

RECORDED

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas  
For the Ninth Judicial Circuit

SEP 17 2018

SC Court of Appeals

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JULIE J. ARISTONIS  
CLERK OF COURT

Appeal from Charleston County Probate Court  
The Hon. Tamara C. Curry, Probate Judge  
Case No. 2017-CP-10-05198

Elizabeth Murray as Personal Representative  
of the Estate of Minnie H. Murray and Elizabeth Stylesetters,

Appellants,

v.

The Estate of William E. Murray,

Respondent.

**ORDER ON PROBATE APPEAL  
(Affirmed)**

This matter comes before the Court pursuant to S.C. Code Ann. §62-1-308 on appeal from the order of the Charleston County Probate Court, dated September by 28, 2017, disallowing two claims asserted against The Estate of William E. Murray which include one claim by Elizabeth Murray as Executrix of the Estate of her mother, Minnie H. Murray, and a separate claim on behalf of her own business, Elizabeth's Stylesetters. The parties submitted briefs as provided by Section 62-1-308, and the matter came before the Court for oral arguments on June 19, 2018. Having carefully reviewed the briefs and the record, and having considered the arguments on each and all the issues raised, the order of the Probate Court is AFFIRMED.

**Procedural and Factual Background**

The Appellant, Elizabeth Murray, is one of three daughters of Minnie H. Murray and William H. Murray. The other two daughters of that marriage are Pamela Holmes Murray, and Catherine Murray-Smith. Their Mother/Mrs. Murray, a resident of New York, died on June 18,

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1967; Elizabeth Murray was appointed as a successor Executrix of her Mother's Estate in 1975. Mr. Murray died more than 40 years later on August 7, 2007, as a resident of this State; Hilton C. Smith, Jr., was appointed as Personal Representative of Mr. Murray's estate along with James Ma.

During the decade preceding his death in August 2007, Mr. Murray was diagnosed with Parkinson's disease and suffered a gradual decline in physical and mental abilities. During the two-three years preceding Mr. Murray's death, there was substantial family discord. One of the points of contention involved Mr. Murray's actions, as chairman on a trust, in removing his daughters Pamela and Elizabeth Murray as trustees which led to highly contentious litigation. While the details of that litigation are not directly relevant to the issue before the Court, in the course of that litigation, Elizabeth Murray asserted claims that her Father was mentally incompetent and incapable of executing the removal documents. Those assertions, which are discussed in more detail below, form part of the foundation for the Probate Court's judicial estoppel ruling on the Stylesetters Claim.

In addition, the Appellant Elizabeth Murray began posturing to challenge Mr. Murray's estate planning, and she even went so far as to consult with lawyers about how to "remove" people who were close to her Father and ways to change her Father's estate plan. Mr. Murray was concerned that his daughter would make a grab for an inheritance, but he had engaged the services of estate planning attorney, Edward G.R. Bennett, through whom he executed a Durable Healthcare Power of Attorney and a Last Will and Testament. Despite Mr. Murray's planning, during the last months of his life, Appellant's machinations escalated and she made allegations that the agents he had appointed under this Health Care Power of Attorney were giving Mr. Murray morphine with the intent of causing an overdose; however, healthcare professionals found Mr. Murray's condition to be consistent with advanced Parkinson's disease and found Mr. Murray well

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cared for with no signs of abuse. In addition, a guardianship petition was filed in the Probate Court in July 2007 (just a month before his death) alleging that Mr. Murray was incompetent and seeking appointment of a guardian at which time a temporary guardian was appointed by the Probate Court.

This appeal directly relates to two creditor's claims filed on June 3, 2008, by Elizabeth Murray against her Father's estate. The claim made by Elizabeth Murray as Executrix of the Estate of Minnie Holmes Murray for \$6,260,845.70 arises from a 1980 Settlement Agreement regarding a debt owed by Mr. Murray to Mrs. Minnie Holmes Murray at the time of her death in 1967. The following facts as to that claim are incontrovertible under the evidence of record. Mr. Murray had borrowed \$142,685 from his wife, Minnie Holmes Murray, and upon her death, the note became the property of her Estate. During the course of the probate of her Estate, Mr. Murray reached an agreement with the beneficiaries (his three daughters) – "the 1980 Settlement Agreement." Mr. Murray made six yearly payments pursuant to the 1980 Settlement Agreement – the last being on February 24, 1986; Elizabeth Murray took no legal actions to collect the sums still remaining due on under the 1980 Settlement Agreement during Mr. Murray's lifetime. In 1992, the three Daughters reached an agreement for accounting and liquidation of the Mother's Estate, and the three Daughters executed an agreement on December 12, 1992, to transfer the debt owed by Mr. Murray to the three beneficiaries, jointly.

The claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, for \$538,034, is allegedly for interior design services she performed for an Inn formerly owned by her Father.

Notices of Disallowance were filed on August 21, 2008, and Elizabeth Murray filed Petition(s) for Allowance of the claims on September 22, 2008. After years of extensive litigation and discovery on a number of issues, the Estate filed a Motion for Summary Judgment, which motion was granted by the Probate Court in an Order, dated September by 28, 2017. As to the

claim of Elizabeth Murray as Executrix of her Mother's Estate, the Probate Court found that she lacks standing to pursue the asserted debt because any obligation would be due to the three Daughters, personally, not the Mother's Estate. In addition, the Probate Court found that any claim by the Mother's Estate was barred as a matter of law by the statute of limitations and by the equitable doctrine of laches based on a delay of 22 years in pursuing a default of the debt which occurred in 1986. As to the claim of Elizabeth's Stylesetters, the Probate Court found that the Elizabeth Murray is judicially estopped from asserting her claim, which is based on a document supposedly executed by Father/Mr. Murray 14 days before his death, in view of the fact that she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life.

**Standard of Review:** On appeal from the final order of the probate court, the circuit court applies the same standard of review that the Court of Appeals or Supreme Court would apply on appeal. Matter of Howard, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "An appellate court reviews the grant of summary judgment using the same standard employed by the circuit court." Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 411 S.C. 557, 560, 769 S.E.2d 847, 848 (2015). Rule 56(c), SCRPC, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that ... no genuine issue [exists] as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the

nonmoving party.” Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361–62, 563 S.E.2d 331, 333 (2002).

