THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Judge

---

Court of Common Pleas Case No. 2015-CP-08-00547
Opinion No. 2018-UP-244 (S.C. Court of Appeals filed June 13, 2018)

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IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992,

RICHARD S. HENSON AND VANN KENNETH HENSON,
Respondents,

v.

ALBERT T. HENSON, JR. AND JULIAN REID HENSON,
Respondents in the Court below,

Of whom ALBERT T. HENSON, JR. IS the Petitioner.

---

# APPENDIX (Volume 2 of 2)

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Daniel F. Blanchard, III (SC Bar 65342)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

ATTORNEYS FOR PETITIONER

Trudy H. Robertson, Esquire (SC Bar 64856)
Paul Lynch, Esquire (SC Bar 12833)
E. Brandon Gaskins, Esquire (SC Bar 73274)
MOORE & VAN ALLEN, PLLC
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7000 telephone
trudyrobertson@mvalaw.com
paullynch@mvalaw.com
gaskinsb@mvalaw.com

ATTORNEYS FOR RESPONDENTS

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Judge

---

Appellate Case No. 2017-000095
Court of Common Pleas Case No. 2016-CP-18-1849

---

IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992,

RICHARD S. HENSON AND VANN KENNETH HENSON,
Respondents,

v.

ALBERT T. HENSON, JR. AND JULIAN REID HENSON,
Respondents in the Court below,

Of whom ALBERT T. HENSON, JR. is the
Appellant.

---

**RECORD ON APPEAL**

---

Daniel F. Blanchard, III (SC Bar 65342)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com
ATTORNEYS FOR APPELLANT

Trudy H. Robertson (SC Bar 64856)
Paul M. Lynch (SC Bar 12833)
E. Brandon Gaskins (SC Bar 73274)
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
trudyrobertson@mvalaw.com
paullynch@mvalaw.com
brandongaskins@mvalaw.com
ATTORNEYS FOR RESPONDENTS

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CERTIFIED COPY
PROBATE JUDGE
DORCHESTER COUNTY
Mary B Hunt

STATE OF SOUTH CAROLINA )
COUNTY OF DORCHESTER ) IN THE PROBATE COURT
2016 SEP -1 PM 12:48
IN RE: ) CASE NO.: 1994-ES-18-000147-2
TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 ) CASE NO.: 2014-ES-18-00592

**ORDER APPOINTING A SPECIAL FIDUCIARY AS INTERIM TRUSTEE**

RICHARD S. HENSON AND VANN K. HENSON,

Petitioners,

v.

ALBERT T. HENSON, JR. and JULIAN REID HENSON,

Respondents.

2016 AUG 31 PM 3:36
PROBATE COURT
DORCHESTER CO., S.C.

This matter came before the Court on June 29, 2016 on the Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee. Present for the hearing were Richard S. Henson with his attorney, Trudy H. Robertson, Esq.; Barry Baker, Esq., as attorney for Richard S. Henson and Vann K. Henson concerning the estate matters; and Albert T. Henson, Jr. with his attorney, Daniel F. Blanchard, Esq. Jurisdiction and venue are properly within this Court. Notice of the hearing was properly provided to all of the interested parties.

## PROCEDURAL HISTORY

1. Eunice I. Page ("Decedent") passed away on October 6, 1993 with a Last Will and Testament dated October 14, 1992. Decedent's Will left all her cash assets to her daughter, Ann P. Pittillo, and the remainder of her estate to a testamentary trust known as Trust EIP.

2. The primary beneficiary of Trust EIP was Ann P. Pittillo. Trust EIP provides that at the death of Ann P. Pittillo, the Trustee of the Trust EIP shall divide the trust corpus into three

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(3) equal shares, subject to certain adjustments, for the benefit of her three (3) grandsons: Albert T. Henson, Jr., Richard S. Henson, and Vann K. Henson.

3. Decedent named Ann P. Pittillo as the Trustee of Trust EIP and named George Hollis Cone to serve as substitute or successor Trustee. Decedent also provided that if Ann P. Pittillo and George Hollis Cone were unable or unwilling to serve, then a "majority of the adult beneficiaries shall designate in a written instrument filed with the Court having jurisdiction over my Will or this Trust, a successor or substitute corporate . . . trustee which shall be a bank or trust company."

4. On July 22, 1997, Ann P. Pittillo, as Personal Representative of the Estate of Eunice I. Page, signed a Deed of Distribution transferring ownership of 605 N. Main Street, Summerville, South Carolina 29483 to "Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page."

5. As Trustee, Ann P. Pittillo executed a Promissory Note to borrow One Hundred Thousand and 00/100 Dollars from David Whitfield and Glenn Little in the name of the EIP Trust. The Promissory Note was dated December 4, 2013 and required satisfaction of the mortgage by December 3, 2016.

6. The terms of the Promissory Note provide that the lenders will receive twenty percent (20%) interest the first year, twenty-five percent (25%) interest the second year, and thirty percent (30%) interest the third year. There is no duty on Trust EIP to make interim payments, but the note provides that if "balloon payment is not made on or before December 3, 2016, borrower agrees to transfer title to lender in lieu of foreclosure."

7. On April 20, 2014, Ann P. Pittillo passed away leaving the Trustee position for Trust EIP vacant. The named Successor Trustee, George Hollis Cones, predeceased Ann P.

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Pittillo. According to the Petitioners, they have been unable to find a corporate trustee willing to take on the position as Successor Trustee.

8. From January 26, 2015 to July 10, 2015, the Court received seven (7) filings from the parties, including:

i. a Petition to Appoint a Successor Trustee (January 26, 2015) filed by Richard S. Henson and Vann K. Henson (hereinafter collectively referred to as "Petitioners");

ii. an Answer (April 2, 2015) filed by Albert T. Henson (hereinafter referred to as "Respondent");

iii. Respondent's Amended Answer, Counterclaim, and Cross-Claim (May 4, 2015);

iv. an Amended Petition to Appoint Successor Trustee and for Subsequent Estate Administration (May 4, 2015) filed by Petitioners;

v. Petitioners' Answers to the Counterclaim and Cross-Claim of Respondent (May 26, 2015);

vi. Respondent's Answer, Counterclaim and Cross-Claim to the Petitioner's Amended Petition to Appoint Successor Trustee and for Subsequent Estate Administration (June 10, 2015); and

vii. Petitioner's Answer to Respondent's Restated Counterclaim and Cross-claim (July 10, 2015).

9. The primary issue outstanding between the parties is the ownership of 605 N. Main Street, Summerville, South Carolina 29483 (hereinafter referred to as "605 N. Main Street.").

10. Petitioners assert that this property is wholly owned by Trust EIP.

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11. Respondent alleges that in 1988, prior to Euince I. Page's death, she conveyed to him the property located at 605 N. Main Street for $334,000.00 with the understanding that it would be paid as he had money available.

12. On July 15, 2015, this Court ordered the parties to mediate this matter within thirty (30) days of the Order. This Order was amended on August 19, 2015 naming David Whittington, Esq. as the mediator. This Order was again amended on October 14, 2015 naming Robert Watson, Esq. as the mediator because David Whittington, Esq. was unable to serve.

13. On October 12, 2015, the instant Motion was filed, wherein Petitioners requested that a special fiduciary be appointed to serve as interim trustee with the authorization to have access to all records concerning the assets of the Trust and authority over all trust assets.

14. On December 9, 2015, Petitioner's requested an expedited hearing on the Motion for Appointment of Special Fiduciary. The Petitioners claim that the outstanding mortgage poses a threat to the Trust's main asset, 605 N. Main Street.

15. On December 14, 2015, the Court received Respondent's Response to the Motion for an Expedited Hearing, wherein he asserts that an expedited hearing was not necessary as the case was currently pending mediation and the maturity date on the Note was not until the following December. Respondent requested that the Court deny the Motion for Expedited Hearing to allow the parties to mediate.

16. On December 9, 2015, the same day Petitioners filed their expedited motion, the Court sent the Petitioners' attorney a Request for Hearing form in order to schedule the hearing based on the parties' unavailable dates. The Court never received the completed Request for Hearing form from Petitioners in order to schedule the Motion.

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17. On April 27, 2016, the Court held a hearing to allow Respondent's attorneys at the time to withdraw from the matter. At the same hearing, the Petitioners, through their attorney Barry Baker, Esq., made a motion for the Court to set a hearing date on their Motion for Appointment of a Special Fiduciary as Successor Trustee. The instant hearing was scheduled at that time.

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW

### A. Appointment of a Special Fiduciary as Interim Trustee of Trust EIP

18. In the instant Motion, Petitioners requested that this Court appoint a special fiduciary as interim trustee as provided for in South Carolina Code § 62-7-704(e). They request that the special fiduciary have the power to access all records concerning the assets of the Trust, have authority over the Trust assets, and receive reasonable compensation.

19. South Carolina Code § 62-7-704(e) provides that "[w]hether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust."

20. The Petitioners also rely on South Carolina Code § 62-7-704(b) which states that a "vacancy in a trusteeship must be filled if the trust has no remaining trustee."

21. At this time, Trust EIP does not have a trustee.

22. On June 29, 2016, Respondent, by and through his attorney Daniel F. Blanchard, III, filed a Memorandum of Law in Opposition to the Motion for Appointment of Special Fiduciary as Interim Trustee.

23. Respondent asserted that one reason the Petitioners' Motion should be denied is because they did not properly support their motion with an affidavit in accordance with South Carolina Rules of Civil Procedures 6(d).

24. South Carolina Rules of Civil Procedures 6(d) states that "[w]hen a motion is to be supported by affidavit, the affidavit shall be served with the motion."

25. The Court finds that the Petitioners' Motion does not require an affidavit. Rule 6(d) is not a mandatory rule for all motions. South Carolina Code § 62-7-704(b) only requires a showing that there is a vacancy in the trusteeship. The Court's file for Trust EIP is replete with evidence that there is a vacancy in the trusteeship. As such, an affidavit is not required.

26. Therefore, based on South Carolina Code § 62-7-704(b) and (e), the Court finds that there is a vacancy in the trusteeship that needs to be filled and hereby appoints Ashley Andrews, Esq. as the special fiduciary to serve as the Interim Trustee.

**B. Duties and Responsibilities of the Special Fiduciary**

27. Respondent also argued that through the substance of their Motion, Petitioners were requesting injunctive relief because the requests of their motion will alter the *status quo*.

28. Petitioners have requested that the appointed special fiduciary have access to all of Respondent's records concerning the assets of the Trust EIP and have authority over Trust EIP assets to include collection of rent and other income generated by 605 N. Main Street.

29. Petitioners asserted on the record that their primary goal is to preserve the asset of 605 N. Main Street to ensure that the mortgage is paid or that the due date is extended.

30. Currently, Respondent asserts that he is in possession of, storing assets on, and leasing portions 605 N. Main Street. Additionally, it was asserted that Respondent has also been paying all taxes associated with the property.

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31. The primary dispute regarding the ownership of 605 N. Main Street is not currently before the Court, but will need to be decided after a full merit's hearing.

32. Because of this outstanding issue, it is important that the Court treads lightly in regards to the duties and responsibilities assigned to a special fiduciary in order to ensure that the *status quo* is maintained in this matter to the greatest extent possible.

33. While on the face of the Motion, Petitioners did not request an injunction, it appears that some of their requested relief would have the consequence of altering the *status quo*.

34. Respondent provided his own affidavit wherein he asserted that he has had exclusive possession of 605 N. Main Street since 1988, that he has made improvements to the land, that he stores property on the land, and that he has leased the land. Affidavit of Albert T. Henson, Jr., ¶¶ 10-13.

35. Petitioners did not provide the Court with any testimony or evidence contradicting or denying the Respondent's claims.

36. While the recorded Deed of Distribution and outstanding mortgage shows the owner of 605 N. Main Street as Trust EIP, Respondent is currently in possession of it.

37. By giving the Special Fiduciary control over the property as well as the collection of rent and other incomes generated by 605 N. Main Street, the Court would be effectively dispossessing Respondent of the property and in turn awarding Petitioners' injunctive relief.

38. While injunctive relief was not plead by Petitioners, that would be the effect.

39. The South Carolina Court of Appeals has stated that "[o]rdinarily the purpose of a temporary injunction is merely to preserve the existing status during the litigation, and as a general rule, subject to some exceptions, it will not be allowed to have the effect of transferring

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the possession of property from a litigant in possession to another who claims a right to possess." Marshall v. Pence, 2005 WL 7083978, *3 (S.C. Ct. App. 2005).

40. Here, the Respondent is in possession of 605 N. Main Street, and the Court will not dispossess him of this property at this time.

41. However, the outstanding mortgage Trust EIP has taken out, with 605 N. Main Street as collateral, poses a major risk to the ownership of this property. If this mortgage is not paid off or the due date extended prior to December 3, 2016, then all parties stand to lose.

42. The Mortgage was taken out by Ann P. Pittillo as Trustee of the Trust EIP. At this time, no party has standing to renegotiate the outstanding mortgage on behalf of the Trust. Therefore, the appointment of a Special Fiduciary is necessary in order to preserve 605 N. Main Street for all parties and to negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion.

43. While Petitioners assert that the only asset of Trust EIP is 605 N. Main Street, the Special Fiduciary shall ensure there are no other assets titled in the name of Trust EIP.

44. Respondent asserts that he purchased this property from his grandmother, Eunice I. Page, prior to her passing and before it was titled in the name of the Trust. Respondent shall work with the Special Fiduciary to provide any records he may have regarding this transfer. Additionally, he shall provide her copies of all agreements he, Eunice I. Page, and/or Ann Page Pittillo may have entered in with another party to lease a portion or all of the land at 605 N. Main Street since January 1, 1988.

45. All actions taken by the Special Fiduciary shall be done in the interest of maintaining the *status quo* pending a final hearing on the merits.

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46. The Special Fiduciary shall be compensated at $200/hour. The Court will make a determination as to how her fees shall be paid at the final hearing on the merits.

**C. Respondent's Supporting Affidavits and the Dead Man's Statute.**

47. Respondent supports his position by filing with the Court his own affidavit as well as the affidavits of Sharon Burbage, Jim Wright, Lee Agnew, and Kane Wright (collectively referred to as the "Affidavits").

48. Petitioners requested that the Court's strike and refuse to consider the affidavits filed by Respondent because they contain inadmissible hearsay and testimony barred by the Dead Man's Statute.

49. While the Petitioners and Respondents made arguments concerning the Dead Man's Statute, at this time, the Court will decline to rule on this issue as the Court did not consider statements that would be objectionable under the statute. Any statements that related to Eunice I. Page, Ann P. Pittillo, or the purchase and/or ownership of 605 N. Main Street are irrelevant to the underlying motion.

50. The Court considered only portions of the Affidavit of Albert T. Henson, Jr. The portions considered were paragraphs 10 – 14, which related directly to his current possession and use of 605 N. Main Street. The Court did not consider any further information from the Affidavit of Albert T. Henson, Jr. as it was irrelevant to the underlying Motion.

51. While the Affidavits of Sharon Burbage, Jim Wright, Lee Agnew, and Kane Wright will be included in the Court's files for the Estate of Ann Page Pittillo and Estate of Eunice I. Page, the Court did not consider these documents in making this decision.

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THEREFORE, it is ORDERED, ADJUDGED, and DECREED that:

A. Ashley Andrews, Esq. is hereby appointed as a special fiduciary to serve as Interim Trustee of the Trust EIP;

B. As Special Fiduciary, Ms. Andrews shall:

i. In her sole discretion, negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or have the mortgage paid off prior to the December 3. 2016 due date;

ii. Determine if any other assets (including bank accounts) are titled in the name of Trust EIP;

iii. Recover all records Respondent may possess that evidences any transfer that Eunice I. Page may have made to Respondent of 605 N. Main Street;

iv. Collect copies of all agreements Respondent, Eunice I. Page, and/or Ann Page Pittillo may have entered into with another party to lease a portion or all of the land at 605 N. Main Street since January 1, 1988; and

v. Ensure all actions taken as Special Fiduciary are done in the interest of maintaining the status quo pending a final hearing on the merits;

C. The Special Fiduciary shall be compensated at $200/hour. She shall submit an Affidavit of her fees and expenses and shall include a detailed billing statement for the Court's review;

D. The Court shall make a determination as to how the Special Fiduciary's fees will be paid at the final hearing on the merits; and

 8/31/16

IT IS SO ORDERED!

31st day of August, 2016
St. George, South Carolina

Molly D. Edwards
Molly D. Edwards
Associate Probate Judge
Dorchester County Probate Court


8/31/16

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801849

| Richard S Henson | Vann Kenneth Henson | Albert T Henson Jr | Julian Reid Henson |
|---|---|---|---|

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☒ Other: Respondent's Motion to Dismiss/Granted

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

## ORDER INFORMATION

**This order** ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|---|---|---|
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
**Note: Title abstractors and researchers should refer to the official court order for judgment details.**
**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

| Edgar Dickson | 2153 | 12/12/2016 |
|---|---|---|
| **Circuit Court Judge** | **Judge Code** | **Date** |

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 12/2016)



recd 12.15.16

## For Clerk of Court Office Use Only

This judgment was entered on **12/12/2016**, and a copy mailed first class or placed in the appropriate attorney's box on **12/12/2016**, to attorneys of record or to parties (when appearing pro se) as follows:

**Trudy Hartzog Robertson/Paul M. Lynch** PO Box 22828 Charleston, SC 29413-2828

**Daniel Francis Blanchard III** PO Box 893 Charleston, SC 29402

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Cheryl Graham

**Court Reporter**

**Cheryl Graham - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

cc: Dorchester County Probate Court

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY DORCHESTER 2016 DEC 12 PM 3:37 | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br>Case No. 2016-CP-18-1849 |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br><br>Respondents. | APPEAL FROM PROBATE COURT<br>Case No. 1994-ES-18-00147-2<br><br>**ORDER** |

On October 26, 2016, Petitioners Richard S. Henson and Vann Kenneth Henson (collectively, "Petitioners") moved to dismiss, pursuant to S.C. Code Ann. § 62-1-308, Respondent Albert T. Henson, Jr.'s ("Respondent") appeal of the order appointing a special fiduciary as interim trustee issued by the probate court. A hearing was held before this Court on Petitioners' Motion to Dismiss Appeal on Monday, November 21, 2016. Presenting argument to this Court were Trudy H. Robertson, Esquire, for Petitioners and Daniel F. Blanchard, III, Esquire, for Respondent. After due deliberation, review of the memoranda and case law, and hearing arguments of counsel, this Court grants Petitioners' motion to dismiss Respondent's appeal of the probate court order appointing a special fiduciary as interim trustee. Based on the findings of fact and conclusions of law more fully set forth below, this Court finds that the probate court order is not appealable under S.C. Code Ann. § 61-1-308 because it provides only temporary relief and is not a final order.

## I. Findings of Fact

1. On January 26, 2015, Petitioners filed in the Probate Court for Dorchester County a Petition to Appoint a Successor Trustee of the Trust EIP Created under the Last Will and Testament of Eunice I. Page, dated October 14, 1992 (the "Trust") and filed an Amended Petition on May 4, 2015 (Probate Case Number 1994-ES-18-00147-2). Petitioners and Respondent are beneficiaries of the Trust. In the Amended Petition, Petitioners claim that the trusteeship of the Trust is vacant and they seek appointment of a successor trustee to administer the Trust.

2. According to the Amended Petition, Eunice I. Page owned certain real property located at 605 North Main Street, Summerville, South Carolina (the "Subject Property"), which was transferred to the Trust by deed on July 22, 1997. Petitioners assert that the Subject Property is the sole asset of the Trust. Respondent denies that the Subject Property is an asset of the Trust and instead claims that Eunice I. Page conveyed the Subject Property to him prior to her death.

3. On October 12, 2015, Petitioners filed a Motion for the Appointment of a Special Fiduciary as an Interim Trustee, and also filed a subsequent Motion for an Expedited Hearing. Under those two motions, Petitioners sought the appointment of a special fiduciary who would serve as interim trustee of the Trust and, among other things, ensure that the Subject Property is not lost to a lender who holds a note and mortgage on the Subject Property maturing on December 3, 2016. Respondent filed a memorandum in opposition to Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee on June 29, 2016.

4. Associate Probate Judge Molly D. Edwards held a hearing on June 29, 2016 on Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee. On August 31, 2016, Judge Edwards issued an Order Appointing Special Fiduciary as Interim Trustee (the

"Order"), in which she appointed Ashley Andrews, Esquire, as a special fiduciary to serve as interim trustee of the Trust pursuant to S.C. Code Ann. § 62-7-704. Under the Order, Ms. Andrews' powers are limited to the following: (1) negotiating with the lender and/or the parties to extend the due date of the current mortgage in order for litigation to be finalized or have the mortgage paid off prior to the December 3, 2016 due date; (2) determining if any other assets are titled to the Trust; (3) recovering all records Respondent may possess regarding the alleged transfer of the Subject Property from Ms. Page to Respondent; (4) collecting copies of all agreements Respondent, Ms. Page, or Ann Page Pittillo may have entered into with another party to lease the Subject Property; and (5) ensuring all actions taken by her are done in the interest of maintaining the *status quo* pending a final hearing on the merits in this case.

5. On September 16, 2016, Respondent, pursuant to S.C. Code Ann. § 62-1-308, filed a Notice of Intent to Appeal with the Court of Common Pleas, Dorchester County, thereby providing notice that he seeks to appeal the Order.

6. On October 26, 2016, Petitioners submitted the Motion to Dismiss Appeal addressed in this Order.

7. On November 17, 2016, Respondent submitted its Memorandum of Law in Opposition to the Petitioners' Motion to Dismiss Appeal.

8. The hearing was held on Monday, November 21, 2016, before this Court.

## II. CONCLUSIONS OF LAW

1. The Order is not appealable under S.C. Code Ann. § 62-1-308 because it provides only temporary relief and is not a final order. Appeals to the circuit court from the probate court are governed by S.C. Code Ann. § 62-1-308, which provides, in pertinent part, that a "person interested in a final order, sentence, or decree of a probate court and considering himself injured

by it may appeal to the circuit court in the same county." An order from the probate court that is not a final order is not reviewable under § 62-1-308. *Fulmer v. Cain*, 380 S.C. 466, 469, 670 S.E.2d 652, 654 (2008). Courts of common pleas lack subject matter jurisdiction over appeals of a temporary order issued by a probate court. *Boyce-Abel v. Work*, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991).

2. Here, the Order provides only temporary relief pending a final hearing on the merits, and it is not a final order subject to appeal under § 62-1-308. This Court finds that the Order is merely a temporary measure intended to preserve the Subject Property until a final hearing on the merits can be held to resolve the issues in dispute.

3. *Boyce-Abel* is controlling on the issue of whether the Order is appealable under § 62-1-308. Just as the appointment of the special administrators in *Boyce-Abel* was temporary, the appointment of the special fiduciary in this case is similarly temporary. In addition, like the special administrators appointed in *Boyce-Abel*, the interim trustee in this case is authorized only to perform certain acts to maintain the status quo until final resolution. *Boyce-Abel* dictates that the Order is not a final, appealable order under § 62-1-308. Accordingly, this Court is dismissing Respondent's appeal for lack of subject matter jurisdiction.

4. Respondent argued, in opposition to Petitioners' Motion to Dismiss Appeal, that the Order is appealable and that *Boyce-Abel* is not controlling because the appeal instead involves (1) a final order affecting a substantial right made in a special proceeding under S.C. Code Ann. § 14–3–330(3) and/or (2) an order that grants, continues, or refuses an injunction under § 14–3–330(4). Respondent also argued that the Probate Court's Order is a final order because of S.C. CODE ANN. § 62-3-107, which states that "unless administration of an estate is involved, each proceeding before the [probate] court is independent of any other proceeding involving the same

estate." Respondent argued that each petition in a probate file should be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order. The Court finds Respondent's arguments without merit. The Order is specifically temporary, in both title and substance, and not final, as determined above. This Court finds that § 62-1-308 and *Boyce-Abel* are controlling and, thus, it is not necessary to further address Respondent's arguments under § 14-3-330(3). Even if the Court were to further address § 14-3-330(3), this Court finds that Respondent has not lost or had affected any "substantial right" as that term is defined by South Carolina law. *See, e.g., Mid-State Distr. v. Century Importers*, 310 S.C. 330 (1993) (an order affecting a substantial right is an order that would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense). Respondent's claims of ownership of the Subject Property have not been discontinued or stricken and are still subject to a future, final hearing before the probate court. Respondent has neither been dispossessed of his claims, nor his physical access to the Subject Property, by the Order. The next argument of Respondent is that the Order grants, continues, or refuses an injunction. This is incorrect. The Order specifically preserves the primary disputes between the parties and only ensures that the *status quo* is maintained pending the final hearing before the probate court. The probate court, in fact, refused to grant any broader relief that was initially requested by the Petitioners and specifically limited its Order and determined that it would not dispossess the Respondent of the Subject Property in the Order. The Order was limited to actions to be taken by the special fiduciary done only in the interest of maintaining the *status quo* pending a final hearing on the merits. To say otherwise is to contradict the clear terms of the probate court's Order, which this Court finds is not an order that grants, continues, or refuses an injunction under § 14–3–330(4).

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## III. CONCLUSION

Based on the foregoing, Respondent's appeal should be **DISMISSED** in its entirety and Petitioners' Motion to Dismiss Appeal **GRANTED**.

~~The Honorable~~ Edgar W. Dickson

~~November~~ December 1, 2016

Orangeburg, South Carolina

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|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>APPEAL FROM PROBATE COURT |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., and JULIAN REID HENSON,<br><br>Respondents. | Case No. 1994-ES-18-00147-2<br><br>**CERTIFICATE OF SERVICE** |

FILED
2016 DEC 12 PM 3:37
CLERK OF COURT
DORCHESTER COUNTY
CERTIFIED COPY

The undersigned does hereby certify that a copy of the foregoing **Order** was served, by electronic mail and by depositing same in the Regular U.S. mail, with sufficient postage attached thereto, addressed to:

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

E-mail: dblanchard@rrhlawfirm.com

*Attorney for Respondent Albert T. Henson, Jr.*

MOORE & VAN ALLEN, PLLC

Wendy S. Stockhausen
Wendy S. Stockhausen

December 6, 2016
Charleston, South Carolina

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | ) | IN THE PROBATE COURT<br>CASE NO 1994 ES 18-00147<br><br>**PETITION TO APPOINT SUCCESSOR TRUSTEE** |

**WHEREAS,** on October 6, 1993, Eunice I. Page ("Ms. Page") died a resident of Dorchester County, with Ms. Paige's estate administered in the Dorchester County Probate Court case number 94ES18-147;

**WHEREAS,** pursuant to the Last Will and Testament (the "Will") of Ms. Page executed on October 14, 1992, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, Ms. Page created the Trust EIP (the "Trust") under Item V of the Will;

**WHEREAS,** Item VII of the Will nominated and appointed Ms. Page's daughter, Ann P. Pittillo ("Ms. Pittillo") as trustee of the Trust and George Hollis Cone ("Mr. Cone") as substitute or successor trustee;

**WHEREAS,** by deed dated July 22, 1997, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, certain of Ms. Page's real property in Dorchester County, South Carolina known as 605 North Main Street, Summerville, South Carolina (the "Real Property") was transferred to Ms. Pittillo as trustee of the Trust;

**WHEREAS,** upon information and belief, the Real Property is the sole asset of the Trust;

**WHEREAS,** on April 20, 2014, Ms. Pittillo died a resident of Dorchester County;

**WHEREAS,** Mr. Cone predeceased Ms. Pittillo;

**WHEREAS,** the Will provides that if Mr. Cone cannot serve as Trustee, the successor Trustee shall be a bank or trust company qualified to do business in South Carolina and appointed by a majority of the adult beneficiaries of the Trust and filed with the Court;

**WHEREAS,** after a diligent search, no bank or trust company is willing to serve as Trustee of the Trust;

**WHEREAS,** the Will does not provide for any additional successor trustees for the Trust in the event either Ms. Pittillo, Mr. Cone or a bank or trust company becomes unable to serve as trustee;

**WHERAS,** Ms. Pittillo was survived by her three sons: Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth Henson;

**WHERAS,** Julian Reid Henson ("Julian") is the sole surviving grandchild of Ms. Pittilo:

**WHEREAS,** Item V(3) of the Will provides that upon the death of the survivor of Ms. Page and Ms. Pittillo, the trustee shall divide the Trust into equal separate shares—subject to certain adjustments as set forth in Item V(3) of the Will—for each of Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth. Henson; or their surviving children;

**WHEREAS,** the Petitioners and Respondents are the sole remaining qualified beneficiaries of the Trust;

**WHEREAS,** a vacancy in a trusteeship occurs pursuant to § 62-7-704(a)(5) of the South Carolina Code of Laws (the "Code") in the event a trustee dies;

**WHEREAS,** Code § 62-7-704(c) provides that a vacancy in a trusteeship in a noncharitable trust must be filled in the following order of priority: (1) by a person designated in the terms of the trust; (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or (3) by a person appointed by the Court;

**WHEREAS,** a successor trustee has not been appointed for the Trust;

**WHEREAS,** the Petitioners desire for the Court to appoint themselves as the successor co-trustees of the Trust for the sole purpose of dissolving the Trust and distributing the Real Property to its designated beneficiaries;

**WHEREAS,** the Petitioners desire that they not be required to post a bond;

**WHEREAS,** pursuant to Code § 62-7-704(c)(2), Petitioners have priority to serve as successor co-trustees of the Trust;

**WHEREAS,** Petitioners are willing to serve as the successor co-trustees of the Trust;

**WHEREAS,** the Probate Court has jurisdiction in this proceeding pursuant to Code §§ 62-1-302(a)(3) and 62-7-201(a)(4); and

**WHEREAS,** pursuant to Code § 62-7-204(b), venue for this proceeding is properly in Dorchester County, South Carolina because Dorchester County is both the location of the Real Property and the principal place of administration by Ms. Pittillo, the last trustee of the Trust.

**NOW THEREFORE,** having fully set forth their Petition, the Petitioners request and pray that the Court issue an Order as follows:

(A) Appointing Richard S. Henson and Vann K. Henson as successor co-trustees of the Trust to dissolve the Trust and distribute the Real Property to the Trust's designated beneficiaries;

(B) Providing that Richard S. Henson and Vann K. Henson shall not be required to post a bond; and

(C) For such other and further relief that may be just and proper.

Respectfully submitted,

Paul M. Lynch
Reid E. Dyer
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
Attorneys for the Petitioners

Charleston, South Carolina

January 22, 2015

**Exhibit A**

Last Will and Testament of Eunice I. Page, dated October 14, 1992

DORCHESTER COUNTY

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# LAST WILL AND TESTAMENT OF EUNICE I. PAGE

Introductory Clause. I, EUNICE I. PAGE, a resident of and domiciled in the County of DORCHESTER and State of SOUTH CAROLINA, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

## ITEM I

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

## ITEM II

Direction to Pay All Taxes from Residuary Estate. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

## ITEM III

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such

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memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequent discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my daughter, Ann P. Pittillo, if she survives me, provided; however, the issue of my deceased daughter surviving me shall take per stirpes the share their mother would have taken had she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM IV

Specific Cash Bequest. I give, devise and bequeath all my cash and cash equivalents in bank accounts or other investments to my daughter, Ann P. Pittillo, if she survives me.

ITEM V

Outright Gift to Testatrix's Daughter. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description, (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will to Trustee hereinafter named to be held in Trust known as Trust EIP. At the time of the execution of this Will my grandson, Albert T. Henson, Jr., owes me Eight Thousand One Hundred ($8,100.00) Dollars for a personal loan. If this amount has not been repaid at the time of my death, then this sum should be collected and added to my estate. At the time of the execution of this Will my grandson, Richard Scott Henson owes me the unpaid balance on that note in the face amount of Thirty-four Thousand ($34,000.00) Dollars executed by him on or about October 15, 1987. If this amount has not been repaid in full at the time of my death,

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then the remaining sum should be collected and added to my estate. However, my personal representative would have the power to refinance this obligation on behalf of the estate. Trust EIP shall be held, administered and distributed as follows:

(1) Discretionary Payment of All Income to My Daughter and My Grandson. Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my daughter and my grandson, Vann Kenneth Henson, until division into shares as hereafter provided, all the net income from Trust EIP in convenient installments in such shares and proportions as my Trustee in its sole discretion shall determine; provided, however, in all events such payments of income to my grandson, Vann Kenneth Henson, shall be limited to no more than Ten Thousand ($10,000.00) Dollars a year, as this income is to be primarily for the benefit of my daughter and to a secondary extent, for the medical care and education of Vann Kenneth Henson, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my said grandson known to my Trustee. Such discretion on the part of my Trustee as to income allocation to Vann Kenneth Henson shall terminate in all events at the earlier of the date of his thirtieth (30) birthday or that date which is three (3) years from the date of my death.

(2) Discretionary Payments of Principal for Child. If my daughter shall survive me, my Trustee may pay to or apply for the benefit of my daughter during her lifetime, such sums from the principal of Trust EIP as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my daughter taking into consideration to the extent my Trustee deems advisable, any other income or resources of my daughter known to my Trustee.

(3) Division Into Shares for Daughter's Children. Upon the death of the survivor of my daughter and me, my Trustee shall divide this Trust as then constituted into equal separate shares for each of my grandsons, Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth Henson, or their surviving children, provided, however, for the purposes of this Paragraph, the net assets of my estate shall be deemed to be increased in value by the sum of any unpaid balances of loans to either Richard Scott Henson or Albert T. Henson, Jr. (or both of them). Thereafter, that share set aside for Richard Scott Henson and Albert T. Henson shall be reduced by that amount of such unpaid balance, if any still due and owing by them (or each of them).

For example, and for purposes of example only, if at the time of my death all the rest, residue and remainder of my estate (after division and distribution as set forth herein, if any, is One Hundred Thirty-seven Thousand Nine Hundred ($137,900.00) Dollars and the combined outstanding debt is Forty-two Thousand One Hundred ($42,100.00) Dollars at that time, then the Forty-two Thousand One

Hundred ($42,100.00) Dollars will be deemed added to my estate to make a total of One Hundred Eighty Thousand ($180,000.00) Dollars in my estate. My personal representative shall then allocate the sum of Twenty-six Thousand ($26,000.00) Dollars to that share for Richard Scott Henson, Fifty-one Thousand Nine Hundred ($51,900.00) Dollars to that share for Albert T. Henson, Jr., and Sixty Thousand ($60,000.00) Dollars to Vann Kenneth Henson.

Those shares set aside for Richard Scott Henson, Albert T. Henson, Jr., and Vann Kenneth Henson shall be distributed outright to each of them, if they shall survive me; provided, however, if they fail to survive me then the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he survived me.

(4) Income/Discretionary Invasion of Principal for Grandsons. After division into shares for my grandsons, all the net income from each share so provided for a living child of my daughter shall be paid in convenient installments to or applied for the benefit of my grandsons until complete distribution of the share as herein provided. In addition to income, my Trustee may pay to or apply for the benefit of the child such sums from the principal of his share as in its sole discretion shall be necessary or desirable from time to time for his medical care, education, support and maintenance in reasonable comfort, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my grandchildren known to my Trustee.

(5) Distribution of the Share of the Grandsons. After division into shares for my grandsons, when the youngest surviving grandson attains the age of Twenty-five (25) years, my Trustee shall distribute to each surviving grandson or (if deceased, to their issue, if any), the undistributed balance of his share.

(6) Upon Death of Daughter's Child to Issue of Daughter's Child. After division into shares for my grandsons, upon the death of a child of my daughter prior to complete distribution of his share, the undistributed balance of the child's share shall be distributed per stirpes to his then living issue, or in default of such issue, per stirpes to my daughter's then living issue.

ITEM VI

Naming an Individual as Personal Representative with a Substitute. I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my daughter, Ann P. Pittillo, and direct that such personal representative shall serve without bond. If for any reason my personal representative is unable or unwilling to serve or continue to serve then I hereby nominate, constitute and appoint as substitute or successor personal representative George Hollis Cone and direct that he shall serve without bond.

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ITEM VII

Naming Trustee. I hereby nominate, constitute and appoint as Trustee of this my Last Will and Testament my daughter, Ann P. Pittillo, and direct that she shall serve without bond. If for any reason she is unable or unwilling to serve or continue to serve then I hereby nominate, constitute and appoint as substitute or successor Trustee George Hollis Cone and direct that he shall serve without bond.

ITEM VIII

Provision for Substitute or Successor Corporate Personal Representative and Trustee. Except as otherwise provided herein, if Ann P. Pittillo or any successor as herein defined should fail to qualify then a majority of the adult beneficiaries shall designate in a written instrument filed with the Court having jurisdiction over my Will or this Trust, a successor or substitute corporate personal representative or trustee which shall be a bank or trust company qualified to do business in the state of my domicile and such corporate personal representative and trustee shall be the sole personal representative and trustee.

ITEM IX

Provision Covering Change in Corporate Fiduciary. Any corporate successor to the trust business of the corporate fiduciary designated herein or at anytime acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

ITEM X

Definition of Personal Representative and Trustee. Whenever the word "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

End Page

ITEM XI

Fee Schedule for Individual Primary Personal Representative and Corporate Substitute or Successor Personal Representative. Standard Fee Schedule. For its services as Personal Representative, my individual Personal Representative shall receive the amount provided by law. If my corporate Personal Representative shall serve, it shall receive for its services an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XII

Fee Schedule for Trustee. Standard Fee Schedule. For its services as Trustee, my Trustee shall receive an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XIII

Long Form of Powers for Personal Representative and Trustee. My Personal Representative and Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this my Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this my Will or by statute or general rules of law:

(1) To retain any property or undivided interests in property owned by me at the time of my death, including residential property and shares of my Personal Representative's or Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of my estate or the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my Estate or the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or



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pooled trust funds of my Personal Representative or Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the Trust Estate, for cash or upon credit, to exchange any property of my estate or the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in its own name as Personal Representative or Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of my Estate or the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.

(7) To refrain from voting or to vote shares of stock owned by my Estate or the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my Estate or the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my Estate or the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by my Personal Representative or Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of my estate or the Trust Estate for a term within or extending beyond the term of the trust, in connection with the

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exercise of any power vested in my Personal Representative or Trustee.

(10) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by me at my death and to do any and all things deemed needful or appropriate by my Personal Representative or Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of my Estate or the Trust Estate.

(15) To insure the assets of my Estate or of the Trust Estate against damage or loss and my Personal Representative or Trustee against liability with respect to third persons.

(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against my Estate or the Trust Estate as my Personal Representative or Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys- at-law, tax specialists, realtors, and other assistants and advisors deemed by my Personal Representative or Trustee needful for the proper administration of my Estate or the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

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(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of my Estate or the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my Personal Representative's or Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of my Estate or the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) To exercise any power herein granted with reference to the control, management, investment or disposition of my Estate or the Trust Estate either as personal representative or trustee without having to declare in which capacity it is acting.

(23) In general, to exercise all powers in the management of my Estate or the Trust Estate which any individual could exercise in his own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this my Will.

(24) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(25) To divide any trust into separate shares or separate trusts or to create separate trusts if my Trustee reasonably deems it appropriate and the division or creation is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(26) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the



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Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero; to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as my Trustee in its sole discretion deems best.

(27) To elect to allocate any portion or all my generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of my death, to any portion or all of Trust EIP or any other trusts or bequests in my Will or any other transfer which I am the transferror for purposes of the generation-skipping tax. Generally, I anticipate that my Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to Trust EIP, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent my Personal Representative deems in the best interest of my estate.

(28) My Personal Representative and Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence.

## ITEM XIV

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-Five. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-five (25) years, such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-five (25) years, using so much of the net income and principal of the share as my Trustee deems necessary to provide for the proper support, medical care, and education of the beneficiary, taking into consideration to the extent my Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to my Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-five (25), or if he or she shall sooner die, to his or her personal representatives. My Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

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ITEM XV

Trustee's Discretion in Making Payments to a Person Under Age Twenty-Five, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-five (25), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Trustee using such amounts directly for the beneficiary's care, support and education.

ITEM XVI

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM XVII

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms

E. Page

"living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as applied to the issue of a person entitled to receive a gift herein shall mean that the gift shall be divided at the applicable time into as many equal shares as there are then living issue of such person in the nearest degree of kinship to such person plus deceased issue of that generation who leave lineal descendants then surviving. Each living issue in such nearest degree of kinship shall be entitled to receive one equal share and the living lineal descendants of each such deceased issue in the same degree of kinship shall take the share that their deceased ancestor would have taken had such deceased ancestor survived such person. This definition of "per stirpes" is intended to describe "taking by representation" as defined in the South Carolina Code Section 62-2-106.

ITEM XVIII

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to Sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XIX

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or

E Page

I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XX

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, my Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ITEM XXI

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my Personal Representative or Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium, Attestation and Self-Proving Affidavit. I, EUNICE I. PAGE, the Testatrix, sign my name to this instrument this 14 day of Oct., 1992, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Eunice I. Page
EUNICE I. PAGE

We, Ann M. Pair and Dana S. Shipman, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(Witness)

Dana S Shipman
(Witness)

The State of SOUTH CAROLINA
County of DORCHESTER

Subscribed, sworn to, and acknowledged before me by EUNICE I. PAGE, the Testatrix, and subscribed and sworn to before me by Dana S Shipman witness, this 14th day of Oct, 1992.

(Seal)
Notary Public for SOUTH CAROLINA

My Commission Expires: 6-16-96

**Exhibit B**

Deed

2015 JAN 26 P 12:40

BK 1960PG185 FILED-RECORDED DORCHESTER COUNTY

SC Deed Rec Fee _____
Co Deed Rec Fee _____
Filing Fee 10.00
Exemption # 1

LINDA T. MESSERVY
Register of Mesne Conveyances

MAY 29 9 PM '98 COUNTY

LINDA MESSERVY
REGISTER
MESNE CONVEYANCES
DORCHESTER COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MATTER OF THE ESTATE OF EUNICE I. PAGE
CASE NUMBER 94ES18-147

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 6th day of October, 1993, and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Dorchester County, South Carolina in File #94ES18-147; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release an undivided interest in the following described property to:

Name: Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page
Address: 148 Pelzer Drive, Summerville, SC 29485

ALL that certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being just outside of the Town of Summerville in the County of Dorchester, State of South Carolina and having such buttings, boundings, and measurements as follows, to wit: Northeast on a lot now or formerly of Luke, then Strobel measuring thereon a distance of Two Hundred Ten (210') feet, Southeast on lands now or formerly of Goodwyn and Eddie Hinson and measuring thereon a distance of Three Hundred Fifteen (315') feet, more or less; Southwest on Highway #78 and lands now or formerly of Frances M. Sparks and measuring thereon a distance of Eighty-five (85') feet and One Hundred Twenty Seven (127') feet, respectively; and Northwest on lands now or formerly of Frances M. Sparks and U.S. Highway #17-A and measuring thereon a distance of One Hundred Twenty-five (125') feet and One Hundred eighty-eight (188') feet, respectively, be the said dimensions, more or less.

The above described lots of lands will more fully appear reference being had to plats of the same by Thomas W. Bailey, C.E. and L.S., dated June 16, 1961, June 19, 1961, and April 4, 1968, reference to which is hereby craved and made a part and parcel hereof.



Form # 400PC (1/89)
SCPC 3-907, 3-908

Ann Priest & Assoc.
P.O. Box 1169
Sville, SC 29484

Less and excepting, however, that 1/10th interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated June 14, 1976, and recorded in Deed Book 285, at Page 130, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated December 12, 1977, and recorded in Deed Book 335, at Page 140, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated January 23, 1978, and recorded in Deed Book 335, at Page 137, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson Pittillo by deed of Eunice I. Page, also known as Inez E. Page, dated December 27, 1980, and recorded in the RMC Office in Book 430, at Page 84.

And less and excepting any other conveyances made by the decedent prior to her death.

Subject, however, to all covenants, restrictions, reservations, easements, conditions and rights appearing of record, and subject to any state of facts an accurate survey would show.

Being the same in part, as was conveyed to H.B. Page by Frances M. Sparks by deed dated February 26, 1959, and recorded in Deed Book 99, at Page 249, RMC Office for Dorchester County, a one-half (1/2) interest of which was conveyed to Inez E. Page by H.B. Page who is one and the same person as Eunice I. Page by H.B. Page by deed dated February 21, 1969, and recorded in Deed Book 166, at Page 249, RMC Office for Dorchester County.

And being the same, in part, as was conveyed to H.B. Page and Eunice I.Page by L.M. Blanchett and Ida B. Blanchett on November 10, 1967, by deed recorded in Deed Book 156, Page 31, in the RMC Office for Dorchester County.

And being the same, in part, as was devised to Eunice I. Page (being the same as Inez E. Page) by H.B. Page pursuant to his Last Will dated December 28, 1955, and recorded in the Probate Court for Dorchester County in Book 4, Page 491, Dorchester County Probate Court Case Number 71ES18-2802.

And being the same, in part, as was conveyed to Inez E. Page by Albert J. Rinck and Alice Marie Rinck on September 16, 1950, and recorded in Deed Book 99, at Page 169 in the RMC Office for Dorchester County.

TMS # 137-04-01-001

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page, her heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 22 day of July, 1997.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Witness: Donna V Sands

Witness: Jennifer D Williams

Estate of: Eunice I. Page

by Signature: Ann Page Pittillo
Personal Representative

STATE OF SOUTH CAROLINA )
) PROBATE
COUNTY OF DORCHESTER )

PERSONALLY appeared before me Donna V Sands and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me this 22nd day of July, 1997

Witness Signature: Donna V Sands

Jennifer D. Williams
Notary Public for South Carolina
My Commission Expires: 1-9-99

Form #400PC (1/89)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 29th day of May, 1998
at 9:19 A and recorded
in book 1960 page 185
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

PROBATE JUDGE
DORCHESTER COUNTY
2015 APR -2 PM 1:56

| | | |
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| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| COUNTY OF DORCHESTER | ) | Case No.: 1994-ES-18-00147 |
| IN RE: | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF ENUICE I. PAGE DATED OCTOBER 14, 1992 | ) | **RESPONDENT, ALBERT T. HENSON, JR.'S, ANSWER TO PETITION TO APPOINT SUCCESSOR TRUSTEE** |
| RICHARD S. HENSON AND VANN K. HENSON | ) | |
| PETITIONERS, | ) | |
| v. | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| RESPONDENTS. | ) | |

The Respondent, Albert T. Henson, Jr., (hereinafter "Henson") by and through his undersigned attorneys, answers the Petitioners' Petition to Appoint Successor Trustee as follows:

1. As to the first "Whereas" paragraph, Henson admits that on October 6, 1993, Eunice I. Page ("Ms. Page") died a resident of Dorchester County, with Ms. Paige's estate administered in the Dorchester County Probate Court case number 94ES18-147.

2. As to the second "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

3. As to the third "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

4. to the fourth "Whereas" paragraph, Henson denies the property in Dorchester County, South Carolina known as 605 North Main Street, Summerville, South Carolina (the "Real Property") was

transferred to Ms. Pittillo as trustee of the Trust, as the Real Property was conveyed to the Respondent, Albert T. Henson, Jr. by Eunice I. Page prior to her death.

5. As to the fifth "Whereas" paragraph, Henson denies the Real Property is an asset of the Trust.

6. As to the sixth "Whereas" paragraph, Henson admits on April 20, 2014, Ms. Pittillo died a resident of Dorchester County.

7. As to the seventh "Whereas" paragraph, Henson admits Mr. Cone predeceased Ms. Pittillo.

8. As to the eighth "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

9. As to the ninth "Whereas" paragraph, Henson has insufficient information to either admit or deny that no bank or trust company is willing to serve as Trustee of the Trust.

10. As to the tenth "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

11. As to the eleventh "Whereas" paragraph, Henson admits that Ms. Pittillo was survived by her three sons, Albert T. Henson, Jr. Richard Scott Henson, and Vann Kenneth Henson.

12. As to the twelfth "Whereas" paragraph, Henson admits that Julian Reid Henson ("Julian") is the sole surviving grandchild of Ms. Pittillo.

13. As to the thirteenth "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

14. As to the fourteenth "Whereas" paragraph, Henson denies that the Petitioners and Respondents are the sole remaining qualified beneficiaries of the Trust, as the Respondent, Julien Reid Henson, would not be entitled to any assets of the Trust, if any such assets even exist.

15. As to the fifteenth "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

16. As to the sixteenth "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

17. As to the seventeenth "Whereas" paragraph, Henson admits a successor trustee has not been appointed for the Trust.

18. As to the eighteenth "Whereas" paragraph, Henson has insufficient information to admit or deny the Petitioners' desire for the Court to appoint themselves as the successor co-trustees of the Trust for the sole purpose of dissolving the Trust and distributing the Real Property to its designated beneficiaries.

