.
19 Q: Is that your mom's signature?
20 A: Yes, ma'am.
21 Q: Any doubt of your -- in your mind about that?

22 A: No, ma'am.

23 Q: And it reflects the two percent interest. Is
24 that right?

25 A: It does.

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1 Q: Is your signature next?

2 A: Yes, ma'am. It is.

3 Q: And you have the 68 percent interest. Right?

4 A: Yes, ma'am.

5 Q: And then the MRSMIE LLC is next. Is that right?

6 A: Yes, ma'am.

7 Q: 30 percent?

8 A: Yes, ma'am.

9 Q: For a total of 100 percent?

10 A: Yes, ma'am.

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10 Q: But you knew when you signed the operating

11 agreement, there was a 30 percent interest going
12 to the MRSMIE LLC. Right?

13 A: Yes, ma'am. I was not happy about that, but I

14 was -- if that's what would help with the estate

15 planning, then I was fine with that.

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9 Q: You're a lawyer?

10 A: Yes, ma'am.

11 Q: You're an educated man?

12 A: Yes, ma'am.

13 Q: You have your own CPA?

14 A: Not at that time.

15 Q: You didn't discuss it with any CPA?

16 A: No, ma'am.

17 Q: You didn't discuss ---

18 A: Chris Moss, the one that Mikell Scarborough

19 brought to us, who's not available.

20 Q: Have you spoken to any attorney. I'm not asking

21 about Mr. Silvernail or Mr. Brackett, but did you

22 speak to any attorney at the time, in December

23 of 2012?

24 A: No, ma'am

MRH FAMILY LLC Operating Agreement

This Operating Agreement ("Agreement") is made and entered into as of December 30th 2012 by and among MRH FAMILY LLC, a South Carolina limited liability company (the partnership) and, Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC (the partnership) and individually, the members.

WHEREAS, the parties desire to form a limited liability company under South Carolina law to protect and unify the partnership in operating a Land Development and Investment business and for all additional purposes hereinafter set forth. NOW, THEREFORE, the partnership having given good and valuable consideration, the partnership and members hereto have agreed and do hereby agree as follows:

1. Definitions

- 1.1 "Act" shall mean the South Carolina Uniform Limited Liability the partnership Act of 1996 of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- 1.2 "Action of the partnership" and any reference to an action taken, or to be taken, by the partnership shall mean any action properly approved by the members.
- 1.3 "Agreement" shall mean this Operating Agreement and any amendments made thereto from time to time. "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the partnership was organized as a South Carolina limited liability company



pursuant to the Act.

- 1.4 "Capital Account" shall mean the account established and maintained for each Member on the books of the partnership.
- 1.5 "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- 1.6 "The partnership" shall mean MRH FAMILY LLC, a South Carolina limited liability company and its members Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC.
- 1.7 "The partnership Liability" shall mean any enforceable debt or obligation for which the partnership is liable or which is secured by any the partnership Property.
- 1.8 "The partnership Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the partnership,
- 1.9 "Manager" shall mean any member of the partnership who is the Manager.
- 1.10 "Member" shall mean the parties to this Agreement.
- 1.11 "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

2 Purpose

MRH FAMILY LLC shall be in the business of preserving partnership assets, operating the partnership as a land development company, and protecting the partnership assets from harm.

2.1 Powers Subject to the provisions of this Agreement, the partnership shall have the same powers as an individual to do all things necessary or convenient to carry on its and affair including but not limited to the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of

its obligations by a mortgage on or a security interest in any of its property, franchises, or income;

(f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the partnership, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

3. Members

3.1 Initial Members. The members are Mary Ross Hanahan, Mikell Milton Henderson, and MRSMIE LLC.

3.2 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any

action taken pursuant to such power of attorney shall be valid for all purposes.

3.3 Voting Rights of Members. All members will have the right to vote their membership interest. Majority vote will prevail except for the Amendment of this Operating Agreement which will require unanimous consent of all members.

4 Member Meetings

4.1 Place of meetings. All meetings of the Members shall be held at the partnership's principal place of business or at such other place designated by the Managing Member.

4.2 Time of Meeting. Meetings of the Members may be called at any time and any place by the Managing Partner. The Purpose of the meetings will be to explore new investments for the partnership, and to review the overall policy of the partnership and any other lawful purposes allowed by this Agreement.

5 Management

5.1 The members shall manage the partnership at all times and have the right to select a member to assist in the management the partnership.

(a) Tenure and Qualifications. The partnership elects member manager, MRSMIE LLC to help assist in the management of the partnership for a term of five (5) years.

(b) Removal. MRSMIE LLC can be removed as manager at any time after the expiration of its five (5) year term by majority vote of the members.

action taken pursuant to such power of attorney shall be valid for all purposes.

3.3 Voting Rights of Members. All members will have the right to vote their membership interest. Majority vote will prevail except for the Amendment of this Operating Agreement which will require unanimous consent of all members.

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5 Management

5.1 The members shall manage the partnership at all times and have the right to select a member to assist in the management the partnership.

(a) Tenure and Qualifications. The partnership elects member manager, MRSMIE LLC to help assist in the management of the partnership for a term of two years.

(b) Removal. MRSMIE LLC can be removed as manager at any time after the expiration of its two year term by majority vote of the members.

- (c) Resignation. A designated member manager may resign at any time..

6. Duties of Members

6.1 Duty of Loyalty. The members have a duty of loyalty to the partnership as follows:

(a) To account to the partnership and to hold as trustee for the partnership any property and profit.

(b) To refrain from dealing with a party having an interest adverse to the partnership; and

(c) To refrain from competing with the partnership.

6.2 Duty of Care. The members have a duty of care to the partnership.

6.3 Fiduciary Duties. The Members shall discharge their duties and exercise any of these duties consistently with the obligation of good faith and fair dealing which they as members owe to each other

6.4 Duty of Confidentiality. The Members hereby warrants, covenants and agree that they will not furnish, divulge, communicate, or use to the detriment of the partnership any of the partnerships confidential information.

7 Capital Accounts and Accounting

7.1 Capital Accounts. The partnership shall establish for each Member a Capital Account.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Members.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the partnership's taxable and fiscal years shall be the calendar year, and the books of account of the partnership shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the partnership under the Code shall be made by the Members.

7.4 Tax Returns. Not later than the time required by law, the members shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the partnership.

7.5 Tax Elections.

(a) The partnership shall make the following elections for federal income tax purposes: (1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense; and (2) To deduct expenses incurred in organizing the partnership ratably over a sixty (60) month

period as provided in Section 709 of the Code.

(b) In the event of a distribution of the partnership Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the partnership shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the partnership pursuant to Sections 734 and 743 of the Code.

7.6 Tax Matters Member

MRSMIE LLC is designated the tax matters partner of the partnership, as defined in Section 6231(a) (7) of the Code. The members may designate a new tax matters member from time to time.

8 Dissolution, Winding Up, and Termination

8.1 Dissolution. The partnership shall dissolve, its affairs shall be wound up, and the partnership shall terminate upon the unanimous written consent of all the members

9 Restrictions on Transfer and Buy-Sell Provisions

9.1 Restrictions on Transfer No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written unanimous consent of all members; The reason being that the primary goal of the partnership is to

keep the assets of the partnership intact and preserved for generations to come.

9.2 Right to Buy. A member may purchase the shares of another member with unanimous consent of all members. A nonmember may purchase shares of a member with unanimous consent of all members.

10. Miscellaneous

10.1 Time of Essence. Time is of the essence with regards to this Agreement.

10.2 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability the partnership Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

10.3 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law.

10.4 Counterparts. This Agreement may be executed in more than one counterpart, and all parties to this Agreement do not have to be present together in order for this Agreement to become effective.

10.5 Entire Agreement. This Agreement embodies the entire understanding and

10.6 Binding Effect. This Agreement shall be binding upon, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns.

	% Ownership
Mary Ross Hanahan <u>Mary Ross Hanahan</u>	2
Mikell Milton Henderson <u>Mikell Milton Henderson</u>	68
MRS MIE LLC <u>By [Signature]</u> [Signature]	30
TOTAL	100

**** EXHIBIT 4**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 134

11 Q: Ross's name is not on there, right, Mr.

12 Henderson?

13 A: No, ma'am. No, he's not.

14 Q: Did that cause you any concern when you signed
15 this?

16 A: Yes.

17 Q: To whom did you raise that concern?

18 A: I later raised it to my mother.

19 Q: And what did she say about it?

20 A: She didn't respond.

21 Q: How late -- how much later did you raise it to
22 her?

23 A: Certainly within the next month.



EXHIBIT 5(1)

RMC BK 0300 Pg 995 : pg 1 *

RMC BK 0300 Pg 995 : pg 2 *

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) TITLE TO REAL ESTATE

WHEREAS, It is the intent of Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, to convey all of her interest in the properties described below to MRH Family, LLC in which she will hold a membership interest.

KNOW ALL MEN BY THESE PRESENTS, THAT I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, in the State aforesaid for and in consideration of the sum of \$10.00 and the above recital to me in hand paid at and before the sealing of these presents by MRH Family, LLC in the State aforesaid, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said MRH Family, LLC, all of my entire interest in the following real property to wit:

FOR LEGAL DESCRIPTION, SEE ATTACHED EXHIBIT "A"

GRANTEE'S ADDRESS: 70 Chadwick Dr.
Charleston, SC 29407

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said MRH Family, LLC, its successors and assigns forever.

AND, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, do hereby bind myself, my heirs and assigns to warrant and forever defend all and singular, the said premises unto the said MRH Family, LLC its successors and assigns, against me and my heirs and those lawfully claiming through me and against no others.