The Probate Court properly applied the summary judgment standard to the facts which are undisputed and by considering any disputed facts in the light most favorable to Elizabeth Murray. The claim of Elizabeth Murray as Executrix of her Mother’s Estate was properly disallowed for lack of standing because the alleged debt had been transferred out of Mrs. Murray’s estate to the three Daughters personally; and for the additional and independent ground that any claim on the debt was barred as a matter of law by the statute of limitations. As to the claim of Elizabeth’s Stylesetters, the Probate Court also properly found that the Elizabeth Murray is judicially estopped from asserting her claim on behalf of Elizabeth’s Stylesetters based on her repeated assertions in legal proceedings that her Father lacked mental capacity in the last years of his life.

## DISCUSSION

### *I. Claim by the Estate of Minnie Holmes Murray*

**A. Lack of Standing:** The Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries of the Estate of Minnie Murray reached an agreement in 1992 that transferred the debt to themselves as joint community property.

The general law on standing as correctly identified by the Probate Court provides:

Standing refers to a “[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.” Black’s Law Dictionary 1413 (7th ed.1999). “Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims.” 1A C.J.S. Actions § 101 (2005). It concerns an individual's “sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court.” *Id.*

Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 665 S.E.2d 237, 241 (Ct. App. 2008).

“Generally, a party must be a real party in interest to the litigation to have standing.” Sloan v.

Friends of the Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). ‘A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.’ *Id.*” Hill v. S.C. Dep't of Health & Env'tl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010).

The Probate Court correctly concluded that the Estate of Minnie Holmes Murray is not the real party in interest and has no standing to pursue this claim because any debt owed under the 1980 Settlement Agreement is the community property of the three Daughters. That conclusion is supported by the clear and express language of the 1992 Agreement that the debt “shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis.” The conclusion is further supported by the sworn testimony of Appellant Elizabeth Murray and her sister Pamela in their April 3, 2013 affidavits that they had “entered into a mutual agreement that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not several basis.”

Other supportive evidence is the fact that during the same time frame that they executed the 1992 transfer agreement, the Daughters also executed a Release in connection with a “Final Account,” liquidating assets and discharging Appellant as the PR. And, not to be overlooked, is the fact that the 1980 Settlement Agreement itself involved the Daughters in their individual capacities and expressly contemplated concluding the administration of the Estate of the late Minnie Holmes Murray. Appellant also acknowledged in the “Dear Daddy” letter discussed below that the three Daughters had agreed to share equally in all monies on this debt, and that the debt was owed to his “original daughters” as his “first three children.” Accordingly, the Probate Court correctly disallowed the claim as presented because the debt no longer belonged to the Estate of Minnie Murray after 1992, and the ruling is AFFIRMED. Moreover, regardless of who had standing, the claim was properly disallowed because it was barred by the statute of limitations.

**B. Statute of Limitations:**

Pursuant to the Probate Code, in the absence of a waiver, “no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.” S.C. Code Ann. § 62-3-802(a). Mr. Murray defaulted on the note in 1986, and thus, the statute of limitations had long expired by the time the claim was presented after Mr. Murray's death in 2007. To avoid the bar from her delay, the Appellant claims that the debt was revived when Mr. Murray allegedly acknowledged and reaffirmed the debt by signing a letter written and presented to him by Elizabeth Murray in February 2006.

The letter (generally referred to as the “Dear Daddy” letter), dated February 9, 2006, is a rambling seven-page document in which Elizabeth Murray generally complains about her Father's estate planning decisions and jealous anger over his intentions to make bequests to his long-time companion/life partner (Helen Flynn), his son-in-law (Hilton Smith), and his fourth daughter (Brianna); and she also expresses concern about her liability to her Mother's Estate as the executrix. She implored her Father to “formally certify below that you are in agreement with your original stated obligation to Mommy's Estate:”

I must have you, as soon as possible, *memorialize this agreement that those monies are due, as outlined in the 1980 agreement (see attached), by you to **her Estate**, whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us.* (Emphasis in original).

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I must ask you affirm this decades old debt owed to your first three children, which you have always stated is your intention, both legally and as our father.

This letter was not presented with the claim or the Petition for Allowance; rather, it was not until several months after the PRs denied her claim (February 2009), that Appellant produced the letter that Mr. Murray's former paramour (Dana Flavin) had supposedly “uncovered” while cleaning out her office.

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As stated by the Probate Court, when the statute of limitations expires, it bars a legal action to collect the debt, but it does not erase the debt. In re Vaughn, 536 B.R. 670, 677 (Bankr. D.S.C. 2015). Stale debts may be revived by either partial payment of the debt or a signed writing. Id. (quoting S.C. Code Ann. § 15-3-120 (2015)):

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. But payment of any part of principal or interest is equivalent to a promise in writing.

However, any such new promise to pay “must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full.” Id. (quoting Black v. White, 13 S.C. 37, 40 (S.C.1880)). “Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a clear and explicit promise to pay the debt sued on, or such an unqualified and unequivocal admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt.” Suber v. Richards, 61 S.C. 393, 402, 39 S.E. 540, 542 (1901). “It seems to be the general doctrine that the writing, in order to constitute an acknowledgment must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it.” Id. at 543 (quoting Manchester v. Braedner, 107 N. Y. 346, 14 N. E. 405, 1 Am. St. Rep. 831 (1887)). See also 4 *Williston on Contracts* §8:20 (4th ed.); 51 Am. Jur. 2d *Limitation of Actions* §§ 301, 314.

After oral argument was held on June 19, 2018, the Appellant Estate of Minnie Murray submitted a letter to this Court attempting to raise a new issue on appeal challenging the Probate Court’s application of South Carolina law on this acknowledgement issue by asserting that the choice of law provision in the 1980 agreement requires application of Georgia law. However, the Appellant has not preserved this choice of law issue for appellate review because she did not raise

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it in the Probate Court and she did not set forth any point on the choice of law in her Statement of Issues on Appeal or in her appellate brief; in fact, the Appellant affirmatively cited and argued South Carolina law. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”); Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal.”); State v. Berry, 418 S.C. 500, 504, 795 S.E.2d 26, 28 (2016) (A party cannot make one argument at trial and another ground on appeal.). Furthermore, Georgia law does not apply to the issue of whether the Dear Daddy letter is a sufficient acknowledgement to avoid the statute of limitations bar because it is a matter integral to the remedy/procedure and thus the law of the forum applies. Paul Pegram & Co. v. Williams, 38 S.C.L. 219, 224, 227 (S.C. App. L. 1851) (“the remedies by which contracts are enforced, are to be according to the *lex fori*”); Levy v. Boas, 18 S.C.L. 217, 219 (S.C. App. L. & Eq. 1831) (“the form of the action, the course of judicial proceedings, and the time when the action must be commenced, must be directed exclusively by the laws of the State, in which the action is brought”); Gattis v. Chavez, 413 F. Supp. 33, 35 (D.S.C. 1976) (“the question of whether the statute of limitations bars a remedy in a given case is ordinarily a matter determined solely by the law of the forum”, citing Levy v. Boas, supra.); *see also* Restatement (Second) of Conflict of Laws § 142 (1971)(as to general rule that law of forum state applies to statute of limitations tolling provisions); Lewis v. Gupta, 54 F. Supp. 2d 611, 616 (E.D. Va. 1999)(“the applicable statute of limitations and its associated tolling provisions are procedural matters governed by the law of the forum state”).