19. As to the nineteenth "Whereas" paragraph, Henson has insufficient information to admit or deny the Petitioners' desire that they not be required to post a bond.

20. As to the twentieth "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

21. As to the twenty-first "Whereas" paragraph, Henson has insufficient information to admit or deny that Petitioners are willing to serve as the successor co-trustees of the Trust.

22. As to the twenty-second "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

23. As to the twenty-third "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

WHEREFORE, having fully answered Petitioners' Petition To Appoint Successor Trustee, the Respondent respectfully request that the same be dismissed with all attorneys' fees, costs and for

such other and further relief awarded to the Respondent, Albert T. Henson, Jr., as this Honorable Court may deem to be just and proper.

BY: _____

JAMES E. REEVES, P.A.
James E. Reeves, Esquire
400 North Cedar Street
Summerville, SC 29483
(843) 832-7337

HART HYLAND AND SHEPHERD, LLC
Andrew T. Shepherd, Esquire
207 East 1st North Street
Summerville, SC 29483
(843) 410-0711

ATTORNEYS FOR THE RESPONDENT,
ALBERT T. HENSON, JR.

Dated: 3/30, 2015
Summerville, South Carolina

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | CASE NO: 1994-ES-18-00147-2 |
| COUNTY DORCHESTER | ) | |
| | ) | |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON | ) | **AMENDED PETITION TO APPOINT SUCCESSOR TRUSTEE AND FOR SUBSEQUENT ESTATE ADMINISTRATION** |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| | ) | |
| RESPONDENTS. | ) | |
| | ) | |

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**WHEREAS,** on October 6, 1993, Eunice I. Page ("Ms. Page") died a resident of Dorchester County, with Ms. Page's estate administered in the Dorchester County Probate Court case number 94ES18-147;

**WHEREAS,** pursuant to the Last Will and Testament (the "Will") of Ms. Page executed on October 14, 1992, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, Ms. Page created the Trust EIP (the "Trust") under Item V of the Will;

**WHEREAS,** Item VII of the Will nominated and appointed Ms. Page's daughter, Ann P. Pittillo ("Ms. Pittillo") as trustee of the Trust and George Hollis Cone ("Mr. Cone") as substitute or successor trustee;

**WHEREAS,** by deed dated July 22, 1997, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, certain of Ms. Page's real property in Dorchester County, South Carolina known as 605 North Main Street, Summerville, South Carolina (the "Real Property") was transferred to Ms. Pittillo as trustee of the Trust;

**WHEREAS,** upon information and belief, the Real Property is the sole asset of the Trust;

**WHEREAS,** on April 20, 2014, Ms. Pittillo died a resident of Dorchester County;

**WHEREAS,** Mr. Cone predeceased Ms. Pittillo;

**WHEREAS,** the Will provides that if Mr. Cone cannot serve as Trustee, the successor Trustee shall be a bank or trust company qualified to do business in South Carolina and appointed by a majority of the adult beneficiaries of the Trust and filed with the Court;

**WHEREAS,** after a diligent search, no bank or trust company is willing to serve as Trustee of the Trust;

**WHEREAS,** the Will does not provide for any additional successor trustees for the Trust in the event either Ms. Pittillo, Mr. Cone or a bank or trust company becomes unable to serve as trustee;

**WHERAS,** Ms. Pittillo was survived by her three sons: Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth Henson;

**WHERAS,** Julian Reid Henson ("Julian") is the sole surviving grandchild of Ms. Pittilo:

**WHEREAS,** Item V(3) of the Will provides that upon the death of the survivor of Ms. Page and Ms. Pittillo, the trustee shall divide the Trust into equal separate shares—subject to certain adjustments as set forth in Item V(3) of the Will—for each of Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth. Henson; or their surviving children;

**WHEREAS,** the Petitioners and Respondents are the sole remaining qualified beneficiaries of the Trust;

**WHEREAS,** a vacancy in a trusteeship occurs pursuant to § 62-7-704(a)(5) of the South Carolina Code of Laws (the "Code") in the event a trustee dies;

**WHEREAS,** Code § 62-7-704(c) provides that a vacancy in a trusteeship in a noncharitable trust must be filled in the following order of priority: (1) by a person designated in the terms of the trust; (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or (3) by a person appointed by the Court;

**WHEREAS,** a successor trustee has not been appointed for the Trust;

**WHEREAS,** the Petitioners desire the Court appoint them as the successor co-trustees of the Trust for the sole purpose of dissolving the Trust and distributing the Real Property to its designated beneficiaries;

**WHEREAS,** the Petitioners desire that they not be required to post a bond;

**WHEREAS,** pursuant to Code § 62-7-704(c)(2), Petitioners have priority to serve as successor co-trustees of the Trust;

**WHEREAS,** Petitioners are willing to serve as the successor co-trustees of the Trust;

**WHEREAS,** after filing the original petition, Petitioners became aware of an error in the previous administration of the Estate of Eunice Page concerning the transfer of all assets into the Trust as outlined in the following paragraphs;

**WHEREAS,** Decedent and her husband H.B. Page amassed the Real Property, now known as 605 North Main Street, Summerville, South Carolina throughout the years of their marriage by purchasing four separate lots;

**WHEREAS,** on September 16, 1950, Albert J. Rinck and Alice Marie Rinck conveyed to Inez E. Page a parcel marked as "C" on the attached Exhibit "C", by deed recorded in Book 99 at Page 169 in the Dorchester County R.M.C.;

**WHEREAS,** on January 26, 1959, Frances Moore Sparks conveyed to H.B. Page the parcel marked as "D" on the attached Exhibit "C", by deed recorded in Book 119 at Page 249 in the Dorchester County R.M.C.;

**WHEREAS,** on November 10, 1967, L.M. Blanchett and Ida B. Blanchett conveyed Parcel B on the attached Exhibit "C" to H.B. Page and Eunice I. Page, by deed recorded in Book 156 at Page 31 in the Dorchester County R.M.C.;

**WHEREAS,** on February 9, 1968, O.J. Strobel conveyed to H.B. Page and Eunice I. Page Parcel A on the attached Exhibit "C", by deed recorded in Book 157 at Page 386 in the Dorchester County R.M.C.;

**WHEREAS,** on February 21, 1969, Inez E. Page being the same person as Eunice I. Page conveyed an undivided one-half interest in Parcel C to H.B. Page by deed recorded in Book 166 at Page 247 in the Dorchester County R.M.C.;

**WHEREAS,** on February 21, 1969, H.B. Page conveyed an undivided one-half interest in Parcel D to Inez E. Page, who is one and the same person as Eunice I. Page by deed recorded in Book 166 at Page 249 in the Dorchester County R.M.C.;

**WHEREAS,** after the transfers on February 21, 1969, H.B. Page and Eunice I. Page each had an undivided one-half interest in the Real Property known as 605 North Main Street;

**WHEREAS,** H.B. Page died testate on April 17, 1971, and his will was probated in Dorchester County;

**WHEREAS,** H.B. Page left his entire estate, both real and personal to his wife Eunice I. Page;

**WHEREAS,** by will, Eunice I. Page became the sole owner of Parcels A, B, C, and D, and thus, the sole owner of the Real Property;

**WHEREAS,** on June 14, 1976, Eunice I. Page conveyed a 1/10 interest in all four parcels to her daughter, Ann Page Henson, by deed recorded in Book 285 at Page 130 in the Dorchester County R.M.C. (Exhibit "D", hereto);

**WHEREAS,** the June 14, 1976 deed referenced each of the four parcels individually in the legal description:

**WHEREAS,** on February 14, 1978, Eunice I Page conveyed a 1.2% interest in the property to Ann Page Henson, by deed recorded in Book 335 at Page 140 in the Dorchester County R.M.C., which contained a revised legal description of the Real Property citing buttings and boundings and measurements (Exhibit "E" hereto);

**WHEREAS,** on January 23, 1978, Eunice I. Page conveyed an additional 1.2% interest in the Real Property to Ann Page Henson, by deed recorded in Book 335 at Page 140 in the Dorchester County R.M.C., which contained the same legal description as the February 14, 1978 deed;

**WHEREAS,** on December 27, 1980, Eunice I. Page conveyed an additional 1.2% interest in the Real Property to Ann Page Henson, by deed recorded in Book 430 at Page 84 in the Dorchester County R.M.C., which contained the same legal description as the February 14, 1978 deed;

**WHEREAS,** Eunice I. Page died testate on October 1, 1993, and her will was filed with the Dorchester County Probate Court on April 26, 1994, in Book 17 at Pages 396-409;

**WHEREAS,** Eunice I. Page devised all cash and other investments to her daughter, Ann Page Patillo, with instructions that the residual and remainder of her estate, including property, be devised to the Trust;

**WHEREAS,** the Deed of Distribution from the Estate of Eunice Page (Exhibit "B"), dated July 22, 1997, and filed May 29, 1998 in Book 1960 at Page 184, conveyed the property to the Trust and uses the revised legal description of buttings and boundings and measurements found in the previous three conveyances to Ann Page, less and excepting the four conveyances to Ann Page;

**WHEREAS,** the legal description in the final three conveyances from Eunice I. Page to Ann Page and in the Deed of Distribution from the Estate of Eunice Page and into the Trust omits any mention of the parcel conveyed to the Pages by O.J. Strobel, identified as Parcel A on Exhibit "C";

**WHEREAS,** a search of the land records of Dorchester County evidenced no separate conveyances concerning Parcel A, and it appears that the legal description used in the February 1978 deed, and copied thereafter, was a scrivener's error;

**WHEREAS,** a ninety-percent interest in Parcel A was not conveyed to the Trust as directed in her Will and remains in the Estate of Eunice Page;

**WHEREAS,** a subsequent administration, pursuant to S.C. Code § 62-3-1008, is necessary to reopen the Estate of Eunice Page for the purpose of devising the ninety-percent interest in Parcel A to the Trust;

**WHEREAS,** it is necessary that the Court appoint a Personal Representative with authority to convey the ninety-percent interest in Parcel A to the Trust;

**WHEREAS,** In Item VI of her Will, Eunice I. Page named her daughter, Ann Page Pitillo as her Personal Representative, and George Hollis Cone, as substitute Personal Representative;

**WHEREAS,** Ann Page Pitillo and George Hollis Cone are both deceased:

**WHEREAS,** Petitioners are grandsons of Eunice I. Page and are willing to serve as Personal Representatives of her Estate, and are filing an Application for Subsequent Administration simultaneously with this Amended Petition;

**WHEREAS,** Petitioners have priority pursuant to S.C. Code Ann. § 62-3-203 and § 62-3-613;

**WHEREAS,** the Probate Court has jurisdiction in this proceeding pursuant to Code §§ 62-1-302(a)(3) and 62-7-201(a)(4); and

**WHEREAS,** pursuant to Code § 62-7-204(b), venue for this proceeding is properly in Dorchester County, South Carolina because Dorchester County is both the location of the Real Property and the principal place of administration by Ms. Pittillo, the last trustee of the Trust.

**NOW THEREFORE,** having fully set forth their Petition, the Petitioners request and pray that the Court issue an Order as follows:

(A) Ordering the subsequent administration of the Estate of Eunice I. Page to enable the devise of after-discovered property to the Trust.

(B) Appointing Richard S. Henson and Vann K. Henson as Personal Representatives for the subsequent administration of the Estate of Eunice I. Page.

(C) Appointing Richard S. Henson and Vann K. Henson as successor co-trustees of the Trust to dissolve the Trust and distribute the Real Property to the Trust's designated beneficiaries;

(B) Providing that Richard S. Henson and Vann K. Henson shall not be required to post a bond; and

(C) For such other and further relief that may be just and proper.

Respectfully submitted,

Paul M. Lynch
Phyllis W. Ewing
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
Attorneys for the Petitioners

Charleston, South Carolina

May 1, 2015

**Exhibit A**

Last Will and Testament of Eunice I. Page, dated October 14, 1992

DORCHESTER COUNTY
94 APR 26 PM 3:02
Book #17
Page 396 - 409

LAST WILL AND TESTAMENT
OF
*EUNICE I. PAGE*

Introductory Clause. I, EUNICE I. PAGE, a resident of and domiciled in the County of DORCHESTER and State of SOUTH CAROLINA, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

*Direction to Pay Debts with Discretionary Refinancing by* Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM II

Direction to Pay All Taxes from Residuary Estate. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM III

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such

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memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequent discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my daughter, Ann P. Pittillo, if she survives me, provided; however, the issue of my deceased daughter surviving me shall take per stirpes the share their mother would have taken had she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM IV

Specific Cash Bequest. I give, devise and bequeath all my cash and cash equivalents in bank accounts or other investments to my daughter, Ann P. Pittillo, if she survives me.

ITEM V

Outright Gift to Testatrix's Daughter. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description, (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will to Trustee hereinafter named to be held in Trust known as Trust EIP. At the time of the execution of this Will my grandson, Albert T. Henson, Jr., owes me Eight Thousand One Hundred ($8,100.00) Dollars for a personal loan. If this amount has not been repaid at the time of my death, then this sum should be collected and added to my estate. At the time of the execution of this Will my grandson, Richard Scott Henson owes me the unpaid balance on that note in the face amount of Thirty-four Thousand ($34,000.00) Dollars executed by him on or about October 15, 1987. If this amount has not been repaid in full at the time of my death,

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then the remaining sum should be collected and added to my estate. However, my personal representative would have the power to refinance this obligation on behalf of the estate. Trust EIP shall be held, administered and distributed as follows:

(1) Discretionary Payment of All Income to My Daughter and My Grandson. Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my daughter and my grandson, Vann Kenneth Henson, until division into shares as hereafter provided, all the net income from Trust EIP in convenient installments in such shares and proportions as my Trustee in its sole discretion shall determine; provided, however, in all events such payments of income to my grandson, Vann Kenneth Henson, shall be limited to no more than Ten Thousand ($10,000.00) Dollars a year, as this income is to be primarily for the benefit of my daughter and to a secondary extent, for the medical care and education of Vann Kenneth Henson, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my said grandson known to my Trustee. Such discretion on the part of my Trustee as to income allocation to Vann Kenneth Henson shall terminate in all events at the earlier of the date of his thirtieth (30) birthday or that date which is three (3) years from the date of my death.

(2) Discretionary Payments of Principal for Child. If my daughter shall survive me, my Trustee may pay to or apply for the benefit of my daughter during her lifetime, such sums from the principal of Trust EIP as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my daughter taking into consideration to the extent my Trustee deems advisable, any other income or resources of my daughter known to my Trustee.

(3) Division Into Shares for Daughter's Children. Upon the death of the survivor of my daughter and me, my Trustee shall divide this Trust as then constituted into equal separate shares for each of my grandsons, Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth Henson, or their surviving children, provided, however, for the purposes of this Paragraph, the net assets of my estate shall be deemed to be increased in value by the sum of any unpaid balances of loans to either Richard Scott Henson or Albert T. Henson, Jr. (or both of them). Thereafter, that share set aside for Richard Scott Henson and Albert T. Henson shall be reduced by that amount of such unpaid balance, if any still due and owing by them (or each of them).

For example, and for purposes of example only, if at the time of my death all the rest, residue and remainder of my estate (after division and distribution as set forth herein, if any, is One Hundred Thirty-seven Thousand Nine Hundred ($137,900.00) Dollars and the combined outstanding debt is Forty-two Thousand One Hundred ($42,100.00) Dollars at that time, then the Forty-two Thousand One

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Hundred ($42,100.00) Dollars will be deemed added to my estate to make a total of One Hundred Eighty Thousand ($180,000.00) Dollars in my estate. My personal representative shall then allocate the sum of Twenty-six Thousand ($26,000.00) Dollars to that share for Richard Scott Henson, Fifty-one Thousand Nine Hundred ($51,900.00) Dollars to that share for Albert T. Henson, Jr., and Sixty Thousand ($60,000.00) Dollars to Vann Kenneth Henson.

Those shares set aside for Richard Scott Henson, Albert T. Henson, Jr., and Vann Kenneth Henson shall be distributed outright to each of them, if they shall survive me; provided, however, if they fail to survive me then the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he survived me.

(4) Income/Discretionary Invasion of Principal for Grandsons. After division into shares for my grandsons, all the net income from each share so provided for a living child of my daughter shall be paid in convenient installments to or applied for the benefit of my grandsons until complete distribution of the share as herein provided. In addition to income, my Trustee may pay to or apply for the benefit of the child such sums from the principal of his share as in its sole discretion shall be necessary or desirable from time to time for his medical care, education, support and maintenance in reasonable comfort, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my grandchildren known to my Trustee.

(5) Distribution of the Share of the Grandsons. After division into shares for my grandsons, when the youngest surviving grandson attains the age of Twenty-five (25) years, my Trustee shall distribute to each surviving grandson or (if deceased, to their issue, if any), the undistributed balance of his share.

(6) Upon Death of Daughter's Child to Issue of Daughter's Child. After division into shares for my grandsons, upon the death of a child of my daughter prior to complete distribution of his share, the undistributed balance of the child's share shall be distributed per stirpes to his then living issue, or in default of such issue, per stirpes to my daughter's then living issue.

ITEM VI

Naming an Individual as Personal Representative with a Substitute. I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my daughter, Ann P. Pittillo, and direct that such personal representative shall serve without bond. If for any reason my personal representative is unable or unwilling to serve or continue to serve then I hereby nominate, constitute and appoint as substitute or successor personal representative George Hollis Cone and direct that he shall serve without bond.

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ITEM VII

Naming Trustee. I hereby nominate, constitute and appoint as Trustee of this my Last Will and Testament my daughter, Ann P. Pittillo, and direct that she shall serve without bond. If for any reason she is unable or unwilling to serve or continue to serve then I hereby nominate, constitute and appoint as substitute or successor Trustee George Hollis Cone and direct that he shall serve without bond.

ITEM VIII

Provision for Substitute or Successor Corporate Personal Representative and Trustee. Except as otherwise provided herein, if Ann P. Pittillo or any successor as herein defined should fail to qualify then a majority of the adult beneficiaries shall designate in a written instrument filed with the Court having jurisdiction over my Will or this Trust, a successor or substitute corporate personal representative or trustee which shall be a bank or trust company qualified to do business in the state of my domicile and such corporate personal representative and trustee shall be the sole personal representative and trustee.

ITEM IX

Provision Covering Change in Corporate Fiduciary. Any corporate successor to the trust business of the corporate fiduciary designated herein or at anytime acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

ITEM X

Definition of Personal Representative and Trustee. Whenever the word "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

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ITEM XI

Fee Schedule for Individual Primary Personal Representative and Corporate Substitute or Successor Personal Representative. Standard Fee Schedule. For its services as Personal Representative, my individual Personal Representative shall receive the amount provided by law. If my corporate Personal Representative shall serve, it shall receive for its services an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XII

Fee Schedule for Trustee. Standard Fee Schedule. For its services as Trustee, my Trustee shall receive an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XIII

Long Form of Powers for Personal Representative and Trustee. My Personal Representative and Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this my Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this my Will or by statute or general rules of law:

(1) To retain any property or undivided interests in property owned by me at the time of my death, including residential property and shares of my Personal Representative's or Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of my estate or the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my Estate or the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or



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pooled trust funds of my Personal Representative or Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the Trust Estate, for cash or upon credit, to exchange any property of my estate or the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in its own name as Personal Representative or Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of my Estate or the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.

(7) To refrain from voting or to vote shares of stock owned by my Estate or the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my Estate or the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my Estate or the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by my Personal *Representative or Trustee pursuant to any such plan, to exercise* all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of my estate or the Trust Estate for a term within or extending beyond the term of the trust, in connection with the

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exercise of any power vested in my Personal Representative or Trustee.

(10) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by me at my death and to do any and all things deemed needful or appropriate by my Personal Representative or Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of my Estate or the Trust Estate.

(15) To insure the assets of my Estate or of the Trust Estate against damage or loss and my Personal Representative or Trustee against liability with respect to third persons.

(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against my Estate or the Trust Estate as my Personal Representative or Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys- at-law, tax specialists, realtors, and other assistants and advisors deemed by my Personal Representative or Trustee needful for the proper administration of my Estate or the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

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(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of my Estate or the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my Personal Representative's or Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of my Estate or the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and *appraise any asset and to distribute such asset in kind at its* appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) To exercise any power herein granted with reference to the control, management, investment or disposition of my Estate or the Trust Estate either as personal representative or trustee without having to declare in which capacity it is acting.

(23) In general, to exercise all powers in the management of my Estate or the Trust Estate which any individual could exercise in his own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this my Will.

(24) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(25) To divide any trust into separate shares or separate trusts or to create separate trusts if my Trustee reasonably deems it appropriate and the division or creation is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(26) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the

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Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero; to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as my Trustee in its sole discretion deems best.

(27) To elect to allocate any portion or all my generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of my death, to any portion or all of Trust EIP or any other trusts or bequests in my Will or any other transfer which I am the transferror for purposes of the generation-skipping tax. Generally, I anticipate that my Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to Trust EIP, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent my Personal Representative deems in the best interest of my estate.

(28) My Personal Representative and Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence.

## ITEM XIV

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-Five. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-five (25) years, such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-five (25) years, using so much of the net income and principal of the share as my Trustee deems necessary to provide for the proper support, medical care, and education of the beneficiary, taking into consideration to the extent my Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to my Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-five (25), or if he or she shall sooner die, to his or her personal representatives. My Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

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ITEM XV

Trustee's Discretion in Making Payments to a Person Under Age Twenty-Five, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-five (25), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Trustee using such amounts directly for the beneficiary's care, support and education.

ITEM XVI

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM XVII

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms

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"living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as applied to the issue of a person entitled to receive a gift herein shall mean that the gift shall be divided at the applicable time into as many equal shares as there are then living issue of such person in the nearest degree of kinship to such person plus deceased issue of that generation who leave lineal descendants then surviving. Each living issue in such nearest degree of kinship shall be entitled to receive one equal share and the living lineal descendants of each such deceased issue in the same degree of kinship shall take the share that their deceased ancestor would have taken had such deceased ancestor survived such person. This definition of "per stirpes" is intended to describe "taking by representation" as defined in the South Carolina Code Section 62-2-106.

ITEM XVIII

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to Sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XIX

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or

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I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XX

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, my Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ITEM XXI

*Spendthrift Provision*. *Except as otherwise provided herein*, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my Personal Representative or Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium, Attestation and Self-Proving Affidavit. I, EUNICE I. PAGE, the Testatrix, sign my name to this instrument this 14 day of Oct., 1992, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Eunice I. Page
EUNICE I. PAGE

We, Ann M. Price and Dana S. Shipman, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(Witness)

Dana S Shipman
(Witness)

The State of SOUTH CAROLINA
County of DORCHESTER

Subscribed, sworn to, and acknowledged before me by EUNICE I. PAGE, the Testatrix, and subscribed and sworn to before me by Dana S Shipman witness, this 14th day of October, 1992.

(Seal)
Notary Public for SOUTH CAROLINA

My Commission Expires: 6-16-96

**Exhibit B**

Deed into Trust

BK 1960PG185 FILED-RECORDED DORCHESTER COUNTY

SC Deed Rec Fee _____

Mar 29 9 PM '96 COUNTY Co Deed Rec Fee _____

Filing Fee 10.00

Exemption # 1

LINDA MESSERVY
REGISTER
MESNE CONVEYANCES
DORCHESTER COUNTY, SC

LINDA T. MESSERVY
Register of Mesne Conveyances

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MATTER OF THE ESTATE OF EUNICE I. PAGE
CASE NUMBER 94ES18-147

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 6th day of October, 1993, and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Dorchester County, South Carolina in File #94ES18-147; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release an undivided interest in the following described property to:

Name: Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page
Address: 148 Pelzer Drive, Summerville, SC 29485

ALL that certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being just outside of the Town of Summerville in the County of Dorchester, State of South Carolina and having such buttings, boundings, and measurements as follows, to wit: Northeast on a lot now or formerly of Luke, then Strobel measuring thereon a distance of Two Hundred Ten (210') feet, Southeast on lands now or formerly of Goodwyn and Eddie Hinson and measuring thereon a distance of Three Hundred Fifteen (315') feet, more or less; Southwest on Highway #78 and lands now or formerly of Frances M. Sparks and measuring thereon a distance of Eighty-five (85') feet and One Hundred Twenty Seven (127') feet, respectively; and Northwest on lands now or formerly of Frances M. Sparks and U.S. Highway #17-A and measuring thereon a distance of One Hundred Twenty-five (125') feet and One Hundred eighty-eight (188') feet, respectively, be the said dimensions, more or less.

The above described lots of lands will more fully appear reference being had to plats of the same by Thomas W. Bailey, C.E. and L.S., dated June 16, 1961, June 19, 1961, and April 4, 1968, reference to which is hereby craved and made a part and parcel hereof.



Form # 400PC (1/89)
SCPC 3-907, 3-908

Ann Priest & Assoc.
P.O. Box 1169
S'Ville, SC 29484

Less and excepting, however, that 1/10th interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated June 14, 1976, and recorded in Deed Book 285, at Page 130, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated December 12, 1977, and recorded in Deed Book 335, at Page 140, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated January 23, 1978, and recorded in Deed Book 335, at Page 137, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson Pittillo by deed of Eunice I. Page, also known as Inez E. Page, dated December 27, 1980, and recorded in the RMC Office in Book 430, at Page 84.

And less and excepting any other conveyances made by the decedent prior to her death.

Subject, however, to all covenants, restrictions, reservations, easements, conditions and rights appearing of record, and subject to any state of facts an accurate survey would show.

Being the same in part, as was conveyed to H.B. Page by Frances M. Sparks by deed dated February 26, 1959, and recorded in Deed Book 99, at Page 249, RMC Office for Dorchester County, a one-half (1/2) interest of which was conveyed to Inez E. Page by H.B. Page who is one and the same person as Eunice I. Page by H.B. Page by deed dated February 21, 1969, and recorded in Deed Book 166, at Page 249, RMC Office for Dorchester County.

And being the same, in part, as was conveyed to H.B. Page and Eunice I.Page by L.M. Blanchett and Ida B. Blanchett on November 10, 1967, by deed recorded in Deed Book 156, Page 31, in the RMC Office for Dorchester County.

And being the same, in part, as was devised to Eunice I. Page (being the same as Inez E. Page) by H.B. Page pursuant to his Last Will dated December 28, 1955, and recorded in the Probate Court for Dorchester County in Book 4, Page 491, Dorchester County Probate Court Case Number 71ES18-2802.

And being the same, in part, as was conveyed to Inez E. Page by Albert J. Rinck and Alice Marie Rinck on September 16, 1950, and recorded in Deed Book 99, at Page 169 in the RMC Office for Dorchester County.

TMS # 137904-01-001

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page, her heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 22 day of July, 1997.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Estate of: Eunice I. Page
by Signature: Ann Page Pittillo
Personal Representative

Witness: Donna V Sands

Witness: Jennifer D Williams

STATE OF SOUTH CAROLINA )
COUNTY OF DORCHESTER )

PROBATE

PERSONALLY appeared before me Donna V Sands and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me this 22nd day of July, 1997

Witness Signature: Donna V Sands

Jennifer D. Williams
Notary Public for South Carolina
My Commission Expires: 1-31-99

Form #400PC (1/89)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 29th day of May 1998
at 9:19 A and recorded
in book 1960 page 185
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES



R_0071

## Exhibit C

Plat

NORTH MAIN STREET
U.S. HIGHWAY 11-A

**Exhibit D**

June 14, 1976 Deed

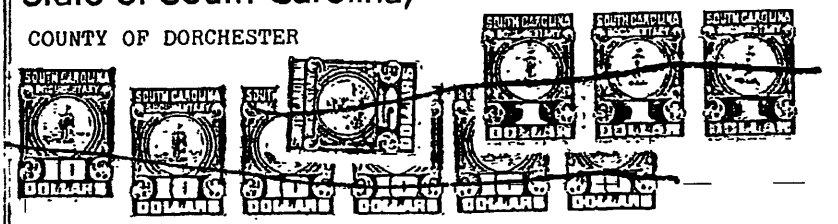
68.00
37.40

VOL 285 PAGE 130

TITLE TO REAL ESTATE — Form 14
The R. L. Bryan Company, Columbia, S. C.

State of South Carolina,

COUNTY OF DORCHESTER



Know All Men by These Presents, That

I, EUNICE I. PAGE (also known as INEZ E. PAGE)

Dorchester County
Stamp Tax
PAID $ 37.40
Margie K. Carn
CLERK OF COURT

in the State aforesaid, in consideration of the sum of Ten Dollars and love and affection from my daughter to me in hand paid ~~paid~~ by ANN PAGE HENSON in the State aforesaid, receipt of which is hereby acknowledge, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

ANN PAGE HENSON, her heirs and assigns, the following parcels of land, to-wit:

An undivided one-tenth (1/10) interest in and to all that certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being near the Town of Summerville in the County of Dorchester, State of South Carolina, being in shape a rectangle measuring on its northeastern and southwestern side a distance of 210' and on its northwestern and southeastern sides a distance of 105', be the said measurements more or less, butting and bounding as follows, to-wit: northeast on a lot formerly of Luke, now of O. J. Strobel; southeast on lands now or formerly of Goodwin; southwest on lands of H. B. Page, and northwest on U. S. Highway 17-A. This lot of land will more fully appear on a plat of the same by Thomas W. Bailey, Surveyor, dated June 16 and June 19, 1961, reference to which is hereby craved and made a part and parcel hereof. This being the same parcel as was deeded to H. B. Page and Eunice I. Page by L. M. Blanchett and Ida B. Blanchett on November 10, 1967 and recorded in the office of the Clerk of Court of Dorchester County in Deed Book 156 at Page 31.

ALSO, an undivided one-tenth (1/10) interest in and to: All that certain piece, parcel or lot of land situate, lying and being just outside the corporate limits of Summerville in the County of Dorchester, being in shape a recetangle measuring on its northeastern and southwestern sides a distance of 85' and on its northwestern and southeastern sides a distance of 124.5', be the said measurements more or less, butting and bounding as follows, to-wit: northeast on a lot of the said grantor herein; southeast on a lot of T. E. Hinson, southwest on U. S. Highway No. 78 and northwest on a lot of Frances M. Sparks. This being the same lot of land as was conveyed to

TITLE NOT SEARCHED

R_0075

H. B. Page by Frances M. Sparks by deed dated February 26, 1959 and recorded in Deed Book 199 at Page 249, in the Clerk of Court's Office for Dorchester County and being the same undivided one-half (1/2) interest as was conveyed by H. B. Page to Eunice I. Page on February 21, 1969, and recorded in Deed Book 166 at Page 249.

Also, an undivided one-tenth (1/10) interest in and to: All that certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being at the southeastern corner of the intersection of Main Street Extension and Sixth North Street just outside the Town of Summerville in the County of Dorchester, being in shape a rectangle measuring on its northwestern and southeastern sides a distance of 105' and on its northeastern and southwestern sides a distance of 210', be the said dimensions more or less, butting and bounding as follows, to-wit: northeast on Sixth North Street of Detmold's Plan of New Summerville; southeast on a lot formerly of Goodwin; southwest on a lot formerly of L. M. Blanchett now of Page; and northwest on said North Main Street Extension. This lot of land will more fully appear as a common marked lot, the northeastern most reference being had to "a plat of a lot owned by H. B. Page, etc." by Thomas W. Bailey, Surveyor, dated June 19, 1961, reference to which is hereby craved and made a part and parcel hereof so far as the same pertains to said northeastern most lot. Being the same as was conveyed by O. J. Strobel to H. B. Page and Eunice I. Page on February 9, 1968 and recorded in the Clerk of Court's Office for Dorchester County in Deed Book 157 at Page 386.

Also, an undivided one-tenth (1/10) interest in and to: All that piece, parcel or lot of land with the buildings and improvements thereon, situate, lying and being just north of Summerville, in the County of Dorchester, in the State of South Carolina; butting, bounding and measuring, as follows: northeast on lands now or formerly of Lee M. Blanchett, 210'; southeast on lands now or formerly of Summerville Infirmary, Inc., 83'; southwest on lands now or formerly of Katherine E. Schaffer and Lawrence B. Schaffer, 210'; and northwest on State Highway No. 64 (extension of Main Street), 83'; be the said measurements, more or less; and having such shape, form, marks, courses, distances, buttings, boundings and measurements as are delineated on a plat by Hugh Hamilton, Surveyor, dated December 12, 1940.

Being the same property conveyed by deed to the said Inez E. Page by Albert J. Rinck and Alice Marie Rinck of Jacksonville, Florida on September 16, 1950 and recorded in the Clerk of Court's Office for Dorchester County in Deed Book 99, Page 169 on September 19, 1950.

Liber 285 Page 139

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 premises before mentioned unto the said

ANN PAGE HENSON, her

Heirs and Assigns forever

And I do hereby bind myself, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said

ANN PAGE HENSON, her

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

*WITNESS Hand and Seal this* June ~~day of~~ 14th *in the year of our Lord one thousand nine hundred and* seventy-six *and in the* ~~one~~ Two Hundredth *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Robert O. Saulsman
David A. Lyles

Eunice L. Page (SEAL)

(SEAL)

TITLE NOT SEARCHED

R_0077

VOL 285 PAGE 133

STATE OF SOUTH CAROLINA,
COUNTY.

PERSONALLY appeared before me Robert B. Pearlman

and made oath that He saw the within-named EUNICE I. PAGE

sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with Gail H. Lyles witnessed the

execution thereof.

*SWORN to before me this* 14th
*day of* June, 1976

Gail H. Lyles (L. S.)
Notary Public of S. C.

My Commission Expires: 5/29/83

Robert B. Pearlman

GRANTOR A WOMAN - DOWER NOT NECESSARY

STATE OF SOUTH CAROLINA,
COUNTY.

**RENUNCIATION OF DOWER**

I, , do hereby certify

unto all whom it may concern, that Mrs.

the wife of the within-named

did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

Recorded 6-16-76-9A.M.
Margie T. Carr
Clerk of Court

Mailed To
Robert B. Pearlman, Atty.
P.O. Box 725
Charleston, S. C. 29402

heirs

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

*Given under my Hand and Seal, this*
*day of*
*Anno Domini 19*

(L. S.)
Notary Public of S. C.

TITLE NOT SEARCHED

R_0078

**Exhibit E**

February 14, 1978 Deed

VOL 335 PAGE 137

TITLE TO REAL ESTATE — Form 14
The R. L. Bryan Company, Columbia, S. C.

# State of South Carolina,

COUNTY OF DORCHESTER

## Know All Men by These Presents, That

I, EUNICE I. PAGE, also occasionally known as INEZ E. PAGE

in the State aforesaid, in consideration of the sum of ---------- One ($1.00) ---------- Dollar and love and affection to me paid by ANN PAGE HENSON in the State aforesaid

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said ANN PAGE HENSON, of 801 North Magnolia Street, Summerville, South Carolina, 29483, her heirs and assigns forever, an undivided 1.2/100 (1.2 percent) interest in all of the following property, to-wit:

ALL THAT certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being just outside of the Town of Summerville in the County of Dorchester, State of South Carolina, and having such buttings, boundings, and measurements as follows, to-wit: Northeast on a lot now or formerly of Luke, then Strobel measuring thereon a distance of Two Hundred Ten (210') feet; Southeast on lands of Goodwyn and Eddie Hinson and measuring thereon a distance of Three Hundred Fifteen (315') feet, more or less; Southwest on Highway #78 and lands now or formerly of Frances M. Sparks and measuring thereon a distance of Eighty-five (85') feet and One Hundred Twenty Seven (127') feet, respectively; and Northwest on lands now or formerly of Frances M. Sparks and U.S. Highway #17-A and measuring thereon a distance of One Hundred Twenty-five (125') feet and One Hundred Eighty-eight (188') feet, respectively, be and said dimensions, more or less.

THE ABOVE described lots of land will more fully appear reference being had to plats of the same by Thomas W. Bailey, C.E. and L.S., dated 6/16/61, 6/19/61 and 4/4/68, reference to which is hereby craved and made a part and parcel hereof.

BEING the same in part, as was conveyed to H. B. Page by Frances M. Sparks by deed dated 2/26/59 and recorded in deed book 99 at page 249, Office of the Clerk of Court for Dorchester County, a one-half (1/2) interest of which was conveyed to Inez E. Page who is one and the same person as Eunice I. Page by H. B. Page by deed dated 2/21/69 and recorded in Deed book 166 at page 249, Office of the Clerk of Court for Dorchester County.

Grantee's Address
137 Cadly River Rd.
Summerville, S.C. 29483

R_0080

AND BEING the same, in part, as was conveyed to H. B. Page and Eunice I. Page by L. M. Blanchett and Ida B. Blanchett on 11/10/67 by deed recorded in Deed book 156, page 31 in the Office of the Clerk of Court for Dorchester County.

AND BEING the same, in part, as was devised to Eunice I. Page (being the same as Inez E. Page) by H. B. Page pursuant to his Last Will dated Dec. 28, 1955 and recorded in the Probate Court for Dorchester County in Book Will 3574, page 491.

AND BEING the same, in part, as was conveyed to Inez E. Page by Abert J. Rinck and Alice Marie Rinck on 9/16/50 and recorded in Deed book 99 at page 169 in the Office of the Clerk of Court for Dorchester County.

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 premises before mentioned unto the said ANN PAGE HENSON, her

Heirs and Assigns forever.

And I do hereby bind my Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said ANN PAGE HENSON, her

Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

*WITNESS* my *Hand and Seal this* 23rd *day of* January *in the year of our Lord one thousand nine hundred and* seventy-eight *and in the* ~~one hundredth and~~ two hundredth and second *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

(1) Emma Sue S. Kinard

(2) Alma Robertson Kinard

✓ Eunice I. Page (SEAL)

(SEAL)

VOL 335 PAGE 129

STATE OF SOUTH CAROLINA,
DORCHESTER COUNTY.

PERSONALLY appeared before me (1) Emma Lee S Kinard

and made oath that (s)he saw the within-named EUNICE I. PAGE, also occasionally known as Inez E. Page sign, seal and, as her act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that he, with (2) Adam Rudolph Kinard witnessed the execution thereof.

SWORN to before me this
14 day of Feb, 1978
Virginia D Lipham (L. S.)
1-22 Notary Public of S. C.

(1) Emma Lee S Kinard

STATE OF SOUTH CAROLINA,
COUNTY.

FEMALE GRANTOR

RENUNCIATION OF DOWER

I, , do hereby certify unto all whom it may concern, that Mrs. the wife of the within-named did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named

heirs and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this
day of
Anno Domini 19

(L. S.)
Notary Public of S. C.

Recorded 2-14-78 at 11:50 A.M.
Diane K. Carr
Clerk of Court

Clerk of Court

mailed to:
Ann Page Henson
137 Wallis Rd.
Summerville, SC. 29483

R_0082

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) | IN THE PROBATE COURT<br>Case No.: 1994-ES-18-00147 |
| IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF ENUICE I. PAGE DATED OCTOBER 14, 1992 | ) | **FIRST AMENDED ANSWER, COUNTERCLAIM AND CROSS-CLAIM OF THE RESPONDENT, ALBERT T. HENSON, JR., TO PETITION TO APPOINT SUCCESSOR TRUSTEE** |
| RICHARD S. HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | ) | |

The Respondent, Albert T. Henson, Jr., (hereinafter "Henson") by and through his undersigned attorneys, answers the Petitioners' Petition to Appoint Successor Trustee as follows:

1. As to the first "Whereas" paragraph, Henson admits that on October 6, 1993, Eunice I. Page ("Ms. Page") died a resident of Dorchester County, with Ms. Paige's estate administered in the Dorchester County Probate Court case number 94ES18-147.

2. As to the second "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

3. As to the third "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

4. As to the fourth "Whereas" paragraph, Henson denies the property in Dorchester County, South Carolina known as 605 North Main Street, Summerville, South Carolina (the "Real

Property") was transferred to Ms. Pittillo as trustee of the Trust, as the Real Property was conveyed to the Respondent, Albert T. Henson, Jr. by Eunice I. Page prior to her death.

5. As to the fifth "Whereas" paragraph, Henson denies the Real Property is an asset of the Trust.

6. As to the sixth "Whereas" paragraph, Henson admits on April 20, 2014, Ms. Pittillo died a resident of Dorchester County.

7. As to the seventh "Whereas" paragraph, Henson admits Mr. Cone predeceased Ms. Pittillo.

8. As to the eighth "Whereas" paragraph, Henson craves reference to alieged documents and denies any allegations inconsistent with these documents.

9. As to the ninth "Whereas" paragraph, Henson has insufficient information to either admit or deny that no bank or trust company is willing to serve as Trustee of the Trust.

10. As to the tenth "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

11. As to the eleventh "Whereas" paragraph, Henson admits that Ms. Pittillo was survived by her three sons, Albert T. Henson, Jr. Richard Scott Henson, and Vann Kenneth Henson.

12. As to the twelfth "Whereas" paragraph, Henson admits that Julian Reid Henson ("Julian") is the sole surviving grandchild of Ms. Pittillo.

13. As to the thirteenth "Whereas" paragraph, Henson craves reference to alleged documents and denies any allegations inconsistent with these documents.

14. As to the fourteenth "Whereas" paragraph, Henson denies that the Petitioners and Respondents are the sole remaining qualified beneficiaries of the Trust, as the Respondent, Julien Reid Henson, would not be entitled to any assets of the Trust, if any such assets even exist.

15. As to the fifteenth "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

16. As to the sixteenth "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

17. As to the seventeenth "Whereas" paragraph, Henson admits a successor trustee has not been appointed for the Trust.

18. As to the eighteenth "Whereas" paragraph, Henson has insufficient information to admit or deny the Petitioners' desire for the Court to appoint themselves as the successor co-trustees of the Trust for the sole purpose of dissolving the Trust and distributing the Real Property to its designated beneficiaries.

19. As to the nineteenth "Whereas" paragraph, Henson has insufficient information to admit or deny the Petitioners' desire that they not be required to post a bond.

20. As to the twentieth "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

21. As to the twenty-first "Whereas" paragraph, Henson has insufficient information to admit or deny that Petitioners are willing to serve as the successor co-trustees of the Trust.

22. As to the twenty-second "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

23. As to the twenty-third "Whereas" paragraph, Henson craves reference to the alleged statute and denies any allegations inconsistent therewith.

## COUNTERCLAIM/CROSS-CLAIM FOR DECLARATORY JUDGMENT AS TO OWNERSHIP OF PROPERTY BY HENSON AND NON-EXISTENCE OF TRUST

24. In 1988, prior to the death of Eunice I. Page, she conveyed to Henson real property designated as TMS No.: 137-04-01-001.000 located at 605 North Main Street, SC 29483 (hereinafter the "Property").

25. In 1988, Eunice I. Page and Henson agreed as follows:

a. That in consideration of the conveyance of the Property that he would pay her $334,000.00, as he had money available;

b. If Eunice I. Page died prior to Henson fully paying the consideration, any remaining monies would be paid to the daughter of Eunice I. Page, being Ann P. Pittillo, the mother of Henson and the Petitioners, Richard S. Henson and Vann K. Henson;

c. If both Eunice I. Page and Ann P. Pittillo died prior to fully paying the consideration any remaining monies would be paid to Henson's brothers, being the Petitioners, Richard S. Henson and Vann K. Henson; and

d. As the new owner of the Property, he would be solely responsible for all taxes, insurance and maintenance on the Property.

26. Henson has fully complied with the agreement with his grandmother by paying the consideration and by paying all taxes, insurance and maintenance on the Property.

27. Further, Henson has been in exclusive possession of the Property since 1988 and has made permanent improvements to the Property of such character to enhance substantially the value of the Property all upon the faith of the promise of his grandmother, Eunice I. Page.

28. Accordingly, the Property is not an asset of the Trust as alleged by the Petitioners, but belongs to Henson in fee simple absolute. The Trust as alleged by the Petitioners contains no assets and should therefore be declared to be non-existent.

**COUNTERCLAIM/CROSS-CLAIM FOR DECLARATORY JUDGMENT FOR EQUITABLE INTEREST IN THE TRUST**

29. Henson re-alleges his allegations in his First Amended Answer, Counterclaim and Cross-claim to the Petition to Appoint Successor Trustee, not inconsistent with this Counterclaim and Cross-Claim, as if repeated herein verbatim.

30. In the alternative, if this Court finds that the alleged Trust does exist, Henson is entitled to an equitable interest in the Trust based on the agreement between Henson and his grandmother, Eunice I. Page.

**COUNTERCLAIM/CROSS-CLAIM FOR DECLARATORY JUDGMENT FOR DISSOLUTION OF TRUST AND PARTITION WITH SET-OFF FOR COSTS ADVANCED**

31. Henson re-alleges his allegations in his First Amended Answer, Counterclaim and Cross-claim to the Petition to Appoint Successor Trustee, not inconsistent with this Counterclaim and Cross-Claim, as if repeated herein verbatim.

32. In the alternative, if this Court finds that the alleged Trust does exist, this Court should partition the Trust by sale and grant Henson a set-off for the costs and expenses of the Trust he has advanced since 1988, together with the value of permanent improvements made by Henson.

**COUNTERCLAIM/CROSS-CLAIM FOR QUANTUM MERUIT /UNJUST ENRICHMENT**

34. Henson re-alleges his allegations in his First Amended Answer, Counterclaim and Cross-claim to the Petition to Appoint Successor Trustee, not inconsistent with this Counterclaim and Cross-Claim, as if repeated herein verbatim.

35. In the alternative, if this Court finds that the alleged Trust does exist as alleged by the Petitioners:

a. Henson has provided valuable services and materials for the benefit of the Trust and it's beneficiaries.

b. These services and materials have been accepted, used and enjoyed by the Trust and it's beneficiaries.

c. The provision and acceptance of these services and materials were under such circumstances that reasonably notified the Trust and it's beneficiaries that Henson was expecting to be reimbursed by the Trust and it's beneficiaries.

36. The retention of the assets of the Trust without reimbursing Henson for the valuable services and materials provided and accepted would amount to an unjust enrichment to the Trust and it's beneficiaries to the detriment and damage of Henson.

## COUNTERCLAIM/CROSS-CLAIM FOR ADVERSE POSSESSION

37. Henson re-alleges his allegations in his First Amended Answer, Counterclaim and Cross-claim to the Petition to Appoint Successor Trustee, not inconsistent with this Counterclaim and Cross-Claim, as if repeated herein verbatim.

37. Henson has been in actual, open, notorious, hostile, continuous and exclusive possession of the Property since 1988.

38. Since 1988, the Petitioners, the Respondent, Julian Reid Henson, Eunice I. Page, and Ann Pittillo have not:

a. been in possession of the Property;

b. maintained the Property;

c. paid taxes on the Property;

d. paid the insurance on the Property; or

e. exercised any ownership rights of any kind as to the Property.

39. Henson's possession and use of the Property is sufficient to establish ownership of the Property through the various theories of adverse possession recognized pursuant to South Carolina Law.

WHEREFORE, having fully answered Petitioners' Petition to Appoint Successor Trustee, the Respondent respectfully requests the following:

a. the Petition be dismissed with all attorneys' fees, costs and for such other and further relief awarded to the Respondent, Albert T. Henson, Jr., as this Honorable Court may deem to be just and proper;

b. the Counterclaims/Cross-Claims as alleged by the Respondent, Albert T. Henson, Jr., be granted with all attorneys' fees, costs and for such other and further relief awarded to the Respondent, Albert T. Henson, Jr., as this Honorable Court may deem to be just and proper;

c. Such other relief as this Honorable Court deems just and proper.

BY: _____

JAMES E. REEVES, P.A.
James E. Reeves, Esquire
400 North Cedar Street
Summerville, SC 29483
(843) 832-7337

HART HYLAND SHEPHERD, LLC
Andrew T. Shepherd, Esquire
207 East 1st North Street
Summerville, SC 29483
(843) 410-0711

ATTORNEYS FOR THE RESPONDENT,
ALBERT T. HENSON, JR.

Dated: 4/29, 2015
Summerville, South Carolina

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | CASE NO: 1994-ES-18-00147-2 |
| COUNTY DORCHESTER | ) | |
| | ) | |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON | ) | **PETITIONERS RICHARD S. HENSON AND VANN K. HENSON'S ANSWER TO COUNTERCLAIM AND CROSS-CLAIM OF RESPONDENT, ALBERT T. HENSON, JR.** |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| | ) | |
| RESPONDENTS. | ) | |
| | ) | |

Petitioners Richard S. Henson and Vann K. Henson, by and through their undersigned counsel, answer the counterclaims and cross-claims of Respondent Albert T. Henson as follows:

1. Petitioners deny the allegations of paragraphs 24, 25, and 26 of the Counterclaim/Cross-Claim.

2. Petitioners lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Counterclaim/Cross-Claim, and therefore deny same, and demand strict proof thereof.