WITNESS my Hand and Seal this 30 day of December, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

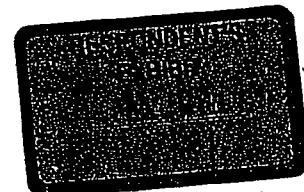


EXHIBIT "A", LEGAL DESCRIPTION

TRACT 1

All that piece, parcel of tract of land, situate, lying and being in St. Andrews Parish, Charleston County, shown and designated as *Block "D"* as shown on a plat prepared by H. Exo Hilton, R.L.S., dated May-July, 1981, entitled, *"Plat of 2,094.0 Acres, Tract "C" Portion of Millbrook Plantation, Property of W. O. Hanahan, Sr. Divided as Shown Above,"* Said plat which is incorporated herein by reference, was recorded on July 22, 1982 in Plat Book AV at Pages 156 and 157 in the R.M.C. Office for Charleston County.

This property is also shown on a plat entitled *"Boundary Survey of Block "D" of Tract "C" Portion of Millbrook Plantation, Now Owned by Mary Ross Hanahan, Located in St. Andrews Parish, Charleston County, South Carolina,"* prepared by Robert L. Frank, P. L. S., dated July 25, 2003, revised October 7, 2003 and recorded October 10, 2003 in Plat Book EG at Page 666.

ALSO, all rights of way, including all rights of access to Block "D" whether prescriptive, appurtenant, commercial or established by covenant and/or grant held by the late W. O. Hanahan, Sr. in and to all roads and avenues shown on the above referenced plat, including rights of access across roads not shown on said plat but discoverable upon an on-site inspection. Including all rights of access to the extent assignable across connecting roads on land formerly of J. Ross Hanahan, Jr. and Maria Grayson Carter and across any roads extending from S.C. Highway 61 to Block "D".

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection.

The interest of Mary Ross Hanahan was conveyed to her by Deed of Distribution from Wachovia Bank, N.A., Personal Representative of the Estate of William O. Hanahan, Sr. dated March 25, 1999 and recorded April 1, 1999 in Book R-323 at Page 083 in the Charleston County R.M.C. Office.

TMS #301-00-00-022

ALSO

TRACT 2

All that certain piece, parcel or tract of land, situate, lying and being in St. Paul's School District, Charleston County, South Carolina composed of Lot No. 1 as shown on a *"Map of a Portion of Fairview Plantation Containing 99.81 Acres Owned by Raymond Hunter, Situate: West of Hwy. 174 and South of Avenue,"* prepared by A. L. Glen, Reg. P.E. & L.S., dated May 20, 1964 and recorded July 31, 1964 in Plat Book R-144; and composed

of Lot 1-A as shown on a "Map of That Portion of Fairview Plantation Designated on Map by J. P. Gaillard, Dated June, 1922 As Mrs. T. G. Legare Portion, Situate South of Toogoodoo Creek, West from Hwy. 174, Charleston County, South Carolina," dated March 29, 1965 and recorded April 23, 1965 in Plat Book S at Page 128.

BUTTING AND BOUNDING as follows: To the North by lands now or formerly of Ramond Hunter, Branch of Toogoodoo Creek and Bank, being a part of the Moffett Tract; To the East by S.C. Highway 174 and by lands now or formerly of Raymond Hunter; to the South by land conveyed to Frances G. Hanahan and to the West by lands nor or formerly of W. W. Allston.

SUBJECT to all applicable easements, covenants restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection.

This property was originally found to contain 120.7 acres, but upon a plat of resurvey by H. Exo Hilton, Reg. Land Surveyor, dated June, 1975 and recorded September 30, 1975 in Plat Book AF at Page 032, it was found to contain 131.35 acres.

Being a portion of the property conveyed to Mary Ross Hanahan by deed of J. P. Sanders, dated April 23, 1965 and recorded April 23, 1965 in Deed Book T-82 at Page 225 in the Charleston County R. M. C. Office; and to Mary Ross Hanahan Henderson, (who is also known as Mary Ross Hanahan) by deed from Raymond V. Hunter dated July 31, 1964 and recorded July 31, 1964 in Book X-80 at Page 254.

TMS #061-00-00-019

ALSO

TRACT 3

ALL that certain piece, parcel or tract of land situate, lying and being in the County of Charleston, State of South, and shown as *Tract D* containing 9.75 acres on a plat prepared by H. Exo Hilton, entitled, "A Plat of 39.00 Acres, A Part of Millbrook Plantation, Property of W.O. Hanahan, Sr., Divided as Shown Above," dated May, 1972 and recorded in Plat Book AB at Page 51 in the R. M. C. Office for Charleston County. The said property hereby conveyed butting to the Northeast partially on the Ashley River and to the Southwest on S.C. Highway No. 61 and having such boundaries, metes, courses and distances as are delineated on said plat.

SUBJECT to all applicable easements, conditions, restrictions and agreements of record and such easements and rights of way as would be determine by an on-site inspection.

This being the same property conveyed to Mary Ross Hanahan Henderson, now known as Mary Ross Hanahan, by deed of William O. Hanahan dated September 6, 1972 and recorded September 7, 1972 in Book A-100 at Page 327 in the Charleston County R. M. C. Office.

364-00-00-005

ALSO

TRACT 4.

All of my interest, being a one-fifth (1/5) interest in and to all that piece, parcel or tract of land, situate, lying and being in St. Andrews Parish, Charleston County, shown and designated as Block "E" as shown prepared by H. Exo Hilton, R.L.S., dated May-July, 1981, entitled, "Plat of 2,094.0 Acres, Tract "C" Portion of Millbrook Plantation, Property of W. O. Hanahan, Sr. Divided as Shown Above," Said plat which is incorporated herein by reference, was recorded on July 22, 1982 in Plat Book AV at Pages 156 and 157 in the R.M.C. Office for Charleston County.

ALSO, all rights of way, including all rights of access to Block "E" whether prescriptive, appurtenant, commercial of established by covenant or grant held by the late W. O. Hanahan, Sr. in and to all roads and avenues shown on the above referenced plat, including rights of access across roads not shown on said plat but discoverable upon an on-site inspection. Including all rights of access to the extent assignable across connecting roads on land formerly of J. Ross Hanahan, Jr. and Maria Grayson Carter and across any roads extending from S.C. Highway 61 to Block "E".

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The interest of Mary Ross Hanahan was conveyed to her by Deed of Distribution from Wachovia Bank, N.A., Personal Representative of the Estate of William O. Hanahan, Sr. dated March 25, 1999 and recorded April 1, 1999 in Book R-323 at Page 090 in the Charleston County R.M.C. Office.

TMS #301-00-00-004

ALSO

TRACT 5

All of one-fifth (1/5th) interest in that piece, parcel or tract of land with any improvements there on and being in St. Andrews Parish, Charleston County, shown and designated as Tract E-1 as more fully shown on a plat entitled, "A Boundary Survey of a Portion of the Lands of Mary Ross Hanahan, Elizabeth Hanahan Clark, Buist Lucas Hanahan, Frances G. Hanahan and the Heirs of W. O. Hanahan, Located in St. Andrews Parish, Charleston County, South Carolina," prepared by Robert L. Frank, P.L.S., dated February 11, 2004, Revised February 12, 2004 and recorded February 13, 2004 in Plat Book EG at Page 902 in the Charleston County R. M. C. Office.

ALSO, all rights of way, including all rights of access to Block "E" and Tract "E-1" whether prescriptive, appurtenant, commercial of established by covenant or grant held by the late W. O. Hanahan, Sr. in and to all roads and avenues shown on the above referenced plat, including rights of access across roads not shown on said plat but discoverable upon an on-site inspection. Including all rights of access to the extent assignable across connecting roads on land formerly of J. Ross Hanahan, Jr. and Maria Grayson Carter and across any roads extending from S.C. Highway 61 to Block "E".

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The interest of Mary Ross Hanahan was conveyed to her by Deed of Distribution from Wachovia Bank, N.A., Personal Representative of the Estate of William O. Hanahan, Sr. dated March 25, 1999 and recorded April 1, 1999 in Book R-323 at Page 090 in the Charleston County R.M.C. Office.

TMS #301-00-00-353

ALSO

TRACT 6

ALL of my undivided interest in that piece, parcel or tract of land, containing 449.7 acres, more or less, situate, lying and being in St. Paul's Parish, Charleston County, S.C., being a part of Dungannon Plantation and know as designated as Tract B on a plat by H. Exo Hilton, Reg. L. S. dated August, 1974 and entitled, "Plat of 3,096.2 Acres, Dungannon Plantation, Property of W. O. Hanahan, Sr.," and recorded in Plat Book Q at Page 154 in the R. M. C. Office for Charleston County, S.C. Said property having such location, butts, bounds, measurements, courses and distances as will by reference to said plat more fully appear.

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The interest of Mary Ross Hanahan was acquired by the following deeds from William O. Hanahan: Deed dated and recorded March 21, 1979 in Book P-118 at Page 316, Deed dated and recorded August 6, 1980 in Book B-123 at Page 83, Deed dated and recorded August 6, 1980 in Book F-193 at Page 264.