While the Estate presented evidence from several sources to prove that the signature on the Dear Daddy letter is not Mr. Murray’s, for the purposes of the summary judgment motion, the signature was properly accepted as genuine. However, even considering the Dear Daddy letter in

the light most favorable to the Appellant/Claimant, it does not constitute a clear and explicit promise to pay the debt or an unqualified and unequivocal admission that the debt was still due to imply a new promise to pay the debt under the legal standard as set forth in Suber v. Richard, supra. As the Probate Court correctly held: "Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt." The Probate Court's conclusion is supported by the analysis in In re Vaughn, 536 B.R. at, 677, regarding a promise that "the debt will 'come in to be paid with my other debts,' then the debt is not revived." (Citing Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C.Ct.App.1841)). The Dear Daddy letter contains similar equivocal language anticipating that the debt may not be due until Father's death as evidenced in the language that the debt was due "whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us." In addition, the letter contains an equivocation that the debt was due "both legally and as our father." Accordingly, in the absence of a sufficient acknowledgement, the Probate Court correctly disallowed the claim as barred by the statute of limitations.

**C. Laches:**

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988) (citing Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324 (1961)). "Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights." Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 599 (Ct. App. 1999). This is certainly a case of unreasonable delay. Appellant sat on her rights and "laid in

wait” for 22 years until Mr. Murray passed away to pursue a claim for Mr. Murray’s alleged default and as a result, the Estate has been prejudiced by the fact that the clock has been running on interest calculations (at a rate of 12%) for over twenty years, such that Appellant now claims she and her two sisters are entitled to over \$6 million for an original debt of a little over \$200,000. In view of the 22-year delay and the serious prejudice, the Probate Court ruled that she is now barred from asserting her claim by the equitable doctrine of laches as well as the statute of limitations.

The Appellant argues that laches is an equitable defense and does not apply to the legal claim to collect on the debt. Whether the particular ground be statute of limitations or laches, in either, the ultimate conclusion is that the claim was presented far too late. Accordingly, the claim was properly disallowed and the Probate Court’s ruling is AFFIRMED.

## ***II. Claim by Elizabeth Murray as Elizabeth’s Stylesetters***

Elizabeth Murray attended the New York School of Interior Design and established her own interior design company, Elizabeth’s Stylesetters. At various times, Mr. Murray hired his Daughter for design projects, including the Inn at Quogue, a New York property owned by Mr. Murray and Hilton Smith. Appellant ceased working at the Inn in 2002. After her Father died, she asserted this claim against his Estate for reimbursement for certain expenses supposedly incurred with her work at the Inn. However, her claim is not supported by any specific invoice(s)<sup>1</sup>; rather, she relies upon a letter she drafted, dated July 21, 2007—just two weeks before her Father

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<sup>1</sup> During the probate litigation, Appellant produced a jumble of hundreds of pages of unorganized receipts, invoices, credit card statements and spreadsheets attempting to establish a foundation for her claim. The Estate’s co-PR, James Ma, who was Mr. Murray’s bookkeeper of all records and payments and worked with Mr. Murray during Elizabeth Murray’s employment at the Inn, reviewed the records and confirmed that Ms. Murray is not owed any money related to her employment at the Inn.

died, purporting to be an agreement by Mr. Murray to pay Appellant for work at the Inn (as well as other monies supposedly owed in conjunction with her divorce).

The Estate moved for summary judgment on grounds that the letter is not a valid contractual basis for the claim because Mr. Murray did not possess the requisite mental capacity to enter into a legally binding contract during those last days of his life.<sup>2</sup> The Probate Court properly declined to grant summary judgment on the factual dispute as to whether Mr. Murray had the mental capacity when he signed the letter; however, the Probate Court did correctly grant summary judgment on the alternative ground that the Appellant is judicially estopped to claim that her Father had the legal mental capacity to execute the July 21, 2007 letter based on statements she made in prior legal proceedings declaring that her Father already was mentally incompetent and incapable of handling his own affairs before July 2007.

The South Carolina Supreme Court adopted the doctrine of judicial estoppel in Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 25-52, 489 S.E.2d 472 (1997), based on a policy concern that “for the judicial process to function properly, litigants must approach it in a truthful manner.” “When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.” Id. In Cothran v. Brown, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004), the Court later adopted/articulated the elements necessary for the doctrine to apply:

- (1) two inconsistent positions taken by the same party or parties in privity with one another;
- (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other;
- (3) the party taking the position must have been successful in maintaining that position and have received some benefit;
- (4) the inconsistency must be part of an intentional effort to

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<sup>2</sup> The Estate presented evidence from Mr. Murray’s personal physician that recounted his dire medical condition and cognitive impairment during those last weeks of his life, and the MUSC physician testified to a reasonable degree of medical certainty, that as of May 2007, Mr. Murray did not have the mental capacity to enter into a contract.


mislead the court; and (5) the two positions must be totally inconsistent. See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct.App.2001).

The Probate Court properly considered each of these elements. As referenced above, the Murrays were embroiled in litigation in 2006 involving a trust, and during that litigation, Appellant made numerous representations that her father was mentally incompetent for a period of time that included his last weeks.<sup>3</sup> Apart from the trust litigation, the Appellant alleged that Mr. Murray lacked mental capacity in the guardianship proceeding in the Probate Court during July 2007. Based on these filings and proceedings each element has been met to apply judicial estoppel to disallow this claim. Accordingly, the Probate Court's ruling is AFFIRMED on this ground.