3. Petitioners deny the allegations of paragraph 28 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Declaratory Judgment for Equitable Interest in the Trust**

4. Answering paragraph 29 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

5. Petitioners deny the allegations of paragraph 30 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Declaratory Judgment for Dissolution of Trust and Partition with Set-Off for Costs Advanced**

6. Answering paragraph 31 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

7. Petitioners deny the allegations of paragraph 32 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Quantum Meruit/Unjust Enrichment**

8. Answering paragraph 34 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

9. Petitioners deny the allegations of paragraphs 35, in all of its parts, and 36 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Adverse Possession**

10. Answering paragraph 37 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

11. Petitioners deny the allegations of paragraphs 38 and 39 of the Counterclaim/Cross-Claim.

Having fully answered the allegations of Respondent Albert T. Henson, Jr.'s Counterclaim/Cross-Claim, Petitioners Richard S. Henson and Vann K. Henson assert the following affirmative defenses:

**For a First Affirmative Defense**
**(Rule 12(b)(6))**

12. The Counterclaim/Cross-Claim, and each and every allegation therein, fails to state a claim upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6).

**For a Second Affirmative Defense**
**(Statute of limitations)**

13. Respondent's Counterclaim/Cross-Claim is barred by the applicable statutes of limitations.

**For a Third Affirmative Defense**
**(Waiver and Estoppel)**

14. Respondent's claims against Petitioners are barred by the doctrines of waiver and estoppel.

**For a Fourth Affirmative Defense**
**(Unclean Hands)**

15. Respondent's claims against Petitioners are barred by Respondent's unclean hands.

**For a Fifth Affirmative Defense**
**(Laches)**

16. Respondent's claims are barred by the doctrine of laches.

**For a Sixth Affirmative Defense**
**(Statute of Frauds)**

17. Respondent's claims are barred by the statute of frauds, including without limitation those set forth in S.C. Code Ann. § 32-3-10, § 36-2-201, and/or § 36-2-202.

**For a Seventh Affirmative Defense**
**(Accounting as a Condition Precedent)**

18. Respondent should be required to provide Petitioners with a complete and detailed accounting of all of their claimed expenses as a condition precedent to the Respondent's right to proceed with all other claims and cause of action asserted by the Respondent.

**For an Eighth Affirmative Defense**
**(Res Judicata)**

19. Respondent's claims are barred by the doctrine of res judicata.

**For a Ninth Affirmative Defense**
**(Collateral Estoppel)**

20. Respondent's claims are barred by the doctrine of collateral estoppel.

**For a Tenth Defense**
**(Failure/Want of Consideration)**

21. Respondent's claims are barred by failure/want of consideration.

**For an Eleventh Defense**
**(Failure to Mitigate)**

22. Respondent's claims are barred by his failure to mitigate damages.

**For a Twelfth Defense**
**(Stale Demand)**

23. Respondent's claims constitute a stale demand and are presumed invalid.

WHEREFORE, having answered the allegations of Respondents' Counterclaim/Cross-Claim, Petitioners pray, that this honorable Court:

a. Dismiss all counterclaims/cross-claims with prejudice;

b. Grant Petitioners the relief requested in their Amended Petition;

c. Award the costs of this action;

d. Award their attorney's fees in this action; and

e. Award such other relief as the Court deems just and proper.

Respectfully submitted,

Paul M. Lynch
Phyllis W. Ewing
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
phyllisewing@mvalaw.com
Attorneys for the Petitioners

May 22, 2015
Charleston, South Carolina

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | CASE NO: 1994-ES-18-00147-2 |
| COUNTY DORCHESTER | ) | |
| | ) | |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON | ) | **PETITIONERS RICHARD S. HENSON AND VANN K. HENSON'S ANSWER TO RESTATED COUNTERCLAIM AND CROSS-CLAIM OF RESPONDENT, ALBERT T. HENSON, JR.** |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| | ) | |
| RESPONDENTS. | ) | |
| | ) | |

Petitioners Richard S. Henson and Vann K. Henson, by and through their undersigned counsel, answer the counterclaims and cross-claims of Respondent Albert T. Henson as follows:

1. Petitioners deny the allegations of paragraphs 34, 35, and 56 of the Counterclaim/Cross-Claim.

2. Petitioners lack information or knowledge sufficient to form a belief as to the truth of the allegations in paragraphs 35 and 55 of the Counterclaim/Cross-Claim, and therefore deny same, and demand strict proof thereof.

3. Petitioners deny the allegations of paragraph 57 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Declaratory Judgment for Equitable Interest in the Trust**

4. Answering paragraph 58 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

5. Petitioners deny the allegations of paragraph 59 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Declaratory Judgment for Dissolution of Trust and Partition with Set-Off for Costs Advanced**

6. Answering paragraph 60 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

7. Petitioners deny the allegations of paragraph 61 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Quantum Meruit/Unjust Enrichment**

8. Answering paragraph 62 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

9. Petitioners deny the allegations of paragraphs 63, in all of its parts, and 64 of the Counterclaim/Cross-Claim.

**Answering the Counterclaim/Cross-Claim for Adverse Possession**

10. Answering paragraph 65 of the Counterclaim/Cross-Claim, Petitioners restate all responses to Respondent's Counterclaim/Cross-Claim verbatim, as if fully incorporated herein.

11. Petitioners deny the allegations of paragraphs 66 and 67 of the Counterclaim/Cross-Claim.

Having fully answered the allegations of Respondent Albert T. Henson, Jr.'s Counterclaim/Cross-Claim, Petitioners Richard S. Henson and Vann K. Henson assert the following affirmative defenses:

**For a First Affirmative Defense**
**(Rule 12(b)(6))**

12. The Counterclaim/Cross-Claim, and each and every allegation therein, fails to state a claim upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6).

**For a Second Affirmative Defense**
**(Statute of limitations)**

13. Respondent's Counterclaim/Cross-Claim is barred by the applicable statutes of limitations.

**For a Third Affirmative Defense**
**(Waiver and Estoppel)**

14. Respondent's claims against Petitioners are barred by the doctrines of waiver and estoppel.

**For a Fourth Affirmative Defense**
**(Unclean Hands)**

15. Respondent's claims against Petitioners are barred by Respondent's unclean hands.

**For a Fifth Affirmative Defense**
**(Laches)**

16. Respondent's claims are barred by the doctrine of laches.

**For a Sixth Affirmative Defense**
**(Statute of Frauds)**

17. Respondent's claims are barred by the statute of frauds, including without limitation those set forth in S.C. Code Ann. § 32-3-10, § 36-2-201, and/or § 36-2-202.

**For a Seventh Affirmative Defense**
**(Accounting as a Condition Precedent)**

18. Respondent should be required to provide Petitioners with a complete and detailed accounting of all of their claimed expenses as a condition precedent to the Respondent's right to proceed with all other claims and cause of action asserted by the Respondent.

**For an Eighth Affirmative Defense**
**(Res Judicata)**

19. Respondent's claims are barred by the doctrine of res judicata.

**For a Ninth Affirmative Defense**
**(Collateral Estoppel)**

20. Respondent's claims are barred by the doctrine of collateral estoppel.

**For a Tenth Defense**
**(Failure/Want of Consideration)**

21. Respondent's claims are barred by failure/want of consideration.

**For an Eleventh Defense**
**(Failure to Mitigate)**

22. Respondent's claims are barred by his failure to mitigate damages.

**For a Twelfth Defense**
**(Stale Demand)**

23. Respondent's claims constitute a stale demand and are presumed invalid.

WHEREFORE, having answered the allegations of Respondents' Counterclaim/Cross-Claim, Petitioners pray, that this honorable Court:

a. Dismiss all counterclaims/cross-claims with prejudice;

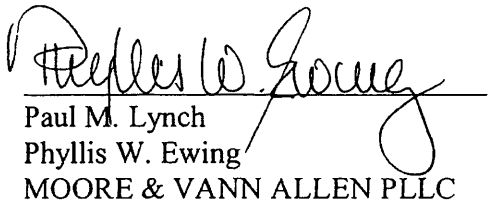
b. Grant Petitioners the relief requested in their Amended Petition;

c. Award the costs of this action;

d. Award their attorney's fees in this action; and

e. Award such other relief as the Court deems just and proper.

Respectfully submitted,



Paul M. Lynch
Phyllis W. Ewing
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
phyllisewing@mvalaw.com
Attorneys for the Petitioners

July 8, 2015
Charleston, South Carolina

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | IN THE PROBATE COURT<br>CASE NO: 1994-ES-18-00147-2 |
| RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | ) | **MOTION FOR THE APPOINTMENT OF A SPECIAL FIDUCIARY AS INTERIM TRUSTEE** |

PROBATE JUDGE
DORCHESTER COUNTY
2015 OCT 12 PM 4:13

Richard S. Henson and Vann K. Henson, Petitioners, hereby submit the following Motion for Appointment of a Special Fiduciary to Act as Interim Trustee, for the following reasons:

On October 6, 1993, Eunice I. Page ("Ms. Page") died a resident of Dorchester County; her estate was administered in the Dorchester County Probate Court, case number 94ES18-147. In her Last Will and Testament (the "Will") executed on October 14, 1992, Ms. Page created the Trust EIP (the "Trust") under Item V of the Will.[1] Ann P. Pittillo ("Ms. Pittillo") was appointed as trustee of the Trust and George Hollis Cone ("Mr. Cone") as substitute or successor trustee. The main asset of the Trust is property located at 605 North Main Street in Summerville ("605 North Main"), which was conveyed to Ms. Pittillo as trustee of the Trust by deed dated July 27, 1997. Ms. Pitillo, who died on April 20, 2014, was predeceased by Mr. Cone. Petitioners were

[1] Copies of the Will, Trust, and Deed into the Trust are attached to the Amended Petition to Appoint Successor Trustee and For Subsequent Estate Administration filed May 4, 2015 in this action.

COPY

unable to find a bank willing to serve as trustee as provided for in the Trust provisions in the Will. On January 21, 2015, Petitioners filed this action for appointment of a successor trustee. Respondent Albert Henson, in his response to the original Petition, alleged that 605 North Main is not property of the Trust, because it was conveyed to him by an unwritten and unrecorded conveyance. Petitioners dispute this claim.

Currently, the position of Trustee is vacant. Upon information and belief, 605 North Main is generating income, possibly only sporadically, income of which there is no record. Items appear to be stored at 605 North Main, and whether rent is being paid for the use of the property for storage is unknown; however, it should be paid and collected for the Trust. Cars associated with a neighboring business regularly park on the parking lot at 605 North Main, another potential source of income for the Trust. Because of the need for proper supervision and administration of 605 North Main and any income it may produce during the litigation over the Trust assets, Petitioners now ask this court to appoint a special fiduciary as interim trustee until the litigation is resolved or the parties agree to the appointment of a trustee, whichever occurs first.

The South Carolina Trust Code states: "A vacancy in a trusteeship must be filled if the trust has no remaining trustee," and authorizes the Court to appoint a trustee if the Trust does not designate someone to serve in this capacity and the beneficiaries do not agree unanimously on the appointment of a trustee. S.C. Code Ann. § 62-7-704(b) and (c). Additionally, "the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust." S.C. Code Ann. § 62-7-704(e).

WHEREFORE, Petitioners request that:

1. This Court appoint a special fiduciary as interim trustee as provided for at S.C. Code Ann. § 62-7-704(e).
2. This Court instruct Albert T. Henson, who is Personal Representative of the Estate of Ann Pittillo, and, upon information and belief, has access to all records concerning the assets of the Trust, turn over such records to the court-appointed special fiduciary/interim trustee.
3. The Trustee shall have authority over Trust assets as set forth in Item XIII of the Last Will and Testament of Eunice I. Page. (Exhibit A.)
4. This Court provide reasonable compensation for the special fiduciary pursuant to S.C. Code Ann. § 62-7-708.

Petitioners sent this motion to opposing counsel seeking consent, to no avail, prior to filing.

Respectfully submitted,

Paul M. Lynch
Phyllis W. Ewing
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
Attorneys for the Petitioners

Charleston, South Carolina
October 9, 2015

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | CASE NO: 1994-ES-18-00147-2 |
| COUNTY OF DORCHESTER | ) | |
| | ) | |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON, | ) | |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| RESPONDENTS. | ) | |

I hereby certify that a copy of the foregoing **Motion for the Appointment of a Special Fiduciary as Interim Trustee,** was served upon the parties below by regular mail with proper postage affixed thereto:

James E. Reeves, Esquire
James E. Reeves, P.A.
400 North Cedar Street
Summerville, SC 29483

Susann O. Williams

October 9, 2015

Charleston, SC

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | ) | IN THE PROBATE COURT<br>CASE NO: 1994-ES-18-00147-2<br><br>**PETITIONERS' MOTION FOR AN EXPEDITED HEARING** |

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:50

PETITIONERS RICHARD S. HENSON and Vann K. Henson, by and through their undersigned attorneys, petition this Court for an expedited hearing on their motion for the appointment of a special fiduciary as the interim trustee.

This dispute arises from a disagreement between the beneficiaries of the Eunice I. Page Trust EIP ("Trust") over the distribution of the Trust after the death of Ann P. Pittillo, the only child of Eunice I. Page, and former trustee of the Trust. The Trust named Pittillo as Trustee, and George Cone as successor trustee, with a bank or qualified financial institution to serve if Cone was unable. Cone predeceased Pittillo, and no bank or financial institution has agreed to serve as Trustee. Richard S. Henson and Vann K. Henson ("Petitioners") petitioned this Court to be appointed as co-trustees of the Trust. Their brother, Albert T. Henson, Jr., did not consent to the appointment.



COPY

The main asset of the Trust is a piece of property located at 605 North Main Street ("605 North Main" or the "Property") in Summerville, South Carolina. The records in the Dorchester County Register of Deeds show the owner of 605 North Main as the Trust. Albert Henson disputes this and claims the Property was never in the Trust as his grandmother had sold/gifted it to him. The Trust remains without a Trustee, and for the course of this litigation, Petitioners are requesting the Court to appoint an interim Trustee for the management of the Property and collection of rents and other income generated by 605 North Main. The Property is located at the intersection of North Main Street and Highway 78 and is appraised at $1,579,000 by the Dorchester County Tax Assessor. (Exhibit "A", hereto.)

Of concern is a mortgage on the Property, executed by Ann Pittillo for the EIP Trust as security for a Note in the amount of $100,000. (Exhibit "B", hereto.) Upon information and belief, a portion of the proceeds from the Note were used to redeem the Property, which had been sold at a delinquent tax sale on December 3, 2012. The Note is due on December 3, 2016 with a payment of $190,000. In his responses to Petitioners' Interrogatories, Albert Henson stated that the estimated amount due on the Note secured by the Mortgage was $150,000 as of September 2015, an indication that nothing has been paid to date. All proceeds being generated by the Property should be applied to this obligation. The possibility of the Mortgage being foreclosed for non-payment of the Note is a real threat to the Trust's main asset, and immediate measures need to be taken to protect this asset, including the possible sale of the property. Various parties have indicated an interest in purchasing the property during the last few years. (Exhibit "C", hereto.)

605 North Main has been used by neighboring businesses as a parking lot. There is a question as to whether the building is being used for storage. In the spring of 2015, plants were

sold from the Property. More recently, the lot was the site for a pumpkin sale and, at the time of this writing, is the site of a Christmas tree lot. (Exhibit "D", hereto.) All of these uses should be generating revenue, revenue that needs to be accounted for. If by chance, some of these uses are the fruits of illegal trespass, the trustee should have the trespassers removed if they will not pay rent.

When trying to schedule a hearing, Petitioners were told that all issues were to be considered during the soon-to-be-scheduled mediation; however, the mediator does not have the power to appoint an interim trustee; that power resides solely with the Court. (S.C. Code Ann. § 62-7-704(c)(3). The appointment of an interim trustee is necessary to protect the main asset of the Trust. Petitioners respectfully request that the Court agree to hear their motion for appointment of a fiduciary as interim trustee to manage the Property and to work with the beneficiaries to address the outstanding mortgage and avoid an eventual foreclosure.

Respectfully submitted,

Paul M. Lynch
Phyllis W. Ewing
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
Attorneys for the Petitioners

Charleston, South Carolina
December 2, 2015

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:51

**Exhibit A**

Property Records Inquiry

Revise Search

FILED & RECORDED
DORCHESTER COUNTY, SC
2015 DEC -9 PM 4:51

## General Information

**Property Address**

605 MAIN ST

**Owner Name & Address**

**Primary Owner**
PITTILLO ANN P AS TRUSTEE OF TRUST EIP
148 PELZER DR
SUMMERVILLE, SC 29485-9703
100.00%

**Legal Description**

**Subdivision:** **Lot:** **Block:**

**Extended Legal:**

**Property Information**

**Parcel Number:** 137-04-01-001.000

**Account Number:** R0021488

**Tax District:** 207

**Current Mill Levy:** 0

**Square Feet:** 78,875.00

**Total Acres:** 1.81

**Primary Use Description:** County Assessor/Auditor

**Additional information:**

## Sales Information

| Reception # | Sale Price | Deed Type | SaleDate | Grantor | Grantee |
|---|---|---|---|---|---|
| 1960185 | $0 | No Value - Conversion | 05/29/1998 | EUNICE I M & P HENSON PAGE | PITTILLO ANN P AS TR |

## Value Information Approach: Cost

| Abstract Code/Description | Value Type | Appraised Value | Assessed Value |
|---|---|---|---|
| LCOM6 Land Commercial 6 Pct | | $1,577,500 | $94,650 |
| IOTHER6 Improvement Other 6 Pct | | $1,500 | $90 |
| | **Totals:** | **$1,579,000** | **$94,740** |

## Account Flags

| Flag Type | Flag Description | Unit Count |
|---|---|---|
| | | |

## Property Attributes & Descriptions

PROBATE COURT
WORCHESTER COUNTY
2015 DEC -9 PM 4:51

**Exhibit B**

# Promissory Note

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:51

| Principal | Loan Date | Maturity |
|---|---|---|
| $100,000.00 | December 4, 2013 | December 3, 2016 |

| | | | |
|---|---|---|---|
| Borrower: | EIP Trust<br>Ann P. Pittillo, Trustee<br>148 Pelzer Drive<br>Summerville, SC 29485 | Lender: | David Whitfield<br>Glenn Little<br>205 Countryside Way<br>Summerville, SC 29483 |

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of **David Whitfield** of Summerville, South Carolina **and Glenn Little** of Ridgeville, South Carolina, in lawful money of the United States of America, the principal sum of One Hundred Thousand and 00/100 ($100,000.00) Dollars with interest from date at the rate of Twenty (20.00%) per annum based on 360 days, then interest increases the second year to Twenty Five (25%) percent per annum based on 360 days, finally interest caps at Thirty (30%) percent per annum based on 360 days until paid in full with interest compounded annually. Borrower will make one lump sum payment based on the date and year paid in full. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued interest; then to principal; then to any late charges; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender my designate in writing.

Borrower reserves the right to prepay in part or in whole at any time subject to the following: If Borrower prepays in the first year, she shall be required to pay One Hundred Twenty Thousand and 00/100 ($120,000.00) Dollars. If Borrower prepays in the second year, she shall be required to pay One Hundred Fifty Thousand and 00/100 ($150,000.00) Dollars. If Borrower prepays on the third year, she shall be required to pay One Hundred Ninety Thousand and 00/100 ($190,000.00) Dollars.

If balloon payment is not made on or before December 3, 2016, borrower agrees to transfer title to lender in lieu of foreclosure.

If default be made in the performance of or compliance with any of the covenants and conditions of the loan or any other instrument securing this note, then in any of said events, said principal sum shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt course, or under foreclosure proceedings under the mortgage securing this note, then all cost of collection, including a reasonable sum for attorney fee shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way, of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment, protest, and notice are hereby waived.

It is expressly agreed and declared that this note is given for an actual loan of One Hundred Thousand and 00/100 Dollars ($100,000.00).

Witness the hand and seal of each of the signers hereof.

Witness.

Paula R. Sellers

**EIP Trust**

Ann P. Pittillo, Trustee

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:51

**Exhibit C**

**Phyllis Ewing**

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:51

**From:** Ken Henson <vkh954@gmail.com>
**Sent:** Tuesday, December 01, 2015 8:53 AM
**To:** [redacted]
**Subject:** Fwd: SC property information for Ann Pittillo - from Ken Henson

---------- Forwarded message ----------
From: **Ken Henson** <vkh954@gmail.com>
Date: Wed, Aug 18, 2010 at 10:05 AM
Subject: SC property information for Ann Pittillo - from Ken Henson
To: carmen@usprimerealtyllc.com

Good Morning!

Here's some of the basic information you'll need regarding the offer on our SC property.

**Property location:**
605 North Main Street, Summerville, SC 29483
TMS# 137-04-01-001

**Buyer's agent:**
Robert M. Bunch, Jr
Bunch Properties of SC, Inc
1719 Live Oak Park
Seabrook Island, SC 29455
(843) 209-6684
bunch@comcast.net

**Buyer:**
J & C Properties, LLC

**Written offer:**
$800,000
$10,000 in earnest money
dated July 16, 2010
(deadline July 22, 2010...ha!)

**My mother:**
Ann Pittillo (pronounced "pi-TILL-o")
148 Pelzer Drive
Summerville, SC 29483
(843) 729-0701
apittillo@gmail.com (may be used, but call when sending anything so she checks it!)

Again, thank you so much for your help with this! Hopefully, it will move quickly and be time well spent for all of us.

Take care and talk to you soon,

Ken Henson
(954) 226-2260

**Phyllis Ewing**

**From:** Ken Henson <ken@kenhensonphoto.com>
**Sent:** Tuesday, December 01, 2015 8:49 AM
**To:** [redacted]
**Subject:** Fwd: Property in Summerville SC

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:51

---------- Forwarded message ----------
From: **Grey Hanna** <Grey@chambers-group.com>
Date: Fri, Apr 17, 2015 at 1:43 PM
Subject: RE: Property in Summerville SC
To: Ken Henson <ken@kenhensonphoto.com>

Thanks Ken. If anything changes let me know.

**From:** Ken Henson [mailto:ken@kenhensonphoto.com]
**Sent:** Friday, April 17, 2015 11:48 AM
**To:** Grey Hanna
**Subject:** Re: Property in Summerville SC

Hi Grey,

Thanks very much for your note.

I am the person you were looking for, but unfortunately am unable to consider offers on the property at this time. It is certainly possible that will change in the future and, if so, I will gladly contact you to discuss any interest you or your clients may have.

Thanks very much for your time and consideration,

Ken Henson

On Fri, Apr 17, 2015 at 9:06 AM, Grey Hanna <Grey@chambers-group.com> wrote:

Ken,

I am reaching out regarding property in Summerville that is under Ann P Pittillo Trustee of Trust EIP. I am not sure if I got the right Ken Henson of Ft Lauderdale but I have a client that has interest in the property and wanted to see if you are or know the right person to contact.

Any thoughts you have are greatly appreciated.

Thanks

Grey Hanna

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Charlotte, NC 28277

Office (704) 752-8350

Facsimile (704) 752-8349

Mobile (704) 301-1818

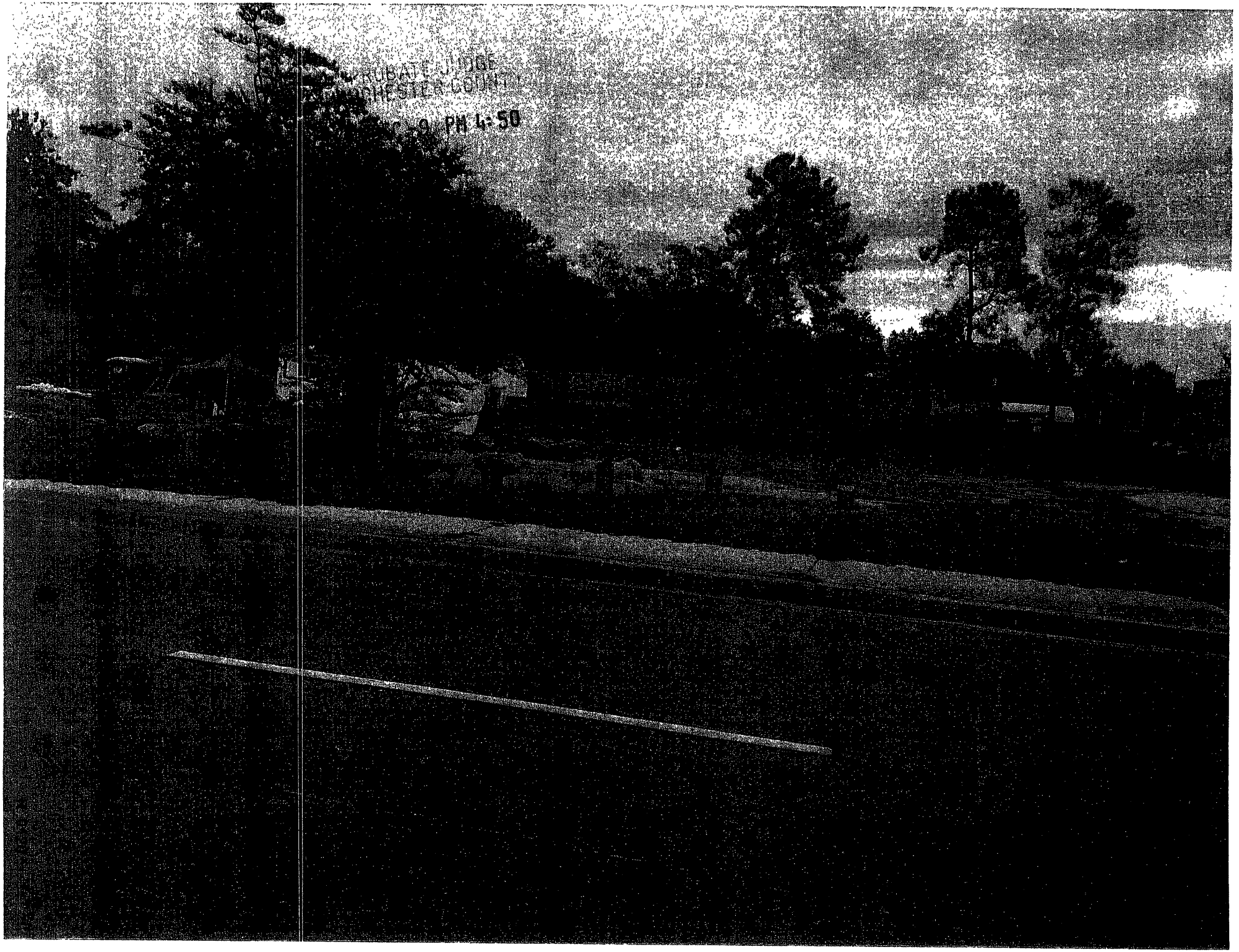
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PROBATE COURT
DORCHESTER COUNTY
2015 DEC -9 PM 4:50

**Exhibit D**

R 0 3 6


PROBATE JUDGE
CHESTER COUNTY
PM 4:50

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | CASE NO: 1994-ES-18-00147-2 |
| COUNTY OF DORCHESTER | ) | |
| | ) | |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON, | ) | |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| RESPONDENTS. | ) | |

PROBATE JUDGE
DORCHESTER COUNTY
2015 DEC -9 PM 4:50

I hereby certify that a copy of the foregoing **Motion for an Expedited Hearing** was served upon the parties below by regular mail with proper postage affixed thereto:

James E. Reeves, Esquire
James E. Reeves, P.A.
400 North Cedar Street
Summerville, SC 29483

Susann O. Williams

December 2, 2015

Charleston, SC

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) IN THE PROBATE COURT | |
| IN RE: ESTATE OF ANN PAGE PITTILLO<br><br>RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee,<br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., individually and as Personal Representative of the Estate of Ann Page Pittillo,<br>Respondent, | ) Case No.: 2014-ES-18-00592<br><br>**MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR APPOINTMENT OF SPECIAL FIDUCIARY AS INTERIM TRUSTEE** | |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br>Petitioners,<br><br>v.<br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br>Respondent, | ) Case No.: 2014-ES-18-00147-2 | 2016 JUN 29 PM 1:43 |

Respondent Albert T. Henson, Jr., individually and as Personal Representative of the Estate of Ann Page Pittillo (hereinafter "Respondent"), submits this memorandum of law in opposition to the Petitioners' motion seeking the appointment of a special fiduciary as interim trustee. The motion should be denied because (1) Petitioners failed to properly support their motion with any affidavits as required by S.C. R. CIV. PRO. 6(d) and (2) because the motion violates well-settled South Carolina law prohibiting this Court from altering the *status quo* by

transferring the possession and control of property from a litigant in possession to others who claim the right to possession when ownership of the property is in dispute.

Petitioners' motion requests the appointment of an interim trustee and to require Respondent to immediately turn over or relinquish possession, use, control, and ownership of commercial property located at 605 North Main Street, Summerville, South Carolina to the interim trustee. Respondent is the owner of the 605 North Main property based on an agreement that he entered into with his late grandmother (Eunice I. Page) in 1988. Pursuant to that agreement, Respondent has continuously possessed and used the property since 1988; has paid all taxes, insurance, and expenses for the property since 1988; has kept his personal property, equipment, and tools on the property since 1988; leases portions of the property to third-party tenants; and earns his livelihood from the business that he conducts on the property. The property is Respondent's sole source of income.

Petitioners argue that the property is owned by a Trust EIP created by virtue of the Last Will and Testament of Eunice I. Page dated October 14, 1992 (hereinafter "the EIP Trust"). Petitioners' motion asks this Court to alter the *status quo* by appointing an interim trustee and to authorize such interim trustee to have immediate possession, control, and authority over the 605 North Main property, including "management" of the property, "collection" of the rents and income generated thereby, and potentially selling the property. The interim trustee obviously cannot have this control or authority over the property unless the Court orders Respondent to vacate the property and to relinquish ownership and possession to the interim trustee.

Petitioners have not filed any affidavits with or in support of their motion. Instead, their motion papers discuss a loan and mortgage involving the property and make the unsupported allegation that "[t]he possibility of the Mortgage being foreclosed for non-payment of the Note is

a real threat to the Trust's main asset, and immediate measures need to be taken to protect this asset, including the possible sale of the property." *See* Motion for Expedited Hearing p. 2.

**A. Petitioners' Motion Was Not Properly Supported by Affidavit in Compliance with SCRCP 6(d):**

Petitioners did not file any affidavit with their motion when it was served on October 9, 2015 and have not since filed any affidavits to support the motion. The South Carolina Probate Code expressly states that "[t]he South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title." S.C. CODE ANN. § 62-1-304. Rule of Civil Procedure 6(d) mandates that "[w]hen a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences." S.C. R. CIV. PRO. 6(d) (emphasis added). This is a mandatory requirement.

Petitioners have supported their motion with nothing but lawyer argument. Settled law holds that arguments of counsel in a motion or memorandum are not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are also not evidence."); *McManus v. Bank of Greenwood,* 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); *Gilmore v. Ivey,* 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (the trial court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence); *S.C. Dept. of Transp v. Thompson,* 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("[a]rguments made by

counsel are not evidence"); *McClurg v. Deaton*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 n.1 (2011) ("Memorandum in support of a motion is not evidence.").[1]

Petitioners did not comply with Rule 6(d). They filed no affidavit with their motion. They have failed to show good cause or excusable neglect to excuse their noncompliance with the rule. Because they filed no affidavit in support of their motion, the Court has no grounds upon which to grant the motion. Thus, the motion must be denied on that basis alone.

**B. Petitioner Have Failed to Show that the Appointment of an Interim Trustee is Necessary or that the *Status Quo* Should be Altered by Requiring Respondent to Turn Over and Relinquish Possession, Control, and Ownership of the Property to any Interim Trustee Appointed by the Court.**

Although Petitioners' motion does not specifically ask for or analyze the requirements for injunctive relief, the substance of their motion seeks a mandatory injunction against Respondent. Petitioners' motion requests this Court to alter the *status quo* by appointing an interim trustee and to require Respondent to immediately turn over and relinquish possession, use, control, and ownership of the 605 North Main property to the interim trustee, even though ownership of the property is in dispute. Despite the fact that Respondent possesses and uses the property and claims ownership of the property, Petitioners nevertheless ask the Court to authorize the interim trustee to have immediate possession, control, and authority over the property, including "management" of the property, "collection" of the rents and income generated thereby, and potentially selling the property. The interim trustee obviously cannot have this control or

[1] In the event that Petitioners may attempt to submit untimely affidavits or evidence to support their motion, the affidavits and evidence should be excluded. *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 60, 488 S.E.2d 327, 329 (1997); *West v. Gladney*, 341 S.C. 127, 133, 533 S.E.2d 334, 337 (Ct. App. 2000). Although the Court has discretion to accept late affidavits, the party offering the untimely affidavit must make a motion showing good cause or excusable neglect for its failure to comply with the rule's deadline. S.C. R. CIV. PRO. 6(b)(2); *Black*, 488 S.E.2d at 329. Petitioners cannot meet this requirement in this case.

authority over the property unless the Court orders Respondent to vacate the property and to relinquish ownership and possession to the interim trustee.

Our state supreme court has recognized that labels are not determinative; instead, it is the substance of the requested relief that matters. *Sanford v. South Carolina State Ethics Com'n*, 385 S.C. 483, 495-96, 685 S.E.2d 600, 607 (2009) ("Because it is 'the substance of the requested relief that matters' and not the form in which the petition for relief is framed, we may construe the Governor's request as one for injunctive relief if that is substantively what he is requesting."); *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 437, 673 S.E.2d 448, 458 (2009) ("Our courts have held that '[i]t is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'"); *see also McDevitt v. Wellin*, 2016 WL 199626, *3 (D.S.C. 2016) ("The trust plaintiffs' motion also seeks to compel the Wellin children to make certain payments and take certain actions with respect to the Trust assets going forward. Thus, it falls within the definition of injunctive relief outlined above."); *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) ("Although the petition in this case was styled as a request for a writ of mandamus, we find that based on the relief sought, the County's pleading is more properly characterized as a request for an injunction. It is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'").

A party seeking to obtain a preliminary injunction "must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). South Carolina law recognizes two types of injunctions: prohibitory injunctions and mandatory

injunctions. A "prohibitory injunction" is defined as an injunction "that forbids or restrains an act." *Sanford*, 685 S.E.2d at 607 n.6 (citation omitted); *see also* 27 S.C. JUR. *Injunctions* § 3 (2016) ("An injunction that orders a person to refrain from doing a particular thing is variously designated as preventive, prohibitive, prohibitory, or negative."). "Prohibitory preliminary injunctions 'aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending.'" *Wellin v. Wellin*, 2013 WL 6175829, at *3 (D.S.C. Nov. 22, 2013).

A "mandatory injunction" is one that "compel[s] rather than prohibit[s] action." *Wellin*, 2013 WL 6175829 at *3. A mandatory injunction is "an extraordinary remedial process that commands the performance of some positive act." 27 S.C. JUR. *Injunctions* § 3. Mandatory preliminary injunctions "do not preserve the status quo." *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980). As a result, "courts apply the exacting preliminary injunction standard in an 'even more searching' manner than for the more common prohibitory preliminary injunctions." *Wellin*, 2013 WL 6175829 at *3. "A mandatory injunction is an especially drastic remedy and is rarely granted." *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (S.C. Ct. App. 1993) (citing *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950)), *aff'd in part, rev'd in part sub nom. Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). A request for a mandatory preliminary injunction should only be granted "when the exigencies of the situation demand such relief." *Wetzel*, 635 F.2d at 286 (citing *I.C.C. v. Baltimore & Annapolis R. Co.*, 64 F.R.D. 337 (D. Md. 1974)); *see also Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994) ("Mandatory preliminary injunctive relief in any circumstance is disfavored, and warranted only in the most extraordinary circumstances."); *Citizens Concerned for Separation of Church and State v. Denver*, 628 F.2d 1289, 1299 (10th Cir. 1980) ("It is fundamental that mandatory injunctive relief should be granted only under compelling circumstances inasmuch as it is a harsh

remedial process not favored by the courts."). A mandatory injunction "may not be availed of to secure a piecemeal trial." *Wetzel*, 635 F.2d at 286-87 (citation omitted).

"The issuance of a mandatory injunction depends upon the equities between the parties, and it rests in the sound judicial discretion of the court whether such an injunction should be granted." *Hunnicutt v. Rickenbacker*, 268 S.C. 511, 515-16, 234 S.E.2d 887, 889 (1977). "Where a great injury will be done to the defendant, with very little if any to the plaintiff, the courts will deny equitable relief." *Id.*

South Carolina law mandates that a preliminary injunction cannot be used to transfer the possession of property from a litigant in possession to another who claims the right to possession. In *Hood v. Edens*, 101 S.E. 822, 823 (S.C. 1919), our supreme court long ago held:

> It is not the province of a preliminary injunction to compel the transfer of property of any kind from one party to another. The party asking for an injunction is assumed to be in possession of the property in respect of which he demands protection, and all the injunction can require on the part of the opposite party is that he should forbear from interfering with that possession. He cannot be required to perform any act whatever. If the plaintiff cannot enjoy his rights without compelling the defendants to perform some act, he must wait until he has established them by his judgment.

*Id.* at 823; *see also Queen v. Swink*, 131 S.E. 324, 327 (1925) ("The purpose of an interlocutory injunction is merely to preserve the existing status during the litigation, and will not be allowed to have the effect of transferring the possession of property from a litigant in possession to another who claims the right of possession."); *Pelzer v. Hughes*, 3 S.E. 781, 784 (S.C. 1887) ("The sole object [of a temporary injunction] is to preserve the subject of controversy in the condition in which it is when the order is made, until an opportunity is offered for a full and deliberative investigation. It cannot be used to take property out of the possession of one person, and put it into that of another.").

In *Marshall v. Pence*, 2005 WL 7083978, *3 (S.C. Ct. App. 2005), for example, the appellants were in possession of real property used as a restaurant and bar. The respondents sued based on their contention that they had rights to the property that were superior to the appellants' lease. The circuit judge granted the respondents' motion for a preliminary injunction and ordered the appellants to vacate the premises and "immediately grant access to the said premises to" the respondents. However, the Court of Appeals reversed the circuit judge. The Court of Appeals observed that "[a]ppellants were in actual possession of the property prior to February 27, 2004 when the temporary injunction was issued." *Id.* The court held that "[o]rdinarily the purpose of a temporary injunction is merely to preserve the existing status during the litigation, and as a general rule, subject to some exceptions, it will not be allowed to have the effect of transferring the possession of property from a litigant in possession to another who claims the right to possession." *Id.* (citations omitted). The Court observed that "[i]f 'the right of possession is in dispute between two parties, one of whom is in actual possession under a claim or color of right, injunction will not, as a rule, lie to transfer possession to the other party.'" *Id.* (citing 43A C.J.S. *Injunctions* § 127 (2004)). In that case, the Court found that "there was some evidence that Appellants were in possession of [the property] by 'color of right.'" *Id.* "This evidence, whether disputed or not, prevents the trial court from transferring possession, thereby preserving the *status quo*." *Id.*

Similarly, in *Consol. Tires, Inc. v. Hamlett*, 2011 WL 11734681 (S.C. Ct. App. 2011), Hamlett occupied two houses on a tract of land owned by Consolidated Tires, Inc. (Consolidated). Consolidated sued to eject Hamlett from the property because it wanted to build new corporate headquarters on the property. The trial court granted Consolidated's motion for a temporary injunction and barred Hamlett from occupying the houses. However, the Court of

Appeals reversed and found: "Here, the circuit court abused its discretion. The temporary injunction was not necessary to preserve the status quo, and in fact, the injunction would do the opposite by removing Hamlett from the property." *Id.* at *1; *see also Bryant v. Epps*, 217 S.C. 361, 363, 60 S.E.2d 685, 686 (1950) ("It cannot be questioned that the roads that Plaintiffs seek to use here pass across lands in the actual possession of the Defendants and such roads were in the exclusive possession of the Defendants at the time that the temporary injunction was granted. Hence, the effect of such injunction was and is not transfer the possession of property from the possession of the Defendants into the possession of the Plaintiffs. This cannot be done.").

The case of *FOC Lawshe Ltd. Partnership v. International Paper Co.*, 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002) is also instructive. In that case, the Court refused to grant injunctive relief involving the use of real property when control of the property was in dispute. 574 S.E.2d at 233. Various hunt clubs had leased land from International Paper. The dogs released by the hunt clubs frequently crossed over from International Paper's lands onto FOC Lawshe's property causing a nuisance. FOC Lawshe moved for a temporary injunction to prohibit International Paper from allowing the use of dogs for hunting on its land. However, even though the Court found that the harm caused by the dogs invading FOC Lawshe's property was likely to continue, the Court nevertheless denied the injunction because there was conflicting evidence concerning whether International Paper maintained control over the activities occurring on its lands. *Id.* at 232-33. The Court held that "[w]hether International Paper retained complete control over its lands is a question of fact," "it is for the finder of fact to weigh the conflicting evidence in the record," and "[t]he fact finder must first decide whether International Paper retained complete control before the court can justify imposing an injunction prohibiting the use of hunting dogs on International Paper's property." Id. at 233. "Because the issue of control has not been

adjudicated, no injunction is needed, at this time, to preserve the status quo." *Id.*; *see also County of Richland v. Simpkins,* 348 S.C. 664, 671, 560 S.E.2d 902, 906 (Ct. App. 2002) (finding the operation of an alleged sexually oriented business could not be enjoined without first adjudicating whether the business had actually violated an ordinance because to do so would not preserve the parties' positions pending a decision on the merits); *Wellin*, 2013 WL 6175829 at *4 (noting that "a number of courts have declined to issue a preliminary injunction when there are significant factual disputes").

In the present case, Petitioners have not shown that a preliminary injunction is necessary to preserve the status quo. Indeed, the requested relief would do the opposite by dispossessing and removing Respondent from the 605 North Main property. It is undisputed that Respondent has possession of the property—he has possessed the property for the past 28 years. Ownership of the property is a disputed issue of fact. To grant the relief requested by Petitioners, this Court must necessarily adjudicate the question of ownership of property and transfer possession of the property from Respondent to the interim trustee sought by Petitioners, which would be improper at this preliminary stage. South Carolina law precludes this Court from altering—rather than preserving—the *status quo* by appointing an interim trustee and by authorizing that person to take over possession, control, and ownership of the property from Respondent.

Petitioners have also failed to satisfy the traditional requirements for issuance of a mandatory injunction. First, Petitioners have made no showing that they will suffer irreparable harm if a mandatory injunction is not granted. Petitioners make the bare claim in their motion papers that there is a mere "*possibility* of the Mortgage being foreclosed for non-payment of the Note." *See* Motion for Expedited Hearing p. 2. However, the standard for injunctive relief requires the movant to show that irreparable injury is "likely"—not "possible"—in the absence

of an injunction. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) ("Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction."). As shown by Respondent's affidavits, the loan and mortgage involving the property are current, the loan has never been overdue, there are no payments currently due or past due, and no payment is due on the loan until December 3, 2016. *See* Henson Aff. ¶ 18. Respondent owns or has access to sufficient assets with which to pay the loan in full when it becomes due and fully expects that the full amount of the note will be timely paid when due in December of 2016. *Id.* Respondent has reached out to the creditors for the loan and they have advised that they are willing to enter into an extension of the loan if that becomes necessary. *Id.* In short, there is no real, reasonable, or imminent risk that the 605 North Main property will be lost to foreclosure. *Id.*

Second, Petitioners have also failed to show that it is "likely" they will succeed on the merits of the litigation. As shown in the affidavits filed by Respondent, Respondent purchased the 605 North Main property from his grandmother (Eunice I. Page) in 1988. *See* Henson Aff. ¶¶ 4-9; Wright Aff. ¶¶ 3-6; Burbage Aff. ¶¶ 4-5. It is common knowledge that Respondent owns the property. *See* Wright Aff. ¶ 3, 6; Burbage Aff. ¶¶ 4-5. In accordance with this sale, Respondent has been in exclusive possession of the property since 1988, has occupied and used the property since that time, and has made permanent improvements to or upon the property. *See* Henson Aff. ¶ 10. Respondent has continuously been in possession, occupancy, and control of the property since 1988. *Id.* Respondent has paid all taxes, insurance, and expenses for the property since 1988; has kept his personal property, equipment, and tools on the property since 1988; leases portions of the property to third-party tenants; and earns his livelihood from the

business that he conducts on the property. *Id.* ¶¶ 10-13, 19. The property is Respondent's sole source of income. *Id.*

Third, Petitioners have failed to show an inadequate remedy at law. The loan and mortgage which Petitioners claim are a risk to the property do not become due until December 3, 2016. Petitioners have made no showing that the loan will not be paid on time or that an extension cannot be obtained. Moreover, the Court can conduct a trial involving the merits of the parties' respective claims before the loan becomes due. If Petitioners' are correct that the EIP Trust owns the property, the Court can grant them appropriate relief after a trial on the merits. However, it is unnecessary and inappropriate for the Court to grant so-called "interim" relief that will alter the *status quo*, will result in a piecemeal trial of the issues in this case, and will dispossess and evict Respondent from the property that he has possessed and used for the past 28 years and which he relies upon for his sole source of income.

Finally, because the relief requested by Petitioners is tantamount to a mandatory injunction, the Court must consider "the equities between the parties." By granting Petitioners' motion, a great injury will be done to the Respondent because he will be dispossessed or evicted from the property that he has possessed and used for the past 28 years and which he relies upon for his sole source of income. Respondent has his personal property, equipment, and tools on the property and earns his livelihood from the business that he conducts on the property. *See* Henson Aff. ¶¶ 11, 19. Respondent leases portions of the property to third-party tenants. It would require a tremendous expenditure of money and time to disassemble and remove all of Respondent's personal property, equipment, and tools from the property or to dispossess him from the property. *Id.* ¶ 20. It would also interfere with and disrupt Respondent's business, interfere with his agreements with the current tenants on the property, and cause him tremendous financial

harm to require him to remove his property, equipment, and tools from the property or to dispossess him from the property. *Id.* Dispossessing Respondent from the property would terminate his sole source of income. *Id.* In comparison, very little if any injury will result to the Petitioners if the motion is denied. As discussed above, there is no real risk that the property will be lost at a foreclosure.

**C. A Bond is Required Before the Court Can Grant Injunctive Relief.**

Under S.C. R. CIV. PRO. 65(c), a preliminary injunction shall not issue "except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." In *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009), the Court held that an adequate bond is a necessary prerequisite to the issuance of injunctive relief. *See also Atwood Agency v. Black,* 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (a nominal bond does not satisfy Rule 65(c) because it fails to provide "an amount sufficient to protect [the non-moving party] in the event the injunction is ultimately deemed improper."). Petitioners' motion nowhere states their willingness or ability to post a bond. The Court cannot grant injunctive relief to Petitioners without requiring them to post a bond in a sufficient amount to protect Respondent from all costs and damages that may be incurred if he is wrongfully enjoined. Because Petitioners are asking the Court for permission to interfere with Respondent's use and possession of valuable commercial property, the bond amount should be commensurate with the substantial financial damages that may be caused to Respondent.

**D. In the Alternative, if Appointment of an Interim Trustee is Deemed Necessary, Then the Court Should Appoint Respondent to the Position.**

In the alternative, only in the event the Court should deem it necessary to appoint a special fiduciary as interim trustee, which it should not for the reasons discussed above, then Respondent respectfully requests the Court to appoint the Respondent as the interim trustee.

Even assuming an interim trustee is necessary, Petitioners have failed to show any reason for appointing anyone other than Respondent to this position. Case law from around the country recognize that a person is not disqualified from acting as a trustee simply because that person is a trust beneficiary. *See* RESTATEMENT (SECOND) OF TRUSTS § 99(2) (1959) ("One of several beneficiaries of a trust can be the sole trustee of the trust."); *Rose v. O'Reilly*, 841 P.2d 3, 4 (Or. Ct. App. 1992) ("[A] person is not disqualified from acting as a trustee simply because that person is a trust beneficiary."); *Gonzalez v. Gonzalez*, 457 S.W.2d 440 (Tex. Civ. App. 1970) ("There is no prohibition of one of several beneficiaries of a trust serving as trustee of trust."); *In re Ervin Testamentary Trust*, 2010 WL 4259395, *5 (Mich. Ct. App. 2010) (affirming probate court's decision to allow the income beneficiary to serve as trustee of trust); *In re Peabody's Will*, 96 N.Y.S.2d 556 (N.Y. Sup. Ct. 1950) (son who was beneficiary of trust was not disqualified from acting as trustee).