TMS #225-00-00-003

STATE OF SOUTH CAROLINA }
COUNTY OF Charleston }

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- I have read the information on this affidavit and I understand such information.
- The property was transferred by MARY ROSS HANAHAN, FORMERLY KNOWN AS MARY ROSS HANAHAN HENDERSON to MRH FAMILY, LLC on DECEMBER 30, 2012

- Check one of the following: The deed is

- (A) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- (C) ☒ exempt from the deed recording fee because (See Information section of affidavit): It is to LLC (Explanation required)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes ☐ or No ☐

- Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):

- (A) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
- (B) ☐ The fee is computed on the fair market value of the realty which is _____
- (C) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

- Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____

- The deed recording fee is computed as follows:

- (A) Place the amount listed in item 4 above here: _____
- (B) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
- (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

- The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

- As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR

- I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

MARY ROSS HANAHAN, formerly Mary Ross Henderson

Responsible Person Connected with the Transaction

MARY ROSS HANAHAN FORMERLY

Print or Type Name Here

KNOWN AS MARY ROSS HANAHAN HENDERSON

Sworn this 30TH day of DEC 2012
Joseph H. Hatten Jr.
Notary Public for _____
My Commission Expires: _____, 20____

My Commission Expires
August 3, 2015

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

HOWARD YATES

42 BROAD ST.

CHARLESTON SC 29401

MAKER:

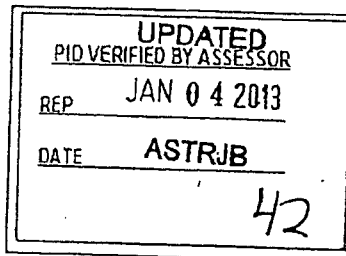
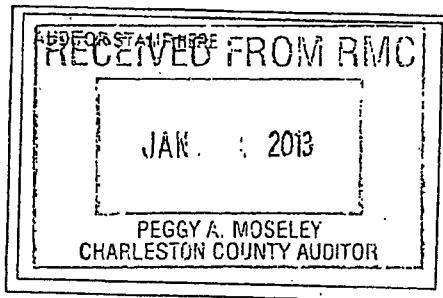
HANAHAN MARY R AL

RECIPIENT:

MRH FAMILY LLC

Original Book:

Original Page:



RECORDED

Date: December 31, 2012

Time: 2:45:01 PM

Book

0300

Page

995

DocType

Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 8

Recording Fee	\$ 10.00
State Fee	\$ -
County Fee	\$ -
Extra Pages	\$ 3.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 13.00

DRAWER Drawer 2
CLERK SLW



0300
Book



995
Page



12/31/2012
Recorded Date



8
Pgs



Original Book



Original Page



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Doc Type



14:45:01
Recorded Time

EXHIBIT 52

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

STATEMENT OF MARY ROSS HANAHAN
CONCERNING 2012 LAND TRANSFERS

I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, acknowledge and state as follows:

I have had the opportunity to consult with Chris Moss, CPA and my nephew, Mikell Scarborough, concerning my assets and the 2013 estate tax changes. I am aware that without planning, my estate taxes could be very high.

To avoid substantial estate taxes, it is my desire to convey the properties described in the deed from me to MRH Family, LLC. I am aware that Mikell Scarborough will have an interest in a limited liability company that is a member of MRH Family, LLC. I am aware that this conveyance will be for nominal consideration, that being my membership in MRH Family, LLC. I am aware that I will hold a two (2%) interest in it.

It is my desire to convey to my son, J. Ross Henderson, my one-half interest in the property described in the deed to him. This property is identified as tax map numbers 061-00-00-023 and 038-00-00-012, being the 30 and 80 acre parcels in the Moffet Hill Plantation Tract.

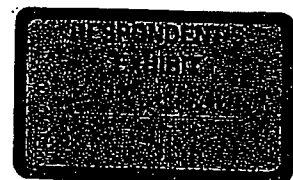
In signing this deed, I have not been placed under any duress or influence by any one. Howard Yates has been asked to prepare the deed for me and has not rendered tax advice. He has advised me that I am free to sign or not to sign this document.

Witness my Hand and Seal this 30th day of December, 2012.

Mary Ross Hanahan

Mary Ross Hanahan, formerly
Known as Mary Ross Hanahan
Henderson

Witnesses *Joseph H. Yates Jr.*
Witnesses *Chris Moss*



**** EXHIBIT 6**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 143

23 Q: What's the date it got recorded?

24 A: Recorded December 31st, 2012 at 2:45 p.m.

25 Q: All right. Was that before or after the deed

Page 144

1 was -- into your brother was recorded?

2 A: I would have to look at his exhibit, I'm sorry.

3 I believe it's Number 11, your Exhibit Number
4 11.

5 Q: Yes, sir.

6 A: It is immediately after. So it would've been

7 within a minute of it being -- of my brother's

8 Number 11 being recorded.

9 Q: But they're dated the same date, aren't they,

10 Mr. Henderson?

11 A: Yes, ma'am.

12 Q: Same witnesses?

13 A: Yes, ma'am.

14 Q: And yet you are not challenging the deed to your

15 brother?

16 A: No, ma'am.

EXHIBIT "A"



BP0300993

RMC BK 0300 Pg 993 : pg 1 *

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

WHEREAS, It is the intent of Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, to convey all of her interest in the properties described below to her son, J. Ross Henderson.

KNOW ALL MEN BY THESE PRESENTS, THAT I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, in the State aforesaid, for and in consideration of the sum of \$10.00, Love and Affection for my son, to me in hand paid at and before the sealing of these presents by J. Ross Henderson, in the State aforesaid, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said J. Ross Henderson, all of my interest in the following real property"

FOR LEGAL DESCRIPTION, SEE ATTACHED EXHIBIT "A"

GRANTEE'S ADDRESS:

5594 Katy Hill Rd.
Wadmalaw IS, SC 29487

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection, unto the said J. Ross Henderson, his and assigns forever.

AND, subject to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection I, Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, do hereby bind myself, my heirs and assigns to warrant and forever defended all and singular, the said premises unto the said J. Ross Henderson, his and assigns, against me and my heirs and those lawfully claiming through me and against no others.

WITNESS my Hand and Seal this 30th day of December, 2012.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson

RMC BK 0300 Pg 993 : pg 2 *

Joseph H. Yates Jr.
Christopher Moss

Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named Mary Ross Hanahan, formerly known as Mary Ross Hanahan Henderson, sign, seal and as her act and deed, deliver the with deed and that he/she with the other witness witnessed the execution thereof.

Sworn to before me this 30TH day of December, 2012.

Joseph H. Yates Jr.
Notary Public for S. C.
My Commission Expires:

Christopher Moss

My Commission Expires
August 8, 2015

LEGAL DESCRIPTION, EXHIBIT "A"

TRACT 1

ALL of my one-half (1/2) interest in that parcel or tract of land, situate, lying and being on the South side of the Seaboard Air Line Railroad in St. Paul's Parish, County of Charleston, State aforesaid, containing 80 acres, more or less and being shown as the Southeastern tract on a *Plat of Moffet Hill Plantation*, prepared by the Robert F. Knoth & Co., dated August, 1947 and recorded in Plat Book G at Page 37.

BUTTING AND BOUNDING: Northwardly on the right of way of the Seaboard Air Line Railroad Company; Eastwardly on lands now or formerly of Aston; Southwardly on land now or formerly of Allston; and Westwardly on lands now or formerly of Jackson.

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

The grantor's one-half interest in the above tract was conveyed to her by deed of J. P. Sanders dated March 9, 1964 and recorded March 14, 1964 in Book U-79 at Page 263 in the Charleston County R. M. C. Office.

TMS #061-00-00-023

ALSO

TRACT 2

All of my one-half (1/2) interest in that parcel or tract of land, situate, lying and being on the South side of the Seaboard Air Line Railroad in St. Paul's Parish, County of Charleston, State aforesaid, containing Thirty (30) acres, more or less and more fully shown as the Southwestern tract on a *Plat of Moffet Hill Plantation*, prepared by the Robert F. Knoth & Co., dated August, 1947 and recorded in Plat Book G at Page 37.

BUTTING AND BOUNDING: Northwardly on the right of way of the Seaboard Air Line Railroad Company; Eastwardly on land now or formerly of Jackson; Southwardly on lands of J. P. Sanders; and Westwardly on lands of J. P. Sanders.

SUBJECT to all applicable easements, covenants, restrictions and agreements of record and such easements and rights of way as would be determined by an on-site inspection.

THE ABOVE DESCRIBED ONE HUNDRED TEN (110) ACRES is comprised of Lots 22 and 23, and parts of Lots 24 and 25 of the Moffett Tract.

The Grantor's one-half interest in the above tract was acquired by deed from J. P.

Sanders dated March 9, 1964 and recorded March 14, 1964 in Book U-79 at Page 263 in the Charleston County R. M. C. Office.

TMS #038-00-00-012

STATE OF SOUTH CAROLINA }
COUNTY OF Charleston } AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property was transferred by MARY ROSS HANAHAN, FORMERLY KNOWN AS MARY ROSS HANAHAN HENDERSON
to J. ROSS HENDERSON on DECEMBER 30, 2012

3. Check one of the following: The deed is

- (A) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (B) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
- (C) ☒ exempt from the deed recording fee because (See Information section of affidavit): Gift #1 (Explanation required)
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):

- (A) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
- (B) ☐ The fee is computed on the fair market value of the realty which is _____
- (C) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____

6. The deed recording fee is computed as follows:

- (A) Place the amount listed in item 4 above here: _____
- (B) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)
- (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as:
GRANTOR

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Mary Ross Hanahan ^{FORMERLY}
Mary Ross Hanahan Henderson ^{AKA}
Responsible Person Connected with the Transaction

Print or Type Name Here

Sworn this 36 day of DEC 2012
Joseph H. Yates
Notary Public for SC
My Commission Expires: 20

My Commission Expires
August 3, 2015

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document.



