

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Civil Action No.: 2010-CP-30-0116

Willie D. Watson,.....Appellant,

v.

Nancy Carol Underwood, individually and as putative trustee of the
Willie D. Watson Trust; John H. Watson, individually and as putative
trustee of the Willie D. Watson Trust; and Future and Potential Heirs
of Willie D. Watson;.....Respondents.

RECORD ON APPEAL

T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, SC 29205
(803) 251-4517
ATTORNEY FOR APPELLANT

B. Michael Brackett, Esquire
Moses & Brackett, PA
P.O. Box 100261
Columbia, SC 29202-3261
(803) 461-2300
ATTORNEY FOR RESPONDENTS

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SC Court of Appeals

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STATE OF SOUTH CAROLINA JUDGMENT IN A CIVIL CASE
COUNTY OF Laurens
IN THE COURT OF COMMON PLEAS LYNN W. LANCASTER
CASE NO. 2010 CP-30-0116

Willie D. Watson

2011 DEC 13 A 11:12

Nancy Carol Underwood, individually and as putative trustee of the Willie D. Watson Trust; John H. Watson, individually and as putative of the Willie D. Watson Trust; and Future and Potential Heirs of Willie D. Watson;

LAURENS COUNTY CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Attorney for: [] Plaintiff [] Defendant or [] 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.
[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [] Other
[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j), SCRPC; [] 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

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: [X] 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 :

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Includes a section for property description: '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.

Circuit Court Judge

Judge Code

A TRUE COPY OF ORIGINAL

For Clerk of Court Office Use Only

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

PARTIAL SUMMARY
This judgment was entered on the *13th* day of *Dec.*, 20 *11* and a copy mailed first class or placed in the appropriate attorney's box on this *13th* day of *Dec.*, 20 *11* to attorneys of record or to parties (when appearing pro se) as follows:

Edward S. McFallum, Esq.

Michael B. Beachett, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn W. Lancaster
CLERK OF COURT

Court Reporter:

Willie D. Watson,)
)
 Plaintiff,)
)
 v.)
)
 Nancy Carol Underwood, individually and)
 as putative trustee of the Willie D. Watson)
 Trust; John H. Watson, individually and)
 as putative trustee of the Willie D. Watson)
 Trust; and Future and Potential Heirs of)
 Willie D. Watson;)
)
 Defendants.)

LAURENS COUNTY
 CLERK OF COURT

Order Granting Defendants' Motion for
 Partial Summary Judgment and Denying
 Plaintiff's Motion for Summary Judgment

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCCP & GS

Plaintiff moved for summary judgment on two questions: (1) Was the creation of the irrevocable trust, which according to its terms was created for the benefit of the Plaintiff, tantamount to the creation of a last will and therefore void because said power is not delegable to an agent, and (2) is the deed whereby Plaintiff's real property was conveyed into the irrevocable trust void for lack of a properly named grantee, specifically for identifying the grantee as the trust rather than the trustees?

The Defendants moved for partial summary judgment, asking the court to conclude as a matter of law that the power to create an irrevocable trust is a power that is delegable by a principal to an agent if the power is expressly authorized in the principal's power of attorney, and that Plaintiff effectively delegated such power to her attorney-in-fact.

This case has been before the Court on earlier occasions pursuant to discovery disputes and pursuant to a motion/petition by the Plaintiff seeking to terminate the irrevocable trust that was, according to its terms, created for her benefit by her attorney-in-fact. Plaintiff's Motion to Terminate Trust was denied by Order dated October 1, 2010.

The factual backdrop for the cross-motions for summary judgment was established by affidavits, depositions and the prior Orders entered in the case. The facts are:

Plaintiff was married to John C. Watson, who died on March 31, 2009. They had three children, the defendants, Nancy Underwood and John H. Watson, and Sherry Long, who is not a party to this case. On October 5, 2006, the Plaintiff executed a Durable Power of Attorney naming her daughter, the defendant, Nancy Underwood, as her attorney-in-fact.¹ The power of attorney was prepared by attorney Richard Townsend, who had done other legal work for the Plaintiff, and it was executed by the Plaintiff in attorney Townsend's office after Plaintiff had ample opportunity to read the power of attorney and to ask questions about its content.² Fourteen enumerated paragraphs in the power of attorney describe the specific powers given to the attorney in fact. Paragraph 11 grants the power "To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts." And, Paragraph 10 grants to the attorney-in-fact the power to transfer by gift any of the Plaintiff's assets to "my spouse, my children and my lineal descendants by gift, including to any such person serving as attorney in

¹ Subsequent to the creation of the Trust that is at issue herein, the Plaintiff revoked the October 5, 2006 Power of Attorney, but Plaintiff has not challenged, and is not now challenging, the validity of the Power of Attorney.

² From attorney Richard Townsend's deposition. (Vol. 1, p. 12).

fact, or to any trust funds which I may have established, revocable or irrevocable . . .³

On the same date, October 5, 2006, the Plaintiff executed a Last Will and Testament, also prepared by attorney Townsend and executed in his office. Just as with the power of attorney, Plaintiff had ample opportunity to read the last will and to ask questions about its content.⁴ Devisees named in Plaintiff's October 5, 2006 Last Will are: her grandchildren living at the time of her death; her great-grandchildren living at the time of her death; defendants Nancy Underwood and John H. Watson; Plaintiff's spouse, then living but now deceased; and Sherry Long. Sherry Long and Plaintiff's spouse were each devised a nominal gift of \$1.00.

Plaintiff's attorney-in-fact visited attorney Townsend in March 2009 to discuss how best to protect Plaintiff's assets. Plaintiff had repeatedly spoken with attorney Townsend regarding Plaintiff's complaints about Sherry Long. Those complaints included that Plaintiff's husband was mentally abusive to her and that Sherry Long encouraged and supported the husband's behavior; that Sherry Long was also physically abusive towards Plaintiff; and that Sherry Long was interested in getting money.⁵ With knowledge of Plaintiff's repeated expressions to him of complaints about Sherry Long's behavior, Plaintiff's perception of Sherry Long's thirst for Plaintiff's assets, and having knowledge about Sherry Long's wrongful withdrawal of funds from Mr. Watson's bank accounts immediately following his death, attorney Townsend recommended to the attorney-in-fact that an irrevocable trust be created and that Plaintiff's assets

³ Plaintiff's Power of Attorney was not a springing power of attorney. A springing power of attorney is one in which the powers granted to the agent may be exercised only if and when the principal is incapacitated. Moon v. Darrow, 912 N.Y.S.2d 850 (2010); In the Matter of Blare, 589 N.W.2d 211 (S.D. 1999); (Richard Townsend deposition.)

⁴ From attorney Richard Townsend's deposition. (Vol. 1, p. 10-11.)

⁵ From attorney Richard Townsend's deposition. (Vol. 2, p. 1-6.)

be transferred into the trust for the protection of those assets.⁶ The attorney-in-fact agreed. The “Irrevocable Trust Agreement for the Benefit of Willie Dendy Lee Watson” was prepared by attorney Townsend, and on April 2, 2009 it was signed in his office by Nancy Underwood as attorney-in-fact for the Plaintiff. The trust was promptly funded with Plaintiff’s bank accounts, car and real property. Attorney Townsend prepared the necessary instruments to transfer the assets into the trust.⁷ Plaintiff argues that it was attorney Townsend’s intention in drafting the trust to allow Ms. Watson to amend the trust by amending her October 5, 2006 Last Will, but that is belied by the fact that the trust was expressly made irrevocable and non-amendable, and as attorney Townsend explained in his deposition: the trust agreement was not a last will (Vol. 1, p. 55, lines 21-24), and

What I put in there was I had Ms. Watson’s last will and testament, so I made it [the trust] conform to her last will and testament and made the ultimate beneficiary the beneficiaries of the last will and testament. (Vol. 1, p. 36, lines 13-25).

And, the creation and funding of the trust protected Ms. Watson’s assets, and

It still left Ms. Watson able to make a will and do whatever she wanted to with what other, other property she had. (Vol. 2, p. 12-13 [particularly p. 13, l. 8-11].)

There was an understanding by the scrivener and by Ms. Watson’s attorney-in-fact, by her having signed the trust instrument, that there was a distinction between the trust and the last will and between the assets controlled by the trust and the assets to be controlled by the last will.⁸

⁶ From attorney Richard Townsend’s deposition, (Vol. 2, p. 10-12.)

⁷ The Plaintiff’s Power of Attorney expressly authorized the creation of an irrevocable trust and authorized the transfer of assets into the trust.

⁸ Plaintiff has previously argued that the Plaintiff was intended to have the ability to change the trust by executing a codicil that would change her October 5, 2006 last will, but that

Section Four of the trust instrument states that: "This trust shall be irrevocable and shall not be revoked or terminated by the Trustor or any other person, nor shall it be amended or altered by Trustor or any other person."⁹ Section Two (b) of the trust states that: "This trust agreement shall terminate upon the death of Willie Dendy Lee Watson and the proceeds remaining in trust shall be distributed [sic] to the estate of Willie Dendy Lee Watson to be disposed of in accordance with the terms and conditions of her Last Will and Testament dated October 5, 2006." (Naming the remainder beneficiaries). At present, the remainder beneficiaries of the trust are the devisees of the Plaintiff's October 5, 2006 Last Will, namely Nancy Underwood, John H. Watson, Sherry Long and Plaintiff's five grandchildren and three great-grandchildren. Four of the grandchildren and great-grandchildren are minors.

By her motion for summary judgment, Plaintiff challenges the validity of the trust, by arguing that the power she granted to her agent to create a trust that is tantamount to a last will, is not legally delegable to an agent and was therefore ineffective to support the attorney-in-fact's creation of the trust, and secondly, that the deed used to place Plaintiff's real property into the trust was ineffective and void because it does not name a proper grantee.

By their motion for summary judgment, the Defendants seek to have the Court find as a matter of law that the power to create the particular trust was and is properly delegable to the Plaintiff's attorney-in-fact and that the creation of the trust by the attorney-in-fact is not a ground to invalidate the trust.

argument was decided adversely to Plaintiff in the aforementioned Order in this case dated October 1, 2010.

⁹ Plaintiff sought to terminate the trust in a separate proceeding filed in this case, and by Order dated October 1, 2010 Plaintiff's Motion to Terminate Trust was denied.

Law

Power of Attorney.

A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney. Verdery v. Daniels, 544 S.E.2d 854 (Ct. App. 2001). A durable power of attorney allows a person, the principal, to designate another as his or her attorney in fact to act on the principal's behalf as provided in the document even if the principal becomes mentally incompetent. Id., citing S.C. Code Ann. § 62-5-501.

Irrevocable Trust.

A trust is defined as a fiduciary relationship in which one person (the trustee(s)) holds legal title to property for the benefit of another (the beneficiary(ies)). Neel v. Clark, 8 S.E.2d 740 (1940). An irrevocable trust is a trust that cannot be terminated solely by the settlor once it is created. Black's Law Dictionary (7th ed. 1999) p. 1516.¹⁰ South Carolina common law provided that a trust is deemed to be irrevocable unless the settlor indicates intent to retain the right to revoke by expressly reserving the power to revoke in the instrument. Chiles v. Chiles, 242 S.E.2d 426 (1978). The South Carolina Trust Code reverses the common law to provide that a trust is presumed to be revocable unless the instrument expressly provides that it is irrevocable. S. C. Code Ann. §62-7-602(a). An important consideration with respect to the issues raised by the Plaintiff in this case is the difference between a last will and an irrevocable trust. An

¹⁰ See also §62-7-103 (13) where "revocable," as applied to trusts, is defined as a trust that is revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

irrevocable trust is essentially a transfer of property by gift, whereas a revocable trust is generally viewed as a form of will substitute. 1 Scott and Ascher on Trusts §3.2 (2006).

A Last Will is a written instrument which ultimately fixes the disposition of real and personal property at death. Black's Law Dictionary (rev. 5th ed. 1979) p. 794. A trust is an inter vivos disposition, whereas a last will is a testamentary disposition.¹¹

Elements for Creation of Trust

The trust at issue was created by a written instrument meeting the requirements of §62-7-402. Those requirements are: capacity, sufficient expression of intention to create a trust, definite beneficiary(ies), duties that the trustee is to perform, and no merger of the legal and beneficial interests. Pre-Trust Code law provided that for a trust to exist, certain elements must be present, including a declaration creating the trust, a trust *res* and designated beneficiaries. The declaration of trust can be oral except when trust property includes realty, in which case the trust has to be in writing. §62-7-402, South Carolina Comment, citing Whetstone v. Whetstone, 420 S.E.2d 877 (S.C. App. 1992). See also Coleman Karesh, Trusts 7 (S.C. Bar 1977).

Construction of the Power of Attorney and the Trust

Generally, the construction of a contract is a question of law for the court. Soil Remediation Co. v. Nu-Way Env'tl., Inc., 482 S.E.2d 554 (1997). Where a motion for summary judgment presents a question as to the construction of a written contract, if the language employed by the agreement is plain and unambiguous, the question is one of law. First-Citizens Bank Trust Co. v. Conway Nat'l Bank, 317 S.E.2d 776 (Ct. App. 1984). "In such a case,

¹¹ A Last Will speaks as of the time of the testator's death. An amendable revocable trust remains changeable during the Settlor's life and only becomes irrevocable at the death of the Settlor. An irrevocable trust is irrevocable immediately upon execution.

summary judgment is proper and a trial unnecessary where the intention of the parties as to the legal effect of the contract may be gathered from the four corners of the instrument itself." Id.

Delegable Powers With Respect to Trusts.

The prevailing rule regarding the scope of what may be delegated by a principal to an agent is broad. Collins, Lombard, Moses and Spitler, Durable Powers of Attorney and Health Care Directives, §2.7 (3d ed. 1999), citing CJS and Am Jur 2d. In each of these legal encyclopedias it is stated that as a general rule, a person may properly appoint an agent to do the same acts and achieve the same legal consequences as if he/she (the principal) had acted personally. 3 Am Jur 2d Agency §18 (2002) and 2A CJS Agency §4 (2003).¹²

But, there are exceptions to that rule. The exceptions are described as:

1. unless public policy or the agreement with the principal requires personal performance by the principal, 3 Am Jur 2d Agency §18 (2002);
2. an act that, if done by the principal, would be illegal cannot be done for the principal by an agent, 2A CJS Agency §4 (2003);
3. where a statute requires an act to be done personally, Id., [see Buonanno v. DiStefano, 430 A.2d 765 (R.I. 1981) where it is said that as a general rule, an agency may be created for the performance of any lawful act, including acts done under the authorization of a statute. In order to determine that the right conferred by statute shall only be exercised personally and cannot be delegated to an agent, something must be found in the act by express enactment or necessary implication that prevents the agent from acting, citing

¹² When acting within the scope of the powers authorized by the principal, the agent's acts are in legal effect equivalent to those of the principal. 2A C.J.S. Agency §145; Crim v. Hutton, 381 S.E.2d 492 (1989); Carver v. Morrow, 48 S.E.2d 814 (1948).

Smith v. Walcott, 85 N.M. 351, 512 P.2d 679 (1973) and 1 Restatement (Second) Agency, § 17 comment a at 54 (1968)].

4. where the act is so peculiarly personal that its performance cannot be delegated, Id.

“[a]n attorney-in-fact is essentially an alter ego of the principal and is authorized to act with respect to any and all matters on behalf of the principal with the exception of those acts which, by their nature, by public policy, or by contract require personal performance.”

Heine v. Newman Tannenbaum, 856 F.Supp. 190 (SDNY 1994), *aff'd* 50 F.3d 2 (2d Cir. 1995). Examples of absolute nondelegable personal acts are:

5. Divorce. It is generally held that marriage and divorce are acts which require personal performance and are not delegable to an agent. Heine v. Newman Tannenbaum, *supra.* See Murray v. Murray, 426 S.E.2d 781 (1993) (bringing a divorce action is personal and cannot be delegated to an agent or guardian).
6. Making of Affidavits on Knowledge. Restatement, Second, Agency §17, cmt. b.
7. Execution of Last Wills. Restatement, Second, Agency §17, cmt. b.

The most recent edition of Bogert's treatise on trusts states that "A settlor may empower an agent to create a trust." Amy Morris Hess, George Gleason Bogert and George Taylor Bogert, The Law of Trusts and Trustees §41 (3rd Ed. 2007). "The general weight of authority suggests that the power to create, modify, or revoke a trust is personal and non-delegable to an attorney-in-fact unless expressly granted in the power-of-attorney." Stafford v. Crane, 382 F.3d 1175 (10th Cir. 2004). In Stafford, an irrevocable trust created by an attorney-in-fact was found to be void *ab initio* because the powers granted to the agent in the power of attorney, although broad in

scope, did not specifically and expressly grant authority to create a trust.¹³ Stafford cites other authorities supporting the legal principle that an agent may create a trust for the principal when the power of attorney expressly grants the power: In re Trust of Jameison, 8 P.3d 83 (Mont. 2000) (noting that “[t]he Power of Attorney [did] not specifically grant the authority to create a trust, reflect [the beneficiary’s] intent to create a trust, or even mention a trust” and that, as a result, “the Power of Attorney [did] not authorize [the purported trustee] to transfer . . . property to herself as trustee and, as a result, [the trust] was not properly created”); Kotsch v. Kotsch, 608 So.2d 879 (Fla. Dist.Ct.App. 1992) (strictly construing a power of attorney and concluding that although the power of attorney granted authority to a son to manage the father’s property during his lifetime, it did not authorize the disposition of the father’s property by means of a trust.) In In re Estate of Kurrelmeyer, 895 A.2d 207 (Vt. 2006), the Vermont Supreme Court held that an agent could create a valid and enforceable trust for the principal where the express language of the power of attorney authorized such. The delineated powers in the Kurrelmeyer trust included: “to add all of my assets deemed appropriate by my said attorney to any trust of which I am the Donor,” and “. . . I authorize my said attorney to: (i) execute and deliver any assignments, stock powers, deeds or trust instruments; . . .” The Court noted that the Restatement (Third) Trusts §11(5) (2003) provides that “it is proper for a principal to authorize an agent to create or modify a revocable inter vivos trust to serve purposes that are financially advantageous . . .” even though a revocable trust (unlike an irrevocable trust) shares characteristics of a last will. As noted hereinabove, an irrevocable trust is essentially a transfer of property by gift, whereas a revocable

¹³ Stafford made no distinction between revocable and irrevocable trusts. The clear implication of the opinion is that an agent can create an irrevocable trust for the principal if the POA expressly authorizes the creation of trusts.

trust is generally viewed as a form of will substitute. 1 Scott and Ascher on Trusts §3.2 (2006).

Plaintiff's Power of Attorney expressly and unambiguously authorized the creation of the trust now at issue. The construction of an agreement [power of attorney] is a matter of contract law. Stribling v. Stribling, 632 S.E.2d 291 (C.t. App. 2006). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Id. If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect. Id. A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. Bruce v. Blalock, 127 S.E.2d 439 (1962). Parties are governed by their outward expressions, and the court is not at liberty to consider their secret intentions. Blakeley v. Rabon, 221 S.E.2d 767 (1976).

Paragraph 11 granted the power "To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts." This provision is clear and direct. There is no ambiguity and no need for construction of the power. Intent can be gleaned from the language used within the four corners of the power of attorney.

Validity of the Deed

Plaintiff complains that the deed that transferred title to her residence to the trust is void for lack of a properly named grantee. The grantee is identified in the deed as "the Willie Dendy Lee Watson Irrevocable Trust of even date herewith." Plaintiff argues that the grantee should have been and must have been "Nancy Carol Underwood and John H. Watson as Trustees of the Willie Dendy Lee Watson Irrevocable Trust of even date herewith."

Plaintiff cites Flinn v. Van Devere, 502 So.2d 454 (Fla.App. 3 Dist. 1986) as supporting

authority for her argument. But, Flinn did not involve a deed without a properly named grantee. In Flinn, there was no deed at all. A settlor executed a trust instrument and identified a particular piece of real property on the property schedule attached to the trust instrument, but did not execute, or attempt to execute, a deed. The argument made was that the trust instrument, including the property schedule, was sufficient to be considered as the functional equivalent of a deed. As a subsequent Florida appellate court opinion described the Flinn holding:

The [Flinn] court explained that the trust documents themselves plainly cannot be regarded as such a deed "for the obvious reason that, although they comply with the necessary formalities of two witnesses and an adequate legal description, they contain no expression which purports to convey, grant or transfer the real estate."

Vaughan v. Boerckel, 963 So.2d 915 (Fla.App. 4 Dist. 2007).

To pass title, a deed must sufficiently specify a grantee. 9 Thompson on Real Property, Second Thomas Edition §82.08(a)(1) (1999); 26 C.J.S. Deeds §24b. However, a deed need not describe the grantee by name if it otherwise identifies him or makes him susceptible of identification by extrinsic evidence. 4 Tiffany, The Law of Real Property §967 (3d ed. 1975) and 23 Am.Jur.2d Deeds §27, citing Garraway v. Yonce, 549 So.2d 1341 (Miss. 1989). Courts are loath to invalidate a deed because the identity of the grantee is misspelled or misdescribed, Thompson on Real Property, supra., and will not invalidate a deed to a misnamed party if the party exists and the intention of the parties and the identity of the grantee can be ascertained. Pruitt v. Ferguson, 297 S.E.2d 714 (Va. 1982).


With specific reference to a deed identifying the grantee as a trust rather than the person or entity serving as trustee, it is generally held that a deed to a trust, without mention of trustee(es), if the trust is in existence at the time the deed is executed, is valid because the names

of the trustees who get title can be shown by extrinsic evidence. Hodgkiss v. Northland Petroleum Consol., 57 P.2d 811 (Mont. 1937); Hill v. Hill, 102 P.3d 1131 (Idaho 2004). Here, there is no dispute with respect to the identities of the co-trustees named in the trust instrument.

Accordingly, the Court finds and concludes that, as a matter of law, (1) the Plaintiff's Power of Attorney expressly authorized the attorney-in-fact to create the trust that is at issue and that such power was legally delegable to the attorney-in-fact¹⁴; and (2) the deed whereby the Plaintiff's real property was transferred into the trust is not invalid for lack of a properly named grantee.

Therefore, Defendants' Motion for Partial Summary Judgment is GRANTED, and Plaintiff's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.,
Judge, Eighth Judicial Circuit

December 9th, 2011

¹⁴ The trust is not a last will. Disposition of property owned by the Plaintiff that has not been transferred into the trust will be governed by Plaintiff's last will, which can be changed as often as Plaintiff chooses, so long as the statutory requirements for execution of testamentary instruments are satisfied.

FORM 4

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

JUDGMENT IN A CIVIL CASE

WILLIE D. WATSON

NANCY CAROL UNDERWOOD, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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

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 DENYING PLAINTIFF'S PETITION TO TERMINATE TRUST

Dated at _____, South Carolina, this _____ day of _____, 20____

PRESIDING JUDGE

This judgment was entered on the 4TH day of OCTOBER 2010, and a copy mailed first class this 4TH day of OCTOBER, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

EDWARD S. MCCALLUM, III
ATTORNEY(S) FOR PLAINTIFF

B. MICHAEL BRACKETT
ATTORNEY(S) FOR DEFENDANT

LYNN W. LANCASTER
CLERK OF COURT

LAURENS COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS 2010 OCT -4 P 12:10

CASE NO. 2010-CP-30-0116

Willie D. Watson,

Plaintiff,

v.

Nancy Carol Underwood, individually and as putative trustee of the Willie D. Watson Trust; John H. Watson, individually and as putative trustee of the Willie D. Watson Trust; and Future and Potential Heirs of Willie D. Watson;

Defendants.

Order Denying Plaintiff's Petition/Motion to Terminate Trust

The primary relief sought by the Plaintiff herein is an Order holding that a trust created by Plaintiff's attorney-in-fact, Defendant Nancy Underwood, is void *ab initio*. In an interlocutory effort to achieve the related objective of having the trust terminated at present by consent, the Plaintiff filed and served a Petition to Terminate Purported Trust. The Petition is considered by the Court as a Motion for the relief described therein.

Plaintiff's Petition/Motion was heard on July 14, 2010 in Laurens. In attendance were the Plaintiff and her attorneys Ed McCallum and Michelle Powers, and the known adult Defendants and their attorney Mike Brackett.¹ Affidavits and deposition transcripts were filed with the Court for its use in deciding the Motion. From these submissions, the underlying facts are as follows.

¹ Because a Guardian-ad-Litem had not been appointed to speak for the minor and unborn trust beneficiaries, the defendant co-trustees can and did represent and bind the minor and unborn trust beneficiaries by virtual representation. §62-1-403(2)(iii).

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Plaintiff was married to John C. Watson, who died on March 31, 2009. They had three children, the defendants Nancy Underwood and John H. Watson, and Sherry Long, who is not a party to this case. On October 5, 2006, the Plaintiff executed a Durable Power of Attorney naming her daughter, the defendant Nancy Underwood, as her attorney-in-fact. The power of attorney was prepared by attorney Richard Townsend, who had done other legal work for the Plaintiff, and it was executed by the Plaintiff in Mr. Townsend's office after Plaintiff had ample opportunity to read the power of attorney and to ask questions about its content. Fourteen enumerated paragraphs in the power of attorney describe the specific powers given to the attorney in fact. Paragraph 11 grants the power "To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts." Paragraph 10 grants to the attorney-in-fact the power to transfer by gift any of the Plaintiff's assets to "my spouse, my children and my lineal descendants by gift, including to any such person serving as attorney in fact, or to any trust funds which I may have established, revocable or irrevocable..." On the same date, October 5, 2006, the Plaintiff executed a Last Will and Testament, also prepared by attorney Townsend and executed in his office. Just as with the power of attorney, Plaintiff had ample opportunity to read the last will and to ask questions about its content. devisees named in Plaintiff's October 5, 2006 Last Will are: her grandchildren living at the time of her death; her great-grandchildren living at the time of her death; defendants Nancy Underwood and John H. Watson; Plaintiff's spouse, then living but now deceased; and Sherry Long. Sherry Long and Plaintiff's spouse were each devised a nominal token gift of \$1.00.

For reasons that are disputed in the underlying action itself, Plaintiff's attorney-in-fact visited attorney Richard Townsend in March 2009 to discuss how best to protect Plaintiff's assets. Attorney Townsend recommended an irrevocable trust. The attorney-in-fact agreed, and the "Irrevocable Trust Agreement for the Benefit of Willie Dendy Lee Watson" was drafted by attorney Townsend, and on April 2, 2009 it was signed in his office by Nancy Underwood as attorney-in-fact for the Plaintiff. The trust was promptly funded with Plaintiff's bank accounts, car and real property. Attorney Townsend prepared the necessary instruments to transfer the assets into the trust.²

With respect to the creation and funding of the trust, when acting within the scope of the powers authorized by the principal, the agent's acts are in legal effect equivalent to those of the principal. 2A C.J.S. Agency §145; Crim v. Hutton, 381 S.E.2d 492 (S.C. 1989); Carver v. Morrow, 48 S.E.2d 814 (S.C. 1948).

Section Four of the trust instrument states that: "This trust shall be irrevocable and shall not be revoked or terminated by the Trustor or any other person, nor shall it be amended or altered by Trustor or any other person." Section Two (b) of the trust states that: "This trust agreement shall terminate upon the death of Willie Dendy Lee Watson and the proceeds remaining in trust shall distributed [sic] to the estate of Willie Dendy Lee Watson to be disposed of in accordance with the terms and conditions of her Last Will and Testament dated October 5,

² The Plaintiff's Power of Attorney expressly authorized the creation of an irrevocable trust, and to the extent that the attorney-in-fact's inclusion as one of the trust remainder beneficiaries can be deemed a gift, the Power of Attorney expressly authorized gifts to Plaintiff's spouse, children and lineal descendants, including the attorney-in-fact.

2006.” (Naming the remainder beneficiaries). At present, the remainder beneficiaries of the trust are the devisees of the Plaintiff’s October 5, 2006 Last Will, namely Nancy Underwood, John H. Watson, Sherry Long, and Plaintiff’s five grandchildren and three great-grandchildren. Four of the grandchildren and great-grandchildren are minors.

Plaintiff now wants to revoke her irrevocable trust in this interlocutory manner and has petitioned or moved the Court to approve the attempted termination of her irrevocable trust agreement by consent pursuant to S.C. Code Ann. §62-7-411(a). This Trust Code statute provides that a noncharitable irrevocable trust may be modified or terminated “with court approval upon consent of the settlor and all beneficiaries” even if the modification or termination of the trust is inconsistent with a material purpose of the trust. Plaintiff’s theory to circumvent the requirements of the trust (that it may not be revoked or modified) and the conditions of the governing statute (requiring consent of all trust beneficiaries for the modification or termination of the trust) is that (1) in January 2010 she executed a codicil to her October 5, 2006 Last Will; (2) the January 2010 codicil removed Nancy Underwood, John H. Watson, the Plaintiff’s grandchildren and the Plaintiff’s great-grandchildren as devisees of the October 5, 2006 Last Will; (3) the codicil named Sherry Long as the sole devisee of the October 5, 2006 Last Will thereby making Sherry Long the sole remainder beneficiary of the trust; and (4) the argument continues, the only persons whose consent is now required to modify or terminate the trust are the Plaintiff, as the trust’s primary lifetime beneficiary, and Sherry Long as the trust’s sole remainder beneficiary.

For the reasons set out below, the Court concludes that the execution of the January 2010 codicil is ineffective as a predicate to the use of S.C. Code Ann. §62-7-411(a) to modify the trust

to reduce the number of trust remainder beneficiaries from eleven to one, and, consequently, is also ineffective as a predicate to the use of S.C. Code Ann. §62-7-411(a) to permit trust termination.

Law

A trust is defined as a fiduciary relationship in which one person (the trustee(s)) holds legal title to property for the benefit of another (the beneficiary(ies)). Neel v. Clark, 8 S.E.2d 740 (S.C. 1940). South Carolina common law provided that a trust is deemed to be irrevocable unless the settlor indicates an intent to retain the right to revoke by expressly reserving the power to revoke in the instrument. Chiles v. Chiles, 242 S.E.2d 426 (S.C. 1978). An irrevocable trust is a trust that cannot be terminated solely by the settlor once it is created. Black's Law Dictionary (7th ed. 1999) p. 1516. See also §62-7-103 (13) where "revocable," as applied to trusts, is defined as a trust that is revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

Once a trust is created and the settlor's title to assets is transferred to the trustee, the rights of the trust beneficiaries become vested. Coleman Karesh, Trusts 13-14 (1977) citing McElveen v. Adams, 94 S.E. 733 (S.C. 1917). Once the rights and interests of the trust beneficiaries are vested, those rights and interests can only be divested or revoked as permitted by law.³ By analogy, the vesting of trust beneficiary rights in trust assets is similar to the effective delivery of an inter vivos gift. The intent to make a gift, accompanied by actual or

³ Using the terminology of the Trust Code, the devisees named in the October 5, 2006 Last Will became "qualified beneficiaries" of the trust on the date the trust was created and funded. §62-7-103(12). The Comment to this statute explains that a qualified beneficiary is one who will take if the primary or first-line beneficiary's interest terminates. The interests of qualified beneficiaries are not considered to be "remote and contingent." Id.

constructive delivery or possession of the property, executes the gift, Barnwell v. Barnwell, 476 S.E.2d 492 (S.C. App. 1996), and in general, a valid and completed gift inter vivos cannot be revoked. 38A C.J.S. Gifts §61 (1996).

Pre-Trust Code common law provided that an otherwise irrevocable trust could be modified and/or terminated by the consent of the settlor and all the beneficiaries, who comprise all of the parties interested in the trust. Linder v. Nicholson Bank & Trust Co., 170 S.E. 429 (S.C. 1933); Klugh v. Seminole Securities Co., 87 S.E. 644 (S.C. 1916). ("Manifestly a trust agreement, like any contract, may be modified by all the parties in interest."). This is the same legal principle now codified in §62-7-411(a), the statute that the Plaintiff/settlor is attempting to invoke. Just as with legal instruments generally, parties to a trust instrument may abandon the instrument and release each other from the performance called for, and the rights accorded in, the instrument, thereby ending the agreement. 89 C.J.S. Trusts §88(a) (1955).

The Court is also mindful of the interests of the minor and unborn/unascertained trust beneficiaries. In Chiles v. Chiles, supra, a settlor created an irrevocable inter vivos trust. The trust agreement provided for the settlor to receive distributions during his lifetime, and upon his death distributions were to be made to specified intermediate beneficiaries. In the group of intermediate remainder beneficiaries was a minor. The settlor commenced a proceeding to modify the trust for the purpose of extinguishing the interests of the intermediate remainder beneficiaries, including the minor. The trial court allowed the modification of the trust and the extinguishment of the minor's interest as a beneficiary. The Supreme Court reversed that result as to the minor, and in doing so, relied on the following legal principles: "[I]t is the duty of the courts to preserve, not destroy, trusts and to see to it that the rights of infants are not injuriously

affected . . . Accordingly, the exercise of this power [referring to a court of equity's power to modify a trust to effectuate the intent of the settlor] can be justified only by some exigency or emergency which makes the action of the court in a sense indispensable to the preservation of the trust . . ."⁴ Id. Applying this legal principle to the case at bar, the Plaintiff who has become unhappy with a beneficiary subsequent to the establishment of the irrevocable trust and who wants to change the trust to reflect the Plaintiff's changed personal relationships with beneficiaries does not remotely begin to satisfy the "exigency or emergency" standard described above.

There are three particular reasons, any one of which alone is sufficient to deny Plaintiff's motion, for why Plaintiff's execution of the codicil is ineffective to modify and thereafter terminate the trust⁵: (1) the codicil cannot serve as a document incorporated by reference into the trust; (2) the codicil, as proposed to be used by the Plaintiff, is a modification of the trust that itself requires the consent of all trust beneficiaries; and (3) the effective date of the codicil does not relate back to the time of the execution of the annexed October 5, 2006 last will, rather the annexed will advances to become effective as of the time of the execution of the codicil, meaning that the codicil does not retain its identity as the Plaintiff's October 5, 2006 Last Will. Each of these will be addressed separately.

Doctrine of Incorporation by Reference

By the terms of Section Two (b) of the Irrevocable Trust Agreement, the settlor/trustor

⁴ In the case now under consideration, four of the trust's remainder beneficiaries are minors.

⁵ There is no dispute that the Plaintiff may execute new last wills or codicils that, if valid, will control the administration of her probate estate but will not affect the administration of the trust according to its terms.

incorporated by reference into the trust agreement her Last Will and Testament dated October 5, 2006 for the purpose of identifying the remainder beneficiaries to the trust. (the incorporation was of a particular document with particular terms incorporated at a particular time for a particular purpose). The Trust Code does not expressly address the doctrine of "incorporation by reference," and having not codified "incorporation by reference" in the Trust Code, the common law and equitable principles remain the governing law on the subject. S.C. Code Ann. §62-7-106.⁶ The Trust Code provides that rules of construction that apply to wills also apply to the construction of trusts, S.C. Code Ann. §62-7-112, so if §62-2-509 is a rule of construction that applies to wills, then it also applies to trusts. In any event, as is shown below, the requirements found in §62-2-509 are the same as found in the common law.

When an instrument incorporates a second document or writing by reference, the second document/writing is effectively inserted into the first instrument in its entirety and becomes as much a part of the instrument as if it had been set out verbatim, **at least to the extent of the designated purpose for the incorporation.** 17A C.J.S. Contracts §316 (1999); Wasson v. Schubert, 964 S.W.2d 520 (Mo. App. 1998); Booker v. Everhart, 240 S.E.2d 360 (N.C. 1978); In Re Marriage of Seymour, 536 P.2d 1172 (Colo. App. 1975); Arntz Contracting v. St. Paul Fire & Marine Ins., 47 Cal. App. 4th 464 (1996). Consequently, Items Two through Six of the October 5, 2006 last will, in which the devisees are named, were incorporated into Section Two (b) of the trust agreement as if set out verbatim for the purpose of naming the trust's remainder

⁶ With respect to the Probate Code and the law of Wills, §62-2-509 provides that "Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification." Section Two (b) of the trust agreement certainly satisfies these requirements when it incorporates by reference the October 5, 2006 last will.

beneficiaries. Taking a snapshot of the situation at the time of the execution of the irrevocable trust agreement on April 2, 2009, the beneficiaries identified in the trust instrument, from the October 5, 2006 last will, were the Plaintiff, her grandchildren (living at the time of her death), her great-grandchildren (living at the time of her death), defendants Nancy Underwood and John H. Watson, and Sherry Long.

To be effectively incorporated into a host document the terms of the incorporated document must be known or easily available to the parties, meaning that only a document in existence at the time of execution of the host document can be incorporated by reference into the host document. 17A C.J.S. Contracts §316, citing United California Bank v. Prudential Ins. Co. of America, 681 P.2d 390 (Ariz. App. 1983); Loomis, Inc. v. Cudahy, 656 P.2d 1359 (Idaho 1983). Other authorities applying this principle of law are: Alpert, Goldberg, Butler, Norton, Weiss v. Quinn, 983 A.2d 604 (N.J. Super 2009); DVD Copy Control Assn. v. Kaleidescape, 176 Cal. App. 4th 697 (2009); Peterson & Simpson v. IHC Health Serv., 217 P.3d 716 (Utah 2009); Ingersoll-Rand Co. v. El Dorado Chem., 283 S.W.3d 191 (Ark. 2008); Scott's Valley Fruit Exch. v. Growers Refrigeration Co., Inc., 184 P.2d 183 (Cal. Ct. App. 1947); Matter of Estate of O'Brien, 627 N.Y.S.2d 544 (1995), affirmed 649 N.Y.S.2d 220); Continental Ill. Nat. Bank & Trust Co. of Chicago v. Art Institute of Chicago, 94 N.E.2d 602 (Ill. App. 1950). The policy behind this principle of law is explained in DVD Copy, *supra*. as follows:

This rule advances the primary goal of contract interpretation- ascertaining the mutual intent of the parties in cases where the parties intended to be bound by specific terms that were not mentioned in the contract. The clear and unequivocal reference to the extrinsic document and the contemporaneous availability of its terms shows that, at the time of contracting, the parties consented to those terms.

Consequently, the January 2010 codicil, as a document not in existence when the trust was created in April 2009 and the October 5, 2006 last will was expressly incorporated by reference into the trust, the codicil cannot serve as a retroactive amendment to the trust instrument.

The codicil itself is a modification that requires the consent of all trust beneficiaries.

The Plaintiff's codicil, as it is described in the Plaintiff's petition/motion, was a significant modification to the October 5, 2006 last will and necessarily would also be a significant modification to the trust agreement. Before Sherry Long can be considered to be the only remainder beneficiary of the trust, the trust must be modified to give effect to the changes brought about by the subsequently executed codicil. The proposed modification reduces the number of remainder beneficiaries from eleven to one. To modify the trust to change the number of remainder beneficiaries requires the consent of the trustor and all pre-modification beneficiaries of the trust. §62-7-411(a), being the Plaintiff, her five grandchildren, her three great-grandchildren, Sherry Long and defendants Nancy Underwood and John Watson. All of the trust beneficiaries have not, and do not, consent to a modification of the trust to change the number or identity of the remainder beneficiaries.

The effective date of the codicil.

Plaintiff's theory is that the effective date of the codicil is the same as the date of its annexed last will (October 5, 2006) so that when the trust incorporates by reference the October 5, 2006 last will, it necessarily includes any codicils thereto. The Court disagrees. The effective date of the codicil does not relate back to the time of the execution of the annexed October 5, 2006 last will, rather the annexed will advances to become effective as of the time of the

execution of the codicil, meaning that the codicil does not retain its identity as the Plaintiff's October 5, 2006 Last Will. A codicil is an instrument that may partially revoke and amend the last will to which it refers and confirm and republish the parts of the last will not addressed by the codicil. In 1 Page on Wills §1.3 (2d ed. 2003) a codicil is defined in several ways: an instrument by which a testator "changes, supplements or adds to the provisions of an existing will . . . an instrument that adds to or subtracts from a previous will." And, a codicil may even completely replace a previous will. Id. In South Carolina case law a codicil is described as a part of a will to which it is annexed that expresses the testator's "**afterthought or amended intention.**" Bethea v. Young, 161 S.E. 514 (S.C. 1931). (Emphasis added). It may confirm, alter, or altogether revoke an intention expressed in the body of the instrument to which it is annexed. Id. A codicil revokes the annexed will in so far as it is necessary to give effect to the terms of the codicil itself. As to other terms of the annexed will, the codicil confirms and republishes those. Id.