There are compelling reasons for appointing Respondent as interim trustee to manage the 605 North Main property while this litigation is ongoing. Respondent is intimately familiar with and knowledgeable regarding the property and its current tenants because he has been occupying, using, leasing, and managing the property since 1988. *See* Henson Aff. ¶ 19. Respondent has been in exclusive possession of the property for approximately 28 years and has managed the property during that time period. *Id.* During that time he maintained and insured the property at his own expense and paid all of the real estate taxes associated with the property at his own

expense. *Id.* He currently has his own personal property, equipment, and tools located on the property and earns his livelihood from the business that he conducts on the property. *Id.* All of the personal property located on the property belongs to Respondent or to his tenants. *Id.*

For the forgoing reasons, Respondent respectfully requests that the Court deny the Petitioners' motion seeking the appointment of a special fiduciary as interim trustee. In the alternative, only in the event the Court should deem it necessary for any reason to appoint a special fiduciary as interim trustee, then Respondent respectfully requests the Court to appoint the Respondent as the interim trustee.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com
ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
June 27, 2016.

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) | IN THE PROBATE COURT |
| IN RE: ESTATE OF ANN PAGE PITTILLO<br><br>RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee,<br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., individually and as Personal Representative of the Estate of Ann Page Pittillo,<br>Respondent, | ) | Case No.: 2014-ES-18-00592<br><br>**AFFIDAVIT OF ALBERT T. HENSON, JR.** |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br>Petitioners,<br><br>v.<br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br>Respondent, | ) | Case No.: 2014-ES-18-00147-2 |

2014 APR 23 PM 1:43

Albert T. Henson, Jr., being first duly sworn, deposes and says:

1. I am over eighteen years of age, am competent to make this affidavit, and do so on my own personal knowledge.

2. I am the son of Ann Page Pittillo (hereinafter "Ann"), who died on April 20, 2014. My brothers are Richard S. Henson (hereinafter "Scott") and Vann K. Henson (hereinafter "Ken").

3. My grandmother was Eunice I. Page (hereinafter "Eunice"), who died on October 6, 1993. Ann was Eunice's daughter.

4. In 1988, prior to Eunice's death, she sold the property known as 605 North Main Street, Summerville, South Carolina, 29483, TMS No. 137-04-01-001.000 (hereinafter "605 North Main") to me in exchange for valuable consideration. Specifically, in 1988, Eunice and I agreed that in consideration of her conveyance of the 605 North Main property to me that I would pay her $375,000.00 and assume the obligations under three existing loans and mortgages on the property; that if Eunice died before I had fully paid the above-described consideration, then I would pay any remaining monies owed to Ann (Eunice's daughter and my mother); and that if both Eunice and Ann died before I fully paid the above-described consideration, then I would pay any remaining monies owed to my brothers (Scott and Ken). As the new owner of the property, I also became solely responsible for payment of all real estate taxes, property insurance, and maintenance on the property beginning in 1988. The property was and is used for commercial purposes and has some buildings and other improvements thereon. The property was formerly used for a car dealership and is sometimes referred to as the "car lot."

5. In 1988, attorney Walter Bailey, Esquire drafted a written agreement setting forth the terms of my agreement with Eunice involving the sale of the 605 North Main property. A true and correct copy of the draft of the agreement that was prepared by Mr. Bailey is attached hereto and incorporated herein as "Exhibit A." Eunice signed this agreement in 1988. However, the signed document cannot presently be located and is feared to be lost or misplaced. I am in the process of searching for the signed agreement and am contacting any persons who may have possession of the document.

6. I fully complied with my agreement with Eunice by paying the full consideration that was owed, by paying and satisfying the three loans and mortgages that had existed on the property, and by paying all real estate taxes, property insurance, utilities, and maintenance on the property. Most, if not all, of the payments that I made to Eunice and to Ann after Eunice died were made in cash.

7. My brothers were fully aware of the fact that Eunice had sold the 605 North Main property to me. My brothers did not file this current action challenging or disputing my ownership of the 605 North Main property until January of 2015, which was after both my grandmother and mother had passed away and was nearly 27 years after I had been in exclusive possession, occupancy, and control of the property. My brothers' delay in bringing these claims has caused significant prejudice to me in that it has severely impaired and impeded my ability to defend against their claims because of the substantial lapse of time, the death and/or unavailability of witnesses, the dulling or loss of witnesses' memory due to the lapse of time, and the destruction or loss of documentation and other evidence.

8. Based on the documents that I have been able to locate as of this time, the following is only a *partial* list of payments that I made from my own funds pursuant to my agreement with Eunice:

Property Taxes for 605 North Main

| | |
|---|---|
| 1988 | $9,180.74 |
| 1989 | $8,859.96 |
| 1990 | $9,795.35 |
| 1991 | $10,730.74 |
| 1992 | $11,666.13 |
| 1993 | $12,601.55 |
| 1994 | $10,405.97 |
| 1995 | $10,667.29 |
| 1996 | $11,108.14 |
| 1997 | $11,355.85 |

| | |
|---|---|
| 1998 | $12,758.12 |
| 1999 | $12,923.40 |
| 2000 | $12,278.42 |
| 2001 | $12,649.08 |
| 2002 | $12,959.40 |
| 2003 | $12,981.58 |
| 2004 | $13,012.03 |
| 2005 | $14,499.66 |
| 2006 | $15,161.67 |
| 2007 | $17,106.29 |
| 2008 | $17,112.88 |
| 2009 | $24,528.90 |
| 2010 | $19,982.55 |
| 2011 | $57,577.17 |
| 2012 | $19,826.83 |
| 2013 | $17,855.60 |
| 2014 | $18,283.83 |
| 2015 | $21,295.76 |
| Subtotal: | $439,173.89 |

Expenses/Maintenance for 605 North Main

| | | |
|---|---|---|
| Nov. 1991 | $91.40 | Coastal Glass Distributors |
| Nov. 1991 | $92.75 | Coastal Glass Distributors |
| Jan. 1995 | $3,520.00 | Sunlife Systems International, Inc. |
| Aug. 1996 | $55.00 | Larry's Heating, Air Conditioning & Electric |
| Nov. 1997 | $125.00 | Archispec Building Inspectors |
| Oct. 2001 | $3,500.00 | Pardee Service Experts |
| — | $24.92 | Bill's Air Compress Service |
| Subtotal: | $8,009.07 | |

Payments Made Directly to Eunice Page

| | |
|---|---|
| March 1988 | $950.00 |
| April 1988 | $950.00 |
| May 1988 | $950.00 |
| June 8, 1988 | $950.00 |
| July 15, 1988 | $950.00 |
| August 6, 1988 | $950.00 |
| Sept. 15, 1988 | $950.00 |
| Oct. 15, 1988 | $950.00 |
| Nov. 6, 1988 | $950.00 |
| March 3, 1988 | $950.00 |
| April 13, 1988 | $950.00 |
| June 1989 | $950.00 |
| July 1989 | $950.00 |

| | |
|---|---|
| Aug. 3, 1989 | $950.00 |
| Sept. 9, 1989 | $950.00 |
| Oct. 10, 1989 | $950.00 |
| Nov. 7, 1989 | $950.00 |
| Dec. 5, 1989 | $1,000.00 |
| Jan. 7, 1989 | $1,000.00 |
| Feb. 9, 1989 | $1,000.00 |
| March 13, 1989 | $1,000.00 |
| April 9, 1989 | $1,000.00 |
| May 1, 1989 | $1,500.00 |
| June 6, 1990 | $1,500.00 |
| July 11, 1990 | $1,600.00 |
| Aug. 3, 1990 | $1,600.00 |
| Sept. 10, 1990 | $1,600.00 |
| Oct. 15, 1990 | $1,600.00 |
| Nov. 19, 1990 | $1,600.00 |
| Dec. 8, 1990 | $1,600.00 |
| Jan. 1991 | $1,600.00 |
| Feb. 1991 | $1,600.00 |
| March 26, 1991 | $1,600.00 |
| May 1, 1991 | $1,600.00 |
| May 20, 1991 | $800.00 |
| June 7, 1991 | $1,600.00 |
| July 6, 1991 | $1,600.00 |
| Aug. 15, 1991 | $1,600.00 |
| Sept. 27, 1991 | $1,600.00 |
| Feb. 1992 | $500.00 |
| Subtotal: | $47,850.00 |
| Total: | $495,032.96 |

9. I continued to make payments to Eunice after February of 1992 until she died in October of 1993 at which point I began making payments to Ann pursuant to my agreement with Eunice. Even though I had fully paid the purchase price for the property under my agreement with Eunice before my mother (Ann) passed away in April of 2014, I nevertheless continued to make payments to my mother until her death (even though I was not legally obligated to do so) because I wanted to ensure that my mother was cared for and I had assured my grandmother that I would take care of my mother. To my knowledge, neither of my brothers provided financial

support to my mother. I am presently collecting the available bank records and other documentation for the payments that I made after February of 1992.

10. In accordance with this sale of the property by Eunice to me and my ownership of the property, I have been in exclusive possession of the 605 North Main property since 1988, have occupied and used the property since 1988, and have made permanent improvements to or upon the property which enhance the property's value. The improvements that I made to the property include, but are not limited to:

- Rekeyed door locks for all existing doors on property.
- Installed concrete drainage pipe and covered existing open ditch.
- Repaired gas heaters.
- Installed new HVAC system.
- Installed new ductwork.
- Put new asphalt shingle roof on separate car garage.
- Installed new lighting, electrical wiring, and vinyl siding for separate car garage.
- Installed new alarm system.
- Installed several new metal doors.
- Reframed openings for new metal overhead doors.
- Installed several new metal overhead doors.
- Repaired and maintained metal doors.
- Added pavement.
- Installed shed roof and added electrical wiring.
- Erected privacy fencing.
- Cut down and removed several large pine trees.
- Paved driveway and parking area with gravel.
- Installed new metal roofing on main building.
- Replaced several glass storefront windows.
- Repaired roof leaks/resealed roof.
- Re-screwed metal roof.
- Replaced electrical wiring to main building.
- Installed new exhaust fans.
- Replaced motor for exhaust fan.
- Cleaned interior drainage system.
- Installed new interior walls.
- Installed interior gutter between buildings.
- Installed wood steps.
- Repaired damaged steps.
- Installed oil drum.
- Painted paint booth/redid wiring for paint booth.
- Cleaned out paint booth exhaust fans.

- Waterproofed ground level areas.
- Installed numerous new lighting fixtures.
- Removed and covered alignment pit.
- Repaired front planter.
- Removed floor tiles.
- Installed drop down ceiling and tiles.
- Excavated and repaired damaged water lines under driveway.

The fact that I have continuously been in possession, occupancy, and control of the 605 North Main property since 1988 has been well known, open, and obvious to Eunice, Ann, my brothers (Scott and Ken), others dealing with me and the property, and the general public.

11. I currently have my own personal property, equipment, and tools located on the property and earn my livelihood from the business that I conduct on the property. My personal property includes many quite large items including airplanes, a camper, vehicles, boats, scaffolding, equipment, tools, building materials, chain falls, engine lifts, shelving, and other items. My personal property, equipment, and tools have been located on the property since the 1980's. The property currently is my sole source of income.

12. In accordance with this sale of the property by Eunice to me and my ownership of the property, the power or utility bills for the 605 North Main property were changed to my name as owner of the property during the 1980's. Additionally, during that same time the locks for the doors to the buildings on the property were changed or rekeyed so that I had the keys as the owner. I also installed a new alarm system. I alone have controlled and restricted access to the property (excepting those portions that I leased to tenants) since 1988.

13. In accordance with this sale of the property by Eunice to me and my ownership of the property, since 1988 I have from time-to-time leased or rented the 605 North Main property or portions thereof to various third-parties, including individuals or businesses that conducted business operations on the property, and received the rents from these tenants. Kane Wright

presently rents a portion of the 605 North Main property for his landscaping business known as Arrow Grounds Maintenance and Landscaping, LLC. As part of his use of the property, he routinely parks and stores various trucks, vehicles, equipment, and trailers on the property. In the past, Dustin Hunter also rented a portion of the property for his cabinetry business. In approximately the 1980's, my brother (Scott) and his wife (Debra) referred a local Kubota tractor dealership to me as owner of the 605 North Main property to be a tenant of the property. Kubota leased the property from me as a tenant for several years in the late 1980's and/or early 1990's.

14. Since 1988, neither Eunice, Ann, nor my brothers (Scott and Ken) have been in possession of the 605 North Main property, have maintained the property, have paid any real estate taxes on the property, have paid any insurance on the property, or have otherwise exercised any rights of ownership to the property. To my knowledge, neither of my brothers have set foot on the property since 1988. My brothers have paid no taxes, insurance, or maintenance expenses associated with 605 North Main property since I became owner of the property in 1988. Despite being well aware of my ownership, occupancy, and possession of the 605 North Main property since 1988, at no time prior to this litigation did Eunice, Ann, or either of my brothers attempt to use or possess the property or seek to evict or otherwise remove me from possession or control of the property.

15. I am informed that my brothers (Scott and Ken) contend in this current litigation that the 605 North Main property belongs to or is owned by a Trust EIP created by virtue of the Last Will and Testament of Eunice I. Page dated October 14, 1992 (hereinafter "the EIP Trust"). However, the 605 North Main property is not owned by or an asset of the EIP Trust.

16. Because of Eunice's sale of the 605 North Main property to me in 1988, she had no ownership interest in the property in 1992 that she could convey or transfer to the EIP Trust

by virtue of her Last Will and Testament dated October 14, 1992. The 605 North Main property is not an asset of the EIP Trust and the EIP Trust has no rights to the property. To my knowledge the EIP Trust has no other assets or property.

17. I am further informed that my brothers (Scott and Ken) are requesting this Court to alter the status quo in this current litigation by granting them interim relief and that they contend it is necessary for the Court to immediately appoint a special fiduciary as interim trustee, to authorize or empower such special fiduciary to have control or authority over the 605 North Main property that I own, and to authorize or empower such special fiduciary to "manage" the property and "collect" the rents and income generated by the property. My brothers are asking this Court to rule on the merits at this interim or premature stage and to determine that the Trust is the owner the 605 North Main property and that I have no ownership interest in the property. I adamantly dispute that a special fiduciary is necessary under the circumstances of this case or that any such person should have control or authority over the 605 North Main property that I own.

18. I am also informed that my brothers allege that they are concerned about a loan and mortgage involving the 605 North Main property. My brothers argue in their papers that "[t]he possibility of the Mortgage being foreclosed for non-payment of the Note is a real threat to the Trust's main asset, and immediate measures need to be taken to protect this asset, including the possible sale of the property." These assertions are meritless. The loan and mortgage involving the property are current, the loan has never been overdue in the past, there are no payments currently due or past due, and no payment is due on the loan until December 3, 2016. I own or have access to sufficient assets with which to pay the loan in full when it becomes due and I fully expect that the full amount of the note will be timely paid when due in December of

2016. I have reached out to the creditors for the loan and they have advised that they are willing to enter into an extension of the loan if that becomes necessary. There is no real, reasonable, or imminent risk that the 605 North Main property will be lost to foreclosure or that the EIP Trust will be harmed even assuming the trust has any interest in the 605 North Main property, which is denied. The appointment of a special fiduciary on an interim basis is unnecessary to preserve any assets of the EIP Trust even assuming the trust has any interest in the 605 North Main property.

19. I respectfully request the Court to deny my brothers' motion for appointment of a special fiduciary as interim trustee. In the alternative, only in the event the Court should deem it necessary for any reason to appoint a special fiduciary as interim trustee, then I respectfully request the Court to appoint me to this position. I am intimately familiar with and knowledgeable regarding the 605 North Main property and its current tenants and have been occupying, using, leasing, and managing the property since 1988. As explained above, I have been in exclusive possession of the property for approximately 28 years and have managed the property during that time period. Since that time I have maintained and insured the property at my own expense and I have paid all of the real estate taxes associated with the property at my own expense. I have exercised all of the rights of ownership of the property, including occupying, using, and leasing the property. I currently have my own personal property, equipment, and tools located on the property and earn my livelihood from the business that I conduct on the property. All of the personal property located on the property belongs to me or to my tenants. I have managed the property for approximately 28 years with no complaint or objection raised by Eunice, Ann, or my brothers until my brothers filed this current litigation in January of 2015 after both my grandmother and mother had passed away.

20. It would require a tremendous expenditure of money and time to disassemble and remove all of my personal property, equipment, and tools from the property or to dispossess me from the property. I estimate it will cost tens of thousands of dollars to remove or relocate my property, equipment, and tools from the property. It would also interfere with and disrupt my business, interfere with my agreements with the current tenants on the property, and cause me tremendous financial harm and other damages to require me to remove my property, equipment, and tools from the property or to dispossess me or my tenants from the property. As stated above, the property currently is my sole source of income. Thus dispossessing me would terminate my sole source of income.

FURTHER AFFIANT SAYETH NAUGHT.

Albert T. Henson, Jr.

SWORN to and subscribed before me this
27th day of June, 2016.

Notary Public for the State of South Carolina
My commission expires: 1/22/2025

2016 JUN 29 PM 1:44

STATE OF SOUTH CAROLINA

AGREEMENT

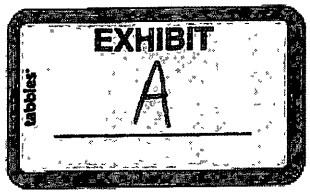
AGREEMENT made and concluded this ____ day of _____, A. D., 1988, by and between EUNICE I. PAGE, also known as INEZ E. PAGE, of the Town of Summerville, County of Dorchester, State aforesaid, hereinafter referred to as "PAGE", and ALBERT T. HENSON, JR., of the Town of Summerville, the County of Dorchester, State aforesaid, hereinafter referred to as "HENSON".

WHEREAS, PAGE is the owner of real property situate in the Town of Summerville, County of Dorchester, State of South Carolina, more particularly known as _____ North Main Street, Summerville, South Carolina, 29483; and

WHEREAS, HENSON is desirous of purchasing the aforementioned property, and PAGE is desirous of selling same to HENSON; and

WHEREAS, the parties hereto are desirous of entering into a written agreement establishing the consideration, terms, stipulations and conditions for the sale of the aforementioned property by PAGE to HENSON; NOW, THEREFORE,

THIS AGREEMENT WITNESSETH, that in consideration of the premises and of the mutual covenants and agreements hereinafter expressed, and the sum of Five Dollars ($5.00) paid by HENSON PAGE on the date hereof (the receipt of which is hereby acknowledged by PAGE), the said parties do hereby covenant and agree the one with the other as follows, to wit:



FIRST: That PAGE does hereby agree to sell, and HENSON does hereby agree to purchase, the aforementioned property for the total consideration of THREE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS ($375,000.00) plus assumption of balances due on the three (3) mortgages presently secured by the subject property.

SECOND: That the parties hereto acknowledge that the subject property is presently under lease and, after the payment of the monthly payments due on each of the three mortgages thereon, a net rental income of $950.00 per month is derived therefrom; that the parties do hereby agree that until such time as the last of the three mortgages are paid in full and satisfied, PAGE shall continue to receive for and during her lifetime the net rental income of $950.00 per month from said property and, at such time as the last of the three mortgages is paid in full and satisfied, PAGE shall then receive for and during her lifetime the net rental income of $1,500.00 per month from said property; that the parties do hereby further agree that each of these monthly payments shall be credited to and applied towards the total purchase price due from HENSON. to PAGE.

THIRD: That the parties hereto agree that in the event rental income is no longer derived from the subject property and there remain any sums due and owing by HENSON for the purchase of said property, HENSON does hereby agree to promptly make whatever arrangements may be necessary to secure continued monthly payments at the same rate and in the same manner as the rental income which had been derived therefrom until such time as the total purchase price has been paid in full.

FOURTH: That the parties hereto agree that in the event of the demise of PAGE, the payments due to her under the within agreement shall be paid over monthly, in equal shares, to ANN PAGE HENSON PITTILLO, RICHARD SCOTT HENSON, and VAN KENNETH HENSON; PROVIDED, HOWEVER, that any and all sums due to VAN KENNETH HENSON hereunder shall be held in trust by ANN PAGE HENSON PITTILLO, RICHARD SCOTT HENSON, and ALBERT T. HENSON, JR., to be placed in an interest-bearing account to provide for the education of VAN KENNETH HENSON and, upon completion of his education, the Trustees may pay over to VAN KENNETH HENSON such sums as the Trustees, in their sole discretion, determine necessary; PROVIDED, HOWEVER, that at such time as the said VAN KENNETH HENSON attains the age of Thirty (30) years, the corpus of the trust shall be released to him, in its entirety, free of trust.

FIFTH: That the parties hereto agree that in the event ANN PAGE HENSON PITTILLO, RICHARD SCOTT HENSON, or VAN KENNETH HENSON should die prior to the termination of the within agreement any and all sums due and owing to them pursuant to Item Fourth hereinabove shall be divided equally between the survivor, or survivors, of them, to the exclusion of the deceased party's spouse or estate.

SIXTH: That the parties hereto agree that closing shall take place on or before _____, 1988, at which time the parties hereto shall execute any and all documents necessary to transfer title of the subject property to HENSON as well as any documents necessary in order for HENSON to assume the payment of the balances due on the three (3) mortgages secured by the said property as well as such other documents as may be deemed necessary to further secure HENSON's obligation to PAGE for the payment of the total purchase price.

SEVENTH: That the parties hereto agree that PAGE shall bear the expense of the following closing costs:

_____

_____;

and HENSON shall bear the expense of the following closing costs:

_____

_____.

EIGHTH: That the parties hereto covenant and agree that this agreement and the terms and conditions hereunder shall survive closing and be binding upon and inure to the benefit of their respective heirs and assigns.

NINTH: That the parties hereto covenant and agree that this agreement shall not be varied or modified in any way without the express written consent of all parties hereto.

TENTH: That the parties hereto covenant and agree that all matters affecting the interpretation of this agreement and the parties hereto in relation to same shall be governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have set their respective Hands and Seals at Summerville, South Carolina, on the day and year first above written.

SIGNED, SEALED AND DELIVERED
In the Presence of:

_____

_____
As to PAGE

_____

_____
As to HENSON

_____
EUNICE I. PAGE
also known as INEZ E. PAGE

_____
ALBERT T. HENSON, JR.

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>IN RE: ESTATE OF ANN PAGE PITTILLO<br><br>RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee,<br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., individually and as Personal Representative of the Estate of Ann Page Pittillo,<br>Respondent, | ) | IN THE PROBATE COURT<br><br>Case No.: 2014-ES-18-00592<br><br>**AFFIDAVIT OF JIM WRIGHT** |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br>Petitioners,<br><br>v.<br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br>Respondent, | ) | Case No.: 2014-ES-18-00147-2 |

2015 JAN 29 PM 1:44

Jim Wright, being first duly sworn, deposes and says:

1. I am an adult citizen and resident of Summerville, South Carolina. I am married to Roxie Wright and am the father of Kane Wright. Kane owns and operates a landscaping business in Summerville known as Arrow Grounds Maintenance and Landscaping, LLC.

2. I personally knew Eunice I. Page ("Eunice"), who died in 1993, and Ann Page Pittillo ("Ann"), who died in 2014. I also personally know Al Henson ("Al" or "Hicky"), Scott Henson ("Scott"), and Ken Henson ("Ken" or "Corky"), who are Ann's sons and Eunice's grandsons. I have known the Henson family members for many years.

3. I am familiar with the property at 605 North Main Street, Summerville, South Carolina. The property was formerly used for a car dealership and is frequently referred to as the

"car lot." My son presently leases a portion of the "car lot" property from Al for his landscaping business and has done so for more than ten years. Since the 1980's, I have understood that the "car lot" property is Al's property and that he owns the property.

4. On several occasions in the 1980's, I personally heard Eunice say that "Hicky" or Al had bought the "car lot" property from her or that she had sold the "car lot" to him. On one specific occasion during the 1980's, I was personally present at my mother-in-law's beauty shop when Eunice told those present (including my mother-in-law, Mary Strobel, and Sharon Burbage) that "Hicky" or Al had bought the "car lot" property from her.

5. On several occasions in or about the 1980's, I also heard Ann say that "Hicky" or Al had bought the "car lot" property from Eunice or that Eunice had sold the "car lot" to Al. On a particular occasion when I was doing some landscape work at Ann's home, Ann told me that "Hicky" or Al had bought the "car lot" property from Eunice and that Scott had bought a separate home from Eunice that was located about a block away from the "car lot" property. Ann said that "Hicky" bought the "car lot" and Scott bought the home.

6. It was common knowledge that Eunice had sold the "car lot" property to Al. I was very surprised to recently learn that Scott and Ken filed a lawsuit in 2015 against Al (their own brother) claiming that they have an interest in the "car lot" property. I have personally seen Al use and occupy the property at 605 North Main Street on a continuous basis since the 1980's. I have never seen Scott, Ken, or Ann use the property.

FURTHER AFFIANT SAYETH NAUGHT.

Jim Wright

SWORN to and subscribed before me this
17th day of June, 2016.

Notary Public for the State of South Carolina
My commission expires: 1/22/2025

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | |
| COUNTY OF DORCHESTER | ) | |
| | ) | |
| IN RE: ESTATE OF ANN PAGE PITTILLO | ) | |
| | ) | |
| RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee, Petitioners, | ) | Case No.: 2014-ES-18-00592 |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR., individually and as Personal Representative of the Estate of Ann Page Pittillo, Respondent, | ) | **AFFIDAVIT OF LEE AGNEW** |
| | ) | |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| | ) | Case No.: 2014-ES-18-00147-2 |
| RICHARD S. HENSON and VANN KENNETH HENSON, Petitioners, | ) | |
| | ) | |
| v. | ) | |
| ALBERT T. HENSON, JR. and JULIAN REID HENSON, Respondent, | ) | |

2016 JUL 29 PM 1:39

Lee Agnew, being first duly sworn, deposes and says:

1. I am an adult citizen and resident of Summerville, South Carolina. I formerly owned and operated a locksmith business.

2 I personally know Al Henson ("Al" or "Hicky"). I am also familiar with the property at 605 North Main Street, Summerville, South Carolina. The property was formerly used for a car dealership. Since the 1980's, I have understood that the property is Al's property and that he owns the property.

3. In the 1980's, I personally did work for Al at the 605 North Main Street property. At that time, as the new owner of the property, Al hired me to rekey all of the door locks to the

buildings that were located on the property. I recall rekeying approximately six doors on the property at that time.

4. Based on my observations, Al has occupied and used the property at 605 North Main Street on a continuous basis since the 1980's.

FURTHER AFFIANT SAYETH NAUGHT.

Lee Agnew

SWORN to and subscribed before me this
28 day of June, 2016.

Notary Public for the State of South Carolina
My commission expires: 11/5/2025

K COLLINS NOTARY PUBLIC MY COMMISSION EXPIRES 11/5/2025 SOUTH CAROLINA

## CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2016, true and correct copies of (a) the Affidavit of Lee Agnew and (b) the Affidavit of Kane Wright were hand-delivered to the following:

Barry I. Baker, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

By:_____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

2016 JUN 29 PM 1:39

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) | IN THE PROBATE COURT |
| IN RE: ESTATE OF ANN PAGE PITTILLO | ) | |
| RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee,<br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., individually and as Personal Representative of the Estate of Ann Page Pittillo,<br>Respondent, | ) | Case No.: 2014-ES-18-00592<br><br>**AFFIDAVIT OF SHARON BURBAGE** |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br>Petitioners,<br><br>v.<br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br>Respondent, | ) | Case No.: 2014-ES-18-00147-2 |

2016 JUN 23 PM 1:44

Sharon Burbage, being first duly sworn, deposes and says:

1. I am an adult citizen and resident of Jedburg, South Carolina.

2. I personally knew Eunice I. Page ("Eunice") and Ann Page Pittillo ("Ann"), who are now both deceased. Eunice died many years before Ann died. I also personally know Al Henson ("Hicky"). I am aware that Hicky, Scott Henson, and Ken Henson are Ann's sons and Eunice's grandsons, although I don't know Scott or Ken personally.

3. I formerly worked as a hairdresser at a beauty shop that was owned by Mary Strobel, who is now deceased. Eunice was a frequent customer at the beauty shop and I would overhear her speak with Mrs. Stobel and others while she was present at the shop. I also sometimes provided hairdressing services to Eunice, although she was not my regular customer.

4. I am familiar with the property at 605 North Main Street, Summerville, South Carolina. That property was formerly used for a car dealership and is sometimes called the "car lot." For many years I have understood that the "car lot" property is Hicky's property and that he owns the property.

5. Before Eunice's death, I recall an occasion when Eunice was at the beauty shop and I personally heard her tell those who were present (including Mary Strobel) that "Hicky" had bought the "car lot" property from her or that she had sold the "car lot" to him.

FURTHER AFFIANT SAYETH NAUGHT.

Sharon H Burbage

Sharon Burbage

SWORN to and subscribed before me this
22 day of June, 2016.

Jonathan Malone

Notary Public for the State of South Carolina
My commission expires: 7/6/25

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER | ) | IN THE PROBATE COURT |
| IN RE: ESTATE OF ANN PAGE PITTILLO | ) | |
| RICHARD SCOTT HENSON, individually and as devisee and VANN KENNETH HENSON, individually and as devisee,<br>Petitioners,<br><br>v. | ) | Case No.: 2014-ES-18-00592 |
| ALBERT T. HENSON, JR., individually and as Personal Representative of the Estate of Ann Page Pittillo,<br>Respondent, | ) | **AFFIDAVIT OF KANE WRIGHT** |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | Case No.: 2014-ES-18-00147-2 |
| RICHARD S. HENSON and VANN KENNETH HENSON,<br>Petitioners,<br><br>v.<br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br>Respondent, | ) | |

2016 JUN 29 PM 1:38

Kane Wright, being first duly sworn, deposes and says:

1. I am an adult citizen and resident of Summerville, South Carolina. I own and operate a landscaping business in Summerville known as Arrow Grounds Maintenance and Landscaping, LLC.

2. I personally know Al Henson ("Al") and am familiar with the property at 605 North Main Street, Summerville, South Carolina. The property was formerly used for a car dealership and is frequently referred to as the "car lot."

3 I presently lease a portion of the "car lot" property from Al for my landscaping business and have done so for more than ten years. I have always understood that the "car lot"

property is Al's property and that he owns the property. I have always made rent payments directly to Al.

4. I was very surprised to recently learn that Al's brothers (Scott Henson and Ken Henson) have filed a lawsuit claiming that they have an interest in the "car lot" property. Since I began leasing a portion of the property many years ago, I have personally seen Al use and occupy the other portion of the property at 605 North Main Street on a continuous basis. I have never seen Scott or Ken present on the property or seen them use the property. I have never made any rent payments to Scott or Ken.

FURTHER AFFIANT SAYETH NAUGHT.

Kane Wright

SWORN to and subscribed before me this
29th day of June, 2016.

Notary Public for the State of South Carolina
My commission expires: Sept 11th 2025

JOSHUA WILBANKS NOTARY PUBLIC SOUTH CAROLINA COMM EXP SEPTEMBER 11, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of June, 2016, true and correct copies of (a) the Affidavit of Lee Agnew and (b) the Affidavit of Kane Wright were hand-delivered to the following:

Barry I. Baker, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

By:_____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

2016 JUN 29 PM 1:39

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| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER | ) | IN THE PROBATE COURT |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., and JULIAN REID HENSON,<br><br>Respondents. | ) | Case No. 1994-ES-18-00147-2<br><br>**PETITIONERS' REPLY TO RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION FOR APPOINTMENT OF SPECIAL FIDUCIARY AS INTERIM TRUSTEE** |

2016 JUN 29 PM 1:15

Petitioners Richard S. ("Scott") Henson and Vann Kenneth ("Ken") Henson submit this Reply to Respondent Albert T. ("Al") Henson, Jr.'s Memorandum in Opposition to Petitioners' Motion for Appointment of Special Fiduciary as Interim Trustee ("the Opposition Memo").

## I. Petitioners' motion should be granted without consideration of any affidavits because the requested appointment of an interim trustee is fully supported by the pleadings, which demonstrate that there is an undisputed vacancy in the trusteeship of the Trust.

Respondent's argument that Petitioners' motion should be denied under Rule 6(d), SCRCP, because it is not supported by affidavit is flawed because it is based on a fundamental misunderstanding of the remedy requested in the motion and the procedure for obtaining that remedy. Contrary to Respondent's claim that Petitioners are seeking a preliminary injunction, Petitioners merely seek the appointment of an interim trustee to fill an undisputed vacancy in a trusteeship. Petitioners and Respondent have admitted in their pleadings that such vacancy exists and that they cannot agree on a successor trustee. Therefore, no affidavit is needed to support this motion.

6/29/16

Petitioners filed their motion pursuant to S.C. Code Ann. § 62-7-704. Section 62-7-704(b) mandates that a "vacancy in a trusteeship **must** be filled if the trust has no remaining trustee." (Emphasis added.) Under § 62-7-704(c), the trusteeship "**must** be filled" in the following order: (1) by a person designated in the trust; (2) by a person appointed by unanimous agreement of the qualified beneficiaries; and (3) by a person appointed by the court. (Emphasis added.) Section 62-7-704(e) further provides that "the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust." The appointment of special fiduciary is made pursuant to the procedural requirements of § 62-3-614, which provides that a special fiduciary may be appointed "in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the [trust] or to secure its proper administration including its administration in circumstances where a [the trustee] cannot or should not act."

In the present motion, Petitioners request that the Court appoint a special fiduciary to serve as an interim trustee because an undisputed vacancy in the trusteeship of the Trust makes the appointment necessary for the administration of the trust. In order to appoint this interim trustee pursuant to §§ 62-7-704(e) and 62-3-614, the Court is required only to find, after notice and hearing, that the appointment of the special fiduciary as interim trustee is necessary to preserve the trust or to secure its proper administration. It is not necessary for the Court to consider any affidavits to make such a finding because Petitioners' and Respondent's pleadings substantiate that the trusteeship of the Trust is vacant, that no successor trustee has been appointed, and that the parties cannot agree on a successor trustee. (*See* Pets.' Amended Petition to Appoint Successor Trustee and for Subsequent Estate Administration, Respondent's Answer, Counterclaim and Cross-Claim.) Although the parties dispute whether certain property is an asset of the Trust, that

dispute does not preclude the appointment of a special fiduciary to serve as an interim trustee of the Trust, determine the scope of assets held by the Trust, and administer the Trust. Given that there is a dispute regarding the Trust assets amongst the beneficiaries, the Trust necessarily requires an independent trustee to ensure that the interest of the Trust, whatever that interest may be, is being protected. Because the pleadings in this case clearly establish the existence of the dispute while also revealing that the trusteeship is vacant, the Court can rely solely on them to make a finding that would support the appointment of a special fiduciary without considering any affidavits.

Moreover, there is nothing in Rule 6(d), SCRCP, that requires Petitioners to support their motion for appointment of a special fiduciary as interim trustee with supporting affidavits. Although Respondent seems to suggest that Rule 6(d) requires affidavits to be submitted with any motion, that suggestion is contrary to the clear language of the rule. Rule 6(d)'s requirement for affidavits to be served with a motion is expressly qualified by the antecedent clause, which makes the requirement applicable only "when a motion is to be supported by affidavit." (Emphasis added.) The plain language of that clause makes clear that affidavits are not always required to be served with a motion. Respondent's interpretation of Rule 6(d) would render that clause superfluous, and therefore, the Court should reject it. *See Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) ("In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes."); *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.")

Affidavits are also not necessary to support Petitioners' motion because the Court can consider live testimony from the parties or witnesses if it determines that it needs further

information to make the necessary findings to support the appointment of an interim trustee. Section 62-3-614, which governs Petitioners' motion, requires only that the Court hold a formal proceeding on the petition of any interested person after notice and hearing. The Court has the inherent ability to consider live testimony within the appropriate standard and scope in lieu of affidavits, and Petitioners can present witnesses if the Court desires it. Accordingly, the absence of affidavits filed in support of Petitioner's motion should not preclude the Court from appointing an interim trustee pursuant to Petitioners' motion.

## II. Petitioners' motion does not seek a preliminary injunction.

To avoid the appointment of a special fiduciary as interim trustee, Respondent attempts to characterize Petitioners' motion for appointment of a special fiduciary as interim trustee as a motion for mandatory injunction. In other words, Respondent argues that Petitioners' motion to appoint a special fiduciary as interim trustee which seeks the appointment of a special fiduciary as an interim trustee is something other than a motion for the appointment of a special fiduciary as interim trustee. This argument is absurd on its face and should be summarily rejected.

Petitioners do not seek a mandatory injunction or the maintenance of the status quo, as Respondent argues. Instead, they merely seek the exact remedy provided under § 62-7-704(e), which is the appointment of a special fiduciary. That remedy is not subject to the mandatory injunction standard that Respondent seeks to impose on Petitioners. Rather, the South Carolina General Assembly has expressly authorized this Court to appoint a special fiduciary "whenever the court considers the appointment necessary for the administration of the trust," which is starkly different than the standard courts apply to the drastic remedy of a mandatory injunction. Because the relief that Petitioners seek is exactly the type of relief that is available under § 62-7-704(e),

Petitioners' motion should be analyzed under that statute and not as a motion for mandatory injunction.

**III. The Court should strike and refuse to consider the affidavits submitted by Respondent in opposition to Petitioners' motion because they contain inadmissible hearsay and testimony barred by the Dead Man's Statute.**

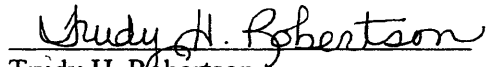
In addition to the fact that the affidavits submitted by Respondent are beyond the scope of the instant motion of the Petitioners, the Court should not consider the three affidavits submitted by Respondent, including one from himself, in opposition to Petitioners' motion because they contain inadmissible hearsay and are barred by the Dead Man's Statute. In his affidavit, Respondent claims that his and Petitioners' grandmother sold certain property to Respondent in 1988 pursuant to a written agreement, despite the fact that Respondent has produced no executed agreement or any deed or other instrument conveying the property. In the two other affidavits, the other affiants, Jim Wright and Sharon Burbage, claim that they overheard statements from Respondent's mother and grandmother during the 1980's in which his mother and grandmother acknowledged that Respondent had purchased the property. The testimony in the affidavits is not admissible evidence and should not be considered by the Court in ruling on Petitioner's motion for appointment of a special fiduciary.

The Dead Man's Statute, S.C. Code Ann. § 19-11-20, "aims to prevent testimony as to communications and transactions with persons deceased . . . on the grounds that it is against public policy to allow witnesses to testify as to matters, of which, if such testimony is untrue, it cannot be contradicted by the deceased." *Estate of Mason v. Mason*, 289 S.C. 273, 279, 346 S.E.2d 28, 31 (Ct. App. 1986). As such, the Dead Man's Statute "prohibits any interested person from testifying concerning conversations or transactions with the decedent if the testimony could affect his or her interest." *Hanahan v. Simpson*, 326 S.C. 140, 151, 485 S.E.2d 903, 909 (1997).

In this case, the Dead Man's Statute prohibits Respondent from testifying regarding his purported transaction with his deceased grandmother in which he allegedly bought the property. Respondent's affidavit consists almost entirely of information attempting to substantiate the transaction with his grandmother to prove that he, rather than Petitioners, owns the property subject to this lawsuit. Thus, it is barred by the Dead Man's Statute and should not be considered by the Court.

The affidavits of Wright and Burbage should similarly be disregarded because they contain inadmissible hearsay under Rule 802, SCRE. Wright and Burbage claim they heard Respondent's grandmother and mother say that he had bought the property, and Respondent offers this testimony to prove that he, in fact, purchased the property. As such, Wright's and Burbage's testimony regarding what they heard Respondent's grandmother and mother say is hearsay, and it does not fall within any of hearsay exceptions under Rules 803 and 804, SCRE. Therefore, the Court should disregard Wright's and Burbage's testimony that they overheard statements in which Respondent's grandmother and mother purportedly acknowledged that Respondent had purchased the property.

Respectfully submitted,



Trudy H. Robertson
Paul M. Lynch
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
trudyrobertson@mvalaw.com
paullynch@mvalaw.com
*Attorneys for the Petitioners*

Charleston, South Carolina

June 28, 2016

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| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., and JULIAN REID HENSON,<br><br>Respondents. | ) | IN THE PROBATE COURT<br><br>Case No. 1994-ES-18-00147-2<br><br>**CERTIFICATE OF SERVICE** |

2016 JUN 29 PM 1:15

It is hereby certified that a copy of the foregoing **Petitioners' Reply to Respondent's Memorandum of Law in Opposition to Motion for Appointment of Special Fiduciary as Interim Trustee and Affidavits** was served upon the parties below on June 28, 2016 via e-mail, and on June 29, 2016 by hand delivery to:

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
E-mail: dblanchard@rrhlawfirm.com

Trudy H. Robertson

Trudy H. Robertson

June 28, 2016
Charleston, SC

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| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER | ) | IN THE PROBATE COURT |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., and JULIAN REID HENSON,<br><br>Respondents. | ) | Case No. 1994-ES-18-00147-2<br><br>**PETITIONERS' SUPPLEMENTAL REPLY TO RESPONDENT'S OPPOSITION TO MOTION FOR APPOINTMENT OF SPECIAL FIDUCIARY AS INTERIM TRUSTEE** |

On June 29, 2016, the Court held a hearing on the Motion for Appointment of Special Fiduciary as Interim Trustee filed by Petitioners Richard S. Henson and Vann Kenneth Henson. During the hearing, counsel for Respondent Albert T. Henson, Jr. submitted supplemental affidavits and certain judicial decisions and secondary legal materials addressing the issues of the applicability of the Dead Man's Statute, S.C. Code Ann. § 19-11-20, and the exclusion of testimony included in previously submitted affidavits as inadmissible hearsay. The Court permitted Petitioners to respond to such supplemental materials submitted by Respondent within five (5) business days of the hearing, excluding the intervening July 4th holiday, and Petitioners respond as follows:

## I. It is not necessary to resolve evidentiary issues under Petitioners' motion.

Petitioners' motion for appointment of a special fiduciary as interim trustee does not require the Court to resolve Respondent's claim of ownership of the property in question or the related issues of the admissibility of evidence concerning the purported transaction between

Respondent and his deceased grandmother under the Dead Man's Statute or the South Carolina Rules of Evidence. As previously argued, Petitioners merely seek the appointment of an interim trustee to protect the interest of the Trust, and they do not seek at this time to eject Respondent from the property. The appointment of a special fiduciary as interim trustee will not preclude Respondent from obtaining a determination of his claim of ownership on the merits after discovery has been completed, and he will suffer no prejudice if an interim trustee is appointed. Conversely, denying Petitioners' motion and allowing the Trust to continue without a trustee in place to protect the Trust's interest could result in severe prejudice to Petitioners and the Trust because the property may be in jeopardy of being lost. Accordingly, the Court should not unnecessarily resolve the issue of ownership of the property under Petitioners' motion, which merely seeks a temporary remedy to secure the interest of the Trust until this action can be resolved either through settlement or a trial on the merits.

**II. Petitioners, as *de facto* trustees and devisees, may invoke the Dead Man's Statute.**

Respondent has offered his personal testimony that he purchased the property from his deceased grandmother. Because this testimony cannot be corroborated or contradicted by his deceased grandmother, Petitioners argue that it is barred by the Dead Man's Statute, S.C. Code Ann. § 19-11-20. The Dead Man's Statute prohibits testimony from an interested person concerning conversations or transactions with the decedent if the testimony could affect his interest if the testimony is offered "against a party then prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person." *Id.* at § 19-11-20. At the hearing on the motion, Respondent responded to Petitioners' argument by asserting that Petitioners were not within the class of individuals who can invoke the Dead Man's Statute to exclude testimony.

The Court should reject Respondent's attempt to avoid the application of the Dead Man's Statute to his testimony regarding a transaction with his deceased grandmother nearly thirty years ago because the nature of the proceedings, including the present motion, and the position of the parties reflect that his testimony is exactly the type of testimony that the Dead Man's Statute is intended to prohibit. The trustee of the Trust is a "devisee" of the property in question under Respondent's grandmother's will because her will expressly devises all of her property, except the cash that was then remaining in her bank accounts, to the trustee. See Ex. 1, Item V (Exhibits are denoted by number as admitted at the June 29th hearing); S.C. Code Ann. § 62-1-201(8) (defining "devisee" to be the trust or trustee in the case of a devise to a trustee described by will). Moreover, the trustee is a necessary party to this action because the trustee has the fiduciary obligation to defend Respondent's counterclaim, which seeks a declaratory judgment that the Trust does not exist and that Respondent, rather than the Trust, owns the property. However, the vacancy in the trusteeship precludes a trustee from presently being named as a party to this action. But for the vacancy in the trusteeship, the Dead Man's Statute would clearly apply and could be invoked by the trustee as a devisee under Respondent's grandmother's will.

In other words, Respondent attempts to exploit the vacancy in the trusteeship to establish ownership of the property through self-serving testimony which otherwise would not be admissible if the trusteeship was occupied. The Court should reject Respondent's argument because it would jeopardize the existence of the trust by virtue of the vacancy in the trusteeship in contradiction of the well-established maxim that a trust should not fail for lack of a trustee. *See Cone v. Cone*, 61 S.C. 512, 522, 39 S.E. 748, 752 (1901) (relying on maxim that a court "will never allow a trust to fail for want of a trustee" to appoint substitute trustee in place of a deceased trustee).

To the extent that the Court deems it necessary to consider issues of ownership under this motion, the Court should permit Petitioners to invoke the protection of the Dead Man's Statute against Respondent's self-serving testimony. Because there is a vacancy in the trusteeship, Petitioners have been forced to initiate this action to appoint a trustee, secure the proper administration of the Trust, and preserve the property of the Trust against Respondent's adverse claim of possession. In fact, Petitioners specifically request in their petition that they ultimately be appointed as trustees of the Trust. Thus, Petitioners are effectively acting on behalf of the Trust as trustees because no one else can without the appointment by the Court of a substitute trustee. In so doing, Petitioners are acting as *de facto* trustees of the Trust, *see Withers v Jenkins*, 21 S.C. 365, 370 (1884) (recognizing "trustee *de facto*" where named trustee declined the trust), and they should be permitted to invoke the Dead Man's Statute as a devisee of the property against Respondent's self-serving testimony that seeks to destroy the Trust's ownership of the property.

## III. The testimony of Wright and Burbage do not reflect the declarants' existing state of mind and are therefore not exceptions to hearsay under Rule 803(3), SCRE.

In support of his attempt to admit the hearsay testimony of affiants Jim Wright and Sharon Burbage, Respondent argues that the statements made by Respondent's grandmother and mother, as testified to by Wright and Burbage, fall within the hearsay exception under Rule 803(3), SCRE, as they are statements of the declarants' then existing states of mind, emotion, sensation, or physical condition. A close examination of these hearsay statements, however, reveals that they do not fall within this exception.

Rule 803(3), SCRE, provides that a statement is not hearsay if it is a "statement of the declarant's then existing state of mind, emotion, sensation, or physical condition." However, "Rule 803(3) specifically excludes a statement of memory or belief to prove the fact remembered or believed." *State v. Tennant*, 383 S.C. 245, 257, 678 S.E.2d 812, 818 (Ct. App. 2009).

In his affidavit, Wright claims that he heard Respondent's grandmother state on "several occasions in the 1980's" that Respondent had bought the property and that he heard Respondent's mother state on "several occasions in the 1980's" that Respondent had bought the property from his grandmother. Similarly, Burbage claims in her affidavit that she overheard Respondent's grandmother state, sometime before her death, that the grandmother had sold the property to Respondent.

None of these statements fall within the hearsay exception under Rule 803(3) because they do not reveal the declarants' then existing state of mind, emotion, sensation, or physical condition, and there is nothing in such statements suggesting that they were made contemporaneous to the purported transaction in which Respondent alleges he bought the property. Because the statements were not made contemporaneous to the underlying transaction, they do not reflect the declarants' state of mind. *See Estate of Gill v. Clemson Univ. Foundation*, 397 S.C. 419, 428-29, 725 S.E.2d 516, 521 (Ct. App. 2012) (ruling that statement regarding declarant's plan under her will which was made almost a year after she created the will did not fall within exception under Rule 803(3) because it did not show her state of mind at the time she created the will). At best (while also disputed by Petitioners), these purported statements are nothing but statements asserting Respondent's mother's and grandmother's beliefs as to whether the property had been sold in the past, which are the types of statement that Rule 803(3) specifically excludes from the exception. *See Tennant*, 383 S.C. at 257, 678 S.E.2d at 818 (affirming trial court's exclusion of hearsay statement that did not depict the declarant's state of mind and only asserted his memory of events). Therefore, the testimony proffered in Wright's and Burbage's affidavits regarding statements about the sale of the property do not fall within the hearsay exception of Rule 803(3), SCRE, and the Court should not consider them.

## IV. The statements of Respondent's mother and grandmother, as testified to by Wright and Burbage, are not hearsay exceptions under Rule 804(b)(3), SCRE, because they are not contrary to the declarants' interest.