#### CONCLUSION

WHEREFORE, based on the foregoing, the Probate Court properly granted summary judgment to the Estate, disallowing the claim made by Elizabeth Murray on behalf of the Estate of Minnie Holmes Murray for the alleged debt arising from a 1980 Settlement Agreement, and that ruling is AFFIRMED. The Probate Court also properly granted summary judgment to the Estate disallowing the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, and that ruling is AFFIRMED.

AND IT IS SO ORDERED.

  
The Honorable Jennifer B. McCoy  
Circuit Court Judge, Ninth Judicial Circuit

Charleston, South Carolina  
August 14, 2018

<sup>3</sup> While the Estate of William Murray in no way concedes that William Murray was, in fact, mentally incapacitated at all times alleged by Ms. Murray, the Estate maintains that he clearly did not have the requisite capacity to enter into the subject contractual documents only two weeks prior to his death.



proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRPC. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED**.

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I. **The Standard for Summary Judgment.**

Summary Judgment is a drastic remedy 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), SCRPC; See also *McNair vs. Rainsford*, 33 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 parties; 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 vs. 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 vs. Millimon*, 392 S.C. 116, 122, 708 S.E.2d

766,769 (2011); *Hancock vs. Mid South Management Co., Inc.*, 381 S.C. 326, 330-331, 673 S.E.2d 801-803 (2009).

## II. Background and Procedural History

1. William E. Murray ("Decedent") died testate on August 7, 2007, as a resident of Charleston County, South Carolina. In accordance with the Decedent's Last Will and Testament, Hilton C. Smith, Jr. and Hongjiang (James) Ma were appointed as Co-Personal Representatives on September 21, 2007.
2. On June 3, 2008, Elizabeth Murray filed two creditor's claims against the Estate of William E. Murray. Ms. Murray's first claim was filed on behalf of the Estate of Minnie Holmes Murray in the amount of \$6,260,845.70. The second claim was filed on behalf of Ms. Murray's company Elizabeth Stylesetters in the amount of \$538,034.00.
3. The claim on behalf of the Estate of Minnie Holmes Murray is predicated on a Settlement Agreement, dated April 22, 1980, between the Decedent and his three (3) daughters who are the beneficiaries of the Estate of Minnie Holmes Murray, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith.
4. The claim on behalf of Elizabeth's Stylesetters was made by Elizabeth Murray as president of the interior design company. The claim is based on reimbursement of various expenditures of her business for work done at the Inn of Quogue ("the Inn"), a hotel and restaurant formerly owned by the Decedent and Hilton C. Smith Jr.
5. On August 21, 2008, Hilton C. Smith, Jr., as Co-Personal Representative of the Estate of William E. Murray, filed a Notice of Disallowance of Claim as to the claims made

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by the Estate of Minnie Holes Murray and Elizabeth's Stylesetters, stating that the claims were not properly made and barred by the statute of limitations.

6. On September 22, 2008, Elizabeth Murray filed a Petition for Allowance of Claim for both the claim of the Estate of Minnie H. Murray and for the claim of Elizabeth Stylesetters.
7. On October 31, 2016, the Estate of William E. Murray filed its Motion for Summary Judgment.

### III. Findings of Fact in the Light Most Favorable to Elizabeth Murray

Construed in the light most favorable to Elizabeth Murray, as the non-moving party, following are the facts before the Court on the Motion for Summary Judgment.

As to the first creditor's claim made on behalf of the Estate of Minnie Holmes Murray:

1. In 1967, the Decedent borrowed \$142,685 from his wife, Minnie Holmes Murray. Following the death of Minnie Holmes Murray, on June 18, 1967, the note became the property of her Estate.
2. On April 22, 1980, the Decedent entered into a Settlement Agreement ("1980 Agreement") with his three (3) daughters, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith, as the beneficiaries of the Minnie Holmes Murray Estate. In the 1980 Agreement, the Decedent agreed to pay \$240,000 plus 8% interest rate and a default interest rate of 12%. The Decedent also transferred a life insurance policy to the Estate of Minnie H. Murray in the amount of \$385,000, to compensate for losses related to the unpaid debt.
3. The Decedent made 6 yearly payments pursuant to the 1980 Settlement Agreement, however, February 24, 1986 was the last time the Decedent made a payment pursuant

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to the 1980 Agreement. The Decedent also stopped paying the premiums on the life insurance policy.

4. Between 1998 and 2006, Elizabeth Murray wrote the Decedent several letters inquiring into the 1980 Agreement and asking the Decedent to make payment on the debt or to reestablish the debt owed.
5. On February 9, 2006, a letter was written from Elizabeth Murray to the Decedent asking the Decedent to make payments pursuant to the 1980 Agreement. According to Elizabeth Murray, the Decedent signed the letter in which he recognized the debt.

As to the second creditor's claim made on behalf of Elizabeth's Stylesetters:

6. Elizabeth's Stylesetters had an interior decorating company owned and operated by Elizabeth Murray.
7. Elizabeth Murray filed a claim on behalf of her company, Elizabeth's Stylesetters, in the amount of \$538,034.00.
8. The claim stems from work done by Elizabeth's Stylesetters at the Inn, which includes interior decorating work done by Elizabeth Murray and items that were left at the Inn.
9. According to Elizabeth Murray, the Decedent signed an agreement on July 21, 2007, two weeks prior to the Decedent's death, to pay back Elizabeth's Stylesetters for the work done at the Inn.

#### IV. Conclusions of Law

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The Estate raises arguments for Summary Judgment as to both claims filed by Elizabeth Murray on behalf of the Estate of Minnie H. Murray and Elizabeth's Stylesetters. Summary Judgment in regards to each claim will be discussed separately.

**A. The Claim of Elizabeth Murray on Behalf of the Estate of Minnie Holmes Murray for \$6,260,845.70.**

The Estate makes four arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. The Court finds that all arguments are valid with the exception of the argument 2, regarding judicial estoppel.

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***Lack of Standing***

1. Courts in South Carolina have consistently held that "standing refers to '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *Powell v. Bank of America*, 379 S.C. 437, 444 (Ct. App. 2008) (citing Black's Law Dictionary 1423 7<sup>th</sup> ed. 1999). "[S]tanding is ... [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims." *Id.* (citing 1A C.J.S. Actions § 101 (2005)). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612 (2010) (citations omitted).