RECORDED

Date: December 31, 2012

Time: 2:44:24 PM

Book Page DocType

0300 993 Deed

Charlie Lybrand, Register
Charleston County, SC

Filed By:

HOWARD YATES

42 BROAD ST.
CHARLESTON SC 29401

MAKER:

HANAHAN MARY R AL

RECIPIENT:

HENDERSON J ROSS

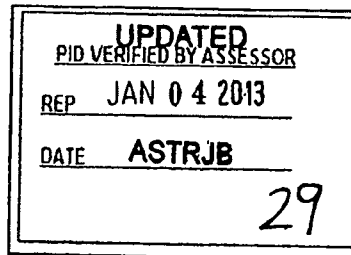
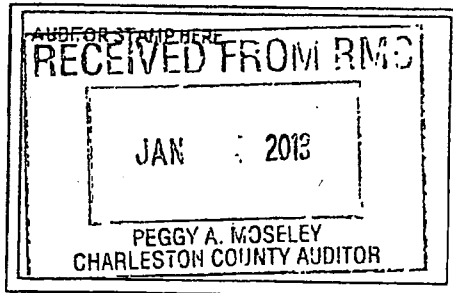
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of Pages: 6

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State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	\$ 1.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 11.00

Original Book:

Original Page:



DRAWER CLERK Drawer 2 SLW



0300
Book



993
Page



12/31/2012
Recorded Date



6
Pgs



Original Book



Original Page



D
Doc Type



14:44:24
Recorded Time

**** EXHIBIT 7**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 140

15 Q: Okay. That's all right. All right. In looking
16 at Respondent's Exhibit 18, Mr. Henderson ---

17 A: Uh-huh.

18 Q: --- what is the name of this document?

19 A: This is entitled a Title to Real Estate.

20 Q: And is that your mom as the grantor?

21 A: Yes, ma'am.

22 Q: And who is the grantee?

23 A: The MRH Family LLC, in which she will hold a
24 membership interest.

25 Q: Right. And what day is this on?

Page 141

1 A: This is signed December 30th of 2012.

2 Q: Okay. Looking at page two. Is that her
3 signature?

4 A: Yes. Yes, I believe it is.

5 Q: Who are the witnesses?

6 A: Joseph Howard Yates, Jr. and Christopher Moss.

7 Q: Who's the subscribing witness?

8 A: Well, it's -- subscribing witness is H.
9 Christopher Moss.

10 Q: And who's the notary?

11 A: Joseph H. Yates, Jr.

12 Q: Do you have any reason to the doubt the manner
13 in which this deed was executed?

14 A: The manner in which it was executed?

15 Q: Yes, sir.

16 A: I have no knowledge whether my mother reviewed
17 the document before she signed it, so.

18 Q: Well, do you have any knowledge about the
19 circumstances under which this got signed?

20 A: No, ma'am. No.

21 Q: Do you know if Mikell Scarborough was present?

22 A: I -- no.

23 Q: Okay.

24 A: I have no idea.

**** EXHIBIT 8**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 136

4 Q: Well, Mr. Henderson ---

5 A: Huh?

6 Q: --- you talked to your mom December 5th?

7 A: Yes, ma'am.

8 Q: According to the email, Respondent's Exhibit 13.

9 Do you recall that?

10 A: Yes, ma'am.

11 Q: And in it you say, I spoke to her on the phone,

12 went over the details, she stated she wanted to

13 go ahead with creating the LLC.

14 A: Uh-huh.

15 Q: Did you doubt her capacity then?

16 A: I did not doubt her capacity that she wanted to

17 follow what Mikell Scarborough had suggested was

18 the best course of action.

19 Q: What changed in three weeks time?

20 A: What changed in three weeks time?

21 Q: Yes, sir. Between December 5th of 2012 and

22 December 30th of 2012?

23 A: I can't point to anything that changed during

24 that three week period of time.

Page 85

2 Q: Okay. Do you have any written statements at all

3 regarding your mom's mental status in October of

4 2012?

5 A: No, ma'am.

6 Q: How about with regard to December of 2012?

7 A: No, ma'am. A: No.

**** EXHIBIT 9**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 151

5 Q: Have you received distributions, Mr. Henderson?

6 A: Mikell Scarborough, I believe has written
7 checks, yes.

8 Q: How much have you received in 2013?

9 A: I do not recall.

10 Q: Is \$10,000 an accurate number?

11 A: It very well could be, yes.

12 Q: All right. How about in 2014?

13 A: I do not recall what distributions I received.

14 Q: Would \$8,000 be an accurate number?

15 A: That probably would be accurate, yes.

16 Q: Okay. Did you receive K-1s relative to this LLC
17 in 2013 and 2014?

18 A: 20- -- yes, 2013 and 2014 from -- directly from,
19 Chris Moss.

20 Q: Okay. And you filed your own personal returns

21 in those two years, Mr. Henderson?

22 A: No. I have an accountant that prepared my
23 taxes.

24 Q: Did you provide those K-1s to your accountant?

25 A: Absolutely.

Page 152

1 Q: Did you rely on those K-1s in preparation of
2 your own returns?

3 A: Yes.

4 Q: Did you tell that -- your CPA that, hey, I'm
5 worried that my mom didn't have capacity, didn't
6 understand what was going on with this LLC?

7 A: No.

8 Q: Why not?

9 A: Because I didn't think it was the accountant's
10 responsibility at the time.

**** EXHIBIT 10**

TESTIMONY OF PETITIONER MIKELL HENDERSON TAKEN APRIL 17, 2017

Page 155

9 Q: Okay. Are you aware that by gifting into the
10 LLC your mom took over six million dollars in
11 assets, from the document I showed you earlier,
12 and it was reduced to about a three million
13 dollar gift?
14 A: According to this, yes.
15 Q: If the LLC were declared void from the
16 beginning, do you know what would happen to
17 those pieces of real estate?
18 A: Those pieces of real estate?
19 Q: That are in the LLC presently.
20 A: They would go into her estate.
21 Q: And what would cause her estate to be valued at?
22 A: I do not know.
23 Q: Are you ---
24 A: It would be greater than this -- the value we're
25 talking about, yes.

Page 156

1 Q: Are you aware that your mom's estate could be
2 valued at more than eight million dollars?
3 A: That sounds correct, yes.
4 Q: Okay. And so, if her estate became valued at
5 eight million dollars ---
6 A: Uh-huh.
7 Q: --- and the exemption amount when she died was
8 about five million four hundred thousand ---
9 A: Yes, ma'am.
10 Q: --- you realize there would be a taxable
11 component to her estate?
12 A: Yes.
13 Q: How would the estate taxes get paid?
14 A: I can't answer that.
15 Q: Well, you would be inheriting all of these
16 properties, Mr. Henderson.
17 A: Yes, ma'am.
18 Q: So if you do the math ---
19 A: Uh-huh.
20 Q: --- and we've got almost a three million dollar
21 difference ---
22 A: Uh-huh.
23 Q: --- between ---
24 A: I would be taxed on the three million dollars in

25 excess.

Page 157

1 Q: Yes, sir.

2 A: Yes. Okay.

3 Q: And there would be estate taxes on that three
4 million.

5 A: Yes, ma'am.

6 Q: Do you know the amount of estate taxes?

7 A: I believe an accountant had tried to run that
8 for me, but I cannot remember what it is. I

9 think it was about -- it was 2.3 million

10 perhaps. I'm not -- I couldn't swear to it.

11 Sorry.

12 Q: How would you pay that?

13 A: Don't know.

14 Q: Wouldn't you have to sell something?

15 A: More than likely. I mean that's possible.

16 Q: What would you pick to sell.

17 A: I couldn't tell you. I mean, you want me to

18 pick something? I couldn't tell you.

19 Q: I'm trying to understand, Mr. Henderson, that

20 creation of the LLC saved estate taxes, but if

21 you unwind the LLC, that brings it all back and

22 inflates the value of her estate.

23 A: Uh-huh.

24 Q: And if you're the sole beneficiary, okay, of

25 that process, it's going to cost her estate,

Page 158

1 thus it will cost you.

2 A: Uh-huh.

3 Q: And I'm trying to figure out why you would be

4 amenable to that.

5 A: If that's what I would owe, that's what I would

6 owe. There's nothing I can do about that.

**** EXHIBIT 11**

TESTIMONY OF HOWARD CHRISTOPHER MOSS TAKEN MAY 5, 2017

MOSS, HOWARD CHRISTOPHER - Vol. I, (Page 4:1 to 4:9)

4

1 HOWARD CHRISTOPHER MOSS, having been duly sworn,

2 deposes and testifies as follows:

3 MR. MOSS - EXAMINATION BY MR. SILVERNAIL:

4 Q: Mr. Moss, I'm Adam Silvernail. We met a bit

5 ago. I represent Mikell Henderson in this

6 action involving his cousin, Mikell

7 Scarborough, in the Estate of his mother, Mary

8 Ross Hanahan. Tell me, what's your occupation?

9 A: I am a CPA and a tax attorney.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 11:15 to 12:4)

11

15 Q: And so, this Power of Attorney identified

16 Mikell R. Scarborough as the Agent for Ms.

17 Hanahan. Tell me how that came to be.

18 A: She told me she wanted him to be the Agent.

19 Q: And does this document identify a back-up or

20 second-option Agent?

21 A: No.

22 Q: Was there any discussion about identifying

23 somebody in the event he couldn't act?

24 A: No.

25 Q: And so, just to summarize and make sure I

12

1 understand. This is signed on December 6th,
2 2012, which I believe I understood you to say
3 earlier was the first day you met Ms. Hanahan.
4 A: Professionally, yes.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 14:13 to 19:12)

14

13 Q: Now, other than the Power of Attorney, what
14 issues with regard to her estate planning did
15 you all discuss on December 6th, 2012?

16 A: We discussed the need to form a family LLC to
17 hold her assets, so that we could take
18 advantage of what's called a minority discount
19 valuation.

20 Q: And just for the record, would you briefly
21 tell me what that advantage is?

22 A: When you put your assets in a family LLC with
23 a limitation on marketability, the government
24 recognizes a discount based on lack of
25 marketability. And it allows you to gift

15

1 more assets than you would have been able to
2 without forming the LLC.

3 Q: And did Ms. Hanahan seem to understand that
4 concept?

5 A: Yes.

6 Q: Did she seem to independently know anything
7 about taxes?

8 A: She knew she paid too much.

14 Q: Now, did she discuss with you that day the
15 nature and extent of her property?

16 A: She said she had real estate was her major
17 asset.

18 Q: And did she approximate a net worth for you?

19 A: We had a list of all the property in front of
20 us. And we did not approximate a net worth,
21 no.

22 Q: Was there any -- before I ask this. Do you
23 recall what the estate tax threshold was in
24 2012?

25 A: I think it was -- I don't know exactly. I
16.

1 couldn't say exact. I can't remember.