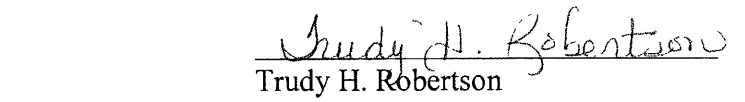
Respondent also argues that Wright's and Burbage's testimony regarding the statements of his mother and grandmother fall within the hearsay exception of Rule 804(b)(3), SCRE, which applies when the declarant is unavailable. To fall within this exception, the statement, at the time of its making, must be "so far contrary to the declarant's pecuniary or proprietary interest . . . or to render invalid a claim by the declarant against another, that a reasonable person would not have made the statement unless believing it to be true." Rule 804(b)(3), SCRE.

The statements that Wright and Burbage allege that Respondent's mother and grandmother made are not hearsay exceptions under Rule 804(b)(3), SCRE. First, the grandmother's alleged statement that she sold the property is not against her interest because the purported transaction, if it actually occurred (again while disputed by Petitioners), would have been supported by consideration, and she would have received a benefit from Respondent in exchange for the conveyance of property. Accordingly, if Respondent's grandmother stated that she sold the property, then that statement would be consistent with her interest and not contrary to it. Second, the mother's alleged statement that Respondent bought the property is not against her pecuniary or proprietary interest because Respondent has not established that his mother had a pecuniary or proprietary interest in the property. In fact, Respondent claims that she had no interest in the property, and therefore, any statements that she made regarding the sale of the property could not be adverse to her interest. Therefore, the testimony of Wright and Burbage are not exceptions to hearsay under Rule 804(b)(3), SCRE.

## V. The Court should not consider the affidavits of Lee Agnew and Kane Wright because they were submitted untimely and are prejudicial to Petitioners.

At the hearing on Petitioners' motion for appointment of a special fiduciary as interim trustee, Respondent submitted supplemental affidavits from Lee Agnew and Kane Wright, in which they state their understanding of who owns the property. The Court should not consider these affidavits because they are untimely and prejudicial. First, the affidavits were not submitted timely under Rule 6(d), SCRCP, which requires that opposing affidavits be submitted no later than two days before the hearing. Second, Respondent has not identified either affiant as a witness in response to interrogatories issued in this case.[1] As a result, Petitioners have not had an opportunity to depose these witnesses or assess the veracity of their proffered testimony. The disclosure of these witnesses and their testimony at the hearing is prejudicial to Petitioners, and the Court should refuse to consider their affidavits.

Respectfully submitted,



Trudy H. Robertson
Paul M. Lynch
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
trudyrobertson@mvalaw.com
paullynch@mvalaw.com
*Attorneys for the Petitioners*

Charleston, South Carolina

July 6, 2016

[1] Petitioners further object to any other affidavits from witnesses not previously identified as witnesses. For example, Sharon Burbage was not previously identified and should be excluded for this additional ground as well.

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| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER | ) | IN THE PROBATE COURT |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | Case No. 1994-ES-18-00147-2 |
| RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., and JULIAN REID HENSON,<br><br>Respondents. | ) | **CERTIFICATE OF SERVICE** |

It is hereby certified that a copy of the foregoing **Petitioners' Supplemental Reply to Respondent's Opposition to Motion for Appointment of Special Fiduciary as Interim Trustee** was served upon the parties below by regular mail and email on July 6, 2016 (copy also emailed to Judge Edwards on July 6, 2016, and delivered by hand for filing on July 7, 2016):

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

E-mail: dblanchard@rrhlawfirm.com

Attorney for Respondent Albert T. Henson, Jr.

Trudy H. Robertson

Trudy H. Robertson

July 6, 2016
Charleston, SC

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DORCHESTER<br><br>IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br>Petitioners,<br><br>v.<br>ALBERT T. HENSON, JR. and JULIAN REID HENSON,<br>Respondent, | ) | IN THE PROBATE COURT<br><br>Case No.: 2016-CP-18-1849<br><br>**NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT** |

2016 SEP 16 AM 10:44
PROBATE COURT
DORCHESTER COUNTY

PLEASE TAKE NOTICE that, pursuant to S.C. CODE ANN. § 62-1-308, the Respondent Albert T. Henson, Jr., by and through the undersigned attorneys, hereby provides this Notice of Intent to Appeal the Order Appointing Special Fiduciary as Interim Trustee of Associate Probate Judge Molly D. Edwards dated August 31, 2016. Counsel for Respondent received written notice of the entry of the Probate Court's Order via regular mail from the Probate Court on September 6, 2016, thus this Notice of Intent to Appeal is timely filed pursuant to S.C. CODE ANN. § 62-1-308(a). A copy of the Probate Court's Order is attached hereto.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
September 15, 2016.

SWORN to and subscribed before me this
15th day of September, 2016.

Notary Public for the State of South Carolina
My commission expires: ~~My Commission Expires~~
March 6, 2017

THIS DOCUMENT IS THE SAME DOCUMENT FOUND AT PAGES 0001 THROUGH 0011 OF THE RECORD ON APPEAL

## CERTIFICATE OF SERVICE

I hereby certify that on the date referenced below that I have served all counsel in this action with a copy of the Notice of Intent to Appeal to Circuit Court in the above-captioned action by mailing a copy of same by United States mail, first class mail, postage prepaid, and addressed to the following:

Barry I. Baker, Esquire
Kyle T. Varner, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

PROBATE JUDGE
DORCHESTER COUNTY
2016 SEP 16 AM 10:44

This the 16th day of September, 2016.

ROSEN, ROSEN & HAGOOD, LLC

By: _____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE PROBATE COURT |
| | ) | |
| COUNTY OF DORCHESTER | ) | |
| | ) | Case No.: 2016-CP-18-1849 |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| RICHARD S. HENSON and VANN KENNETH HENSON, Petitioners, | ) | **NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT** |
| v. | ) | |
| ALBERT T. HENSON, JR. and JULIAN REID HENSON, Respondent, | ) | |

2016 SEP 16 AM 10:43
CLERK OF COURT
DORCHESTER COUNTY

PLEASE TAKE NOTICE that, pursuant to S.C. CODE ANN. § 62-1-308, the Respondent Albert T. Henson, Jr., by and through the undersigned attorneys, hereby provides this Notice of Intent to Appeal the Order Appointing Special Fiduciary as Interim Trustee of Associate Probate Judge Molly D. Edwards dated August 31, 2016. Counsel for Respondent received written notice of the entry of the Probate Court's Order via regular mail from the Probate Court on September 6, 2016, thus this Notice of Intent to Appeal is timely filed pursuant to S.C. CODE ANN. § 62-1-308(a). A copy of the Probate Court's Order is attached hereto.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
September 15, 2016.

SWORN to and subscribed before me this
15th day of September, 2016.

Notary Public for the State of South Carolina
My commission expires: My Commission Expires
March 6, 2017

THIS DOCUMENT IS THE SAME DOCUMENT FOUND AT PAGES 0001 THROUGH 0011 OF THE RECORD ON APPEAL

## CERTIFICATE OF SERVICE

I hereby certify that on the date referenced below that I have served all counsel in this action with a copy of the Notice of Intent to Appeal to Circuit Court in the above-captioned action by mailing a copy of same by United States mail, first class mail, postage prepaid, and addressed to the following:

Barry I. Baker, Esquire
Kyle T. Varner, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

This the 16th day of September, 2016.

ROSEN, ROSEN & HAGOOD, LLC

By: _____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

CERTIFIED COPY
2016 OCT 24 PM 1:26
CLERK OF COURT
DORCHESTER COUNTY

| | |
|---|---|
| STATE OF SOUTH CAROLINA ) | IN THE PROBATE COURT |
| ) | |
| COUNTY OF DORCHESTER ) | Case No.: 2016-CP-18-1849 |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 ) | |
| RICHARD S. HENSON and VANN KENNETH HENSON, Petitioners, ) | STATEMENT OF ISSUES ON APPEAL |
| v. ) | |
| ALBERT T. HENSON, JR. and JULIAN REID HENSON, Respondent, ) | |

Pursuant to S.C. CODE ANN. § 62-1-308(b), the Appellant Albert T. Henson, Jr. (hereinafter "the Appellant"), by and through the undersigned attorneys, hereby submits this Statement of Issues on Appeal:

1. Did the Probate Court err by appointing a Special Fiduciary as Interim Trustee for the Trust EIP created by virtue of the Last Will and Testament of Eunice I. Page dated October 14, 1992 (hereinafter "the EIP Trust")?

2. Did the Probate Court err by granting the Respondents' motion seeking the appointment of a special fiduciary as interim trustee for the EIP Trust when the Respondents failed to properly support their motion with any affidavits as required by S.C. R. CIV. PRO. 6(d) and no testimony was taken?

3. Did the Probate Court err by granting the Respondents' motion seeking the appointment of a special fiduciary as interim trustee for the EIP Trust based on allegations in the Respondents' motion that are not supported by the pleadings, affidavit, or testimony?

4. Did the Probate Court err by granting Respondents' motion seeking the appointment of a special fiduciary as interim trustee for the EIP Trust based on Respondents' bare allegation in their motion that there is a "*possibility* of the Mortgage being foreclosed for non-payment of the Note" when no showing was made that the Note is at risk of going into default?

5. To the extent that the appointment of a special fiduciary as interim trustee for the EIP Trust is deemed to be necessary or appropriate, did the Probate Court err in failing and/or refusing to appoint the Appellant to that position when he is

fully qualified and capable to act in the position and he requested the appointment in the event it was deemed necessary?

6. To the extent that the appointment of a special fiduciary as interim trustee for the EIP Trust is deemed to be necessary or appropriate, did the Probate Court err in failing and/or refusing to appoint a bank or trust company to that position in accordance with the terms of the Trust EIP?

7. To the extent that the appointment of a special fiduciary as interim trustee for the EIP Trust is deemed to be necessary or appropriate, did the Probate Court err by appointing a special fiduciary as interim trustee without requiring the special fiduciary or the Respondents to post an adequate bond or other security?

8. To the extent that the appointment of a special fiduciary as interim trustee for the EIP Trust is deemed to be necessary or appropriate, did the Probate Court err by appointing a special fiduciary as interim trustee without making adequate findings that would justify the waiver of the requirement for a bond or other security?

9. To the extent that the appointment of a special fiduciary as interim trustee for the EIP Trust is deemed to be necessary or appropriate, did the Probate Court err by authorizing the special fiduciary "in her sole discretion, [to] negotiate with the lender and/or parties to extend the due date on the current mortgage" when the special fiduciary has no authority or right to control, manage, or direct any funds, property, or assets belonging to the EIP Trust?

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
October 21, 2016.

## CERTIFICATE OF SERVICE

I hereby certify that on the date referenced below that I have served all counsel in this action with a copy of the Appellant's Statement of Issues on Appeal in the above-captioned action by mailing a copy of same by United States mail, first class mail, postage prepaid, and addressed to the following:

Barry I. Baker, Esquire
Kyle T. Varner, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

This the 21st day of October, 2016.

CERTIFIED COPY
2016 OCT 24 PM 1:27
CLERK OF COURT
DORCHESTER COUNTY

ROSEN, ROSEN & HAGOOD, LLC

By: _____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR APPELLANT

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER 2016 OCT 28 PM 12:45<br><br>CLERK OF COURT<br>DORCHESTER COUNTY | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>APPEAL FROM PROBATE COURT<br><br>Case No. 1994-ES-18-00147-2 |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S. HENSON and VANN KENNETH HENSON,<br><br>Petitioners,<br><br>v.<br><br>ALBERT T. HENSON, JR., and JULIAN REID HENSON,<br><br>Respondents. | **PETITIONERS' MOTION TO DISMISS APPEAL** |

Pursuant to S.C. Code Ann. § 62-1-308, Petitioners Richard S. Henson and Vann Kenneth Henson (collectively, "Petitioners") hereby move to dismiss Respondent Albert T. Henson, Jr.'s ("Respondent") appeal of the order appointing a special fiduciary as interim trustee issued by the probate court. As explained further below, this order provides only temporary relief, and it is not a final order subject to appeal under § 62-1-308.

## I. PROCEDURAL BACKGROUND

On January 26, 2015, Petitioners filed a Petition to Appoint a Successor Trustee of the Trust EIP Created under the Last Will and Testament of Eunice I. Page, dated October 14, 1992 (the "Trust") and filed an Amended Petition on May 4, 2015. Petitioners and Respondent are beneficiaries of the Trust. In the Amended Petition, Petitioners claim that the trusteeship of the Trust is vacant and they seek appointment of a successor trustee to administer the Trust.

According to the Amended Petition, Eunice I. Page owned certain real property located at 605 North Main Street, Summerville, South Carolina (the "Subject Property"), which was transferred to the Trust by deed on July 22, 1997. Petitioners assert that the Subject Property is the sole asset of the Trust. Respondent denies that the Subject Property is an asset of the Trust and instead claims that Eunice I. Page conveyed the Subject Property to him prior to her death.

On October 12, 2015, Petitioners filed a Motion for the Appointment of a Special Fiduciary as an Interim Trustee, and also filed a subsequent Motion for an Expedited Hearing. Under those two motions, Petitioners sought the appointment of a special fiduciary who would serve as interim trustee of the Trust and, among other things, ensure that the Subject Property is not foreclosed upon by a lender who holds a mortgage on the Subject Property. Respondent filed a memorandum in opposition to Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee on June 29, 2016.

Associate Probate Judge Molly D. Edwards held a hearing on Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee on June 29, 2016. On August 31, 2016, Judge Edwards issued an Order Appointing Special Fiduciary as Interim Trustee (the "Order"), in which she appointed Ashley Andrews, Esq., as a special fiduciary to serve as interim trustee of the Trust pursuant to S.C. Code Ann. § 62-7-704. Under the Order, Ms. Andrews's powers are limited to the following: (1) negotiating with the lender and/or the parties to extend the due date of the current mortgage in order for litigation to be finalized or have the mortgage paid off prior to December 3, 2016; (2) determining if any other assets are titled to the Trust; (3) recovering all records Respondent may possess regarding the alleged transfer of the Subject Property from Ms. Page to Respondent; (4) collecting copies of all agreements Respondent, Ms. Page, or Ann Page Pittillo may have entered into with another party to lease the Subject Property; and (5) ensuring all

actions taken by her are done in the interest of maintaining the status quo pending a final hearing on the merits in this case.

On September 16, 2016, Respondent, pursuant to S.C. Code Ann. § 62-1-308, filed a Notice of Intent to Appeal with the Court of Common Pleas, Dorchester County, thereby providing notice that he seeks to appeal the Order.

## II. ARGUMENT

### THE ORDER IS NOT APPEALABLE UNDER S.C. CODE ANN. § 62-1-308 BECAUSE IT PROVIDES ONLY TEMPORARY RELIEF AND IS NOT A FINAL ORDER.

Appeals to the circuit court from the probate court are governed by S.C. Code Ann. § 62-1-308, which provides, in pertinent part, that a "person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county." An order from the probate court that is not a final order is not reviewable under § 62-1-308. *Fulmer v. Cain*, 380 S.C. 466, 469, 670 S.E.2d 652, 654 (2008). Courts of common pleas lack subject matter jurisdiction over appeals of a temporary order issued by a probate court. *Boyce-Abel v. Work*, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991).

In this case, the Order provides only temporary relief pending a final hearing on the merits, and it is not a final order subject to appeal under § 62-1-308. The temporary nature of the relief provided in the Order is clear. Judge Edwards's appointment of an "interim trustee" is *per se* temporary because it applies only in the interim period between the date of appointment and a final hearing on the merits. The Order expressly limits the interim trustee's powers to maintaining the *status quo* "pending a final hearing on the merits." (Order ¶¶ 45, B(v).) In addition, Judge Edwards was careful not to resolve the primary dispute between Petitioners and Respondent because that "will need to be decided after a full merit's hearing." (*Id.* at ¶32.) Therefore, the Order is only a

temporary measure intended to preserve the Subject Property until a final hearing on the merits can be held to resolve the issues in dispute. Therefore, the Order is temporary and is not final, and it is not appealable under § 62-1-308.

The South Carolina Court of Appeal's decision in *Boyce-Abel* is controlling on the issue of whether the Order is appealable under § 62-1-308. In *Boyce-Abel*, the probate court appointed special administrators of a decedent's estate until a personal representative could be formally appointed. *Id.* The special administrators' siblings appealed the appointment to the circuit court, and the circuit court disqualified one of the special administrators. *Id.* The Court of Appeals vacated the circuit court's appellate decision and remanded the case to the probate court for further proceedings because the circuit court lacked subject matter jurisdiction over the appeal of the probate order. *Id.* According to the Court of Appeals, the circuit court did not have jurisdiction under § 62-1-308 because the probate court's appointment of the special administrators was not a final order. *Id.* Instead, the probate order was "clearly temporary" pending the formal appointment of a personal representative and only provided the special administrators with limited powers to administer the estate in an interim period. *Id.*

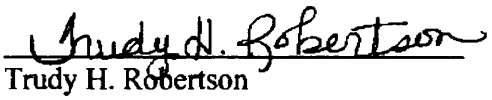
There is no material difference between the appointment of the special fiduciary as interim trustee in this case and the appointment of the special administrators in *Boyce-Abel* for the purpose of determining whether the Order is a final order subject to appeal under § 62-1-308. Just as the appointment of the special administrators in *Boyce-Abel* was temporary, the appointment of the special fiduciary in this case is similarly temporary. And like the special administrators appointed in *Boyce-Abel*, the interim trustee in this case is authorized only to perform certain acts to maintain the status quo until final resolution. Therefore, *Boyce-Abel* dictates that the Order is not a final,

appealable order under §62-1-308, and the Court should dismiss Respondent's appeal for lack of subject matter jurisdiction.

## III. CONCLUSION

Based on the foregoing, Respondent's appeal should be dismissed in its entirety.

Respectfully submitted,



Trudy H. Robertson
Paul M. Lynch
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
trudyrobertson@mvalaw.com
paullynch@mvalaw.com

*Attorneys for the Petitioners*

Charleston, South Carolina

October 26, 2016

| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| | FIRST JUDICIAL CIRCUIT |
| COUNTY DORCHESTER | APPEAL FROM PROBATE COURT |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | Case No. 1994-ES-18-00147-2 |
| RICHARD S. HENSON and VANN KENNETH HENSON, Petitioners, v. ALBERT T. HENSON, JR., and JULIAN REID HENSON, Respondents. | **CERTIFICATE OF SERVICE** |

2016 OCT 28 PM 12:44

CLERK OF COURT DORCHESTER COUNTY

The undersigned does hereby certify that a copy of the foregoing **Petitioners' Motion to Dismiss Appeal** was served, by depositing same in the Regular U.S. mail, with sufficient postage attached thereto, addressed to:

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

E-mail: dblanchard@rrhlawfirm.com

*Attorney for Respondents Albert T. Henson, Jr. and Julian Reid Henson*

MOORE & VAN ALLEN, PLLC

Wendy Stockhausen

Wendy Stockhausen

October 26, 2016

Charleston, South Carolina

FILED - RECORDED
2016 OCT 31 PM 3:06
CANCELLED
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| COUNTY DORCHESTER | FIRST JUDICIAL CIRCUIT |
| IN RE: | CASE NO. 2016-CP-18-1849 |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | (Probate Case No.: 1994-ES-18-00147-2) |
| RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | **PETITIONERS' MOTION FOR AN EXPEDITED HEARING** |

FILED - RECORDED
2016 NOV -1 AM 8:57
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Petitioners Richard S. Henson and Vann K. Henson respectfully request an expedited hearing on their Motion to Dismiss Respondents' Appeal of the Order Appointing Special Fiduciary as Interim Trustee.

This dispute arises from a disagreement between the beneficiaries of the Eunice I. Page Trust EIP ("Trust") over the distribution of the Trust after the death of Ann P. Pittillo, the only child of Eunice I. Page, and former trustee of the Trust. According to the Amended Petition, Eunice I. Page owned certain real property located at 605 North Main Street, Summerville, South Carolina (the "Subject Property"), which was transferred to the Trust by deed on July 22, 1997. Petitioners assert that the Subject Property is the sole asset of the Trust. Respondent denies that the Subject Property is an asset of the Trust and instead claims that Eunice I. Page conveyed the Subject Property to him prior to her death.

On August 31, 2016, Judge Edwards issued an Order Appointing Special Fiduciary as Interim Trustee (the "Order"), in which she recognized that the Subject Property is subject to an outstanding mortgage, which is due on December 3, 2016. To eliminate the "major risk" posed by the outstanding mortgage on the Subject Property, Judge Edwards appointed Ashley Andrews, Esq., as a special fiduciary to serve as interim trustee of the Trust pursuant to S.C. Code Ann. § 62-7-704. Under the Order, Ms. Andrews is authorized to, among other things, negotiate with the lender and/or the parties to extend the due date of the current mortgage on the Subject Property in order for litigation to be finalized or have the mortgage paid off prior to December 3, 2016.

On September 16, 2016, Respondent, pursuant to S.C. Code Ann. § 62-1-308, filed a Notice of Intent to Appeal with the Court of Common Pleas, Dorchester County, thereby providing notice that he seeks to appeal the Order. On October 26, 2016, Petitioners filed a Motion to Dismiss Respondent's appeal on the grounds that the Order is not a final order immediately appealable under § 62-1-308.

As of the date of this filing, the due date of the outstanding mortgage on the Subject Property is approximately five (5) weeks away, and the appeal threatens to undermine the Special Administrator's authority and ability to negotiate with the lender regarding the mortgage. To prevent the likely irreparable harm that may result if this appeal remains pending over the next several weeks prior to the due date of the mortgage, Petitioners respectfully request an expedited hearing at the Court's earliest convenience to hear their Motion to Dismiss.

Respectfully submitted,



Trudy H. Robertson
Paul M. Lynch
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
Attorneys for the Petitioners

Charleston, South Carolina

October 27, 2016

FILED - RECORDED
2016 NOV 14 PM 2:12
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS |
| | FIRST JUDICIAL CIRCUIT |
| COUNTY DORCHESTER | |
| IN RE: | CASE NO. 2016-CP-18-1849 |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | (Probate Case No.: 1994-ES-18-00147-2) |
| RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | **NOTICE OF HEARING**<br>**HEARING DATE: November 21, 2016**<br>**HEARING TIME: 2:00 P.M** |

TO: DANIEL F. BLANCHARD, III, ESQUIRE, ROSEN, ROSEN & HAGOOD, ATTORNEYS FOR RESPONDENTS:

PLEASE TAKE NOTICE that a hearing on Petitioners' Motions to Dismiss Appeal/For Expedited Hearing will be held on **November 21, 2016, at 2:00 p.m.**, before the Honorable Edgar W. Dickson, Circuit Court Judge for Dorchester County, at the Orangeburg County Courthouse, located at 151 Docket Street, Orangeburg, South Carolina 29115.

PLEASE BE PRESENT IF SO MINDED.

Trudy H. Robertson
Paul M. Lynch
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
E-mail: trudyrobertson@mvalaw.com
paullynch@mvalaw.com

*Attorneys for the Petitioners*

November 10, 2016

Charleston, SC

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY DORCHESTER | ) | |
| | ) | CASE NO. 2016-CP-18-1849 |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | (Probate Case No.: 1994-ES-18-00147-2) |
| | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| RESPONDENTS. | ) | |

FILED - RECORDED
2016 NOV 14 PM 2:13
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I hereby certify that a copy of the foregoing **Notice of Hearing** was served upon the parties below via e-mail and by regular U.S. mail with proper postage affixed thereto:

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

E-mail: dblanchard@rrhlawfirm.com

*Attorney for Respondents Albert T. Henson, Jr. and Julian Reid Henson*

Wendy Stockhausen
Wendy S. Stockhausen

November 10, 2016

Charleston, SC

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO. 2016-CP-18-1849<br><br>(Probate Case No.: 1994-ES-18-00147-2) |
| RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | ) | **PETITIONERS' MOTION FOR AN EXPEDITED HEARING** |

Petitioners Richard S. Henson and Vann K. Henson respectfully request an expedited hearing on their Verified Petition to Lift Stay, if any, resulting from the Notice of Appeal of the Court's Order Appointing Special Fiduciary as Interim Trustee, which was filed by Respondent Albert T. Henson, Jr., for the following reasons:

This dispute arises from a disagreement between the beneficiaries of the Eunice I. Page Trust EIP ("Trust") over the distribution of the Trust after the death of Ann P. Pittillo, the only child of Eunice I. Page, and former trustee of the Trust. According to the Amended Petition, Eunice I. Page owned certain real property located at 605 North Main Street, Summerville, South Carolina (the "Subject Property"), which was transferred to the Trust by deed on July 22, 1997. Petitioners assert that the Subject Property is the sole asset of the Trust. Respondent denies that

the Subject Property is an asset of the Trust and instead claims that Eunice I. Page conveyed the Subject Property to him prior to her death.

On August 31, 2016, Judge Edwards issued an Order Appointing Special Fiduciary as Interim Trustee (the "Order"), in which she recognized that the Subject Property is subject to an outstanding mortgage, which is due on December 3, 2016. To eliminate the "major risk" posed by the outstanding mortgage on the Subject Property, Judge Edwards appointed Ashley Andrews, Esq., as a special fiduciary to serve as interim trustee of the Trust pursuant to S.C. Code Ann. § 62-7-704. Under the Order, Ms. Andrews is authorized to, among other things, negotiate with the lender and/or the parties to extend the due date of the current mortgage on the Subject Property in order for litigation to be finalized or have the mortgage paid off prior to December 3, 2016.

On September 16, 2016, Respondent, pursuant to S.C. Code Ann. § 62-1-308, filed a Notice of Intent to Appeal with the Court of Common Pleas, Dorchester County, thereby providing notice that he seeks to appeal the Order. On October 26, 2016, Petitioners filed a Motion to Dismiss Respondent's appeal on the grounds that the Order is not a final order immediately appealable under § 62-1-308. A hearing was held on the Motion to Dismiss before Judge Dickson on November 21, 2016. His ruling is pending.

As of the date of this filing, the due date of the outstanding mortgage on the Subject Property is approximately one (1) week away, and the appeal threatens to undermine Ms. Andrews's authority and ability to negotiate with the lender regarding the mortgage. If the Subject Property is lost because of the Ms. Andrews's perceived or actual lack of authority to negotiate on behalf of the Trust, one of the central issues of this case, which is the ownership and disposition of the Subject Property, will be rendered moot. To prevent the likely irreparable

harm that may result if Ms. Andrews's authority to act during the pendency of the appeal is not resolved, Petitioners respectfully request an expedited hearing at the Court's earliest convenience to hear their Petition to Lift Stay, if any.

Respectfully submitted,



Trudy H. Robertson
Paul M. Lynch
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
paullynch@mvalaw.com
Attorneys for the Petitioners

Charleston, South Carolina

November 23, 2016

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO. 2016-CP-18-1849<br><br>(Probate Case No.: 1994-ES-18-00147-2)<br><br>**CERTIFICATE OF SERVICE** |

I hereby certify that a copy of the foregoing **Motion for an Expedited Hearing** was served upon the parties below by hand delivery thereto:

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

E-mail: dblanchard@rrhlawfirm.com

*Attorney for Respondent Albert T. Henson, Jr.*

Wendy S. Stockhausen

Wendy S. Stockhausen

November 23, 2016

Charleston, SC

11-21-16

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| STATE OF SOUTH CAROLINA | ) | IN THE CIRCUIT COURT |
| | ) | |
| COUNTY OF DORCHESTER | ) | Case No.: 2016-CP-18-1849 |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | |
| RICHARD S. HENSON and VANN KENNETH HENSON, Petitioners, | ) | **MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS APPEAL** |
| v. | ) | |
| ALBERT T. HENSON, JR. and JULIAN REID HENSON, Respondent, | ) | |

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CLERK OF COURT
DORCHESTER COUNTY

Respondent Albert T. Henson, Jr. (hereinafter "Respondent") submits this memorandum of law in opposition to Petitioners Richard S. Henson's and Vann K. Henson's (hereinafter "Petitioners") motion to dismiss the Respondent's appeal from the Probate Court's order appointing a Special Fiduciary as Interim Trustee pursuant to S.C. CODE ANN. § 62-7-704(e).

Petitioners' motion argues that the Probate Court's appointment of an "interim" special fiduciary grants "only temporary relief" and "is not a final order subject to appeal." However, this appeal involves (1) a final order affecting a substantial right made in a special proceeding under S.C. CODE ANN. § 14–3–330(3) and (2) an order that grants, continues, or refuses an injunction under § 14–3–330(4). As such, the order is appealable and the motion to dismiss must be denied.

As is discussed below, Petitioners' reliance upon the Court of Appeals's decision in *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991), is misplaced because the Court in that case was never asked to—and did not—address the appealability of a Probate Court's order under either § 14–3–330(3) or § 14–3–330(4).

## BACKGROUND

This litigation arises from a dispute among three brothers over the ownership of valuable commercial property located at 605 North Main Street, Summerville, South Carolina. Petitioners assert in their papers that the property is worth at least $1,579,000. *See* Motion filed 12.9.15 p. 2.

Respondent and Petitioners are brothers. They are the grandchildren of Eunice I. Page, who died on October 6, 1993. Respondent maintains that he is the owner of the 605 North Main property based on an agreement that he entered into with Mrs. Page in 1988. Pursuant to that agreement, Respondent has continuously possessed and used the property since 1988; has paid the taxes, insurance, and expenses for the property since 1988; has kept his personal property, equipment, and tools on the property since 1988; has leased portions of the property to tenants; and earns his livelihood from the business that he conducts on the property. The property is Respondent's sole source of income.

On January 26, 2015, Petitioners filed a petition in the Probate Court entitled "Petition to Appoint a Successor Trustee," in which they seek to take the property away from their brother. Petitioners allege in their petition that the 605 North Main property is owned by a Trust EIP created under the Last Will and Testament of Eunice I. Page dated October 14, 1992 ("the EIP Trust"). *See* Petition filed 1.26.15. The EIP Trust named Ann P. Pittillo as Trustee. Mrs. Pittillo is the mother of Petitioners and Respondent and is the daughter of Mrs. Page. Mrs. Pittillo died on April 20, 2014. Petitioners allege that Respondent, Petitioners, and Julian R. Henson (Richard Henson's daughter) are the "sole remaining qualified beneficiaries of the" EIP Trust. According to the petition, "Petitioners desire for the Court to appoint themselves as the successor co-trustees of the Trust for the sole purpose of dissolving the Trust and distributing the [605 North Main property] to its designated beneficiaries." *Id.* p. 2. Stated differently, Petitioners ask

the Court to deem the Trust to be the owner of the 605 North Main property, to immediately dissolve the Trust, and to disburse the property (i.e., proceeds from its sale) to themselves and Respondent. The petition avers that the Probate Court "has jurisdiction in this proceeding pursuant to" §§ 62-1-302(a)(3) and 62-7-201(a)(4) if the Probate Code.

On April 2, 2015, Respondent filed an Answer to the petition denying that the 605 North Main property is owned by the EIP Trust. *See* Answer filed 4.2.15. On May 4, 2015, Respondent filed an Amended Answer, Counterclaims, and Cross-Claim. *See* Amended Answer filed 5.4.15. Respondent's Counterclaims seek, *inter alia*, a declaratory judgment declaring that Respondent is the owner of the 605 North Main property.

On October 12, 2015, Petitioners filed a "Motion for Appointment of Special Fiduciary as Interim Trustee" pursuant to S.C. CODE ANN. § 62-7-704(e). Section 62-7-704(e) provides that "[w]hether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust." *Id.* § 62-7-704(e). On December 9, 2015, Petitioners also moved for an expedited hearing on their Motion for Appointment of Special Fiduciary.

In their two motions, Petitioners requested that a special fiduciary be appointed with the authorization to immediately have "access to all records concerning the assets of the Trust," "authority over Trust assets," and payment of "reasonable compensation." *See* Motion filed 10.12.15 p. The motions also asked the Probate Court to alter the *status quo* by authorizing the special fiduciary to have immediate possession, control, and authority over the 605 North Main property, including "management" of the property, "collection of rents and other income generated by" the property, and potentially selling the property. *See* Motion filed 12.9.15 p. 2.

The motions effectively requested the Probate Court to order Respondent to vacate the property and to relinquish ownership and possession of the property to the special fiduciary. The motions also argued that it was imperative that the Probate Court appoint a special fiduciary because Mrs. Pittillo had previously executed a Promissory Note and Mortgage involving the 605 North Main property that is scheduled to become due on December 3, 2016. Petitioners did not file any affidavit to support either of their motions. Instead, their motions made the unsupported allegation that "[t]he possibility of the Mortgage being foreclosed for non-payment of the Note is a real threat to the Trust's main asset, and immediate measures need to be taken to protect this asset, including the possible sale of the property." *See* Motion filed 12.9.15 p. 2.

On June 29, 2016, Respondent filed an opposition to the Motion for Appointment of Special Fiduciary. Respondent also filed affidavits of Respondent and several witnesses, including Jim Wright, Lee Agnew, Sharon Burbage, and Kane Wright. In his opposition to Petitioners' motions, Respondent argued that the substance of their motions seek a mandatory injunction against Respondent, that Petitioners have failed to show that injunctive relief is necessary to preserve the *status quo*, and that the motions improperly request the Court to alter the *status quo* by appointing a special fiduciary and to require Respondent to immediately turn over and relinquish possession, use, control, and ownership of the 605 North Main property to the special fiduciary, even though ownership of the property is in dispute. Respondent also argued that the Probate Court could not grant the relief requested by Petitioners in their motions without requiring them to post a bond under S.C. R. CIV. PRO. 65(c), which Petitioners had not shown they were capable of providing. Finally, as an alternative argument, Respondent also requested that the Probate Court appoint him as the special fiduciary should the Court determine that it is necessary and appropriate to appoint such a person.

On June 29, 2016, Associate Probate Judge Molly D. Edwards conducted a hearing on the motions. Judge Edwards heard the arguments of counsel, but no testimony was proffered or taken. Thereafter, on August 31, 2016, Judge Edwards issued a written order Appointing Special Fiduciary as Interim Trustee. In her order, Judge Edwards appointed Ashley Andrews, Esquire "as the special fiduciary to serve as the Interim Trustee." *See* Order p. 6. In delineating Ms. Andrews' "duties and responsibilities," the order states that "it is important that the Court treads lightly in regards to the duties and responsibilities assigned to a special fiduciary in order to ensure that the *status quo* is maintained in this matter to the greatest extent possible." *Id.* p. 7. The order also expressly finds that "[w]hile on the face of the Motion, Petitioners did not request an injunction, it appears that some of their requested relief would have the consequence of altering the *status quo*" and that "[w]hile injunctive relief was not plead by Petitioners, that would be the effect." *Id.* However, Judge Edwards concluded that the outstanding mortgage taken out on the 605 North Main property by Mrs. Pittillo "poses a major risk to the ownership of this property," thus she ruled that the "appointment of a Special Fiduciary is necessary in order to preserve 605 N. Main Street for all parties and to negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion." *Id.* p. 8. The order expressly authorizes Ms. Andrews "[i]n her sole discretion, [to] negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or [to] have the mortgage paid off prior to the December 3, 2016 due date." *Id.* p. 10. By appointing Ms. Andrews as Special Fiduciary, Judge Edwards necessarily denied Respondent's request that he be appointed to the position. The order affirmatively requires that Respondent turn over records to Ms. Andrews regarding his ownership of the 605 North Main property and any leases

of the property. *Id.* pp. 8, 10. The order further states that Ms. Andrews "shall be compensated at $200/hour." *Id.* p. 9.

Respondent's counsel received written notice of the entry of the order via regular mail on September 6, 2016. On September 16, 2016, Respondent timely filed and served his Notice of Intent to Appeal to Circuit Court in accordance with S.C. CODE ANN. § 62-1-308.

**LEGAL ANALYSIS**

Appeals from the Probate Court to the Circuit Court are governed by S.C. CODE ANN. § 62-1-308. Section 62-1-308 provides that "[a] person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county . . . ." *Id.* § 62-1-308(a). It further states that "[t]he circuit court . . . shall hear and determine the appeal according to the rules of law." *Id.* § 62-1-308(i). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citation omitted); *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254, 257 (1993). Therefore, "a circuit court hearing an appeal from the probate court must apply the same rules of law as an appellate court would apply on appeal." *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005); *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836, 839 (Ct. App. 2009); *Howard*, 434 S.E.2d at 257.

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. CODE ANN. § 14–3–330." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6-7, 630 S.E.2d 464, 467 (2006); *see also Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) ("Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within S.C. CODE ANN. § 14-3-330."); *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 379-80, 762 S.E.2d 44, 47 (Ct. App.

2014), *reh'g denied* (Aug. 25, 2014); *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002).

> The types of orders that are appealable pursuant to § 14-3-330 include:
>
> (3) **A final order affecting a substantial right made in any special proceeding** or upon a summary application in any action after judgment; and
>
> (4) **An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction** or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. CODE ANN. § 14-3-330 (emphasis added); *see also Edwards*, 369 S.C. at 93-94, 631 S.E.2d at 530. Although § 14-3-330(4) does not explicitly refer to "probate court" orders involving injunctions, our appellate courts have applied this provision to such orders. *See, e.g., Ex parte McFarlin*, 2007 WL 8326605, at *2 (S.C. Ct. App. Feb. 12, 2007).

Our statutes and rules of court should be construed liberally in favor of the right of appeal. *Stroup v. Duke Power Co.*, 216 S.C. 79, 84, 56 S.E.2d 745, 747 (1949); *Haughton v. Order of United Commercial Travelers of Am.*, 108 S.C. 73, 74–75, 93 S.E. 393, 394 (1917); *O'Rourke v. Atl. Paint Co.*, 91 S.C. 399, 403, 74 S.E. 930, 931 (1912). When there is a single order that is appealable in part, the entire order should be considered upon the appeal. *Rice Hope Plantation v. S. Carolina Pub. Serv. Auth.*, 216 S.C. 500, 511, 59 S.E.2d 132, 136 (1950), *overruled on other grounds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

### 1. The Probate Court's Order is a Final Order Affecting a Substantial Right Made in a Special Proceeding.

The Probate Court's order constitutes a final order affecting a substantial right made in a special proceeding within the meaning of § 14-3-330(3).

Despite the fact that § 14-3-330(3) and its predecessor versions have been around for over a century and a half, South Carolina has few reported decisions addressing this subsection.

Our courts have defined the term "special proceeding" as follows: "[A] collateral proceeding in aid of a remedy prosecuted by action or otherwise, but it is so far independent that a final order in such proceeding is in the nature of a judgment and may be appealed from at any time, without regard to the state of proceedings on an action to which it may be collateral." *Emory v. Davis*, 4 S. C. 23, 36 (1872).

Despite the dearth of law in South Carolina, numerous other states have enacted statutes identical to § 14-3-330(3). Courts applying those statutes have held that "[a] special proceeding includes every special statutory remedy which is not in itself an action." *Williams v. Baird*, 735 N.W.2d 383, 389 (Neb. 2007); *Sullivan v. Storz*, 55 N.W.2d 499, 502 (Neb. 1952) ("A special proceeding may be said to include every special statutory remedy which is not in itself an action."); 4 AM. JUR. 2D *Appellate Review* § 116 (2016) (citing cases). "A special proceeding is defined as usually meaning such a proceeding as may be commenced independently of a pending action by petition or motion, upon notice, in order to obtain special relief." *In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 756 (Minn. 2005). "Its existence is not dependent upon the existence of any other action and it therefore is not an integral part of the original action but is separate and apart" and "[i]t adjudicates by final order a substantial right distinct from any judgment entered upon the merits of the original action." *Id.*; *see also In re Estate of Janecek*, 610 N.W.2d 638, 642 (Minn. 2000) (stating that a special proceeding is a "generic term for a remedy that is not part of the underlying action and that is brought by motion or petition, upon notice, for action by the court independent of the merits of the underlying action"); *Schuster v. Schuster*, 87 N.W. 1014, 1015 (Minn. 1901) ("The phrase 'special proceeding,' within its proper definition, is a generic term for all civil remedies in courts of justice which are not ordinary

actions. Where the law confers a right, and authorizes a special application to a court to enforce it, the proceeding is special, within the ordinary meaning of the term 'special proceeding.'").

AMERICAN JURISPRUDENCE (SECOND) explains the difference between an "action" and a "special proceeding" as follows:

> The word "action" refers to an entire proceeding, not to one or more parts within a proceeding. Specifically, an action not only encompasses the complaint but also refers to the entire judicial proceeding at least through judgment. An "action" is an ordinary proceeding.
>
> The phrase "special proceeding" has no reference to provisional remedies in actions at law or in equity, and it has reference only to such proceedings as may be commenced independently of a pending action by petition or motion upon notice in order to obtain special relief. Special proceedings include civil statutory remedies not encompassed in the civil procedure statutes. As a general rule, a special proceeding is confined to the type of case which was not, under the common law or equity practice, either an action at law or a suit in equity. A special proceeding instead arises from a right conferred by a statute which authorizes a special application to the courts to enforce the right. Special proceedings have been distinguished from actions by characterizing the latter as ordinary proceedings in court by which one party prosecutes another for a declaration, enforcement, or protection of a right; or the redress or prevention of a wrong, with all other remedies being deemed special proceedings. Special proceedings have also been distinguished from actions by characterizing actions as ordinary proceedings for the punishment of a public offense. Additionally, special proceedings may be distinguished from other civil actions by the manner of pleading, practice, and procedure prescribed by the law.

1 AM. JUR. 2D *Actions* § 3 (2016) (footnotes omitted).

A probate proceeding is an example of a "special proceeding." *See Pfeil v. State*, 727 N.W.2d 214, 218 (Neb. 2007) ("[A] special proceeding includes every special statutory remedy which is not in itself an action. . . . Examples of special proceedings include . . . probate actions . . . ."); *Williams*, 735 N.W.2d at 389 ("Examples of special proceedings include juvenile court proceedings, probate actions, and workers' compensation cases."); *see also* 4 AM. JUR. 2D *Appellate Review* § 116 (citing cases); *In re Guardianship of Forster*, 856 N.W.2d 134, 146 (Neb. Ct. App. 2014) (proceedings under the Nebraska Probate Code are "special proceedings");

*In re Trust of Rosenberg*, 693 N.W.2d 500, 504 (Neb. 2005) (proceeding in county probate court to remove trustee was "special proceeding"); *Wead v. Lutz*, 831 N.E.2d 482, 485 (Ohio Ct. App. 2005) ("Generally, matters related to estate administration are treated as special proceedings."); *In re Estate of Janet N. Price*, 1995 WL 628344 (Ohio Ct. App. Oct. 26, 1995) (appeal from probate court's order denying an application to administer an estate was a final, appealable order because it affected a substantial right and was made in a special proceeding); *In re Putka*, 2001 WL 210027, at *1 n.1 (Ohio Ct. App. Mar. 1, 2001) (appeal from probate court's denial of an application for appointment as executor of the decedent's estate was final order made in a special proceeding and affected a substantial right).

In applying statutes identical to § 14-3-330(3), courts have held that "[a] substantial right is an essential legal right as distinguished from a mere technical one." *Sullivan*, 55 N.W.2d at 502; *In re Estate of Muncillo*, 789 N.W.2d 37, 42 (Neb. 2010) ("A substantial right is an essential legal right, not a mere technical right."). "A 'substantial right' is 'a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a man is entitled to have preserved and protected by law: a material right.'" *Barnes v. Kochhar*, 633 S.E.2d 474, 479 (N.C. Ct. App. 2006) (citation omitted);[1] *see also In re GlaxoSmithKline PLC*, 699 N.W.2d at 754 (substantial right defined as "[a]n essential right that potentially affects the outcome of a lawsuit and is capable of legal enforcement and protection, as distinguished from a mere technical or procedural right" (quoting *Black's Law Dictionary* 1349 (8th ed. 2004)).

[1] In *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008), our Court of Appeals pointed out the similarity of our statute to North Carolina's statute involving appealability of orders affecting a "substantial right."

It is critically important to the instant motion that South Carolina is among the large number of jurisdictions which have adopted Section 3-107 of the Uniform Probate Code (UPC). Under this section, unless administration of an estate is involved (which is inapplicable here), "each proceeding before the [probate] court is independent of any other proceeding involving the same estate." S.C. CODE ANN. § 62-3-107; *see also* UPC § 3-107; *Cotty v. Yartzeff*, 309 S.C. 259, 422 S.E.2d 100, 102 (1992) (quoting § 62-3-107). The comment to UPC § 3–107 provides in part: "[w]hen resort to the judge is necessary or desirable to resolve a dispute or to gain protection, the scope of the proceeding if not otherwise prescribed by the Code is framed by the petition." UPC § 3–107 cmt.

Thus, "as a practical matter each petition in a probate file should ordinarily be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order." *Matter of Estate of Newalla*, 837 P.2d 1373, 1377 (N.M. 1992); *In re Estate of Sanders*, 750 N.W.2d 806, 813 (Wis. 2008) ("Because the probate of an estate may consist of a series of special proceedings, unlike other forms of litigation, probate can result in a series of potentially final orders."); *Estate of Marsh*, 2016 WL 6581173, at *5 (Cal. Ct. App. Nov. 7, 2016) ("The administration of a decedent's estate can involve several 'independent collateral proceedings,' and the 'final orders' entered in each such proceeding are independently appealable and can be the basis for a res judicata defense." (citations omitted)).

"Because each proceeding [before the probate court] is independent, there needs to be finality, for purposes of appealability, only for the proceeding being appealed." *In re Estate of Ketterling*, 885 N.W.2d 85, 87 (N.D. 2016). "[M]ultiple judgments final for purposes of appeal can be rendered on certain discrete issues" in a single probate matter. *In re Guardianship of*

*Glasser*, 297 S.W.3d 369, 372 (Tex. App. 2009) (citation omitted). "[I]n order to authorize an appeal in a probate matter, it is not necessary that the decision, order, decree, or judgment referred to therein be one which fully and finally disposes of the entire probate proceeding." *Kelley v. Barnhill*, 188 S.W.2d 385, 386 (Tex. 1945); *White v. Pope*, 664 S.W.2d 105, 107 (Tex. Ct. App. 1983) ("An order may be final and appealable even though the decision does not fully and finally dispose of the entire probate proceeding.").

All that is required for a probate order to be appealable is that "[t]he order must finally dispose or be conclusive of the issue or controverted question for which the particular part of the proceeding was brought." *Wittner v. Scanlan*, 959 S.W.2d 640, 641 (Tex. Ct. App. 1995); *see also Kelley*, 188 S.W.2d at 386 ("[I]t must be one which finally disposes of and is conclusive of the issue or controverted question for which that particular part of the proceeding was brought."); *In re Estate of McKillip*, 820 N.W.2d 868, 875–76 (Neb. 2012) ("In the context of multifaceted special proceedings that are designed to administer the affairs of a person, the word 'case' means a discrete phase of the proceedings" and "[a]n order that ends a discrete phase of the proceedings affects a substantial right because it finally resolves the issues raised in that phase.").

"An order affecting a substantial right, when made in a special proceeding is a final order and is appealable, even though it does not terminate the action, nor constitute a final disposition of the case." *Sullivan*, 55 N.W.2d at 502; *In re Guardianship of Forster*, 856 N.W.2d 134, 146 (Neb. Ct. App. 2014) ("If a substantial right is affected, an order is directly appealable as a final order even though it does not terminate the action or constitute a final disposition of the case."). "In other words, 'an order is appealable if it finally adjudicates some substantial right, whereas if it merely leads to further hearings on the issue, it is interlocutory.'" *White*, 664 S.W.2d at 107 (citation omitted).

Importantly, "it is substance and not mere nomenclature which determines the nature and finality of the order." *In re Estate of Sims*, 540 S.E.2d 650, 651 (Ga. Ct. App. 2000); *see also Gomes v. Kauwe's Heirs,* 472 P.2d 119, 119-120 (Haw. 1970) ("The nature of an order as final or interlocutory is determined by its substance and not on the basis of the designation given to by the court."); *Howell v. Reimann,* 288 P.2d 649, 651 (Idaho 1955) ("Whether an instrument is an appealable order or judgment must be determined by its content and substance, and not by its title."); *Airline Ground Serv. Inc. v. Checker Cab Co.,* 39 N.W.2d 809, 811 (Neb. 1949) ("It is fundamental of course that the form of an order or the label placed upon it does not determine its character. It is the substance of the order which is controlling in determining its nature."); *Peninsula Prop. Co. v. Santa Cruz County,* 235 P.2d 635, 640 (Cal. Dist. Ct. App.1951) ("The label placed upon the order or judgment by the trial court is not conclusive. . . . [A]n appellate court must determine from the substance and effect of the order or judgment whether it is final or interlocutory.").