Of particular relevance to the timing of the codicil and the question of whether the codicil relates back to the date of its annexed last will, it is stated that a will and its codicil are to be regarded as a single and entire instrument, taking effect at the time of the testator's death, **as if both had been executed at the time of the making of the codicil.** This is the law of South Carolina, McLaurin v. Newton, 191 S.E. 59 (S.C. 1937), Werber v. Moses, 109 S.E. 396 (S.C. 1921), and it is the general common law. 79 Am. Jur. 2d Wills §593, citing several authorities. Other cases so holding include: Matter of Nicholas, 41 A.D. 2d 625 (N.Y. 1973); Matter of Estate of Eickholt, 365 N.W.2d 44 (Iowa App. 1985); Langston v. First Nat. Bank, 449 S.W. 2d 855 (Tx. Civ. App. 1969); Pullen v. Est. of Virgie Pullen, 460 S.W.2d 753 (Ark. 1970). The

result is that once the codicil was signed, the Plaintiff's new last will, now comprised of the October 5, 2006 Will and the January 2010 codicil, was no longer "the Last Will and Testament dated October 5, 2006", but rather was, and is, considered to be the Plaintiff's last will dated and effective January 2010.

Conclusion

The irrevocable trust agreement herein provides that the remainder beneficiaries of the trust are those particular persons named in a particular document (October 5, 2006 last will) at a particular time (April 2, 2009 when the trust agreement-host document was executed and the October 5, 2006 last will was incorporated by reference).


The Plaintiff would have the Court find that the trust's language actually provides that the trust's remainder beneficiaries are to be determined by whatever last will is in existence by use of a codicil when the testator either dies or the testator/settlor seeks court approval and beneficiary consent to modify or terminate the trust, whichever first occurs; even if the interests of minors as remainder beneficiaries are extinguished. Without the consent of all the trust's beneficiaries as named in the trust agreement at the time of its execution, the Plaintiff cannot effectively modify the trust to change the number and/or identity of the trust's remainder beneficiaries. And, without the consent of all the trust's beneficiaries as named in the trust agreement at the time of its execution, the Plaintiff cannot effectively terminate the trust.

Accordingly, it is

ORDERED that Plaintiff's Petition/Motion to terminate her irrevocable trust is denied.

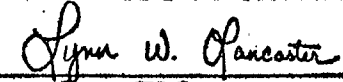
IT IS SO ORDERED.

Oct 1, 2010
September, 2010
Newberry, SC



Eugene C. Griffith, Jr.,
Judge, Eighth Judicial Circuit

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

LAURENS COUNTY
CLERK OF COURT
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS 2011 FEB 16 P 3: 21 CASE NO. 2010-CP-30-0116

LYNN W. LANCASTER

Willie D. Watson,

Plaintiff,

v.

Nancy Carol Underwood, individually and as putative trustee of the Willie D. Watson Trust; John H. Watson, individually and as putative trustee of the Willie D. Watson Trust; and Future and Potential Heirs of Willie D. Watson;

Defendants.

Order Denying Plaintiff's Rule 59(e) Motion and Granting Defendants' Motion to Compel Deposition Testimony From Attorneys

On November 10, 2010 the Court held a hearing on Plaintiff's Motion for Reconsideration of the Court's Order Denying Plaintiff's Petition/Motion to Terminate Trust dated October 1, 2010 and on Defendants' Motion and Supplemental Motion to Compel Deposition testimony from attorneys Townsend and Dowd.

Order on Plaintiff's Motion for Reconsideration

The Court has fully considered the matters raised in the Plaintiff's Rule 59(e) Motion for Reconsideration and now concludes that the Order dated October 1, 2010 properly decided the issues presented to the Court for decision. Accordingly, the Court has reconsidered the Order and denies the Motion insofar as it seeks that the Order be altered or amended.

IT IS SO ORDERED.

Order on Defendants' Motion to Compel Deposition Testimony

Defendants deposed attorney Richard Townsend and attorney Jennifer Dowd. The witnesses were asked questions about conversations or communications with the Plaintiff. The attorney witnesses declined to answer certain questions, asserting the attorney-client privilege. Defendants moved to compel answers, arguing that the privilege had been previously waived by the Plaintiff.

At the outset of attorney Townsend's deposition, Plaintiff's trial attorney disclosed that Plaintiff would assert the attorney-client privilege with respect to conversations between Plaintiff and Townsend that Plaintiff deemed privileged. Attorney Jennifer Dowd, the attorney for the personal representative of the estate of John C. Watson, testified that she had conversations with the Plaintiff before the Plaintiff renounced her right to serve and nominated Defendant Underwood to serve as personal representative. When asked about the details of the conversations, Dowd asserted the privilege and declined to answer the questions.

Although the attorney-client privilege serves the public interest by promoting full disclosure of information between attorney and client, South Carolina Highway Dept. v. Booker, 195 S.E.2d 615 (S.C. 1973), it is not a favored evidentiary concept in law since it results in obscuring the truth, and for that reason it is construed as narrowly as is consistent with its purpose. Hawkins v. Stables, 148 F.3d 379 (4th Cir. 1998); U.S. v. Suarez, 820 F.2d 1158 (11th Cir. 1987), *cert. denied*, 484 U.S. 987 (1987).

The burden of showing the privilege is upon the person who claims the protection of the privilege and objects to the disclosure. State v. Love, 271 S.e.2d 110 (S.C. 1980), *cert. denied*, 449 U.S. 901. The elements of the privilege are: (1) where legal advice of any kind is sought, (2)

from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his instance permanently protected, (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived. State v. Doster, 284 S.E.2d 218 (S.C. 1981). The attorney client privilege is owned by the client and can be waived by the client. Floyd v. Floyd, 615 S.E.2d 465 (S.C. App. 2005). The privilege excludes from evidence confidential attorney-client communications of a professional nature between attorney and client, unless the client, for whose benefit the rule is established, waives the privilege. Id. In litigation matters, the litigation attorney has express or implied actual authority to manage the details of pretrial discovery in the client's case and, unless shown to be acting in bad faith, can waive the client's attorney-client privilege by voluntary disclosures. 8 Wigmore, Evidence §2325 (McNaughton rev. 1961).

In this case there are two ways that the attorney-client privilege was waived by the Plaintiff:

(A) implied waiver by claim assertion and (B) traditional waiver by voluntary disclosure. See Mueller, Kirkpatrick and Rose, Evidence Practice Under the Rules §5.30, pp. 413-416 (3rd ed. 2009).

(A). Implied Waiver by Claim Assertion. When a client advances a claim that puts in issue the nature of communications with his/her lawyer, "substantial authority agrees that this action impliedly waives any claim of privilege for that communication." Id. It is a matter of fairness- Defendants' rebuttal of Plaintiff's claims require the disclosure of the privileged communications. U.S. v. Bilzerian, 926 F.2d 1285 (2nd Cir. 1991), *cert. den.* 112 S.Ct. 63. (privilege may implicitly be waived when defendant asserts a claim that in fairness requires

examination of protected communications); Byers v. Burlison, 100 F.R.D. 436 (D.D.C. 1983) (by claiming that the statute of limitations was tolled by his lack of knowledge that he had a cause of action, plaintiff waived the attorney-client privilege with respect to communications bearing on such knowledge); Cazanas v. State, 508 S.E.2d 412 (Ga. 1998) (when the client herself has raised the issue, she cannot now invoke the privilege to block the introduction of evidence that would tend to establish the truth or falsity of the matter that her assertions rest on); Greater Newburyport Clamshell Alliance v. PSCNH, 838 F.2d 13 (1st Cir. 1988) (privilege ends at the point where the defendant can show that the plaintiff's civil claim, and the probable defenses thereto, are enmeshed in important evidence that will be unavailable to the defendant if the privilege prevails). In Hearn v. Rhay, 68 F.R.D. 574 (E. D. Wash. 1975), the Court noted that the established exceptions to the rules of attorney-client privilege have a common denominator; in each instance, the party asserting the privilege placed information protected by it in issue through some affirmative act for his own benefit, and to allow the privilege to protect against disclosure of such information would have been manifestly unfair to the opposing party. The factors common to each exception may be summarized as follows: (1) assertion of the privilege was a result of some affirmative act, such as filing suit, by the asserting party; (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; and (3) application of the privilege would have denied the opposing party access to information vital to his defense. Thus, where these three conditions exist, a court should find that the party asserting a privilege has impliedly waived it through his own affirmative conduct.

Plaintiff raised in her Complaint the issue of the Defendants' motives for creating the

trust and alleged that the motives were improper and actionable and that said motives gave rise to money damages. The Plaintiff cannot then invoke the privilege to block the introduction of evidence from Plaintiff's attorney (the drafter of the trust instrument on whose recommendation to the Defendants the trust was created) that would tend to establish the truth or falsity of the Plaintiff's allegations. Evidence shows that Defendant Underwood, as Plaintiff's attorney-in-fact, consulted with Plaintiff's attorney (deponent Townsend) about the need to protect Plaintiff's assets and it was the attorney's recommendation that an irrevocable trust be created.

(B) Voluntary Disclosure. The other way that the privilege was waived was by voluntarily placing the information at issue on the record and thereby "opening the door" to such evidence. Graham, Handbook of Federal Evidence §511.1 (6th ed. 2006). When the privilege holder elicits testimony that expressly or implicitly discloses the content of the confidential communication, the privilege is waived. Jones on Evidence §45.19(d) (7th ed. 2010). For instance, where the client's adversary limits his questions of a former attorney to nonprivileged material but the client's current attorney then questions the former attorney concerning privileged discussions, the privilege is waived as to those discussions, and the former attorney may be questioned about those matters. People v. Gillard, 57 Cal.App.4th 136 (1997), citing among other authorities Winegar v. Gray, 204 Cal.App.2d 303 (1962).

An evidentiary privilege is waived by voluntary disclosure even where the holder did not intend to relinquish the privilege. Disclosure during pretrial or trial testimony, without objection and without compulsion of court order and without fraud or deception, is generally considered to be a voluntary waiver. Donaggio v. Arlington County, VA, 880 F.Supp. 446 (E.D. Va. 1995) (deposition testimony may waive the attorney-client privilege); Andrade v. State, 773 So.2d

1238 (Fla. App. 2000) (holder of the privilege waives it through voluntary disclosure); In Re Grand Jury Invest. of Ocean Transp., 604 F.2d 672 (D.C. Cir. 1979) (an intent to waive one's privilege is not necessary for such a waiver to occur). The policy behind this principle of law in Grand Jury was explained as follows:

"A privileged person would seldom be found to waive, if his intention not to abandon could alone control the situation. There is always the objective consideration that when his conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not."

8 Wigmore, Evidence § 2327 (McNaughton rev. 1961). The door opening rule is founded on fairness; if a party in the course of litigation opens the door by asking for evidence that the opposing party would not be permitted to ask about, it is unfair not to allow the opposing party to go into the matter and provide more information to the fact-finder. Id., citing Danny R. Collins, South Carolina Evidence §2.9 (2d ed. 2000). It is also said that the client cannot use the privilege in a selective manner to allow into evidence only partial information on a subject that she deems helpful while asserting the privilege to exclude what she deems unfavorable with respect to the same subject.

Waiver of Privilege With Respect to Townsend

From the record it appears that at the outset of attorney Townsend's deposition, Plaintiff's trial attorney disclosed that Plaintiff would assert the attorney-client privilege with respect to conversations between Plaintiff and Townsend that Plaintiff deemed privileged. Plaintiff's former attorney, Richard Townsend, declined to testify at deposition about certain conversations he had with the Plaintiff prior to October 5, 2006. Without being able to include the subject conversations into his answers, several of the former attorney's answers to questions

posed to him by Plaintiff's attorney were admittedly only partial and incomplete. Defendants assert that if such a privilege covers the conversations, the privilege was waived by the Plaintiff's questioning, and the former attorney should be required to give full and complete answers to the questions.

The following exchanges from the Townsend deposition transcript, the questioning is by Plaintiff's attorney, demonstrate the waiver (emphasis added):

McCallum: Did you consider you and her [Plaintiff] to have established an attorney/client relationship?

Townsend: **Yes. She had. . . I can't go into it, but she had come in to talk to me about problems for long time.** (Townsend depo., p. 50, l. 9-13).

McCallum: So when she came in for the last will and testament and the power of attorney, at that point you considered her to be your client, and to the best of your knowledge, she considered you to be her lawyer? Is that a fair statement?

Townsend: Correct. . . . (Townsend depo., p. 50, l. 18-23).

[later on the subject of the irrevocable trust]

McCallum: **Why was the choice made to create an irrevocable trust versus a revocable trust, or was the issue ever even discussed?**

Townsend: **I'm sure it was probably discussed. In order for me to be able to explain to you the reason, I would have to go into conversations your client had with me when her daughter was not there.**

McCallum: Okay. And I, I . . .

Townsend: A long, a long history of conversations.

McCallum: Okay. And I'm not intending to do that, and I apologize. I appreciate your bringing that to my attention.

Townsend: You're putting me in a, in a bad situation.

McCallum: I don't . . . and that wasn't the gist of my question. Let me ask it this way.

Townsend: **I, I can put it this way. I felt completely justified that I was doing what Mrs. Watson wanted done.**

McCallum: **As of her attitude three years previously?**

Townsend: **And prior to that. You know, that's the entire time that I had known her.**

(Townsend depo., p. 61, l. 25 to p. 62, l. 20).

McCallum: Mr. Townsend, is it a fair statement to say that Ms. Underwood and Mr. Watson came into your office on or before April 2nd, 2009, or within a day or two of that and told you that their sister has stolen money from their deceased father's checking account?

Townsend: It's my recollection that that was part of the conversation, **and there was more concerning the sister than just that.**

McCallum: Okay.

Townsend: **There was . . . I'm handicapped.** (Townsend depo., p. 71, l. 1-11).

McCallum: All right. I just want to make sure we're clear on the record. At no time did you ever have any indication that Willie Watson was incompetent or unable to



conduct her own affairs, did you?

Townsend: From observing her? No. And no one ever told me that she was mentally incompetent. I was only told that she had had [sic] a stroke and was unable to take care of her ...

McCallum: Of her physical needs?

Townsend: **No. This all goes back to her conversations with me that are privileged.**

(Townsend depo., p. 72, l. 8-18).

With respect to why Townsend considered himself to have an attorney-client relationship with the Plaintiff on October 5, 2006, the door was opened by Plaintiff for Townsend to further explain the nature of the "problems" that they had discussed for "a long time" that impacted the attorney's advice to the attorney-in-fact that an irrevocable trust be created for the benefit of Plaintiff.

On the issue of the creation of the trust, and in particular why the trust was created as an irrevocable trust, the door was opened to the "long history of conversations" that caused Townsend to feel justified in recommending an irrevocable trust for the protection of Plaintiff's assets and why Townsend felt justified that his recommendation with respect to the trust was "what Mrs. Watson wanted done."

On the issue of the role of the other sister in the decision to create the trust for the benefit of the Plaintiff, the door was opened for Townsend to explain what he had been told by the Plaintiff about the sister that affected his (Townsend's) legal advice with respect to the trust.

Finally, on the question of Plaintiff's competency at the time of the creation of the trust, the door was opened for Townsend to explain what he knew of Plaintiff's need for assistance,

including information that he had learned from the Plaintiff “[going] back to her conversations with me that are privileged.”

These four subjects were raised by the Plaintiff in her attorney’s questioning of Townsend. There were no contemporaneous objections from Plaintiff to Townsend’s answers, and there was no effort made on the record to have the answers stricken. Consequently, the door has been opened for Townsend to give more complete answers, and Defendants are now entitled, in fairness and in the pursuit of the truth, to have Townsend further elaborate on his answers by the inclusion of evidence from his prior conversations with the Plaintiff.

Privilege, if any, with Respect to Dowd

Defendants assert that Plaintiff was never a client of Dowd and that communications between them were not confidential or privileged. Alternatively, Defendants argue that the conversations at issue were not private because third persons were always present.

Dowd first met Underwood and Plaintiff on May 6, 2009. The purpose of the meeting was “just general probate questions concerning Mr. Watson’s estate.” (Dowd depo., p. 9, l. 2-18).

Dowd did not have a private conversation with Plaintiff. Both Plaintiff and Underwood were present during the discussions on May 6, 2009. (Dowd depo., p. 10, l. 11-22).

The conversation was about Mr. Watson’s passing and about the probate process. (Dowd depo., p. 11, l. 13 to p. 12, l. 5).

Dowd did not consider either Underwood or Plaintiff as a client when they left the office on May 6, 2009. (Dowd depo., p. 12, l. 21 to p. 14, l. 8).

There was a second very brief meeting in Dowd's office, attended by Underwood and Plaintiff, where more questions about the probate process were addressed. (Dowd depo., p. 14, l. 9-23).

On June 18, 2009 Dowd sent documents to the probate court to open the estate, and by that time Underwood was the client because Plaintiff had renounced her right to and priority for appointment as personal representative. (Dowd depo., p. 15, l. 15 to p. 16, l. 17).

With respect to the meetings in Dowd's office, with both Underwood and Plaintiff in the room, Dowd was asked by the undersigned if the subject of the trust agreement came up. Dowd expressed concern about an attorney-client privilege, and refused to answer the question unless and until a court said that she could. (Dowd depo., p. 16, l. 18 to p. 18, l. 13).

There was a subsequent communication between Dowd and Plaintiff over the telephone on the subject of the probate estate. (Dowd depo., p. 18, l. 14-22).

Dowd did not consider the Plaintiff to have been her client at the time of the telephone communication. (Dowd depo., p. 18, l. 23-25).

The call was about a Renunciation form that Dowd prepared for Underwood, by which the Plaintiff would renounce her priority to serve as personal representative. There were two people (Slice and Underwood) in the room with the Plaintiff when Dowd explained the form to Mrs. Watson over the phone. (Tim Slice depo. p. 6, l. 6 to p. 7, l. 21; and Exhibit 1 to Slice depo.).

Any privilege that arose from the meetings in Dowd's office were waived by Plaintiff in her own deposition. Although the Plaintiff was represented by counsel at her deposition, when asked about what she (Plaintiff) and Dowd talked about, there was no privilege-based objection.

In fact, Plaintiff denied that she was in Dowd's office to discuss probate estate matters because she thought, erroneously so, that Dowd and Underwood were friends and that they were going to engage in "girl talk." (Plaintiffs's depo., p. 103, l. 1-12).

When asked if she (Plaintiff) talked about the trust with Dowd, there was no privilege objection from the Plaintiff. Plaintiff actually denied that she said anything to Dowd about the trust. (Plaintiffs's depo., p. 104, l. 11-18).

When asked about the telephone communication with Dowd with respect to the renunciation form, there was no objection by the Plaintiff. Again, Plaintiff said she did not remember talking with Dowd, and she did not remember signing the form in the presence of Tim Slice. (Plaintiffs's depo., p. 106, l. 3 to p. 107, l. 10).

With respect to pending litigation, during pretrial discovery, privileges are not self executing, Hobley v. Burge, 226 F.R.D. 312 (N.D. Ill. 2005), so to preserve the privilege the holder of the privilege must satisfy the "both-and" rule: both timely object to the disclosure and refuse to disclose. Nguyen v. Excel Corp., 197 F.3d 200 (5th Cir. 1999). Failure to do either results in a waiver of the privilege. Id.; Hawkins v. Stables, 148 F.3d 379 (4th Cir. 1998); Gebbie v. Cadle Co., 714 A.2d 678 (Conn. App. 1998); Miller v. Doctor's Gen. Hosp., 76 F.R.D. 136 (W.D. Okla. 1977)

(privilege objection must be made "in the first instance"); Perrignon v. Bergen Brunswick Corp., 77 F.R.D. 455 (N.D. Cal. 1978) (the witness' refusal to answer without an objection having been made on the record is a waiver of the privilege). Plaintiff did not object at her deposition to disclosure of communications between her and Dowd. For the most part, she denied any communication whatsoever.

In Hawkins v. Stables, 148 F.3d 379 (4th Cir. 1998) a party (Stables) was asked at deposition about whether a conversation had occurred between her and her former attorney. There was no attorney-client privilege objection made to the question, and the party proceeded to testify that no such communication had occurred between her and her former attorney. During the subsequent trial, the subject of the same communication was raised, and the party objected and asserted the protection of the attorney-client privilege. On appeal to the Fourth Circuit Court of Appeals, the court concluded that the party had waived the privilege at her deposition by both answering the question without objection and by having denied that a privileged communication had taken place. The Court noted that the burden of proving that a communication falls under the attorney-client privilege rests on the proponent of the privilege, the key portion of the opinion on this issue followed:

Although the question asked during deposition clearly elicited information regarding confidential communications Stables may have had with Diehl, and was objectionable on its face on the ground of attorney-client privilege, neither Stables nor her attorney asserted an objection. In response to the question, Stables simply stated that she never had a discussion of the matter with her attorney. By answering the question as she did, Stables both waived her privilege and provided probative evidence that she had had no conversation with her attorney on the subject of a phone tap. Without a communication, there is nothing to which the privilege can attach. Based on her own testimony, Stables cannot meet her burden of proof.

The same reasoning applies to the Plaintiff herein. The privilege, if any, was waived by answering as she did at her deposition without objection, and the privilege cannot prevent Dowd from now answering the questions posed to her about the subject communications that occurred in her office and over the phone.

Alternatively, with respect to the conversation about the trust, the evidence indicates that the meeting with Dowd was for the purpose of discussing probate estate matters relating to the

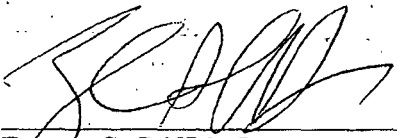
opening and administration of Mr. Watson's estate. Therefore, a communication about the Plaintiff's own Irrevocable Trust would not be confidential or privileged, because one of the requirements of the attorney-client privilege is that the communication, to be privileged, relate to the matters as to which the client has sought the attorney's professional advice. Danny R. Collins, South Carolina Evidence §15.3(C)(3) (2d ed. 2000); Jones on Evidence §45:3.1 (7th ed. 2010), citing Hedges v. Hedges, 209 N.W.2d 660 (S.D. 1973). See also State v. Doster, 284 S.E.2d 218 (S.C. 1981) (to be privileged the communication must relate to the purpose for which legal advice is being sought). The mere fact that a communication occurred (about her trust) which was outside the purpose of Plaintiff's seeking professional advice about the probate of her late husband's estate, does not give rise to an attorney-client privilege with respect to the subject of the trust communication. To be privileged, the communication must be for the purpose of obtaining legal advice on the subject of the communication. Jones on Evidence §45:3.2 (7th ed. 2010). Stated otherwise, the privilege does not extend to communications that are not confidential or to communications that are about subjects other than the subject for which advice is sought. A communication is not privileged simply because it is made by or to a person who happens to be a lawyer.

Alternatively, with respect to the communication over the telephone between Plaintiff and Dowd, the presence of Tim Slice in the room with the Plaintiff during the telephone communication destroyed any expectation of confidentiality on the part of the Plaintiff. State v. Smith, 334 S.E.2d 277 (S.C. 1985), *cert. denied*, 475 U.S. 1031 (1986). (information made known to or observed by third parties is not confidential).

For the reasons set out herein, it is ORDERED that Defendants' Motion to Compel Deposition testimony from attorneys Townsend and Dowd is granted, and because the attorney-client privilege was waived as to the subject communications between Plaintiff and attorneys Townsend and Dowd, the attorneys shall answer Defendants' questions about the attorneys' communications with the Plaintiff notwithstanding the attorney-client privilege.

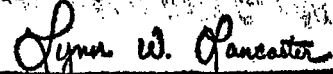
IT IS SO ORDERED.

WJ 14
January, 2011



Eugene C. Griffith, Jr.,
Judge, Eighth Judicial Circuit

A TRUE COPY OF ORIGINAL



Lynn W. Lancaster
Laurens County CCCP & GS

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

LYNN W. LAWMASTER
 JUDGE

JUDGMENT IN A CIVIL CASE
 CASE NO. 2010 CP-30-116

WILLIE D. WATSON

2012 APR 10 P 11:41 AM
 NANCY CAROL UNDERWOOD, ET AL.

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant

LAURENS COUNTY
 CLERK OF COURT

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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

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:

Plaintiff's Motion to Reconsider is respectfully denied.

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.

[Handwritten Signature]
Circuit Court Judge

2154
Judge Code

4/10/2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of April, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Edward S. McCallum, III

B. Michael Brackett

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster
Laurens County CCCP & GS

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

LYNN W. LANCASTER

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2010 JAN 26 P 12:48

SUMMONS

Willie D. Watson,

Plaintiff,

vs.

LAURENS COUNTY
CLERK OF COURT

Case No. 2010-CP-24-00 ³⁰ 116

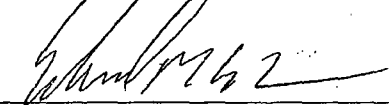
Nancy Carol Underwood individually and as
putative trustee of the Willie D. Watson Trust,
John H. Watson individually and as putative
trustee of the Willie D. Watson Trust,
Willie Dendy Lee Watson Irrevocable Trust,
and Future and Potential Heirs of
Willie D. Watson,

Defendants,

TO: THE DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Plaintiff's Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at 340A Oak @ Main Street, Greenwood, South Carolina, within thirty (30) days after service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MCCALLUM & POWERS



Edward S. McCallum, III

Michelle D. Powers

Attorneys for the Plaintiff

340A Oak & Main Street

P.O. Box 148

Greenwood, SC 29646

Phone: (864) 223-8546 Fax: (864)223-8015

Greenwood, South Carolina
January 25, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
LYNN W. LAMCASTER) EIGHTH JUDICIAL CIRCUIT

COUNTY OF LAURENS)
2010 JAN 26) P 12:48

COMPLAINT

Willie D. Watson,)
Plaintiff,)
LAURENS COUNTY)
CLERK OF COURT)

vs.)

Case No. 2010-CP-24 00 ³⁶⁻116

Nancy Carol Underwood individually and)
putative trustee of the Willie D. Watson Trust,)
John H. Watson individually and as putative)
trustee of the Willie D. Watson Trust,)
Willie Dendy Lee Watson Irrevocable Trust,)
and Future and Potential Heirs of.)
Willie D. Watson,)
Defendants,)

(Jury Trial Demanded)

PLAINTIFF Willie D. Watson, by and through her undersigned attorney would show and
allege unto the Court as follows:

JURISDICTION AND VENUE

1. Plaintiff Willie D. Watson is a resident of Ware Shoals in Laurens County, South Carolina.
2. Defendant Nancy Underwood is Plaintiff's daughter and a resident of Chapin in Newberry County, South Carolina.
3. Defendant John H. Watson is Plaintiff's son and a resident of Greenwood in Greenwood County, South Carolina.
4. That Defendants Underwood and Watson are the named trustees of an alleged trust known as the Willie D. Watson Irrevocable Trust.

5. Defendant Trust was formed in and is alleged title owner to certain real and personal property located in Laurens County, South Carolina.
6. Venue is proper in Laurens County as title to real property in question is located in Laurens County at 423 Free Bridge Road, Laurens, South Carolina.

GENERAL INFORMATION

7. Plaintiff, in consideration of future possible infirmities, executed a General Durable Power of Attorney on October 5, 2006 appointing Nancy Underwood as her Attorney in Fact, which was subsequently recorded by the Clerk of Court for Laurens County in Book 803 at Pages 1-4. A copy of this General Durable Power of Attorney is attached as Exhibit A.
8. Defendant Nancy Underwood, without the knowledge or consent of Plaintiff, executed a purported irrevocable trust agreement on April 2, 2009 for the alleged benefit of Willie Dendy Lee Watson (hereinafter "Purported Trust"). A copy of this purported trust is attached as Exhibit B.
9. After learning of Nancy Underwood's secret execution of the trust, Plaintiff executed a Revocation of Power of Attorney on June 18, 2009 specifically revoking the Power of Attorney granted to Nancy C. Underwood on October 5, 2006. This revocation was recorded by the Clerk of Court for Laurens County in Book D 936 at Page 83.
10. The purported trust names Nancy Underwood as Power of Attorney for Willie Watson as the "Trustor."
11. The purported trust names Nancy Underwood and John H. Watson as co-trustees.

FOR A FIRST CAUSE OF ACTION
(Setting Aside Purported Irrevocable Trust)

12. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
13. The purported trust claims as the "trust estate" certain assets of the Plaintiff, including both real and personal property and financial accounts and monies, listed in Exhibit A of the alleged trust document. The document attempts to transfer these assets at the time of execution of the purported trust by Nancy Underwood as the purported "trustor."
14. The document, on its face and by its plain language, should nullify said trust as the trust contains ambiguities and contradictions which appear to create a testamentary trust, and trust in any form directly contradicts Plaintiff's intentions. Ambiguities and contradictions contained in the purported trust are as follows:
 - (a) "My Trustees are authorized in their absolute discretion with respect to any property, real or personal, at any time held under any provision of **this my Will and the Trust created hereunder** 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** . . ." (emphasis added)
 - (b) "To retain any property or undivided interests in property owned by me **at the time of my death**, including residential property. . ." (emphasis added)
15. That under these terms a testamentary trust has been formed, and, as such, the trust should not be funded until Plaintiff's death; therefore, the trustees currently wrongfully hold Plaintiff's assets.

16. That additionally, an inherent conflict exists between Defendants' duty to disperse trust funds to Plaintiff and Defendant's own interests because Underwood and John Watson made themselves beneficiaries at Plaintiff's death pursuant to the terms of the trust and are attempting to obtain control of and conserve the assets to the detriment of Plaintiff for their own benefit.
17. That the Defendants were neither authorized by the Plaintiff nor did they have the voluntary consent of all the beneficiaries of the will to waive any conflict of interest inherently created where the attorney in fact appoints herself as trustee and beneficiary of the purported trust and that such appointment is in direct contravention of the Plaintiff's current Last Will and Testament.
18. Plaintiff would further show the actions of Underwood and Watson are in direct violation of SC Code Ann. 62-7-303, and, as such, the purported irrevocable trust is void *ab initio*.
19. That additionally, the Power of Attorney did not grant the Underwood the right to establish any trust. The Power of Attorney stated:
 - (a) in paragraph 10 that the "Attorney in Fact may transfer assets to any trusts already established by the principal."
 - (b) in paragraph 11 that the agent has the right to transfer funds to an existing trust where the phrase "trust funds" denotes not the right to create a trust, but to fund a trust already established by Plaintiff.

20. Therefore, the attempted creation of the irrevocable trust exceeds the powers granted by the POA of October 5, 2006 (Underwood POA) and therefore, the purported trust is void *ab initio*.
21. That additionally, the Laws of the State of South Carolina prevent a Power of Attorney from creating a will for her principal, and, as such, Underwood could not use her powers to create an irrevocable document that by its terms bound the Plaintiff to a specific will by naming said will in the irrevocable document, and thereby allowing Underwood to prevent the revocation of the freely revocable will, which would be Underwood indirectly creating a will by preventing the Plaintiff's right to freely revoke.
22. That additionally, Underwood never discussed the creation of an irrevocable trust with Plaintiff, and at no time was the Plaintiff incompetent or unable to act on her own behalf.
23. That the Defendants secretly and deceptively, and with the intent to defraud the Plaintiff of her assets, attempted to create the purported trust.
24. That the deed transferring the property to the purported trust was marked, "Please Do Not Publish," evidencing Underwood's attempt to hide the transaction in bad faith and as an abuse of the powers Plaintiff granted to her through the Power of Attorney.
25. Plaintiff would show that a Power of Attorney requires the Attorney-In-Fact to act for the benefit of the principal, and the Defendants only acted in self serving manner.
26. Plaintiff has been damaged by the wrongful taking and retention of her property without right or her consent and is entitled the return of her property to her control and

damages by way of setting aside the purported trust in this matter and reversing all transaction which the Defendants have performed for their own benefit.

**FOR A SECOND CAUSE OF ACTION
(Setting Aside Deed)**

27. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
28. On April 2, 2009, Defendant Nancy Underwood executed a deed affecting Plaintiff's residence at 423 Free Bridge Road, Laurens, SC to a purported irrevocable trust for the stated consideration of "One Dollars (sic) (\$1.00) and love and affection. . . .".
29. That the deed improperly transfers the Plaintiff's property to the trust itself, and a trust cannot hold title but, instead, title must be conveyed to the trustees.
30. Therefore, the deed attempting to convey the Plaintiff's property is void on its face as the trustees do not hold legal title to the res, and the deed should be set aside, cancelled, and the Plaintiff as *cestui que*, should regain title; this court should remove the cloud on the title; and rightful ownership should be returned to the Plaintiff.
31. Additionally, Plaintiff would show that she could not have love and affection for a trust she did not know existed, and she received no other consideration.
32. Plaintiff is informed and believes that no binding contract was created and, therefore, no transfer of interest in the real property under the deed for a patent lack of consideration.
33. Plaintiff has been damaged by the wrongful taking of her property and would ask that the deed be set aside for lack of consideration.

**FOR A THIRD CAUSE OF ACTION
(Breach of the Fiduciary Duty of Loyalty)**

34. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
35. Plaintiff, in October 2006 by the Power of Attorney, appointed Underwood as her attorney in fact to assist Plaintiff should she ever be unable to handle her own affairs.
36. This relationship created a special confidence that bound Underwood, in equity and good conscience, to act in good faith and with due regard in all affairs undertaken with this power for the sole benefit of the Plaintiff.
37. On April 2, 2009, Underwood used the powers vested in her and attempted to create the purported irrevocable trust.
38. The purported trust document, in the second paragraph, states its purpose is "for the sole benefit of Willie Dendy Lee Watson."
39. Underwood then attempted transfer of Plaintiff's financial accounts, personal property and real property into the purported trust entity.
40. Underwood, in so doing, precluded the Plaintiff from managing her own affairs with regard to her property, both real and personal, in direct contravention of Plaintiff's desires and intentions.
41. Underwood placed herself in position of settlor and co-trustee as well as a beneficiary of the purported trust- a direct and inherent conflict.
42. Underwood also recruited her brother, John Watson, as co-trustee and co-beneficiary.

43. The purported trust was established in an effort to favor Underwood and Watson and secure their inheritance by placing them in control of all monies and assets of the Plaintiff.
44. Plaintiff would show that such a trust was and is not for her benefit and was never within her intentions upon execution of the Power of Attorney.
45. On June 18, 2009, upon learning of the Defendants' activities, Plaintiff immediately revoked the Power of Attorney previously granted to Underwood and demanded Defendants return her property but was refused.
46. Plaintiff further alleges that because of the fiduciary relationship created by the Power of Attorney, Plaintiff placed her trust and confidence in the Underwood and should have been protected from the abuse, harassment, demeaning behavior and mental anguish as well as the fraudulent conveyances of her property and the failure of the Defendants, especially Underwood, to consult her and abide by her wishes and intentions.
47. Further, Defendant Underwood breached her obligations under the Power of Attorney and theories of principal/agent duties of disclosure by secretly utilizing her Power of Attorney powers to divest Plaintiff of her property.
48. That the Defendant Underwood breached her duty to the Plaintiff, both as an individual and in her capacity as Power of Attorney.
49. That although the Defendants were fully aware the Plaintiff was competent to handle her own affairs and the parties had orally agreed that the Power of Attorney was only to be used if she ever became incompetent or incapable of handling her own affairs,

the Defendants, both individually and/or in concert, acted in their own interests and not the Plaintiff's interest.

50. That the fiduciary relationship between the Plaintiff and Defendants, both individually and/or in concert, created a duty to protect Plaintiff and to act in Plaintiff's best interest.

51. Further, Plaintiff placed her trust and confidence in the Defendants that they would protect Plaintiff from harm, and thereafter, harm was delivered at the hands and by the actions of the Defendants themselves, both individually and/or in concert.

52. The above described conduct, both independently and in conjunction with continuing acts of harassment, constitute a breach of the fiduciary duty owed to Plaintiff by Defendants, both individually and/or in concert.

53. As a legal result of Defendants' conduct as described hereinabove, Plaintiff has suffered, and will continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiff was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life.

54. Plaintiff has sustained damages to be determined at trial in this matter.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty by Self-Dealing)**

55. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.

56. Defendants intentionally dispossessed and intermeddled with Plaintiff's property consisting of real property lawfully titled in Plaintiff's name without the express permission of the Plaintiff. That the Plaintiff never ratified any changes to her estate nor ratified nor was informed of the Defendants' attempts to create a trust under which she would have no control in any shape or form of her assets.
57. That the Defendants, in their individual capacities represent an opposite, competing interest.
58. The Defendants' interests are in competition with those of the true beneficiary and the Plaintiff's intentions and Plaintiff's own current use of her assets.
59. That the said competition subsumed within the Power of Attorney, trustee and beneficiary processes would likely cause the trustee to contravene the principle embodied in section 170(1) of the Restatement (Second) of Trusts, comment (p) involving competition with the beneficiary.
60. That the Defendants did not have authorization by the Plaintiff nor a voluntary consent by all of the beneficiaries to the will waiving any conflict of interest transaction inherently involved in the Power of Attorney appointing herself as trustee of the purported trust in direct contravention of the Last Will and Testament of the Plaintiff, which provides assets at the death of the Plaintiff to the Defendants.
61. That the Defendants had a personal interest of substantial nature, that it affected their judgment, and that said acts were self-dealing.

62. Defendants exercised control over the Plaintiff's assets by misusing them and transferring them for the use and the long term benefit of the Defendants themselves and not for the good faith benefit of the Plaintiff herein.

63. As a direct and proximate result of all the Defendants' actions, Plaintiff is entitled to actual and punitive damages in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION
(Detinue)

64. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.

65. Control of Plaintiff's assets was wrongfully obtained by the Defendants, individually and/or in concert.

66. That the acting Power of Attorney converting the assets for her own use constituted a breach of duty.

67. As the Defendants committed the acts in an effort to undermine the wishes of the Plaintiff as evidenced by her actions and her will, the acts were intentionally wrongful.

68. The Defendants still have access to and full control of the Plaintiff's assets which were fraudulently placed in the trust, and they continue to possess control over the assets over Plaintiff's objections.

69. The Plaintiff has repeatedly requested the return of her assets and has revoked the Power of Attorney, and that despite these actions and her requests, the Defendants have failed and refused and continue to fail and refuse to return the assets and cease in their

efforts to convert her assets for their own benefit. The Defendants have failed to comply with virtually all requests.

70. Defendants, individually and collectively, have no right to continue possessing the Plaintiff's assets and control over her estate.
71. Plaintiff has been damaged by the wrongful taking and retention of her property without right or her consent and is entitled the return of her property to her control and damages by way of setting aside the purported trust in this matter and reversing all transactions which the Defendants have performed for their own benefit including, but not limited to, reimbursing Plaintiff for all attorney fees Defendants have incurred in creating the trust, maintaining the trust and defending this action.

**FOR A SIXTH CAUSE OF ACTION
(Conversion)**

72. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
73. Defendants intentionally dispossessed and intermeddled with Plaintiff's property consisting of bank accounts, titles to vehicles and other assets without the express permission of the Plaintiff.
74. Defendants exercised control over the assets misusing them and transferring them for the use and the long term benefit of the Defendants themselves and not for the good faith benefit of the Plaintiff herein.
75. The misuse of the Power of Attorney and the dispossessing the assets constitute a trespass/conversion to Plaintiff's chattels.

76. The aforementioned acts of Defendants herein were willful, wanton, malicious, and oppressive, undertaken with the intent to defraud, and justify the awarding of exemplary and punitive damages in an amount to be proven at trial.