2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as "one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources*, 345 S.C. 594, 600 (2001) (citation omitted).
3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

*Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.*

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4. Elizabeth Murray's sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).
5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.
6. ~~Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.~~
7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

**Statute of Limitations**

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.
9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied...".
10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maier vs. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).

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11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or “some writing signed by the party to be charged thereby”. *In re Vaughn*, 536 B.R. 670, 677 (2015); see also S.C. Code Ann. Section 15-3-120. “The new promise to pay, may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full.” *Id.* “Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will ‘come in to be paid with my other debts,’ then the debt is not revived.” *Id.* (citing *Horlbeck v. Hunt*, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).
12. “Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt.” *Suber v. Richards*, 61 S.C. 393, 401 (S.C. 1901) (emphasis added). The rule is “the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id.* at 402.
13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray \$240,000. The last payment made by the Decedent pursuant to that agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

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14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over \$5 million owed by the Decedent to the Estate of Minnie H. Murray.
15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.
16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

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***Doctrine of Laches***

17. The equitable doctrine of laches states it “is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” *Hallums v. Hallums*, 296 S.C. 195, 198 (1988) (citing *Byars v. Cherokee County*, 237 S.C. 548 (1961))
18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199*. Applying the doctrine of laches is “highly fact specific and each case must be judged by its own merits.” *Emery v. Smith*, 361 S.C. 207, 216 (Ct. App. 2004). The doctrine of laches may be

applied to claims at law where the statute of limitations has expired. *Treadway v. Smith*, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App).

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent's default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over \$6 million dollars on an original debt of \$240,000.
20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.
21. As stated above, Elizabeth Murray's claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.
22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

**B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters for \$538,034.00**

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to

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his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters \$538,034.00. The second argument is an argument of fact not law (see SCRCF Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

**Judicial Estoppel**

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1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251 (1997). The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.* The doctrine of judicial estoppel, therefore, "punishes those who take the truth-seeking function of the system lightly" *Id. at 252.*
2. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown*, 357 S.C. 210, 215 (2004). The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey*, 327 S.C.242, 489 S.E.2d 472 (1997).
3. In order for the doctrine to apply, the following elements must be met:
  - (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related

proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

*Cothran at 215-16; See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).*

4. Elizabeth Murray states in her Memorandum in Opposition that “Elizabeth’s Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death.” (Pet’r. Mem. Opp’n Summ. J. 14).
5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust (“Samuel Freeman Trust Litigation”). Ms. Murray commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.
6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated “WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee.” Ms. Murray also alleged “Over the past several years WEM’s physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters.” (Estate’s Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)

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7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.
8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.
9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.
10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into

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an agreement to pay Elizabeth Murray \$538,043.00, in which Elizabeth Murray claims he did.

11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.
12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.
13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her \$538,043.00.
14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to

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execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

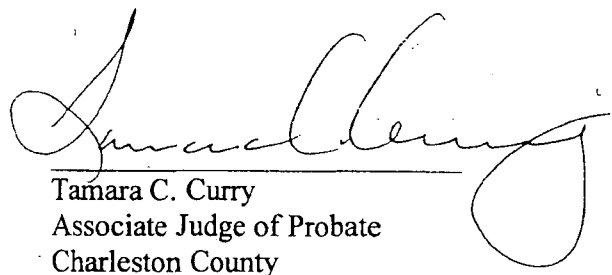
16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

**V. Conclusion**

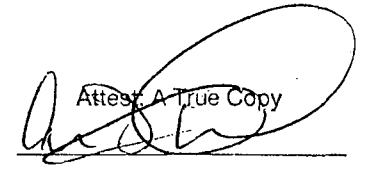
For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby

**GRANTED.**

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Tamara C. Curry  
Associate Judge of Probate  
Charleston County

September 28, 2017  
Charleston, South Carolina

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE PROBATE COURT  
  
CASE No. 2007-ES-10-1116

IN RE: )  
THE ESTATE OF WILLIAM E. )  
MURRAY )  
 )  
 )  
 )

**ORDER TO AMEND  
ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

Hearing Date: July 25, 2017  
Presiding Judge: Tamara C. Curry  
Plaintiff's Attorneys: Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., Jean Marie Jennings, Esq., and Edward G.R. Bennett, Esq.  
Respondent's Attorneys: George Kefalos, Esq. Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen Slotchiver, Esq.  
Court Reporter: Janice N. Shepherd, CSR, RPR

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This Court has received and verified information that has been determined to be a clerical error in the recorded Order dated September 28, 2017. Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Court may correct clerical mistakes in judgments or orders. The Petitioner sought a Motion for Summary Judgment and the motion was granted. The Order erroneously stated "For the foregoing reasons, Respondent's Motion for Summary Judgment is hereby **GRANTED**". This is a clerical error and the correct language should read "For the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby **GRANTED**."

**THIS MATTER** came before the Court for hearing on July 25, 2017 on the Motion for Summary Judgment filed by the Estate of William E. Murray, against Elizabeth Murray on November 1, 2016. Present at the hearing were Molly H. Craig, Esq., Robert H. Hood, Sr., Esq., and Jean Marie Jennings, Esq., as attorneys for the Estate

of William E. Murray, George J. Kefalos, Esq., Oana D. Johnson, Esq., Barry I. Baker, Esq., and Stephen M. Slotchiver, Esq., as attorneys for Elizabeth Murray, John B. Hagerty, Esq., as attorney for Hilton C. Smith, Jr., James J. Duggan, Esq., as attorney for Catherine Murray-Smith and Brianna Rodriguez, Richard S. Rosen, Esq., as Special Fiduciary to the Estate, and Daniel F. Blanchard, III., Esq., on behalf of Mr. Rosen.

The Estate's Motion for Summary Judgment is predicated upon several grounds, as to the claim by the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. As to the claim by Elizabeth Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Estate argues that Summary Judgment should be granted because no disputed material issue of fact exists, therefore, they are entitled to judgement as a matter of law. Rule 56, SCRCF. Upon careful review of the file, properly presented evidence, argument of counsel, and facts viewed in the light most favorable to the non-moving party, the Estate's Motion for Summary Judgment is hereby **GRANTED**.

**I. The Standard for Summary Judgment.**

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Summary Judgment is a drastic remedy 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 vs. Rainsford*, 33 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 parties; 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 vs. 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 vs. Millimon*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); *Hancock vs. Mid South Management Co., Inc.*, 381 S.C. 326, 330-331, 673 S.E.2d 801-803 (2009).