The fact that a probate order is designated as "interim" does not negate the conclusion that it is appealable as a "final" order under § 14-3-330(3). *See, e.g., Rentz v. Rentz*, 2016 WL 6270439, at *3 (Ga. Ct. App. Oct. 26, 2016) ("The probate court's caption as an 'interim' order does not require us to conclude that the order was not final. Rather, we look to the substance of the order to determine whether it was final. In this case, the probate court's order resolved the issue pending before it—the sale of the estate property. Accordingly, the probate court's order was final for purposes of the superior court's jurisdiction." (citations omitted)); *In re Estate of Adams*, 2013 WL 84925, *2 (Tex. Ct. App. Jan. 8, 2013) ("A probate proceeding consists of a continuing series of events, in which the probate court may make decisions at various points in the administration of the estate on which later decisions will be based. In probate cases, it is

possible to have more than one final, appealable order. *There may be appeals of interim orders rendered on discrete issues before the entire probate proceeding is concluded . . . .*" (emphasis added)); *In re Merlino's Estate*, 294 P.2d 941, 943 (Wash. 1956) (holding that an "interim order made during the course of probate" was "final in its nature" and immediately appealable); *In re Estate of Williams*, 2011 WL 345848, at *5 (Tex. App. Feb. 3, 2011) ("[P]robate proceedings give rise to a recognized exception to the general rule that only final judgments are appealable. *This exception accommodates appeals of interim orders rendered on discrete issues before the entire probate proceeding is concluded.*" (emphasis added)).

In the case at bar, the Petitioners' motion for appointment of a Special Fiduciary pursuant to § 62-7-704(e) of the South Carolina Probate Code is a "special proceeding." The motion is not in itself an action, but requests special relief (appointment of a Special Fiduciary on an interim basis) that is not dependent upon the existence of any other action or the outcome of the Petitioners' original petition. The motion for appointment of a Special Fiduciary is not essential to the Petitioners' original petition and is discrete from that petition. The original petition did not seek appointment of an interim Special Fiduciary. It is unnecessary for the Probate Court to appoint a Special Fiduciary on an interim basis in order to adjudicate the Petitioners' original petition, which seeks the appointment of a Successor Trustee to administer and dissolve the Trust after a final hearing on the merits. The appointment of a Special Fiduciary on an interim basis is not an integral part of the original petition, but is separate and apart from that petition. It is merely collateral to it; a special and independent step.

The Probate Court's order also fully and finally adjudicates the parties' rights involving Petitioners' request for the appointment of a Special Fiduciary. The order is "final" because no further action is required in the Probate Court to determine the parties' rights with respect to the

discrete issue involving the appointment of a Special Fiduciary. The order does not advise that any further hearings or proceedings will occur on whether to appoint a Special Fiduciary. There is nothing left for the Probate Court to do involving Petitioners' request for appointment of a Special Fiduciary. The Probate Court has already decided that discrete issue. Indeed, the Special Fiduciary has already been acting pursuant to the authorization granted in the Probate Court's order.

Finally, the Probate Court's appointment of a Special Fiduciary involves a substantial right, not merely a technical or procedural matter. The Probate Court's order specifically authorizes the Special Fiduciary "to negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion." *See* Order p. 8. The order expressly authorizes the Special Fiduciary "[i]n her sole discretion, [to] negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or [to] have the mortgage paid off prior to the December 3, 2016 due date." *Id.* p. 10. For example, the Special Fiduciary could obtain a loan from a lender to pay off the existing loan and place another mortgage on the 605 North Main property, which Respondent maintains that he alone owns. Indeed, Respondent is informed that the Special Fiduciary already has undertaken efforts to try to extend or renegotiate the loan and mortgage involving the 605 North Main property without Respondent's knowledge or involvement. The Probate Court also denied Respondent's request to be appointed to the position of Special Fiduciary, thus depriving him of this right. The order affirmatively requires that Respondent turn over records to the Special Fiduciary regarding his ownership of the 605 North Main property and any leases of the property. *Id.* pp. 8, 10. The order further states that the Special Fiduciary "shall be compensated at $200/hour." *Id.* p. 9. In short, the order undoubtedly involves substantial rights.

Notably, even if this Court should later determine that the Probate Court erred in appointing a Special Fiduciary and in allowing transactions involving the 605 North Main property to proceed without Respondent's involvement, it will be impossible to undo the particular transactions that have already taken place under the Probate Court's order. The transactions will have already occurred and there is nothing this Court could do to rectify the Probate Court's improper rulings. In short, if the Special Fiduciary is allowed to undertake transactions involving the 605 North Main property, this Court will not be able to provide an effective remedy to Respondent if he has to wait until the entire controversy is disposed of before he can appeal the order.[2] *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 8, 630 S.E.2d at 468 (agreeing that order unsealing family court records was immediately appealable because no appellate remedy is likely to repair any damage done by an improper disclosure); *In re Estate of Muncillo*, 789 N.W.2d 37, 41–42 (Neb. 2010) (Court held that probate court order denying application for appointment of a special administrator was a "special proceeding" and "affects an essential legal right" which "cannot be vindicated upon appeal from entry of the later final judgment" because "[i]t is not uncommon for the probate of an estate to remain open for years, and a special administrator cannot go back in time and preserve or administer the estate long after the application to appoint has been denied." Accordingly, Court held "the probate court's ruling in this case affected a substantial right of the appellant in a special proceeding, and is therefore a final, appealable order . . . .").

In summary, because the Probate Court has entered a final order in a special proceeding affecting a substantial right, the Probate Court's order is appealable.

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[2] The Probate Court's order rejected Respondent's request that the Petitioners be required to give a bond or otherwise indemnify the Respondent for any loss he may sustain if it should finally be determined the Probate Court's order was improperly entered. The Probate Court's order does not require either Petitioners or the Special Fiduciary to post a bond of any sort.

## 2. The Probate Court's Order Effectively Grants, Continues, or Refuses an Injunction.

The Probate Court's order also has the effect of granting or refusing an injunction within the meaning of § 14-3-330(4).

Orders granting or refusing an injunction are immediately appealable. *Babb v. Scott*, 2005 WL 7084291, *1 (S.C. Ct. App. 2005) ("A grant of an injunction is immediately appealable."); *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 602 S.E.2d 83, 86 (Ct. App. 2004) ("Appellants correctly argue that the refusal to grant a restraining order is immediately appealable."); *Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57, 61 (1956) (appeal lay from the restraining order or temporary injunction); S.C. CODE ANN. § 14–3–330(4).

"In determining what constitutes an injunction subject to interlocutory review the court should look to the substance of the order rather than its form." *Jordan v. Officer*, 508 N.E.2d 1077, 1079 (Ill. App. Ct. 1987). "An order—including a postjudgment order—is properly characterized as an 'injunction' when it substantially and obviously alters the parties' pre-existing legal relationship." *Jones-El v. Berge*, 374 F.3d 541, 544 (7th Cir. 2004).

Our state supreme court has recognized that labels are not determinative; instead, it is the substance of the requested relief that matters. *Sanford v. South Carolina State Ethics Com'n*, 385 S.C. 483, 495-96, 685 S.E.2d 600, 607 (2009) ("Because it is 'the substance of the requested relief that matters' and not the form in which the petition for relief is framed, we may construe the Governor's request as one for injunctive relief if that is substantively what he is requesting."); *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 437, 673 S.E.2d 448, 458 (2009); *see also McDevitt v. Wellin*, 2016 WL 199626, *3 (D.S.C. 2016) ("The trust plaintiffs' motion also seeks to compel the Wellin children to make certain payments and take certain actions with respect to the Trust assets going forward. Thus, it falls within the definition

of injunctive relief outlined above."); *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) ("Although the petition in this case was styled as a request for a writ of mandamus, we find that based on the relief sought, the County's pleading is more properly characterized as a request for an injunction. It is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'").

Although Petitioners' motions did not specifically ask for or analyze the requirements for injunctive relief, the substance of their motions sought a mandatory injunction against Respondent. Petitioners' motions requested the Probate Court to alter the *status quo* by appointing a special fiduciary and to require Respondent to immediately turn over and relinquish possession, use, control, and ownership of the 605 North Main property to the special fiduciary, even though ownership of the property is in dispute. Despite the fact that Respondent possesses and uses the property and claims ownership of the property, Petitioners nevertheless asked the Court to authorize the special fiduciary to have immediate possession, control, and authority over the property, including "management" of the property, "collection" of the rents and income generated thereby, and potentially selling the property.

In the Probate Court's order appointing a Special Fiduciary, the Court specifically acknowledged that "it is important that the Court treads lightly in regards to the duties and responsibilities assigned to a special fiduciary in order to ensure that the *status quo* is maintained in this matter to the greatest extent possible." *See* Order p. 7. The order also expressly found that "[w]hile on the face of the Motion, Petitioners did not request an injunction, it appears that some of their requested relief would have the consequence of altering the *status quo*" and that "[w]hile injunctive relief was not plead by Petitioners, that would be the effect." *Id.* By appointing Ms.

Andrews as Special Fiduciary, the order also necessarily denied Respondent's request to be appointed to that position.

The Probate Court's order alters the parties' legal relationship. The order appoints Ms. Andrews as the Special Fiduciary with powers over the Trust for an indefinite period of time. Even though ownership of the 605 North Main property is in dispute, the order expressly permits Ms. Andrews "to negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion." *See* Order p. 8. "In her sole discretion, [Ms. Andrews may] negotiate with the lender and/or parties to extend the due date on the current mortgage in order for litigation to be finalized or [to] have the mortgage paid off prior to the December 3, 2016 due date." *Id.* p. 10. Ms. Andrews could obtain a loan from a lender to pay off the existing loan and place another mortgage on the 605 North Main property without Respondent's consent or approval. The order also mandates that Respondent must turn over records to Ms. Andrews regarding his ownership of the 605 North Main property and any leases of the property. *Id.* pp. 8, 10. The order further states that Ms. Andrews "shall be compensated at $200/hour." *Id.* p. 9.

The practical effect of the Circuit Court's order is to grant injunctive relief because it effectively restrains Respondent from exercising complete and full ownership over his property. By granting the Special Fiduciary the power to negotiate and obtain an extension of the note and mortgage involving the property or to take steps to pay off the mortgage (such as obtaining a new loan and placing a new mortgage on the property), it necessarily alters the parties existing legal relationship. The order also denied or refused Respondent's request to be appointed as Special Fiduciary.

### 3. The Court of Appeals's Opinion in *Estate of Boyce* is not Controlling.

Petitioners' motion relies almost exclusively on the Court of Appeals's decision in *Estate of Boyce*. However, that reliance is misplaced because the Court was never asked to address the appealability of the probate court's order under §§ 14–3–330(3) or (4). In that case, the Court of Appeals held that a probate court order appointing two sisters as "special administrators" for an estate was "clearly temporary" because it stated the sisters are appointed "until such time as a Personal Representative(s) shall be formally appointed."[3] The order also forbade the sisters from distributing any estate assets and required them to post a substantial bond. On appeal to the circuit court, the circuit court disqualified one of the sisters from serving as special administrator. The sisters then appealed to the Court of Appeals, which vacated the circuit court's order based on its conclusion that the probate court's "temporary order" was not final.

However, nothing in the Court of Appeals' opinion indicates that it was presented with any argument that the order was a final order affecting a substantial right made in a special proceeding under § 14–3–330(3) or an order that grants, continues, or refuses an injunction under § 14–3–330(4). As former Chief Judge Alex Sanders so aptly stated, "appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin,* 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991).[4] Thus, the Court of Appeals in *Estate of Boyce* did not decide the issues presented in this case and that decision is not controlling of the issues raised in Petitioners' motion to dismiss.

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[3] The order at issue in this case is noticeably different from the order in *Estate of Boyce*. Although the Probate Court's order in this case states the "special fiduciary [is] to serve as the Interim Trustee," it nowhere states when the Special Fiduciary's appointment will terminate. *See* Order p. 6. Instead, the Special Fiduciary is appointed for an indefinite period.

[4] The Court of Appeals's opinion in *Estate of Boyce* was appealed to our state Supreme Court. However, the parties settled before the Supreme Court had decided the matter. *See Boyce-Abel In re Estate of Boyce v. Work*, 308 S.C. 234, 417 S.E.2d 597 (1992).

**4. Deciding Novel Issues in the Interest of Judicial Economy.**

Even if the Court should find that this case does not fit within § 14-3-330, the Court should still decide the novel issues in this appeal in the interest of judicial economy. In *Ex parte Wilson,* 367 S.C. 7, 625 S.E.2d 205 (2005), the South Carolina Supreme Court found that the trial court's order was not immediately appealable, but nevertheless addressed the novel issue raised in the appeal in the interest of judicial economy. *Id.* at 14, 625 S.E.2d at 208 ("Although we dismiss the order as not immediately appealable, we address this novel issue in the interest of judicial economy."); *see also Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471-72, 674 S.E.2d 154, 160-61 (2009) (allowing appeal from discovery order when it involved a novel question of law in a matter that was the subject of numerous claims in state and federal courts and a decision by the Court would best serve the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest); *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 452, 661 S.E.2d 81, 87 (2008) (allowing appeal from class certification order based in part on finding that the issue presents a novel question of law which should be addressed at this time in the interest of judicial economy and guidance to the bench and bar).

This present appeal involves the novel issue of whether the Probate Court can authorize a Special Fiduciary to take actions and exert control over purported Trust assets (which are in the possession of another party) even when ownership of those same assets is disputed and the parties are litigating that very issue. Because of the Probate Court's appointment of a Special Fiduciary, the Special Fiduciary is allowed to conduct transactions involving the 605 North Main property without Respondent's control or involvement and without providing Respondent with any information involving these transactions. It is more economical to decide the novel issues raised in this appeal at this juncture before transactions involving the property are completed

under the Probate Court's order, instead of waiting until the entire controversy is decided at which point any relief this Court may grant to Respondent would be a hollow gesture because the transactions will already have been completed and cannot be undone.

For the forgoing reasons, Respondent respectfully requests that the Court deny the Petitioners' motion to dismiss the appeal.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
November 17, 2016.

CERTIFIED COPY
2016 NOV 21 PM 12:46
CLERK OF COURT
DORCHESTER COUNTY

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of November, 2016, a true and correct copy of the Respondent's Memorandum of Law in Opposition to Motion to Dismiss Appeal in the above-captioned action was sent via e-mail to and deposited in the U.S. mail with sufficient postage affixed thereto and addressed to:

Barry I. Baker, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

By: _____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S.HENSON AND VANN K. HENSON<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | ) | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO. 2016-CP-18-1849<br><br>(Probate Case No.: 1994-ES-18-00147-2)<br><br>**PETITIONER'S VERIFIED PETITION TO LIFT STAY** |

Pursuant to S.C. Code Ann. § 62-1-308 and Rule 241, SCACR, Petitioners Richard S. Henson and Vann K. Henson submit this Verified Petition to Lift Stay, if any, resulting from the Notice of Appeal of the Court's Order Appointing Special Fiduciary as Interim Trustee, which was filed by Respondent Albert T. Henson, Jr., for the following reasons:[1]

## I. FACTUAL BACKGROUND

On October 6, 1993, Eunice I. Page ("Ms. Page") died a resident of Dorchester County. Her estate was administered in the Dorchester County Probate Court, case number 94ES18-147. In her Last Will and Testament (the "Will") executed on October 14, 1992, Ms. Page created the Trust EIP (the "Trust") under Item V of the Will. Ann P. Pittillo ("Ms. Pittillo") was appointed as trustee of the Trust and George Hollis Cone ("Mr. Cone") as substitute or successor trustee. The

[1] Judge Dickson heard a Motion to Dismiss the appeal on Monday, November 21, 2016. His ruling is pending.

main asset of the Trust is property located at 605 North Main Street in Summerville (the "Subject Property"), which was conveyed to Ms. Pittillo as trustee of the Trust by deed dated July 27, 1997. Ms. Pittillo, who died on April 20, 2014, was predeceased by Mr. Cone. Petitioners were unable to find a bank willing to serve as trustee as provided for in the Trust provisions in the Will.

On January 26, 2015, Petitioners filed a Petition to Appoint a Successor Trustee of the Trust and filed an Amended Petition on May 4, 2015. Petitioners and Respondent are beneficiaries of the Trust. In the Amended Petition, Petitioners claim that the trusteeship of the Trust is vacant and they seek appointment of a successor trustee to administer the Trust. Petitioners also assert that the Subject Property is the sole asset of the Trust. Respondent denies that the Subject Property is an asset of the Trust and instead claims that Eunice I. Page conveyed the Subject Property to him prior to her death.

On October 12, 2015, Petitioners filed a Motion for the Appointment of a Special Fiduciary as an Interim Trustee, and also filed a subsequent Motion for an Expedited Hearing. Under those two motions, Petitioners sought the appointment of a special fiduciary who would serve as interim trustee of the Trust and, among other things, ensure that the Subject Property is not foreclosed upon by a lender who holds a mortgage on the Subject Property.

Associate Probate Judge Molly D. Edwards held a hearing on Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee on June 29, 2016. On August 31, 2016, Judge Edwards issued an Order Appointing Special Fiduciary as Interim Trustee (the "Order"), in which she appointed Ashley Andrews, Esq., as a special fiduciary to serve as interim trustee of the Trust pursuant to S.C. Code Ann. § 62-7-704. (Ex. A – Certified Copy of Order.) Under the Order, Ms. Andrews's powers are limited to the following: (1) negotiating with the lender and/or the parties to extend the due date of the current mortgage in order for litigation to be finalized or

have the mortgage paid off prior to December 3, 2016; (2) determining if any other assets are titled to the Trust; (3) recovering all records Respondent may possess regarding the alleged transfer of the Subject Property from Ms. Page to Respondent; (4) collecting copies of all agreements Respondent, Ms. Page, or Ann Page Pittillo may have entered into with another party to lease the Subject Property; and (5) ensuring all actions taken by her are done in the interest of maintaining the status quo pending a final hearing on the merits in this case.

On September 16, 2016, Respondent, pursuant to S.C. Code Ann. § 62-1-308, filed a Notice of Intent to Appeal with the Court of Common Pleas, Dorchester County. (Ex. B – Notice of Appeal.) Petitioners filed their Motions to Dismiss Appeal and for an Expedited Hearing on October 26, 2016 and October 27, 2016, respectively.

## II. GROUNDS FOR THE PETITION & LEGAL ARGUMENT

The South Carolina Appellate Court Rules govern appeals under § 62-1-308. *See In re* Howard, 315 S.C. 356, 360, 434 S.E.2d 254 (1993). Under the South Carolina Appellate Court Rules, the procedure for lifting a stay arising from a notice of appeal is provided in Rule 241, SCACR. *See also, In re Estate of Connor*, Unpublished Opinion No. 2009-UP-502, 2009 S.C. App. Unpub. LEXIS 524 (S.C. Ct. App. Oct. 29, 2009) (ruling that stay from an appeal under § 62-1-308 can be lifted pursuant to Rule 241, SCACR). Pursuant to Rule 241(c)(2), the court, in determining whether to lift a stay arising from an appeal, "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot."

In this case, the potential stay regarding the matters affected by the Order should be lifted because the cloud of the interim fiduciary's authority to act on behalf of the Trust created by the appeal is interfering with Ms. Andrews's ability to negotiate and/or pay off the existing loan and

satisfy the mortgage. As stated above, the Subject Property is subject to a loan and mortgage, and the deadline for the payment of that loan by the Trust is December 3, 2016. If the Trust fails to pay the loan by that date, then the Subject Property must be transferred to the lender. Although Ms. Andrews has been able to locate a potential lender who will refinance the existing loan and thereby prevent the loss of the Subject Property, she has not been able to finalize the loan because she cannot obtain a lender's title insurance policy due to the pending appeal and the question of her authority to act on behalf of the Trust while the appeal is pending. (Ex. C – Aff. Ashley Andrews.) In addition, Ms. Andrews may be able to reach an agreement with the lender to extend the due date under the existing mortgage and loan; however, her authority to enter into such an extension is unclear because of the pending appeal. (*Id.*) Therefore, if the potential stay is not lifted, then the Subject Property will likely be transferred to the lender, thereby rendering moot the contested issues in this case.

## III. CONCLUSION

For the forgoing reasons, Petitioners request that the Court lift any stay arising from Respondent's appeal of the Court's Order Appointing Special Fiduciary as Interim Trustee and clarify that the special fiduciary has the authority to act as provided in the appointment Order.

Trudy H. Robertson
Paul M. Lynch
E. Brandon Gaskins
MOORE & VANN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000
E-mail: trudyrobertson@mvalaw.com
paullynch@mvalaw.com
*Attorneys for the Petitioners*

November 23, 2016

Charleston, SC

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY DORCHESTER | ) | |
| | ) | CASE NO. 2016-CP-18-1849 |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | (Probate Case No.: 1994-ES-18-00147-2) |
| | ) | |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON | ) | **VERIFICATION** |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| RESPONDENTS. | ) | |

Personally appeared before me, the undersigned, who being duly sworn, deposes and states under oath that he is the Petitioner in the above-referenced action and that he has read the contents of the foregoing Petition to Obtain Lift of Stay pending and that the matters contained therein are true to the best of his knowledge.

Richard S. Henson

Richard S. Henson

Sworn to before me
This 23rd day of November, 2016

Wendy S. Stockhausen
Notary Public for South Carolina
My Commission expires: May 12, 2024

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FIRST JUDICIAL CIRCUIT |
| COUNTY DORCHESTER | ) | |
| | ) | CASE NO. 2016-CP-18-1849 |
| IN RE: | ) | |
| | ) | |
| TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | ) | (Probate Case No.: 1994-ES-18-00147-2) |
| | ) | |
| RICHARD S.HENSON AND VANN K. HENSON | ) | **CERTIFICATE OF SERVICE** |
| | ) | |
| PETITIONERS, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| ALBERT T. HENSON, JR. AND JULIAN REID HENSON, | ) | |
| | ) | |
| RESPONDENTS. | ) | |
| | ) | |

I hereby certify that a copy of the foregoing **Verified Petition to Lift Stay** was served upon the parties below by hand delivery to:

Daniel F. Blanchard, III, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

E-mail: dblanchard@rrhlawfirm.com

*Attorney for Respondent Albert T. Henson, Jr.*

Trudy H. Robertson

November 23, 2016

Charleston, SC

# EXHIBIT A

**THIS DOCUMENT IS THE SAME DOCUMENT FOUND AT PAGES 0001 THROUGH 0011 OF THE RECORD ON APPEAL**

# EXHIBIT B

| | |
|---|---|
| STATE OF SOUTH CAROLINA | IN THE PROBATE COURT |
| COUNTY OF DORCHESTER | Case No.: 2016-CP-18-1849 |
| IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992 | |
| RICHARD S. HENSON and VANN KENNETH HENSON, Petitioners, v. ALBERT T. HENSON, JR. and JULIAN REID HENSON, Respondent, | NOTICE OF INTENT TO APPEAL TO CIRCUIT COURT |

PLEASE TAKE NOTICE that, pursuant to S.C. CODE ANN. § 62-1-308, the Respondent Albert T. Henson, Jr , by and through the undersigned attorneys, hereby provides this Notice of Intent to Appeal the Order Appointing Special Fiduciary as Interim Trustee of Associate Probate Judge Molly D Edwards dated August 31, 2016. Counsel for Respondent received written notice of the entry of the Probate Court's Order via regular mail from the Probate Court on September 6, 2016, thus this Notice of Intent to Appeal is timely filed pursuant to S.C. CODE ANN. § 62-1-308(a) A copy of the Probate Court's Order is attached hereto.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina
September 15, 2016

SWORN to and subscribed before me this
15th day of September, 2016.

Notary Public for the State of South Carolina
My commission expires: ~~My Commission Expires~~
March 6, 2017

**THIS DOCUMENT IS THE SAME DOCUMENT FOUND AT PAGES 0001 THROUGH 0011 OF THE RECORD ON APPEAL**

## CERTIFICATE OF SERVICE

I hereby certify that on the date referenced below that I have served all counsel in this action with a copy of the Notice of Intent to Appeal to Circuit Court in the above-captioned action by mailing a copy of same by United States mail, first class mail, postage prepaid, and addressed to the following:

Barry I Baker. Esquire
Kyle T. Varner, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

This the 16th day of September, 2016

ROSEN, ROSEN & HAGOOD, LLC

By. _____
Daniel F. Blanchard, III, Esquire
ATTORNEYS FOR RESPONDENT

# EXHIBIT C

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY DORCHESTER<br><br>IN RE:<br><br>TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992<br><br>RICHARD S.HENSON AND VANN K. HENSON,<br><br>PETITIONERS,<br><br>v.<br><br>ALBERT T. HENSON, JR. AND JULIAN REID HENSON,<br><br>RESPONDENTS. | IN THE COURT OF COMMON PLEAS<br>FIRST JUDICIAL CIRCUIT<br><br>CASE NO. 2016-CP-18-1849<br><br>(Probate Case No.: 1994-ES-18-00147-2)<br><br>**AFFIDAVIT OF ASHLEY ANDREWS, ESQUIRE, IN SUPPORT OF PETITION TO LIFT THE AUTOMATIC STAY** |

Personally appeared before me, Ashley Andrews, Esquire, who being duly sworn, deposes and says as follows:

1. I am over eighteen (18) years old. I am competent to give this affidavit, and it is based upon my own personal knowledge.

2. I am a resident of Charleston County, South Carolina.

3. I am an attorney admitted to the Bar of the Supreme Court of South Carolina and actively engaged in the practice of law.

4. I am familiar with the above-captioned action and the events and circumstances involved in this contested case. The matters stated herein are of my own personal knowledge, and I am competent to testify to the matters stated herein.

5. Pursuant to Petitioners' Motion for the Appointment of a Special Fiduciary as an Interim Trustee on June 29, 2016, I was appointed by Associate Probate Judge Molly D.

Edwards as a special fiduciary to serve as interim trustee of the Trust EIP Created under the Last Will and Testament of Eunice I. Page, dated October 14, 1992 (the "Trust"), in accordance with S.C. Code Ann. § 62-7-704 on August 31, 2016. The Trust has a purported interest in certain real property located at 605 North Main Street, Summerville, South Carolina (the "Subject Property"), which is the subject of an existing loan and mortgage that must be satisfied on or before December 3, 2016.

6. My powers as interim trustee of the Trust are limited to the following: (1) negotiating with the lender and/or the parties to extend the due date of the current mortgage on the Subject Property in order for litigation to be finalized or have the mortgage paid off prior to December 3, 2016; (2) determining if any other assets are titled to the Trust; (3) recovering all records Respondent may possess regarding the alleged transfer of the Subject Property from Ms. Page to Respondent; (4) collecting copies of all agreements Respondent, Ms. Page, and/or Ann Page Pittillo may have entered into with another party to lease the Subject Property; and (5) ensuring all actions taken by me are done in the interest of maintaining the status quo pending a final hearing on the merits in this case.

7. I have been actively engaged in negotiations with a lender to refinance the existing loan and pay off the mortgage on the Subject Property prior to December 3, 2016. I have obtained approval to refinance the loan and satisfy the mortgage on the Subject Property, however, such refinancing is conditioned upon the Trust's ability to obtain a lender's title insurance policy. I have not been able to obtain a lender's title insurance policy for the Subject Property due to uncertainty about my authority to act on behalf of the Trust created by the pending appeal of the Court's Order appointing me as interim trustee of the Trust. If I am unable to obtain a lender's title insurance for the Subject Property, it is unlikely that I will be able to

refinance and pay off the current loan on the Subject Property on or before December 3, 2016. If the note and mortgage are not satisfied by this date, the Subject Property must be transferred to the lenders under the terms of the existing loan, and the Trust will likely lose its purported interest in the Subject Property.

8. If the stay arising from Respondent's appeal is lifted, I will likely be able to obtain a lender's title insurance policy on the Subject Property and obtain the necessary refinancing to ensure that the Trust's interest in the Subject Property is preserved and that the contested issues in this case are not rendered moot.

9. In addition, I have been in discussions with the lenders on the existing note and mortgage for the Subject Property regarding an extension of the term of the loan. In these discussions, the lenders have indicated that they are willing to extend the due date of the loan, which will ensure that the Subject Property is not transferred to the lenders in the event that the loan is not paid off by December 3, 2016. However, my authority to enter into an agreement to extend the term and the effectiveness of such agreement is uncertain due to the pending appeal of my appointment by Respondent. If the Court lifts any stay arising from Respondent's appeal, I likely will be able to enter into an agreement to extend the term of the loan and preserve the property under its current ownership until the Court can hold a final hearing on the merits.

FURTHER AFFIANT SAYETH NAUGHT.

Ashley Andrews, Esq.

Sworn to before me this
23rd day of November, 2016

Notary for the State of South Carolina
My Commission Expires: 1/9/18

CATHERINE E. LAFOND
NOTARY PUBLIC
SOUTH CAROLINA
My Commission Expires
01-09-2018

RECEIVED
JAN 17 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Judge

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Court of Common Pleas Case No. 2016-CP-18-1849

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IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992,

RICHARD S. HENSON AND VANN KENNETH HENSON,
Petitioners,

v.

ALBERT T. HENSON, JR. AND JULIAN REID HENSON,
Respondents.

Of whom

ALBERT T. HENSON, JR. IS the Appellant.

---

**NOTICE OF APPEAL**

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Appellant Albert T. Henson, Jr. appeals the Order of Circuit Judge Edgar W. Dickson filed on December 12, 2016. Appellant received written notice of entry of the Order on December 15, 2016. A copy of the written Order is attached hereto.

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III (SC Bar 65342)
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726 telephone
dblanchard@rrhlawfirm.com

January 12, 2017

ATTORNEYS FOR APPELLANT

Other attorneys

Barry I. Baker, Esquire
Kyle Varner, Esquire
Post Office Box 31265
Charleston, SC 29417
(843) 766-1265 telephone

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828
(843) 579-7061 telephone

ATTORNEYS FOR PETITIONERS

Ashley G. Andrews, Esquire
Lafond Law Group, PA
544 Savannah Highway
Charleston, SC 29407
(843) 762-3554 telephone

SPECIAL FIDUCIARY AS INTERIM TRUSTEE

**THIS DOCUMENT IS THE SAME DOCUMENT FOUND AT PAGES 0012 THROUGH 0019 OF THE RECORD ON APPEAL**

RECEIVED
JAN 17 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Judge

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Court of Common Pleas Case No. 2016-CP-18-1849

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IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE DATED OCTOBER 14, 1992,

RICHARD S. HENSON AND VANN KENNETH HENSON,
Petitioners,

v.

ALBERT T. HENSON, JR. AND JULIAN REID HENSON,
Respondents.

Of whom

ALBERT T. HENSON, JR. Is the Appellant.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on the Petitioners by mailing a copy of it to their attorneys of record on January 12, 2017 by United States first-class mail, with sufficient postage affixed thereto, and addressed as follows:

Barry I. Baker, Esquire
Kyle Varner, Esquire
Post Office Box 31265
Charleston, SC 29417

Trudy H. Robertson, Esquire
Paul Lynch, Esquire
Moore & Van Allen, PLLC
Post Office Box 22828
Charleston, SC 29413-2828

Ashley G. Andrews, Esquire
Lafond Law Group, PA
544 Savannah Highway
Charleston, SC 29407

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Daniel F. Blanchard, III
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
ATTORNEYS FOR APPELLANT

January 12, 2017.

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| STATE OF SOUTH CAROLINA ) | IN THE PROBATE COURT |
| ) | |
| COUNTY OF DORCHESTER ) | C/N 1994-ES-18-00147-2 |

IN RE: TRUST EIP CREATED UNDER THE LAST WILL AND TESTAMENT OF EUNICE I. PAGE, DATED OCTOBER 14, 1992,

RICHARD S. HENSON and VANN KENNETH HENSON,

PETITIONERS,

-VS-

ALBERT T. HENSON, JR. and JULIAN REID HENSON,

RESPONDENTS.

HEARING BEFORE THE

HONORABLE MOLLY D. EDWARDS

JUNE 29, 2016

2:14 p.m.

A-P-P-E-A-R-A-N-C-E-S

Court Reporter: Lisa A. McCarn

For the Petitioner:
Moore & VanAllen
By: Trudy H. Robertson, Esq.
78 Wentworth Street
Charleston, SC 29401

Barry I. Baker
Attorney at Law
1 Carriage Lane, Building H
Charleston, SC 29407

For the Respondents:
Rosen, Rosen & Hagood
By: Daniel Blanchard, III, Esq.
151 Meeting Street, Suite 400
Charleston, SC 29401

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No. 2 Deed of Distribution

No. 3 Promissory Note

(Retained by the Court.)

THE COURT: Please be seated. Thank you all very much. Is there anything we need to take up before we go on the record?

MR. BLANCHARD: No, Your Honor. I just wanted to make sure: I did file some affidavits today, and I had e-mailed. I just want to make sure that --

THE COURT: Sure.

MR. BLANCHARD: I have actual extra copies, file copies, if that would help?

THE COURT: That would be great.

MR. BLANCHARD: And I've already given them to opposing counsel. And there's also some law that we may talk about, and I've got some copies of that, too. I just wanted to make sure you had them before we got started.

THE COURT: Thank you so much.

MS. ROBERTSON: Your Honor, I don't think there's anything to discuss prior to going on the record. Of course, we have disagreement on how to proceed today, but that's probably a discussion for the record.

THE COURT: Wonderful, thank you so much. Okay. Let's go ahead and go on the record.

Today is Wednesday, June 29th, 2016. We are

here In the Matter of Anne Page Pittillo, Case Number 2014-ES-18-00592, as well as the Estate of Eunice I. Page, Case Number 1994-ES-18-00147-2. Present in the courtroom today is Ms. Trudy Robertson?

MS. ROBERTSON: Yes, ma'am.

THE COURT: And you are here on behalf of Richard Henson and Vann Henson; is that correct?

MS. ROBERTSON: That is correct, the petitioners.

THE COURT: The petitioners, thank you so much. And Barry Baker is also present today?

MR. BAKER: I'm also present, but I don't really know if I'm going to be a participant because this involves a trust.

THE COURT: Okay.

MR. BAKER: Even though I noticed that Mr. Blanchard filed his brief on behalf of Mr. Al Henson as personal representative and individually, this involves a trust file and not the estate file. So I don't know to what extent I'll be participating.

MR. BLANCHARD: Your Honor, just to clarify on that: The reason I did that is the hearing was noticed in the case that Barry's in --

THE COURT: Okay.

MR. BLANCHARD: -- instead of the trust case.

So I wasn't sure if I quite understood which case the motion was being made, but I think the motion is being made in the trust case, correct?

MS. ROBERTSON: Correct. We represent, I do, Moore and VanAllen, my firm, we represent the petitioners only in the trust case.

THE COURT: Only in regard to the trust, okay.

MS. ROBERTSON: We filed the motion, and it is related to the trust case. The notice probably came about because there was a hearing that was held before Your Honor previously where this hearing was set with a date, and that's probably why that picked up.

THE COURT: The only case number that's associated with this matter is the Estate of Eunice Page, 1994-ES-18-00147-2?

MS. ROBERTSON: That's correct.

THE COURT: Thank you so much. And we also have Daniel F. Blanchard, III, and you're here on behalf of Al Henson, correct?

MR. BLANCHARD: Yes, Your Honor. And Mr. Henson is here with me.

THE COURT: Thank you so much. Good to see you again. And one of your clients is here, as well,

Ms. Robertson?

MS. ROBERTSON: That is correct. I have Mr. Scott Henson here.

THE COURT: All right. Thank you so much for being present.

MS. ROBERTSON: Mr. Ken Henson and, of course, this is Richard Scott, he goes by Scott, and Vann Kenneth Henson, Mr. Ken Henson is not in the country. He's out of the country right now.

THE COURT: Okay. All right. Ms. Robertson, I'm going to turn the floor over to you, if you want to get started?

MS. ROBERTSON: Yes. Thank you, Your Honor. We are here today, Your Honor, of course, on a motion to appoint a special fiduciary as an interim trustee. This is a motion that's been brought by the petitioners, both Mr. Scott and Mr. Ken Henson. And Your Honor, it's brought specifically under the trust code. And that section is 62-7-704. I'm sure Your Honor is familiar with that section, but I'll just briefly highlight the provisions of the code that we base our motion on.

First of all, you've got Subsection B. And that requires, Your Honor, that a vacancy in a trusteeship must be filled if the trust has no

remaining trustee.

Then Subsection C provides the order on how the trusteeship must be filled. And first, you look to the person that's designated in the trust. Secondly, it's by a person who's appointed by unanimous agreement of the qualified beneficiaries. And thirdly, Your Honor, you go to the person appointed by the Court.

Subsection E goes on to provide that the Court may appoint a special fiduciary whenever the Court considers the appointment necessary for the administration of the trust. And that is the basis for our motion today, Your Honor, that code section.

And very simply, we seek the appointment of the special fiduciary as an interim trustee because we have a vacancy, and the trust needs a trustee. The respondent, Your Honor, Mr. Al Henson, he admits in his pleading, I think in his answer and his counterclaims, that a vacancy exists. That is not disputed.

He admits that there are three beneficiaries: That's himself; Scott, and Ken Henson, his brothers, which are our clients. And he admits that a successor trustee cannot be agreed upon. For those reasons, that's all we really need to look to for today's

hearing.

The pleadings support the motion we have before you, and those admissions and statements in the pleadings are all that's needed, we think, for the appointment of an interim trustee. I would like to give Your Honor just a little bit more background.

We do have this case pending because we've got a disagreement on the beneficiaries of the Eunice Page Trust, and that trust was created under Ms. Page's will. There's a disagreement over the distribution of the trust that's following obviously her death, but then the death of Ms. Anne Pittillo, who is the mother or was the mother of the three beneficiaries that we have involved in the cases before Your Honor. And Ms. Pittillo served as the trustee of this trust during her lifetime.

So Ms. Page, the grandmother, she died back in October of 1993. Her estate was administered here in Dorchester County, and her will was probated in Dorchester County. And it is the will that was dated October 14th, 1992, and this is the will of Eunice Page.

And, Your Honor, I'd like to hand up for you a certified copy of that will, if I might approach?

THE COURT: Yes. Any objection?

MR. BLANCHARD: No, Your Honor.

MS. ROBERTSON: And the trust was created under that will, under Item 5, Your Honor. If you look at Item 6 -- or I should say, 7 and 8, Roman Numeral 7 and 8, those are the provisions that speak to the naming of a trustee and how a successor trustee is to be determined.

Under that Item 7, Ms. Anne Pittillo, she served and was appointed as the trustee of the trust. Her children, as was indicated, are the beneficiaries. And then, she dies in April of 2014. The trust then provided that Mr. George Cone was to serve. He was the successor trustee named in the trust created under the will, and he had predeceased Ms. Pittillo. So he was not available to serve.

The trust then provides that in such a circumstance where those two individuals are deceased, you look under Item 8, and it directs you to a bank or a financial institution to serve as the trustee. And no entity that is a bank or a trust has -- company has agreed to serve in this matter. We've not been able to locate that. So we've got the vacancy, and we've got this action.

Your Honor, the primary asset or the main asset of this trust is 605 North Main Street in

Summerville. This property was conveyed to Ms. Anne Pittillo as the trustee of the trust by deed of distribution, dated July 22nd, 1997. Your Honor, I have a certified copy of that deed I'd like to hand up to the Court, as well.

THE COURT: Any objection?

MR. BLANCHARD: No, Your Honor.

MS. ROBERTSON: Your Honor, as you might expect, this is a valuable piece of property located in downtown Summerville. The property has expenses, taxes, maintenance, and we believe it also generates income. None of that is being accounted for at the present on behalf of the trust.

Importantly, one of the trust expenses is a mortgage and a note, a promissory note that was provided during discovery in this case by Mr. Al Henson. And that mortgage and note was executed by Ms. Pittillo as trustee of the trust -- the trust is the borrower -- prior to her death on December 4th, 2013. And the lenders are two individuals, Your Honor. And I've got a copy of that note and mortgage that was produced by Mr. Henson to us in this case that I would like to hand up, as well.

THE COURT: Any objection?

MR. BLANCHARD: To them handing up a copy of

it?

THE COURT: Uh-huh.

MR. BLANCHARD: No, Your Honor.

MS. ROBERTSON: There's a copy of the promissory note attached to that.

Your Honor, we believe that there had been no payments made on this note. And if you refer to the note, you will see that a balloon payment is required on December 3rd, 2016, and that will be the amount of $190,000. If this balloon payment is not made, the borrower, and the borrower is the trust, then the note states that the title is to be transferred to the lenders. There is a foreclosure process. The title was transferred.

So, Your Honor, we believe that this is obviously an obligation of the trust. It's an expense of the trust. There are other administration of the trust that's necessary. There's clearly a vacancy of the trustee. I think that is undisputed by the pleadings. And under those circumstances, we are asking Your Honor by way of this motion to appoint the interim trustee until we can resolve this case in full.

And, Your Honor, I received -- if you would allow me just to make some comments on Mr. Blanchard

and Mr. Henson's opposition that they submitted on Monday?

THE COURT: Okay.

MS. ROBERTSON: We got it on Monday, a memo. That memo contained three affidavits. And just prior to Your Honor coming out here on the bench, Mr. Blanchard handed me two more affidavits. We submitted a reply to Your Honor yesterday by e-mail. I have a hardcopy if Your Honor would like it?

THE COURT: I received both. Everything that was submitted prior to the hearing, except for the most recent affidavits, I've had an opportunity to review them.

MS. ROBERTSON: Very good. And I filed that with the clerk prior to coming into the courtroom today, as well. Your Honor, just briefly a few comments on the positions that Mr. Henson is stating in his opposition.

First of all, they argue that an affidavit or testimony is needed for this motion to appoint an interim trustee. We believe that is incorrect. There is no testimony necessary. There is no affidavit necessary. This is an appointment that we are seeking for an interim trustee of an undisputed vacancy, and the trust provisions themselves direct how this

procedure goes forward. It does not call for an affidavit or testimony. In particularly here where we have the pleadings that allow us to determine the vacancy and the lack of a trustee, certainly none is needed on those points.

The trust code also directs this Court to find, after notice and a hearing, that the appointment of a special fiduciary as an interim trustee is necessary to protect and preserve the trust before its administration. That clearly exists under the pleadings, as well.

The dispute that Mr. Al Henson has raised in his counterclaim of ownership does not prevent an appointment. In fact, I think it supports the appointment of an interim trustee under the circumstances that we have in this case.

Also, Your Honor, they raised the argument of an injunctive-type proceeding and the argument that we're seeking to preserve a status quo or change a status quo. That is just not correct. They are attempting to recast this motion into something it is not. It is not for an injunction. The remedy that we seek is the exact remedy provided for in the trust code.

There's nothing in the trust code that

opposes an injunction standard. Rather, the code expressly authorizes Your Honor to appoint an interim trustee or a special fiduciary where it is determined necessary for the trust. That is the only requirement under the trust code. That is a very different standard than the one that is being proffered by Mr. Al Henson to this Court. We do not believe that applies.

Also, they cite to the Civil Procedure Rule 6(d) as a requirement for a motion to be supported by an affidavit. That is not the case. All motions are not required to be supported by an affidavit. And I think the rule clearly states that only if a motion is to be supported by an affidavit do you file it with a motion. It is not the blanket ascertain that they argue that it is.

And finally, Your Honor, I would like to address the affidavits and the proposal that this hearing involved testimony. And I'd specifically like to talk about those in the context of the dead man's statute and hearsay.

Everything that Mr. Al Henson has offered in his affidavit is -- goes to an issue of ownership and his undocumented claim, all of that testimony is prevented by the dead man's statute. This is the very

type of testimony that he is trying to offer this Court that is the reason we have the dead man's statute. He is wanting to testify to a transaction in which he has an interest, when we have no ability to cross-examine a deceased person who was a party to that transaction. This is why the statute exists.

And everything we do have that is a writing, whether it is signed or unsigned, the one he's trying to show, demonstrates that the trust holds this property. We have the Deed of Distribution. We have Ms. Pittillo acting as a trustee during her lifetime to secure a note and mortgage in the name of the trust and et cetera, et cetera, but that's the issue for ownership. Nothing he can testify to can get around the dead man's statute that prohibits that kind of testimony.

So as far as his affidavit goes, we would ask the Court not to consider that affidavit, not only for the reason that it's not needed for this motion, we don't need testimony, but also for the reason that it violates the dead man's statute and should not be allowed.

Separately, Your Honor, I haven't been able to read very closely the two affidavits that were just handed to me, but I did read the two that were sent to

me on Monday, and they are not allowed. They're not competent witness testimony under the evidentiary rules. They are nothing but hearsay. They're attempting to relay a conversation that was overheard being said by someone, and that is not allowable under Rule 802 of the South Carolina Rules of Evidence. And there is no exception that exists under 803 or 804 that will allow that kind of testimony to come into this case.

So for those same reasons, I believe that would be similar upon my quick review of the two that were handed to me today, they're equally based on incompetent testimony of witnesses without personal knowledge, and their only source is hearsay.

So, Your Honor, those affidavits, we think, should not be considered for this hearing for the variety of reasons we've outlined. And we clearly have a vacancy. We need a trustee in place. We need someone to handle this on an interim basis until we can have a final hearing. There's numerous expenses of examples, and certainly that note and mortgage is one of those, and no one has the authority to act on behalf of the trust but a trustee, and we don't have a trustee.

So we would ask Your Honor to please appoint

an interim trustee to provide, you know, income and expenses or at least what is going on in the property with income to handle the expenses and under the order of the Court, the authority to preserve the property pending a resolution of this case.

THE COURT: So what you're asking of the trustee be able to do is go on and make -- create income or collect income from the property?

MS. ROBERTSON: Well, on an interim basis, Your Honor. We aren't seeking to change anything Mr. Al Henson is doing on the property. What we don't have right now is we have no information of what is occurring. We believe the property is having income sources. We don't know where that income's going, except I can glean from some portion of Mr. Henson's affidavit, and I think you ought to consider, that he clearly uses the property for his own purpose, by his own admission in those affidavits. But we need someone to determine what is the income sources, what does need to be done. If this note and mortgage comes due before we get a resolution of this case, clearly someone needs to address that, or this asset is under threat of being lost; deeded back over to the lenders.

Now, maybe there's a way to get an extension. Maybe there's a way payment can be made, but a trustee

is the only one who's got the authority to do that when you've got it in the name of the trust. And that's the hurdles we have of not being able to get over right now.

So we need something in the interim to determine and preserve -- and if Mr. Henson is utilizing the property, maybe he does need to pay rent for the property. Those are issues I don't know that we need to get to until the ultimate decision, but right now we need the property preserved.

THE COURT: So at this point in time, the only responsibility of the trustee, in your mind, is preserving that asset with regards to the mortgage and any other debts of that property?

MS. ROBERTSON: I would say on the interim basis, yes, that -- I think that is our goal with this motion, is to make sure that asset is around for us to have a determination over ultimately this case. And that cannot happen by any of these siblings. There's simply a disagreement. We don't think -- we aren't proposing our client serve as the interim trustee. We don't think Mr. Henson can serve -- Mr. Al Henson can serve as the interim trustee. There needs to be an objective independent, either a company or a person that's there to, in the interim basis, handle this

piece of property.

THE COURT: Anything further?

MS. ROBERTSON: Bear with me just a moment, Your Honor. Your Honor, the exhibits that I handed up, I would like to move to make those part of the record and enter them into evidence. I think I handed them up without objection, but I would ask that those be made a part of the record for this case.

THE COURT: Thank you. Any objection?

MR. BLANCHARD: I have an objection to the note and mortgage. I don't think they've been properly authenticated.

MS. ROBERTSON: Your Honor, they were signed by Ms. Pittillo, who was the trustee, on behalf of the trust. Mr. Al Henson, I think in his discovery, has admitted that he was involved in that transaction. He has admitted in his discovery answers that there is a note and mortgage. There's a balance of 190. We've got those in his answers to interrogatories. So I mean, I don't know how you can contest the authenticity of that.

Mr. BLANCHARD: My understanding is that her argument is she's going to confine her position to the pleadings. The pleadings do not attach or reference the mortgage or note in that part of the pleadings.

So if she's going to go beyond the pleadings, then I think we're talking about affidavits and testimony.

THE COURT: The promissory note was referenced in the pleadings. We have it in our file. It's been referenced throughout this whole case. I'm going to overrule and make this an exhibit. So Exhibit 1 will be the Last Will and Testament. Exhibit 2 will be the Deed of Distribution, and Exhibit 3 will be the Promissory Note. This is clearly all through the file and all through the entire proceedings. So I don't think that's an issue in entering it here. Anything further?

MR. BAKER: Your Honor, I didn't understand: What is the exhibit numbers for what documents? I didn't have a chance to write them down.

THE COURT: Exhibit 1 is the Last Will and Testament.

MR. BAKER: Okay.