2 Q: Did she give you any information that made
3 clear that she would have exceeded an estate
4 tax threshold at that point, that she would
5 have had a taxable estate?

6 A: She did not.

7 Q: Did Mr. Scarborough give you any such
8 information?

9 A: No.

10 Q: And so, how was it determined that this tax
11 planning measure was necessary?

12 A: We weren't certain, but we were thinking
13 that, if the president had reduced from that
14 point into 2013 to what he was proposing,

15 which would have been a million dollars, she
16 definitely would have been over a million.
17 But that day, on December 6th, I believe it
18 was much higher than a million. I just can't
19 remember the -- I don't want to say something
20 that's incorrect. So, I just can't remember.
21 It was a few million dollars.

22 Q: Okay.

23 A: Which she might have been under at that
24 point. But on the first of January, she
25 would have been over.

17

17 Q: Did DeDe explain to you anything about what
18 her general desire was for the dispossession
19 of her Estate at her death?

20 A: Yes.

21 Q: And what was your understanding of that?

22 A: She has two sons, one was to receive nothing.
23 I can't recall that gentleman's name, but
24 Mikell Henderson's brother. And Mikell
25 Henderson was to receive a certain portion.

18

1 And Mikell Scarborough was to receive a
2 certain portion.

3 Q: And did she tell you that in the first
4 meeting?

5 A: Yes.

6 Q: And was there any discussion about what
7 portions would go to whom among Mikell
8 Henderson and Mikell Scarborough?

9 A: Well, she asked me what I normally would
10 recommend in these cases. And I said that
11 Mikell Scarborough should get somewhere
12 between 10 and 20 percent. Mikell Henderson
13 should get the difference. And she needed to
14 keep at least two percent to make the whole
15 thing legal. She couldn't give everything
16 away.

17 Q: And do you recall what her response to that
18 was?

19 A: She said she wanted Mikell to get more than
20 that, Mikell Scarborough.

21 Q: And he was present at that time?

22 A: Yes.

23 Q: And do you recall him being involved in any
24 of the discussion about that other than
25 sitting and listening?

19

1 A: He was in absolute denial that he deserved
2 anything.

3 Q: And how long did the exchange about what
4 those percentages would be go on
5 approximately?

6 A: Oh, just five minutes or so. She knew what
7 she wanted. And she picked 30 percent and

8 there was no talking her out of it.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 19:22 to 20:8)

19

22 Q: Now, was there anything else discussed on the
23 meeting on the 12th -- on the 6th? Excuse
24 me.

25 A: That time was of the essence, because the

20

1 president was likely to let the provisions
2 expire, dropping the exemption to a million,
3 so that time -- it had to be done before the
4 end of the year. We discussed my fee and she
5 said that's fine and that was it.

6 Q: And do you recall what your fee for this
7 process was?

8 A: \$5,000.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 21:3 to 23:4)

21

3 Q: Do you recall what your first contact with
4 Mikell Henderson was?

5 A: Phone call on December 5th.

6 Q: And what was the purpose of that call?

7 A: To just give him heads up that I was meeting
8 with his mother on the 6th and that wanted to
9 make sure he was aware of what we were doing
10 with the LLC.

11 Q: Had DeDe requested that you make that call?

12 A: No.

13 Q: Do you regularly contact the children of
14 perspective clients to let them know their
15 parents are doing estate planning?

16 A: Yes. Unless they're so young that it would
17 be -- they would be considered minors. But
18 if they're over 18, yes.

19 Q: And do you recall -- well, first did you
20 place the call to Mikell Henderson?

21 A: Yes.

22 Q: And do you recall what his reaction was to
23 what you conveyed to him?

24 A: Well, first I got voice mail, then he called
25 me back, got voice mail, so we played some

22

1 tag. But eventually we reached each other.
2 And he was very happy about it. Very
3 excited.

4 Q: And do you recall whether there was -- well,
5 all of the phone tag and then the eventual
6 live contact was on the 5th of December?

7 A: Yes.

8 Q: Prior to your meeting with Ms. Hanahan?

9 A: Yes.

10 Q: And so, other than the general idea of estate
11 planning, did you discuss any details of what
12 might be done with Mike Henderson on the 5th?

13 A: Done with what?
14 Q: Well, you let him know that there was the
15 potential that there would be some tax or
16 estate planning done, correct?
17 A: Yes.
18 Q: You didn't, at that time, know what exactly
19 would be done, did you?
20 A: Well, I gave him the same discussion that
21 ensued with his mother, which was the
22 discount, the discount due to marketability
23 would save them estate taxes.
24 Q: And so, after December 5th, what was your
25 next contact with Mikell Henderson?

23

1 A: Phone calls, could have been some e-mails.
2 That would have been maybe on the 6th. I
3 can't recall if it was the 5th or the 6th,
4 but we were e-mailing and phone calling.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 25:8 to 31:17)

25

8 Q: I'm going to hand you what we've marked
9 Plaintiff's Three. Does this appear to you
10 to be a copy of the MRH Family LLC Operating
11 Agreement?
12 A: Yeah.
13 Q: Did you draft this document?

14 A: I did.

15 Q: And would it be fair to say the drafting took
16 place between December 6th and December 30th
17 of 2012?

18 A: Yes.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 67:10 to 68:10)

67

10 Q: All right. Chris, in looking at the
11 operating agreement, the family operating
12 agreement, can you tell us what were the
13 discussions you had either via e-mail or on
14 the phone with Mikell Henderson in regard to
15 his 68 percent ownership interest?

16 A: Just that -- he received a copy of the
17 operating agreement, so he knew the
18 percentages when he signed it. And he never
19 asked me any questions about it.

20 Q: He never questioned you about the 68 percent?

21 A: No.

22 Q: Did he ever question you about the two
23 percent his mom retained?

24 A: No.

25 Q: Did he ever question you about the 30 percent

68

1 interest the MRSMIE, LLC obtained?

2 A: He did not.

3 Q: Did Mikell Henderson ever communicate to you

4 he was concerned about his mother's ability
5 to understand what was going on?

6 A: No.

7 Q: Did he ever voice any concern about her
8 capacity to you regarding the formation of
9 the LLC?

10 A: No.

26

2 Q: And on December 30th you met with DeDe,
3 correct?

4 A: That's correct.

5 Q: Was Mr. Scarborough present at that meeting?

6 A: He was not.

7 Q: And was anybody else present at that meeting?

8 A: Howard Yates was present.

9 Q: And where did that meeting take place?

10 A: My office.

15 A: I do not know.

16 Q: And so, tell me, during that meeting -- who
17 is Mr. Yates?

18 A: Mr. Yates is an attorney that I've known for
19 years from the St. Philip's men's group
20 lunches. And he was retained by DeDe to
21 prepare the deeds and record them at the
22 courthouse.

3 Q: And when did you know that he was going to be
4 preparing the deeds?

5 A: Not until very close to the 29th or the 30th.
6 I prepared everything and he was there and it
7 happened very quickly.

8 Q: And had you told DeDe that someone would need
9 to prepare the deeds to convey this property?

10 A: I did not.

11 Q: Do you prepare deeds when you do this sort of
12 work?

13 A: No.

14 Q: And so, do you have any idea of how the
15 decision was made to include the properties
16 that were conveyed to the LLC?

17 A: Well, they were there on the 6th, all of
18 them. And DeDe wanted just about everything
19 that she could included in the LLC. So, she
20 had already made that decision on the 6th.

21 Q: And was her home one of the properties that
22 was discussed for that possibility?

23 A: No. But it would not have been because the
24 general best practice is not to include your
25 home in the family LLC because then it sounds

1 like you're trying to just do your will a
2 little early before you die. And it -- so,
3 nobody in my business would put your home in
4 the family LLC.
5 Q: But you don't recall discussing that reasoning
6 with her?
7 A: No, because it just never came up.
8 Q: Now, this document appears be signed by Mary
9 Ross Hanahan, Mikell Milton Henderson, and
10 MRS MIE, LLC by Mikell R. Scarborough, correct?
11 A: Yes.
12 Q: Which, if any, of these signatures were
13 applied in your presence?
14 A: The Mary Ross Hanahan and Mikell Scarborough.
15 Q: And Mary Ross Hanahan you said was present
16 with Howard Yates and you at your office on
17 December 30th.
18 A: Yeah.
19 Q: Where were you present with Mikell Scarborough
20 when he signed?
21 A: I wasn't. What's your question? Did I
22 witness this?
23 Q: My question was, for whose signatures were
24 you present?
25 A: Okay. Then I misspoke. I was only present

29

1 for Mary Ross Hanahan.
2 Q: And how did you come to -- or let me ask this

3 first. Did you ever receive copies signed by
4 Mikell Scarborough and/or Mikell Henderson?

5 A: I received both different times.

6 Q: And do you recall how you received them?

7 A: Mikell Scarborough personally delivered the
8 original to me. And I then e-mailed it to
9 Mikell Henderson. He then faxed it back to
10 me, Mikell Henderson did.

11 Q: And fax or e-mail?

12 A: Faxed. I e-mailed. He faxed.

13 Q: Okay. And do you recall whether all of those
14 signatures came to you by the end of the day
15 on December 30th?

16 A: I believe the fax from Mikell Henderson came
17 on the 31st, I believe.

18 Q: And what about Mr. Scarborough's?

19 A: That was on the 30th.

20 Q: And when you -- all three signatures appear
21 on this copy.

22 A: Yes.

23 Q: And that would indicate that at least one or
24 two of these folks signed a copy of the first
25 person's signature, correct -- I mean, a copy

30

1 of the page with the first person's signature
2 already on it?

3 A: Yes.

4 Q: So, was Ms. Hanahan the first to sign this

5 document?