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## II. Background and Procedural History

1. William E. Murray ("Decedent") died testate on August 7, 2007, as a resident of Charleston County, South Carolina. In accordance with the Decedent's Last Will and Testament, Hilton C. Smith, Jr. and Hongjiang (James) Ma were appointed as Co-Personal Representatives on September 21, 2007.
2. On June 3, 2008, Elizabeth Murray filed two creditor's claims against the Estate of William E. Murray. Ms. Murray's first claim was filed on behalf of the Estate of Minnie Holmes Murray in the amount of \$6,260,845.70. The second claim was filed on behalf of Ms. Murray's company Elizabeth Stylesetters in the amount of \$538,034.00.

claim was filed on behalf of Ms. Murray's company Elizabeth Stylesetters in the amount of \$538,034.00.

3. The claim on behalf of the Estate of Minnie Holmes Murray is predicated on a Settlement Agreement, dated April 22, 1980, between the Decedent and his three (3) daughters who are the beneficiaries of the Estate of Minnie Holmes Murray, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith.
4. The claim on behalf of Elizabeth's Stylesetters was made by Elizabeth Murray as president of the interior design company. The claim is based on reimbursement of various expenditures of her business for work done at the Inn of Quogue ("the Inn"), a hotel and restaurant formerly owned by the Decedent and Hilton C. Smith Jr.
5. On August 21, 2008, Hilton C. Smith, Jr., as Co-Personal Representative of the Estate of William E. Murray, filed a Notice of Disallowance of Claim as to the claims made by the Estate of Minnie Holes Murray and Elizabeth's Stylesetters, stating that the claims were not properly made and barred by the statute of limitations.
6. On September 22, 2008, Elizabeth Murray filed a Petition for Allowance of Claim for both the claim of the Estate of Minnie H. Murray and for the claim of Elizabeth Stylesetters.
7. On October 31, 2016, the Estate of William E. Murray filed its Motion for Summary Judgment.

### **III. Findings of Fact in the Light Most Favorable to Elizabeth Murray**

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Construed in the light most favorable to Elizabeth Murray, as the non-moving party, following are the facts before the Court on the Motion for Summary Judgment.

As to the first creditor's claim made on behalf of the Estate of Minnie Holmes Murray:

1. In 1967, the Decedent borrowed \$142,685 from his wife, Minnie Holmes Murray. Following the death of Minnie Holmes Murray, on June 18, 1967, the note became the property of her Estate.
2. On April 22, 1980, the Decedent entered into a Settlement Agreement ("1980 Agreement") with his three (3) daughters, namely: Elizabeth Edwards Murray, Pamela Holmes Murray, and Catherine Peronneau Murray-Smith, as the beneficiaries of the Minnie Holmes Murray Estate. In the 1980 Agreement, the Decedent agreed to pay \$240,000 plus 8% interest rate and a default interest rate of 12%. The Decedent also transferred a life insurance policy to the Estate of Minnie H. Murray in the amount of \$385,000, to compensate for losses related to the unpaid debt.
3. The Decedent made 6 yearly payments pursuant to the 1980 Settlement Agreement, however, February 24, 1986 was the last time the Decedent made a payment pursuant to the 1980 Agreement. The Decedent also stopped paying the premiums on the life insurance policy.
4. Between 1998 and 2006, Elizabeth Murray wrote the Decedent several letters inquiring into the 1980 Agreement and asking the Decedent to make payment on the debt or to reestablish the debt owed.

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5. On February 9, 2006, a letter was written from Elizabeth Murray to the Decedent asking the Decedent to make payments pursuant to the 1980 Agreement. According to Elizabeth Murray, the Decedent signed the letter in which he recognized the debt.

As to the second creditor's claim made on behalf of Elizabeth's Stylesetters:

6. Elizabeth's Stylesetters had an interior decorating company owned and operated by Elizabeth Murray.
7. Elizabeth Murray filed a claim on behalf of her company, Elizabeth's Stylesetters, in the amount of \$538,034.00.
8. The claim stems from work done by Elizabeth's Stylesetters at the Inn, which includes interior decorating work done by Elizabeth Murray and items that were left at the Inn.
9. According to Elizabeth Murray, the Decedent signed an agreement on July 21, 2007, two weeks prior to the Decedent's death, to pay back Elizabeth's Stylesetters for the work done at the Inn.

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#### IV. Conclusions of Law

The Estate raises arguments for Summary Judgment as to both claims filed by Elizabeth Murray on behalf of the Estate of Minnie H. Murray and Elizabeth's Stylesetters. Summary Judgment in regards to each claim will be discussed separately.

##### A. The Claim of Elizabeth Murray on Behalf of the Estate of Minnie Holmes Murray for \$6,260,845.70.

The Estate makes four arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of the Estate of Minnie Holmes Murray: (1) Elizabeth Murray lacks standing to make claims on behalf of the Estate of Minnie H. Murray; (2) Elizabeth Murray is judicially estopped from claiming she is owed money which she failed to claim under oath during her divorce proceedings; (3) the claim is barred by the statute of limitations; and (4) the claim is barred by the doctrine of laches. The Court finds that all arguments are valid with the exception of the argument 2, regarding judicial estoppel.

***Lack of Standing***

1. Courts in South Carolina have consistently held that “standing refers to ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’” *Powell v. Bank of America*, 379 S.C. 437, 444 (Ct. App. 2008) (citing Black’s Law Dictionary 1423 7<sup>th</sup> ed. 1999). “[S]tanding is ... [the] concept of justifiability that is concerned with whether a particular person may raise legal arguments or claims.” *Id.* (citing 1A C.J.S. Actions § 101 (2005)). “A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation.” *Hill v. S.C. Dep’t of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612 (2010) (citations omitted).
2. Under Rules 17 and 81 of the South Carolina Rules of Civil Procedure, all actions commenced in Probate Court must be prosecuted in the name of the real party in interest. Real party in interest is defined as “one who has a real, material, or substantial interest in the subject matter of the action, as opposed

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to one who has only a nominal or technical interest in the action.” *Sea Pines Ass’n for Protection of Wildlife, Inc. v. South Carolina Dept. of Natural Resources*, 345 S.C. 594, 600 (2001) (citation omitted).