**FOR A SEVENTH CAUSE OF ACTION
(Misappropriation)**

77. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
78. The Defendants, in connection with the transfer and conversion of the Plaintiff's assets, directly and indirectly, knowingly or recklessly have employed devices, schemes and artifices to defraud the Plaintiff.
79. The Defendants have made untrue statements of material fact and have omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and have engaged in acts, practices and courses of business which operate as a fraud and deceit upon the Plaintiff as well as her other true beneficiaries.
80. Defendants, acting individually and/or in concert with each other, knowingly provided substantial assistance to each other to defraud the Plaintiff and misappropriate her assets in an effort to benefit themselves and said action directly harmed the Plaintiff.
81. Plaintiff has been damaged by the wrongful taking and retention of her property without right or her consent and is entitled the return of her property to her control and damages by way of setting aside the purported trust in this matter and reversing all transactions which the Defendants have performed for their own benefit.

**FOR AN EIGHTH CAUSE OF ACTION
(Fraud)**

82. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
83. Plaintiff alleges she executed the Power of Attorney at the insistence of Underwood because threats were made to place the Plaintiff into a nursing home and with assurances that no one would act as Power of Attorney until and unless Plaintiff was unable to act in her own behalf or in the event of Plaintiff's incompetency.
84. That after the Power of Attorney was executed, the Defendants did place the Plaintiff in an assisted living facility and refused to assist her, and that Plaintiff told the Defendants she was changing her will after the Plaintiff's other daughter, Sherry, assisted her in leaving the assisted living facility.
85. That only after Defendants knew Plaintiff's intentions to remove Defendants from her will did Defendants act in their own benefit by securing the assets so Plaintiff had no control over them.
86. At all times mentioned herein, the Defendants willfully and intentionally refused to follow Plaintiff's requests and went against the Plaintiff's wishes.
87. The Defendants intentionally misrepresented Plaintiff's intentions and attempted to create a trust that was not in the best interest of the Plaintiff in absolute and strict violation of the duties of a Power of Attorney.
88. Plaintiff further alleges the Defendants showed fraudulent intent by Underwood and Watson holding themselves out in good standing and as though they were acting in good faith, and by acting in concert with each other during the mistreatment and

inappropriate acts of transferring Plaintiff's assets, in total disregard of the Plaintiff's rights, wishes, and intentions.

89. Plaintiff further alleges the Defendants, both individually and/or in concert, had a duty as Plaintiff's fiduciaries to obtain and disclose information relating to their acts of transferring assets and that Defendants failed to properly disclose and inform the principal as persons acting as Plaintiff's agent.
90. Plaintiff realleges that Defendants' representations Plaintiff could not act on her own were false and that Defendants intentionally and maliciously made misrepresentations and untruths about the Plaintiff's mental capacity and intentions recklessly and without regard for the truth against Plaintiff and with the knowledge and acquiescence of the Defendants in their individual capacity and as agent for her.
91. Plaintiff further alleges Defendants intended for others to rely on their malicious misrepresentations regarding the Plaintiff causing Plaintiff great mental harm and great harm to her reputation.
92. Plaintiff further alleges she reasonably relied on Defendants' misrepresentations that they were acting in Plaintiff's best interest and that her reliance was a substantial factor in causing her harm.
93. As a result of Defendants' conduct described hereinabove, Plaintiff has sustained loss of property and assets and has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiff is prevented and will continue to be prevented from performing

daily activities and obtaining the full enjoyment of life and access and control of her property.

**FOR A NINTH CAUSE OF ACTION
(Civil Conspiracy)**

94. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
95. The Defendants, in concert with each other and with the intent to defraud, cause emotional distress and misrepresent, conspired whereby they misrepresented and intentionally released false information relating to the Plaintiff. By misrepresenting such information each Defendant committed at least one act in furtherance of the conspiracy.
96. Defendants are liable based on their ratification, approval and/or acquiesce of their own actions in their activities and the inappropriate treatment of the Plaintiff despite Plaintiff's complaints and requests for the Defendants to cease the inappropriate actions and behavior.
97. The Defendants acted in concert together ultimately resulting in Plaintiff's loss of control of her assets.
98. That upon information and belief, Defendants conspired to deny, deprive, interfere with and injure Plaintiff in violation of the Defendants' duties as fiduciaries and Underwood's duties as Power of Attorney and the laws of the State of South Carolina.
99. That the Defendants did so conspire for the purpose of wrongfully misrepresenting Plaintiff and conspired together by using the confidential and fiduciary position

granted to Underwood, and wrongfully and with civil intent misrepresented her intentions by annotating the incorrect beneficiaries to Plaintiff's estate in the purported trust.

100. As a legal result of Defendants' conduct as described hereinabove, Plaintiff has sustained loss of assets and property and has suffered, and will continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiff was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life.
101. As a direct and proximate result of all the Defendants' actions, Plaintiff is entitled to actual and punitive damages in an amount to be determined at trial.

**FOR A TENTH CAUSE OF ACTION
(Alternative Relief)**

102. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.
103. That alternatively, to the extent any claims herein may be barred by any provision of South Carolina law, which is denied, but pled solely for the purposes of this cause of action, the Plaintiff seeks a judgment on each cause of action hereinabove against the Defendants individually, as fiduciaries, trustees and/or as beneficiaries.
104. That, if said purported trust is determined to be valid, the Defendants' transfers and conveyances of property from the Plaintiff to the trust and ultimately, after her death, to the others as well as the Defendants by which such transfers were to be effectuated

were without a fair consideration and were fraudulent and were intended to hinder, delay and defraud the rightful beneficiary as well as the Plaintiff, both now and in the future.

105. Said conveyance of the subject property and transfer of the assets to the purported trust were fraudulent and therefore are now void.
106. At the time of the execution of the trust agreement Plaintiff was unaware of its execution and did not and would not have consented as it is not in her best interest or her welfare. That the Plaintiff in no way ever ratified the asset transfers or the creation of any type of trust.
107. Defendants also admitted Plaintiff to an assisted living facility around this same time that Underwood executed the purported trust. That the Plaintiff tried to thwart the attempts and eventually her other child came and withdrew her which caused the Defendants to place all her assets in trust in an attempt to secure their own inheritance to the detriment of the Plaintiff.
108. Plaintiff has medical statements explicitly stating she does not require 24 hour care and is capable of handling her own affairs.
109. Plaintiff would further show Underwood exerted undue influence on Plaintiff, secreted transactions, misled her, concealed information from her, deceived her, took advantage of her, breached the confidential and/or fiduciary relationship she had with her mother, and/or through deceit, bad faith, concealment, and taking advantage of Plaintiff's mistaken ideas, caused her to grant Underwood a POA which Underwood used to obtain control of all of Plaintiff's property.

110. Plaintiff is informed and believes that this Court, being a court of equity, should find the actions of Underwood unconscionable and exploitive and should find the trust void *ab initio*, or, in the alternative, replace the trustees.

**FOR AN ELEVENTH CAUSE OF ACTION
(Prevent Trustees from Using Trust Assets to Defend Suit)**

111. To the extent not inconsistent herewith, Plaintiff incorporates by reference all previous allegations, as set forth *in toto* hereunder.

112. Plaintiff is informed and believes that the Defendants have heretofore expended in excess of \$4,000.00 of Plaintiff's money in attorney fees for the pursuit of actions against her and in an effort to harass and intimidate and embarrass Plaintiff with regard to the purported trust prior to the commencement of this action.

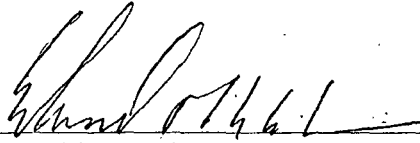
113. Plaintiff moves for protection of her assets by this Court in that the Trustees should be prevented from using Trust assets to defend the suit because of the misuse of the Power of Attorney and other abuses set forth in this complaint.

114. Alternatively, Plaintiff would request that the Court require the Trustees to post individual bonds to cover the assets so used.

WHEREFORE, Plaintiff prays this Court for:

1. a jury trial;
2. an Order deeming the purported trust as void;
3. judgment jointly and severally, on all causes of action;
4. an Order restraining Trustees from using trust assets to defend or, alternatively, for Trustees to post individual bonds to cover assets so used;

5. for actual and consequential damages;
6. for punitive damages where permitted by law;
7. for attorneys fees and costs; and
8. for any other or further relief which the Court may deem just and proper.



Edward S. McCallum, III
340A Oak @ Main Street
P.O. Box 148
Greenwood, SC 29648
(864)223-8546 facsimile (864)223-8015

Greenwood, SC
January 13, 2010

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-30-0116

Willie D. Watson,

Plaintiff,

v.

Answer of Defendants Nancy
Underwood and John Watson

Nancy Carol Underwood, individually and as
putative trustee of the Willie D. Watson Trust;
John H. Watson, individually and as putative
trustee of the Willie D. Watson Trust; and
Future and Potential Heirs of Willie D. Watson;

Defendants.

Defendants Nancy Underwood and John Watson, each individually and as co-trustee, answer the Complaint herein as follows:

1. Admit paragraph 1.
2. Admit so much of paragraph 2 as alleges that Nancy Underwood is the Plaintiff's daughter and deny the remainder of said paragraph and would show that Defendant Nancy Underwood is a resident of Lexington County.
3. Admit paragraph 3.
4. Admit paragraph 4 with the exception that it is denied that the Willie D. Watson Irrevocable Trust is an "alleged" trust.
5. Admit paragraph 5.
6. Admit paragraph 6.
7. Admit so much of paragraph 7 as alleges that the Plaintiff executed a durable power of attorney on October 5, 2006, naming Defendant Underwood as attorney-in-fact, and that said POA was recorded in Laurens County Record Book D803 at page 1-4: The remaining allegations of said paragraph are denied. There was no Exhibit A attached.

8. Deny paragraph 8 as alleged, but would show that Defendant Underwood, as attorney-in-fact, consulted with Plaintiff's attorney, Richard Townsend, Esquire, about the need to protect Plaintiff's assets, and that Mr. Townsend prepared an Irrevocable Trust Agreement naming Defendants Underwood and Watson as co-trustees. The trust agreement was executed on April 2, 2009, and was thereafter funded with Plaintiff's assets with the guidance and assistance of attorney Richard Townsend.
9. Deny paragraph 9 as alleged, but would show that Defendant Underwood informed Plaintiff of the Trust Agreement on or about April 10, 2009 and that Plaintiff revoked her October 5, 2006 POA on or about June 18, 2009.
10. Deny paragraph 10 as alleged and would show that the trust instrument identifies the Trustor as "Willie Dendy Lee Watson by her attorney-in-fact, Nancy Carol Underwood."
11. Admit paragraph 10 except that it is denied that the trust is a "purported" trust.

As to the First Cause of Action

12. Answering paragraph 12, these Defendants repeat and reallege the allegations of paragraphs 1 through 11 above.
13. Deny paragraph 13 as alleged but would show that the assets listed on Exhibit A to the trust instrument were transferred into the trust by Defendant Underwood acting as attorney-in-fact for the Plaintiff.
14. Deny paragraph 14, but will admit the language of the trust instrument.
15. Deny paragraphs 15, 16, 17, 18, 19, 20, and 21.
16. Admit paragraph 22, but would further show that Plaintiff was then a vulnerable adult who was being abused and exploited by her daughter Sherry Long.
17. Deny paragraphs 23 and 24.
18. Admit so much of paragraph 25 as alleges that an attorney-in-fact must act for the benefit of the principal, and/or may act in accordance with the terms of the POA; and the remainder of said paragraph is denied.
19. Deny paragraph 26.

As to the Second Cause of Action

20. Answering paragraph 27, these Defendants repeat and reallege the allegations of paragraphs 1 through 19 above.
21. Deny paragraph 28 as alleged but would show that Defendant Underwood, as attorney-in-fact for Plaintiff, executed a deed that had been prepared by Plaintiff's attorney, Richard Townsend, that transferred the real property known as 423 Free Bridge Road into the trust.
22. Deny paragraphs 29, 30, 31, 32 and 33.

As to the Third Cause of Action

23. Answering paragraph 34, these Defendants repeat and reallege the allegations of paragraphs 1 through 22 above.
24. Deny paragraph 35 as alleged.
25. Admit paragraph 36 and would further show that Defendant Underwood, as attorney-in-fact, was authorized to take action permitted by the terms of the POA.
26. Admit paragraph 37 only to the extent that it alleges that Defendant Underwood, as attorney-in-fact, under authority of the terms of the POA created the Irrevocable Trust Agreement for the Benefit of Willie Dendy Lee Watson. The remaining allegations of said paragraph are denied.
27. Deny paragraph 38 as alleged and would crave reference to the trust agreement for its exact terms.
28. Deny paragraph 39 as alleged but would show that Defendant Underwood, as attorney-in-fact, and with the authority granted by the POA, transferred the assets identified on Exhibit A to the trust agreement into the trust.
29. Deny paragraphs 40, 41, 42, 43 and 44.
30. Admit only so much of paragraph 45 as alleges that Plaintiff revoked her POA on June 18, 2009. The remaining allegations of said paragraph are denied.
31. Deny paragraphs 46, 47, 48 and 49.
32. Admit paragraph 50 and would show that the creation and funding of the trust was in keeping with the duty to act in Plaintiff's best interests.

33. Deny paragraphs 51, 52, 53 and 54.

As to the Fourth Cause of Action

34. Answering paragraph 55, these Defendants repeat and reallege the allegations of paragraphs 1 through 33 above.
35. Deny paragraphs 56, 57, 58, 59, 60, 61, 62 and 63.

As to the Fifth Cause of Action

36. Answering paragraph 64, these Defendants repeat and reallege the allegations of paragraphs 1 through 35 above.
37. Deny paragraphs 65, 66, 67, 68, 69, 70 and 71.

As to the Sixth Cause of Action

38. Answering paragraph 72, these Defendants repeat and reallege the allegations of paragraphs 1 through 37 above.
39. Deny paragraphs 73, 74, 75 and 76.

As to the Seventh Cause of Action

40. Answering paragraph 77, these Defendants repeat and reallege the allegations of paragraphs 1 through 39 above.
41. Deny paragraphs 78, 79, 80 and 81.

As to the Eighth Cause of Action

42. Answering paragraph 82, these Defendants repeat and reallege the allegations of paragraphs 1 through 41 above.
43. Deny paragraphs 83 through 93, inclusive.

As to the Ninth Cause of Action

44. Answering paragraph 94, these Defendants repeat and reallege the allegations of paragraphs 1 through 43 above.
45. Deny paragraphs 95 through 101, inclusive.

As to the Tenth Cause of Action

46. Answering paragraph 102, these Defendants repeat and reallege the allegations of paragraphs 1 through 45 above.
47. Deny paragraphs 103 through 110, inclusive.

As to the Eleventh Cause of Action

48. Answering paragraph 111, these Defendants repeat and reallege the allegations of paragraphs 1 through 47 above.
49. Deny paragraphs 112 through 114, inclusive.

WHEREFORE, these Defendants pray that the Complaint be dismissed.



B. Michael Brackett, Esquire
Moses Koon & Brackett, PC
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Defendants Underwood and
Watson, individually and as co-trustees

Columbia, SC

February 16, 2010

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS LAURENS COUNTY EIGHTH JUDICIAL CIRCUIT
CLERK OF COURT

Willie D. Watson.

Plaintiff,

Motion Cover Sheet

v.

2010 APR 29 A 11:14

Nancy Carol Underwood et al.

Case No.: 10-CP-30-0116

LYNN W. LANCASTER
Defendants.

Name, S.C. Bar No. and address of Plaintiff's Atty
Edward S. McCallum, III;
S.C. Bar No: 2149
P.O. Box 148, Greenwood, SC 29648
(O)864-223-8546 (F)864-223-8015

Name, S.C. Bar No. and address of Defendant's Atty.
B. Michael Brackett, Esq.
Moses, Koon & Brackett, PC
1333 Main St., #650 Columbia, SC 29201

SEE ATTACHED FOR ADDITIONAL COUNSEL

MOTION HEARING REQUESTED (attach written motion and complete Sections I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

PROPOSED ORDER/CONSENT ORDER (complete Sections II and III)

SECTION II: Motion/Order Type

Nature of Motion: Petition to Terminate Trust

Estimated Time Needed: 1 hour Court Reported Needed: Yes No

Signature of Attorney for Plaintiff

Date submitted April 21, 2010

SECTION III: Motion Fee

PAID - AMOUNT: \$25.00

Exempt: Rule to show Cause in Child or Spousal Support

(Check Reason) Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRPC)

Proposed Order

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

Judge

Code

Date:

CLERK'S VERIFICATION

Collected by _____ Date

Filed:

(Print Name)

MOTION FEE COLLECTED: _____ CONTESTED AMT. DUE

SCAA/223 (1/03)

(b) A noncharitable irrevocable trust may be terminated upon consent of all beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as ordered by the court.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.”

This is the so-called American rule: When the continuance of the trust is necessary to carry out a material purpose of the trust, the beneficiaries cannot terminate the trust. Under the English rule, it is immaterial whether the purposes of the trust have been carried out; the beneficiaries, if all agree and are *sui juris*, can at any time insist on termination.

Our statutory provisions follow the Restatement, § 338:

“(1) If the settlor and all of the beneficiaries of a trust consent and none of them is under an incapacity, they can compel the termination or modification of the trust, although the purposes of the trust have not been accomplished.

“(2) Although one or more of the beneficiaries of a trust do not consent to its modification or termination or are under an incapacity, the other beneficiaries with the consent of the settlor can compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent or are under an incapacity are not prejudiced thereby.”

The statute restates the common law of most states, IV A. Scott, *Scott on Trusts*, § 338 (Fratcher’s 4th ed. 1989) [hereinafter “*Scott on Trusts*”]. Getting the consent of all who are *sui juris* might be difficult in most cases, however it is not the case here, there are no minors and by independent medical examiners the Petitioner herein is considered competent. The power to terminate includes the power to modify. *Scott on Trusts* § 338, n. 17.

However, even if all beneficiaries consent, as is here, they must leap the hurdle of paragraph (b) of this section. If continuance of the trust "is necessary to carry out a material purpose of the trust" the court must first determine that the proposed change "substantially outweighs" the interest in accomplishing the material purpose. The statute clarifies that a trust may not be modified in a manner inconsistent with its material purpose without court approval. As such, the stated material purpose of this trust is to provide "for the sole benefit of Willie Dendy Lee Watson." Further, it is to provide the remainder interest following Ms. Watson's death to be disposed of "in accordance with the terms and conditions of her Last Will and Testament dated October 5, 2006." As she has drafted and executed a codicil to that will, naming Ms. Sherry Long, her daughter, as the sole beneficiary of her estate, pursuant to the Last Will and Testament, and Ms. Long has joined Ms. Watson in requesting the termination of the trust, there is no basis for not terminating the trust *in toto*. "Persons beneficially interested in a trust are necessary parties to a suit to terminate the trust." 89 C.J.S. Trusts § 93e (1955). There have been and are no allegations that Ms. Watson is a spendthrift, irresponsible or in any way incompetent to handle her own affairs. To the contrary, Ms. Watson has been declared fully competent to handle her own affairs and has videotaped her execution of the codicil to ensure that no pressure nor undue influence was placed upon her during the amendment to her will.

As such, and as the law requires, the purported trust should be terminated and the assets turned over to her for her own use and benefit. It certainly is not in Ms. Watson's best interest for her to be fighting with her other two children for her assets and using monies which are rightfully her own in order to defend and prosecute cases just to determine if her assets should be returned to her as the purported trust's language relates that it is for her sole benefit, which none

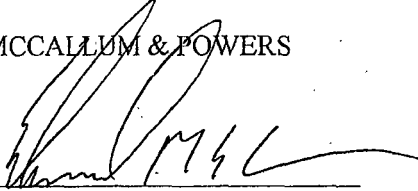
of these actions are accomplishing anything but using her monies in order to obtain her assets which are rightfully hers to begin with, which is not beneficial to her.

The primary purpose of the trust is to provide for Willie Dendy Watson. The name of the trust actually states the purpose of the trust, "Irrevocable Trust Agreement for the Benefit of Willie Dendy Lee Watson." Pursuant to her doctor's reports, she can provide for herself, she is competent and as her reports indicate, she is not suffering from dementia or any other type of issue where she cannot provide for herself. There was no reason for the trust to be created to begin with and as such the goals of the trust are impossible and unachievable. Essentially, a trust is extinguished by the entire fulfillment of its object or upon its object becoming impossible or unlawful, as is here. When the purpose for which an express trust was created ceases, the trust should be dissolved or terminated *in toto*.

WHEREFORE, Petitioner prays for the Irrevocable Trust Agreement for the Benefit of Willie Dendy Lee Watson be terminated *in toto*.

Respectfully Submitted,

MCCALLUM & POWERS



EDWARD S. MCCALLUM, III
PO Box 148
Greenwood, South Carolina 29648
Telephone 864-223-8546
Facsimile 864-223-8015

Counsel for the Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) EIGHTH JUDICIAL CIRCUIT

Willie D. Watson,) PLAINTIFF'S 59(E) MOTION
Plaintiff,) TO RECONSIDER, ALTER
) OR AMEND JUDGMENT
vs.)

Nancy Carol Underwood individually and as)
putative trustee of the Willie D. Watson Trust,)
John H. Watson individually and as putative)
trustee of the Willie D. Watson Trust,)
Willie Dendy Lee Watson Irrevocable Trust,) Case No. 2010-CP-30-0116
and Future and Potential Heirs of)
Willie D. Watson,)
))
Defendants,)

COMES NOW, Petitioner, by and through her attorneys of record and moves this honorable court pursuant to SCRCF 59(e) to reconsider its Order filed of record on October 4, 2010. As grounds therefore, Plaintiff would show the Court as follows:

1. That the Court failed to identify the beneficiaries/heirs at law and no determination was made. That the Court has to make a factual finding as to who are the remainder beneficiaries of the trust. And, if the estate is the remainder beneficiary, who controls the estate.
2. That the Court failed to specify the facts and/or law that was the determining factor in deciding that the Last Will and Testament referenced in the Irrevocable Trust was not amendable by the Codicil which was executed by the Plaintiff and declaring that the Codicil is ineffective.

3. That the Power of Attorney cannot lock an estate's distribution through a provision of an irrevocable trust as is being done here.
4. That it is the right of the testator to change her Last Will and Testament through a Codicil, and the irrevocable trust references the Last Will and Testament which would incorporate the Codicil. The reformation of the trust would express the true intentions of the trustor as outlined in the Codicil.
5. That the Court failed to make a finding of fact that the trust's beneficiaries were not able to be altered by the execution of a Codicil.
6. That the Court reached beyond the pleadings by stating that the Codicil was ineffective.

LEGAL AUTHORITY

When a party raises an issue at trial but the judge does not address the issue in the final order, the party must file a Rule 59(e) motion on the judge's failure to address the issue in order to preserve the issue for appeal. *Summer v. Carpenter*, 492 S.E.2d 55 (S.C. 1997).

The interpretation of codicils has been further explained as follows:

Although the execution of a codicil usually denotes a change in the disposition of the estate, it is not infrequent that codicils are merely explanatory, made for the purpose of clarifying or making plain some provision of the will, and hence a codicil will be interpreted in the light of the general scheme of the will and not in isolation, and as far as is possible and practicable, the provisions of the will and codicil should be reconciled as one consistent whole, giving effect to every part.

However, where the will and codicil are so conflicting or repugnant as to make them irreconcilable, the codicil will prevail, especially where the testator so provides, it being the last expression, but the codicil supersedes the will only to the extent of those provisions of the will that are inconsistent or in conflict with it, and the provisions of the will should not be disturbed further than is necessary to give effect to the codicil. While the codicil will prevail where there is

an irreconcilable conflict between it and the will, this rule will not be applied so as to effect an alteration, unless such an intention on the part of the testator is clearly and unequivocally expressed in the codicil. Where the testator specifies how his or her will is altered by a codicil is to read, the court must construe the two together as he or she directs.

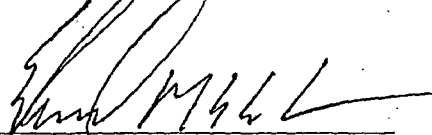
While the clear and definite language of a will should prevail over an obscure codicil, and a doubtful expression in a codicil will not alter a plain provision of the will, where the testator's purpose is clear, the court cannot restrict the codicil by any rule of construction to a meaning which would frustrate its intentment.

96 C.J.S. Wills § 879 at 296-99 (2001).

Petitioner respectfully requests the Court to reconsider, amend and/or alter its ruling as set forth in the October 4, 2010 Order including making specific findings of fact and conclusions of law with regard to the issues raised herein.

Respectfully Submitted,

MCCALLUM & POWERS



EDWARD S. MCCALLUM, III
PO Box 148
Greenwood, South Carolina 29648
Telephone 864-223-8546
Facsimile 864-223-8015

Counsel for the Plaintiff

October 14, 2010

Greenwood, SC

attorney Richard Townsend, who had done other legal work for the Plaintiff, and it was executed by the Plaintiff in Mr. Townsend's office after Plaintiff had ample opportunity to read the power of attorney and to ask questions about its content.² Fourteen enumerated paragraphs in the power of attorney describe the specific powers given to the attorney in fact. **Paragraph 11 grants the power "To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts."** And, Paragraph 10 grants to the attorney-in-fact the power to transfer by gift any of the Plaintiff's assets to "my spouse, my children and my lineal descendants by gift, including to any such person serving as attorney in fact, or to any trust funds which I may have established, revocable or irrevocable..."³

On the same date, October 5, 2006, the Plaintiff executed a Last Will and Testament, also prepared by attorney Townsend and executed in his office. Just as with the power of attorney, Plaintiff had ample opportunity to read the last will and to ask questions about its content.⁴ Devisees named in Plaintiff's October 5, 2006 Last Will are: her grandchildren living at the time of her death; her great-grandchildren living at the time of her death; defendants Nancy Underwood and John H.

² From attorney Richard Townsend's deposition.

³ Although Plaintiff's Memo of Law states that Plaintiff had the understanding that her power of attorney would be used by her attorney-in-fact only in the event of Plaintiff's incapacity, the Plaintiff's Power of Attorney is not a springing power of attorney, meaning that the powers granted in it are **not** limited, expressly or by implication, to being exercised only if the principal is incapacitated. Moon v. Darrow, 912 N.Y.S.2d 850 (2010); In the Matter of Blare, 589 N.W.2d 211 (S.D. 1999). (Richard Townsend deposition, p. 18, l. 1-20).

⁴ From attorney Richard Townsend's deposition.

Watson; Plaintiff's spouse, then living but now deceased; and Sherry Long. Sherry Long and Plaintiff's spouse were each devised a nominal gift of \$1.00.

Plaintiff's attorney-in-fact visited attorney Richard Townsend in March 2009 to discuss how best to protect Plaintiff's assets. Plaintiff had repeatedly spoken with attorney Townsend regarding Plaintiff's complaints about Sherry Long. Those complaints included that Plaintiff's husband was mentally abusive to her and that Sherry Long encouraged and supported the husband's behavior; that Sherry Long was physically abusive towards Plaintiff; and that Sherry was interested in getting money.⁵ With knowledge of Plaintiff's repeated expressions to him of complaints about Sherry Long's behavior, and having knowledge about Sherry Long's wrongful withdrawal of funds from Mr. Watson's bank accounts immediately following his death, attorney Townsend recommended to the attorney-in-fact that an irrevocable trust be created and that Plaintiff's assets be transferred into the trust for the protection of those assets.⁶ The attorney-in-fact agreed. The "Irrevocable Trust Agreement for the Benefit of Willie Dendy Lee Watson" was prepared by attorney Townsend, and on April 2, 2009 it was signed in his office by Nancy Underwood as attorney-in-fact for the Plaintiff. The trust was promptly funded with Plaintiff's bank accounts, car and real property. Attorney Townsend prepared the necessary instruments to transfer the assets into the trust.⁷

⁵ From attorney Richard Townsend's deposition.

⁶ From attorney Richard Townsend's deposition.

⁷ The Plaintiff's Power of Attorney expressly authorized the creation of an irrevocable trust and authorized the transfer of assets into the trust(s), and to the extent that the attorney-in-fact's inclusion as one of the trust remainder beneficiaries can be deemed a gift, the Power of Attorney expressly authorized gifts to Plaintiff's spouse, children and lineal descendants, including the attorney-in-fact.

Section Four of the trust instrument states that: "This trust shall be irrevocable and shall not be revoked or terminated by the Trustor or any other person, nor shall it be amended or altered by Trustor or any other person."⁸ Section Two (b) of the trust states that: "This trust agreement shall terminate upon the death of Willie Dendy Lee Watson and the proceeds remaining in trust shall distributed [sic] to the estate of Willie Dendy Lee Watson to be disposed of in accordance with the terms and conditions of her Last Will and Testament dated October 5, 2006." (Naming the remainder beneficiaries): At present, the remainder beneficiaries of the trust are the devisees of the Plaintiff's October 5, 2006 Last Will, namely Nancy Underwood, John H. Watson, Sherry Long and Plaintiff's five grandchildren and three great-grandchildren. Four of the grandchildren and great-grandchildren are minors.

Summary Judgment Issues

Defendants' Motion. To conclude as a matter of law that the power to create an irrevocable trust is a power that is delegable by a principal to an agent if the power is expressly authorized in the principal's power of attorney.⁹

Plaintiff's Motions. (1) Was the creation of the irrevocable trust tantamount to the creation of a last will and therefore void because said power is not delegable to an agent?¹⁰

⁸ Plaintiff sought to terminate the trust in a separate proceeding filed in this case, and by Order dated October 1, 2010 Plaintiff's Motion to Terminate Trust was denied.

⁹ The issue before the court is an agent's power to create an irrevocable trust, and not the power to create, amend or revoke a revocable trust, but the cases do not seem to make distinctions between the power to create or modify a revocable trust and the power to create an irrevocable trust. The critical question in either situation is whether the power of attorney expressly grants to the agent the power to create or modify trusts.

¹⁰ This is the same issue raised by Defendants' Motion for Summary Judgment.

(2) Is the deed whereby the real property was conveyed into the trust void for lack of a properly named grantee, specifically for identifying the grantee as the trust rather than the trustees?

It is necessary to remind the Court that the motions are directed to the issue of whether, as a matter of law, the specific power to create an irrevocable trust can ever be delegated by a principal to an agent. The question presented is not whether the agent has exercised that power with a proper or improper motive. Plaintiff uses much ink in her Reply to Defendants' Motion as an effort to paint the Defendants in a bad light to show that the agent's exercise of the power conferred a personal benefit on the agent and was therefore a breach of fiduciary duty. Although this issue is beyond the reach of the pending motions, Defendants will address the breach of fiduciary duty allegations hereinbelow just so the Plaintiff's statements do not go unchallenged.

Law

Power of Attorney.

A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney. Verdery v. Daniels, 544 S.E.2d 854 (S.C. App. 2001). A durable power of attorney allows a person, the principal, to designate another as his or her attorney in fact to act on the principal's behalf as provided in the document even if the principal becomes mentally incompetent. Id., citing S.C. Code Ann. § 62-5-501.

Irrevocable Trust.

A trust is defined as a fiduciary relationship in which one person (the trustee(s)) holds legal title to property for the benefit of another (the beneficiary(ies)). Neel v. Clark, 8 S.E.2d 740 (S.C. 1940). An irrevocable trust is a trust that cannot be terminated solely by the settlor once it is created. Black's Law Dictionary (7th ed. 1999) p. 1516. ¹¹ South Carolina common law provided that a trust is deemed to be irrevocable unless the settlor indicates an intent to retain the right to revoke by expressly reserving the power to revoke in the instrument. Chiles v. Chiles, 242 S.E.2d 426 (S.C. 1978). The South Carolina Trust Code reverses the common law to provide that a trust is presumed to be revocable unless the instrument expressly provides that it is irrevocable. S. C. Code Ann. §62-7-602(a). **An important consideration with respect to the issues raised by the Plaintiff in this case is the difference between a last will and an irrevocable trust. An irrevocable trust is essentially a transfer of property by gift, whereas a revocable trust is generally viewed as a form of will substitute. 1 Scott and Ascher on Trusts §3.2 (2006). A Last Will is a written instrument executed with the required formalities of law, whereby a person makes a disposition of his property to take effect after his death. Black's Law Dictionary (rev. 4th ed. 1968) p. 1772. The trust is an inter vivos disposition, and the last will is a testamentary disposition.¹²**

¹¹ See also §62-7-103 (13) where "revocable," as applied to trusts, is defined as a trust that is revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

¹² A Last Will speaks as of the time of the testator's death. An amendable revocable trust remains changeable during the Settlor's life and only becomes irrevocable at the death of the Settlor. An irrevocable trust is irrevocable immediately upon execution.

Elements for Creation of Trust

The trust at issue was created by a written instrument meeting the requirements of §62-7-402. Those requirements are: capacity, sufficient expression of intention to create a trust, definite beneficiary(ies), duties that the trustee is to perform, and no merger of the legal and beneficial interests. Pre- Trust Code law provided that for a trust to exist, certain elements must be present, including a declaration creating the trust, a trust *res* and designated beneficiaries. The declaration of trust can be oral except when trust property includes realty, in which case the trust has to be in writing. §62-7-402, South Carolina Comment, citing Whetstone v. Whetstone, 420 S.E.2d 877 (S.C. App. 1992).

See also Coleman Karesh, Trusts 7 (S.C. Bar 1977).

Plaintiff's Policy Arguments

Plaintiff's policy arguments all condense into two central assertions: (1) that creation of the trust was tantamount to the creation of a last will and was not delegable to an agent and (2) that the deed signed by the agent to partially fund the trust was void because it named the trust as the grantee rather than naming the co-trustees as grantee.

(1) Delegable Powers With Respect to Trusts.

The prevailing rule regarding the scope of what may be delegated by a principal to an agent is broad. Collins, Lombard, Moses and Spitler, Durable Powers of Attorney and Health Care Directives, §2.7 (3d ed. 1999), citing CJS and Am Jur 2d. In each of these legal encyclopedias it is stated that as a general rule, a person may properly appoint an agent to do the same acts and achieve

the same legal consequences as if he/she (the principal) had acted personally. 3 Am Jur 2d Agency §18 (2002) and 2A CJS Agency §4 (2003).¹³

But, there are exceptions to that rule. The exceptions are described as:

- unless public policy or the agreement with the principal requires personal performance by the principal, 3 Am Jur 2d Agency §18 (2002);
- an act that, if done by the principal, would be illegal cannot be done for the principal by an agent, 2A CJS Agency §4 (2003);
- where a statute requires an act to be done personally, Id., [see Buonanno v. DiStefano, 430 A.2d 765 (R.I. 1981) where it is said that as a general rule, an agency may be created for the performance of any lawful act, including acts done under the authorization of a statute. In order to determine that the right conferred by statute shall only be exercised personally and cannot be delegated to an agent, something must be found in the act by express enactment or necessary implication that prevents the agent from acting, citing Smith v. Walcott, 85 N.M. 351, 512 P.2d 679 (1973) and 1 Restatement (Second) Agency, § 17 comment a at 54 (1968)].
- where the act is so peculiarly personal that its performance cannot be delegated, Id.

“[a]n attorney-in-fact is essentially an alter ego of the principal and is authorized to act with respect to any and all matters on behalf of the principal with the exception of those acts which, by their nature, by public policy, or by contract require personal performance.”

¹³ When acting within the scope of the powers authorized by the principal, the agent's acts are in legal effect equivalent to those of the principal. 2A C.J.S. Agency §145; Crim v. Hutton, 381 S.E.2d 492 (S.C. 1989); Carver v. Morrow, 48 S.E.2d 814 (S.C. 1948).

Heine v. Newman Tannenbaum, 856 F.Supp. 190 (SDNY 1994), *aff'd* 50 F.3d 2 (2d Cir.

1995). Examples of absolute nondelegable personal acts are:

- Divorce. It is generally held that marriage and divorce are acts which require personal performance and are not delegable to an agent. Heine v. Newman Tannenbaum, *supra*.. See Murray v. Murray, 426 S.E.2d 781 (S.C. 1993) (bringing a divorce action is personal and cannot be delegated to an agent or guardian).
- Making of Affidavits on Knowledge. Restatement, Second, Agency §17, cmt. b.
- Execution of Last Wills. Restatement, Second, Agency §17, cmt. b.

The most recent edition of Bogert's treatise on trusts states that "A settlor may empower an agent to create a trust." Amy Morris Hess, George Gleason Bogert and George Taylor Bogert, The Law of Trusts and Trustees §41 (3rd Ed. 2007). "The general weight of authority suggests that the power to **create**, modify, or revoke a trust is personal and non-delegable to an attorney-in-fact **unless expressly granted in the power-of-attorney**." Stafford v. Crane, 382 F.3d 1175 (10th Cir. 2004). (emphasis added). In Stafford, an irrevocable trust created by an attorney-in-fact was found to be void *ab initio* because the powers granted to the agent in the power of attorney, although broad in scope, did not specifically and expressly grant authority to create a trust.¹⁴ Stafford cites other authorities supporting the legal principle that an agent may create a trust for the principal when the power of attorney expressly grants the power: In re Trust of Jameison, 8 P.3d 83 (Mont. 2000) (noting that "[t]he Power of Attorney [did] not specifically grant the authority to create a trust, reflect

¹⁴ Stafford made no distinction between revocable and irrevocable trusts. The clear implication of the opinion is that an agent can create an irrevocable trust for the principal if the POA expressly authorizes the creation of trusts.

[the beneficiary's] intent to create a trust, or even mention a trust" and that, as a result, "the Power of Attorney [did] not authorize [the purported trustee] to transfer . . . property to herself as trustee and, as a result, [the trust] was not properly created"); Kotsch v. Kotsch, 608 So.2d 879 (Fla. Dist.Ct.App. 1992) (strictly construing a power of attorney and concluding that although the power of attorney granted authority to a son to manage the father's property during his lifetime, it did not authorize the disposition of the father's property by means of a trust.) In In re Estate of Kurrelmeyer, 895 A.2d 207 (Vt. 2006), the Vermont Supreme Court held that an agent could create a valid and enforceable trust for the principal where the express language of the power of attorney authorized such. The delineated powers in the Kurrelmeyer trust included: "to add all of my assets deemed appropriate by my said attorney to any trust of which I am the Donor," and ". . . I authorize my said attorney to : (i) execute and deliver any assignments, stock powers, deeds or trust instruments; . . ." The Court noted that the Restatement (Third) Trusts §11(5) (2003) provides that "it is proper for a principal to authorize an agent to create or modify a revocable inter vivos trust to serve purposes that are financially advantageous . . ." even though a revocable trust (unlike an irrevocable trust) shares characteristics of a last will. **As noted hereinabove, an irrevocable trust is essentially a transfer of property by gift, whereas a revocable trust is generally viewed as a form of will substitute.** 1 Scott and Ascher on Trusts §3.2 (2006).

Plaintiff's Power of Attorney expressly and unambiguously authorized the creation of the trust now at issue. The construction of an agreement [power of attorney] is a matter of contract law. Stribling v. Stribling, 632 S.E.2d 291 (S.C. App. 2006). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Id. If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the

contract's language determines the instrument's force and effect. Id. A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. Bruce v. Blalock, 127 S.E.2d 439 (S.C. 1962). Parties are governed by their outward expressions, and the court is not at liberty to consider their secret intentions. Blakeley v. Rabon, 221 S.E.2d 767 (S.C. 1976).

Paragraph 11 granted the power “To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts.” Clear and direct. There is no ambiguity and no need for construction of the power.

(2) Deed.

If Plaintiff cannot successfully challenge the creation of the trust by her attorney-in-fact, Plaintiff then challenges the transfer of her real property into the trust by challenging the effectiveness of the deed.

The Deed is not Void for Lack of a Properly Named Grantee. Plaintiff complains that the deed that transferred title to her residence to the trust is void for lack of a properly named grantee. The grantee is identified in the deed as “the Willie Dendy Lee Watson Irrevocable Trust of even date herewith.” Plaintiff argues that the grantee should have been and must have been “Nancy Carol Underwood and John H. Watson as Trustees of the Willie Dendy Lee Watson Irrevocable Trust of even date herewith.”