6 A: Yes.

7 Q: And then Mikell Scarborough was the second?

8 A: Yes.

9 Q: And then was it e-mailed to Mikell Henderson
10 for signature with the other two?

11 A: It was.

12 Q: Okay. And the final ownership percentages
13 were two percent to Ms. Hanahan, 68 percent
14 to Mikell Henderson, and 30 percent to
15 MRS MIE, LLC, correct?

16 A: Yes.

17 Q: Were those percentages decided upon during
18 your first meeting or were they worked on
19 later?

20 A: They were pretty much decided the first
21 meeting.

22 Q: And was there ever any further discussion
23 about those?

24 A: No.

13 A: The only discussion we had was that whatever
14 assets she had that was not in this LLC would
15 be taxed, would be fully taxed as part of her
16 estate and she understood that. And so, that
17 was it.

37

15 Q: All right. And so, when you met with her on

16 December 30th, this was prepared, correct?

17 A: Yes.

18 Q: And did you go through this document with

19 her?

20 A: Yes.

21 Q: Did she read it?

22 A: She did.

23 Q: Carefully?

24 A: You'd have to ask her that. I don't know if

25 she read it carefully or not.

38

1 Q: Well, do you recall how long that meeting

2 was?

3 A: Hours. Maybe three hours. Long meeting.

4 Q: And so, tell me what your practice is when

5 you sit down with a client generally to

6 review and execute an operating agreement.

7 A: I go over the key provisions in the operating

8 agreements, ask if there's any questions, then

9 go on to the next provision.

24 A: I can tell you what I touched on with

25 Mrs. Hanahan.

1 Q: Please do.

2 A: Okay. We went over the fact that this is a
3 family, that it is something that will keep
4 her family together, it is a family
5 unification, a family that will keep these
6 assets preserved for generations to come, and
7 that the reason she's doing this is not only
8 to save estate taxes, but to give her
9 children a way to get closer to her and her
10 family. And she got very upset with this
11 other son of hers and said she doesn't want
12 anything to do with him. So, she said,
13 Mikell Scarborough is my son. I'll never
14 forget that. She said, Mikell Scarborough is
15 my son along with Mikell Henderson. They're
16 the ones that will be part of this family.
17 And I said, well, Mikell Scarborough and
18 Mikell Henderson and you will be the family.
19 And we went over some of the other
20 provisions. Do you want me to discuss those
21 other provisions that we went over?

22 Q: Yes, please.

23 A: We talked about the powers that are being
24 given, the partnership on page three,
25 paragraph two. We talked about meetings

1 being tax deductible on number four, that if

2 she wanted to spend the money and bring the
3 family together anywhere in the country, she
4 could write that off for tax purposes. We
5 talked about the management of the company.
6 We talked about loyalty, that all of us
7 required loyalty who were in the company,
8 that her son and Mikell Scarborough required
9 to be loyal to the company, required to be
10 confidential. We talked about the tax
11 returns. And she asked me to prepare the tax
12 returns. And I said that would be a separate
13 fee and she said that would be fine. We
14 talked about the tax matters member would be
15 Mikell Scarborough. She never asked me what
16 MRSMIE, LLC was.

17 Q: And you never told her?

18 A: No. We talked about dissolution. I told her
19 I felt very strongly that there had to be
20 unanimous written consent of all the members
21 that no one member could make this thing go
22 away, this was a permanent legacy that she
23 was leaving. And so, number nine was very,
24 very important to her. This last sentence on
25 page 9.1 there, "The reason being that the

41

1 primary goal of the partnership is to keep
2 the assets of the partnership intact and
3 preserved for generations to come." She felt

4 very, very strongly about that. She also
5 felt that no one should have the right to buy
6 in without unanimous consent. We did not go
7 over the miscellaneous stuff.

8 Q: And in going through this document with her
9 on the 30th, do you recall whether she had
10 questions about these provisions?

11 A: None. She just wanted to make sure her other
12 son was not part of this.

13 Q: And did you have any conversation with Mr.
14 Yates that day about what he understood his
15 purpose in being there was?

16 A: Well, it was not discussed, but we all knew
17 he was there to record the deeds.

18 Q: And do you recall whether he came to that
19 meeting with deeds in hand?

20 A: He did.

21 Q: Were you a witness to the deeds?

22 A: I was there. I did not go to the courthouse
23 with him.

24 Q: Were you present when she signed them?

25 A: Oh, yes.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 42:9 to 43:2)

42

9 Q: And were you present for the entire meeting?
10 Did you leave while Mr. Yates was still there
11 or step out for any part of this meeting?

12 A: Other than to use the restroom, no. It was

13 my office, so I was there the whole time.
14 Q: And do you recall what discussion took place
15 about the deeds?
16 A: That she was transferring the deeds into the
17 family LLC.
18 Q: And do you recall any discussion about what
19 exactly was being transferred via these deeds?
20 A: Well, she knew that it was saving her estate
21 taxes. That's all she knew.
22 Q: So, there was no discussion about which
23 parcels of real estate were included?
24 A: Oh, she knew because on the 6th there was a
25 list of all the real estate. And she wanted

43

1 to give all of that into the LLC if she
2 could.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 43:11 to 44:25)

43

11 Q: Now, do you recall -- well, just for the
12 record, this is a deed from Mary Ross Hanahan
13 to J. Ross Henderson of certain parcels of
14 property, correct?

15 A: Yes.

16 Q: And J. Ross Henderson is her other son?

17 A: Yes.

18 Q: Do you recall any discussion about this deed?

19 A: Yes. It was a heated discussion between
20 Mikell Scarborough and DeDe about that she

21 didn't want to give anything to -- is he
22 called Ross?
23 Q: Yes, sir.
24 A: So, she didn't want to give anything to Ross.
25 And Mikell Henderson just wouldn't relent.

44

1 He said, you have to give her something --
2 you have to give him something. And so, we
3 had the list of all the real estate, we said
4 here ---
5 MS. BROCKINGTON: I'm sorry. Excuse me. I believe
6 you're meaning Scarborough. You said
7 Henderson.
8 THE WITNESS: Mikell Scarborough. Excuse me then.
9 A: Mikell Scarborough said -- he was relentless
10 and said, you have to give him something, you
11 have to give Ross something. And so, we went
12 down the list and he said, this one and this
13 one or whatever he -- I don't know what he
14 picked, but he said how about these two. And
15 she said, fine, but I don't want to. And
16 that was the end of that.
17 Q: Okay. And did you hear anything more about
18 that between that date on the 30th when this
19 deed was executed?
20 A: Yeah. She still -- on the 30th she was still
21 going on and on about how she didn't want to
22 give him anything.

23 Q: Did she tell you anything about her reasoning
24 for that?
25 A: No.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 45:3 to 47:19)

45

3 Q: I'm going to hand you what's been marked at
4 Plaintiff's Five and see if you can identify
5 that document or tell me if you recognize
6 that for some reason.
7 A: Yes, I do recognize it.
8 Q: What is it?
9 A: It's a statement that was prepared by Howard
10 Yates to have me sign as a witness along with
11 Howard, I guess. And it was just to
12 basically show that we gave the client plenty
13 of opportunity to understand what she was
14 doing. That's what I was aware of that
15 that's what this was for.
16 Q: And you said this was prepared by Mr. Yates?
17 A: Either that or he gave he something or I
18 typed it up and printed it out, something.
19 Either -- I can't recall how we got it
20 together, but it was at my office.
21 Q: And would it be fair to say that whoever
22 actually drafted the document, it was a
23 collaborative effort or at least an effort
24 you were both involved in?

25 A: Yes. And I didn't create the language, but

46

1 I'm sure that I might have been there putting

2 it together or printing it out or something.

3 But I did not create this language.

4 Q: And in the second paragraph of this document

5 it indicates that, I have had the opportunity

6 to consult with Chris Moss, CPA and my

7 nephew, Mikell Scarborough, concerning my

8 assets and the 2013 estate tax changes. I am

9 aware without planning, my estate taxes could

10 be very high. Had you advised her that her

11 estate taxes could be very high?

12 A: Yes.

13 Q: Did you know by this point what her net worth

14 was?

15 A: So, on this day, yes, I was aware that by

16 creating this estate plan, she would be

17 paying very high estate taxes if we didn't do

18 this.

19 Q: And do you recall what your understanding of

20 her net worth was at that point?

21 A: It was somewhere between six, seven, eight

22 million. Somewhere between six and eight

23 million is what I was under the impression

24 of.

25 Q: And do you recall where you got that

47

1 impression?

2 A: From DeDe.

3 Q: And did she speak in any detail about what
4 made -- you know, what comprised or what that
5 was composed of?

6 A: No. But it was just something she never
7 really discussed with me, but I'm sure she
8 discussed it with someone, but it wasn't me.

9 Q: All right. Now, DeDe retained a two percent
10 interest in MRH Family, LLC, correct?

11 A: That is correct.

12 Q: Does the document make any provision for how
13 the income coming in would be divided among
14 the owners?

15 A: It does not.

16 Q: Is -- do you have any idea of what the effect
17 of that would be -- under this operating
18 agreement, who would receive the income as it
19 came in?

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 51:8 to 52:8)

51

8 Q: Okay. And do you recall where the values
9 came from for this tax return?

10 A: There were appraisals. I can't recall who
11 did the appraisals and I don't have the
12 appraisals.

13 Q: Did you ever have the appraisals?

14 A: Yes.

15 Q: And so, when you put together the numbers
16 here, you had the appraisals available to you
17 to look at?

18 A: Yeah. And I sent them in to the government
19 like -- you cannot file this electronically,
20 so I sent it in. And I never made copies of
21 them.

22 Q: All right. And do you recall, when you
23 discussed the gift tax return with Ms.
24 Hanahan, how Mr. Scarborough came to be the
25 person who signed it? I mean, you said you

52

1 discussed it with her.