THE COURT: Exhibit 2 is the Deed of Distribution, and Exhibit 3 is the Promissory Note.

MS. ROBERTSON: And the mortgage is attached to the back of that note, Your Honor.

THE COURT: Okay.

MS. ROBERTSON: Thank you.

THE COURT: Anything further?

MS. ROBERTSON: Not at this time, Your Honor. I guess I would reserve my right to make a comment after we hear from Mr. Blanchard, but that's our motion and the basis we think that the Court needs to determine our motion on.

THE COURT: I appreciate it. Thank you so much. Mr. Blanchard?

MR. BLANCHARD: Thank you, Your Honor. May it please the Court. Just in a bullet-point fashion, and I'll go into it in more detail: We obviously disagree with Ms. Robertson's position on a number of issues. One, this is a matter that cannot be determined solely on the pleadings because there are disputed factual issues that the Court has to resolve. And those issues cannot be resolved in a preliminary hearing at this stage.

Number two, despite what Ms. Robertson is claiming, this is not simply appointing a special fiduciary. The issue is not simply whether a special fiduciary should be appointed, but what power that person should be given.

The status quo right now is my client possesses the property, uses the property, leases it out to a third-person, has his own personal property there. He pays the taxes on it. He pays the

expenses. He has done everything that an owner of the property does. They want to change that on an interim basis.

They're asking for you to appoint a special trustee and to also give that person authority over the property. They're talking about preserving the trust's assets. What they really mean is: They want to have that person have the power to possibly refinance this loan.

The only way that could be done is to use the property as collateral or to use the income or rents that's generated by that property. So that trust, too, would have to take control of the assets to do so. That would be altering the status quo. And South Carolina law is adamantly clear that the Court, at this stage, cannot do that.

You cannot dispossess Mr. Henson at the preliminary stage and give possession of the property to their clients, to some special trustee that's appointed by the Court. That is the central issue at this point in the proceeding, whether, you know, what powers would a special trustee have.

And because the law is clear that the Court will not give the special trustee possession of the property when ownership of the property is in dispute,

and my client is currently in possession of the property, there's nothing for the special trustee to do. So there's no reason to appoint a special trustee at this point. They would have -- it would be meaningless at this point.

There's no other asset that the trust arguably owns, other than this piece of property that we've been talking about.

The affidavits that we've submitted are admissible, Your Honor, despite the dead man's statute and the hearsay rule, and I'll go through that in considerable detail.

The main reason that the dead man's statute is not applicable is because the petitioners are not among the class of people that are protected by the statute, and I'll go through that in specific language.

The hearsay rule does not bar the affidavits from the non-parties because there are exceptions to the hearsay rule that apply; state of mind, the intent of the deceased. We also have: When the deceased or when the declarant is not unavailable when the person -- when the witness has testified about statements they make against their interest are admissible. So both of those exceptions will apply, and I'll go

through that in some detail, as well.

I don't want to, I guess, reiterate a lot of the same things that are in that memorandum. So I would ask if the Court would recognize the memorandum as part of the record and as part of the argument that's being made today.

But the first issue is: Can this motion be decided solely on the pleadings, or does the Court have to go beyond the pleadings?

There clearly are certain motions under the rules that do not require a party to submit any evidence. A motion for a judgment of the pleadings, for example; a motion of failure to state a claim under Rule 12(b)(6). The Court is confined to the pleadings, and you don't consider anything outside of the pleadings.

This motion is not that type of motion, because the basis for their motion, they're arguing that you need to appoint a special trustee and give that person authority over the property because they're concerned that there is a loan and mortgage on the property that is going to go into default; and if that happens, the trust will lose the asset. They're saying that it's an emergency situation.

The only way that the Court can make that

finding is based on actual evidence, and that is not in the pleadings. And I want to make sure that I distinguish between the two. The pleadings are the petition and the complaint and the answers in the complaint. The pleadings are not motions, and I think there's case law out there saying that. The note was filed with their motion. It was not filed as part of their pleadings.

So my client has not filed an answer to that document accepting whether or not the note and mortgage was valid. So those documents, in our view, are distinguishable from these documents that are actually referenced in the pleadings, which are the deed, the trust document, the will creating the trust. So that's why I was distinguishing between that.

But part of their motion is not simply saying there's a vacancy in the position; therefore, fill the vacancy. They're going a step further. They're saying: Give that person the authority over the property that is in dispute. And their pleadings, if you simply base it on the pleadings, the pleadings are in dispute.

My clients filed a counterclaim saying that he's the owner of the property. He's in possession of the property. So even if you look solely at the

pleadings, you can't resolve that issue at this point because there's a conflict or dispute as to ownership. And the only way that this special trustee could have any authority over the property is if he is given rights as an owner. That's the only way he could collect rents; collect income; he could refinance, put a mortgage on the property; he could pay off the existing loan and mortgage. All those types of things he'd have to have the rights of an owner, which the Court cannot give to this person at this point.

I've argued in the memorandum, Rule 6(d). The point we're essentially making is is that because this is a motion in which the Court is being asked to go beyond the pleadings themselves, it is a motion that has to be supported by affidavits. Well, they didn't file any affidavit with their motion.

So under Rule 6(d), there's nothing for the Court to consider. There's no grounds upon which the Court can grant their motion, because they haven't filed timely affidavits, even as we sit here today at the hearing.

As far as the affidavits that we have submitted, the dead man's statute I've handed up to Your Honor, and I just kind of want to walk through some of these things. There's a one-page sheet where

I actually have the entire dead man's statute copied. And there's a highlighted excerpt, Section 19-11-20 is the code section.

THE COURT: Okay.

MR. BLANCHARD: And the statute provided that no party to an action shall be examined regarding a transaction between such witness and a person at the time of such examination who is deceased. And I'm actually going to quote: "As a witness against a party then prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person".

Well, the petitioners are not prosecuting or defending an action in any of those capacities. The capacity they're bringing this action is is as a beneficiary of a trust. That is not specified in the dead man's statute as being among the class of people who are protected by the statute.

I've handed up to Your Honor, the next thing is an excerpt from CJS, which is talking about the dead man's statute. And every state has some version of the dead man's statute. And CJS states that, "Although a witness may belong to a class and the statute makes him competent, his or her testimony

cannot be excluded unless the party against with whom the testimony is offered is within one of the classes protected by the statute."

Now, I've also got, behind that, some South Carolina cases. The first, Savings and Loan Association versus Nodine case, N-O-D-I-N-E. I think I have some pages tabbed. If you turn to the third page of that opinion, there's language that I've highlighted in yellow. It talks about the dead man's statute, and says, "No party to an action shall be examined in regard to any transaction between such witness and a person at the time of such examination deceased". And it quotes that language that I just quoted to you.

And in that case, "The proffered testimony of Frances, while within every other provision of the statute, is not offered against a party prosecuting or defending the action as executor, administrator", et cetera.

So in that case, the dead man's statute didn't apply because the person seeking to invoke it were not protected by the statute.

Further down, the Court clarifies or states: "Only the testimony of those persons specifically included in the particular relations referred to in

the statute can be considered as embraced in the provisions of the statute; the testimony of others not named, even though within the mischief intended to be prevented, cannot be excluded."

The next case I've handed up to Your Honor is Jones versus Plunkett. It's a really old case, but the dead man's statute has been around for centuries. If you look at the fourth page of that opinion, it again is focusing on this language that I've highlighted for Your Honor. And it says, "But it is only as against certain specified persons that the evidence is capable of being excluded. And they alone can object to the introduction, the executor, administrator", et cetera.

"No other description of persons can be added to these enumerated in the statute, not even a trustee or successor to a deceased trustee."

In this situation, the statute does not say that those protected by include trustees or beneficiaries of the trust, and that's the capacity in which they're bringing this action against my client. So they cannot invoke the dead man's statute. I think it's pretty clear.

The last page -- I'm not going to go through it, Your Honor, but it's part of the stack for Long

versus Convoy. If you look on Page 4? I'm referring to the numbers at the bottom right corner. I've highlighted the language where they talk about -- they break down the statute into sections and what you have to show. And this just clarifies that if you cannot show that the person seeking to invoke the statute are among that class that I've just listed, then the statute does not bar from testimony. So that deals with the dead man's statute.

I guess one last thing on that, and I didn't cite any of these cases, but there are probably fifty cases in South Carolina that say the statute is strictly construed and limited to its clearly express terms, and that the proponent or the person who is seeking to invoke the statute has the burden of showing that it applies. So that again, I think, is important for the Court to take note of.

The next argument, by their affidavit, that they're arguing that the verbiage rights affidavits are inadmissible as hearsay. And I've handed to Your Honor -- I didn't copy the entire evidence rules, but there's a one-page excerpt where I've quoted Rules of Evidence 803(3) and the Rules of Evidence 804(b)(3).

And when you look at those rules, they say that testimony of a declarant, even though the

declarant is available as a witness, in this case, neither Eunice or Anne is available. They're both deceased. Regarding a statement of the declarant's then-existing state of mind, and it goes on such as intent, plan, et cetera.

The testimony we've offered shows Eunice's intent or plan with regard to the property. So that's why we've offered that testimony.

The next exception is 804(b)(3). And this only applies when the declarant is unavailable, which we've met. And it states that, a statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, criminal that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

The statement against interest exception -- and I've handed up to Your Honor some cases: The Hawkins versus Bethany Associates' case, I'm not going to go through that in detail, but it discusses the first exception, 803(3), and they allow the testimony.

And the next case is Obsternate versus Obsternate, and that case discusses the 804(b)(3) section. And in that case, they allow the testimony. So we submit that the affidavits we've filed are

proper, and they're not barred by hearsay or the dead man's statute.

The main issue -- and this is what we primarily focused on in our brief that was submitted to the Court on Monday, is that what the petitioners are asking the Court to do is to offer the status quo because my client is in possession of the property, and he is using the property.

They're asking not only to appoint a special trustee, but to give that person the power of ownership over the property. There is numerous South Carolina cases holding that to do that, you're having to give -- grant injunctive relief, mandatory injunction. And a mandatory injunction, by its definition in the case law, is something that compels, rather than prohibits, action that requires the performance of some positive act. In the case, it talks about a situation where someone was ordered to vacate the premises, ordered to stop using their property for certain reasons, for example, allowing hunting dogs on the premises.

There's another case where there was a dispute between complainants involving a restaurant and bar, and one group said, "we have superior rights to the restaurant and bar and the property, so we want

you to be evicted so that we can use it." In that case, the Court said that was injunctive relief, and the Court could not grant that relief on a preliminary basis before a final hearing on the merits, because the law is well settled that when there is a person in possession of property, you cannot use an injunction to dispossess them of that interest, prior to a final hearing on the merits, which is what they're asking the Court to do in this case.

I've quoted in our brief, Your Honor, numerous South Carolina cases. I'm not going to go through them here because I know I've been going for a pretty good long period. But just I'll give you the names: Hood versus Eden; Queen versus Swink. Discussions are detailed in Marshall versus Pence case. That's the restaurant and bar case.

Consolidated Tires versus Hamlet case is the one where there was a man that occupied two houses on a tract of land. The owner of the land wanted to evict him. When he got a preliminary injunction ordering him to vacate the premises, the Court of Appeals reversed, said the trial court didn't have authority to do that on a preliminary injunction basis.

We also analyzed in our brief, Your Honor,

the requirements for injunctive relief, irreparable harm, likely success on merits, inadequate remedy of law, and the balancing the equities.

The petitioners have not, in their reply, attempted to even address those elements. So I'm not going to say anything more about that. That's not in our brief, but if you have any questions about any of what we've said, I'll certainly do my best to address any of those things.

The last couple of points that I wanted to make, Your Honor, is that as part of the requirements for an injunctive relief -- and we believe that what they're asking you to do is to grant a mandatory injunction against my client that would order him to vacate and give up control of the property.

If you're going to do that, then Rule 65 requires a bond be posted in the amount that's sufficient to compensate my client in the event it's determined the injunction was improperly granted.

This property is my client's sole source of income. He operates the property. He's been on the property literally 28 plus years. He's been acting as owner of the property that entire time period. He has -- I mean, we tried to give, I think, some description of the types of property that he had owned

in real estate. I mean, it's really kind of astronomical.

A lot is built into the property. There are fixtures. There are things: Machinery, boats, equipment, all kinds of things. And the point I want to make is that it's not simply a situation where Mr. Henson could remove all that stuff in day or two. I mean, we're talking about a considerable effort to remove the property alone.

THE COURT: Is there an airplane on there?

MR. BLANCHARD: Yes, a small plane. So we're talking about tens of thousands of dollars just to get his property off of the real estate. So you have that. Then you have the fact that he's contending that he's the owner of the property, and he's making income on the property; he has tenants and things of that nature. So if you removed him and said, "You can no longer do that", those are damages that he would have in the event that it's later determined that the injunction should not have been granted.

If we get to a hearing on the merits and it's determined that he's the actual owner but the Court, in the preliminary stage, has prevented him from using the property, he would be entitled to damages because the injunction should not have been issued. And the

bond is to protect him. It's to say that if I'm going to give this injunction, I'm going to require, as a condition of doing that, that a bond be posted in a sufficient amount to cover any damages that can be caused.

They have not -- the petitioners have not indicated that they are willing to post a bond or what amount of bond that they would want to post. So that is an issue that has to be addressed by the Court, if the Court decides that the relief should be granted.

The last point that we don't believe that a special trustee should be appointed at this point because we don't think the Court can give that person the power that they would need to do anything related to the special trustee, because ownership of the only arguable asset of this trust is vigorously in dispute.

Now, if the Court did agree that I'm going to appoint a special trustee, I'm going to give that person the powers of the property, we ask the Court to appoint Al Henson to that position. He is very familiar with the property. He's the most person in the world who's most familiar with the property. He's been on it for 28 years. He operates it. There's no reason why he should be disqualified from doing so.

I mean, if the Court wanted to require him to

file some kind of an accounting or some description of whatever revenue or income he's generated, I think we could agree to it. But what we don't want is for him to be removed from the property and have serious injury to him and then -- which I don't think that the petitioners are going to have the ability to compensate him for down the road.

I addressed his qualification for acting as special trustee in the brief. I've gone through that in considerable detail there, so I won't, I guess, reiterate all of that stuff here. Your Honor, I know I've covered a lot of ground, but did you have any questions about anything maybe I've said today or anything that was in the materials?

THE COURT: I don't think I have any questions at this point. I understand that the land is the main asset of this trust. Everybody's clear that there's no trust bank account, or is there a trust bank account that anybody's aware of? There's none?

MS. ROBERTSON: Right, Your Honor.

THE COURT: Okay.

MR. BLANCHARD: It's just the real estate. I guess one last thing, Your Honor: I did include, as part of the package that I gave to you, copies of the

cases, two of them that I think I cited: Marshall versus Pence -- I guess three of them: Consolidated Tires versus Hamlet. And there's a third case: FOC Lausch Partnership. That case involved a situation where -- the hunt club situation, where the Court said that it was improper to grant an injunction until control of the property had been resolved, because there was a dispute about control.

The final case is Black versus Lexington, and that's just dealing with timeliness of affidavits. In that case, the Court refused to consider affidavits that were not timely filed.

Your Honor, if you'll give me one second to make sure my client didn't have any notes for me.

THE COURT: Thank you so much.

MR. BLANCHARD: Thank you, Your Honor.

THE COURT: Thank you. Any follow-up?

MS. ROBERTSON: Your Honor, if I might respond briefly. I know I addressed some of this prior to Mr. Blanchard speaking based on what we've seen in his opposition brief that he provided on Monday. But I want to again reiterate that the positions they have on what is needed for this hearing and this whole injunctive concept just misses the mark of what we're asking this Court to do. The code is

clear on this.

Your Honor is guided by 62-7-704. And it clearly says that you, The Court, can consider the appointment necessary for the administration of the trust. And that's your power to appoint a special fiduciary, and that is all you have to determine.

It is clear, not just in general from the pleadings, I'm not asking you to accept all pleadings as Mr. Blanchard indicated, but there are specific admissions in their answer is what I'm referring to, not the motion.

If you look at their answer and their counterclaim, Mr. Al Henson's, he specifically admits Ms. Pittillo has died, and he couldn't possibly not admit that. But he admitted that. He admitted that Mr. Cone predeceased Ms. Pittillo has been set forth in his answer. He admits that a successor trustee has not been appointed for the trust. These are in Paragraphs 6, 7, and 17 of his answer.

That establishes, without question and without dispute, that we have a vacancy in the trusteeship. And the Code Section 704 gives Your Honor the power to appoint the special fiduciary in the interim capacity. It is not an injunctive proceeding.

Your Honor, we clearly disagree with the dead man's statute comments that Mr. Blanchard has made with the hearsay exceptions; they just don't apply. The dead man's statute specifically prohibits this kind of testimony, is our contention. We don't think you need to get there because we don't think the affidavits needs to be considered at all. That issue may be for another day on a full hearing in this case, but it's not necessary for this hearing before you today.

To the extent, Your Honor, that you are inclined to consider the affidavits or consider them in light of those rules, I would ask the opportunity, since we were just handed these cases by Mr. Blanchard, to be able to respond to them more fully. But it's our position that we don't need to get there today. That is not necessary for you to appoint an interim trustee.

We are also, Your Honor, not seeking to change or do anything with respect to Mr. Al Henson's conduct or what he is doing on that property. If rental income is coming in, we think the trustee does need to account for it and determine what that is, but we're not seeking to dispossess what is occurring on the property at present. We simply want it accounted

for and preserved.

So we believe, Your Honor, that the code is just straightforward here, and these issues and objections that have been raised are not at issue today. They don't need to be considered today. That may be later, but they don't prevent the appointment of a special fiduciary today under the circumstances that we have before Your Honor.

Bear with me just a minute. Obviously, Your Honor, we did submit to you the Dead of Distribution, it's the certified copy. The title is vested in the property at 605 North Main Street in the name of the trust by that deed. It's a public record. It's a certified copy, and there is no way to get around that for purposes of today. And with that being the case, it's held in trust. And that supports the interim trustee appointment, as well, Your Honor, as the basis for us needing that and to have that administration observed and preserved until we can have a final hearing.

Additionally, Your Honor, in the order, you do have the ability to put limits on what an interim trustee can do. If there needs to be a refinance or a reconsideration of that note and mortgage, that can be through approval by the Court, authority through the

Court, action can be subject to coming before the Court to get approval for that and having that conversation. It doesn't need to be given outright to an interim trustee to do as they please. We would ask that the Court oversee that. Thank you, Your Honor.

THE COURT: Thank you.

MR. BLANCHARD: Your Honor, I know I've spoken for a while, but if I can just make a few comments, if I can?

THE COURT: Yes.

MR. BLANCHARD: I meant to say earlier, and I forgot to, is that the South Carolina code sections that Ms. Robertson's relying on nowhere deal with the Court making the determination as to what assets the trust owns. So that, in my mind, is sort of the primary issue we're dealing with. It's not so much whether a special trustee is in place or not. We all can see that there's no special trustee or trustee in place. The position is vacant.

The question is: If you appoint a special trustee, what powers will that person have over the property that is in dispute? And because the property is in my client's possession, has been so for 28 years, the Court cannot do anything to change that at the preliminary stage.

And their statements today are actually contradicting what is in the motion papers. If you read their motion papers, they filed a motion for appointment of a special trustee, and they filed a motion for an expedited hearing. If you read both of those things together, they're very clear that they're wanting this person that they're seeking to be appointed to have power over the property, to be able to potentially sell the property. They actually mentioned that in their papers.

I don't know how you can now say in court that we're not wanting to change anything that's happening on the property to get -- in order to have this person be appointed, and they potentially can sell the property while this case is pending. To me, they're not consistent.

If this were a case where there was no dispute about what the trust owned and that was agreed upon, clearly you could appoint a special trustee, and that person would have power over all those assets. That's not the case we're dealing with here.

We're dealing with a case where what assets the trust owns is in dispute, and my client is in possession of those assets under colorable claim of title. And the case law is very clear that the Court

cannot change that in a preliminary hearing. Thank you, Your Honor.

MS. ROBERTSON: Your Honor, just briefly: As far as the powers for an interim trustee, we would want that subject to Your Honor and a court order and approval. There is the potential, and this would be a grave, grave consequence if this should happen, if December the 1st rolls around and that note is not paid, this property is gone. It says, in the note, that the lenders are to be deeded the property.

Well, if the loan could not be refinanced and we could not get the money to pay the loan, it would be a grave consequence to have to sell the property to pay this loan. But that would be better than having an extremely valuable piece of property deeded over for a loan of $190,000 when it's a multimillion piece of property. So that is an ultimate consequence that we want to avoid, and we don't want the property sold through an interim trustee. In the end of this case down the road, that may be something that has to happen, but we need the property protected. That is a consequence we want to avoid, and we don't want that to be the only way this note gets dealt with, but that would be a better alternative than losing the piece of property over a $190,000 note that has not been paid.

And there is no color of title under which Mr. Al Henson is proffering this case. There is a deed in the name of the trust. There is a trust under the will of Ms. Eunice Page that was created. We clearly have the vacancy, and we clearly have a trust. That just cannot be disputed. And the property is deeded in the name of the trust. The note and mortgage is in the name of the trust.

You can't get around the fact that we have a trust with no trustee, and we need someone with the authority to protect the trust. And that can be the subject of this Court's orders, subject to the powers this Court gives, and we are certainly willing to have that conversation or have Your Honor impose whatever appropriate guards you think are needed there. So the interim trustee is needed.

THE COURT: Thank you.

MR. BLANCHARD: I just have one last comment or response to what Ms. Robertson just said: The issue about the due date on the loan, my client has already had discussions with the creditors, and they are amenable to extension of the load. So the deadline is really not a factor or should not be a factor -- decided before December of 2017, I think that's what Mr. Henson negotiated with a one-year

extension, then there probably are some problems here, but I think we can get the case decided or resolved before then. So I don't think that the due date on the loan should be what is decided in the Court's ruling on a motion.

MS. ROBERTSON: Your Honor, I know we need to sit down and quit talking, but Mr. Al Henson has no authority to be dealing with this loan and mortgage, that's part of the problem. If an extension can be secured, it should be secured on behalf of the trust. If that can happen, maybe that alleviates a lot of concerns, but who's the person that can do that? It's the trustee. That's who holds the note and mortgage, and that's part of the problem here: We have no one with authority acting.

But if that can be eliminated and there's a way to do it on behalf of the trust, then maybe we can alleviate some of these concerns. If he's got the money to pay the note off, maybe he can deposit that with the Court. If we reach that date and it hadn't been paid, if he wants to pay it, he can pay it subject to down the road. If he's right and can somehow prove his case, he's paid it on his behalf. If he's not, then he's paid it on behalf of the trust and the trust obligation, he can be reimbursed for it,

but there are ways -- it needs to be dealt with as a trust obligation.

MR. BLANCHARD: Your Honor, I will stop.

THE COURT: Are you sure?

MR. BLANCHARD: We'll just keep going back and forth.

THE COURT: All right. I think I have a grasp on everybody's position at this time. I'm going to hold my decision and look over all these documents and the case law that's been presented to me and the arguments that have been made, and I'll issue an order. I know that there's an outstanding order for mediation. Where do we stand on mediation?

MS. ROBERTSON: We have concern today that our mediator, Mr. Butch Watson, is available. We've had a couple of dates that he's been available, and I know Frank's not available. But July 25th I have confirmed is available by Mr. Watson. We are available, and I understand Mr. Blanchard is available. So we are confirming that date. I'm hopeful that that's good to go.

MR. BLANCHARD: I think it's going to work, Your Honor, that it will happen on July 25th. Your Honor, if it would help the Court, I have no problem with both sides submitting proposed orders. I don't

know how you normally do things, if you do your own orders or you ask for proposed orders from either side, but I'm just offering that if that would be beneficial.

THE COURT: I appreciate that. Let me come to my decision, and I may e-mail you both and let you know what my decision is as to an order at that point.

MS. ROBERTSON: Your Honor, if you might allow, because we were handed the case law today by Mr. Blanchard, this packet, I would like the opportunity to look at it more closely. And if you would allow, I'd like to be able to submit a supplemental memo to the Court addressing these cases that he just presented today. It may not be necessary, but I would like that opportunity, if you don't mind. And we can do that within just a few days.

THE COURT: Okay.

MR. BLANCHARD: I have no problem with that, Your Honor. And just to clarify: I received Ms. Robertson's reply to the brief last evening, so that's why --

THE COURT: I understand.

MR. BLANCHARD: -- the cases were handed to you today.

THE COURT: I appreciate it. If I can have those within five days?

MS. ROBERTSON: Absolutely, Your Honor.

THE COURT: Anything further?

MS. ROBERTSON: Nothing further from the petitioners.

MR. BLANCHARD: No, Your Honor.

THE COURT: Thank you so much. I appreciate everyone making the trip out here, and I'll get the order out to you as soon as possible.

(The hearing concluded at 3:12 p.m.)

* * *

C-E-R-T-I-F-I-C-A-T-E

I, Lisa A. McCarn, Professional Court Reporter and Notary Public for the State of South Carolina, certify that the hearing was held at the Dorchester County Courthouse, 5200 East Jim Bilton Boulevard, St. George, South Carolina; that the foregoing pages constitute a true and accurate transcript of the proceeding.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 10th day of July, 2016.




Lisa A. McCarn
Notary Public for South Carolina
My Commission Expires:
April 30, 2025

DORCHESTER COUNTY

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LAST WILL AND TESTAMENT
OF
EUNICE I. PAGE

Introductory Clause. I, EUNICE I. PAGE, a resident of and domiciled in the County of DORCHESTER and State of SOUTH CAROLINA, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM II

Direction to Pay All Taxes from Residuary Estate. I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interests in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM III

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such

E Page

memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequent discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my daughter, Ann P. Pittillo, if she survives me, provided; however, the issue of my deceased daughter surviving me shall take per stirpes the share their mother would have taken had she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM IV

Specific Cash Bequest. I give, devise and bequeath all my cash and cash equivalents in bank accounts or other investments to my daughter, Ann P. Pittillo, if she survives me.

ITEM V

Outright Gift to Testatrix's Daughter. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description, (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will to Trustee hereinafter named to be held in Trust known as Trust EIP. At the time of the execution of this Will my grandson, Albert T. Henson, Jr., owes me Eight Thousand One Hundred ($8,100.00) Dollars for a personal loan. If this amount has not been repaid at the time of my death, then this sum should be collected and added to my estate. At the time of the execution of this Will my grandson, Richard Scott Henson owes me the unpaid balance on that note in the face amount of Thirty-four Thousand ($34,000.00) Dollars executed by him on or about October 15, 1987. If this amount has not been repaid in full at the time of my death,

then the remaining sum should be collected and added to my estate. However, my personal representative would have the power to refinance this obligation on behalf of the estate. Trust EIP shall be held, administered and distributed as follows:

(1) Discretionary Payment of All Income to My Daughter and My Grandson. Commencing with the date of my death, my Trustee shall pay to or apply for the benefit of my daughter and my grandson, Vann Kenneth Henson, until division into shares as hereafter provided, all the net income from Trust EIP in convenient installments in such shares and proportions as my Trustee in its sole discretion shall determine; provided, however, in all events such payments of income to my grandson, Vann Kenneth Henson, shall be limited to no more than Ten Thousand ($10,000.00) Dollars a year, as this income is to be primarily for the benefit of my daughter and to a secondary extent, for the medical care and education of Vann Kenneth Henson, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my said grandson known to my Trustee. Such discretion on the part of my Trustee as to income allocation to Vann Kenneth Henson shall terminate in all events at the earlier of the date of his thirtieth (30) birthday or that date which is three (3) years from the date of my death.

(2) Discretionary Payments of Principal for Child. If my daughter shall survive me, my Trustee may pay to or apply for the benefit of my daughter during her lifetime, such sums from the principal of Trust EIP as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of my daughter taking into consideration to the extent my Trustee deems advisable, any other income or resources of my daughter known to my Trustee.

(3) Division Into Shares for Daughter's Children. Upon the death of the survivor of my daughter and me, my Trustee shall divide this Trust as then constituted into equal separate shares for each of my grandsons, Albert T. Henson, Jr., Richard Scott Henson, and Vann Kenneth Henson, or their surviving children, provided, however, for the purposes of this Paragraph, the net assets of my estate shall be deemed to be increased in value by the sum of any unpaid balances of loans to either Richard Scott Henson or Albert T. Henson, Jr. (or both of them). Thereafter, that share set aside for Richard Scott Henson and Albert T. Henson shall be reduced by that amount of such unpaid balance, if any still due and owing by them (or each of them).

For example, and for purposes of example only, if at the time of my death all the rest, residue and remainder of my estate (after division and distribution as set forth herein, if any, is One Hundred Thirty-seven Thousand Nine Hundred ($137,900.00) Dollars and the combined outstanding debt is Forty-two Thousand One Hundred ($42,100.00) Dollars at that time, then the Forty-two Thousand One

Hundred ($42,100.00) Dollars will be deemed added to my estate to make a total of One Hundred Eighty Thousand ($180,000.00) Dollars in my estate. My personal representative shall then allocate the sum of Twenty-six Thousand ($26,000.00) Dollars to that share for Richard Scott Henson, Fifty-one Thousand Nine Hundred ($51,900.00) Dollars to that share for Albert T. Henson, Jr., and Sixty Thousand ($60,000.00) Dollars to Vann Kenneth Henson.

Those shares set aside for Richard Scott Henson, Albert T. Henson, Jr., and Vann Kenneth Henson shall be distributed outright to each of them, if they shall survive me; provided, however, if they fail to survive me then the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he survived me.

(4) Income/Discretionary Invasion of Principal for Grandsons. After division into shares for my grandsons, all the net income from each share so provided for a living child of my daughter shall be paid in convenient installments to or applied for the benefit of my grandsons until complete distribution of the share as herein provided. In addition to income, my Trustee may pay to or apply for the benefit of the child such sums from the principal of his share as in its sole discretion shall be necessary or desirable from time to time for his medical care, education, support and maintenance in reasonable comfort, taking into consideration to the extent my Trustee deems advisable, any other income or resources of my grandchildren known to my Trustee.

(5) Distribution of the Share of the Grandsons. After division into shares for my grandsons, when the youngest surviving grandson attains the age of Twenty-five (25) years, my Trustee shall distribute to each surviving grandson or (if deceased, to their issue, if any), the undistributed balance of his share.

(6) Upon Death of Daughter's Child to Issue of Daughter's Child. After division into shares for my grandsons, upon the death of a child of my daughter prior to complete distribution of his share, the undistributed balance of the child's share shall be distributed per stirpes to his then living issue, or in default of such issue, per stirpes to my daughter's then living issue.

ITEM VI

Naming an Individual as Personal Representative with a Substitute. I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my daughter, Ann P. Pittillo, and direct that such personal representative shall serve without bond. If for any reason my personal representative is unable or unwilling to serve or continue to serve then I hereby nominate, constitute and appoint as substitute or successor personal representative George Hollis Cone and direct that he shall serve without bond.

ITEM VII

Naming Trustee. I hereby nominate, constitute and appoint as Trustee of this my Last Will and Testament my daughter, Ann P. Pittillo, and direct that she shall serve without bond. If for any reason she is unable or unwilling to serve or continue to serve then I hereby nominate, constitute and appoint as substitute or successor Trustee George Hollis Cone and direct that he shall serve without bond.

ITEM VIII

Provision for Substitute or Successor Corporate Personal Representative and Trustee. Except as otherwise provided herein, if Ann P. Pittillo or any successor as herein defined should fail to qualify then a majority of the adult beneficiaries shall designate in a written instrument filed with the Court having jurisdiction over my Will or this Trust, a successor or substitute corporate personal representative or trustee which shall be a bank or trust company qualified to do business in the state of my domicile and such corporate personal representative and trustee shall be the sole personal representative and trustee.

ITEM IX

Provision Covering Change in Corporate Fiduciary. Any corporate successor to the trust business of the corporate fiduciary designated herein or at anytime acting hereunder shall succeed to the capacity of its predecessor without conveyance or transfer.

ITEM X

Definition of Personal Representative and Trustee. Whenever the word "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronoun therefor are used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

(page)

ITEM XI

Fee Schedule for Individual Primary Personal Representative and Corporate Substitute or Successor Personal Representative. Standard Fee Schedule. For its services as Personal Representative, my individual Personal Representative shall receive the amount provided by law. If my corporate Personal Representative shall serve, it shall receive for its services an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XII

Fee Schedule for Trustee. Standard Fee Schedule. For its services as Trustee, my Trustee shall receive an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered.

ITEM XIII

Long Form of Powers for Personal Representative and Trustee. My Personal Representative and Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this my Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this my Will or by statute or general rules of law:

(1) To retain any property or undivided interests in property owned by me at the time of my death, including residential property and shares of my Personal Representative's or Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of my estate or the Trust Estate or even the entirety thereof.

(2) To invest and reinvest all or any part of my Estate or the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or



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pooled trust funds of my Personal Representative or Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(3) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of my estate or the Trust Estate, for cash or upon credit, to exchange any property of my estate or the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(4) To hold any securities or other property in its own name as Personal Representative or Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(5) To keep, at any time and from time to time, all or any portion of my Estate or the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(6) To sell or exercise stock subscription or conversion rights.

(7) To refrain from voting or to vote shares of stock owned by my Estate or the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of my Estate or the Trust Estate.

(8) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of my Estate or the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by my Personal Representative or Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(9) To borrow money and to encumber, mortgage or pledge any asset of my estate or the Trust Estate for a term within or extending beyond the term of the trust, in connection with the

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exercise of any power vested in my Personal Representative or Trustee.

(10) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(11) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(12) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(13) To continue and operate any business owned by me at my death and to do any and all things deemed needful or appropriate by my Personal Representative or Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(14) To collect, receive, and receipt for rents, issues, profits, and income of my Estate or the Trust Estate.

(15) To insure the assets of my Estate or of the Trust Estate against damage or loss and my Personal Representative or Trustee against liability with respect to third persons.

(16) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary, capacity.

(17) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against my Estate or the Trust Estate as my Personal Representative or Trustee shall deem best.

(18) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys- at-law, tax specialists, realtors, and other assistants and advisors deemed by my Personal Representative or Trustee needful for the proper administration of my Estate or the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

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(19) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(20) To hold and retain the principal of my Estate or the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on my Personal Representative's or Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(21) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of my Estate or the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(22) To exercise any power herein granted with reference to the control, management, investment or disposition of my Estate or the Trust Estate either as personal representative or trustee without having to declare in which capacity it is acting.

(23) In general, to exercise all powers in the management of my Estate or the Trust Estate which any individual could exercise in his own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this my Will.

(24) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if my Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(25) To divide any trust into separate shares or separate trusts or to create separate trusts if my Trustee reasonably deems it appropriate and the division or creation is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(26) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the

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Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero; to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as my Trustee in its sole discretion deems best.

(27) To elect to allocate any portion or all my generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of my death, to any portion or all of Trust EIP or any other trusts or bequests in my Will or any other transfer which I am the transferror for purposes of the generation-skipping tax. Generally, I anticipate that my Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to Trust EIP, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent my Personal Representative deems in the best interest of my estate.

(28) My Personal Representative and Trustee may in its discretion permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition and hazard insurance premiums on the residence.

ITEM XIV

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-Five. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-five (25) years, such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-five (25) years, using so much of the net income and principal of the share as my Trustee deems necessary to provide for the proper support, medical care, and education of the beneficiary, taking into consideration to the extent my Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to my Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-five (25), or if he or she shall sooner die, to his or her personal representatives. My Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ITEM XV

Trustee's Discretion in Making Payments to a Person Under Age Twenty-Five, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-five (25), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Trustee using such amounts directly for the beneficiary's care, support and education.

ITEM XVI

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions.

ITEM XVII

Definition of Children. For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms

"living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent.

The term "per stirpes" as applied to the issue of a person entitled to receive a gift herein shall mean that the gift shall be divided at the applicable time into as many equal shares as there are then living issue of such person in the nearest degree of kinship to such person plus deceased issue of that generation who leave lineal descendants then surviving. Each living issue in such nearest degree of kinship shall be entitled to receive one equal share and the living lineal descendants of each such deceased issue in the same degree of kinship shall take the share that their deceased ancestor would have taken had such deceased ancestor survived such person. This definition of "per stirpes" is intended to describe "taking by representation" as defined in the South Carolina Code Section 62-2-106.

ITEM XVIII

Definition of Words Relating to the Internal Revenue Code. As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to Sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XIX

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or

I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XX

Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary. On the death of any person entitled to income or support from any Trust hereunder, my Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

ITEM XXI

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my Personal Representative or Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium, Attestation and Self-Proving Affidavit. I, EUNICE I. PAGE, the Testatrix, sign my name to this instrument this 14 day of Oct., 1992, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

EUNICE I. PAGE

We, Ann M. Pike and Dana S. Shipman, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(Witness)

Dana S. Shipman
(Witness)

The State of SOUTH CAROLINA
County of DORCHESTER

Subscribed, sworn to, and acknowledged before me by EUNICE I. PAGE, the Testatrix, and subscribed and sworn to before me by Dana S. Shipman witness, this 14th day of October, 1992.

(Seal)
Notary Public for SOUTH CAROLINA

My Commission Expires: 6.11.96

BK 1960PG185 FILED-RECORDED DORCHESTER COUNTY

SC Deed Rec Fee _____

May 29 9 PM '98 Dor Co Deed Rec Fee _____

Filing Fee 10.00

Exemption # 1

LINDA MESSERVY
REGISTER
MESNE CONVEYANCES
DORCHESTER COUNTY, SC

LINDA T. MESSERVY
Register of Mesne Conveyance

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MATTER OF THE ESTATE OF EUNICE I. PAGE
CASE NUMBER 94ES18-147

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 6th day of October, 1993, and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Dorchester County, South Carolina in File #94ES18-147; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release an undivided interest in the following described property to:

Name: Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page
Address: 148 Pelzer Drive, Summerville, SC 29485

ALL that certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being just outside of the Town of Summerville in the County of Dorchester, State of South Carolina and having such buttings, boundings, and measurements as follows, to wit: Northeast on a lot now or formerly of Luke, then Strobel measuring thereon a distance of Two Hundred Ten (210') feet, Southeast on lands now or formerly of Goodwyn and Eddie Hinson and measuring thereon a distance of Three Hundred Fifteen (315') feet, more or less; Southwest on Highway #78 and lands now or formerly of Frances M. Sparks and measuring thereon a distance of Eighty-five (85') feet and One Hundred Twenty Seven (127') feet, respectively; and Northwest on lands now or formerly of Frances M. Sparks and U.S. Highway #17-A and measuring thereon a distance of One Hundred Twenty-five (125') feet and One Hundred eighty-eight (188') feet, respectively, be the said dimensions, more or less.

The above described lots of lands will more fully appear reference being had to plats of the same by Thomas W. Bailey, C.E. and L.S., dated June 16, 1961, June 19, 1961, and April 4, 1968, reference to which is hereby craved and made a part and parcel hereof.



Ann Priest & Assoc.
P.O. Box 1169
Summerville SC 29484

Less and excepting, however, that 1/10th interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated June 14, 1976, and recorded in Deed Book 285, at Page 130, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated December 12, 1977, and recorded in Deed Book 335, at Page 140, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated January 23, 1978, and recorded in Deed Book 335, at Page 137, in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson Pittillo by deed of Eunice I. Page, also known as Inez E. Page, dated December 27, 1980, and recorded in the RMC Office in Book 430, at Page 84.

And less and excepting any other conveyances made by the decedent prior to her death.

Subject, however, to all covenants, restrictions, reservations, easements, conditions and rights appearing of record, and subject to any state of facts an accurate survey would show.

Being the same in part, as was conveyed to H.B. Page by Frances M. Sparks by deed dated February 26, 1959, and recorded in Deed Book 99, at Page 249, RMC Office for Dorchester County, a one-half (1/2) interest of which was conveyed to Inez E. Page by H.B. Page who is one and the same person as Eunice I. Page by H.B. Page by deed dated February 21, 1969, and recorded in Deed Book 166, at Page 249, RMC Office for Dorchester County.

And being the same, in part, as was conveyed to H.B. Page and Eunice I.Page by L.M. Blanchett and Ida B. Blanchett on November 10, 1967, by deed recorded in Deed Book 156, Page 31, in the RMC Office for Dorchester County.

And being the same, in part, as was devised to Eunice I. Page (being the same as Inez E. Page) by H.B. Page pursuant to his Last Will dated December 28, 1955, and recorded in the Probate Court for Dorchester County in Book 4, Page 491, Dorchester County Probate Court Case Number 71ES18-2802.

And being the same, in part, as was conveyed to Inez E. Page by Albert J. Rinck and Alice Marie Rinck on September 16, 1950, and recorded in Deed Book 99, at Page 169 in the RMC Office for Dorchester County.

TMS # 137-04-01-001

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I. Page, her heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 22 day of July, 1997.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Estate of: Eunice I. Page
by Signature: Ann Page Pittillo
Personal Representative

Witness: Donna V Sands

Witness: Jennifer D Williams

STATE OF SOUTH CAROLINA )
COUNTY OF DORCHESTER )

PROBATE

PERSONALLY appeared before me Donna V Sands and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me this 22nd day of July, 1997

Witness Signature: Donna V Sands

Jennifer D. Williams
Notary Public for South Carolina
My Commission Expires: 1-31-99

Form #400PC (1/89)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 24th day of May 1998
at 9:19 A and recorded
in book 1960 page 185
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES



R_0313

# Promissory Note

| **Principal** | **Loan Date** | **Maturity** |
|---|---|---|
| $100,000.00 | December 4, 2013 | December 3, 2016 |

| | | | |
|---|---|---|---|
| Borrower: | EIP Trust<br>Ann P. Pittillo, Trustee<br>148 Pelzer Drive<br>Summerville, SC 29485 | Lender: | David Whitfield<br>Glenn Little<br>205 Countryside Way<br>Summerville, SC 29483 |

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of **David Whitfield** of Summerville, South Carolina **and Glenn Little** of Ridgeville, South Carolina, in lawful money of the United States of America, the principal sum of One Hundred Thousand and 00/100 ($100,000.00) Dollars with interest from date at the rate of Twenty (20.00%) per annum based on 360 days, then interest increases the second year to Twenty Five (25%) percent per annum based on 360 days, finally interest caps at Thirty (30%) percent per annum based on 360 days until paid in full with interest compounded annually. Borrower will make one lump sum payment based on the date and year paid in full. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued interest; then to principal; then to any late charges; and then to any unpaid collection costs. Borrower will pay Lender at Lender's address shown above or at such other place as Lender my designate in writing.

Borrower reserves the right to prepay in part or in whole at any time subject to the following: If Borrower prepays in the first year, she shall be required to pay One Hundred Twenty Thousand and 00/100 ($120,000.00) Dollars. If Borrower prepays in the second year, she shall be required to pay One Hundred Fifty Thousand and 00/100 ($150,000.00) Dollars. If Borrower prepays on the third year, she shall be required to pay One Hundred Ninety Thousand and 00/100 ($190,000.00) Dollars.

If balloon payment is not made on or before December 3, 2016, borrower agrees to transfer title to lender in lieu of foreclosure.

If default be made in the performance of or compliance with any of the covenants and conditions of the loan or any other instrument securing this note, then in any of said events, said principal sum shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt course, or under foreclosure proceedings under the mortgage securing this note, then all cost of collection, including a reasonable sum for attorney fee shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way, of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment, protest, and notice are hereby waived.

It is expressly agreed and declared that this note is given for an actual loan of One Hundred Thousand and 00/100 Dollars ($100,000.00).

Witness the hand and seal of each of the signers hereof.

Witness:

Paula R. Sellers

**EIP Trust**

Ann P. Pittillo, Trustee

Prepared by and Return to:
Shelbourne Law Firm
131 E. Richardson Ave.
Summerville, SC 29483

FILED/RECORDED
December 9, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA )
) MORTGAGE OF REAL ESTATE
COUNTY OF DORCHESTER )

TO ALL WHOM THESE PRESENTS MAY CONCERN:

IN THE STATE AFORESAID, SEND GREETING:

WHEREAS, We, the said, **Ann P. Pittillo, Trustee of the EIP Trust,** hereinafter also styled the Mortgagor(s), in and by my certain Note bearing even date herewith, stand firmly held and bound **David Whitfield and Glenn Little,** hereinafter also styled the mortgagee, in the sum of ONE HUNDRED THOUSAND AND 00/100 ($100,000.00) DOLLARS, as evidenced by and according to the terms and conditions of a Promissory Note of even date herewith, as in and by the said Note and Condition(s) thereof, being thereunto had, will more fully appear.

NOW, KNOW ALL MEN, that the said, **Ann P. Pittillo, Trustee of the EIP Trust,** in consideration of the said debt, and for the better securing the payment thereof, according to the conditions of the said Note, which with all its provisions is hereby made a part hereof; has mortgaged, and by these Presents, does mortgage unto the said **David Whitfield and Glenn Little,** their heirs and assigns, THE FOLLOWING DESCRIBED PROPERTY, TO-WIT:

SEE EXHIBIT "A" ATTACHED

Mortgagee's Address: 205 Countryside Way, Summerville, SC 29483

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 unto the said Mortgagee's, its heirs and assigns forever.

AND Mortgagor do(es) hereby bind Mortgagor's heirs, successors, executors and administrators, to procure or execute any further necessary assurances of title to the said premises, the title to which is unencumbered, and also to warrant and forever defend all and singular the said Premises unto the said mortgagee, mortgagee's heirs and assigns, from and against Mortgagor and Mortgagor's heirs, successors, executors and administrators and all persons lawfully claiming, or to claim the same or any part thereof.

AND it is agreed, by and between the parties hereto, that the said mortgagor, mortgagor's heirs, successors, executors or administrators, shall keep the buildings erected, or to be erected on said

**SHELBOURNE LAW FIRM**
**Attorneys at Law**
**131 E. Richardson Avenue**
**Summerville, SC 29483**

premises, insured against loss or damage by fire, for the benefit of the said mortgagee, for an amount not less than the value of the buildings in such company as shall be approved by the said mortgagee, and shall deliver the policy to the said mortgagee, and in default thereof, the said mortgagee, mortgagee's heirs or assigns, may effect such insurance and reimburse itself under this mortgage for the expense thereof, with interest thereon, from the date of its payment. And it is further agreed, in the event of other insurance and contribution between the insurers, that the said mortgagee, mortgagee's heirs or assigns, shall be entitled, to receive from the aggregate of the insurance moneys to be paid, a sum equal to the amount of the debt secured by this mortgage.

AND IT IS AGREED, by and between the said parties, that the mortgagor, mortgagor's heirs, successors or assigns, executors or administrators shall provide the mortgagee or mortgagee's within 10 days after due date proof that taxes has been paid in full.

AND IT IS AGREED, by and between the said parties, that if the said mortgagor, mortgagor's heirs, successors or assigns, executors or administrators shall fail to pay all taxes and assessments upon the said premises when the same shall first become payable, then the said mortgagee, mortgagee's successors or assigns, may cause the same to be paid, together with all penalties and costs incurred thereon, and reimburse itself under this mortgage for the sums so paid, with interest thereon, from the dates of such payments.

AND IT IS AGREED, by and between the said parties, that upon any default being made in the payment of the interest on the said Note or of the insurance premiums, or of the taxes, or of the assessments hereinabove mentioned, when the same shall severally first become payable, or in any other of the provisions of this mortgage, that the entire amount of the debt secured, or intended to be secured hereby, shall forthwith become due, at the option of the said mortgagee, mortgagee's heirs or assigns, although the period for the payment of the said debt may not then have expired.

AND IT IS AGREED, by and between the said parties, that the mortgagor, mortgagor's heirs, successors or assigns, executors or administrators shall provide the mortgagee or mortgagee's within 10 days after due date proof that property insurance has been paid in full.

AND IT IS AGREED, That if the holder of the Note secured hereby is compelled to pay any taxes upon the debt represented by said Note, or by this mortgage, then, and in that event, unless the said taxes are paid by some party other than the said holder, that the entire amount of the debt secured, or intended to be secured, shall forthwith become due at the option of the said mortgagee, mortgagee's successors or assigns, although the period for its payment may not then have expired.

AND IT IS AGREED, by and between the said parties, that, should legal proceedings be instituted for the collection of the debt secured hereby, then, and in that event, the said mortgagee, mortgagee's successors or assigns, shall have the right to have a Receiver appointed of the rents and profits of the above described premises, with power to forthwith lease out the said premises anew if he should so elect, who, after deducting all charges and expenses attending such proceedings, and the execution of the said trust as Receiver, shall apply the residue of the said rents and profits towards the payment of the debts secured hereby.