Plaintiff cites Flinn v. Van Devere, 502 So.2d 454 (Fla.App. 3 Dist. 1986) as supporting authority for her argument. But, Flinn did not involve a deed without a properly named grantee. In Flinn, there was no deed at all. A Settlor executed a trust instrument and identified a particular piece

of real property on the property schedule attached to the trust instrument, but did not execute, or attempt to execute, a deed. The argument made was that the trust instrument, including the property schedule, was sufficient to be considered as the functional equivalent of a deed. As a subsequent Florida appellate court opinion described the Flinn holding:

The [Flinn] court explained that the trust documents themselves plainly cannot be regarded as such a deed "for the obvious reason that, although they comply with the necessary formalities of two witnesses and an adequate legal description, they contain no expression which purports to convey, grant or transfer the real estate."

Vaughan v. Boerckel, 963 So.2d 915 (Fla.App. 4 Dist. 2007).

To pass title, a deed must sufficiently specify a grantee. 9 Thompson on Real Property, Second Thomas Edition §82.08(a)(1) (1999); 26 C.J.S. Deeds §24b. However, a deed need not describe the grantee by name if it otherwise identifies him or makes him susceptible of identification by extrinsic evidence. 4 Tiffany, The Law of Real Property §967 (3d ed. 1975) and 23 Am.Jur.2d Deeds §27, citing Garraway v. Yonce, 549 So.2d 1341 (Miss. 1989). Courts are loath to invalidate a deed because the identity of the grantee is misspelled or misdescribed, Thompson on Real Property, supra., and will not invalidate a deed to a misnamed party if the party exists and the intention of the parties and the identity of the grantee can be ascertained. Pruitt v. Ferguson, 297 S.E.2d 714 (Va. 1982).

With specific reference to a deed identifying the grantee as a trust rather than the person or entity serving as trustee, it is generally held that a deed to a trust, without mention of trustee(es), if the trust is in existence at the time the deed is executed, is valid because the names of the trustees who get title can be shown by extrinsic evidence. Hodgkiss v. Northland Petroleum Consol., 57 P.2d 811 (Mont. 1937); Hill v. Hill, 102 P.3d 1131 (Idaho 2004).

The Deed is not Void for Failure of Consideration. Plaintiff may challenge the validity and enforceability of the attorney-in-fact's deed to the trust because there was no consideration for the deed. Consideration is not required for a transfer in trust. Coleman Karesh, Trusts 8 (S.C. Bar 1977), citing Clarke v. DeVeaux, 1 S.C. 172 and Restatement (Second) Trusts §29 which reads: "The owner of property can create a trust of the property by transferring it to another person in trust although there is no consideration other than the transfer of the property."

Breach of Fiduciary Duty in Creating the Trust.

This portion of the Memo of Law addresses the Plaintiff's arguments that are beyond the particular questions presented but which Defendants cannot allow to go unanswered.

Plaintiff argues that Gagnon v. Coombs, 654 N.E.2d 54 (Mass. App. 1995) is supporting authority for the Plaintiff's opposition to the pending motion for partial summary judgment. But a careful reading of Gagnon reveals that it was decided on issues related to breach of an agent's fiduciary duties in conveying a particular real property asset into the trust rather than in creating the trust itself. The facts:

- Nov. 1990 Principal executed POA granting to the agent the power to sell or transfer real estate; to add property to, or withdraw property from, any trust of which the principal is grantor or beneficiary. Perhaps most importantly, the POA did not authorize the agent to make gifts of the principal's assets, including gifts to the agent herself.
- Feb. 1991 The POA was revoked by written revocation, but notice of the revocation was not given to the agent.

Dec. 5, 1991 Principal personally negotiated a sale of his real estate (farm property) resulting in a signed purchase and sale agreement.

Dec. 26, 1991 After being told by the principal about the purchase and sale agreement, agent created a trust agreement and executed a deed by which the farm property (then under contract to be sold by the principal) was conveyed into the trust.

Jan. 1992 Principal learned of the agent's creation and funding of the trust and filed an action to set aside the conveyance of the farm property.

The trial court ruled in favor of the agent on the ground that she had no actual or constructive notice that her authority as agent had been revoked prior to her execution of the trust instrument and the deed. The Appeals Court of Massachusetts reversed the trial court. The central issue in the Gagnon opinion is not the creation of the trust itself but rather whether the actions of the agent in deeding the real property into the trust and failing to thereafter deed it back to the principal, **in the absence of language in the power of attorney that allowed the agent to enter transactions that benefitted the agent**, constituted breaches of fiduciary duty that required the title to the real property to be reconveyed by the agent/trustee to the principal.

Consequently, Gagnon is not persuasive authority for deciding the pending motion because (1) it does not directly address the issue of an agent's authority to create a trust when expressly authorized by the power of attorney; and (2) it rests on principle's of agency law where the power of attorney does not expressly permit the agent to benefit from transactions involving the principal's assets.

“Agency” is a consensual, fiduciary relationship whereby a person, the agent, acts on behalf of another, the principal, subject to the principal’s control, in such a manner as to affect the legal relationship of the principal with third parties. Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2002, §5-2. An agent appointed by and acting under a power of attorney is in a fiduciary relationship with the principal. Steele v. Victory Savings Bank, 368 S.E.2d 91 (S.C. App. 1988) citing Loftis v. Eck, 341 S.E.2d 641 (S.C. App. 1986). In Fender v. Fender, 329 S.E.2d 430 (S.C. 1985) the general standards for agents acting pursuant to a power of attorney were described as follows:

Absent intention to the contrary, an agent must further the principal's interests. He may not use his authority in a manner hostile to the principal for the benefit of himself or a third party. 2A C.J.S. *Agency*, § 151, p. 773. It is incumbent upon the agent to act with the utmost good faith and loyalty. 3 C.J.S. *Agency*, § 271, p. 31. Effectively, absent express intention, an agent may not utilize his position for his or a third party's personal benefit in a substantially gratuitous transfer. . . The power to make any gift [by the attorney-in-fact] must be expressly granted in the instrument itself. (internal citations omitted).

In South Carolina, a fiduciary owes fiduciary duties to beneficiaries [and to a principal] and is obligated to carry out the trust with the highest degree of fidelity, good faith, and loyalty to the exclusion of all self-interest. Yates v. Yates, 354 S.E.2d 800 (S.C. App. 1987). However, this duty of loyalty rule is not without exception. The most commonly recognized exception is where the principal expressly or impliedly approved of the conflict of interest position or transaction. George Gleason Bogert & George Taylor Bogert, The Law of Trusts and Trustees §543 (Rev. 2d ed. 1993). The following cases demonstrate the application of this legal principle: Dick v. Peoples Mid-Illinois Corp., 609 N.E.2d 997 (Ill. App. 1993) (“it is well established that a trustee may occupy conflicting positions in handling the trust where the trust instrument contemplates, creates or sanctions the

conflict of interest . . . where a conflict of interest is approved or created by the testator, the fiduciary will not be held liable for his conduct unless the fiduciary has acted dishonestly or in bad faith . . . further, when the Will approves the conflict of interest, the burden of proof remains on the party challenging the fiduciaries conduct as there is no presumption against the fiduciary despite the divided loyalty”); Jochec v. Clayburne, 863 S.W.2d 516 (Tex. App. 1993) (broad powers within the trust instrument allowed the trustee to transact business with any entity, including those in which the trustee had an ownership interest, and, consequently, the duty of fidelity was modified by the settlor); Goldman v. Reuben, 441 A.2d 713 (Md. 1982) (the rule against fiduciary self-dealing does not apply if the transaction is authorized by statute, by the instrument creating the trust, or by the Court, provided the transaction is fairly made. In such cases, the burden of proof on the issue of breach of trust is not initially on the trustee because there is no presumption against the trustee for self-dealing); In Re Steele’s Estate, 103 A.2d 409 (Pa. 1954) (the doctrine of self-dealing does not apply where the testator knowingly placed his trustee in a position which he knew might conflict with the interest of the trust and nevertheless gave the trustee the power to act in a dual capacity). See also 76 Am. Jur. 2d Trusts §380; Gregory v. Moose, 590 S.W.2d 665 (Ark. App. 1979); In Re Hanes, 214 B. R. 786 (E.D. Va. 1997); Matter of Kellogg, supra.; Bank of Nevada v. Speirs, 603 P.2d 1074 (Nev. 1979); Huntington Nat’l Bank v. Wolfe, 651 N.E.2d 458 (Ohio App. 1994).

On the strength of the authorities cited hereinabove, a principal may delegate to and empower an agent to create a trust and to name the agent as a trust beneficiary by expressly granting the power to create the trust and to make gifts in a written power of attorney, and when so delegated by a competent principal to his/her agent in a power of attorney, the power to create a trust and to name the trust beneficiaries under those circumstances does not violate the public policy or the law of

South Carolina and is not personal and nondelegable as a matter of law. This is consistent with South Carolina law in the analogous situation of an attorney-in-fact making gifts of the principal's assets. In Fender v. Fender, 329 S.E.2d 430 (S.C. 1985) the South Carolina Supreme Court, in order to avoid fraud and abuse, adopted a rule barring a gift by an attorney in fact to himself or to a third party absent clear intent to the contrary evidenced in writing.

That the Defendant Underwood as agent was given the power by the Plaintiff to create the irrevocable trust and to make herself one of many beneficiaries of the trust is evidenced by the two POA provisions quoted above:

Paragraph 11 grants the power "To establish trust funds, revocable or irrevocable, funded or unfunded, **for the benefit of me, my spouse, my children** and my lineal descendants, and to transfer any of my assets to such trusts." (Emphasis added).

Paragraph 10 grants to the attorney-in-fact the power **to transfer by gift any of the Plaintiff's assets to "my spouse, my children** and my lineal descendants by gift, **including to any such person serving as attorney in fact**, or to any trust funds which I may have established, revocable or irrevocable..."

Enough said.

Mere Ambiguity does not Void Trust

That the trust instrument contains some ambiguity does not affect its validity. It is not necessary that the declarations in the trust instrument express every element so clearly that nothing can be left to inference or implication; it is sufficient if the settlor's general intent and the objects thereof (beneficiaries) are ascertainable by the court. 89 C.J.S. Trusts §45. Only where the terms are

too vague and indefinite for a court to understand them will the court find a trust void for uncertainty. Imperfections not affecting the manifestation of intent, such as informality or obscurity of language will not defeat the formation of a valid trust. In re Kline Revocable Trust, 763 N.Y.S.2d 721 (Sur. Ct. 2003). All that is necessary are words and circumstances which unequivocally show an intention that the legal estate is vested in one person to be held in some manner or for some purpose on behalf of another. In re Dameron, 155 F.3d 718 (4th Cir. 1998)(stating Virginia law). Ambiguities, if any, are resolved through a court's construction of the instrument.

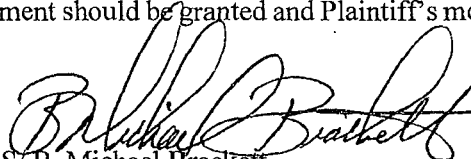
Conclusion

Plaintiff's Power of Attorney literally authorized the creation and funding of the trust about which Plaintiff now objects. The creation and funding of the trust was prompted by Plaintiff's own concerns about her assets, repeatedly voiced to her attorney and to her children. The creation of the irrevocable trust was recommended to the agent by the Plaintiff-principal's own attorney, who also prepared the instrument. The trust preserved the Plaintiff's estate plan that was in existence at the time of trust creation.

Because the power of attorney expressly authorized the creation of the trust and the transfer of assets into the trust, and expressly authorized gifts to Plaintiff's family, including the agent herself, thereby approving what might otherwise be considered conflict of interest transactions, the Plaintiff cannot now be heard to complain about the use of the power of attorney to create a trust.

The language of the Plaintiff's Power of Attorney is legally sufficient to delegate the power to create a trust to the Plaintiff's agent without violating the public policy or the law of South Carolina.

Defendants' motion for partial summary judgment should be granted and Plaintiff's motion for summary judgment should be denied.



S/ B. Michael Brackett

B. Michael Brackett, Esquire
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2312
Attorney for Defendants

Columbia, South Carolina
April 25, 2011

will by reference. Mrs. Watson was not asked or notified at the time of the trust's creation and only learned about the trust in June of 2009. Upon learning of Mrs. Underwood's activities, Mrs. Watson revoked the Power of Attorney and demanded the return of her property but was refused by Mrs. Underwood and Mr. Watson.

The Question of Whether or Not the Irrevocable Trust is Valid is a Question of Fact

Mrs. Watson argues the irrevocable trust is not for her benefit and, despite its recitations, was not created for the purpose of protecting her as the principal but was instead a callous attempt by Nancy Underwood and John Watson to secure their inheritance and exclude their sibling. Creation of the irrevocable trust and transfer of all of Mrs. Watson's real and personal property and bank accounts to the trust by deed is a violation of Mrs. Underwood fiduciary duty as agent for her mother. A confidential and fiduciary relationship existed between Mrs. Watson and Defendant Underwood.

To show a "confidential relationship" existed between the grantor and grantee, the grantor must present adequate evidence that she has placed her "trust and confidence in the grantee, and the grantee has exerted dominion over the grantor." *Brooks v. Kay*, 339 S.C. 479, 489, 530 S.E.2d 120, 125 (2000); *Middleton v. Middleton*, 300 S.C. 402, 404, 388 S.E.2d 639, 641 (1990); *Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986). Once a contestant has proven a confidential relationship existed at the time of conveyance, the burden shifts to the grantee to prove that the contestant's conveyance was not the product of undue influence. *Brooks*, 339 S.C. at 489, 530 S.E.2d at 125. In this case, since the transfer was by the fiduciary partially to the fiduciary without the true grantor's knowledge undue influence may be presumed.

Underwood and Watson were in a confidential relationship at the time of conveyance. First, the parties are related as mother and daughter. Although this Court has declined to hold that a familial relationship, alone, is sufficient evidence of a confidential relationship, a familial relationship certainly supports an argument that a confidential relationship exists. *See Hudson*, 288 S.C. at 196, 341 S.E.2d at 139. Second, Watson gave Underwood a power of attorney to use if and when she became unable to handle her own affairs, this suggests Watson placed some trust and confidence in her to make decisions for her in case she had to be hospitalized or unable to carry out her affairs. This, alone, creates a fiduciary relationship. *See In re Estate of Cumbee*, 333 S.C. at 672-73, 511 S.E.2d at 394 (finding in will contest that fiduciary relationship, which created the presumption of undue influence, existed between son and mother where son had mother's power of attorney and managed her finances). "However, the existence of a confidential relationship creates a presumption that the instrument is invalid, and the burden then shifts to the proponent of the instrument to affirmatively show the absence of undue influence." *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 299, 569 S.E.2d 371, 378 (Ct. App. 2002) (citations omitted). "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." *Cumbee*, 333 S.C. at 672, 511 S.E.2d at 394 (quoting *Brown v. Pearson*, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)). The presumption of invalidity in deed cases also applies to will cases. *Howard v. Nasser*, 364 S.C. 279, 287, 613 S.E.2d 64, 68 (Ct. App. 2005); *see Dixon v. Dixon*, 362 S.C. 388, 398 n.7, 608 S.E.2d 849, 854 n.7 (2005) ("[T]he analysis is the same regardless of whether the underlying document sought to be set aside on the grounds that the plaintiff was unduly influenced is a will or a deed."); Restatement (Third) of Prop.: Wills and Other Donative

Transfers § 8.3 cmt. f (2003) ("A presumption of undue influence arises if the alleged wrongdoer was in a confidential relationship with the donor . . . whether the transfer was by gift, trust, will, will substitute, or a donative transfer of any other types.").

Most of this (and other) state's jurisprudence on the issue of undue influence involves a contestant seeking to set aside a will, rather than a deed, as does the case quoted above. *See First Nat'l Bank of Appleton v. Nennig*, 285 N.W.2d 614, 623 (Wis. 1979) (holding that "undue influence in the execution an of inter vivos conveyance is proved in the same way that undue influence is proved in the execution of a will"); *Lyons v. Elston*, 98 N.E. 93 (Mass. 1912) (holding that the analysis is the same regardless of whether the underlying document sought to be set aside on the grounds that the plaintiff was unduly influenced is a will or a deed).

The trust should be set aside because Defendant Underwood used the power of attorney as a vehicle to secure her own inheritance and not for the benefit of her mother. The question of fact inherent in the above issue is whether or not Mrs. Underwood was acting in the best interest of her mother when she created the irrevocable trust. If she was not acting for the benefit of her mother, there is not valid trust created. Therefore, summary judgment is inappropriate in this case on this issue.

Cross Motion for Summary Judgment

Mrs. Watson has filed a cross motion requesting summary judgment on the following issues where there is no genuine issue of material fact and only questions of law:

1. Where a deed purports to transfer her property to a trust rather than to the trustees in trust for the beneficiaries it is violation of South Carolina law and the deed is, therefore, void.

2. Where the power of attorney used her fiduciary powers to create an irrevocable trust that incorporates a fully revocable will properly executed by the principal and thereby, in effect, created a will in violation of the powers of a Power of Attorney under South Carolina law.

“Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.” *City of Columbia v. American Civil Liberties Union, etc., et al.*, 475 S.E.2d 747, 748 (S.C. 1996). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in light most favorable to the nonmoving party.” *Id.* The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 580 S.E.2d 433, 438 (S.C. 2003).

The Deed is Void as a Matter of Law

Mrs. Watson argues that her real property located at 423 Free Bridge Road, Laurens, SC is not a part of the trust. A trust may be created by “transfer of property to **another person as trustee** during the settlor’s lifetime” S.C. Code Ann. § 62-7-401 (Amended 2005). A trust is defined as “the right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title. ...” Black’s Law Dictionary 1261 (8th ed. 2005). The proper form required to deed property is set out in S.C. Code Ann. § 27-7-10 which specifically allows transfers from one person to another or others. The deed created by Mrs. Underwood transferred the property to the trust rather than the trustees. This deed is void and of no effect and because legal title to the property was never properly conveyed by deed, the property remains owned by Mrs. Watson in fee simple.

In *Flinn v. Van Devere*, 502 So. 2d 454 (Fla. 3d DCA 1986), the Third District concluded that realty owned by the decedent was not validly transferred to a trust she established during her

lifetime and thus remained an estate asset and the property passed under the residuary clause of her will rather than the trust. *Id.* at 454. The court held that the decedent's execution of a form instrument creating a standard inter vivos "living trust" of property owned by her and listed in an accompanying schedule was ineffective with respect to the real estate described because the settlor did not, as is required, also execute a deed which conveyed the realty to the trustees. *Id.* at 455. (*emphasis added*).

A POA Cannot Create a Will

Mrs. Watson argues the power of attorney cannot create or prevent revocation of a will. Mrs. Watson's entire estate is at present controlled and withheld from her by this trust. As discussed supra, the trust purports to make Mrs. Watson a lifetime beneficiary of the trust and the beneficiaries of her October 2006 will as the "estate" the residuary beneficiaries of the trust.

A sane testator's right to dispose of his property as he chooses is protected under common law. *See Calhoun v. Calhoun*, 290 S.E.2d 415, 418 (S.C. 1982). ("Even though one may have unreasonable likes and dislikes and may act unjustly and even cruelly toward his family in the disposition of his estate, still his will, when legally expressed, must be supported. Therefore, the issue of undue influence should be resolved in the light of proposition that a sane testator has the right to dispose of his property as he chooses"). Only the testator, or someone who signs in the testator's name in the testator's conscious presence and by the testator's direction, can execute a will. S.C. Code Ann. § 62-2-502 (Amended 2005). Wills are freely revocable instruments as there is no limitation on the right of a testator to revoke a validly executed will, except in the case of a contract involving a will. S.C. Code Ann. § 62-2-701 (Amended 2005). This code section specifically invalidates any presumptive contract not to revoke a will, ie. joint or reciprocal wills do not create a presumptive contract not to revoke a will. *Id.*

The trust code does not provide to the trustee any power to execute a will for his agent. *See* S.C. Code Ann. §§ 62-7-815 and 62-7-816 (Amended 2005). Furthermore, the code drafters specifically provided for incorporation of documents into a will, but not for a trust. South Carolina Code Ann. § 62-2-509 (Amended 2005) provides for the incorporation by reference of any then existing writing into a will when the will is executed. However, no companion statute exists in the trust code, evidencing the legislature's intent not to provide for the incorporation of existing documents into a trust.

Mrs. Watson is being stripped of her right to determine the disposition of her estate after her death. Mrs. Watson does not desire to leave the bounty of her estate to those persons named in her will of October 2006 as evidenced by her revocation of that will and subsequent codicil to that will. Mrs. Watson executed a codicil to the October 2006 will, naming her daughter, Sherry Long, as beneficiary of her estate. However, the Circuit Court held on the codicil did not modify the trust. If this is the case, Nancy Underwood has, in fact, as power of attorney, created a will or circumvented the statute, which requires strict adherence to create a contract not to revoke, by incorporating a fully revocable will in the irrevocable trust. She has prevented Mrs. Watson from passing her estate as she wishes. She has failed in her duty as both a daughter and a fiduciary.

A power of attorney as an agency device can empower the attorney-in-fact only with the ability to perform acts that the principal is competent to perform himself. However, South Carolina (as well as every other state) allows by statute the creation of a durable power of attorney, which remains valid despite the principal's subsequent incapacity. S.C. Code Ann. § 62-5-501. In some cases when a durable power of attorney empowers the attorney-in-fact to act for an incompetent principal, the attorney-in-fact may attempt to revoke or amend a trust created by the settlor. Because the principal may have created the trust as part of an overall estate plan,

the trust's revocation or amendment would in effect change the principal's estate plan. South Carolina follows the generally accepted common law view that an agent cannot change a principal's will. See *Moses & Pope*, supra note 48, at 526; Restatement (Third) of Prop.: Wills and Other Donative Transfers § 8.1 cmt. k (2003). Essentially, Mrs. Underwood is attempting to do just that, by referencing the Will in the irrevocable trust which purportedly has title to all but nominal assets of Mrs. Watson so Mrs. Watson cannot change her will.

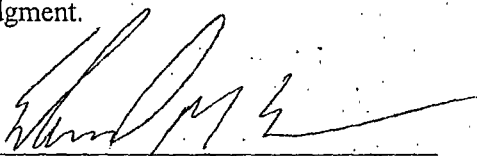
This precise issue is addressed in *Gagnon v. Coombs*, 39 Mass. App. CT 144, wherein an agent under a power of attorney violated her fiduciary duty of loyalty to her principal by conveying the principal's property to herself as trustee of an irrevocable trust, by refusing to obey the principal's direction that she reconvey the property to the principal, by failing to inform the principal of all relevant facts with respect to the transfer of the property and by her self-dealing with respect to the conveyance and as such, the conveyance was therefore revocable and the agent was to reconvey the property to the principal. Nancy Underwood, the prior power of attorney at issue herein, was not granted the power to acquire interests adverse to those of the principal or to seek or derive personal advantage, profit or benefit from the agency or from any transactions undertaken pursuant thereto, just as in the case supra. Mrs. Watson did not have any knowledge that Underwood was acting in such capacity of power of attorney and Underwood was only to act under such power if Mrs. Watson could not do so herself. "An agent is authorized to do, and to do only, what is reasonable for him to infer that the principal desires him to do in the light of the principal's manifestation and the facts as the agent knows or should have known them at the time he acts." Restatement (Second) of Agency § 33. An agency differs from the other fiduciary relations in the fact that it is the agent's duty to obey the will of the principal, to respond to the principal's directions. Restatement (Second) of Agency § 14, 33, 385.

In no event must (the agent) act contrary to what . . . the principal desires him to do,” Id. at comment a, “even if the principal’s directions amount to a breach of the agency contract. Id. at §118 comment b. Underwood through the creation of the trust by utilization of the power of attorney, benefits personally from the creation of the trust directly opposed and communicated by Mrs. Watson. Underwood has breached her fiduciary obligations and unselfish obligations. The power of attorney did not authorize Underwood with agency powers to gain personal advantage without Mrs. Watson’s consent.

To allow an agent to create an irrevocable trust which references a freely revocable document, such as the October 2006 will, and thereby preclude the testator from revoking or modifying the will, allows the agent to, in effect, execute a will by thwarting free revocation. The irrevocable nature of the trust is extended to the will in direct contradiction of the obvious protections written into the statute. It allows an agent to do indirectly what he cannot do directly and is in violation of both South Carolina law and public policy.

Plaintiff prays for an Order denying Underwood’s Motion for Summary Judgment *in toto* and granting Plaintiff’s Cross Motion for Summary Judgment.

Greenwood, South Carolina
August 24, 2011



Edward S. McCallum, III
ATTORNEY FOR PLAINTIFF
340-A Main Street
Greenwood, South Carolina 29646
(864) 223-8546

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

COUNTY OF Laurens

LYNN W. LANCASTER

CASE NO.: 2010-CP-30-0116

Willie D. Watson

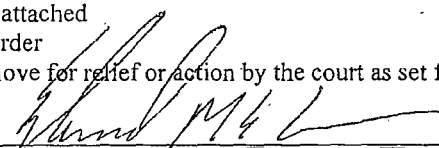
DEC 30 A 10 31
Plaintiff,

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Nancy Underwood, et al

LAURENS COUNTY
CLERK OF COURT

Plaintiff's Attorney: <u>Edward S. McCallum, III</u> , Bar No. <u>2149</u> Address: <u>PO Box 148 Greenwood, SC 29648</u> Phone: <u>864-223-8546</u> Fax <u>864-223-8015</u> E-mail: _____ Other: _____	Defendant's Attorney: <u>B. Michael Brackett</u> , Bar No. _____ Address: <u>Po Box 100261 Columbia, SC 29202</u> Phone: _____ Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Motion for Reconsideration</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
Date submitted: <u>December 22, 2011</u>	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
LYNN W LANCASTER) EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS)
2011 DEC 30 A 10:31

Willie D. Watson,)
Plaintiff,)
vs.)
Nancy Carol Underwood individually and as)
putative trustee of the Willie D. Watson Trust,)
John H. Watson individually and as putative)
trustee of the Willie D. Watson Trust,)
Willie Dendy Lee Watson Irrevocable Trust,)
and Future and Potential Heirs of)
Willie D. Watson,)
Defendants,)
LAURENS COUNTY)
CLERK OF COURT)
PLAINTIFF'S 59(E) MOTION)
TO RECONSIDER, ALTER)
OR AMEND JUDGMENT)
Case No. 2010-CP-30-0116)

COMES NOW, Petitioner, by and through her attorneys of record and moves this honorable court pursuant to SCRPC 59(e) to reconsider its Order filed of record on December 13, 2011. As grounds therefore, Plaintiff prays the Court to alter judgment as follows:

1. The Court failed to make specific findings of fact where a deed purports to transfer property to a trust rather than to the trustees in trust for the beneficiaries it is violation of South Carolina law and the deed is, therefore, void.
2. The Court failed to make specific findings of fact where a person under a power of attorney uses her fiduciary powers to create an irrevocable trust that incorporates a fully revocable will properly executed by the principal created a will in violation of the powers of a Power of Attorney under South Carolina law.
3. The Court failed to make specific findings of fact where a Power of Attorney cannot lock an estate's distribution through a provision of an irrevocable trust.

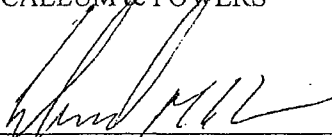
LEGAL AUTHORITY

When a party raises an issue at trial but the judge does not address the issue in the final order, the party must file a Rule 59(e) motion on the judge's failure to address the issue in order to preserve the issue for appeal. *Summer v. Carpenter*, 492 S.E.2d 55 (S.C. 1997).

Petitioner respectfully requests the Court to reconsider, amend and/or alter its ruling as set forth in the Order including making specific findings of fact and conclusions of law with regard to the issues raised herein.

Respectfully Submitted,

MCCALLUM & POWERS



EDWARD S. MCCALLUM, III
PO Box 148
Greenwood, South Carolina 29648
Telephone 864-223-8546
Facsimile 864-223-8015

Counsel for the Plaintiff

December 22, 2011

Greenwood, SC

State of South Carolina)
) Court of Common Pleas
County of Laurens) 2010-CP-30-116

Willie D. Watson)
 vs.) Transcript of Record
)
Nancy Carol Underwood,)
 individually and as putative)
 trustee of the Willie D.)
 Watson Trust; John H. Watson,)
 individually and as putative)
 trustee of the Willie D.)
 Watson Trust; and Future and)
 Potential Heirs of Willie D.)
 Watson;)
 Defendants)

July 14, 2010
Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Judge.

A P P E A R A N C E S:

Edward McCallum, Esq.
Attorney for the Plaintiff

B. Michael Brackett, Esq.
Attorney for the Defendant

Joy E. Holston

Court Reporter

1 THE COURT: This is part of the case we began in
2 Abbeville County.

3 MR. MCCALLUM: Your Honor, yes, you did hear a motion
4 in Abbeville County. If you recall I think you called
5 this the musical chairs case.

6 THE COURT: Yes, I remember. Where do we stand on
7 this one now?

8 MR. MCCALLUM: Your Honor, the plaintiff, Willie D.
9 Watson and counsel filed a petition to terminate the
10 purported trust. That was filed on April 29th of this
11 year. My understanding is that why we are here to today
12 is to hear that motion. Just to give you a very brief
13 background so that the record is clear. Ms. Watson who is
14 Willie Dendy Watson, who is seated behind me in black and
15 white, Your Honor. Ms. Watson has two daughters, Nancy
16 Carol Underwood as well as Sherry Long. Additionally she
17 has a son who is John H. Watson. She was married to Mr.
18 John Watson, Sr., the father who has passed away.
19 Subsequently, Your Honor, she granted a power of attorney
20 to Nancy Underwood. Ms. Underwood acting under that power
21 of attorney created a settlor on behalf of Willie Dendy
22 Watson a irrevocable trust. That trust was dated the
23 second day of April, 2009. I have copies of that trust
24 for the Court. The trust which we believe, we believe
25 that this trust is invalid from its inception, Your Honor,

1 for a number of reasons that aren't before the Court
2 today. But for purposes of this argument, assuming that
3 the trust document is valid, does validly create a trust
4 we are at this time moving for that trust to be terminated
5 pursuant to code section 62-7-411. And I have a copy of,
6 we have quoted it verbatim in our brief but I can pass up
7 a copy of it for the Court so you can have it. That
8 section provides in pertinent part a non-charitable, this
9 is subsection A, non-charitable irrevocable trust may be
10 modified or terminated with Court approval upon consent of
11 the settlor and all beneficiaries even if the modification
12 or termination is inconsistent with a material purpose of
13 the trust. A settlor's power to consent to a trust
14 modification or termination may be exercised by an agent
15 under a power of attorney only to the extent expressly
16 authorized by the power of attorney or the terms of the
17 trust by the settlor's conservator with approval with the
18 Court supervising the conservator if an agent is not so
19 authorized or by the settlor's guardian with the approval
20 of the Court supervising the guardianship of an agent is
21 not so authorized and a conservator has not been
22 appointed. We cite the balance of the section but
23 basically what we have here is a situation where the trust
24 in section two on page one provides this trust agreement
25 shall terminate upon the death of Willie Dendy Lee Watson

1 and the proceeds remaining in the trust shall be
2 distributed to the estate of Willie Dendy Lee Watson to be
3 disposed of in accordance with the terms and conditions of
4 her last will and testament dated October 5th, 2006.
5 Subsequently Ms. Watson has executed a codicil to her
6 October 5th, 2006 will. I will provide a copy which
7 opposing counsel has previously reviewed and has agreed
8 with the Court's permission to please seal this document
9 in the record because we don't think it is appropriate for
10 public record as it is the present will of Ms. Watson.
11 Your Honor, the settlor of this trust was Nancy Carol
12 Underwood acting through her power of attorney of Willie
13 Dendy Lee Watson. So the true party, the true settlor of
14 the trust was Ms. Watson. Under the terms of the codicil
15 all of her assets shall be disposed of to her daughter,
16 Sherry Long. I do not believe, there has not been raised
17 and I think apparent from her deposition that Ms. Watson
18 is fully competent despite her age. She has a good grasp
19 of her estate, she understands who her children are, she
20 understands the natural objects of her affections. It
21 does not seem to be any reason to believe that she is
22 incompetent and I don't believe that a section allegation
23 has been made by the defendant. Secondly, Your Honor, we
24 were extremely careful during the execution of this
25 codicil to insure that Sherry Long neither knew that the

1 codicil was being executed nor did she have any idea of
2 the terms or conditions of the codicil at any time prior
3 to its execution and to the best of my knowledge the first
4 she is hearing of it is here today in this courtroom. If
5 the Court wishes to review it we also took the added
6 precaution of having a video tape made of the execution of
7 this codicil just so there would be no questions as to any
8 undue influence, duress or competency. Additionally, Your
9 Honor, we had two physicians examine Ms. Watson prior to
10 the execution of her codicil to determine that she was
11 competent and I will be happy, if there is an issue to
12 that effect, to present their reports to the Court. Under
13 62-7-411 and in light of the affidavit which was attached
14 to our petition by Sherry Long, it is now agreed between
15 the settlor, the lifetime beneficiary and the remainder
16 beneficiary that the trust should be terminated. We also
17 have attached to our petition the affidavit of Willie D.
18 Watson which verifies the execution of her codicil, states
19 that she had no intention to create the trust and that she
20 has no intention at this point of changing her will. We
21 believe that there are other reasons, of course, that the
22 trusts are invalid. But even assuming its validity today
23 it is clear that all of the criteria of 62-7-411 have been
24 met and that we are now seeking the Court's approval to
25 terminate this trust, have all funds returned to Willie D.

1 Watson in her individual capacity. Thank you, Your Honor.

2 THE COURT: Mr. Brackett.

3 MR. BRACKETT: If it please the Court. What the
4 plaintiff is proposing to do, Your Honor, is to use a
5 codicil to circumvent the express, explicit terms of the
6 trust. And I submit to you for reasons that I will get
7 into the law does not permit that under these
8 circumstances. Now, although we are here only on the
9 question of whether the codicil can affectively be used in
10 a way that it is being attempted Mr. McCallum has gone
11 into some of the background of the case for context
12 purposes so I will do the same just to give Your Honor a
13 flavor of what is going on here. The and by the way, you
14 should have before you, Your Honor, the defendant's return
15 to this motion. It has five exhibits attached to it that
16 relate to the relevant documents in this case for easy
17 reference. The power of attorney that Ms. Watson, the
18 plaintiff, gave to my client, Nancy Underwood in October
19 of 2006 is one of those exhibits. That power of attorney
20 is very broad, it gives to the agent explicitly, you don't
21 have to apply anything, it is set out in there very
22 clearly that the agent may establish a trust, revocable or
23 irrevocable and can put any or all of the plaintiff's
24 assets into that trust. It also has an explicit gifting
25 provision that allows gifts to go to anybody in the family

1 including the agent. It gives the agent the authority to
2 essentially to sell anything the plaintiff owns. The
3 point being that the disposition of the plaintiff's assets
4 were very broadly granted to the agent in the power of
5 attorney. Now if we jump forward to April 2nd of 2009, on
6 that date the trust agreement that is the subject of this
7 motion was executed. By the way, all of the relevant
8 documents that Ms. Watson has and that are somewhat an
9 issue in this instance, that would be the power of
10 attorney and the will that were executed in October of
11 2006 and the trust that was executed in April of 2009 were
12 all prepared by the plaintiff's lawyer, Richard Townsend,
13 longtime practicing lawyer here in Laurens. Now, the
14 trust agreement itself and I forget exactly which exhibit
15 it is but it is attached. The trust agreement itself, it
16 speaks for itself, in section four, expressly provides
17 that this trust is irrevocable and it may not be amended
18 by anyone. No conditions, no trap doors, it simply says
19 you can't do it. Now, of course that provision of the
20 trust does not trump section 62-7-411. But what it says
21 is, absent satisfying the conditions of the statute nobody
22 else can change, modify, terminate, do anything to the
23 terms of this trust. Now, to amend the trust, according
24 to 62-7-411 requires two things. It requires of the Court
25 and it requires the consent of all of the beneficiaries.

1 Question, who were the beneficiaries on April 2nd, 2009
2 when the trust was created. By the terms of the trust and
3 by the affidavits attached to the return we know those
4 beneficiaries were John Watson, Sherry Long, Nancy
5 Underwood, five grandchildren and three
6 great-grandchildren, four of those grandchildren and
7 great-grandchildren are minors. That is the universe of
8 beneficiaries originally named in the trust. Now how do
9 we know they were named in the trust. Because the trust
10 incorporates in section three, I think it is, that upon
11 the termination of the trust the remainder beneficiaries
12 are those people who would be named in the plaintiff's
13 last will and testament dated October 5, 2006. It doesn't
14 set them out by name, it incorporates the last will with
15 the plaintiff for the purpose of identifying the remainder
16 beneficiaries of the trust which of course raises the
17 doctrine of incorporation by reference. I have set all
18 that out, Your Honor, in the return. Now, it is important
19 I think for the Court to realize that the trust
20 incorporated the October 5, 2009 last will. It did not
21 incorporate that last will plus any subsequent amendments
22 to that document or to include any subsequently executed
23 codicil. It said, that will. It was incorporated at a
24 particular time that was April the 2nd, 2009 for a
25 particular purpose, that being to identify the people who

1 would be the remainder beneficiaries of the trust and for
2 no other purpose. So the trust itself that says, I am
3 incorporating a document that we know exist and we know
4 what the terms are and that, we are just pulling that
5 language out of the will and plugging it into the trust.
6 That is the way the doctrine works. Now, in order to, in
7 order now and you have to look at this in terms of a
8 snapshot of what the situation was on the day the trust
9 was created. And so we know on that date who the various
10 cast and characters were, who had an interest in the
11 trust. Either that was a lifetime beneficiary, that would
12 be the plaintiff or as remainder beneficiaries, that would
13 be the eleven persons who I identified for the Court.
14 Now, in order to even modify the trust, they are here to
15 terminate, okay. And in so doing they are here to get the
16 Court to approve the modification, it is a two-step
17 process. But they have to have the consent of all of the
18 eleven, actually twelve, including the plaintiff, twelve
19 beneficiaries. They presented the consent of two, the
20 plaintiff and Sherry Long. Where is the consent of the
21 other nine, they don't have it. And they are trying to
22 use this idea of, well, let's change the October 5 will to
23 reduce the number of beneficiaries from eleven to nine, I
24 am sorry, from eleven to two. So that all that we would
25 have to have would be the two people to consent. Well, my

1 point is, the modification itself requires the consent of
2 all of the beneficiaries. Remember we took that snapshot
3 back on April the 2nd of 2009 and we have that pool of
4 beneficiaries. In order to change the trust in any
5 respect requires the consent of all of those people. They
6 only have the consent of two. Now, the argument then
7 would be that, well, when you put in there, when you put
8 in the trust that it was governed by this last will you
9 implicitly understood that that will could be later
10 changed by a codicil. Well, the trust doesn't say that,
11 very easily could have said that but it didn't. And the
12 argument, the other argument that I make is the fact that
13 once a will is changed by a codicil, a subsequently
14 executed codicil it no longer retains its identity as the
15 original will. In other words, when this codicil was
16 signed in January of 2010 it really no longer retained its
17 identity as to last will and testament dated October 5 of
18 2006 because in the return on page, basically pages 9, 10
19 and 11 I point out to the Court that a corporation by
20 reference can apply to a document that is in existence on
21 the date that the document incorporates document number
22 two. The codicil wasn't in existence on April 2nd of
23 2009. Therefore the terms of the codicil could not be
24 known therefore the settlor, the trustee, the parties
25 could not know what the terms of the codicil would be and

1 that would fall outside the scope of the agreement to
2 establish the trust. What he is trying to do now is to
3 use a later codicil that had a retroactive effect to go
4 back to modify the trust which cannot be done without the
5 consent of eleven beneficiaries. Now, I have also pointed
6 out, Your Honor, in the return and this is found on page
7 12 of the return this question of timing. How does a
8 codicil affect the will to which it is annexed and does
9 the will spring forward to assume the date of the codicil
10 or does the codicil go back and retroactively take the
11 date of the will. The law says that when a will is
12 amended by a subsequent codicil that they both are treated
13 as one document and they are treated as though both had
14 been executed at the time of the codicil. And I set out
15 many South Carolina cases that say that. So where the
16 plaintiff attempts to use the codicil retroactively, to go
17 back and change everything after the fact the law says,
18 well, you really can't do that. The codicil actually, the
19 will actually moves forward and attaches itself to the
20 codicil. So what we end up with is a testamentary
21 instrument that really has the affective date of the date
22 that the codicil was executed. And according to the copy
23 that has been handed up that would be January the 12th of
24 2010. So the codicil cannot be used in the way that it is
25 purported to be used in this case. Now, the doctrine of

1 incorporation by reference which I think is central to
2 this case because that is exactly what the trust did, says
3 that you cannot incorporate terms that do not yet exist or
4 are not known at the time of the incorporation. That is
5 where the big hurdle is in this case, where they are
6 simply trying to say we can run and do a little in and
7 around on the irrevocability and the fact that the trust
8 cannot even be amended, we will do this little in and
9 around. According to the cases that I have cited you
10 can't do that in this case. I have cited a North Carolina
11 case, it is similar, it is not identical. It involves the
12 actual execution of a second will, not a codicil, but the
13 execution of a second will where the first will had been
14 actually incorporated or part of that first will had been
15 incorporated into a trust. And the question was, did the
16 revocation of will number one by the execution of will
17 number two in any way affect the operation of the trust.
18 And the North Carolina Court said, no it doesn't. Will
19 number one was incorporated for a purpose, it was
20 incorporated pursuant to the terms as they existed in that
21 document on the date of incorporation and the fact that
22 that document was later revoked doesn't affect the trust,
23 it affects the probate estate and how the probate assets
24 are later going to be administered. But the fact that a
25 new will sort of took its place does not in and of itself

1 cause it to sort of step in in lieu of the terms of will
2 number one. An incorporated document, Your Honor, is a
3 snapshot, that is what it is. It gets plugged in at that
4 point and that is the end of that.