3. Elizabeth Murray filed a claim against the Estate of William E. Murray as Executrix of the Estate of Minnie H. Murray. However, on December 12, 1992, Elizabeth Murray, along with her sisters Pamela Holmes Murray and Catherine Peronneau Murray Smith, as the beneficiaries of the Estate of Minnie Holmes Murray, entered into an agreement to transfer the debt owed by the Decedent from the Estate of Minnie Holmes Murray to the three beneficiaries, jointly. The December 12, 1992 agreement stated the following:

This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Holmes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

*Release, Refunding, Receipt and Indemnity Agreement, signed and notarized by the three sisters and beneficiaries of the Minnie H. Murray Estate on December 12, 1992.*

4. Elizabeth Murray’s sworn affidavit dated April 3, 2013 states that she entered into a mutual agreement with her sisters, Pam Murray and Catherine Murray Smith, that all obligations due under the note dated April 22, 1980 are

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community property between us [three sisters], on a joint, not a several basis (see Elizabeth Murray Affidavit, April 3, 2013 para. 30).

5. Based on the December 12, 1992 Agreement as well as the confirmation by Elizabeth Murray in her affidavit dated April 3, 2013, the Court finds that any obligation due under the 1980 Agreement is due to Elizabeth Murray, Pamela Murray and Catherine Murray Smith, jointly, not to the Estate of Minnie Holmes Murray.
6. Therefore, Elizabeth Murray, as Executrix of the Estate of Minnie Holmes Murray, is not the party who has a claim to any obligation on the note.
7. Accordingly, the Motion for Summary Judgment on the ground of Lack of Standing is granted.

**Statute of Limitations**

8. Pursuant to S.C. Code Ann. Section 62-3-802, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.
9. S.C. Code of Laws Ann. Section 15-3-530(1) provides that suit must commence "within three years (on) an action upon a contract, obligation, or liability, expressed or implied...".
10. A cause of action for breach of contract begins to accrue upon breach, or upon the later of the date of breach or the date upon which the breach should have been discovered by the exercise of reasonable diligence. *Maher vs. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1978).

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11. The Statute of Limitations does not extinguish a debt, therefore, debts can be revived by partial payment of the debt or "some writing signed by the party to be charged thereby". *In re Vaughn*, 536 B.R. 670, 677 (2015); see also S.C. Code Ann. Section 15-3-120. "The new promise to pay 'may be implied as well as expressed, but it must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full'. *Id.* "Thus, when a party expressly admits the debt exists, but in doing so also expressly states he will not pay the debt, instead stating the debt will 'come in to be paid with my other debts,' then the debt is not revived." *Id.* (citing *Horlbeck v. Hunt*, 26 S.C.L. 197, 201 (S.C. Ct. App. 1841).

12. "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a **clear and explicit** promise to pay the debt sued on, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." *Suber v. Richards*, 61 S.C. 393, 401 (S.C. 1901) (emphasis added). The rule is "the writing, in order to constitute an acknowledgment, must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it. *Id.* at 402.

13. The basis of the claim by the Estate of Minnie H. Murray is a 1980 Agreement, in which the Decedent entered into an agreement with his three children, from his marriage to Minnie H. Murray, to pay the Estate of Minnie H. Murray \$240,000. The last payment made by the Decedent pursuant to that

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agreement was made on February 24, 1986. Therefore, it is clear that the three-year Statute of Limitations under S.C. Code Ann. Section 15-3-530(1) has run.

14. Elizabeth Murray argues that the Decedent revived the 1980 Agreement on February 9, 2006, when the Decedent signed a letter written by Elizabeth Murray, which asked that the Decedent recognize the debt of over \$5 million owed by the Decedent to the Estate of Minnie H. Murray.

15. Taking the facts in the light most favorable to Elizabeth Murray, as the non-moving party, even if the February 9, 2006 letter was properly signed by the Decedent, it does not constitute a **clear and explicit** promise to pay the debt, or such an **unqualified and unequivocal** admission that this particular debt is still due as will imply a promise to pay such debt as stated in *Suber v. Richard* (emphasis added). Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt.

16. Accordingly, the Motion for Summary Judgment on the ground of Statute of Limitations is granted.

#### ***Doctrine of Laches***

17. The equitable doctrine of laches states it "is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198 (1988) (citing *Byars v. Cherokee County*, 237 S.C. 548 (1961))

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18. To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums at 199*. Applying the doctrine of laches is “highly fact specific and each case must be judged by its own merits.” *Emery v. Smith, 361 S.C. 207, 216 (Ct. App. 2004)*. The doctrine of laches may be applied to claims at law where the statute of limitations has expired. *Treadway v. Smith, 325 S.C. 367, 378, 479 S.E.2d 849 (S.C. Ct. App)*.

19. It is clear through the letters written by Elizabeth Murray to the Decedent, that she was waiting until the Decedent passed to pursue a claim for the Decedent’s default of the 1980 Agreement in order to avoid family strife. However, that is an unreasonable delay and as a result Elizabeth Murray is claiming that the Estate is owed over \$6 million dollars on an original debt of \$240,000.

20. The claim made by Elizabeth Murray, on behalf of the Estate of Minnie H. Murray, is the first legal action taken by Elizabeth Murray against the Decedent for default on the 1980 Agreement, which occurred in 1986. The Estate of William E. Murray would be severely prejudiced if Ms. Murray is allowed to collect on a debt in which she waited 22 years to pursue any legal actions.

21. As stated above, Elizabeth Murray’s claim is outside the statute of limitations, therefore her claim is also barred pursuant to the doctrine of laches.

22. Accordingly, the Motion for Summary Judgment on the ground of doctrine of laches is granted.

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**B. The Claim of Elizabeth Murray on Behalf of Elizabeth's Stylesetters  
for \$538,034.00**

The Estate make three arguments in support of their Motion for Summary Judgment as to the claim filed on behalf of Elizabeth's Stylesetters: (1) Elizabeth Murray is judicially estopped from making this claim because the debt is based on a July 21, 2007 letter and Elizabeth Murray claimed the Decedent did not have mental capacity on November 17, 2006; (2) the Decedent did not have the capacity to enter into a contract promising payment of funds fourteen days prior to his death; and finally, (3) Elizabeth Murray failed to assert a claim against the Decedent within the requisite statute of limitations. The Court finds that only the first argument is appropriate for Summary Judgment proceedings. The second argument raised by the Estate argues that the Decedent lacked mental capacity to enter into the July 21, 2007 contract, which Elizabeth Murray contends the Decedent agreed to pay Elizabeth's Stylesetters \$538,034.00. The second argument is an argument of fact not law (see SCRCF Rule 56). The third argument raised by the Estate is predicated on the finding that the Decedent lacked the capacity to enter into the July 21, 2007 agreement, therefore, it is not appropriate for Summary Judgment.