2 A: She was aware that he signed it and she said
3 that's fine.

4 Q: Well, she was aware that he signed it or I
5 thought I understood the conversation with her
6 to have taken place before this.

7 A: Yes. She was aware that he was going to sign
8 it.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 52:12 to 53:11)

52

12 Q: And then you prepared her personal income tax
13 returns for 2012, 2013, and 2014?

14 A: '14, yes. '12, '13, '14.

15 Q: And the 2014 return would have been filed
16 after her death?

17 A: Yes.

18 Q: Do you recall whether for 2012 or 2013 who
19 signed on her behalf, the tax returns?
20 A: Nobody signs because it's electronic, so you
21 just file them. Nobody signed.
22 Q: Did you meet with her about preparing her
23 annual taxes those years?
24 A: Oh, yes.
25 Q: And do you recall where those meetings took

53

1 place?
2 A: It would have been my office.
3 Q: And do you recall whether anybody else
4 attended those meetings?
5 A: I can't recall. I believe she had a nurse,
6 an African American woman with her there with
7 a walker.
8 Q: Do you recall whether Mikell Scarborough came
9 to any of those meetings?
10 A: He was not. He was not at those meetings,
11 no.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 58:21 to 62:13)

58

21 MR. MOSS - EXAMINATION BY MS. BROCKINGTON:
22 Q: Chris, as you know, I'm Shirrese Brockington,
23 go by Sherri. And I'm representing Mikell
24 Scarborough individually in this matter, along
25 with co-counsel Joe Mendelsohn, who's

59

1 representing -- is the Personal Representative
2 of Ms. Hanahan's Estate. I'm going to be
3 asking you a few questions. If there's
4 something I ask you that you don't
5 understand, please let me know and I'll be
6 happy to rephrase it. When you meet with
7 clients for discussions regarding formations
8 of family LLCs for the tax strategies, what
9 is the first step that you take with regard
10 to that meeting?

11 A: I do a PowerPoint presentation.

12 Q: Did you do one for Ms. Hanahan?

13 A: Yes.

14 Q: On December 6th of 2012?

15 A: Yes.

16 (Defendants' Exhibit Number One was marked for
17 identification purposes.)

18 Q: Chris, I'm going to hand you what's been
19 marked as Defendants' Exhibit Number One. Do
20 you recognize that document?

21 A: Yes. It's part of my standard pitch when I
22 get new business and for -- same as everyone,
23 this is what I would have given to DeDe.

24 Q: All right. When we show her a -- excuse me.
25 Did you, in fact, show her a PowerPoint that

60

1 day that reflects this particular page?

2 A: Yes, I did.

3 Q: All right. Let's look at this. All right.

4 The Summary 5 Action Steps, can you tell me
5 what's step number one?

6 A: The first step is to have DeDe acquire the
7 LLC and then she would own a hundred percent
8 of that is step one.

9 Q: And did you explain that to Ms. Hanahan at
10 the meeting?

11 A: Yes.

12 Q: And do you know what the MRH stands for?

13 A: Mary Ross Hanahan.

14 Q: And is it typical that you use the
15 individual's initials with regard to the
16 family LLC?

17 A: Usually. You try not to identify the person
18 because of identity theft, so you usually
19 create initials.

20 Q: All right. What is step number two on
21 Defendants' One?

22 A: Step number two gave the different percentages
23 that we all agreed on. It was not exactly
24 68/30 when we first did it, but I switched it
25 to 68/30 and we printed it out. It was not

61

1 originally 68 ...

2 Q: What was the original percentage to Mikell
3 Henderson? Do you recall?

4 A: Mikell was supposed to get like, you know,

5 75, 80. And Mikell Scarborough was going to
6 get much less and DeDe absolutely insisted
7 that we put it up to 30.

8 Q: Do you know why she insisted on that 30
9 percent interest to Mikell Scarborough?

10 A: He was a son to her. She kept saying that.

11 Q: So, the change was made there in your office
12 on December 6th?

13 A: Yes, it was.

14 Q: And you testified you explained the
15 two percent remainder interest to her. Did
16 she question that at all?

17 A: No. I explained it to her even though she
18 didn't ask, that it's best practice to give
19 the grantor a continuing ownership so they
20 don't think it's a pre-death will.

21 Q: And who doesn't think of it as a pre-death
22 will?

23 A: The IRS.

24 Q: What is step number three?

25 A: My fee. And it's pretty standard in 2012.

62

1 It's much higher now.

2 Q: All right. And it's reflected there as
3 \$5,000; is that right?

4 A: Yes.

5 Q: And is that what you actually ended up
6 charging Ms. Hanahan?

7 A: Yes.

8 Q: Did she pay it?

9 A: She did.

10 Q: Did she question your fee?

11 A: No.

12 Q: Did she get upset about your fee?

13 A: No

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 65:25 to 67:9)

65

25 Q: Are you aware of any K-1s that were issued to

66

1 the family during 2012, '13, or '14?

2 A: Yes. We issued K-1s to Mikell Henderson for

3 sure.

4 Q: And how about to Ms. Hanahan?

5 A: Yes.

6 Q: And how about to the MRSMIE, LLC?

7 A: Yes.

8 Q: All right. Were you the one that issued

9 those K-1s? In other words you sent them to

10 the members of this LLC?

11 A: Yes. I personally delivered one of them to

12 DeDe and I e-mailed the others.

13 Q: Have you ever had any discussions with Mikell

14 Henderson in regards to the K-1s that he has

15 received from this LLC?

16 A: Probably via e-mail we've discussed it.

17 Q: Do you remember what those discussions have

18 been?

19 A: He'd say things like where is it. He's not
20 the only one. Other clients constantly asked
21 me, where are they, where are they. But I
22 would say, it's coming. And then finally I'd
23 send it to him and he'd say, thank you.

24 Q: Did he ever question you about the amount
25 that was listed on any K-1s that were sent to

67

1 him?

2 A: No.

3 Q: Did he ever make demand for any changes to
4 those K-1s?

5 A: No.

6 Q: Did he ever ask for copies of the tax returns
7 that substantiated the K-1s?

8 A: After the -- or right before the lawsuit,
9 yes. But other than that, no.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 67:10 to 68:10)

67

10 Q: All right. Chris, in looking at the
11 operating agreement, the family operating
12 agreement, can you tell us what were the
13 discussions you had either via e-mail or on
14 the phone with Mikell Henderson in regard to
15 his 68 percent ownership interest?

16 A: Just that -- he received a copy of the
17 operating agreement, so he knew the

18 percentages when he signed it. And he never
19 asked me any questions about it.
20 Q: He never questioned you about the 68 percent?
21 A: No.
22 Q: Did he ever question you about the two
23 percent his mom retained?
24 A: No.
25 Q: Did he ever question you about the 30 percent

68

1 interest the MRSMIE, LLC obtained?
2 A: He did not.
3 Q: Did Mikell Henderson ever communicate to you
4 he was concerned about his mother's ability
5 to understand what was going on?
6 A: No.
7 Q: Did he ever voice any concern about her
8 capacity to you regarding the formation of
9 the LLC?
10 A: No.

MOSS, HOWARD CHRISTOPHER - Vol. I, (Pages 68:20 to 71:21)

68

20 Q: In looking at Defendants' Number Two, is your
21 signature anywhere on that document?
22 A: I believe it -- let me find it. Not on this
23 one.
24 Q: Look on page two.
25 A: Oh, yes. Yes. It's on page two, yes. Thank

69

1 you.

2 Q: And just to clarify. Looking at the front,
3 can you tell me who is the grantor on this
4 particular deed?

5 A: Mary Ross Hanahan.

6 Q: And who is the grantee, the entity receiving
7 the ownership?

8 A: MRH Family, LLC.

9 Q: All right. And flip to page two for me.

10 Your signature is on there, Chris; is that
11 right?

12 A: Yes.

13 Q: Okay. And did you watch Ms. Mary Ross
14 Hanahan sign this document on December 30th,
15 2012?

16 A: I did.

17 Q: Did you witness it along with Mr. Howard
18 Yates?

19 A: Yes.

20 Q: Did you also serve as a subscribing witness
21 on the document?

22 A: I did.

23 Q: And Mr. Yates served as the notary?

24 A: Yes.

25 Q: Was this deed done in conjunction with the

70

1 deed to Ross Hanahan? In other words, were
2 they done at the same time ---

3 A: Everything was done at the same time, I
4 believe.

5 Q: Okay. You testified earlier that Ms.
6 Hanahan, the meeting with her that day was
7 around two to three hours?

8 A: Probably three hours, yes.

9 Q: Why does that time frame stick in your mind?

10 A: It's just the -- it was a very intense
11 meeting about particularly deciding how much
12 ownership and explaining to her and talking
13 to her and she was -- she was very aware of
14 everything that was going on and she was very
15 grateful.

16 Q: At any time did you doubt her ability to
17 comprehend and understand the documents she
18 was looking at and signing that day?

19 A: No. She was sharp. She was very sharp that
20 day.

21 Q: At any time did you ever prepare a codicil
22 for Ms. Hanahan?

23 A: I did not.

24 Q: Had you met her prior to -- excuse me. I'll
25 scratch that. I'll withdraw that question.

71

1 MS. BROCKINGTON: Let me step out with Mr.
2 Mendelsohn.

3 (Off the Record)

4 Q: Chris, you testified you first met with

5 Ms. Hanahan December 6th, 2012. And you
6 continued to meet with her and handle her
7 preparation of her tax returns; is that
8 right?

9 A: That's correct.

10 Q: Over what time period did that occur?

11 A: Well, I can't recall the exact dates. But I
12 would meet her once in a while to give her
13 information on her taxes.

14 Q: And that was prior to her death in October of
15 2014?

16 A: Yes.

17 Q: At any time during that window between
18 December of 2012 until really close to time
19 of death did you ever doubt her mental
20 capacity?