5 THE COURT: What you say or what you are arguing is
6 is that more or less, codicil being executed doesn't
7 change the trust. The trust will continue at Ms. Watson's
8 death and the trust will be distributed pursuant to the
9 terms of the codicil/will dated January of 2010.

10 MR. BRACKETT: No, sir. The trust will continue,
11 will always be distributed according to the terms of the
12 October 5, 2006 will. Ms. Watson's probate estate will be
13 administered and distributed according to whatever her
14 last will and testament is in effect on the day of her
15 death. So she can change the testamentary document known
16 as the last will that governs distribution, administration
17 of the probate assets. What we are talking about here are
18 trust assets. And the fact that the will, the terms of
19 that will, the remainder beneficiaries identified in that
20 will, that that has been plugged into and incorporated in
21 the trust, that doesn't change. She could have signed a
22 brand new will, totally revoked the old one, the same
23 result. The codicil works exactly the same as this
24 revocation by new will in a North Carolina case. They are
25 trying to use it the same way. And if the total

1 revocation doesn't work then a simple amendment doesn't
2 work either for the same reasons as set out in that
3 opinion.

4 THE COURT: All right.

5 MR. MCCALLUM: May I respond, Your Honor?

6 THE COURT: You may.

7 MR. MCCALLUM: Your Honor, I am reading from page 21
8 of the transcript of the Abbeville hearing that we had
9 had. And Your Honor recognized this issue very
10 succinctly. Your Honor stated, if your client changes her
11 will and leaves the beneficiary to the society against the
12 cruelty prevention of animals and leaves all of the kids
13 out and these trustees do not act appropriately then that
14 beneficiary would have a claim against them for delving
15 out money to your client pending the terms of the trust,
16 is that right. I answered, by the same token, Your Honor,
17 she could leave it to Sherry Long and her codicil which is
18 precisely the person they say they are trying to protect
19 it from. There is no reason to have the trust at which
20 point Mr. Brackett commented, there is a protection,
21 predeath is what we are interested in. And I think that
22 very well frames this issue that is before the Court.
23 Now, if we are talking about trying to do something by the
24 backdoor that you can't do through the front door that is
25 the entire problem with this case. What is happened here

1 is Ms. Underwood knew that she was going to be
2 disinherited--

3 MR. BRACKETT: Your Honor, please, we are not here
4 about the validity of the trust. We are here about the
5 operation of the codicil, what effect if any it has on the
6 trust.

7 MR. MCCALLUM: I am merely trying to respond to the
8 context laid out, Your Honor.

9 MR. BRACKETT: Page one of the motion itself says
10 that. That we are assuming for purposes of this hearing
11 that everything was validly signed.

12 MR. MCCALLUM: The point being, Your Honor, that a
13 power of attorney cannot create a will. That is black
14 letter law. A power of attorney can neither modify nor
15 create a will. What in effect has happened here is that
16 power of attorney has been used to create a trust that now
17 at least the defendant's position is the will referenced
18 in the trust cannot be modified. There is a couple of
19 problems with that and if you take a look and I don't know
20 if Mr. Brackett provided a copy of Wheeler v. Queen, the
21 North Carolina case that he is talking about.

22 THE COURT: I have got the cite in this memorandum.

23 MR. MCCALLUM: What happened there, there was a deed
24 to property that placed the property in trust for the
25 benefit of the grantor during life and then to some, the

1 trustee during his life and then on to the grandchildren.
2 The difference between that case and this case is
3 specifically found on page 197, number four. And this is
4 the exact language of that trust. Upon the death of
5 Myrtle P. Wheeler this trust shall terminate and the
6 trustee shall be discharged and all of the property which
7 remains in the trust estate including the corpus and
8 accumulated income, if any, shall pass as directed, shall
9 pass as directed under the terms and provisions of the
10 last will and testament of Myrtle P. Wheeler dated
11 February 26th, 1986, which will as incorporated herein by
12 reference. Now, the North Carolina court made a great
13 distinction and they went to great lengths to make this
14 distinction. And in fact they even agreed with what the
15 trial Court had done in substance but remanded the case
16 back to the trial Court because they made the distinction
17 that that language did not mean that the corpus of the
18 trust passed through the will. They said that language
19 meant that the directions contained in that will were to
20 be used to distribute the corpus of the trust. We have
21 different language. The language in this case says this
22 trust agreement shall terminate upon the death of Willie
23 Dendy Lee Watson and the proceeds remaining in trust shall
24 be distributed to the estate. It doesn't say that it
25 shall be distributed pursuant to the terms of the will.

1 It says it shall be distributed to the estate of Willie
2 Dendy Watson to be disposed of in accordance with the
3 terms and conditions of the will. Very different
4 language. It is a great distinction because if you look
5 at Mr. Townsend's deposition on page 60 of his deposition
6 and I am sorry, I just got the transcript, Your Honor, and
7 I haven't had an opportunity to make copies but I will.

8 THE COURT: Okay.

9 MR. MCCALLUM: Line 17. Did you ever advise Ms.
10 Watson or Ms. Underwood and understand that Ms. Watson was
11 not aware, there is no evidence that Ms. Watson was aware
12 that this trust was being created. The testimony was that
13 Ms. Underwood, taking the power of attorney, went to Mr.
14 Thompson's office and had the trust done. So in that
15 context I asked, did you ever advise Ms. Watson or Ms.
16 Underwood that because the will was cited as being the
17 distribution for this trust that the will could be
18 modified by codicil?

19 Answer. I think I told Ms. Watson, as long as she
20 had her faculties could change her will or modify it.

21 Question. And you told them at the time that the
22 irrevocable trust agreement was drafted?

23 Answer. I feel certain I did because I had to
24 discuss the fact that I had in preparing the trust to
25 designate the beneficiary, an ultimate beneficiary, it

1 couldn't just be left hanging in the air.

2 Question. But could you, I am sorry, but you could
3 in fact have taken a look at the last will and testament
4 that had been executed in your office some three years
5 prior and actually tracked the language out of the will
6 and made that to be the contingent distribution of the
7 trust property, couldn't you?

8 Answer. That would have taken away Ms. Watson, I
9 mean Ms. Watson's right to make a change to her will which
10 was not my intention.

11 Your intention was just to take away her right to be
12 able to control her property in any way other than through
13 her will?

14 My intention was to set up an instrument that would
15 protect her if something happened to her attorney in fact
16 whom she had expressed a great deal of confidence in to
17 me.

18 So it is clear that even Ms. Underwood, as the power
19 of attorney, having explained to her that the codicil of
20 the will could change the beneficiaries of the trust.

21 MR. BRACKETT: Object, Your Honor, that is not what
22 that says. And I would object to his interpretation of
23 that.

24 MR. MCCALLUM: I will make a copy and it says what it
25 says, Your Honor, and it can be interpreted any way the

1 Court feels is appropriate. I think it is very clear that
2 Mr. Thompson could have very easily set forth the
3 beneficiaries directly as set forth in that will that he
4 admits he had a copy of in his office. He didn't, he left
5 it to the estate and that is critical, Your Honor, the
6 fact that the corpus will pass to the estate. The trust
7 nor the power of attorney can control the estate. The
8 only thing that can control the estate is the last will
9 and testament. And that very clearly is modified by this
10 codicil. Therefore we have to look, not at snapshooting
11 time but we have to look at who the actual ultimate
12 beneficiaries of this trust are. The only person who has
13 control of her estate is Ms. Watson. Nobody else, not by
14 virtue of an irrevocable power of attorney, not by virtue
15 of an irrevocable trust, does anybody else have control of
16 her estate. She has expressed her intentions with regard
17 to that estate, she has done so properly in a valid
18 document. And even if the Court should determine that the
19 estate is not the true party in interest, the beneficiary
20 of that estate certainly is. And Ms. Sherry Long has
21 provided the Court with an affidavit as to her position on
22 that as the beneficiary. Therefore, Your Honor, we
23 believe that even Wheeler v. Queen which is the case that
24 is clearly most relied upon by the defendant in this case
25 and when you read that case carefully they say, in

1 conclusion, we agree with the trial Court that the trust
2 corpus passed to the petitioner upon Ms. Wheeler's death.
3 However, we remand to the trial Court with the
4 recommendation that it altered the language of its
5 judgment to clarify that the trust corpus did not pass
6 under Ms. Wheeler's will but it passed according to the
7 1990 trust deed whose terms included provisions of the
8 1986 will incorporated therein by reference. Perhaps it
9 is a little more than schematics but we would clarify that
10 what survived in revocation of all other wills and
11 codicils by the 1992 will was not a will but rather the
12 original amended trust deed. We are not seeking to amend
13 the terms of the trust, what we are doing is saying that
14 the estate is the ultimate beneficiary, the beneficiaries
15 of the estate agree with the settlor and the lifetime
16 beneficiary that there is no longer a reason under
17 62-7-411 for the trust to remain in existence and seek the
18 Court's approval to terminate the trust.

19 THE COURT: All right. I would like to scan that
20 language of that deposition and send Mr. Brackett a copy.

21 MR. BRACKETT: It is attached. Mr. Townsend's
22 deposition is attached as exhibit 5 to the return. It is
23 in there.

24 THE COURT: Okay.

25 MR. BRACKETT: Your Honor, the language of the trust

1 says that upon termination the trust assets will be
2 distributed to the estate to be governed by the terms of
3 the last will and testament dated October 5, 2006. The
4 trust instrument cannot control the probate of the estate,
5 it just can't. Mr. McCallum said so, I agree with that.
6 In order for the disposition of the assets to work out the
7 way he suggest, that means that that part of the trust, it
8 says to be disposed of in accordance with the terms and
9 conditions of her last will and testament dated October 5,
10 2006. That term gets written out of the trust. It is as
11 if it is not there. All he is saying is, the estate, the
12 beneficiary trust pay it over to the estate. Whatever
13 will governs the probate estate, we know the trust can't
14 serve in that capacity, so whatever will governs the
15 probate estate then governs the disposition of the trust
16 assets. That is not the intent of the trust. When he
17 says that they don't want to amend the trust, that is
18 exactly what they are doing.

19 THE COURT: He don't want to amend, he wants to
20 cancel.

21 MR. BRACKETT: Well, he has got to amend it before he
22 can cancel it. That is the problem. There were in
23 existence on the date of trust creation that pool of
24 beneficiaries. He now wants to alter the trust to reduce
25 that number and to change the identity of the people who

1 would otherwise get the trust, who would be entitled to
2 get the trust assets upon the termination of the trust.
3 That is the ultimate objective of the plaintiff in this
4 case. Before she can terminate she has to modify. Either
5 case requires the consent of all of the beneficiaries and
6 they don't have it.

7 MR. MCCALLUM: Your Honor, I don't know how much more
8 clearer it could be. On line 12, page 61 of Mr.
9 Thompson's deposition.

10 THE COURT: What page?

11 MR. MCCALLUM: Page 61, line 12.

12 But that would have taken away Ms. Watson, I mean Ms.
13 Watson's right to make a change to her will which was not
14 my intention.

15 I don't know how more clearly the intention could be.
16 And he says that in the context of his discussion with Ms.
17 Underwood who was acting under the POA as the settlor.

18 MR. BRACKETT: But we don't claim, Your Honor, that
19 Ms. Watson doesn't have the right and ability to change
20 her will. She could have written a new will every day,
21 after April 2nd of 2009 she could have changed her will
22 every single day after that. But the point being, the
23 trust remainder beneficiaries would have still been
24 determined by the terms of the October 5, 2006 will as it
25 existed on the date the trust was created. Changing the

1 will doesn't change the trust. That is the point of the
2 argument, it can't. It is incorporated by reference. It
3 is just a shorthand way that people do it. It is a
4 doctrine that has been recognized by the Courts forever.
5 So the fact that he didn't just take it out, each
6 individual line or each individual name doesn't matter.
7 They just took it out in order, took out that portion of
8 the will to name the remainder beneficiaries incorporated.

9 MR. MCCALLUM: And I agree one-hundred percent with
10 Mr. Brackett if that is what the trust said. But it
11 doesn't. The trust says that the corpus is to pass to the
12 estate, it does not say that the corpus is to pass
13 pursuant to the terms of that will.

14 MR. BRACKETT: That is the language he keeps leaving
15 off, is the second part of that sentence in that trust
16 provision.

17 THE COURT: I understand both of y'all's argument. I
18 am going to read a little while. I am on the issue, I
19 have got that. I will, let me read over this stuff a
20 little bit and I will let you know. That is what I am
21 going to do.

22 MR. MCCALLUM: Thank you.

23 MR. BRACKETT: Thank you. Your Honor, while we are
24 here, there is a motion that we have recently filed that
25 has to do, by the way, with the deposition of Mr.

1 Townsend's and with another attorney. And it is going to
2 impact how this case progresses. At their depositions
3 matters of attorney/client privilege came up and were
4 asserted and certain questions were not answered. I have
5 sort of spelled those out in the motion. I don't want to
6 argue it here, I am just trying to see if there is some
7 way we can get this thing on a roster for a hearing pretty
8 soon so we don't have to wait a long time because it does
9 affect how this case progresses. I don't know if you have
10 any control over that or not.

11 THE COURT: How long will the motion take do y'all
12 think?

13 MR. MCCALLUM: Depending on how you rule on this it
14 may not be necessary at all.

15 THE COURT: I could guess you were going to say that.

16 MR. MCCALLUM: And to be honest with you, Your Honor,
17 if you recall you granted us \$5,000.00 dollars out of the
18 trust for the prosecution of this case.

19 Straightforwardly, Your Honor, we are out of money. We
20 are long out of money. And I hate to spend a bunch more
21 money while waiting your ruling.

22 MR. BRACKETT: We are not going to do anything until
23 you rule. There is really nothing to do in the interim.

24 MR. MCCALLUM: It is going to take a bunch more
25 depositions.

1 THE COURT: I will make a note in the file that as
2 soon as the ruling is made on this we need a subsequent
3 motion hearing scheduled. And most likely you are also
4 asking for a little more money from the trust.

5 MR. MCCALLUM: It is going to be significantly more
6 money I am afraid.

7 THE COURT: All right.

8 MR. MCCALLUM: Thank you, Your Honor.

9 MR. BRACKETT: Thank you, Your Honor.

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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State of South Carolina)
) Court of Common Pleas
County of Laurens) 2010-CP-30-116

Willie D. Watson)
 vs.) Transcript of Record
)
Nancy Carol Underwood,)
 individually and as putative)
 trustee of the Willie D.)
 Watson Trust; John H. Watson,)
 individually and as putative)
 trustee of the Willie D.)
 Watson Trust; and Future and)
 Potential Heirs of Willie D.)
 Watson;)
 Defendants)

August 26, 2011
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Judge.

A P P E A R A N C E S:

Edward McCallum, Esq.
Attorney for the Plaintiff

B. Michael Brackett, Esq.
Attorney for the Defendant

Joy E. Holston

Court Reporter

1 THE COURT: Tell me, we did discuss in-chambers, who
2 filed first?

3 MR. MCCALLUM: Mr. Brackett did, Your Honor.

4 THE COURT: I believe Mr. Brackett will proceed.

5 MR. BRACKETT: Thank you, Your Honor, Mike Brackett
6 representing the defendants. This is a Laurens County
7 case that we pretty much appreciating you agreeing to hear
8 today here in Newberry. Your Honor, just a couple of
9 housekeeping matters. We are here on cross motions for
10 summary judgment so I need to make clear for the record
11 exactly what submissions are being made or have been made
12 that would be before the Court for purposes of these
13 motions. Previously submitted to the Court at a prior
14 hearing was the sealed deposition transcript of Richard
15 Townsend's, lawyer in Laurens. Since that time we have
16 reopened his deposition, he gave a second, had a second
17 session I guess you would say and I would now hand up to
18 the Court the sealed transcript of Mr. Townsend's, the
19 completion I guess of his deposition. I would also offer
20 to the Court a couple of things that are already in the
21 record, that would be the affidavit of Nancy Underwood and
22 the affidavit of John Watson. Those were submitted to the
23 Court previously as exhibits to the memorandum of law in
24 the prior proceeding in Laurens. I have copies if the
25 Court would like to have those but they are already in the

1 record.

2 MR. MCCALLUM: Your Honor, I would just to save a
3 little time. I am not aware there being any significant
4 factual disputes that the Court may have to inquire into.
5 I haven't heard Mr. Brackett's full argument. But I think
6 we all pretty much agree on the sequence of events and
7 what happened.

8 THE COURT: Having heard the arguments several times
9 I am pretty aware of how this thing originated.

10 MR. BRACKETT: Pardon me?

11 THE COURT: I think I am fairly apprized of how this
12 thing originated and how we got here.

13 MR. BRACKETT: Just for the record, because sometimes
14 the Appeals Court, if anybody takes it to appeal they get
15 a little picky about what is before the trial Court. And
16 so I just, I am touching all of the bases if you know what
17 I mean.

18 THE COURT: Yes, sir. No problem.

19 MR. BRACKETT: We would also ask the Court to
20 consider its prior order of October 1, 2010 in this case.
21 The last will and testament of Ms. Watson dated October 5,
22 2006. The durable power of attorney signed by Ms. Watson
23 October 5, 2006 and the trust agreement that is in dispute
24 in this case dated April 2nd, 2009. All of those have
25 been placed in the record in prior proceedings.

1 MR. MCCALLUM: Yes, Your Honor, the only objection or
2 comment I might have about those is I think the Court is
3 going to consider the October 2006 will and it also needs
4 to have at least available for its consideration the
5 codicil to that will which was also previously entered
6 into the record in prior arguments.

7 THE COURT: I think that would be appropriate.

8 MR. BRACKETT: Your Honor, the defendants motion ask
9 that the Court rule as a matter of law that the power to
10 create an irrevocable trust is a power that a principal
11 may delegate to an agent as long as it is expressly
12 authorized in writing in the power of attorney. The
13 plaintiff's cross motion for summary judgment is, based on
14 our conversation in-chambers is not quite according to Mr.
15 McCallum, is not quite the reverse of my motion but is
16 very closely related to it. But in this particular case
17 and I have made available to the Court previously my
18 memorandum of law in this case. And before I forget I
19 have, and I sent it by computer, I have now signed one and
20 will pass up an original for the Court's file.

21 MR. MCCALLUM: To not interrupt Mr. Brackett but it
22 is our reply and brief in opposition and our cross brief.

23 THE COURT: And I told both of y'all in-chambers that
24 I have reviewed the memorandum this morning in-chambers.
25 I came in very early this morning before everyone was out

1 here, it was nice quiet time.

2 MR. BRACKETT: Your Honor, the real thrust of my
3 argument is contained on, starting on page 7 of the
4 memorandum dealing with powers with respect to trust is
5 the general law as set out in Treatise, (phonetic), and
6 several cases that the power to create a trust, whether
7 revocable or irrevocable is a power that may be delegated
8 by a principal to an agent if it is expressly authorized
9 in writing. Now, there is no South Carolina case that
10 says that but there is a South Carolina case that speaks
11 to that same general subject on the question of whether an
12 agent may make a gift of assets that have been placed in
13 the agent's care and possession. That is the Fender case.
14 And South Carolina has adopted in the Fender case the rule
15 that an agent may not make a gift to himself or to third
16 parties of the principal's assets unless that authority is
17 expressly set forth in writing. So the idea that an agent
18 under a power of attorney could create a trust which
19 according to the law as I have cited in irrevocable trust
20 is a gift, it is a form of gift. So the fact that this
21 particular trust in this case, I am sorry, this particular
22 power of attorney in this case authorizes expressly both
23 the creation of a trust, an irrevocable trust and also
24 allows the agent to make gifts to members of the family
25 including to the agent herself, those two provisions

1 taking together pretty much covers the waterfront in this
2 case. And would be consistent with law from other
3 jurisdictions that the agent could create an irrevocable
4 trust, fund that trust which would be the equivalent,
5 functional equivalent of a gift because authorized to do
6 so by the power of attorney. We are just asking the Court
7 to rule as a matter of law that that is permissible, that
8 the law would permit that sort of transaction if in
9 writing. Now, I can wait until after Mr. McCallum argues
10 to mention issue number two which is the deed since he
11 raised that.

12 THE COURT: I think I will let you respond to that
13 and let him go on his sufficiency of the deed or the
14 grantor, grantee and the deed.

15 MR. MCCALLUM: Your Honor, we don't deny that a power
16 of attorney has the ability to create a trust revocable or
17 irrevocable when that power of attorney grants that
18 authority to the holder of the power of attorney which is
19 in this power of attorney document that is before the
20 Court. That's not the argument. The argument is or the
21 question that is really before the Court is what duties
22 does the power of attorney have in exercising that
23 authority. If I grant Mr. Brackett my power of attorney
24 to create an irrevocable trust, call him up or ask him to
25 come to my office and say, Mike, I am going out of the

1 country, I want to create an irrevocable trust for my
2 children, here are the assets I would like for you to put
3 in it, give them a power of attorney allowing him to do
4 that there is not an issue here. That is well within the
5 grant of the power of attorney. That is not the case that
6 is before you. There is absolutely no dispute of the fact
7 that Ms. Watson, the owner of the corpus in the trust had
8 no knowledge that the trust had been created, was going to
9 be created or what properties were placed in them. And as
10 soon as she found out that this had occurred she revoked
11 the power of attorney and shortly thereafter filed this
12 action for recovery of her property which includes without
13 argument her home to the extent the Court may decide this
14 deed issue today, her automobile and all of her cash
15 assets at the time, all of her CD's is what they were.
16 She had a very minimal amount of money that came in
17 because of her social security. But the vast bolt of her
18 estate, everything that she owned was placed into this
19 trust. Your Honor, a power of attorney creates an agency
20 relationship and as an agency relationship there is a duty
21 there, there was a duty, both a fiduciary duty as we call
22 it for shorthand but what we are really talking about is a
23 duty of loyalty. And a principal may be authorized to do
24 as but the principal is required to only act, I am sorry,
25 the agent is required to only act within the authority and

1 the scope that is granted but also keeping the principal
2 informed of the agent's acts and the nature of
3 transactions that the agent is engaged in. Your Honor, we
4 have searched the entire country to the best of our
5 ability and we have found one case that even comes close
6 to this situation. We cited it in our brief, Gagnon v.
7 Coombs. And that appears at 39, Massachusetts Appellate
8 Court, 144, it is a 1995 case. Slightly different factual
9 scenario as Mr. Brackett very ably pointed out in his
10 brief. But what happened in the Coombs case was power of
11 attorney was granted, had very similar provisions. The
12 owner of the property, the grantor of the power of
13 attorney entered into a contract of the sell of the
14 property to a third party. When the power of attorney
15 heard about this potential sale they immediately
16 transferred the property into an irrevocable trust. Upon
17 learning of it the owner, the true owner of the property,
18 the grantor and the power of attorney remanded the
19 property to be conveyed back out of the irrevocable trust,
20 the litigation ensued. That is a very similar situation
21 to what we have here. As soon as Ms. Watson found out
22 that her property had been transferred and understand that
23 Ms. Underwood, the power of attorney, was her primary
24 caregiver at that time. Ms. Watson was in a nursing home
25 but there has been no allegation that Ms. Watson was ever

1 incompetent or did not have the ability to conduct her own
2 affairs. That has never been alleged by anybody and she
3 remains competent today. But as soon as she found out
4 about it she attempted to get her property back, wrote
5 letters demanding her property back and this litigation
6 likewise ensued. The Massachusetts Court found that the
7 agent had violated her duty of loyalty to her principal by
8 conveying the principal's property to herself as trustee
9 in the irrevocable trust by refusing to obey the
10 principal's direction that she reconvey the property to
11 the principal. And I think that is what is key here. The
12 power of attorney is an instrument between a principal and
13 an agent that the principal can direct, can order the
14 agent to comply with. What Ms. Underwood has done here is
15 only half of it. She has taken advantage of the power
16 that she has been granted but she has refused to obey the
17 directions that she is given in exercising that power.
18 The Court also stated that there was a breach in the duty
19 of loyalty by failing to inform the principal of all
20 relevant facts with respect to the transfer of the
21 property and by self dealing with respect to the
22 conveyance. And that therefore the conveyance was
23 revocable and the agent was to reconvey the property to
24 the principal. That was the Massachusetts Court's
25 resolution of the issue. Talking about the Restatement,

1 Second of Agency Section 119, comment A. An agent is
2 authorized to do and to do only what is reasonable for him
3 to infer that the principal desires him to do in the light
4 of the principal's manifestation and the facts as the
5 agent knows or should know them at the time that he acts.
6 Again, I think it is very important that the Court
7 understands that Ms. Watson has never demonstrated any
8 kind of incompetence. All the power of attorney had to do
9 here was say, Mom, I want to put this in the trust, I
10 think it is in your best interest to put it in the trust
11 and here is how it will work. You will get it for life
12 and afterwards it will be distributed to your estate
13 pursuant to this will. If Mom had said yes then we
14 wouldn't be here. But here the power of attorney is
15 acting on her own and there is a long history of sibling
16 rivalry between the two sisters involved in this case.
17 Ms. Sherry Long who is seated to Ms. Watson's left and her
18 sister, Ms. Nancy Underwood, POA and the trustee together
19 with her brother, John Harrison, John Watson. Your Honor,
20 what this in effect has done, if you read that trust and
21 read it carefully it has taken all of Ms. Watson's assets,
22 all of the assets that she inherited from her husband, it
23 has put them into this trust, the earnings of the trust
24 support her for life. She can invade the principal of the
25 trust but only to the extent that her daughter allows her

1 to who is her agent under the power of attorney that she
2 no longer can direct because she independently serves as
3 the trustee. And ultimately then leaves them not two
4 individual beneficiaries. But leaves, read the trust,
5 leaves it to the estate to be distributed pursuant to a
6 will dated October, 2006. It is a very, very important
7 point. It leaves it to an estate. The only person that
8 can control the disposition of property from the estate is
9 the decedent by a testamentary instrument and that is by a
10 will. In this case what the power of attorney has done is
11 not just transfer property into a irrevocable trust but
12 has gone even a step further than that. What this power
13 of attorney has done, is this power of attorney has
14 created an irrevocable trust that effectively prevents Ms.
15 Watson from creating a will. All of her substantial
16 assets, virtually everything she owns of any value is now
17 going to an estate that is locked in by the terms of this
18 trust to a particular distribution pursuant to a will.
19 She don't have the power to effectively revoke that will.
20 And as our brief points out, from the common law all the
21 way through the code only a decedent has the right to
22 write a will and the decedent, during their lifetime, has
23 the absolute right to revoke a will and write a new will
24 assuming that they are competent. So in effect, now maybe
25 not in form and I agree with Mr. Brackett, not in form but

1 in effect what Ms. Watson has done is drafted, Ms.
2 Underwood has done is drafted Ms. Watson's will for her
3 and locked her into a will. And in fact if you recall our
4 prior argument and I am not trying to reargue that point,
5 the Court has made a ruling and depending on how this case
6 comes out we may appeal or not appeal that ruling at some
7 point down the road. But the Court determined that, if I
8 am understanding the Court's prior order correctly, that
9 the beneficiaries of that will have now gained an interest
10 in this trust. You recall Ms. Watson executed a codicil
11 from that will naming Sherry Long as the sole beneficiary.
12 Ms. Long and Ms. Watson both agreed to terminate the
13 trust, the Court ruled that they couldn't terminate the
14 trust because the other beneficiaries of the trust had a
15 vested interest in the trust and all of them would have to
16 agree to terminate the trust. Now, not conceding the
17 argument, not arguing with the Court, we don't believe
18 they did, we believe the estate got the interest. The
19 estate was the ultimate beneficiary of the trust. What
20 this has effectively done is prevented Ms. Watson from
21 being able to exercise her absolute right to dispose of
22 her property at the time of her death. Further, Your
23 Honor, there is another point that I just want to bring up
24 so it is on the record. When the probate code was passed
25 the legislature saw fit to provide a specific code section

1 and I have cited it in my brief. I apologize, I don't
2 know it off the top of my head here. 62-2-509 and it was
3 amended in 2005. That code section specifically provides
4 for the incorporation of referenced documents into a will.
5 But it leaves out trust, it specifically leaves out trust.
6 And there is no corresponding code section in the trust
7 sections which are almost parallel that provides for the
8 incorporation of documents by reference. Once that trust
9 says that the ultimate beneficiary is the estate it is our
10 position that that is it. The provision that says to be
11 distributed pursuant to the October, 2006 will is invalid
12 because there is no South Carolina law that provides for
13 the incorporation of a referenced document into a trust
14 instrument; especially not when it is something that the
15 power of attorney that created the trust doesn't have the
16 authority to do to start with, i.e., power of attorney can
17 not write a will for its principal. South Carolina law
18 provides that there are certain almost unalienable rights
19 to do things in your own proper person, get married, get
20 divorced, write your will is one of those things. If the
21 Court should determine that it is appropriate for a power
22 of attorney to reference a will as being the document that
23 provides the control and distribution of an irrevocable
24 trust corpus it is really a significant change in the law
25 because it provides that an agent can determine the

1 ultimate distribution of a person's individual property
2 and real estate. Your Honor, we think lastly that South
3 Carolina law is clear specifically section 27-7-10 of the
4 South Carolina Code. Specifically allows transfers of
5 real property by deed from one person to another. The
6 deed that is at issue here which I think has previously
7 been submitted into the record for the Court specifically
8 provides that the property is being granted to Willie D.
9 Watson irrevocable trust. That is in violation of the
10 code section that provides that deeds can transfer
11 property from one person to another or to a series of
12 other persons. There is no such person under the law as
13 the Willie D. Watson irrevocable trust and therefore the
14 grant fails. Now, anticipating Mr. Brackett's argument
15 that this is nothing more than a scribner's error, that
16 the Court can reform the deed, that the deed can be
17 modified because the intent of the parties is clear. I
18 think that is a real question. The intent of the parties
19 is clear. The intent of the party is the intent of Ms.
20 Watson. She is the owner of the property prior to this
21 transaction. She never expressed the intent to transfer
22 this property. She never expressed an intent to her power
23 of attorney to transfer this property. There is
24 absolutely no evidence in the record that the power of
25 attorney ever, going back to the Gagnon case, kept her

1 informed of the relevant facts of the transaction. Didn't
2 come to her and say, Mom, I want to put your house into
3 this trust. So the Court's first question has to be,
4 whose intent are we going to look at when we determine the
5 intent of the parties to this deed. Are we going to look
6 at the authorized but undirected power of attorney. And
7 we are not talking about here, Your Honor, let's be very
8 clear. We are not talking about some third party here
9 that has relied on the power of attorney. Now if Ms.
10 Watson needed money for a nursing home and Ms. Underwood
11 under the power of attorney had mortgaged the property in
12 order to obtain funds to benefit her mother at the nursing
13 home and the bank relied on the power of attorney that
14 would be a different case. But as Mr. Brackett stated in
15 his argument this transfer of the property into the trust
16 is a gift. And it is a gift to Ms. Underwood herself and
17 her brother both as trustees during Ms. Watson's lifetime
18 and ultimately if the Court should uphold the apparent
19 language in the trust to her and her lineal descendants
20 and her brother and his lineal descendants depending on
21 who is alive at the time of Ms. Watson's death. So there
22 is no third party that is giving any reliance on the power
23 of attorney's actions here. There is nobody that will be
24 damaged by the Court setting aside this conveyance, by the
25 Court setting aside this trust. There is no damage. The

1 only person that has been injured here is Ms. Watson, very
2 bluntly, having to pay for both sides of this litigation.
3 Not only has she, of course, she has incurred my fees and
4 cost but it is her money that is paying Mr. Brackett's
5 fees and cost out of the trust. And the only distribution
6 that has been made out of that trust has been the interest
7 that is earned on the CD's and what this Court has ordered
8 the trustee to assist with my fees, very early on in the
9 litigation. So the Court setting aside these transfers
10 and setting aside this trust does no injury to anyone.
11 Your Honor, for those reasons we believe that we are
12 entitled as a matter of law for the trust to be set aside
13 because it was created through a breach of the duty of
14 loyalty and fiduciary duties that Ms. Underwood had under
15 the power of attorney. Secondly, we believe that the
16 trust should be set aside because of the improper language
17 in the ultimate distribution clauses of the trust that
18 effectively prevents Ms. Watson from revoking or drafting
19 a new will. And finally should the Court rule against us
20 on those issues we believe that at least the house should
21 be clearly reconveyed by the Clerk of Court back to Ms.
22 Watson or that deed, order that deed be struck from the
23 record because of the improper grantee subjects.

24 THE COURT: Okay. Mr. Brackett.

25 MR. BRACKETT: Your Honor, most of Mr. McCallum's

1 argument goes beyond the scope of this hearing. I
2 mentioned in my brief that I thought that was going to
3 happen. The motion itself is limited to the question of
4 whether the law permits a principal to delegate the
5 authority to an agent if done in writing. That is all.
6 That would be limited to an issue of law. What Mr.
7 McCallum is doing is going one step beyond that now and
8 claiming the power, even if it exist, has been misused in
9 this case because the agent was somehow acting under ill
10 will or some other self interested motivation. Those are
11 disputed issues of fact in this case. So, again, I am
12 trying to make sure the Court understands we are limited
13 to the question of whether the law says it can be done.
14 And that is it. Now, when, for instance when Mr. McCallum
15 says Ms. Watson had no foreknowledge of the creation of
16 the trust. It is not required. If she wanted that that
17 could have been put in the power of attorney, it wasn't.
18 She could have placed whatever conditions on it she wanted
19 to place, she did not. This question of her competency
20 and whether or not she was competent, competency has
21 nothing to do with this. No one has ever alleged that she
22 was incompetent. This is not a springing power of
23 attorney that may only be used once incapacity is shown.
24 It is just not what it is. She was not told afterward
25 about it, that is a disputed issue of fact, whether she

1 was told about it or not immediately after the creation of
2 the trust. Mr. McCallum says there is a duty to keep the
3 principal informed. Disputed question of fact, was she
4 informed about the -- and there is no requirement in the
5 power of attorney that she be given forewarning or she be
6 told about it or have to agree to it; anything like that.
7 It is a very broad, very direct grant of authority to make
8 gifts to certain people and to create trusts and to use
9 her assets to fund the trust. That is what she said. Now
10 the opinion from the Massachusetts Court, the Gagnon
11 opinion, however they pronounce that, opinion. That power
12 of attorney in that case had no gifting provision. That
13 was the problem with everything that happened in that
14 case, everything spun off of the fact that there was no
15 gifting provision and the transaction that the Court was
16 critical of was the fact that the agent, without the
17 gifting provision, and with knowledge that that real
18 estate asset had been placed under contract by the
19 principal, nevertheless established the trust and deeded
20 that asset to the trust naming herself as a beneficiary.
21 That violated in and of itself two, two particular duties.
22 One, she was basically placing her principal in breach of
23 contract by deeding away the title when she knew there was
24 an equitable interest in it to a buyer. Okay. And so she
25 was basically snatching that asset away from the contract

1 meaning that the principal could not carry out his
2 contractual obligation. Well obviously that is a no, no.
3 We don't have anything like that in this case. Secondly
4 the fact that she created the trust and benefited from it
5 personally as a beneficiary, the trust, sure that was a
6 gift, she did that. And that power of attorney said you
7 can't make gifts or I think more accurately it did not
8 address gifts at all. So the facts of that case are
9 totally different than what we have here. And then Mr.
10 McCallum said the agent refused to reconvey the property
11 to the principal when he asked for it back. That was in
12 light of the fact that she had taken it with knowledge of
13 the contract. And he said, I've got to have it in order
14 for me to be able to honor my obligation on a contract, I
15 have got to have the title back. You need to get it back
16 so I can do that and she refused to do it. Again, a
17 circumstance totally different from what we have here.
18 Now, this idea of the effect of this trust removes all
19 control of the property from Ms. Watson and that she
20 can't, she can't direct the ultimate disposition of that
21 property, that is true, it is exactly what it does. But
22 there is nothing at all impermissible about it because she
23 authorized it. Now, this transaction could have been
24 structured in a different way. The agent could have said,
25 well, I am not going to fool with a trust. I am just

1 looking at the gifting provision and I am just going to
2 use that to accomplish the same purpose. So I am going to
3 convey these assets directly to family members and reserve
4 to Ms. Watson a life estate. She can use it during her
5 life, when she dies the title vest in whoever owns the
6 remainder interest, it could have been done that way. It
7 would have been a little more cumbersome, it would have
8 required more in the way of legal instruments, lawyer fees
9 and all of that. That would have removed her control of
10 the ultimate disposition but again it was authorized. She
11 said you can make gifts of my assets to my family
12 including to the attorney-in-fact or quite frankly the
13 agent could have just given it away and not even reserved
14 a life estate because a power of attorney allowed that,
15 make a gift outright, that could be done. So this idea,
16 this idea that by creating this trust this is somehow a
17 very unusual vehicle by which to snatch away from Ms.
18 Watson the ability to control her assets, nothing at all
19 unusual about it. There were two or three ways it could
20 have been done all absolutely consistent with the
21 authority in the power of attorney. Now, whether there
22 was a proper or improper motivation for having done it by
23 any method, disputed issue of fact. Again, that goes
24 beyond the question that is before the Court today. The
25 argument is, it impermissibly allows the agent to

1 determine the future disposition of it, absolutely it does
2 because she granted the authority for the agent to
3 determine the final disposition of those assets. It
4 happens all the time. Powers of attorney include that
5 language all the time. Prevents from Ms. Watson from
6 effectively creating a will, absolutely not. She can
7 write a will today, she can write one every day from today
8 to the end of her life, she can change it however she
9 wants to and she can leave whatever assets are still
10 titled in her name to whomever she wishes to leave it.
11 The fact that these particular assets that went into the
12 trust are no longer titled in her name, that is true. She
13 cannot by a will affect those assets which is the same
14 result if the assets had been given away, absolutely, or
15 if the remainder interest had been deeded away and retain
16 a life estate, she couldn't control that by will either.
17 The fact that the probate code allows incorporation by
18 reference in the code section Mr. McCallum cited but a
19 similar provision is not contained in the trust code means
20 absolutely nothing. Probate code deals with wills, trust
21 code deals with trust. Trust code provides that if there
22 is a subject not specifically addressed in the trust code
23 common law continues on that subject. So if the trust
24 code doesn't speak in terms specifically incorporation by
25 reference then the common law on that subject continues to

1 apply and we argue that the prior brief in the case has
2 all kinds of law in it about incorporation by reference.
3 So there is nothing at all evil or sinister about that.
4 The deed requirement, I have given the Court the two cites
5 I have been able to find in the appellate opinions about
6 what happens when a grantee is identified as a trust
7 instead as the trustees. And they are, in that particular
8 case, if the trust is in existence at the time you can't,
9 you cannot name a nonexistence trust as a grantee but if
10 the trust is in existence at the time the deed is signed
11 that is okay, the deed is not void for lack of a properly
12 named grantee. So that simply is not a problem because
13 the Courts will bend over backwards to uphold deeds if at
14 all possible. And so here we have the evidence shows that
15 that deed was signed on the same day the trust was created
16 and all the assets were then funded or placed into the
17 trust, all of that was a part of a single transaction in
18 Mr. Townsend's office. The intent is clear but that is
19 the idea, we are going to create this trust, we are going
20 to park these assets in that trust to protect those
21 assets, disputed issue of fact I admit. And that was the
22 nature of that transaction. And so that deed is not void
23 as a matter of law because it names a trust as the
24 grantee. Finally Mr. McCallum argues that, well Judge if
25 you set all of this stuff aside and put all of these

1 assets back over there no one is hurt, it doesn't affect
2 anybody. Well, yes it does. There are remainder
3 beneficiaries in that trust, grandchildren,
4 great-grandchildren whose interest my client also
5 represents, my clients as the cotrustees, they have to
6 protect the interest of all of the minor beneficiaries.
7 Right now they have a vested remainder interest if you
8 will in whatever assets remain, it would remain in that
9 trust that would be distributable after Ms. Watson's
10 death. And so to go back now and undo this would be to
11 prejudice those property interests. So it simply isn't
12 true that the only interest at stake here is Ms. Watson's,
13 no sir. This is a case of buyers remorse. This is a case
14 where the situation that existed in 2006 was such that Ms.
15 Watson wanted her daughter, Nancy Underwood, to serve as
16 her agent. And the fact that Ms. Underwood made decisions
17 that Ms. Watson in 2010 now finds herself in disagreement
18 with doesn't mean she gets a do over. Everything that has
19 happened here she authorized and that is, the laws says if
20 you sign it there are consequences associated with signing
21 these legal instruments. It is not something to be done
22 lightly, that is why you require witnesses and notaries
23 and all of the other stuff. And so when you sign it there
24 are consequences attached to that and so you are giving
25 that agent, as Mr. Townsend said in his deposition, he

1 said I explain to all of those clients who ask for these
2 sorts of documents I tell them the danger associated with
3 it, you are giving people the power to do anything and
4 everything you could do yourself. And so you have to be
5 sure about it and that is what has happened here. Now, if
6 Ms. Watson wants to continue to dispute the motivation
7 behind all of this that is fine, that is her right to do.
8 But as a matter of law nothing about the creation of this
9 trust, based upon the terms of the power of attorney,
10 nothing about that trust, the creation of that trust is
11 void as a matter of law. And that is all we are asking
12 the Court to say at this point. And then of course on the
13 deed we are asking the Court to rule as a matter of law.
14 Again, let me make the record complete here. Mr. McCallum
15 has asked for summary judgment that the Court declare the
16 deed to be void. I am going to move right now for the
17 cross-motion for summary judgment on that very issue and
18 ask that the Court rule as a matter of law that it is not
19 void for having named a trust that has been in existence
20 as the grantee. And so those questions I guess, depending
21 on the outcome, would focus later issues at trial, however
22 those come up. But I would just ask for the flip side of
23 that motion. Thank you.