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***Judicial Estoppel***

1. Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251 (1997). The purpose of judicial estoppel is to "protect the integrity of the judicial process or the integrity of the courts." *Id.*

The doctrine of judicial estoppel, therefore, “punishes those who take the truth-seeking function of the system lightly” *Id. at 252*.

2. “Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Cothran v. Brown*, 357 S.C. 210, 215 (2004). The South Carolina Supreme Court has adopted the doctrine of judicial estoppel as it relates to matters of fact. *Hayne Federal Credit Union v. Bailey*, 327 S.C.242, 489 S.E.2d 472 (1997).

3. In order for the doctrine to apply, the following elements must be met:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

*Cothran at 215-16; See Carrigg v. Cannon*, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

4. Elizabeth Murray states in her Memorandum in Opposition that “Elizabeth’s Stylesetters, as represented by Elizabeth Murray, maintains that Mr. Murray remained lucid and competent and exercised free will just a few days before his death.” (Pet’r. Mem. Opp’n Summ. J. 14).
5. In November of 2006, Elizabeth Murray was involved in litigation in New York in which she sought to have the Decedent removed as a trustee to the Samuel Freeman Trust (“Samuel Freeman Trust Litigation”). Ms. Murray

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commenced this litigation because she was removed by the Decedent as one of the trustees to the Samuel Freeman Trust.

6. During the course of the litigation, Elizabeth Murray filed a verified Answer and Cross-Petition in which she stated "WEM [the Decedent] lacked and lacks the requisite mental capacity to intelligently and knowingly execute a document that purported to remove Elizabeth [Murray] as a Trustee." Ms. Murray also alleged "Over the past several years WEM's physical condition and mental competency have become severely impaired. As of this date he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." (Estate's Ex. to Memorandum in Support of Motion for Summary Judgment No. 54)
7. There was not a judicial determination regarding the capacity of the Decedent during the Samuel Freeman Trust Litigation, however, Elizabeth Murray was reinstated as one of the trustees to the Samuel Freeman Trust.
8. Furthermore, Elizabeth Murray commenced actions in this Court in July of 2007 stating that the Decedent lack mental capacity and needed a guardian appointed for his protection.
9. The requirements first requirement for judicial estoppel, as stated in paragraph 3 of this section, is that two inconsistent positions must be taken by the same parties or parties in privity with one another. In the Samuel Freeman Trust Litigation, Elizabeth Murray took the position that the Decedent lacked the requisite mental capacity to execute the documents that removed her as trustee in November of 2006. In this case Elizabeth Murray is taking the position that

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the Decedent had the requisite mental capacity to enter into an agreement to pay Ms. Murray over one-half of a million dollars in July of 2007. Furthermore, around the same time that Ms. Murray stated that the Decedent had the mental capacity to enter into the agreement to pay her, she was also representing to this Court that the Decedent lacked the mental capacity to make decisions regarding his wellbeing.

10. The second element of judicial estoppel is that the positions must be taken in the same or related proceedings involving the same party. The issues in both the Samuel Freeman Trust Litigation and this issue is whether the Decedent had mental capacity. In the Samuel Freeman Trust Litigation, it was whether the Decedent had the mental capacity to remove Elizabeth Murray as trustee, in which Elizabeth Murray claims he did not. In this case, it is whether the Decedent had the mental capacity to enter into an agreement to pay Elizabeth Murray \$538,043.00, in which Elizabeth Murray claims he did.

11. Elizabeth Murray argues that Samuel Freeman Trust Litigation and this Estate matter are not related proceedings, however, the Court in *Hayne Fed. Credit Union v. Bailey* judicially estopped a person from taking one position in a divorce proceeding and another in a foreclosure action. Although the proceedings on their face may be different the Court reasoned that as long as the issue itself is the same then the second element of judicial estoppel is met.

12. The third element of judicial estoppel is that the party must have been successful in maintaining that position and received some benefit. Although there was no adjudication as to the Decedent mental capacity in the Samuel

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Freeman Trust Litigation, Elizabeth Murray was reappointed as trustee as a result of the litigation. Also, this Court appointed a temporary guardian for the Decedent as a result of Ms. Murray filings.

13. The fourth element of judicial estoppel is that the inconsistency must be part of an intentional effort to mislead the court. The fifth element is that the positions must be totally inconsistent. Elizabeth Murray has alleged that the Decedent lacked the mental capacity to remove her as trustee in the Samuel Freeman Trust Litigation and the Decedent had the mental capacity to promise to pay her \$538,043.00.

14. Elizabeth Murray has alleged that the Decedent lacked mental capacity and had mental capacity at different points throughout the latter stages of the Decedent's life. The position that is taken by Ms. Murray is that which best suits her financially. Ms. Murray is misleading the Court by stating that the Decedent had mental capacity to execute a contract fourteen days prior to his death while also stating that the Decedent lacked mental capacity in November of 2006.

15. Therefore, as a matter of law and for the integrity of the Courts, the Court finds that Ms. Murray is judicially stopped from claiming Mr. Murray had the capacity to execute the July 21, 2007 document which she purports is the basis for this claim.

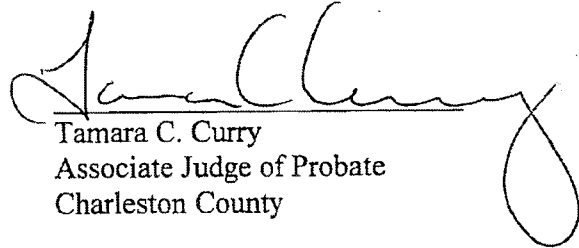
16. Accordingly, the Motion for Summary Judgment on the ground of judicial estoppel is granted.

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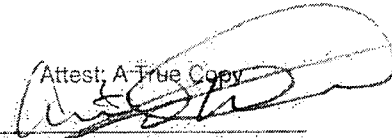
**V. Conclusion**

For the foregoing reasons, Petitioner's Motion for Summary Judgment is hereby

**GRANTED.**

  
Tamara C. Curry  
Associate Judge of Probate  
Charleston County

November 13, 2017  
Charleston, South Carolina

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

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