AND IT IS FURTHER AGREED, by and between the parties that should legal proceedings be instituted for the foreclosure of the mortgage, or should the mortgagee become a party to any action by reason of this mortgage, or should the debt secured hereby be placed in the hands of an attorney at law for collection, by suit or otherwise, all costs and expenses incurred by the mortgagee, including a

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**Attorneys at Law**
**131 E. Richardson Avenue**
**Summerville, SC 29483**

reasonable attorney's fee, shall thereupon become due and payable as a part of the debt secured hereby, and may be recovered and collected hereunder.

PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties, that if the mortgage does and shall well and truly pay, or cause to be paid, unto the mortgagee, its/his successors, heirs and assigns, the debt or sum of money aforesaid, with interest thereon, and if any shall be due, according to the true intent and meaning of the note and this mortgage, then this mortgage shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue.

AND IT IS AGREED, by and between the parties, that the mortgagor shall hold and enjoy the premises until default of payment shall be made.

ANY reference in this instrument to the plural shall include the singular, and any reference to the neuter shall include the male and female, the male shall include the female and vice versa.

This mortgage is not assumable without the written permission of the holder hereof.

WITNESS my hand and seal this 4th day of December, 2013.

IN THE PRESENCE OF:

EIP Trust

Paula R. Sellers
Witness

Ann P. Pittillo, Trustee

Notary

FILED/RECORDED
December 9, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

I, P. Brandt Shelbourne, a Notary Public of the County and State first above written, do hereby certify that Ann P. Pittillo, Trustee of the EIP Trust personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this 4th day of December, 2013.

Notary Public

My Commission Expires: 1.11.16

(SEAL)

**SHELBOURNE LAW FIRM**
**Attorneys at Law**
**131 E. Richardson Avenue**
**Summerville, SC 29483**

**Legal Description**

**ALL** that certain piece, parcel or lot of land with the buildings and improvements thereon situate, lying and being just outside of the Town of Summerville, in the County of Dorchester, State of South Carolina and having such buttings, boundings and measurements as follows, to wit: Northeast on a lot now or formerly of Luke, then Strobel measuring thereon a distance of Two Hundred Ten (210') feet, Southeast on lands now or formerly of Goodwyn and Eddie Hinson and measuring thereon a distance of Three Hundred Fifteen (315') feet, more or less; Southwest on Highway #78 and lands now or formerly of Frances M. Sparks and measuring thereon a distance of Eighty-five (85') feet and One Hundred Twenty Seven (127) feet, respectively; ad Northwest on lands now or formerly of Frances M. Sparks and U.S. Highway #17-A and measuring thereon a distance of One Hundred Twenty-five (125') feet and One Hundred Eighty-eight (188') feet, respectively, be the said dimensions, more ore less.

The above described lots of lands will more fully appear reference being had to plats of the same by Thomas W. Bailey, C.E. and L.S., dated June 16, 1961, June 19, 1961 and April 4, 1968 reference to which is hereby craved and made a part and parcel hereof.

Less and excepting, however, that 1/10th interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated June 14, 1976 and recorded in Deed Book 285, at Page 130 in the RMC Office for Dorchester County.

Less and excepting, however that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson by deed of Eunice I. Page, also known as Inez E. Page, dated January 23, 1978 and recorded in Deed Book 335 at Page 137 in the RMC Office for Dorchester County.

Less and excepting, however, that 1.2/100 (1.2 percent) interest conveyed to Ann Page Henson Pittillo by deed of Eunice I. Page, also known as Inez E. Page, dated December 27, 1980 and recorded in the RMC Office in Book 430, at Page 84.

And less and excepting any other conveyances made by the decedent prior to her death.

Subject, however to all covenants, restrictions, reservations, easements, conditions and rights appearing of record and subject to any state of facts an accurate survey would show.

BEING the same property conveyed to Ann P. Pittillo, as Trustee of Trust EIP created under the Last Will and Testament of Eunice I, Page by Deed of Distribution (case number 94-ES-18-147) Ann Page Pittillo, Personal Representative of the Estate of Eunice L. Page dated July 22, 1997 and recorded May 29, 1998 in the RMC Office for Dorchester County in Deed Book 1960 at Page 185.

TMS No.: 137-04-01-001

**SHELBOURNE LAW FIRM**
**Attorneys at Law**
**131 E. Richardson Avenue**
**Summerville, SC 29483**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

2016-CP-18-1849

In re: Trust EIP Created Under the Last Will and Testament of Eunice I. Page dated October 14, 1992 Richard S. Henson and Vann Kenneth Henson,

Plaintiffs,

v.

Albert T. Henson, Jr., and Julian Reid Henson,

Defendants

Transcript of Record

November 21, 2016
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge.

A P P E A R A N C E S:

Trudy A Robertson, Esquire
Attorney for the Plaintiff

Daniel Frank Blanchard, III Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

Motion Hearing

WITNESS/DESCRIPTION PAGE NO.

EXHIBITS:

There were no exhibits marked to this proceeding

Certificate of Court Reporter ..... 43

THE COURT: Okay. Hilda, do you have the case?

COURT REPORTER: I don't have anything on this case, Judge.

THE COURT: Has anybody got that -- you got something?

MS. ROBERTSON: A caption.

THE COURT: Yes, a caption.

MR. BLANCHARD: I've got an extra copy of the docket.

THE COURT: Okay.

COURT REPORTER: May I borrow it, please. I'll pass it up.

MR. BLANCHARD: Yes, ma'am.

THE COURT: And your name is?

MR. BLANCHARD: Frank Blanchard. I'm at Rosen and Haygood in Charleston on behalf of the Respondent, Alfred Henson, Jr.

THE COURT: Okay. And you are?

MS. ROBERTSON: I am Trudy Robertson. I'm here on behalf of Scott and Ken Henson who are the petitioners in the probate underlying action.

THE COURT: Okay. All right. And this is someone's motion to dismiss an appeal?

MS. ROBERTSON: That is correct, Your Honor. It is my client's motion, Mr. Scott Henson, who's here. Also

Ken Henson, his brother. It's our motion to dismiss an appeal that was filed by Mr. Blanchard's client.

THE COURT: Okay. So this isn't the appeal. This is a motion to dismiss the appeal?

MS. ROBERTSON: That is correct.

THE COURT: Okay. The floor is yours.

MS. ROBERTSON: Thank you, again, Your Honor.

THE COURT: Yes, ma'am.

MS. ROBERTSON: Your Honor, as I said, I represent the petitioners in the underlying case, Scott and Ken Henson. Mr. Scott Henson is here in the courtroom with us. I've also got Brandon Gaskins who is my associate and colleague and then we've got Mr. Barry Baker here. He represents both Scott and Ken Henson in a related estate matter.

THE COURT: Okay.

MS. ROBERTSON: Your Honor, we are here on a motion to dismiss the appeal. And it's an appeal of an order that appoints a special fiduciary as an interim trustee that was issued by the Probate Court Judge Molly Edwards in the underlying case. And the ground, Your Honor, for our motion to dismiss is quite simple. Is that Judge Edwards' order is not a final order under the probate code. It's not final under 62-1-308. And, Your Honor, it's not final under any other code section that's cited by Mr. Al

Henson, nor any other authorities that he has cited throughout the United States from various other jurisdictions. It does not change the fact that this order is not a final order. Thus, this appeal should be dismissed.

Your Honor, I'll give you a little bit of brief background if you don't mind.

THE COURT: Yes, ma'am.

MS. ROBERTSON: Back in early 2015 we filed -- Scott and Ken Henson filed a petition to appoint a successor trustee. And the petitioner's Scott and Ken Henson are brothers to Al Henson who is the respondent. Their mother was Ann Patilla and she served as a trustee during her life. And upon her death, that's when the trusteeship became vacant. The trust provided for a successor trustee to be an individual who had predeceased. And then it provided for a corporate trustee to be named and there has been no corporate trustee that could be identified to be named. Thus, the petition to appoint a successor trustee. We had a vacancy. The grandmother of Scott and Ken Henson and Al Henson, Ms. Ann Patilla's mother, Eunice Page, she owned a piece of real property. This property is in downtown Summerville. It's at the corner, the approach to the corner of Highway 78 and Main Street. And as you might guess, Your Honor, it's quite a valuable piece of property.

Upon her death, Ms. Page, the grandmother, her death, this property was placed into the trust. It is believed to be the sole asset of the trust. And the property, Your Honor, reportedly was conveyed and transferred to the trust by a deed. And that deed is dated July the 22nd in 1997. It is recorded in the RMC's office. It is the public record. The title is held to this piece of property in the trust. Nevertheless, Your Honor, when this action was filed Mr. Al Henson, who is the respondent in the case and it's appealed, says he owns the property. He says that his grandmother, Ms. Page before her death, conveyed it to him. So this would have been some time before 1997. It would be contrary to Ann Patilla, his mother's acting as a trustee of the trust and acting as a trustee with respect to the property. It would be contrary to the recorded deed, which has the property held in the name of the trust. Nevertheless, he says he owns the property.

So with that background, Your Honor, I would like to talk a little bit about the urgency of the matters that are now before you, particularly this motion to dismiss the appeal. The order that is the subject of Mr. Al Henson's appeal appoints a special fiduciary trustee as an interim trustee. And the reason, Your Honor, is that we must ensure that this valuable piece of property is not foreclosed on. And foreclosed may not even be the right word because the

mortgage and note don't even allow for that. It's just transferred back. But there is a note and mortgage on this piece of property that is coming due on December the 3rd, 2016 in just a couple of weeks. And this interim fiduciary, special fiduciary was acting as the interim trustee. The appointment was, in large part, done to preserve this piece of property and to have someone who could act with respect to this note and mortgage. And it has to be someone that is trustee and acting in that capacity because the note and mortgage was signed by Ms. Ann Patilla as the trustee.

THE COURT: And you've given me copies all of this?

MS. ROBERTSON: Your Honor, out of the appeal record that would be before you, I can hand you up a copy of the deed. I can hand you up a copy of the note and the mortgage. They are part of the underlying record. You have those.

THE COURT: Okay. Yeah, if you don't mind.

MS. ROBERTSON: Yes, sir. I'll be glad to.

THE COURT: My problem is that we are holding court here in Orangeburg. I don't have the file in front of me.

MS. ROBERTSON: Sure.

THE COURT: So that would help.

MS. ROBERTSON: Bear with us just a minute, Your

Honor.

MR. BLANCHARD: I don't loose anything, I just can't find it.

THE COURT: I put things in a safe place. Unfortunately, they're very safe.

MR. BLANCHARD: I've got it because I saw it here this morning.

MS. ROBERTSON: We have it as well, Your Honor. We just need to --

THE COURT: Take your time.

MS. ROBERTSON: We actually have a certified copy that was presented Judge Edwards as part of this appointment.

MR. BLANCHARD: Here it is.

THE COURT: Okay. I just like to look at the documents so I can follow along, if you don't mind.

MS. ROBERTSON: Yes, sir. There's the note. The mortgage is attached and there is the deed.

THE COURT: All right. Thank you. All right. Just bear with me one second, please, ma'am.

MS. ROBERTSON: Yes, sir.

THE COURT: Just out of curiosity, who is David Whitfield? I mean, I know he's the person you're paying the mortgage to. But I mean is he a relation or anything like --

MS. ROBERTSON: It is two individuals, Mr. Whitfield and Mr. Little that hold this note and this mortgage on this property. And, Your Honor, I don't know that there is any relation. They are the individuals that Ms. Patilla obtained a loan and the mortgage from. She signed it as trustee. And in large part we think the proceeds were used to pay some back taxes on the property to get it out of the potential of a tax sale. So she appears to have borrowed these funds to do that.

THE COURT: A hundred thousand dollars? Is that -- I mean --

MS. ROBERTSON: That is correct, Your Honor. And a balloon payment basically coming due on December the 3rd that will have the interest attached to it plus the amount that will have to be paid back or -- that is the purpose for the interim special fiduciary trustee that can act to do something with this note and mortgage and I can tell you a little bit more of how we got -- here is the settlement HUD statement, Your Honor, from that loan and note that addresses where those proceeds went.

THE COURT: Okay. And Mr. Blanchard, you've got copies of all of this?

MR. BLANCHARD: I don't have them with me today.

THE COURT: No, but, I mean, you've seen them. I want to make sure you've seen these things?

MR. BLANCHARD: Yes. I've seen them before today.

THE COURT: Okay. All right. Okay.

MR. BLANCHARD: I will say there's a dispute about what was published as part of the record in the Probate Court but I don't think it's really important to today.

THE COURT: Okay. All right. Thank you, sir. Okay. Now, just so I'll understand it. Y'all needed to have the interim special trustee appointed so they could write a check to pay this off?

MS. ROBERTSON: Your Honor, Ms. Ashley Andrews is here. She is the court appointed fiduciary. And part of this order was -- and it was a very limited authority that was given to her, but the critical part was to address this note and mortgage. Because when December the 3rd comes if it is not dealt with, this property is gone. It won't be there for Scott Henson, Ken Henson or Al Henson. David Whitfield and Mr. Little, if I've got those names right --

THE COURT: Uh-huh. (Affirmative response.)

MS. ROBERTSON: -- They will take this property.

THE COURT: Okay.

MS. ROBERTSON: And it will be a very valuable piece of property, the potential would be a loss over a hundred and ninety thousand dollars. It's a multi-million dollar piece of property. But, part of the authority was that she, the interim fiduciary could negotiate with the

lender and the parties to extend the due date of the note and mortgage or to refinance it. So she has been working to try to put that in place so that the property stays preserved, status quo for there to be a hearing down the road. Also, she could determine if there were other assets. She could recover records regarding Mr. Al Henson's claims of ownership, collect copies of any leases, but that's all she can do. Otherwise, it was maintain the status quo.

THE COURT: Uh-huh. (Affirmative response.)

MS. ROBERTSON: There was no dispossession of Mr. Al Henson and his use of the property. The order was very clear in that respect. And it was very limited and basically to deal with the loan and note and mortgage that threatens the property.

THE COURT: Okay.

MS. ROBERTSON: And, Your Honor, I don't know if you have an order. Do you have a copy of the order that appoints her?

THE COURT: No, ma'am.

MS. ROBERTSON: If I could hand that up, I'll be glad to do that as well.

THE COURT: Pretend I don't have anything.

MS. ROBERTSON: Okay.

THE COURT: And we'll work real well.

MS. ROBERTSON: That is the order that appoints

Ms. Andrews. And I think if you turn to page ten, Your Honor, it kind of sums up her authority. But Judge Edwards goes through eleven pages of describing what this interim trustee relationship is all about and what she was attempting to do and not do by way of this order. So Ms. Andrews has the ability right now through conversations with the mortgage and note holders to either put some refinancing in place. There's someone who could refinance it. We also have -- she has talked with the note holders and mortgage holders at present and they appear willing to extend the due date on this note and mortgage to allow this action to go forward to try the ultimate issues. So that is potentially out there but we don't want her to have any cloud over that authority, to make sure that she can undertake these transactions as the trustee. Because she is the only one, again, Your Honor, that's acting in a trustee capacity that we have. The brothers cannot.

THE COURT: Now, is Ms. Andrews related at all to any of the parties?

MS. ROBERTSON: She is not. She was court appointed by Judge Edwards.

THE COURT: Okay.

MS. ROBERTSON: So, Your Honor, with that background to kind of go back to our motion and the reason for the motion to dismiss the appeal, this appeal, Your

Honor, should not really be allowed to obstruct the ability of Ms. Andrews to deal with this note and mortgage or there'll be no real purpose to any of this case. And the ultimate issues are Mr. Al Henson's claim to the ownership versus the trustee's ownership or the trust ownership, which is the public record, those arguments were saved for a final hearing down the road. And what we're talking about here is an interim order. It is not a final order. And there is clearer South Carolina controlling law, we believe, that speaks to the very issue of an appeal from a Probate Court and we cited that in our motion, Your Honor, Boyce Able versus Brook (sp) a very short opinion. And I'm happy to hand up a copy of that as well.

THE COURT: Yes, ma'am. And that must be written by a different court. Oh, '91, okay.

MS. ROBERTSON: Your Honor, we believe --

THE COURT: So Ralph King Anderson did not write this order?

MS. ROBERTSON: Correct.

THE COURT: Okay.

MS. ROBERTSON: It's very short.

THE COURT: Okay.

MS. ROBERTSON: We believe you only need to really look at that opinion and the Probate Code section is 62-1-308 that is directly applicable here. It's the section

under which Mr. Al Henson filed the appeal. It says a person interested in a final order, sentence or decree of a Probate Court in considering himself injured by it, may appeal to the Circuit Court in the same county. That's how we get to you. And in this case, Your Honor, it's a Court of Appeals action, we believe it's controlling on the issue under this code section. In that case, the Probate Court had appointed special administrators of an estate until a personal representative could have been formally appointed, much like what we have here. The appointment of a special interim fiduciary with very limited powers until a trustee can be appointed and other issues decided at another hearing down the road. In this case the Court of Appeals held that the Circuit Court did not have jurisdiction under the Code Section in the Probate Code 62-1-308 because the Probate Court's appointment of that special administrator was not a final order. The order was clearly temporary in nature and it only provided the special administrator with limited powers for a minimum period. That's exactly what we have here, Your Honor, appointment of a special fiduciary that was temporary with limited power. If you look at the order, and it's clear, that it is temporary in nature. You've got an interim period from the date of appointment to the date of a final hearing. The powers are simply to maintain the status quo. Judge Edwards was very careful not to resolve

any of the primary disputes of ownership. She spent a great deal of time in that order making sure of that. She noted that those would be tried at a full hearing on the merits. That's for another day. She was very clear to make it temporary, very clear to make it limited.

So, Your Honor, because of that we don't believe it's appealable now in the South Carolina Probate Court. And while Mr. Al Henson in his memo in opposition cites -- he acknowledges 62-1-308. And he goes on to cite -- Mr. Blanchard does on his behalf, a number of very general statutes related to appeals. They have cited authority, Your Honor, from one end of the country to the other, very little South Carolina authority if any at all. And it's, I think, an attempt to confuse and kind of avoid the clear mandate that we have from the Probate Code is 62-1-308 and the clear controlling law that's in the case, Your Honor, that we handed up.

We would ask, Your Honor, that the appeal be dismissed. It's not a final order. And that Ms. Andrews be allowed to move forward unfettered without any cloud over any authority to deal with this note and mortgage. She's been able to talk to the lenders and get an extension. Has the potential to even refinance. But she can deal with it, address those issues and preserve this very valuable piece of property for us to have something to have a hearing about down the road.

THE COURT: Okay.

MS. ROBERTSON: And, Your Honor, I'll save additional comments about their brief in reply to allow -- see what Mr. Blanchard's going to say.

THE COURT: All right.

MS. ROBERTSON: Thank you, Your Honor.

THE COURT: Mr. Blanchard.

MR. BLANCHARD: May it please the Court?

THE COURT: Yes, sir.

MR. BLANCHARD: Your Honor, may I hand you a copy of a memorandum that I filed last night.

THE COURT: Yeah. Go ahead.

MR. BLANCHARD: I know you don't have that.

THE COURT: Thank you, sir.

MR. BLANCHARD: Your Honor, as was pointed out earlier this is simply a motion to dismiss --

THE COURT: I've already got a copy of it.

MR. BLANCHARD: Okay. It is not a hearing on the merits of the appeal. We believe the order is appealable for a number of reasons. The case that we're relying on is controlling for a number of reasons, that I'll go through. But essentially, Ms. Robertson spent a lot of time going through the background of the case and she spent very little time actually addressing the arguments that we make in our papers. The order was appealed for two reasons. One, it is

an order that entered in a special proceeding in the Probate Court, which is appealable under South Carolina Statutory Law. Second --

THE COURT: Which statute?

MR. BLANCHARD: Statute 14-3-330 subsection (3). And that deals with -- and I'm going to go through this in a little bit more detail.

THE COURT: Okay. Well, then I'm sorry to -- go ahead.

MR. BLANCHARD: That's all right. And it's also appealable because the relief that was requested in the Probate Court -- and the Probate order actually deals with this and discusses it -- is they were requesting what is, in effect, an injunctive relief. So the order on appeal is an order that is denying, granting and/or continuing an injunction in place, which is also appealable under 14-3-330 subsection (4).

THE COURT: Let me ask you. Where does it say that it granted -- I've got a copy of the order.

MR. BLANCHARD: Right.

THE COURT: And if you'll just show me where that is.

MR. BLANCHARD: She does not say that she is granting an injunction. What she does say in the particular parts of it, that she acknowledges that what is being

requested in the Probate Court was injunctive relief.

THE COURT: Right.

MR. BLANCHARD: And I think it's in -- this is page seven, paragraph thirty-three. While on the face of the motion petitioners did not request an injunction, it appears that some of the requested relief would have the consequence of altering the status quo. When you put that in context, what we were arguing in Probate Court was in their motion they asked the court to not only appoint a special fiduciary, but to give that person power and authorization over the property.

My client has been in possession of the property since 1988. He's been paying taxes and expenses on the property since that time. He's been leasing the property out to tenants. He's made improvements to the property. So my client has been exercising all the indicia of ownership for almost thirty years. So that's been the status quo up until this Probate Judge's order that was entered earlier this year. So what we were arguing in front of Judge Edwards is the law in South Carolina is clear that a court cannot grant an order that is, in effect, an injunction that would dispossess somebody who is in possession of the property at the time that the action was started. That would alter the status quo. It's not the permissible under South Carolina law. So what Judge Edwards did is she pretty much says in

her order, I'm going to only alter the status quo just a little bit. I'm going to appoint a special fiduciary. I'm going to give this person some powers that in effect mean the person has powers over my client's property. Part of what the special fiduciary can do is go out and obtain a loan against the property. Put a note, another mortgage against the property. My client because he uses the income that's generated by the property, that would be in jeopardy because what bank or lender is going to give you a loan against a property but not require documents that would effectively prevent my client from being able to be used and possess the property and lease it out to tenants. So ---

THE COURT: Mr. Blanchard, let me ask you a question. You're talking about him being in possession.

MR. BLANCHARD: Yes.

THE COURT: Okay. Do you have a deed or anything giving your -- and your client is Al Henson?

MR. BLANCHARD: Right.

THE COURT: Do you have -- you know, in South Carolina when you dealing with real estate, it has to be in writing?

MR. BLANCHARD: Right. I understand the deed issue. My client does not have a deed.

THE COURT: Okay.

MR. BLANCHARD: But the situation was is my client

had an agreement with his grandmother. And the agreement was that if he made payments over time, she would transfer the property to him. He has complied with his obligations under the agreement but his grandmother died and there was never a deed conveying title to the property.

THE COURT: Let me ask you another question. Since it was something that was dealing with real estate -- when I was dealing real estate, everything that effected real estate had to be in writing. Do you have a copy of the agreement that he had with his grandmother?

MR. BLANCHARD: There is no signed written agreement that we've been able to produce.

THE COURT: Okay.

MR. BLANCHARD: But --

THE COURT: I just want to make sure. So what you have is an oral agreement that your client says he made with his grandmother? Is that correct?

MR. BLANCHARD: Yes. I think so.

THE COURT: Okay. Okay. I mean, I just want to make sure I've got it right. Excuse me. Okay.

MR. BLANCHARD: Well, there was a written agreement. It was signed. But this happened in 1988. We have not been able to produce a copy of the agreement. So that's why I'm saying as of this date we have not been able to produce a copy of the agreement. There are people that

we think may have possession of a copy of the document --

THE COURT: Okay.

MR. BLANCHARD: -- including the attorney that was involved in the transaction. Walter Bailey was the attorney that was involved in it.

THE COURT: Well, I'm looking forward to getting Walter Bailey under oath.

MR. BLANCHARD: We have an actual copy of the document that was drafted by Mr. Bailey. What we don't have is the signed document.

THE COURT: Okay. Okay. So there is a copy of a proposed agreement?

MR. BLANCHARD: Well --

THE COURT: I mean from standpoint, you don't have a -- you have a document that's blank. Just like I have a deed where I'm conveying you property --

MR. BLANCHARD: Right.

THE COURT: -- but I haven't signed it?

MR. BLANCHARD: Correct.

THE COURT: Okay. I just want to make sure I understand. Okay. Sorry. Go ahead.

MR. BLANCHARD: Well, you're kind of getting into the merits of the case, Your Honor, with all due respect. And really, I don't want that to --

THE COURT: Influence my decision.

MR. BLANCHARD: Well, distract you from what the issues are right now. And the issues are simply whether this is an appealable order or not.

THE COURT: And right now, one of the reasons you gave me that -- never mind. I won't keep asking you questions.

MR. BLANCHARD: Right.

THE COURT: I'll let you go ahead with your presentation. Okay.

MR. BLANCHARD: Well, let me make sure I make this clear too because I have said it earlier.

THE COURT: Okay.

MR. BLANCHARD: Is there is a provision in the South Carolina Probate Code. We cite that in our brief.

THE COURT: Uh-huh. (Affirmative response.)

MR. BLANCHARD: It's section 63-3-107. And basically what it says is that unless the administration of the estate is at issue -- and we're not dealing with estate administration, so that doesn't come into play. It says each proceeding before the Probate Court is independent of any other proceedings involved in the same estate. And so what -- this is basically a document verbatim from the uniform probate code we adopted some years ago. And there's only one case in South Carolina that applies to that statute, and a case that gets close to the statute. It

didn't really go into any detail. But there are cases around the country construing and applying the very same provision. And what they all say is that in the Probate Court it's basically that you have a series of independent or separate proceedings. And so when the court hears one of those proceedings and enters an order that disposes the issues that were raised in that petition, it is deemed or considered a final order. And even though it doesn't close out the estate, even though it doesn't end the entire probate process, that's exactly what we have in this case. They filed a petition, a motion for the appointment for a special fiduciary. It came up in front of the Probate Judge. She heard it. She ruled on it. There's nothing left to do. It's over. So that's what we have appealed.

THE COURT: Tell me -- and I know I'm not getting into the merits of the appeal, but just so I have a better understanding. What's the basis of your appeal? I mean, other than the fact I'm assuming that who you wanted as a trustee didn't get appointed. What's the basis of your appeal?

MR. BLANCHARD: We asked for our client to be appointed as special fiduciary if that became necessary. That was rejected. We asked for the court to require that a bond be posted. That was rejected. We asked for a number of things in Probate Court that were denied. So we also

take issue with some of the powers that were granted to the special fiduciary, given that those powers were set forth in the order before we get to the final hearing on the merits.

THE COURT: Okay.

MR. BLANCHARD: Our concern has been my client is on the property, using the property. He's also been, himself, working to raise the funds to pay off this note and mortgage that are going to come due. He fully plans to do that. The appointment of a special fiduciary has made that problematic and has been hindering his efforts to do that. So that's exactly what we didn't want to happen. Is that he's -- his position is he is the owner of the property. Understand that he's been there for twenty-eight years acting as owner. The property is insured through his name, things of that nature that any owner would do. The problem has been the title. The property is not titled in my client's name. But we have an adverse possession claim. We have other claims that would be determined by the Probate Court at a final hearing on the merits. But what's happened in the interim is the Court has entered an order that is effecting our client's use and ability to take advantage of his property. And that is improper before you get to a final hearing on the merits under the South Carolina law that we relied on in the Probate Court.

THE COURT: Okay.

MR. BLANCHARD: So I have detailed in the brief that I gave you a number of cases. And there are two particular provisions that we're relying on to argue that it's appealable. There is virtually no South Carolina case interpreting one of the provisions. The only cases I found were from the 1800's. But this again is a provision that is identical to the statute in a number of states around the country. It's kind of like a term of art, some of the language in the statute. And so there are cases out there that are applying this exact same language. And I've cited those cases in that memorandum. And it's very clear that the type of order that we're dealing with in this case is immediately appealable. Because it is a special proceeding. It is a proceeding that effects a substantial right. And the order is final for purposes of that special proceeding. No, it does not close out the estate. It does not end the entire probate process. But it ended that particular matter that was before the Probate Judge at the time. And given South Carolina law on that, that is considered a final order that can be appealed for purposes of this sub-section. It also grants the special fiduciary certain powers over the property that alters the status quo, including -- the language in the order says -- let me find that for you. It says that the special fiduciary, in her sole discretion, can negotiate with the lender and/or the parties, extend the due

date on the current mortgage in order for litigation to be finalized or to have the mortgage paid off prior to the December 3rd, 2016 due date. And also negotiate an extension of the current loan or other appropriate action to pay the mortgage in her sole discretion. That would include entering into an agreement with a bank that assigns the right to income, the --

THE COURT: Okay. Wait a minute. Okay. The copy of the order I have goes through at her sole discretion to negotiate with the lender and all parties to extend the due date in order for the litigation to be finalized or have the mortgage paid off prior to December 3rd, 2016.

MR. BLANCHARD: That's on page ten. It's also on page eight.

THE COURT: Well, now, to me so we all clearly understand, from my standpoint the only thing that matters is page ten of the -- because that's what's ordered. Now, a Judge can make findings and all of that kind of stuff to, you know, to tell the reasons for the order, but this is the order, page ten.

MR. BLANCHARD: Well, I'm just reading the language that I see. And she says in her order on page eight. Therefore, the appointment of a special fiduciary is necessary in order to preserve 605 North Main Street for all parties. And to negotiate an extension of the current loan

or other appropriate action to pay the mortgage in her sole discretion. I consider that to be part of the Court's ruling.

THE COURT: No, that's a part -- that's part of the Court's findings or conclusions, why she did it. But the order -- and, of course, the order says essentially the same thing but leaves out -- I mean, I just wanted to make sure you understand from my standpoint, page ten is the order.

MR. BLANCHARD: Well, if they're conceding that the special fiduciary does not have this power to take other appropriate action, then that's different from my understanding of what the court's ruling is. But --

THE COURT: Okay. But I ask Ms. Robertson when she gets back up, you know. But, I mean, to me this is the order. I mean, every order I see that attorneys write, they put a lot stuff in there. And Judges when they have a lot of other stuff for findings and conclusions of law, but the order is where it says, it is hereby ordered and that's it.

MR. BLANCHARD: I understand, Your Honor.

THE COURT: Okay.

MR. BLANCHARD: But this is just to let you know Judge Edwards actually drafted her own orders. She didn't ask --

THE COURT: Oh, well good. Well, then this is

exactly what she means, okay? Because if she meant something else, she didn't put it in there. If you're appealing this order, this is what you're appealing. This is what she said they were going to do and that's it. This is the limit of the authority of the interim trustee, page ten.

MR. BLANCHARD: Right.

THE COURT: Okay. I'll make that ruling now if that's a concern.

MR. BLANCHARD: I'm not sure I understand what you're --

THE COURT: If you want me to say on the record or affirm that this is the order of the Probate Court, page ten, I'll say that and that will be the order. Okay.

MR. BLANCHARD: I understand and I appreciate that Your Honor.

THE COURT: I'm here to help.

MR. BLANCHARD: The problem is is that the only issue before Your Honor right now is simply whether or not it's an appealable or not.

THE COURT: I understand that. Okay.

MR. BLANCHARD: Your Honor, I've gone through and briefed a number of cases that talk about -- one of the issues is their argument because the order is supposedly interim. And that means it can't be appealed. There's case

law out there saying that -- the fact that it may use the term interim does not mean it's not a final order for the purposes of an order that is entered in a special proceeding that effects a substantial right. And what the cases basically hold is that they look at the substance of the order. Does it resolve in its entirety the matter that was raised to the Court as part of that petition or that motion. Clearly, Judge Edwards did that. She ruled on whether a special fiduciary should be appointed. She ruled on what powers that person should have. There's nothing left for the Probate Court to do on that particular issue. And it is separate and distinct from the initial petition that they've filed in which they were asking the Court to appoint a successor trustee to dissolve the trust and to disburse the trust assets to the beneficiaries. So -- and the case law is clear that unless the more recent petition is integral to that original action, then it would be simply separate proceedings. And the order in that special proceeding can be appealed. The case that they're relying on, and I've read that case. It's a very short opinion. The Court there, as far as I can tell, was never asked to address any of the different issues that we're raising in this case. The court there did not address whether or not the Probate Court's order was a -- were entered in a special proceeding that effected a substantial right. The court in that case

did not address whether or not the order had the effect of granting, refusing or continuing an injunction. So those are issues that we're raising in the appeal in our case. So I don't see that the Estate of Boyce case is controlling for that reason. And there's a -- we cite in brief a quote from Judge Sanders, which basically says that appellate courts are like well behaved children. They don't speak unless asked to basically. So nobody asked the court to address that issue or those issues in that case.

THE COURT: And you would act the same way, don't you?

MR. BLANCHARD: No, Your Honor.

THE COURT: Okay. Well, I'm sitting as an appellate court here.

MR. BLANCHARD: You are. But what I mean is --

THE COURT: I understand. I understand.

MR. BLANCHARD: That's correct.

THE COURT: Okay.

MR. BLANCHARD: And one thing I didn't mention is the law is clear that you are acting the same as the South Carolina Court of Appeals would be acting or the South Carolina Supreme Court would be acting if somebody was appealing one of your rulings as a Circuit Court Judge. So you're not allowed to consider additional evidence.

THE COURT: Right.

MR. BLANCHARD: You're only allowed to consider the arguments that are being raised based on what happened in the Probate Court.

THE COURT: Right. And it's my understanding from doing Probate appeals, if there's any evidence that the Probate Court -- to support their decision, I've got to enforce it.

MR. BLANCHARD: That's is there was a hearing or a fact trial -- a trial on the facts.

THE COURT: Or a hearing on the appeal?

MR. BLANCHARD: That's right.

THE COURT: Right. Okay.

MR. BLANCHARD: We're not really -- I don't think we're dealing with a situation where there's a dispute about the evidence or, you know, what the underlying factual situation is. We're really dealing more so what authority did the Probate Judge have and did she exceed that authority.

THE COURT: Okay. Let me ask you a question. The Probate Court, did you file pleadings in response to their request? In other words, they filed asking for a special -- someone to be appointed and to take care of the property and all that other kind of stuff. They filed a petition, did you file --

MR. BLANCHARD: They filed a motion.

THE COURT: A motion. Did you file a response to that motion?

MR. BLANCHARD: I did. I filed a memorandum in my position and some affidavits.

THE COURT: Okay. Okay. Do you have copies of those?

MR. BLANCHARD: I do not have them with me, but I can get you copies and email them first thing in the morning.

THE COURT: Okay. All right. Well, if I need them I'll ask you for them.

MR. BLANCHARD: Okay.

THE COURT: Okay.

MR. BLANCHARD: The affidavits were basically going through the evidence that we have, that there was the agreement with the grandmother.

THE COURT: Okay. But I --

MR. BLANCHARD: It also goes to the current situation.

THE COURT: Okay.

MR. BLANCHARD: I'm sorry, Your Honor. I didn't mean to cut you off.

THE COURT: No, no, no. I didn't mean to cut you off. Okay. Okay. All right. Anything else you need to tell me?

MR. BLANCHARD: I think that -- just --

THE COURT: Okay.

MR. BLANCHARD: Maybe one last point, Your Honor.

THE COURT: Yes, sir.

MR. BLANCHARD: This is discussed more in the brief that I gave you. But sort of the thrust of it is, is that all these cases talk about if you don't allow an appeal now, what would be the effect if the Court finds later on that the person or the special fiduciary should not have been appointed. And as Ms. Robertson has indicated to you, this special fiduciary is already undertaking actions pursuant to the authorization given under the Probate Judge's order. So what happens if we have a situation where we go down this whole process with an appeal, at end the case and it's determine that no, a special fiduciary should not have been appointed. They should not have been given this power. But yet by that point, we've already got a situation where she's obtained a new loan. She's got a new mortgage on the property. All these things have happened, which I presume would be void at that point. But I don't know whether the court could undo what has been done in the interim. So what these cases talk about is that that is a factor in determining whether or not a substantial right has been effected by the Probate Judge's order. We feel that has because it would be next to impossible for a court to

undo what's happened if you don't allow appeal at this point.

You know, I know I've talked a good little bit but if there's anything you have any questions about, I'd be glad to answer them.

THE COURT: All right. I do. Okay. Just so I can have this straight and I know we're getting into the merits to some -- there is no deed in the chain of title after this deed of distribution that's recorded in Dorchester County placing the title in Ann P. Patilla's name as Trustee; is there?

MR. BLANCHARD: That's correct.

THE COURT: Okay. And this mortgage from the trustee to Mr. Whitfield and Mr. Little is recorded of record?

MR. BLANCHARD: That's correct. And you asked a question earlier about who they were. They actually were people that attended, went to Ms. Patilla's church. One of them is her pastor. They made a loan at the last minute because the property was going to be lost to a tax sale. The sale had actually already happened and they were in that period, the redemption period.

THE COURT: Yeah.

MR. BLANCHARD: So the loan was done -- I think it was done because the property was titled in that trust and

Ms. Patilla signed the documents and got the money to pay the taxes.

THE COURT: And, of course, one of the reasons you asked for your client to be appointed as the interim trustee was so he would have the authority to --

MR. BLANCHARD: Yes.

THE COURT: Okay. Okay.

MR. BLANCHARD: Yes.

THE COURT: Because somebody has got to be in that position to do something with this mortgage; right?

MR. BLANCHARD: No. You don't have to have somebody appointed to pay a mortgage off.

THE COURT: Oh, yeah. No, if somebody's got a hundred thousand dollars, I agree, you know.

MR. BLANCHARD: Well, that's what's going to happen.

THE COURT: Okay.

MR. BLANCHARD: I don't think the mortgage is going to be -- well, I haven't been privy to Ms. Andrews conversations where apparently the creditors are saying they're now wanting to extend the loan.

THE COURT: Uh-huh. (Affirmative response.)

MR. BLANCHARD: But my understanding was they wanted their hundred and ninety thousand dollars by December 3rd. So that's where we've been going is to make that

happen. I think there was one last thing I wanted to mention to you. I'm sure I'll probably think of it while we're talking about something else.

THE COURT: Okay. In 2013 they borrowed a hundred thousand dollars?

MR. BLANCHARD: Yes.

THE COURT: And now they have to repay a hundred and ninety?

MR. BLANCHARD: Three years later.

THE COURT: I'm glad she was dealing with her minister.

MR. BLANCHARD: I certainly had the same questions in my mind.

THE COURT: We certainly won't want to deal with anybody who was, you know, take advantage of somebody. Okay. Whew. Anything else.

MR. BLANCHARD: I don't think so, Your Honor.

THE COURT: Okay. Thank you.

MS. ROBERTSON: Your Honor, I would like to point out that that was Mr. Al Henson's minister, I think, that gave this loan. But Ms. Ann Patilla, as trustee did take the loan out. And I know we don't want to get into the facts of ownership, but I do want to correct one thing.

THE COURT: Okay.

MS. ROBERTSON: Mr. Blanchard has talked about his

client possessing this property for thirty years and ownership over the property and that he's always been the one. That is just absolutely not correct. Ms. Ann Patilla -- as we've just been looking at this note and mortgage, acted as a trustee over this property in 2013 taking out a loan. Those proceeds went to pay the taxes on that property for the trust. And she acted as the trustee. So there's a lot of facts here in dispute but --

THE COURT: Oh, I understand.

MS. ROBERTSON: -- that goes well into them, but I didn't want the record to stand where he had said thirty years.

THE COURT: And Ms. Robertson, this order -- do you consider there's any more of an order than page ten?

MS. ROBERTSON: I don't, Your Honor. I think Judge Edwards was very clear --

THE COURT: Okay.

MS. ROBERTSON: -- of what powers she gave the special fiduciary. I think she was very careful in writing this eleven page order. And she laid out those powers, as you have indicted, on page ten.

THE COURT: Okay.

MS. ROBERTSON: And they are limited and they are giving Ms. Andrews only certain powers and they're brief. Your Honor, I just have to say and I do want to briefly

reply to the code sections that he's referenced. This appeal has no real logic to us. If Ms. Andrews is not allowed to act as the interim fiduciary, the interim trustee, this property could well be lost on December the 3rd and it doesn't matter what these brothers want to talk about. So that is the critical importance, why we wanted to come before Your Honor. And we appreciate the opportunity to come today to address this. And Boyce Able case, if we look at that case, Your Honor, it's directly controlling. And it's controlling because it does address the only issue that's important here, the finality of an order. That case addressed a situation very similar to what we're dealing with, and found that it was not a final order subject to appeal. And if you look at the code sections Mr. Blanchard cites, 14-330. If you look at all of his case law he throws out from across the country, none of that really matters because the key to all of that is still you have to have a final order. That is a key facet of all of that. And Boyce Able speaks directly to that issue. It is not a final order. Your Honor, just briefly, if you look at what a special proceeding is, he goes through a great deal in the brief. And we can look at cases in Nebraska, Minnesota, Ohio. No South Carolina cases. He tried to speak about the substantial right from this code section. If you look at cases he cited were Nebraska, North Carolina, New Mexico,

Wisconsin, California, and Texas. No South Carolina -- and, Your Honor, I would point you to -- there is South Carolina authority that defines what a substantial right is. And there's some cases. One of those is Mid-state versus Century Recorders 310 S.C. 330. It's a Supreme Court case from 1993 and it defines what a substantial right is. It's an order that will discontinue an action, prevent an appeal, grant or refuse a new trial, to strike out an action or defense. That's clearly not the case here. The Respondent has not lost -- Mr. Al Henson's claim of ownership. He's not been dispossessed of the property. And that's all issues to be determined.

So, Your Honor, whether you talk about a special proceeding or you talk about a substantial right, there's just no final order that they can appeal here. And a substantial right of anything is the right of the trust. We've got a recorded deed. We've got a public record. The trust has the substantial right, if anything, not Mr. Al Henson, Your Honor. He's got his claims of ownership and he'll have his day in court over that but there will be no point to have a day in court if we have no property to talk about.

And just lastly, Your Honor, and quickly. Mr. Blanchard tries to construe Judge Edwards' order as some type of injunctive relief. We didn't seek an injunction.

She notes that in the order. You can read that. She was very careful about that. She says the court's not going to dispossess Mr. Al Henson of the property. She was very careful not to do anything to change the status quo. He continues to use the property, store equipment in it. He's leasing it. We think he's leasing and the proceeds aren't coming to the trust, but those are the issues for a later day. But, you know, he's got all of those same relationships he had before this order. She did not alter those.

So, Your Honor, we believe that we've got to preserve this property. It's titled in the name of the trust and we've got a trustee that's been appointed for a very interim, limited basis to deal with this note and mortgage. She has had conversations. She can deal with it. She's the person that's able to do it. And we need that to happen and we need it to happen now. Mr. Al Henson's promises of payoffs or funds, we can't wait around on that. We need the person that the court said go deal with it, to do that before December the 3rd so we can have something to hold a hearing over later down the road. And we'd ask you to dismiss their appeal.

THE COURT: Okay. Let me ask you one thing, Ms. Robertson?

MS. ROBERTSON: Yes, sir.

THE COURT: I did receive the memorandum from --

MR. BLANCHARD: Mr. Blanchard.

THE COURT: -- yeah. Mr. Blanchard. Excuse me, Mr. Blanchard. I was -- did y'all do a memo?

MS. ROBERTSON: We have a motion -- Your Honor, I'm glad you mentioned that. I had it to hand to you.

THE COURT: Okay.

MR. BLANCHARD: It cites our authority within it.

THE COURT: Thank you, ma'am.

MS. ROBERTSON: So that's a copy of our motion as well.

THE COURT: All right. Anything else you need to tell me?

MS. ROBERTSON: No, sir. I don't believe so from our side.

THE COURT: Okay. Before noon tomorrow I'll tell y'all what my decision is, okay?

MS. ROBERTSON: Thank you, Your Honor.

MR. BLANCHARD: Thank you, Your Honor.

THE COURT: Okay. All right. Thank y'all.

MR. BLANCHARD: Your Honor, if I may --

THE COURT: Yes, sir.

MR. BLANCHARD: If I could just email you some of the things that were filed in the Probate Court just so you can see those before you issue your ruling?

THE COURT: That's fine. Okay. And copy them. If y'all want to send something --

MS. ROBERTSON: Well, I was going to say, Your Honor, we might do the same on what we filed.

THE COURT: Okay.

MS. ROBERTSON: We also had a reply memo and there were a number of memos exchanged that went in before this order and the hearing.

THE COURT: That would be fine if y'all would sent it early because I want to get this thing out, okay?

MS. ROBERTSON: Yes, sir. We'd certainly like for you to. So we'll send you copies of ours as well.

THE COURT: And I'd like to surprise people by doing it the next day.

MS. ROBERTSON: Thank you, Your Honor. We appreciate it.

THE COURT: All right. Thank y'all.

(This proceeding was concluded.)

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 21 DAY OF NOVEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

_____

Hilda M. Jordan, CVR-M

April 8, 2017

# MARGARET L BAILEY
## DORCHESTER COUNTY
### REGISTER OF DEEDS

201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

| | | | |
|---|---|---|---|
| **Instrument #:** | 2017000318 | | |
| **Receipt Number:** | 17592 | **Return To:** | LAFOND LAW FIRM |
| **Recorded As:** | MODIFICATION | | |
| **Recorded On:** | January 05, 2017 | | |
| **Recorded At:** | 09 36:22 AM | **Received From:** | LAFOND LAW FIRM |
| **Recorded By:** | CB | **Parties:** | |
| **Book/Page:** | RB 10602: 263 - 267 | | Direct- EIP TRUST |
| **Total Pages:** | 5 | | Indirect- WHITFIELD, DAVID |

***** EXAMINED AND CHARGED AS FOLLOWS *****

| | |
|---|---|
| **Recording Fee:** | $9 00 |
| **Tax Charge:** | $0.00 |

Margaret Bailey

Margaret Bailey - Register of Deeds

FILED/RECORDED
January 5, 2016
DORCHESTER COUNTY
REGISTER OF DEEDS

LaFond Law Group, PA
544 Savannah Highway
Charleston, SC 29407-7210

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

MODIFICATION OF MORTGAGE

WHEREAS, EIP TRUST a/k/a TRUST EIP is the borrower (hereinafter "Borrower") under that certain Mortgage from EIP TRUST in favor of DAVID WHITFIELD AND GLENN LITTLE (hereinafter "Lender") dated December 4, 2013 in the original principal amount of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS recorded in the Register of Deeds Office for Dorchester County in Mortgage Book 9110 at Page 292, secured by property known as 605 N. Main Street, Summerville, SC 29483 ("Mortgage"); and

WHEREAS, both Borrower and Lender wish to extend the maturity date of the Mortgage and Note of even date.

NOW THEREFORE the parties hereto do agree as follows:

1. The above recitals are incorporated by reference into this Item 1 as if repeated herein verbatim.

2. The current amount due under the Note as of December 3, 2016 is One Hundred Ninety Thousand and no/100 ($190,000.00) dollars.

3. The maturity date of the Mortgage, and Note of even date, is hereby extended to December 3, 2017 at which time the total amount due shall be Two Hundred Forty Seven and no/100 ($247,000.00) Dollars.

4. The effective date of this Modification of Mortgage shall be December 3, 2016.

5. The Mortgage dated December 4, 2013 shall retain full force and effect as its lien and in all other respects remain unchanged except as herein modified.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 6th day of December, 2016.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness 1

Witness 2/Notary

BORROWER:

(Seal)
EIP Trust
By: Ashley Andrews
It's: Interim Trustee

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

ACKNOWLEDGMENT

Ashley G. Andrews, Interim Trustee for EIP Trust, acknowledged the foregoing instrument before me this 6th day of December, 2016.

Notary Public for South Carolina
My commission expires: 7/9/25

KATHERINE D COTTON
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires
07-09-2025

FILED/RECORDED
January 5, 2016
DORCHESTER COUNTY
REGISTER OF DEEDS

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness 1

Witness 2/Notary

LENDER:

David Whitfield (Seal)

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

ACKNOWLEDGMENT

David Whitfield acknowledged the foregoing instrument before me this 15 day of December, 2016.

Notary Public for South Carolina
My commission expires: 12/13/19

BENJAMIN A. LAFOND
Notary Public, South Carolina
My Commission Expires
December 13, 2019

FILED/RECORDED
January 5, 2016
DORCHESTER COUNTY
REGISTER OF DEEDS

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness 1

Witness 2/Notary

LENDER:

Glenn Little (Seal)
Glenn Little

STATE OF SOUTH CAROLINA )
)
COUNTY OF DORCHESTER )

ACKNOWLEDGMENT

Glenn Little acknowledged the foregoing instrument before me this 15 day of December, 2016.

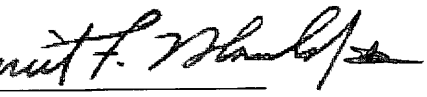
Notary Public for South Carolina
My commission expires: 12/13/19

BENJAMIN A. LAFOND
Notary Public, South Carolina
My Commission Expires
December 13, 2019

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Daniel F. Blanchard, III (SC Bar 65342)
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726
ATTORNEYS FOR APPELLANT

August 7, 2017.