24 MR. MCCALLUM: Your Honor, you know it is interesting
25 that in Mr. Brackett's argument is that the Court

1 shouldn't divest the grandchildren of the contingent
2 remainder that Mom took from Grandma that Grandma never
3 intended to give them in the first place. All the cases
4 Mr. Brackett cited with regards to the deed issue, the
5 Court goes back and looks at the intent, the intent is the
6 critical issue. And there is absolutely no evidence in
7 the record nor will there ever be any evidence in the
8 record that Ms. Watson had the intent to transfer this
9 property to their trust, it just didn't happen. Mr.
10 Brackett's argument about the powers and the authority of
11 a person holding a power of attorney, he is absolutely
12 right. She has the power, she has the authority but she
13 also has the obligation, the fiduciary obligation, the
14 obligation, one supreme characteristic is that the
15 fiduciary relationship, it is fiduciary in respect to all
16 matters within the scope of the agency. A power of
17 attorney is a different animal, a power of attorney is an
18 agent. And as an agent differs from other fiduciary
19 relationships. It is an agent's duty to obey the will of
20 the principal to respond to the principal's wishes and not
21 to act contrary to the principal's directions. That is
22 out of the Restatement, Second, Agency sections 14, 33 and
23 385. In no event must the agent act contrary to what the
24 principal desires him to do. That is section 33, comment
25 A. You look at page 155 in the opinion that I passed up

1 out of the Massachusetts opinion. Even if the principal's
2 directions amount to a breach of the agency contract the
3 agent still has the duty to do what the principal tells
4 them to do. There is a second part of that fiduciary duty
5 between the agency and the principal. And that is the
6 duty to make full disclosures to the principal of all
7 material facts relevant to the agency. It is a necessary
8 corollary to the fundamental agency obligations of
9 undivided loyalty and utmost good faith. Whatever facts
10 known to the agent but not to the principal may affect the
11 desires or the conduct of the principal the agent must
12 communicate that information to the principal particularly
13 if the agent is engaging in any arrangement adverse to the
14 principal's interest. Divesting her of substantially
15 everything she owns and control of it is clearly adverse?
16 The only thing she can make a will about is a little bit
17 of personal property or clothing, a few pieces of jewelry
18 that she had to recover and her stream of income from
19 social security. What do the grandchildren get that she
20 never intended to give them, three to four-hundred
21 thousand dollars worth of property and liquid assets.
22 Your Honor, the power of attorney is an agent with the
23 duty of loyalty has an absolute obligation to talk with
24 and realize that anything likely to affect the judgment of
25 the principal should be communicated to the principal and

1 they should receive direction from the principal to enter
2 into a particular transaction absent the principal's being
3 incompetent. And that is precisely why we make the
4 distinction in the law between durable and non-durable
5 powers of attorney because if this was a non-durable power
6 of attorney, if Ms. Watson was incompetent Ms. Underwood
7 could not have acted at all. Why, what is the theory
8 behind that. The theory behind that is she is only
9 allowed to do the directions of Ms. Watson. Durable power
10 of attorney was created as an artifice of the law in order
11 to allow a person to care for another, particularly a
12 loved one. Not to divest in their assets, not to divest
13 in their ability to dispose of what they worked their
14 entire life for. If you look at the Gagnon case, Mr.
15 Brackett said that whole case turns on the fact that she
16 transferred it to herself as trustee. Well that is just
17 not, read the case, that is not what the case says. The
18 case does mention that there was some self feeling because
19 she had a potential remainder interest in the property.
20 But that is all the way down in section D or section E of
21 the opinion. Sections A, B, C and D all deal with this
22 relationship between, the agency relationship between the
23 grantor power of attorney and the person who receives that
24 power of attorney. And the person who receives that power
25 of attorney only should act in the way that they are

1 directed to act.

2 THE COURT: All right. I want to read the Gagnon
3 case and I want to review everything that y'all have
4 submitted and I am going to do my best to get y'all an
5 order.

6 MR. MCCALLUM: Thank you, Your Honor.

7 MR. BRACKETT: Your Honor, just a couple of points.
8 The idea that the agent must go back to the principal
9 before making a decision or taking some action is
10 something that is no where found in the law. This power
11 of attorney sets out fourteen specific types of powers.
12 Under Mr. McCallum's theory, before Nancy Underwood could
13 do anything that would affect Ms. Watson's assets she
14 would have to go back to Ms. Watson and say, you know,
15 paragraph nine says that I have the right to execute and
16 file your income tax returns for you. Are you serious
17 about that, may I really do that. Or paragraph twelve
18 says I could go into your safe deposit box and inventory
19 it and take stuff out. Do you really mean that.

20 THE COURT: I think his primary point if I am not
21 missing it is, authority to create the trust, yes.
22 Authority to create a revocable trust, yes. The authority
23 to make a deed, yes. The authority to make an irrevocable
24 trust which names a specific will which can never be
25 revoked, changed or altered, no. I think that is his

1 argument and I think yours is the converse. All the
2 authority to do is exactly that. I think in all terms on
3 that last step is the will dated October of '05 locked in
4 or is the will at the time she dies, the one that is
5 controlling which hasn't been written yet. I think that
6 is the exact issue.

7 MR. BRACKETT: That gets to the incorporation by
8 reference because you can't incorporate a document not in
9 existence at the time. We talked about that before. And
10 so the agent using the authority given to her under the
11 power of attorney set it up and named who the remainder
12 beneficiaries were going to be and they were the same as,
13 this idea that she never intended her grandchildren to get
14 this, that is not true because they were named as
15 designees in the will. Okay.

16 THE COURT: Her grandchildren aren't fighting.

17 MR. BRACKETT: That is right. And whose intent is it
18 with respect to the deed, he says the intent to convey
19 title has to be the intent of Ms. Watson. No, the intent
20 is the intent of the agent who is then wearing the agents
21 hat acting on behalf of the principal. That is whose
22 intent.

23 MR. MCCALLUM: I would agree if there was a third
24 party that was dealing with--

25 THE COURT: I understand y'all's argument. I am with

1 you, I think I get it.

2 MR. MCCALLUM: If I may make one more very quick
3 point. What Mr. Brackett says is not truly accurate. The
4 trust does not name the beneficiaries of that will as
5 being the remainder of the beneficiaries trust. The trust
6 got named the estate. And then it says the estate shall
7 distribute pursuant to this will. And that is a big
8 distinction. If it had just said remainder beneficiaries
9 are the people listed in the will I can buy that. But
10 that is not what it says. It says the estate and then we
11 are not only going to control her assets during her
12 lifetime, we are going to control what her estate does.

13 THE COURT: Okay. I believe I understand y'all's
14 exact positions.

15 MR. MCCALLUM: Thank you, Your Honor.

16 MR. BRACKETT: One clarification, Your Honor. This
17 case is on the trial roster for September the 12th, I
18 think.

19 THE COURT: We have a date certain case suppose to
20 go. The attorney is unavailable during winter and spring
21 months but I don't anticipate it coming up. If that case
22 falls through potentially it is there. But that is where
23 we stand on the September week.

24 MR. BRACKETT: I don't want to go to the time and
25 effort for gearing up for trial if you need more time. I

1 don't know where this thing is going, I am not trying to
2 rush anybody or anything of that nature. I just don't
3 want to have to subpoena witnesses and get things prepared
4 and it turns out this issue hasn't been resolved.

5 THE COURT: I will put y'all on notice on that.

6 MR. MCCALLUM: Your Honor, this is probably going,
7 you may want to ask for a day certain. This thing is
8 going to last for three or four days.

9 THE COURT: If we are going to do a day certain I
10 like giving six to eight weeks notice so y'all know it is
11 coming. I am not going to put y'all on short notice on a
12 three day, four day trial. I don't like that. Y'all are
13 first up next week on Thursday afternoon. I didn't like
14 that and I am not going to put y'all into that. You have
15 got a day and a half day car wreck case, yes, I am going
16 to do that to you. This is a more to it than that.

17 MR. MCCALLUM: Thank you, Your Honor.

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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25

1 her. With regard to any private conversations
2 that may have occurred between Willie D. Watson
3 and counsel, she does in fact assert that
4 privilege.

5 **MR. TOWNSEND:** Based upon that statement and
6 my discussions with Mr. McCallum, I did have both
7 private conversations with his client with no one
8 present but someone on my staff, and I had
9 conversations when Nancy Underwood was present,
10 and I will limit my testimony to any
11 conversations I had with your client when Ms.
12 Underwood was present.

13 **MR. MCCALLUM:** Thank you, sir.

14 Q: Would you state your full name, please.

15 A: Richard Taylor Townsend.

16 Q: And your occupation or profession?

17 A: I'm an attorney.

18 Q: Practicing in Laurens?

19 A: Correct. Townsend & Thompson Attorneys.

20 Q: How long have you been a practicing attorney?

21 A: Forty-five years. April 15th was 45 years.

22 Q: And how long have you practiced out of your
23 Laurens office?

24 A: Forty-five years. I opened, I opened my office
25 the day I got sworn in. I came home and opened

1 it that afternoon.

2 Q: Do you specialize in any particular area of the
3 law?

4 **MR. MCCALLUM:** I'm going to object as to
5 form.

6 A: We have a general practice. We don't do any
7 complicated tax work or anything requiring a
8 specialty. Just basically a general practice
9 firm with an emphasis on probably litigation and
10 family law.

11 Q: All right. I'm going to hand you two documents.
12 I'll give you a second to glance over Exhibits
13 One and Two.

14 **(Exhibits Number One and Two were marked for**
15 **identification purposes.)**

16 A: Which one is Number One?

17 Q: The power of attorney I think is Number One.

18 A: Correct.

19 Q: Do you recognize those documents?

20 A: Yes. I prepared both of these documents.

21 Q: And if you look at the signature pages on those
22 documents, were those signed by Ms. Watson in
23 your office?

24 **MR. MCCALLUM:** Objection to the extent that
25 it may have been done during a private meeting or

1 consultation.

2 A: These documents were signed in the presence of
3 me, two of my employees, and Ms. Nancy Underwood.

4 Q: All right. Now the witnesses

5 A: In this, this room.

6 Q: The witnesses to each of those documents appear
7 to be Brenda Jones and Susan Smith, if I'm
8 reading the signature correctly.

9 A: Correct. Brenda Jones is the legal assistant
10 that sits in the adjoining office. Susie Smith
11 is my paralegal, sits in front of my desk. And I
12 was the notary.

13 Q: Can you generally describe how those two
14 documents came to be prepared by you?

15 A: Ms. Watson and her daughter, Ms. Underwood, came
16 in one day, met with me in my office where we
17 were a while ago. Ms. Watson stated that she
18 wanted to do a will and she wanted to give Nancy
19 Underwood her power of attorney. I do recall Ms.
20 Underwood asking Ms. Watson would you like for me
21 to leave so you can talk to Mr. Townsend, and Ms.
22 Watson said, no, I want you to, you know, stay
23 here. I have nothing to hide, I believe was her
24 expression. Ms. Watson was a very likeable lady.

25 Q: This is Ms. Willie Watson.

1 A: Ms. Willie Watson, who I had gotten to know,
2 know after Thomas Babb of Babb and Babb, which
3 was a law firm that rented this office here died.
4 I guess we kind of inherited Ms. Watson, and she
5 frequently visited our office to either talk to
6 me or to talk to my secretary. Probably more to
7 my secretary than to me. We were, we were just
8 the place she came to, you know, so, and we
9 became right fond of her.

10 Q: The date appearing on the signature page of each
11 of those documents is October the 5th, 2006. Do
12 you recall whether the documents were prepared on
13 that date, or were they prepared prior to that
14 date?

15 A: They were prepared prior to that date. The
16 meeting in my office when Ms. Watson gave me the
17 instructions what she wanted done, I later
18 dictated the documents to my secretary, and our
19 standard procedure is that we on all wills,
20 living wills, healthcare powers of attorney, any
21 documents that someone's going to be signing,
22 coming back to sign, we have a rack that is
23 documents to be signed. After they're typed,
24 they're placed in that rack. On this particular
25 day, Ms. Watson, Ms. Willie Watson, and Ms.

1 Underwood came in. My secretary took the
2 documents to Ms. Watson sitting in the waiting
3 room, asked her to read the documents and to let
4 us know of any misspellings, any changes in
5 names, any change she wants to make. Very often
6 a name is misspelled in a will, and it's easier
7 for us to let them read them and catch it there
8 so that it can be changed before we come in here
9 and get three witnesses to start signing, and we
10 often have to make changes. Somebody will say my
11 daughter's name doesn't have but one O in it or
12 it's an IE and not a Y, something of that effect,
13 but anyway, after Ms. Watson said the documents
14 were fine and I rounded up the two secretaries to
15 come in here with us, Ms. Watson, Ms. Underwood,
16 myself, Susie Smith, and Brenda Jones came in and
17 sat at this table. This is where we execute all
18 of our documents, and that was done the date of
19 the documents.

20 Q: So any direction or instruction that you were
21 give about what was to go into the documents were
22 given to you in the first meeting?

23 A: I have the package from the first meeting. Ms.
24 Watson had a will dated it looks like May 20th,
25 1996, that had been prepared by Thomas Babb, and

1 I believe that is Thomas F. Babb. There were two
2 Babbs. Thomas A. was the older Mr. Babb. Thomas
3 F. was the younger one, and the will was
4 witnessed by the younger one's wife, Holly and a
5 Renee Templeton which she gave me to look at.
6 Then she gave me instructions that she wanted to
7 do a new will. She wanted to provide that she
8 wanted a grave-side service. She did not want
9 her casket open. She wanted a closed casket.
10 She did not want people looking at her after she
11 was dead. She instructed me to leave one dollar
12 to Sherry Long, I'm trying to read my own cold
13 writing now, so, who has received hers by
14 advancement. One-half acre has already been,
15 one-half acre given to her. At that time she
16 told me she wanted to leave \$2,000 to each living
17 grandchild and great grandchild. She told me
18 that her assets, her main asset was 27 acres of
19 land that she owned at Ware Shoals. She wanted
20 everything divided between Nancy Carol Underwood
21 and John Hubert Watson. She wanted Nancy
22 Underwood to be named as her personal
23 representative. She wanted John to be named as
24 her alternate personal representative. She
25 wanted a power of attorney and wanted to name

1 Nancy as her attorney in fact. She wanted to
2 know how much it was going to cost her. I quoted
3 her a price for the will of \$175 and the power of
4 attorney at that time the power of attorney
5 is always \$100, but the recording fee changes
6 depending on the number of pages. At that time
7 it was \$112. She subsequently changed her mind,
8 and I'm not positive whether she either as
9 she communicated it to me, I think it was when
10 she read everything in the waiting room, she
11 wanted us to change it, and instead of giving the
12 great grandchildren \$2,000, she wanted to reduce
13 it to \$1,000. My secretary made that change.
14 That was the day that Ms. Watson was here with
15 Ms. Underwood. That change was made at the same
16 time well, she discussed other stuff with me
17 concerning her other daughter in explaining to me
18 why she did not want to leave her but one dollar.

19 Q: Well, I'll get to that in just a second.

20 A: Okay.

21 Q: Okay. Now with respect to the last will and
22 testimony in item, this is Exhibit Two to your
23 deposition, she left her husband John Calvin
24 Watson one dollar. Did she offer to you in the
25 presence of Nancy Underwood any explanation for

1 why she would leave only a dollar to her spouse?
2 A: Well, she made it very clear that she did not
3 want to leave him anything. I can't go into the
4 history of it because every other meeting I had
5 with her prior to that, no one else was present
6 except my staff, but, but she made it very clear
7 she did not want him to have anything, and I'm
8 trying to remember the will she had just
9 prepared. No, that earlier will, which I have in
10 my file, the Tom Babb will was 1987. She did not
11 leave anything to her husband in that will
12 either.
13 Q: Is it your recollection, Mr. Townsend, that
14 A: I'm double checking to make sure I'm, I'm telling
15 you that right.
16 Q: Sure.
17 A: And of course if your client wants a copy of
18 that, I'll be happy to furnish it, and you can
19 either authorize me to or not to give a copy to,
20 to them.
21 Q: So with respect to the dispositive provisions of
22 the last will that was signed on October the 5th,
23 2006, is it the case that you received specific
24 direction from Ms. Watson regarding those
25 dispositive provisions?

1 A: Correct.

2 Q: Once Ms. Watson now to your knowledge did
3 Ms. Watson have a full and just a full
4 opportunity to read over the will and to ask you
5 any questions she had about it before she signed
6 it?

7 A: Ms. Watson to my recollection has read it in the
8 waiting room, the two documents. I think that's
9 when she made the change to the \$1,000. When we
10 come in to sign the documents, we go through a
11 standard procedure. On the will they have I
12 ask them in front of the witnesses if that's
13 their will, if they've read it, is that their
14 last will and testimony, do they want, you know,
15 to execute it and want these people to be
16 witnesses. I have them sign the bottom of each
17 page, and I have them sign the signature lines,
18 and we do the execution. I notarize it normally.
19 My secretaries are the witnesses. The power of
20 attorney, I go over the same explanation with
21 everybody. I tell them that the power of
22 attorney is a serious document and that they
23 better make sure that they trust the person
24 they're giving it to because I said this power of
25 attorney authorizes your attorney-in-fact to do

1 anything you can do. Anything you can do, they
2 can do. I said they can walk off tomorrow with
3 all of your money, and your only recourse if they
4 throw it away is to have them put in jail because
5 they violated fiduciary duty. So make sure
6 you're giving it to somebody that you want to,
7 you know, handle it and that you trust to handle
8 it. She indicated that she wanted her daughter
9 to do that.

10 Q: Her daughter Nancy?

11 A: Her daughter Nancy who had been previously, I
12 think, named as her personal representative in
13 her other will. She, she just she indicated
14 to me that she had complete trust in her daughter
15 Nancy. I had never had any contact with the son,
16 and I had never had any contact with the other
17 daughter at that point. She executed the power
18 of attorney. We explained to her what the
19 durable meant, that it would continue to be in
20 effect even if she had a stroke or became
21 comatose or whatever. At that time durable was a
22 little bit newer than it is now, and it was
23 something we explained to everybody. That it
24 would last till the day she died unless she
25 revoked it, and that if she ever wanted to revoke

1 it, all she had to do was come back. We would
2 draw up a revocation and record it on record
3 because the power of attorney would be recorded
4 on record, and she paid us to record it, so.

5 Q: Had Nancy Underwood ever been a client of yours
6 or your firm prior to October 2006?

7 A: I'd never met any of the children. In fact I
8 never met Mr. Watson.

9 Q: Now in your recollection and your opinion, did
10 Ms. Watson have a full, fair opportunity to read
11 the durable power of attorney before she signed
12 it?

13 A: Yes.

14 Q: Do you recall Ms. Watson voicing to you any
15 objections to the power of attorney or having any
16 questions about particular provisions?

17 A: The only changes I recall her wanting made to any
18 of the documents was where she had originally
19 told me that she wanted each grandchild to have
20 \$2,000. She decided she only wanted that to be
21 \$1,000.

22 Q: Some mention has been made

23 A: Great, great grandchildren.

24 Q: Some mention has been made previously that Ms.
25 Watson thought she was, that she had asked for

1 **MR. MCCALLUM:** Objection.

2 **MR. BRACKETT:** Okay.

3 Q: Now there's also been some mention made that Ms.
4 Watson thought that she had asked for and was
5 getting what's known in the law as a springing
6 power, one that would only come into effect if
7 and when she was declared mentally incompetent.
8 Do you have any recollection or any notes
9 indicating that that was really what she wanted?

10 A: None. If she had, we would have prepared the
11 springing power of attorney.

12 Q: Based on what you knew at the time about Ms.
13 Watson, was there anything in the power of
14 attorney that surprised or concerned you in any
15 way? As you were preparing it, you're asking
16 yourself what in the world is Ms. Watson
17 thinking?

18 **MR. MCCALLUM:** Objection.

19 Q: Anything like that?

20 A: No.

21 Q: Same question with respect to the content of the
22 last will that was signed October 5th, 2006.
23 Anything in there, based on your knowledge at the
24 time, that caused you concern or surprise?

25 **MR. MCCALLUM:** Objection.

1 **MR. TOWNSEND:** No. I keep everything
2 together, you know.

3 **MR. BRACKETT:** If you're comfortable, I'm
4 comfortable.

5 **MR. TOWNSEND:** Yeah. My recollection is she
6 brought this when she came in that day.

7 **MR. MCCALLUM:** All right. So you have one
8 day from the meeting to the day she signed the
9 will and the power of attorney?

10 **MR. TOWNSEND:** My recollection is she came
11 in. Her daughter was visiting, and she came in,
12 asked us to prepare it, and we prepared it, and
13 she came back the next day to sign it.

14 **MR. MCCALLUM:** Okay.

15 **MR. TOWNSEND:** That's my recollection.

16 **Q:** Getting back then to your meeting in March of
17 '09, 2009, with Nancy, John, and their spouses
18

19 **A:** Okay.

20 **Q:** you had said they were expressing interest
21 in trying to protect their mother's assets.

22 **A:** And I was telling you that John handed me an
23 interest statement, 2008 interest statement, from
24 an account. It looks like it's in his and
25 Nancy's name both. I was my recollection

1 was it was just his, but anyway he just said I
2 have this money I'm holding. He was worried that
3 he might die. Ms. Underwood was worried she was
4 the only person named on the power of attorney,
5 and if something happened to her, who was going
6 to take care of her mother. They had this money
7 in real estate, and they asked me if there was a
8 vehicle they could put it in or do to protect
9 their mother if something happened to them. John
10 was worried that his wife or children would end
11 up with the money he wanted his mother to have.
12 They brought me a copy of a vehicle title, which
13 was a Toyota automobile, and I was already
14 familiar with the approximately 27 acres, 26.73
15 acres that was owned by Ms. Watson, and I
16 recommended to them that the only way I knew they
17 could protect their mother completely if
18 something happened to them was to place the money
19 in a trust and to make it an irrevocable trust
20 and to make sure they wanted to be assured
21 that the instrument would assure that nobody got
22 that money, them or anybody else, other than
23 their mother. At the time I understood that she
24 had had a stroke, and I was told, I'm ceratin by
25 Ms. Underwood, not by her mother, that her doctor

1 said she had to have round-the-clock either care
2 or supervision or something.

3 Q: Let me ask you this.

4 A: They anticipated this money would all be used
5 taking care of their momma.

6 Q: Now so there in mid March in 2009, you're talking
7 to Nancy Underwood about financial affairs
8 relating to her mother. What authority did you
9 understand Nancy Underwood to have to engage in a
10 transaction on behalf of her mother having to do
11 with this trust, this proposed trust?

12 A: Well, our power of attorney provides that the
13 attorney-in-fact can establish a trust, either
14 revokable or irrevokable.

15 Q: And that would be paragraph 10, I think, of
16 Exhibit One?

17 A: I would have to look.

18 Q: Actually 11, paragraph 11 of Exhibit One.

19 A: Those two paragraphs are paragraphs I added years
20 ago to allow attorneys-in-fact the first
21 paragraph was to be able to be allowed to
22 continue to make gifts after someone became
23 incompetent. This was a wealthy client. That's
24 pretty important. And the other one was to give
25 the attorney-in-fact the power to prepare. Say

1 the attorney-in-fact got cancer, you know. The
2 mother's already, assuming the mother's already
3 incapable of changing anything, that it gave
4 flexibility to the attorney-in-fact to protect
5 the person who gave the power of attorney.

6 Q: And to your knowledge in March of 2009, the power
7 of attorney that Ms. Watson had given to Nancy
8 Underwood in October of 2006 was still in effect
9 as far as you knew?

10 A: We, we can check the Clerk of Court's office from
11 here, so all we have to do is look on the
12 computer to see if it's been revoked or not.

13 Q: So after your meeting with Nancy and John and
14 their spouses in mid March of 2009, what did you
15 do?

16 A: Prepared the trust agreement.

17 Q: And

18 A: Prepared the schedule A that provided what was
19 going to be transferred into it. We prepared a
20 deed, and I think my secretary assisted in
21 getting the vehicle transferred. I think.

22 Q: I was going to ask if your office assisted in
23 making the transfers of those assets into the
24 trust?

25 A: We prepared the deed and of course the Exhibit A

1 deposited to three accounts. There were my
2 notes show there were two accounts in Ms.
3 Watson's name which were First Citizens accounts,
4 and John Watson's account was the Palmetto Bank
5 account that he wanted to get he was in a
6 quandary what to do with it.

7 Q: All right.

8 A: Because he was holding money he wanted his mother
9 to have. It may have been her money. I don't
10 even know. I don't remember. I just know he had
11 money he wanted his mother to have, but he was
12 scared to turn loose of it unless it was
13 protected.

14 Q: Between the date of your meeting with the four of
15 them and the date that this trust agreement was
16 signed, which appears to be April the 2nd of 2009,
17 did you have any communication at all with Ms.
18 Watson?

19 A: Not to my knowledge.

20 Q: Did you have any other meetings with or
21 communications with Nancy Underwood as the
22 attorney-in-fact for Ms. Watson about the subject
23 of the trust?

24 A: Any communications. When I picked up this file
25 to look at it, there are a group of e-mails that

1 trust in, and I keep emphasizing that to them.
2 Don't give it to somebody that you don't have
3 complete trust in.

4 Q: Now this incident report that's been marked as
5 Exhibit Number Six, I think we covered this, and
6 I appreciate Mr. Brackett's willingness to allow
7 me to jump into his deposition on a couple of
8 occasions, that this incident report is dated
9 10/4/06, October 4th, 2006, is that correct?

10 A: Yes. The disposition day October 4th.

11 Q: Okay. And was

12 A: And the incident date was September 28th is when
13 the incident occurred.

14 Q: Okay. Let me, let me point something out to you,
15 and perhaps it will change your mind about what
16 you just said.

17 A: Okay.

18 Q: Can you read this block for me right here?

19 A: "Dispatch date, time, and clock."

20 Q: So rather than do you believe based on that
21 that this 10/4/06 date would be the dispatch date
22 that appears just underneath that block? Now one
23 is the incident date.

24 A: Yeah, I mean it, it appears that the date under
25 the dispatch is 10/4.

1 Q: All right. So would it appear from that that the
2 police were called on 10/4 to be informed of an
3 incident which had occurred on 9/28?

4 A: When you read the writing, it says Ms. Watson
5 came to the Laurens Sheriff's Department so that
6 there wasn't a dispatch evidently.

7 Q: What date does it say she came to the Laurens
8 County Sheriff's Department?

9 A: It says she came on October 4th.

10 Q: All right. And what time does it appear that
11 that, the arrival time of Ms. Watson at the
12 Laurens County Sheriff's Department?

13 A: 10:20.

14 Q: And the departure time?

15 A: I don't have very good eyes. It looks like
16 11:15.

17 Q: Okay. So from that report it appears that on the
18 morning of October 4th, this incident was brought
19 to the attention of the Laurens County Sheriff's
20 Department, is that, is that a fair statement?

21 A: That's the way it appears.

22 Q: All right. And then apparently that afternoon
23 they came to your office, is that correct?

24 A: Correct.

25 Q: And you prepared the last will and testament and

1 prepared the power of attorney for her execution
2 the next day?

3 A: Correct.

4 Q: Do you recall what time she came back in to sign
5 these documents?

6 A: I can go look on my calendar. I don't recall it.

7 Q: Would it be a fair statement to say that she had
8 just at or maybe an hour or two more than 24
9 hours to consider these documents prior to her
10 signing them?

11 A: I, I would assume if she came after 10:00 o'clock
12 or 10:20 in the morning or 11:10 that she had
13 more than 24 hours, but I, I can go look on my
14 calendar and give you a time.

15 Q: Would you agree with me it would be less than 30
16 hours though in any case? You didn't come up
17 here in the middle of the night and sign these,
18 did you?

19 A: No. My, my secretaries leave at 5:00 o'clock, so
20 it would have had to have been before 5:00
21 o'clock.

22 Q: And the entire time that she was in here, she was
23 in the presence of Nancy Underwood?

24 A: To my knowledge, yes.

25 Q: Now a power of attorney cannot modify a will, can

1 MR. RICHARD TOWNSEND, being duly sworn, testifies as
2 follows:

3 MR. TOWNSEND - EXAMINATION BY MR. BRACKETT:

4 Q: Mr. Townsend, this is a resumption of the
5 deposition you gave on June the 3rd, 2010, in the
6 case of Willie Watson versus Nancy Underwood and
7 others. In that deposition, certain questions were
8 not answered due to the attorney/client privilege,
9 and since that time, as you know, we have a court
10 order that resolves the attorney/client privilege
11 issues, so I resume the deposition just for the
12 purpose of going over those particular subjects
13 that we didn't go into last time. Okay?

14 MR. MCCALLUM: And if I may, Mr. Brackett, by
15 participation in this deposition, I want it to be
16 clear that my client in no way waives her rights.
17 Of course she will comply with the court order,
18 allow the deposition to go forward unimpeded
19 pursuant to the court order, but does not waive any
20 rights that she had, may have at trial to object to
21 the admission of this testimony at trial or appeal.
22 the court's order waiving her privilege.

23 MR. BRACKETT: Okay.

24 Q: Mr. Townsend, at your first deposition you were
25 being questioned about Ms. Watson's last will and a

1 power of attorney that she signed in your office in
2 October of 2006, and you were asked the question
3 did you consider, at that time that Ms. Watson was
4 your client, that you had an attorney/client
5 relationship with her, and on page 50 of your
6 deposition you said "Yes, I can't go into it, but
7 she had come in to talk to me about problems for a
8 long time." I'm going to ask you today to follow
9 up with that answer, and if you could tell us what
10 sort of problems Ms. Watson had come in to talk to
11 you about.

12 Q: Originally Ms. Watson was Buck Babb's client. Buck
13 rented this half of our building. When Buck died
14 or got sick, Ms. Watson kind of came with the
15 building. She just started coming into our office
16 where she used to come into Buck's office. The
17 first time she really consulted with me that I felt
18 was an attorney/client privilege was about her
19 husband. She wanted to get she basically
20 wanted to leave him, and she wanted to discuss
21 whether she could take she wanted to take all
22 of her money, all her property, and get rid of him,
23 and after I explained all of I went through on
24 more than one occasion went over with her that she
25 would have to fight the possibility that that

1 property had been transmuted into marital property
2 and that it wasn't just her property. If I recall,
3 they had lived there for a tremendous amount of
4 time, and both of them had put repairs, money, that
5 kind of stuff into the house. She didn't like the
6 fact that she couldn't just leave with all her
7 money. Her other problem was she had a daughter
8 that she had given a half acre or three-quarters of
9 an acre or something of the property. It sat right
10 in the middle of the 20-something acres that she
11 owned. She wanted to know could she take that
12 property back from her daughter because I told her
13 that that was going to depreciate the sale of her
14 house cause the way she described it, the daughter
15 was right there in the yard, and it seems to me
16 they used the same driveway or something. But
17 anyway, I explained to her once she had given the
18 property to a daughter, it was her daughter's
19 property, she couldn't get that away.

20 **MR. MCCALLUM:** If I might, which daughter?

21 **MR. TOWNSEND:** I think her name is Sherry.

22 A: The one that lived in the yard was the one she was
23 talking about. She also had problems with her
24 daughter.

25 Q: Sherry?

1 A: Sherry.

2 Q: Okay.

3 A: The, the husband, from the way she described it,
4 sat around and did nothing, expected Ms. Watson to
5 do all of the cleaning, all of the cooking, clothes
6 washing, pay the bills, and he didn't want to spend
7 any of his money, but he also didn't want to help.
8 She was getting old. She was tired. Same thing
9 with the daughter. I don't know whether the
10 daughter was eating at her house or staying at her
11 house at times or whatever, but it was like the
12 daughter and the husband were together against her,
13 and the daughter would always take the husband's
14 side. Ms. Watson basically just wanted out away
15 from it.

16 **MR. MCCALLUM:** Objection.

17 A: To go either buy her a house or get some other
18 place that she could stay. But every time it came
19 down to possibly costing her part of her property
20 or part of her money, then she would hold up, and
21 at a later time she would come back and go over the
22 same thing again, and again I would give her the
23 same answers.

24 Q: How frequently would she this is prior now to
25 October of 2006. On average, how frequently would

1 she come to see you to talk about these things?

2 A: I can't remember. I remember she sat in my office
3 on at least three or four occasions, but she had a
4 habit of coming and talking to my secretary when I
5 wasn't here or, or even if I was but I was busy.
6 Any problem that she had she would come talk to her
7 about if I wasn't able to see her.

8 Q: Did she ever voice to you any complaint that Sherry
9 yelled at her or screamed at her or raised her
10 voice at her?

11 A: Sherry as she was scared of Sherry, as I
12 recall.

13 **MR. MCCALLUM:** Objection.

14 A: And I believe she told me that Sherry had done more
15 than just hollered at her. That she had actually
16 physically abused her. The husband was all mental
17 abuse. It wasn't any it wasn't the husband
18 doing anything to her, but and most of the time
19 with Ms. Watson, it involved money.

20 Q: Now when, when you prepared the will, the last will
21 for her in October of 2006, the will provided that
22 one dollar would go to the husband. Based on what
23 you've just told us, were you surprised that she
24 would only leave her husband a dollar?

25 A: No. The will she already had, as I recall, that

1 Buck Babb had done left her husband nothing. She
2 didn't even mention her daughter. I'm the one who
3 recommended that. She wanted to leave him out, so
4 I went through with her elective share, you know,
5 that he would be able to get it no matter what she
6 did even though she left him a dollar or left him
7 nothing. I even I think suggested to her that I
8 felt like she could get around that elective share
9 by leaving him a life estate and a third of her
10 estate with it then to go like she wanted it to go.
11 She didn't want to leave him anything. She was
12 adamant she hadn't left him anything before.
13 She didn't want to leave him anything that time. I
14 had to explain to her what the one dollar was. She
15 wanted she said Sherry had gotten her share of
16 the estate and that Sherry would get in her opinion
17 what the daddy had. Evidently she was the daddy's
18 girl and that she did not want to leave Sherry
19 anything, so we left one dollar to Sherry, and then
20 she gave me instructions as to what she wanted for
21 her I believe grandchildren and great
22 grandchildren, and we prepared the will, and, as I
23 said at the last deposition, when she came in was
24 reading the documents. She made some changes. One
25 of them being the change in the amount she was

1 leaving to some of the heirs.

2 Q: Ms. Watson has told us that the power of attorney
3 that she wanted in October of 2006 was to be only a
4 healthcare power and that she understood that
5 that's what it was supposed to be. What she signed
6 was something different than that. Do you have a
7 recollection of what, what instruction or direction
8 you received with respect to the scope of the power
9 of attorney?

10 A: My notes are clear, and I always make them when I'm
11 talking to somebody, and I start out going over the
12 will. Then I tell them that it's just as important
13 to have a power of attorney as it is a will cause
14 we've learned how to prolong agony and keep bodies
15 alive when minds are gone. Somebody would have to
16 manage her money. I then explained to her that the
17 next document that I would recommend anybody have
18 would be a healthcare power of attorney, and the
19 last one would be a living will. The four
20 documents go together. She wanted to know the
21 price, and she decided that she wanted to do the
22 will and the power of attorney and that she would
23 think about doing anything else, and she never came
24 back to, to spend the money to do anything else.

25 Q: Now between October of 2006 and March of 2009,

1 which is when the trust was done, in that window of
2 time, do you recall having any other visits from
3 Ms. Watson where she discussed her relationship
4 with Sherry?

5 A: I don't particularly I don't remember any
6 particular conversation, but she was in this office
7 after that. As I said, she talked more to my
8 she'd get more out of my secretary, and she
9 wouldn't get billed, and she, you know, would
10 trying to make an appointment and see me. She
11 would always just come in, not make an appointment.
12 The secretary's worked a long time in a law office,
13 she's very accommodating, and she would talk to her
14 or listen to her talk. I'm sure I talked to her,
15 but I can't specifically remember any time that she
16 was in here.

17 Q: During that same period, did you get any indication
18 from any source that Ms. Watson's relationship with
19 her daughter Sherry had improved?

20 **MR. MCCALLUM:** Objection. Calls for hearsay.