21 A: I did not.

MRH Family LLC

Summary 5 Action Steps prior to 12/31/2012

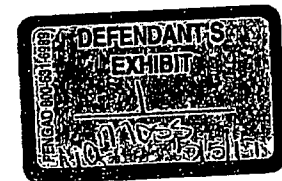
Step 1 MRH Family LLC formed owned 100% by you and assets transferred to MRH Family LLC.

Step 2 You gift 68% of LLC to your son Mike Henderson, with and 30% to Mikell Scarborough who in return will Manage and protect the family LLC. You own the remaining 2%.

Step 3 One time payment of \$5000 to H Christopher Moss CPA to set up the structure and \$500 per month for annual tax LLC preparation and IRS protection from audit.

Step 4 Gift Tax Returns are filed to reflect transfer of assets.
All Tax Free

Step 5 Partnership return for MRH Family LLC is filed annually and K-1s issued to family



**** EXHIBIT 12**

TESTIMONY OF HOWARD YATES TAKEN MAY 5, 2017

YATES, HOWARD - Vol. I, (Page 3:4 to 3:10)

3

4 J. HOWARD YATES, Jr., having been duly sworn, deposes

5 and testifies as follows:

6 MR. YATES - EXAMINATION BY MR. SILVERNAIL:

7 Q: Mr. Yates, I will try to be very brief today.

8 I don't think this will take very long. Have

9 you had your deposition taken before?

10 A: Yes, I have.

YATES, HOWARD - Vol. I, (Pages 6:8 to 11:25)

6

8 Q: And do you recall approximately how long before

9 December 30th of 2012 that would have been?

10 A: It was the day that -- the day that these

11 documents were executed is the day that I met

12 with her.

13 Q: And you said Mikell Scarborough was present

14 during that meeting?

15 A: He was -- he picked me up and we went over to

16 DeDe, as -- he referred to her as Aunt DeDe's

17 house. And I remember walking in. And I think

18 she had a walker or some assisted devise or a

19 cane or something to get around. And she had

20 a Labrador Retriever there. I can't remember

21 whether it was one or two. And we walked in

22 and I said to Mikell that I don't want you
23 anywhere around, please go into another part of
24 the room, I want to talk to your aunt. And
25 Mikell secreted himself to another part of the

7

1 room. I spoke to her as to -- I said, this --
2 these are documents that I have prepared. And
3 I want you to make sure that you know what is
4 going on and that you know what you are
5 signing. And she said, yes. I remember -- I
6 remember her saying, yes, this is what I want
7 to do. And then I said, do you have any
8 questions. And she said, no. And my
9 recollection was that I am not a tax attorney,
10 I'm just, as they say, a dirt lawyer and that
11 she had been in contact with Mr. Moss, Chris
12 Moss. And I said, well -- Mikell, I think --
13 we were there -- the total time that I was with
14 Mikell's Aunt DeDe was probably about two
15 hours, little over two hours. And I had Mikell
16 go out or go away from earshot or sight so that
17 I could talk to her about this and to make sure
18 that I felt comfortable that she had an intent
19 to sign these documents. And then after we had
20 discussed this -- and she was adamant that this
21 is what she wanted. We didn't have another
22 witness and so we went over to Mr. Moss' office
23 and Mr. Moss was a witness. And, again, I

24 asked Mikell to leave the room and Mikell went
25 into the hallway outside of the office

8

1 completely. And again, with Chris Moss there,
2 I asked Ms. -- I want to say Ms. Hanahan, but
3 Ms. Henderson what -- just to make sure that
4 this was what she wanted to do and that she
5 understood what she was doing. And I said,
6 nobody is pushing you, Mikell is out of the
7 room, you don't have to do anything. She said,
8 this is -- I mean, she was adamant. She said,
9 this is what I want. I detected no evidence of
10 incapacity or forgetfulness at all. And at
11 that point I said, well, listen I've got a
12 document that states -- and I think you all
13 have seen the document that Chris Moss and I
14 witnessed before Ms. Hanahan -- excuse me,
15 before Ms. Henderson that -- a declaration.
16 And after discussing all of this with
17 Ms. Henderson, we executed these documents and
18 she was -- she signed before Chris Moss and
19 before me. And I was of the opinion that she
20 was under no disability or constraint or any
21 undue influence. I made doggone certain that;
22 Mikell is not here, this is between us, you
23 don't have to do this if you don't want to. I
24 just wanted to make that sure that, in the
25 event we ever had a situation like this, that

1 I could -- not that I was anticipating it at
2 all, but in the event someone questioned it, I
3 was going to make sure that I had the proper
4 evidence to establish that this was what she
5 wanted.

6 Q: Now, am I to understand that the deed was
7 prepared before you first met and spoke with
8 Ms. Hanahan?

9 A: Correct.

10 Q: And so, the deed conveys, it appears, six
11 tracts of land.

12 A: Correct.

13 Q: From Ms. Hanahan to MRH Family, LLC. Who gave
14 you instruction on which tracts of land should
15 be included in this deed?

16 A: Mr. Mikell Scarborough.

17 Q: And in going through the deed with Ms. Hanahan
18 on the date it was signed, did you discuss each
19 tract of land?

20 A: I believe that I had tax maps. Tax maps are
21 drawings. They're not exact drawings, but
22 they're drawings showing where properties are
23 located. And I can't remember, but I think I
24 did have tax maps showing which parcel was
25 which and where it was located. I can't

1 remember, but I believe I did. That's usually

2 my custom.

3 Q: And do you recall whether you went through
4 those tax maps with Ms. Hanahan?

5 A: Yes, I believe I did. I described the
6 properties so that she knew which ones were --
7 where they were.

8 Q: Was there any discussion of real estate she
9 owned that was not among the tracts being
10 transferred?

11 A: No. Not that I can recall.

12 Q: And I think you may have made reference a
13 moment ago to what we had previously marked
14 Plaintiff's Five.

15 A: Yes.

16 (Plaintiff's Exhibit Number Five was introduced into
17 the record at this time.)

18 Q: Is that the document you were speaking of?

19 A: That's it.

20 Q: And did I hear you correctly -- or did I hear
21 you say that you and Chris Moss prepared this
22 together?

23 A: No. I did it myself.

24 Q: Was Chris Moss involved in the wording of it?

25 A: No. Not at all. It was mine.

11

1 Q: Was this a document that you had a form of
2 previously or did you draft this from the
3 ground up?

4 A: Drafted from scratch.

5 Q: What called upon you to do this if you hadn't
6 done it before?

7 A: Well, it's normally my custom when someone is
8 not officially represented. I didn't -- I
9 considered myself to be Mikell's lawyer. When
10 I went over all these things, I think there's
11 a deed that went to another member of the
12 Henderson family. And I, is this what you want
13 to do. And she said, yes. And in a case like
14 this, I wanted to make sure that there was no
15 question as to her competency or to her ability
16 to understand and mainly to kind of memorialize
17 the transaction.

18 Q: And had you -- did you know what MRH family,
19 LLC was at the time you drafted the deed?

20 A: I knew it was going to be -- it was a LLC,
21 family LLC.

22 Q: And did you know who the owners were?

23 A: Yeah. I think that I have Mrs. Henderson there
24 in paragraph three. And I'm certain that I
25 knew who the owners were.

YATES, HOWARD - Vol. I, (Pages 13:12 to 17:13)

13

12 Q: All right. And you mentioned a moment ago
13 another deed done that day transferring land to
14 a family member?

15 A: Correct.

16 Q: Was that her son, J. Ross Henderson?

17 A: Yes, I believe so.

18 Q: And do you recall any specific discussions with
19 her about that transaction separate and apart
20 from the LLC transfers?

21 A: I paid equal weight to all of the transactions
22 and I went over who the grantor was, who the
23 grantee was, what the property entailed was,
24 and made sure that she understood and wanted to
25 do all of those transfers.

14

1 Q: And did she tell you anything about the
2 reasoning for the transfers to her son?

3 A: No.

10 Q: All right. Now, when you spoke with
11 Ms. Hanahan, were you aware that there had been
12 a diagnosis of dementia in her past?

13 A: No, I wasn't.

14 Q: And were you aware that she had had a long
15 history of mental illness otherwise?

16 A: No.

17 Q: Did you ever become aware of either of those
18 things?

19 A: No.

20 Q: Would you have conducted these transactions any
21 differently if you had known either or those

22 things?

23 A: Well, I would have had to have known the
24 specifics as to time and place, et cetera, and
25 how long it had been since her last

17

1 hospitalization or if she was on medication or
2 treatment or whatever. It's -- of course, I'm
3 looking at this 20/20 hindsight right now and
4 you just told me that for the first time. If
5 I suspected that she was under any undue
6 influence or unable to understand the nature
7 and quality of her act, I would have said we're
8 not going to have anything signed. I couldn't
9 observe anything. She was vibrant and very
10 congenial and such and just like any other
11 person that I've seen. But I -- if I knew that
12 she had a history of that, I probably would
13 have investigated that further.

YATES, HOWARD - Vol. I, (Pages 18:6 to 19:3)

18

6 Q: Have you ever met or spoken, prior to today,
7 with Mike Henderson?

8 A: No.

9 Q: Not via any method?

10 A: No. I haven't met him before.

11 Q: Okay. Did Ms. Hanahan mention Mikell Henderson
12 as y'all were meeting on December 30th, 2012?

13 A: I believe she -- I asked her -- I said, because
14 I -- I asked her if this is what you want. And
15 I'm trying to recall whether -- and I can't
16 exactly remember about discussing other
17 children. But I was aware that she had other
18 children -- had children. And this was what
19 she wanted. And she did not go into any
20 specifics that I can recall about the children,
21 but I asked her if this was the deed that she
22 wanted to execute to convey to one of the
23 children. And so, I'm certain that we had
24 addressed any issues if she wanted the children
25 to have anything. And that was what I can

19

1 recall.