21 A: No.

22 Q: Now in

23 A: I had no indication one way or the other.

24 Q: All right. In March of 2009, you were visited by
25 Nancy and, Nancy Underwood and John Watson about

1 the same subject, I guess, Ms. Watson's
2 relationship with Sherry.

3 **MR. MCCALLUM:** Objection. Assumes facts not
4 in evidence.

5 Q: And you testified at your first deposition that you
6 recommended, you were asked why was the choice made
7 to create an irrevokable trust versus a revokable
8 trust, and you said "In order for me to be able to
9 explain to you the reason, I'd have to go into
10 conversations your client had with me when her
11 daughter was not there, a long history of
12 conversations." So my follow-up is what history of
13 long, long history of conversations were you
14 referring to that influenced your advice to create
15 an irrevokable trust for Ms. Watson?

16 A: Ms. Watson the entire time that I dealt with her
17 had never wavered on the fact that Sherry had
18 gotten her share of Ms. Watson's she thought
19 what she was entitled to from her estate. That
20 Sherry was in all likelihood going to get the money
21 that her husband had. She had not left her husband
22 anything in the previous will. In this will she
23 did not want to leave Sherry or her husband
24 anything: It was during those occasions that she
25 told me about the mental abuse by the husband and

1 what I understood to actually be physical abuse by
2 the daughter. At no time did she ever waiver from
3 that in any of my conversations with her, anything
4 that did.

5 **MR. MCCALLUM:** I'm placing an objection on
6 the record.

7 Q: And then you were asked about meeting in your
8 office on or before April 2nd, 2009, when Nancy
9 Underwood and John Watson came to see you, and you
10 were asked if, if you were told by them that their
11 sister Sherry had stolen money from their deceased
12 father's checking account, and your, your answer
13 was "It's my recollection that was part of the
14 conversation and there was more concerning the
15 sister than just that," and then you said I'm
16 handicapped. In other words, you couldn't go on
17 and be more you couldn't elaborate any more.
18 Today I'm going to ask you to do that. What was it
19 what, what, what was the more concerning the
20 sister Sherry than just the fact that she had
21 stolen money that influenced your advice about
22 creating an irrevocable trust?

23 **MR. MCCALLUM:** Objection.

24 A: I was told that Sherry had again abused the mother
25 and that the mother was going to or had signed a

1 warrant or filed a complaint concerning Sherry that
2 backed up what she had told me consistently.

3 **MR. MCCALLUM:** Objection.

4 A: I was also told that she had gone into the bank
5 after her daddy was dead with a power of attorney,
6 withdrew all of his money under the power of
7 attorney and that she was asked by the teller how's
8 your dad doing, and she said something to the
9 effect he's not doing real well, but she did not
10 disclose that he was dead, and she wasn't entitled
11 to get the money.

12 **MR. MCCALLUM:** Objection.

13 A: That is what was told to me.

14 Q: All right. Was it your recommendation in March and
15 April of 2009 to Nancy Underwood as the attorney in
16 fact for Ms. Watson, was it your recommendation
17 that a irrevocable trust be created and that Ms.
18 Watson's assets be placed in that trust?

19 A: Yes. Nancy came in here and said I want to make
20 sure my mother is protected. Her brother was with
21 her. I had never met him before. He had some
22 \$50,000 in his name, was not in Ms. Watson's name,
23 that he either was her money or was his money
24 he wanted to give her. There was some reason he
25 wanted her to have the benefit of the money. He

1 was worried that if he died, his wife and children
2 would get involved in it. My recollection was the
3 account was just in his name, but at the last
4 deposition, we looked, and I believe it was in both
5 of their names possibly. I remember it was a
6 Palmetto Bank account. He wanted to find a vehicle
7 that he could assure that the money was used solely
8 for his mother and that it couldn't be taken away
9 from her.

10 **MR. MCCALLUM:** And excuse me. When you say
11 both their names, you're talking about John Watson,
12 and who is the both?

13 **MR. TOWNSEND:** And Nancy.

14 A: I think it possibly was in both names. I've got
15 the account. We went over it at the last
16 deposition. In my opinion the best way to solve
17 all of the things they wanted to accomplish, Nancy
18 had power of attorney. Ms. Watson had always done
19 nothing but express confidence in Nancy. Sometime
20 Nancy would come with her when she came. Nancy
21 always offered to go outside of the room, and Ms.
22 Watson would say no, no. No, no, I want you in
23 here. I don't have anything to hide. I felt that
24 the best thing all around to make sure that the
25 money was used for Ms. Watson was to put it into an

1 irrevocable trust and that would do two things. It
2 would protect the money that Nancy had control over
3 at that time. It would allow the money that her
4 brother had that he wanted for the use of his
5 mother to go in there and assure that his mother
6 couldn't take the money and give it to somebody
7 else or it wouldn't get used for her benefit or it
8 couldn't get taken away from her. So I recommended
9 the irrevocable trust. It still left Ms. Watson
10 able to make a will and do whatever she wanted to
11 with what other, other property she had. Her
12 husband had just died. I knew she was going to
13 inherit at least an elective share, that her
14 attorney would collect it, you know, her share of
15 the estate. It's possible her husband's will left
16 everything to her, I don't know, but she would have
17 other money. And it seems to me that she had
18 mentioned siblings or something over the years.
19 You know, any other money she got of course she
20 would be able to change her will if she wanted to
21 change it. Change her burial place, change whether
22 she wanted to be cremated, or change her personal
23 representative, but I made the beneficiaries that
24 she had chosen herself, which were her children,
25 grandchildren, great grandchildren, the

1 beneficiaries of the trust if there was anything
2 left over. As I recall, they were of the opinion
3 it would take everything she had to keep her in a
4 nursing home or a senior citizen's home because the
5 doctor as I remember it, the doctor had told
6 them she either had to be in a home

7 **MR. MCCALLUM:** Objection.

8 A: or had to have around-the-clock care, and she,
9 Ms. Watson, didn't want to spend \$20 an hour to
10 have around-the-clock care.

11 Q: Has Ms. Watson ever expressed to you that she felt
12 Sherry was trying to get, get Ms. Watson's assets?
13 That Sherry was pressuring her in some way, was
14 trying to get her hands on Ms. Watson's assets?

15 A: The things she talked about was if Sherry and the
16 daddy pushed her to spend her money, give them her
17 money while Mr. Watson put all of his in the bank
18 and wouldn't spend any of his money. In other
19 words, she had to keep him up.

20 Q: Okay.

21 A: And she wasn't happy about that. She just wanted
22 to be out of there.

23 Q: Okay.

24 A: She had worked hard all her life. As I recall, she
25 had a retirement account and she had pensions and

1 social security, and he had evidently not been as
2 successful as she was.

3 MR. BRACKETT: Thank you. That's all I have.

4 MR. MCCALLUM: Just a couple, if I may.

5 MR. TOWNSEND - EXAMINATION BY MR. MCCALLUM:

6 Q: Now as I understood your testimony, you said that
7 you were told that there was a warrant issued
8 against Sherry for abusing Ms. Watson at the time
9 that Nancy came in to do the irrevocable trust?

10 A: No. I said I understood that there had been or
11 would be a warrant or a police report made
12 concerning an abuse that occurred evidently about
13 the time the daddy died.

14 Q: A physical abuse?

15 A: A physical abuse.

16 Q: Ah. And you were told this by Nancy?

17 A: I don't know whether it was by Nancy or by her
18 brother.

19 Q: Okay. And as I further understood your testimony
20 just a moment ago, that you said that Nancy had
21 control of the money or some monies that she wanted
22 to protect for the benefit of her mother prior to
23 the irrevocable trust. It was this account that
24 was in Nancy and John's name?

25 A: I understood it that day that it was just in John's

1 Q: And what's the address?

2 A: 423 Free, F-R double E, Free Bridge Road.

3 Q: Yes, ma'am.

4 A: Ware Shoals, South Carolina. We get the mail
5 through Ware Shoals.

6 Q: How long have you lived there?

7 A: Thirty-one years.

8 Q: So have you lived there ever since you lived in
9 Florida?

10 A: Yes.

11 Q: So you moved from Florida to Ware Shoals?

12 A: Yeah, back home.

13 Q: All right.

14 A: We were in Florida about 40 years.

15 Q: Now you were married to Mr. John Calvin Watson?

16 A: Correct.

17 Q: Did you refer to him as Calvin?

18 A: Yes.

19 Q: During the deposition today, because we have two
20 John Watsons, I'm going to refer to them as Calvin
21 and John your son so we can distinguish between the
22 two just so nobody gets confused. Is that okay?

23 A: Yes.

24 Q: How long were you and Calvin Watson married?

25 A: Sixty-two years.

1 Q: And how many children did you have?

2 A: Three.

3 Q: And that would be?

4 A: John. Sherry, John, and Nancy.

5 Q: And is that the sequence of their ages? Sherry is
6 the oldest?

7 A: Yes.

8 Q: Then John and then Nancy?

9 A: Yes.

10 Q: What sort of work did Calvin do?

11 A: He was a contractor, building houses and hotels.

12 Q: When did he retire?

13 A: I believe he retired in 1982. He retired a year
14 before I did.

15 Q: And in '82, I'm sorry, you were living in Florida at
16 the time?

17 A: Yes. Palm Springs, Florida.

18 Q: So he was doing contracting down there?

19 A: Yes.

20 Q: Did he, so he did not work at contracting after he
21 moved back to Ware Shoals?

22 A: No. He planned on doing work, but he his
23 health got bad.

24 Q: Now when you left Florida and moved back to South
25 Carolina, is there any particular reason you went to

1 Ware Shoals?

2 A: That was my mother and daddy gave me property,
3 and my brother built me a house, and we moved in the
4 house that my brother built.

5 Q: So the property where you live now was property that
6 came from your family?

7 A: Yes.

8 Q: And did any of your children live in the vicinity of
9 Ware Shoals at the time? Well, I guess they were
10 younger then. Were they living at home then?

11 A: The children?

12 Q: Yes, ma'am.

13 A: Well, they were married.

14 Q: And were they living near Ware Shoals?

15 A: Well, my daughter Sherry, I gave her a half an acre,
16 and she lives there.

17 Q: And when did you give Sherry half an acre?

18 A: I believe it was 1984.

19 Q: Was she married then?

20 A: Yes.

21 Q: And why did you give her half an acre?

22 A: Because we wanted her to be near us.

23 Q: That would be you and Calvin wanted her to be near?

24 A: Yes.

25 Q: Where was John living at the time?

1 Q: Do you ever have you recently been spending
2 time at Ed Jones' place in Simpsonville?

3 A: I visit up there sometimes.

4 Q: Sometimes?

5 A: Yes.

6 Q: I want you to take a look at some documents for me,
7 Ms. Watson.

8 A: Mr. Jones is a-mighty fine person.

9 MR. BRACKETT: Sorry. I didn't know you were
10 going to be here.

11 MS. POWERS: That's all right.

12 MR. BRACKETT: I would have made another copy.

13 Q: Let me show you what we've marked as Exhibit One,
14 Ms. Watson, and you can take a moment to look at
15 that. Then I'm going to ask you some questions
16 about it.

17 **(Defendant's Exhibit Number One was marked for**
18 **identification purposes.)**

19 Q: Just for the record, I notice you are, you do have
20 glasses on today. Do you have any difficulty
21 reading? I didn't want to

22 A: No.

23 Q: Okay. All right, Ms. Watson, you've seen that
24 document before today, haven't you?

25 A: No.

1 Q: You've never seen that?

2 A: Not this.

3 Q: You've now had a chance to read it?

4 A: I read some of it, yes.

5 Q: And you see that it's an incident report from the
6 Laurens County Sheriff's Department? You see that?

7 A: Yes.

8 Q: And it says that on October the 4th, 2006, you went
9 to the sheriff's department and made a complaint
10 against Sherry. You see that?

11 A: Yes.

12 Q: And you reported to the sheriff's department that on
13 September the 28th, 2006, Sherry was harassing you,
14 and this report says that you told the sheriff that
15 had been going on for several years. That Sherry
16 had been harassing you for several years and you
17 wanted it to stop.

18 **MR. MCCALLUM:** Objection as to form.

19 Q: You see that in there?

20 A: Yes.

21 Q: You reported that on that particular day Sherry was
22 driving you to the hospital to get Calvin, he was
23 being released, and that for some reason Sherry
24 became really angry and upset with you and began to
25 yell, scream and yell, and call you names. Called

1 you dummy and stupid, and she slammed on the brakes
2 to scare you, and you became so upset about it that
3 you could not stay at the hospital with Calvin.

4 **MR. MCCALLUM:** Objection as to form.

5 Q: Now did you do you recall those events?

6 A: Yes.

7 Q: And was that accurate when you told the sheriff's
8 department that all that stuff had happened?

9 A: Well, like I said, it's just part of people getting
10 angry with me.

11 Q: You think

12 A: And again, this, I know where this all come from.

13 Q: Well, I'll give you a chance to explain that in just
14 a second.

15 A: Yes, do. Please do.

16 Q: But if is it your testimony today that a
17 daughter harassing you for several years to such an
18 extent that you become physically

19 A: She wasn't harassing me for several years like that.

20 Q: Well, this

21 A: That was just one. That only time like that.

22 Q: This report says that you told, you told law
23 enforcement this has been going on for several
24 years. Now did you tell them that, or are you
25 denying that today?

1 A: Well, if I said I told them that, I did. I don't
2 lie.

3 Q: Okay. So as far as you know, as far as you recall
4 back in October of 2006, you told law enforcement
5 Sherry had been harassing you for several years.

6 **MR. MCCALLUM:** Objection as to form.

7 Q: That's what you told the sheriff's department, isn't
8 it?

9 A: Yes, I went over there.

10 Q: And you told them what you thought was the truth?

11 A: Yes.

12 Q: And you told the sheriff, I'm reading right from the
13 report, you're welcome to follow along. "Ms. Watson
14 stated that Ms. Long has assaulted her in the past
15 by throwing objects at her." So you told, you told
16 the sheriff's department that Sherry Long threw
17 things at you. That was true when you told it to
18 them, wasn't it?

19 **MR. MCCALLUM:** Objection as to form. May I
20 point out the part that you're referring to?

21 **MR. BRACKETT:** Yes. Please, yes. It's the
22 third that sentence is the fourth line from the
23 bottom from the text.

24 **MR. MCCALLUM:** Right here where it says Ms.
25 Watson did state.

1 A: One time she throwed something at me. Only one
2 time.

3 Q: Only one time?

4 A: Yes.

5 Q: And this report goes on to say that you told, you
6 told the sheriff's department you were scared of
7 Sherry and that Sherry, you thought Sherry was going
8 to make you have a heart attack one day. Is that
9 the way you felt at the time?

10 A: I really don't remember.

11 Q: If the sheriff says, that's what the sheriff's
12 department puts that in their report, do you deny
13 that?

14 A: No, I don't. I don't deny it.

15 MR. MCCALLUM: Objection, objection as to
16 form. Let me finish my objection, and then you can
17 answer. Objection as to form. Go ahead and answer.

18 MR. BRACKETT: Just so we don't have to go
19 through all this, are you objecting to leading
20 questions?

21 MR. MCCALLUM: No.

22 MR. BRACKETT: Okay.

23 Q: Now you must have been pretty upset back on October
24 the 4th, 2006, to have gone to the sheriff's
25 department to fill out a report. Were you upset

1 Q: Had he ever done legal work for Calvin Watson
2 before?

3 A: No.

4 Q: When you went to Richard Townsend's office on
5 October the 5th, 2006, were you the person who
6 decided to go to his office?

7 A: I think it was Nancy's decision.

8 Q: So it's your testimony that Nancy chose Mr.
9 Townsend?

10 A: What now? Repeat the question.

11 Q: Is it your testimony that Nancy is the person who
12 chose Mr. Townsend to go to?

13 A: No, I didn't say that.

14 Q: All right. Who chose Mr. Townsend?

15 A: The day we went over there was her suggestion. She
16 came to my house and said, Ma, let's go.

17 Q: Who chose Mr. Townsend?

18 A: I guess I did.

19 Q: Because you had had communications with him
20 previously?

21 A: Yes.

22 Q: And who went with you to Mr. Townsend's office?

23 A: Nancy.

24 Q: Anybody else?

25 A: I think Natalie was along, her daughter.

1 Q: And is it your testimony today that you did not want
2 to go to Mr. Townsend's office?

3 A: I really didn't want to go because my husband was
4 sick and getting ready to have heart surgery, and
5 but she come and said, Ma, let's go. Let's go over
6 there and get that power of attorney.

7 Q: Now whose idea was it to get a power of attorney?

8 A: It was mine.

9 Q: So you wanted, you wanted to give a power of
10 attorney

11 A: For medical reasons only.

12 Q: for medical reasons only?

13 A: Yes...

14 Q: Now did you have a chance to sit down on October the
15 5th and talk with Mr. Townsend?

16 A: No.

17 Q: You didn't?

18 A: I sat down, but I didn't talk to him.

19 Q: Were you in the same room with Mr. Townsend?

20 A: Yes, I was.

21 Q: And what was said? Who was in the room with you?

22 A: Nancy.

23 Q: So what was said in that room?

24 A: It was said to read these papers and sign them.

25 Q: So your testimony is that the documents had already

1 before this, before I even signed. I didn't know I
2 was signing a name to, to the probate will that
3 Nancy stole from me. She grabbed it out of my hand,
4 and I told her to leave it alone. She also stole my
5 husband's little knife that her husband gave him for
6 a Christmas present. She said I'm going to take
7 that like she took everything else.

8 Q: Now in January of 2009, you're still living at
9 Sterling House, right?

10 A: Yes.

11 Q: And Calvin is hospitalized again.

12 A: Yes.

13 Q: Do you remember that?

14 A: Yes.

15 Q: And he stayed in the hospital for

16 A: I don't know how long.

17 Q: I don't know how long. All right. And do you
18 recall during that period of time that Sherry was
19 continuing to threaten you that she was going to put
20 you out, take everything, and she was continuing
21 with the

22 A: No, I don't remember that.

23 Q: You don't remember that? All right. Then on or
24 about March the 4th, Calvin went back in the
25 hospital with pneumonia.

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A: Yes.

Q: Do you remember that?

A: Yes.

Q: Now had he been living at the Sterling House, or had he been living with Sherry?

A: I told you before he was not living with Sherry. He stayed one night with her. That's when she had to rush him to the hospital.

Q: And then every other night he was staying at Sterling House?

A: Yes, as well as I remember.

Q: And then he was in the hospital for three days. Then on March the 22nd he was in the hospital with pneumonia from March the 4th to March the 7th, 2009, is that your recollection?

A: Yes.

Q: And then he went back in the hospital on March the 22nd with what the record said was a neck fracture. That he was in there and he did not, he did not return home from that hospitalization. Do you remember that?

A: No.

Q: He was in there from March the 22nd. He died on March the 31st, right?

A: That's correct.

- 1 Q: Now while he was in the hospital, did you call
2 Josie, John's wife, upset about the fact that Sherry
3 was still threatening you
- 4 A: No, I did not call Josie. Josie called me.
- 5 Q: Josie called you? Do you remember the conversation?
6 A: No, not too much.
- 7 Q: How do you remember she called you and you didn't
8 call her?
- 9 A: Well, you were talking about it. Said I called her.
- 10 Q: Yes, ma'am. Did you call Josie complaining about
11 you were upset and complaining about the fact
12 that Sherry was again being mean to you and
13 threatening you?
- 14 A: I said a little something like that.
- 15 Q: A little something like that. Okay. And then you
16 also called Nancy?
- 17 A: I did not call Nancy.
- 18 Q: While Calvin was in the hospital in March, and you
19 made the same sort of complaint that you had told
20 Josie.
- 21 A: Josie gets things mixed up.
- 22 Q: That
- 23 A: Cause she don't speak English too well.
- 24 Q: All right.
- 25 A: She's Spanish.

1 Q: So you deny calling Nancy and telling her that
2 Sherry was still being mean to you and still
3 threatening you? You deny making that phone call?

4 A: Yes.

5 Q: You do?

6 A: I don't remember it.

7 Q: Well, is it you don't remember it, or you're deny
8 making it?

9 A: I don't remember.

10 Q: So you could have made it, and you just don't
11 recall?

12 A: It could be like that.

13 Q: Now on March the 13th, you moved out of Sterling
14 House, right?

15 A: I think that's correct. I'm almost positive.

16 Q: And that's between the hospitalizations. Calvin had
17 been in the hospital twice in March, and during the
18 period he was not in the hospital, you moved out of
19 Sterling House, March the 13th, 2009. Do you
20 remember that?

21 A: I don't know.

22 Q: And isn't it the fact that Sherry moved you out?

23 A: Yes, she did.

24 Q: At night?

25 A: What's wrong with night?

1 Q: I'm just asking. You all moved out of Sterling
2 House

3 MR. MCCALLUM: Objection as to form.

4 Q: at night, didn't you?

5 A: If that's what you got wrote down there.

6 Q: Well, I'm just asking for your recollection.

7 A: We didn't want to pay any more rent when we moved.

8 Q: And did you tell people you were moving out?

9 A: Yes. We paid them for the time we were there, and
10 we moved.

11 Q: Did you tell the people at Sterling House I'm moving
12 out?

13 A: Yes.

14 Q: Before you moved? Or did you tell them after?

15 A: Yes, we told them we were going to move. We wasn't
16 trying to do nothing wrong.

17 Q: Now did anybody else in the family know you were
18 moving out or just Sherry?

19 A: I don't know.

20 Q: You didn't tell anybody, did you?

21 A: No.

22 Q: And then you went to live with Sherry, stayed with
23 her until April the 8th?

24 A: That's correct.

25 Q: About three weeks?

- 1 A: Yes.
- 2 Q: Right?
- 3 A: Yes.
- 4 Q: And where were you staying during those three weeks?
- 5 A: I was staying in Simpsonville.
- 6 Q: In Simpsonville at Ed Jones' house?
- 7 A: That's right. Mr. Jones's house.
- 8 Q: And then on March the 31st, after you had moved out,
- 9 you're up in Simpsonville, March the 31st, Calvin
- 10 dies. Were you at the hospital the day that he
- 11 passed, do you remember?
- 12 A: Yes.
- 13 Q: There was Sherry
- 14 A: No, I wasn't at the I wasn't there when he
- 15 died.
- 16 Q: Was Sherry there or John or Nancy, if you know?
- 17 A: They called and said he was having a hard time and
- 18 tried to get there before he died.
- 19 Q: And the funeral was on April the 3rd, three days
- 20 later?
- 21 MR. BRACKETT: Is that right, the 3rd?
- 22 MS. UNDERWOOD: It was on that Friday, so.
- 23 MR. BRACKETT: I'm sorry. I shouldn't be
- 24 asking you on the record.
- 25 Q: Do you remember going to the funeral?

1 A: Yes, she was trying to get my husband down there,
2 too. She had a motive to do a lot of things.

3 Q: To Generations?

4 A: Yeah.

5 Q: Well, he didn't

6 A: And he said for me not to even go down there.

7 Q: All right.

8 A: He never wanted me to even visit Nancy.

9 Q: So this is something Calvin said about Generations?
10 Your moving to Generations?

11 A: No I, I didn't say that.

12 **MR. MCCALLUM:** Objection.

13 Q: All right. I'm trying to figure out

14 A: Nancy was always talking to me and my husband you
15 all ought to come to Columbia down there and stay in
16 Generations. My friends' parents all live there.
17 Nastiest place I've ever been in in my life.

18 Q: When did you first

19 A: And then when I found out what all she'd done and
20 the way she was treating me, then she come in there
21 one day and said I'm thinking about turning you over
22 to the state, and that's when I called my daughter
23 and I said I want you to come here and get me.

24 Q: So that was in that was when you moved out of
25 Sterling House?

1 A: No, that's

2 Q: When you moved out of Generations?

3 A: Yes.

4 Q: Oh, I see. Okay.

5 A: It's more like

6 Q: Let's look at Exhibit Twelve.

7 **(Defendant's Exhibit Number Twelve was marked for**
8 **identification purposes.)**

9 Q: Is this the paperwork that you signed when you
10 signed up to move into Generations?

11 A: I got my name written there. I don't know if it's
12 the same paper. I guess it is.

13 Q: Now you signed this one Dendy Watson down at the
14 bottom?

15 A: Yeah, that's my really Dendylee Watson.

16 Q: And it's your testimony that on May the 6th of 2009,
17 you really didn't want to move into Generations, and
18 Nancy was forcing you to do it?

19 A: Well, she said that her and Rock had talked it over
20 a lot of times, and they didn't want nobody staying
21 with them, maybe just to visit. His parents or her
22 parents.

23 Q: Well

24 A: And they wanted me out of the way.

25 Q: Wanted you out of the way?

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
)

Willie D. Watson,
Plaintiff,

) AFFIDAVIT OF WILLIE D. WATSON
)

vs.

) Case No. 2010-CP-30-0116
)

Nancy Carol Underwood individually and as
putative trustee of the Willie D. Watson Trust,
John H. Watson individually and as putative
trustee of the Willie D. Watson Trust,
Willie Dendy Lee Watson Irrevocable Trust,
and Future and Potential Heirs of
Willie D. Watson,
Defendants,

LYNN W. LANCASTER

2010 APR 29 A 11:14

LAURENS COUNTY
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Willie D. Watson, who being duly sworn,
deposes and says:

I am the Plaintiff in the above referenced matter. I crave reference to my
complaint which is filed in this matter and ask the Court to overturn the purported trust
and declare it null and void for the following reasons:

1. The purported trust is now invalid as I have changed my will by codicil.
That the purported trust references the specific will which I have altered and changed as a
result of the codicil.
2. That my codicil is my true and honest wants and wishes for my estate after
my death.
3. That the codicil leaves all my belongs to my beloved daughter, Sherry
Long.

4. That it is my understanding that Sherry does not contest that the purported trust be terminated and that all the assets be turned over to me.

5. I never wanted my assets to be placed in a trust and I really believe that it was wrong, and it is my understanding that my assets will be my responsibility as they always were and should always be.

6. I have no intention whatsoever in changing my will again, and I do not think that it was proper to begin with for the purported trust to be created through a power of attorney without my knowledge.

7. I believe that my daughter, Nancy Underwood, created the purported trust for her own benefit to secure her inheritance because she had intentions of locking me away in a nursing home.

8. I feel that she was self dealing and did so for her own benefit, not mine.

FURTHER AFFIANT SAYETH NOT.

Willie D. Watson
Willie D. Watson

SWORN to before me this 9th day of
April, 2010.

CW
Notary Public for South Carolina

My Commission Expires: 12/3/2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Willie D. Watson,)
)
Plaintiff,)
)
vs.)
)
Nancy Carol Underwood individually and as)
putative trustee of the Willie D. Watson Trust,)
John H. Watson individually and as putative)
trustee of the Willie D. Watson Trust,)
Willie Dendy Lee Watson Irrevocable Trust,)
and Future and Potential Heirs of)
Willie D. Watson,)
Defendants,)

AFFIDAVIT OF SHERRY LONG

Case No. 2010-CP-30-0116

LYNN W LANCASTER

2010 APR 29 A 11:14

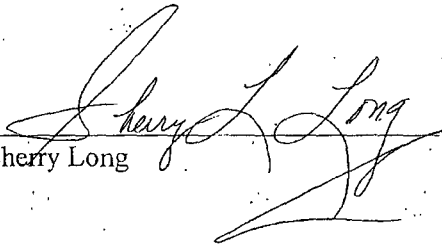
LAURENS COUNTY
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Sherry Long, who being duly sworn, deposes and says:

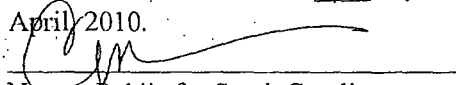
1. I am Sherry Long, and I live at 389 Free Bridge Road, Laurens, SC 29692.
2. It is my understanding that my mother, Willie D. Watson has amended her Last Will and Testament dated October 5, 2006 by codicil on January 12, 2010 and that I am the sole beneficiary under this codicil.
3. I give my full consent without any objection to the termination/dissolution of the purported Irrevocable Trust created in April 2009 by Nancy Underwood as Power of Attorney for Willie D. Watson.
4. I give my consent to the purported trust's termination regardless of any unachieved material purpose of the purported trust.
5. It is my understanding this purported trust was created without my mother's consent by my sister, Nancy Underwood.

6. I hereby request that the Court terminate the purported trust and order the trustees to distribute all property and monies held by same to my mother immediately.

FURTHER AFFIANT SAYETH NOT.


Sherry Long

SWORN to before me this 9th day of
April 2010.


Notary Public for South Carolina

My Commission Expires: 12/13/2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

CASE NO. 2010-CP-30-0116

Willie D. Watson,

Plaintiff,

v.

Affidavit of
Defendant Underwood, Individually
and as Co-Trustee

Nancy Carol Underwood, individually and as putative trustee of the Willie D. Watson Trust; John H. Watson, individually and as putative trustee of the Willie D. Watson Trust; and Future and Potential Heirs of Willie D. Watson;

Defendants.

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

1. I am Nancy Underwood, the daughter of Plaintiff Willie Watson, and I am one of the trustees to the Willie Watson Irrevocable Trust. I give this affidavit in my individually capacity and as a co-trustee.
2. Plaintiff was married to John C. Watson, who died on March 31, 2009. They had three children, me, John H. Watson, who is a defendant in this case, and Sherry Long, who is not a party to this case.
3. On October 5, 2006 Plaintiff signed a durable power of attorney naming me, individually, as attorney-in-fact. **(Exhibit 2)**. The power of attorney expressly granted to me the power and authority to make gifts, including to myself, and "to establish trust funds, revocable or

irrevocable, funded or unfunded, for the benefit of me [my mother], my children and my lineal descendants, and to transfer any of my assets to such trusts. . .” The power of attorney was prepared by my mother’s attorney, Richard Townsend, and it was executed in his office.

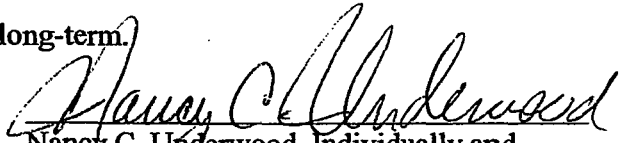
4. Also on October 5, 2006, the Plaintiff signed a Last Will and Testament. (Exhibit 3). The Will was prepared by attorney Townsend and it was signed in his office.
5. When John C. Watson, my father, died on March 31, 2009, my mother’s relationship with my sister Sherry Long was not good, -it had not been good for a long time- and I learned that Sherry Long was trying to take advantage of our father’s death to enrich herself to the prejudice of our mother and to the prejudice of our father’s estate. My mother was always calling to complain about how Sherry Long treated her and about how Sherry was only interested in getting mother’s money. Neither my brother nor I was surprised to hear this because Sherry Long had done essentially the same thing with our father (Plaintiff’s husband) during the last months of his life. Only days after our father was discharged from the hospital, Sherry “helped” him prepare a boilerplate form Last Will that left everything to her, and took him to a UPS store to have the Last Will signed and witnessed. His prior Will left everything to his spouse and 3 children.
6. In March 2009, I and my sister-in-law received calls from my mother; she was upset about something done or said by Sherry Long. I decided that something had to be done. Using the authority granted in the power of attorney, my brother, John H. Watson, and I, and our spouses, consulted with my mother’s attorney, Richard Townsend, the same attorney who had prepared the power of attorney and Last Will in October 2006. From his past conversations with the Plaintiff, Mr. Townsend was aware of Plaintiff’s problems with her

husband and with her daughter Sherry Long. Using the power and authority given to me in the power of attorney, an irrevocable trust was created to shield my mother's assets from Sherry Long. (Exhibit 4). I had never before used the power of attorney, much less abused my authority under the power of attorney. The trust agreement was executed on April 2, 2009, and while at the bank that day to transfer the title to the bank accounts to the trust, my brother and I were told by the bank representative that Sherry Long had been there to close a POD account in my father's name, which named my mother as the POD beneficiary, and that Sherry Long was using a power of attorney given by my father to conduct the transaction. Sherry misled the bank representative by saying that our father was not doing well, thereby implying that he was still living, and she did not tell the bank that he had died. Of course, our father's death terminated the power of attorney that gave Sherry Long access to the bank accounts.

7. The Trust Agreement names me and my brother John H. Watson as co-trustees. It provides that all net income is payable to our mother. It also provides that trust principal may be distributed to our mother, if the trustees in their sole and uncontrolled discretion deem it necessary for her upkeep, maintenance and support; however, the trustees in exercising their discretion to make distributions from trust principal must consider "any other sources of income" available to our mother. I promptly told our mother about the creation of the trust and the reason for its creation, and she initially made no objection and actually spoke favorably of it to others, including attorney Jennifer Dowd. The trust incorporates Plaintiff's October 5, 2006 Last Will as a means to identify the remainder beneficiaries to the trust. This was the most recent Last Will executed by the Plaintiff prior to the creation of the trust. The devisees named in the Will are me, John H. Watson, Sherry Long and Plaintiff's five

grandchildren and three great-grandchildren. (Four of the grandchildren and great-grandchildren are minors.) Plaintiff expressed her relief that her assets were protected.

8. Several months after our father's death, Sherry Long removed our mother from the assisted living facility in Chapin where she then resided, and the evidence will show that since that time Sherry Long has isolated mother from us, has unduly influenced mother and fomented disagreements in the family, has poisoned our mother's relationship with us and our families, and has caused our mother to now oppose the creation of the trust. We believe that Sherry Long has exploited mother, who we believe is a vulnerable adult under South Carolina law.
9. Prior to Sherry Long's influence, my mother renounced her right and opportunity to serve as personal representative of our father's estate and nominated me, not Sherry Long, to serve as personal representative. As mentioned above my mother subsequently fell under the influence of Sherry Long and only then began expressing dissatisfaction with the trust.
10. The trust assets are mother's house, a car and the moneys/CD's shown on the trust accounting. With the assistance of attorney Townsend, these assets were transferred into the trust immediately after the trust was created.
11. Since the trust was created and funded, my brother and I, as trustees, have relied on the advice of our trust attorney, and we are trying to follow the terms of the trust to insure that our mother has assets to support her in the long-term.

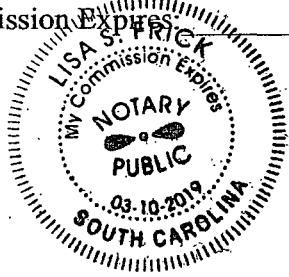

Nancy C. Underwood, Individually and
as Co-Trustee

Sworn to before me this 13th day
of May, 2010.

Lisa Sprick

Notary Public for South Carolina

My Commission Expires



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

CASE NO. 2010-CP-30-0116

Willie D. Watson,

Plaintiff,

Affidavit of
Defendant John Watson, Individually
and as Co-Trustee

v.

Nancy Carol Underwood, individually and as
putative trustee of the Willie D. Watson Trust;
John H. Watson, individually and as putative
trustee of the Willie D. Watson Trust; and
Future and Potential Heirs of Willie D. Watson;

Defendants.

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

1. I am John H. Watson, the son of Plaintiff Willie Watson, and I am one of the trustees to the Willie Watson Irrevocable Trust. I give this affidavit in my individually capacity and as a co-trustee.
2. Plaintiff was married to John C. Watson, who died on March 31, 2009. They had three children, me, Nancy Underwood, who is a defendant in this case, and Sherry Long, who is not a party to this case.
3. On October 5, 2006 Plaintiff signed a durable power of attorney naming Nancy, individually, as attorney-in-fact. **(Exhibit 2)**. The power of attorney expressly granted to Nancy the power and authority to make gifts, including to me and to her, and "to establish trust funds,

revocable or irrevocable, funded or unfunded, for the benefit of me [my mother], my children and my lineal descendants, and to transfer any of my assets to such trusts. . .” The power of attorney was prepared by my mother’s attorney, Richard Townsend, and it was executed in his office.

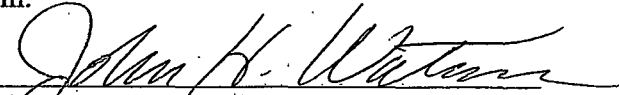
4. Also on October 5, 2006, the Plaintiff signed a Last Will and Testament. (**Exhibit 3**). The Will was prepared by attorney Townsend and it was signed in his office.
5. When John C. Watson, my father, died on March 31, 2009, my mother’s relationship with my sister Sherry Long was not good; -it had not been good for a long time- and I learned that Sherry Long was trying to take advantage of our father’s death to enrich herself to the prejudice of our mother and to the prejudice of our father’s estate. My mother was always calling me and/or Nancy to complain about how Sherry Long treated her and about how Sherry was only interested in getting mother’s money. Neither Nancy nor I was surprised to hear this because Sherry Long had done essentially the same thing with our father (Plaintiff’s husband) during the last months of his life. Only days after our father was discharged from the hospital, Sherry “helped” him prepare a boilerplate form Last Will that left everything to her, and took him to a UPS store to have the Last Will signed and witnessed. His prior Will left everything to his spouse and 3 children.
6. In March 2009, Nancy and my wife received calls from my mother; she was upset about something done or said by Sherry Long. Nancy and I decided that something had to be done. Using the authority granted to Nancy in the power of attorney, Nancy and I, and our spouses, consulted with my mother’s attorney, Richard Townsend, the same attorney who had prepared the power of attorney and Last Will in October 2006. From his past conversations

with the Plaintiff, Mr. Townsend was aware of Plaintiff's problems with her husband and with her daughter Sherry Long. Using the power and authority given to Nancy in the power of attorney, an irrevocable trust was created to shield my mother's assets from Sherry Long. **(Exhibit 4)**. To my knowledge, Nancy had never before used the power of attorney, much less abused her authority under the power of attorney. The trust agreement was executed on April 2, 2009, and while at the bank that day to transfer the title to the bank accounts to the trust, Nancy and I were told by the bank representative that Sherry Long had been there to close a POD account in my father's name, which named my mother as the POD beneficiary, and that Sherry Long was using a power of attorney given by my father to conduct the transaction. Sherry misled the bank representative by saying that our father was not doing well, thereby implying that he was still living, and she did not tell the bank that he had died. Of course, our father's death terminated the power of attorney that gave Sherry Long access to the bank accounts.

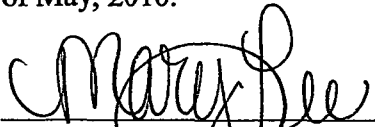
7. The Trust Agreement names me and Nancy as co-trustees. It provides that all net income is payable to our mother. It also provides that trust principal may be distributed to our mother, if the trustees in their sole and uncontrolled discretion deem it necessary for her upkeep, maintenance and support; however, the trustees in exercising their discretion to make distributions from trust principal must consider "any other sources of income" available to our mother. The trust incorporates Plaintiff's October 5, 2006 Last Will as a means to identify the remainder beneficiaries to the trust. This was the most recent Last Will executed by the Plaintiff prior to the creation of the trust. The devisees named in the Will are me, Nancy, Sherry Long and Plaintiff's five grandchildren and three great-grandchildren. (Four of the grandchildren and great-grandchildren are minors.) My mother never complained to

me that the trust had been created.

8. Several months after our father's death, Sherry Long removed our mother from the assisted living facility in Chapin where she then resided, and the evidence will show that since that time Sherry Long has isolated mother from us, has unduly influenced mother and fomented disagreements in the family, has poisoned our mother's relationship with us and our families, and has caused our mother to now oppose the creation of the trust. We believe that Sherry Long has exploited mother, who we believe is a vulnerable adult under South Carolina law.
9. Prior to Sherry Long's influence, my mother renounced her right and opportunity to serve as personal representative of our father's estate and nominated Nancy, not Sherry Long, to serve as personal representative. As mentioned above my mother subsequently fell under the influence of Sherry Long and only then began expressing dissatisfaction with the trust.
10. The trust assets are mother's house, a car and the moneys/CD's shown on the trust accounting. With the assistance of attorney Townsend, these assets were transferred into the trust immediately after the trust was created.
11. Since the trust was created and funded, Nancy and I, as trustees, have relied on the advice of our trust attorney, and we are trying to follow the terms of the trust to insure that our mother has assets to support her in the long-term.


John H. Watson, Individually and
as Co-Trustee

Sworn to before me this 17th day
of May, 2010.


Notary Public for South Carolina
My Commission Expires: 07/24/19

COPY

LAST WILL AND TESTAMENT

I, **WILLIE D. WATSON**, of the County of Laurens, State of South Carolina, being of sound and disposing mind and memory, and acting without duress, menace, fraud or undue influence from any person or persons whomsoever, do hereby make, publish, and declare this to be my Last Will and Testament, hereby revoking all other wills and codicils by me at any time heretofore made.

ITEM ONE

I direct that all of my just debts, taxes, and funeral expenses be paid as soon as practicable after my death. I request that I be given a grave-side service and that my casket remain closed at all times.

ITEM TWO

I hereby give, devise, and bequeath to my husband, **JOHN CALVIN WATSON**, the sum of \$1.00.

ITEM THREE

I hereby give, devise, and bequeath to my daughter, **SHERRY LONG**, whom I have made many advancements, the sum of One Dollars (\$1.00) to be hers absolutely and forever.

ITEM FOUR

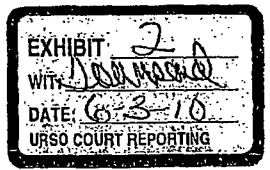
I hereby give, devise, and bequeath to each of my grandchildren living at the date of my death the sum of \$2,000.00 each.

ITEM FIVE

I hereby give, devise, and bequeath to my great-grandchildren living at the time of my death the sum of \$1,000.00 each.

ITEM SIX

All of the rest, residue and remainder of my estate, both real and personal, whatsoever and wheresoever situate, of which I die seized and possessed or to which I might be entitled, I hereby give, devise, and bequeath to be equally divided between my other two children, **NANCY CAROL**



L. I. R. W. H. Watson

UNDERWOOD and JOHN HUBERT WATSON, children of a predeceased child to take their parents share, to be theirs absolutely and forever.

ITEM SEVEN

I hereby nominate, constitute and appoint my daughter, NANCY CAROL UNDERWOOD, as Personal Representative of this my Last Will and Testament. If my daughter, NANCY CAROL UNDERWOOD, predeceases me or we die in a common disaster, then and in that event, I hereby nominate, constitute and appoint my son, JOHN HUBERT WATSON, as Personal Representative of this my Last Will and Testament and direct that my Personal Representatives shall serve without bond, granting unto my Personal Representatives the full power and authority to sell or convey any and all real or personal property that in his absolute discretion may be necessary or convenient in the administration of my estate, without requiring the approval of any court, and without limitation as to time.

ITEM EIGHT

By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to executors generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, sell, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all of the powers in the management of my Estate which any individual could exercise in the management of similar property owned in its own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5th day of

John H. Watson

October, 2006.

Willie D. Watson
WILLIE D. WATSON

Signed, sealed, published, and declared by WILLIE D. WATSON, the Testatrix above named, to be her Last Will and Testament in our presence, and we, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses this 5th day of October, 2006.

Jusana G. G. G. G. of Clinton SC
Brenda L. Jones of Laurin, SC

I, WILLIE D. WATSON, the Testatrix, sign my name to this instrument this 5th day of October, 2006, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament; that I sign it willingly; 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.

Willie D. Watson
WILLIE D. WATSON

We, the witnesses signed herein, 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 Testament, and that he signs it willingly 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.

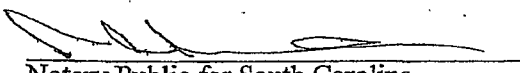
Jusana G. G. G. G.
Brenda L. Jones

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF LAURENS)

Subscribed, sworn to and acknowledged before me by WILLIE D. WATSON, the Testatrix,
and subscribed and sworn to before me by the witnesses subscribed above this 5th day of
October, 2006.



Notary Public for South Carolina
My commission expires: 11-28-10

2006012230

POWER OF ATTORNEY
RECORDING FEES \$15.00
PRESENTED & RECORDED:

10-09-2006 02:21 PM

BARBARA T. WASSON
CLERK OF COURT
LAURENS COUNTY, SC
BY: CARISSA BROCK CLERK

BK: D 803

PG: 1 - 4



STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, the undersigned, **WILLIE D. WATSON**, a legal resident of the County of Laurens, State of South Carolina, hereby revoke any and all other Powers of Attorney heretofore made by me, and by these presents do make, constitute and appoint, **NANCY CAROL UNDERWOOD**, my true and lawful attorney in fact to set in, manage, and conduct all my estate and all my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute, or to concur with persons jointly interested with myself therein in the doing or executing of, all or any of the following acts, deeds, and thins, all of which shall be done in a fiduciary capacity:

1. To buy, receive, lease, accept or otherwise acquire, sell, give, convey, transfer, mortgage, hypothecate, pledge, borrow, quitclaim, or otherwise encumber or dispose of, or to contract or agree for the acquisition, disposal, or encumbrances of any property, real, personal, tangible or intangible, upon such terms, considerations and conditions as my said attorney in fact shall think proper;

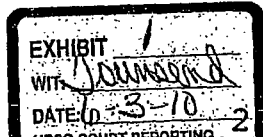
2. To take, hold, possess, invest, lease, or let, or otherwise manage any or all of my property or any interest therein; to eject, remove, or relieve tenants or other persons from, and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, build on, raze, rebuild, alter, modify or improve the same or any part thereof;

3. To make, do, and transact all and every kind of business of whatever nature, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interest, dividends, annuities, social security payments, veteran's administration benefits, demands, debts, taxes and obligations, or any rebate, refund or discount thereon, which may now or hereafter be due, owing or payable by me or to me, and to make disclaimers on my behalf for any inheritance or any other reason;

4. To make, endorse, negotiate, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, contracts of sale, assignments, agreements, certificates, hypothecations, checks, notes, vouchers, receipts, and such other instruments in writing of whatever kind and nature as may be necessary, convenient or proper in the premises;

5. To deposit and withdraw for the purposes hereof, in either my said attorney's name, or my name or jointly in both names, or in my name jointly with another person, in from any banking or savings institution, money market fund and other investment, any funds, negotiable papers, or moneys which may come into my said attorney's hands as such attorney in fact, or which I now or hereafter may have on deposit, or be entitled to;

6. To institute, prosecute, protest, defend, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, claims for refund, assessment notices or tax deficiencies, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in



Willie D. Watson

1
20

litigation in connection with the premises;

7. To act as my attorney in fact or proxy in respect to any stocks, shares, bonds, warrants, rights, or other investments, rights, or interests, that I may now or hereafter hold;

8. To receive, endorse, and collect checks payable to the order of the undersigned drawn on any firm, person, corporation, limited liability company, partnership, or association, or on the treasurer or other fiscal officer of the United States, or any sovereign state or authority, or any political subdivision or instrumentality thereof;

9. To prepare, execute and file income and other tax returns;

10. To transfer any of my assets, specifically including real property I might own, to my spouse, my children and my lineal descendants by gift, including to any such person serving as attorney in fact, or to any trust funds which I may have established, revocable or irrevocable, funded or unfunded; provided, however, that my attorney in fact shall not be authorized to make any gift which incurs federal or state gift tax or to make any gift to one person, other than my spouse, which exceeds the amount of the federal annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code, as then in effect at the time of the gift;

11. To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts;

12. To enter any safe deposit box either in my name or jointly with another, and to inventory same, and withdraw anything from said safe deposit box;

13. To purchase for my benefit and in my behalf United States Government bonds redeemable at par in payment of United States estate taxes imposed at my death upon my estate; and

14. To exercise or perform any act, power, duty, right, or obligation whatsoever that I, as principal, now have, or may hereafter acquire the legal right, power, or capacity to exercise or perform, in connection with, arising from, or relating to any person, item, transaction, thing, business, property, real, personal, tangible or intangible, or matter whatsoever.

This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to my said attorney in fact.

This power of attorney shall remain in full force and effect until I have revoked it by written instrument. This power of attorney may be amended by me at any time and from time to time by written instrument. Any person named herein as attorney in fact may be removed by written instrument executed by me. If this power of attorney has been recorded in the public records of the County aforesaid, then any revocation, amendment, or removal shall also be recorded in the public records of the County aforesaid. All references to attorney in fact shall include the plural as well as the singular, and the feminine, masculine and neuter genders.

Notwithstanding any provisions herein to the contrary, my attorney in fact shall not satisfy the legal obligations of the attorney in fact out of any property subject to this power of attorney. Except to the extent this power of attorney specifically authorizes gifts to my attorney in fact, my

M. M. D. Watson

attorney in fact may not exercise this power in favor of the attorney, the attorney's estate, the attorney's creditors, or the creditors of the attorney's estate.

Notwithstanding any provision herein to the contrary, my attorney in fact shall have no power or authority whatever with respect to (a) any policy of insurance owned by me on the life of my attorney in fact, and (b) any trust created by my attorney in fact as to which I am a Trustee.

Notwithstanding any provision herein to the contrary, this power of attorney shall not revoke, or be deemed to revoke, any health care powers of attorney heretofore made by me.

By this power of attorney I am giving and granting unto my said attorney in fact full power and authority to do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property, and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specifically enumerated powers herein being in aid and exemplification of the full, complete and general powers herein granted and not in limitation or definition thereof; and hereby ratifying all that my said attorney in fact shall lawfully do or cause to be done by virtue of these presents.

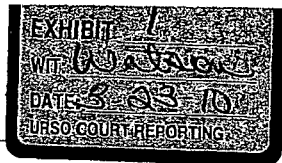
And I hereby declare that any act or thing lawfully done hereunder by my said attorney in fact shall be binding on myself, my heirs, my legal and personal representatives, and assigns, whether the same shall have been done before or after my death, or other revocation of this instrument, unless and until reliable intelligence or notice thereof shall have been received by my said attorney in fact.

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing her own estate. It is my intention that the power and authority conferred herein upon my attorney in fact shall be exercisable notwithstanding my physical disability or mental incompetence. All acts done by my attorney in fact pursuant to this power during any period of disability or mental incompetence shall have the same effect and inure to the benefit of and bind me, and my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled.

It is my express intention that after the onset of mental disability my attorney in fact shall not be required to file any inventory or accounting with the Probate Court, but my attorney in fact shall keep accurate books and records in order to account to me or my heirs or personal representatives. I direct that no surety bond or other security shall be required to be posted in any jurisdiction by my attorney in fact or any successor before or after my mental disability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5th day of October, 2006, and I direct that photographic copies of this power of attorney can be made which shall have the same force and effect as an original.


WILLIE D. WATSON



LAURENS COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

CASE NUMBER: 06003267
INC. ENT.:

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
13C - ELDERLY ABUSE	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	20 09		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): 23 FREEBRIDGE RD, WARE SHOALS SC
ZIP CODE: 29692 WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK			LOCATION NO.
09/28/2006	1200		09/28/2006	1300	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME
					10/04/2006	1000	1020	1115

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
WATSON, WILLIE D	#1 PA	#2	#3	<input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U	W	F	88	N	861-2562	

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
123 FREEBRIDGE RD	WARE SHOALS	SC	29692	08

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
WATSON, WILLIE D	#1 PA	#2	#3	<input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> U	W	F	88	N	861-2562	

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
5-5	131	WHI	BRO								

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
123 FREEBRIDGE RD	WARE SHOALS	SC	29692	08

VISIBLE INJURY (VICT. 1) YES NO EXPLAIN -

VICTIM (NO. 1) USING: ALCOHOL: YES NO UNK. DRUGS: YES NO UNK.

TWO-MAN VEH. ONE-MAN VEH. DETECTIVE/SPLASMT. OTHER ALONE ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown

1 SUBJECT	SUBJECT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
<input type="checkbox"/> RUNAWAY	LONG, SHERRY	W	F	55	N	09/21/1951	5-6	185	BLN	BRO
<input type="checkbox"/> WANTED	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
<input type="checkbox"/> WARRANT	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.					
<input type="checkbox"/> ARREST	389 FREEBRIDGE RD	WARE SHOALS	SC	29692	08					
<input type="checkbox"/> JAIL	SUBJECT (NO. 1) USING: ALCOHOL: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK.		ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST			
<input type="checkbox"/> SUMMONS	DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK. TYPE:		TOTAL # ARRESTED		09/28/2006		1200			

ON 10/04/2006 MS WILLIE WATSON CAME TO THE LAURENS COUNTY SHERIFF'S OFFICE IN REFERENCE TO HER DAUGHTER HARASSING HER. MS WATSON STATED THAT THIS HAS BEEN GOING ON FOR SEVERAL YEARS. MS WATSON STATED THAT ON 09/28/06 HER HUSBAND WAS TO BE RELEASED FROM THE HOSPITAL AND SHE WAS TO GO TO THE HOSPITAL TO GET INSTRUCTIONS FROM THE DOCTOR FOR HOME. MS WATSON STATED THAT SHERRY LONG (DAUGHTER) WAS TAKING HER TO THE HOSPITAL AND BECAME ANGRY WITH MS WATSON AND BEGAN TO SCREAM AND YELL AT HER AND CALL HER NAMES LIKE DUMMY AND STUPID. MS WATSON ALSO STATED THAT HER DAUGHTER ALSO SLAMMED ON THE BRAKES TO INTIMIDATE HER AND SCARE HER. MS WATSON STATED THAT SHE DIDN'T HARM HER THIS DAY BUT SHE WAS SO UPSET THAT SHE BECAME SICK AND WAS UNABLE TO STAY AT THE HOSPITAL WITH HER HUSBAND. MS WATSON DID STATE THAT MS LONG HAS ASSAULTED HER IN THE PAST BY THROWING OBJECTS AT HER. MS WATSON DESIRES FOR THIS ACTIVITY TO STOP SINCE SHE IS ELDERLY, 88 YEARS OLD. MS WATSON STATES THAT SHE IS SCARED THAT SHE MAY CAUSE HER TO HAVE A HEART ATTACK ONE DAY. MS WATSON WAS ADVISED THAT THIS INCIDENT REPORT WOULD BE DONE AND FORWARDED TO INVESTIGATIONS FOR FURTHER REVIEW.

GROUP	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	TOTAL VALUE
Count/Forged			
Dest./Damaged			
Recovered			
Seized			
Stolen			244
Unknown			

SUBJECT IDENTIFIED SUBJECT LOCATED SUBJECT ACTIVE SUBJECT CLOSED SUBJECT ARRESTED UNDER 18 SUBJECT FLY OR FINGER 18

SD # 117530 LAURENS COUNTY
 VICTIM'S ASSISTANCE PROGRAM
 VICTIM INFORMATION/NOTIFICATION FORM

DATE 10/4/16 TIME 10:55 INCIDENT REPORT NUMBER 0662217 CHARGE Elderly Abuse

VICTIM INFORMATION

VICTIM'S NAME Willie D Watson HOME PHONE # 361-2562 WORK PHONE #
 VICTIM'S ADDRESS 423 Emerald City Rd MARITAL STATUS M SPOUSE'S NAME
 CITY Ware Shoals ZIP 29169 DATE OF BIRTH 8/16/18 RACE W SEX F
 EMPLOYER EMPLOYER'S ADDRESS CITY ZIP

OCCUPATION Can we contact you at work? Yes No

IF FAMILY OR NEIGHBOR, PLEASE PROVIDE NAME
 PAGER MOBILE FAMILY NEIGHBOR 871-2638

What is the best time to contact you concerning this incident? (Check all that Apply) 7:00 AM to 3:00 PM 3:00 PM to 11:00 PM 11:00 PM to 7:00 AM

SUSPECT'S NAME Sherry Long SUSPECTS ADDRESS 1801 Freedom Rd
 CITY Ware Shoals ZIP 29169 SUSPECT ARRESTED Yes No

WAIVER

I certify that I have received a copy of this report from a police officer, and that they have explained to me my rights and duties as a victim of a crime as per Act 141.
 I DO DO NOT (please check) choose to waive my rights under that Bill.

PLEASE RESPOND TO THE FOLLOWING IF YOU CHOOSE NOT TO WAIVE YOUR RIGHTS

- YES NO I do desire to prosecute the person(s) who committed this crime.
- YES NO I do desire to be notified when an arrest is made in this crime.
- YES NO I do desire to be notified when the person(s) arrested in this case appears for a bond hearing.
- YES NO I do desire to be notified when the person(s) arrested in this case appears for a preliminary hearing.
- YES NO I do desire to be notified when the person(s) arrested in this case appears in court for any plea, trial, or sentence.
- YES NO I do desire to make a written impact statement for the court to consider before setting bond or sentencing the person(s) arrested in the case.
- YES NO I do desire to make an oral impact statement for the court to consider before setting bond or sentencing the person(s) arrested in the case.
- YES NO I do desire to be notified when the person(s) arrested in this case are released from custody.
- YES NO I do desire to be notified when the person(s) arrested in this case escape custody.
- YES NO I do desire to be notified when the person(s) arrested in this case are transferred to a different detention facility.

X Victim's Signature Date 10/4/16

FOR OFFICE USE ONLY

Copy of this form given to jail. SIGNATURE OF OFFICER DATE
 NOTICE OF BOND HEARING: The victim was notified of the bond hearing on _____, 20____ at _____ hours.
 (Representative's Signature)*
 SIGNATURE OF NOTIFYING PERSON
 NOTICE OF DEFENDANT'S RELEASE: The victim was notified of the defendant's release on bond on _____, 20____ at _____ hours.
 SIGNATURE OF NOTIFYING PERSON

HOW NOTIFIED n. Did not press charges DID not want daughter to lose job

General Power of Attorney (with Durable Provision)

NOTICE: THIS IS AN IMPORTANT DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO PLEDGE, SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. YOU MAY SPECIFY THAT THESE POWERS WILL EXIST EVEN AFTER YOU BECOME DISABLED, INCAPACITATED OR INCOMPETENT. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

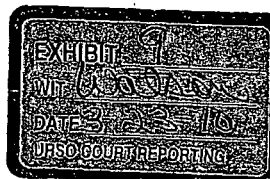
TO ALL PERSONS, be it known that I, John Calvin Watson
of 423 FREE BRIDGE ROAD, WARE SHOALS, SC 29692
the undersigned Grantor (hereinafter Principal), do hereby make and grant a general power of attorney to Sherry Long,
my daughter of 389 Free Bridge Road, Ware Shoals, SC
and do thereupon constitute and appoint said individual as my Attorney-in-Fact/Agent. 29692

If my Agent is unable to serve for any reason, I designate William Robert Fuller Jr, my Great Grandson
of 8 Rose Wood Drive, Greenville, SC 29607 as my successor Agent.

My Attorney-in-Fact/Agent shall act in my name, place and stead in any way that I myself could do, if I were personally present, with respect to the following matters, to the extent that I am permitted by law to act through an agent:

(NOTICE: The Principal must write his or her initials in the corresponding blank space of each box below with respect to each of the subdivisions (A) through (N) below for which the Principal wants to give the agent authority. If the blank space within a box for any particular subdivision is NOT initialed, NO AUTHORITY WILL BE GRANTED for matters that are included in that subdivision. Cross out each power withheld.)

- (Jcw) (A) Real estate transactions
- (Jcw) (B) Tangible personal property transactions
- (Jcw) (C) Bond, share and commodity transactions
- (Jcw) (D) Banking transactions
- (Jcw) (E) Business operating transactions
- (Jcw) (F) Insurance transactions
- (Jcw) (G) Gifts to charities and individuals other than Attorney-in-Fact/Agent
(If trust distributions are involved or tax consequences are anticipated, consult an attorney.)
- (Jcw) (H) Claims and litigation
- (Jcw) (I) Personal relationships and affairs
- (Jcw) (J) Benefits from military service



- (Jew) (K) Records, reports and statements
- (Jew) (L) Full and unqualified authority to my Attorney-in-Fact/Agent to delegate any or all of the foregoing powers to any person or persons whom my Attorney-in-Fact/Agent shall select
- (Jew) (M) Access to safe deposit box(es)
- (Jew) (N) All other matters

Durable Provision:

(Jew) (O) If the blank space in the block to the left is initialed by the Principal, this power of attorney shall not be affected by the subsequent disability or incompetence of the Principal.

Other Terms:

My Attorney-in-Fact/Agent hereby accepts this appointment subject to its terms and agrees to act and perform in said fiduciary capacity consistent with my best interests as he or she in his or her best discretion deems advisable, and I affirm and ratify all acts so undertaken.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND I FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

Signed under seal this 6TH day of OCTOBER, 2008

Signed in the presence of:

Witness [Signature]
 Witness [Signature]

Grantor (Principal) [Signature: James O. Watson]
 Attorney-in-Fact/Agent [Signature: Henry L. Long]

2009002777
 DEED
 RECORDING FEES \$10.00
 STATE TAX \$0.00
 COUNTY TAX \$0.00
 PRESENTED & RECORDED:
 04-02-2009 02:25 PM
 LYNN W. LANCASTER
 CLERK OF COURT
 LAURENS COUNTY, SC
 BY: KAREN LAROCHE CLERK
 BK: D 926
 PG: 308 - 311

Prepared by Townsend & Thompson, Attorneys at Law, P. O. Box 215, Laurens, SC 29360

PLEASE DO NOT PUBLISH

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS) **TITLE TO REAL ESTATE**

KNOW ALL MEN BY THESE PRESENTS, that

Nancy Carol Underwood, attorney-in-fact for Willie D. Watson,

(hereinafter called "Grantor"), in consideration of One Dollar and no/100 Dollar (\$1.00), to the Grantor in hand paid at and before the sealing of these presents, by the Willie Dendy Lee Watson Irrevocable Trust of even date herewith. (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

the Willie Dendy Lee Watson Irrevocable Trust of even date herewith,

its heirs and assigns forever, the following described real property, to wit:

ALL THAT lot, piece or parcel of land lying, being and situate in the County of Laurens, State of South Carolina, containing 27.23 acres, more or less, being bounded on the north by one acre lot of the Paul Massey herein and by centerline of dirt road, on the northeast by Falkner property and by Martin property, on the east and southeast by a branch Martin property lying across said branch and on the west by lands conveyed to Faith M. Tims.

Less and except: All that piece, parcel or lot of land containing 0.5 acres, more or less, conveyed to Sherry L. Long by deed recorded in the Office of the Clerk of Court for Laurens County in Deed Book 239 at Page 801.

THIS BEING a identical property conveyed to Willie Dendy Lee Watson by deed recorded in the Office of the Clerk of Court for Laurens County in Deed Book 220 at Page 127.

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Jaw
A.U.

Grantee's Address: 109 Shorthill Ct. Greenwood SC 29649

TMS No.: 088-00-00-005

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor does hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hands and seals this the 2nd day of April, 2009.

SIGNED, SEALED AND DELIVERED
in the presence of:

[Signature]

[Signature]

Nancy Carol Underwood
attorney in fact for
Willie D. Watson (SEAL)
Nancy Carol Underwood,
attorney-in-fact for
Willie D. Watson.

State of South Carolina)

County of Laurens)

ACKNOWLEDGMENT

I, the undersigned, a notary public do hereby certify that the grantor herein appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 2nd day of April, 2009.

[Signature] (Seal)
Notary Public for South Carolina

My commission expires: 12 2010

[Handwritten initials]

STATE OF SOUTH CAROLINA)

AFFIDAVIT

COUNTY OF LAURENS)

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

- 1. I have read the information on this affidavit and I understand such information.
- 2. Property located at 423 Free Bridge Road, Ware Shoals, bearing Laurens County Tax Map Number 088-00-00-005, was transferred by Nancy Carol Underwood, attorney-in-fact for Willie D. Watson to the Willie Dendy Lee Watson Irrevocable Trust of even date herewith on 4-2-09.

- 3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) x _____ exempt from the deed recording fee because (see information section of affidavit):

deeded to trust - no consideration
(If exempt, please skip items 4-7, and go to item 8 of this affidavit)

- 4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit)
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____

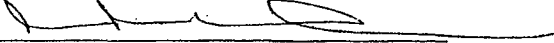
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: \$ _____

- 6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: \$ _____
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ _____

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

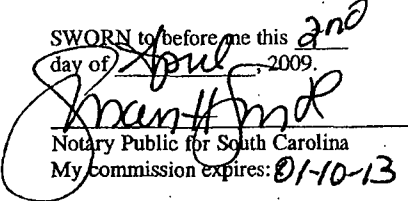
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Atty

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



Seller, Purchaser, Legal Representative of the
Purchaser, or other Responsible Person Connected
with the transaction

SWORN to before me this 2nd
day of April, 2009.



Notary Public for South Carolina
My commission expires: 01-10-13

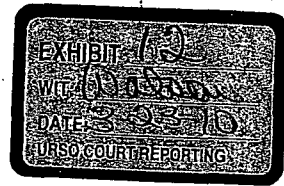
INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining the fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provision of the law.

Exempted from the fee are deeds:

- (1) transferring in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of the United States;
- (4) transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A) of the South Carolina Code of Laws;
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39 of the South Carolina Code of Laws;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and grantor's spouse, parent, grandparents, sisters, brothers, children, stepchildren, grandchildren and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or take functional control of electric transmission assets as defined in the Federal Power Act.

GENERX PHARMACY



429 East Boundary Street
Chapin, SC 29036

Phone 1-888-777-4101
(803) 345-0708
Fax 1-888-777-4102
(803) 345-9791

CUSTOMER AGREEMENT

Facility Name: Generations of Chapin Date: 5/6/09
Denny Watson
Patient Name: Denny Watson DOB: 8/10/18
Social Security Number: 248-05-4345 Medicare #: 248-05-4345-A

Medicare Part D- Yes No Copy of card attached Y N

Medicaid- Yes No Copy of card attached Y N

Private Insurance- Yes No Copy of card attached Y N

We must have copies of front and back of cards in order to bill ins. companies properly

Allergies: N/A

Responsible Party: Nancy Underwood

Address: 391 Night Harbor Dr city: Chapin zip: 29036

Each month an itemized bill will be sent to the responsible party. This is payable directly to GENERX Pharmacy and is due by the 15th of each month. Please include the stub from the bill and put the account or persons name on the check to insure proper credit. I agree to be responsible for payment to GENERX Pharmacy for all services provided. If payment is not made by the next billing cycle, GENERX Pharmacy may suspend medications for non-payment. I agree to be responsible for the full amount of charges if no payment is made from claims submitted to an insurance company, in addition to any collection costs incurred. I agree to transfer immediately to GENERX Pharmacy any payment made directly to me for products and services provided by GENERX Pharmacy on an assigned basis.

I understand that by signing this agreement, I indicate to purchase health care products or services, or both from GENERX Pharmacy.

I understand that I am under the supervision and control of my attending physician. I understand also my physician has prescribed the therapy, equipment and or supplies noted as part of my treatment.

The undersigned hereby authorizes GENERX Pharmacy to request on my/ our behalf and to collect all public and private insurance benefits due for products and services provided by GENERX Pharmacy and all insurance benefits be made to GENERX Pharmacy. I/we further agree that in any suit brought on this contract of Guarantee by GENERX Pharmacy, no further proof shall be required of it than to establish the amount or sum of money due owing to it from the said patient, and when so provided shall be conclusive and binding on the guarantor (s). Any and all suits for and every breach of said agreement may be instituted and maintained in Lexington County, South Carolina.

The undersigned consents to the review of his/ her records including medical records by any federal, state or accrediting body or agency as required by the regulatory licensing or accrediting body. Also the undersigned authorizes the insurer and any other third party payer who provides the customer with coverage to disclose to the company and information regarding coverage, including but not limited to (a) payment by such insurer (s) or third party payer (s) to any of us, for services rendered by GENERX Pharmacy and (b) the scope and extent of coverage available from time to time. Customer authorizes all medical personnel to provide information to GENERX pharmacy concerning his/ her medical history as it may relate to the customers therapy.

The undersigned certifies that he/she is the customer or is authorized by the customer as the customer's agent to execute the above and accept its terms. A duplicate copy of this agreement and Consent shall be considered as the same as the original.

Signature: ~~Nancy Underwood~~ Denny Watson ²⁵²

Plan Review Signature Sheet

Ignacio Medina Date 5/6/09
Administrative Signature

____ Date _____
Administrative Signature

____ Date _____
Administrative Signature

____ Date _____
Administrative Signature

Resident *Denny Watson*
↓
____ Date 5/6/09
Resident/Responsible Party Signature

____ Date _____
Resident/Responsible Party Signature

____ Date _____
Resident/Responsible Party Signature

____ Date _____
Resident/Responsible Party Signature

RESIDENT TRUST FUND
DEPOSIT AUTHORIZATION

RESIDENT'S NAME Denny Watson

REPRESENTATIVE'S NAME _____

I hereby grant this facility authorization to deposit my personal funds into the Resident Trust Fund Account maintained on deposit at the BB&T Bank located in Chapin, SC. I understand that there is no charge for this service and that I may withdraw my funds upon request. I further understand that a quarterly accounting will be made of my funds and that I or my representative will be provided a copy of such reviews.

I am I am not interested in having a residents fund account at Generations of Chapin.

5-6-09
Date

Denny Watson
Signature of Resident

5-6-09
Date

[Signature]
Signature/Title of Witness

GENERATIONS OF CHAPIN
431 EAST BOUNDARY STREET
CHAPIN, SOUTH CAROLINA 29036
(803) 345-1911

CONTRACT FOR ASSISTED LIVING/RESIDENTIAL CARE

Denny Watson
(Name of Resident)

In consideration of the acceptance of the above as a resident of Generations of Chapin, the undersigned agrees to the following:

1. That Generations of Chapin shall render care that is considered residential care to the resident.
2. That should the resident expire or be discharged to a hospital or nursing home, any payment collected in advance will be refunded up to the date of discharge. For other causes, a five day notice of the intent to withdraw from residency is requested but not required.
3. That Generations may discharge the above at anytime the condition of the resident becomes such that the program of care offered here is considered by the attending physician as insufficient, or upon such conduct which may be considered by the administration as a detriment or a jeopardy to the happiness and contentment of the other residents.
4. That Generations is hereby released from any responsibility for the protection of personal jewelry, money, or any other valuables as long as the above is a resident of this facility. Special efforts will be made to assist each resident in the preservation of such articles.
5. That the resident be responsible for physician bills, medicines, medical supplies and personal articles. Payment for room and board is to be paid by the tenth ~~(10th)~~¹² of each month for the month to follow.
6. That fluctuation in the cost of care may be expected, requiring rate adjustments. A 30 day prior notice will be given to residents for the month to follow.
7. That the fee of \$ 2700 per month for room and board is the rate at time of admission.

Denny Watson
(Signature)

5-6-09
(Date)

[Signature]
(Witness Signature)

RESIDENT INFORMATION SHEET
PLEASE FAX TO BILLING DEPARTMENT:

* FOR NEW ADMISSION INFORMATION
* FOR DISCHARGE INFORMATION

NEW ADMISSION
 DISCHARGE
 CHANGE OF RESIDENT INFORMATION (ROOM RATE, ADDRESS, ETC.)

FACILITY NAME GOC
RESIDENT'S NAME Denny Watson
ADMISSION DATE 5-9-09 NUMBER OF DAYS TO BILL _____
CHARGE DATE _____ NUMBER OF DAYS TO REFUND _____
(CHECK ONE)
PRIVATE PAY OSS _____

RESIDENT IS PRIVATE PAY, COMPLETE THE FOLLOWING:

ROOM RATE \$ 2730
NAME & ADDRESS WHERE BILL IS TO BE SENT:
Denny Watson
431 East Boundary St.
Chapin SC 29634

RESIDENT IS OSS, PLEASE COMPLETE THE FOLLOWING:

DO YOU HAVE A COPY OF O-1 FORM THAT SHOWS RESIDENT'S COUNTABLE INCOME & PERSONAL NEEDS AMOUNT _____
ARE YOU RESPONSIBLE FOR RESIDENT FUND ACCOUNT ___ YES ___ NO
(WE ARE RESPONSIBLE ONLY IF CHECKS ARE SENT DIRECTLY TO US FROM SOC SEC OR SSI)

NAME & ADDRESS WHERE BILL IS TO BE SENT:

AMOUNT COLLECTED ON ADMISSION \$ 2730 ÷ 31 = 88.06
88.06 X 23 days

\$ 2025.48
256

Includes
\$130.00 Furniture
per month

GENERx PHARMACY

429 East Boundary Street
Chapin, SC 29036

Phone 1-888-777-4101
(803) 345-0708
Fax 1-888-777-4102
(803) 345-9791

Acknowledgement of Receipt of Privacy Notice

I have been presented with a copy of GENERx Pharmacy Notice of Privacy Policies, detailing how my information may be used and disclosed as permitted under federal and state law. I understand the contents of the Notice, and I request the following restriction(s) concerning the use of my personal medical information (write "none" if there are no restrictions):

Sherry Long

Further, I permit a copy of this authorization to be used in the place of the original, and request payment of medical insurance benefits either to myself or to the party who accepts assignment. Regulations pertaining to medical assignment of benefits apply.

Resident: Denny Watson

Facility: GOC

Signed: Denny Watson

Date: 5-06-09

If not signed by patient, please indicate relationship to patient (e.g., spouse)

Relationship: _____

Internal Use Only:

Date received in Pharmacy: _____

Generations of Chapin
Plan of Care

Wake up around
6:30 A to 7pm

Resident's Name Denny Watson

Date	Problem Identified	Goal	Goal Date	Approches	Date Resolved
5/09	Bathing	Resident to be clean and odor free at all times	11/09	Staff will assist with bathing 3x a week Stand by assistance	
5/09	Medications	resident to receive the correct meds at the correct time	11/09	Staff will administer all meds per physicians orders	
5/09	Transportation	Resident to attend all scheduled Dr. Appt	11/09	Daughter will provide transportation to and from the Dr.	
5/09	Meals	Resident will maintain body weight	11/09	staff will prepare 3 meals a day for resident as well as snacks No Hot Dogs if possible No salt	258
5/09	Laundry	Resident to have clean cloths at all times	11/09	Staff will launder all clothes for resident.	
5/09	Resident prefers to be called Ms. Denny		11/09		
5/09	Activities	Resident to attend as many activities as possible	11/09	Staff will remind resident of all activities	
5/09	Dressing	Resident able to get dressed safely due to past stroke	11/09	Staff will assist as needed with dressing	



POWER OF ATTORNEY
 RECORDING FEES \$15.00
 PRESENTED & RECORDED:
 10-09-2006 02:21 PM
 BARBARA T. WASSON
 CLERK OF COURT
 LAURENS COUNTY, SC
 BY: CARISSA BROCK CLERK
 BK: D 803
 PG: 1 - 4

STATE OF SOUTH CAROLINA)
) DURABLE POWER OF ATTORNEY
 COUNTY OF LAURENS)

KNOW ALL MEN BY THESE PRESENTS, that I, the undersigned, **WILLIE D. WATSON**, a legal resident of the County of Laurens, State of South Carolina, hereby revoke any and all other Powers of Attorney heretofore made by me, and by these presents do make, constitute and appoint, **NANCY CAROL UNDERWOOD**, my true and lawful attorney in fact to set in, manage, and conduct all my estate and all my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute, or to concur with persons jointly interested with myself therein in the doing or executing of, all or any of the following acts, deeds, and thins, all of which shall be done in a fiduciary capacity:

1. To buy, receive, lease, accept or otherwise acquire, sell, give, convey, transfer, mortgage, hypothecate, pledge, borrow, quitclaim, or otherwise encumber or dispose of, or to contract or agree for the acquisition, disposal, or encumbrances of any property, real, personal, tangible or intangible, upon such terms, considerations and conditions as my said attorney in fact shall think proper;

2. To take, hold, possess, invest, lease, or let, or otherwise manage any or all of my property or any interest therein; to eject, remove, or relieve tenants or other persons from, and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, build on, raze, rebuild, alter, modify or improve the same or any part thereof;

3. To make, do, and transact all and every kind of business of whatever nature, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interest, dividends, annuities, social security payments, veteran's administration benefits, demands, debts, taxes and obligations, or any rebate, refund or discount thereon, which may now or hereafter be due, owing or payable by me or to me, and to make disclaimers on my behalf for any inheritance or any other reason;

4. To make, endorse, negotiate, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, contracts of sale, assignments, agreements, certificates, hypothecations, checks, notes, vouchers, receipts, and such other instruments in writing of whatever kind and nature as may be necessary, convenient or proper in the premises;

5. To deposit and withdraw for the purposes hereof, in either my said attorney's name, or my name or jointly in both names, or in my name jointly with another person, in from any banking or savings institution, money market fund and other investment, any funds, negotiable papers, or moneys which may come into my said attorney's hands as such attorney in fact, or which I now or hereafter may have on deposit, or be entitled to;

6. To institute, prosecute, protest, defend, compromise, arbitrate, and dispose of legal, equitable, or administrative hearings, actions, claims for refund, assessment notices or tax deficiencies, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in

259 *Willie D. Watson*

litigation in connection with the premises;

7. To act as my attorney in fact or proxy in respect to any stocks, shares, bonds, warrants, rights, or other investments, rights, or interests, that I may now or hereafter hold;

8. To receive, endorse, and collect checks payable to the order of the undersigned drawn on any firm, person, corporation, limited liability company, partnership, or association, or on the treasurer or other fiscal officer of the United States, or any sovereign state or authority, or any political subdivision or instrumentality thereof;

9. To prepare, execute and file income and other tax returns;

10. To transfer any of my assets, specifically including real property I might own, to my spouse, my children and my lineal descendants by gift, including to any such person serving as attorney in fact, or to any trust funds which I may have established, revocable or irrevocable, funded or unfunded; provided, however, that my attorney in fact shall not be authorized to make any gift which incurs federal or state gift tax or to make any gift to one person, other than my spouse, which exceeds the amount of the federal annual gift tax exclusion under Section 2503(b) of the Internal Revenue Code, as then in effect at the time of the gift;

11. To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me, my spouse, my children and my lineal descendants, and to transfer any of my assets to such trusts;

12. To enter any safe deposit box either in my name or jointly with another, and to inventory same, and withdraw anything from said safe deposit box;

13. To purchase for my benefit and in my behalf United States Government bonds redeemable at par in payment of United States estate taxes imposed at my death upon my estate; and

14. To exercise or perform any act, power, duty, right, or obligation whatsoever that I, as principal, now have, or may hereafter acquire the legal right, power, or capacity to exercise or perform, in connection with, arising from, or relating to any person, item, transaction, thing, business, property, real, personal, tangible or intangible, or matter whatsoever.

This instrument is to be construed and interpreted as a general power of attorney. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it, limit or restrict, and is not to be construed or interpreted as limiting or restricting, the general powers herein granted to my said attorney in fact.

This power of attorney shall remain in full force and effect until I have revoked it by written instrument. This power of attorney may be amended by me at any time and from time to time by written instrument. Any person named herein as attorney in fact may be removed by written instrument executed by me. If this power of attorney has been recorded in the public records of the County aforesaid, then any revocation, amendment, or removal shall also be recorded in the public records of the County aforesaid. All references to attorney in fact shall include the plural as well as the singular, and the feminine, masculine and neuter genders.

Notwithstanding any provisions herein to the contrary, my attorney in fact shall not satisfy the legal obligations of the attorney in fact out of any property subject to this power of attorney. Except to the extent this power of attorney specifically authorizes gifts to my attorney in fact, my

attorney in fact may not exercise this power in favor of the attorney, the attorney's estate, the attorney's creditors, or the creditors of the attorney's estate.

Notwithstanding any provision herein to the contrary, my attorney in fact shall have no power or authority whatever with respect to (a) any policy of insurance owned by me on the life of my attorney in fact, and (b) any trust created by my attorney in fact as to which I am a Trustee.

Notwithstanding any provision herein to the contrary, this power of attorney shall not revoke, or be deemed to revoke, any health care powers of attorney heretofore made by me.

By this power of attorney I am giving and granting unto my said attorney in fact full power and authority to do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property, and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specifically enumerated powers herein being in aid and exemplification of the full, complete and general powers herein granted and not in limitation or definition thereof; and hereby ratifying all that my said attorney in fact shall lawfully do or cause to be done by virtue of these presents.

And I hereby declare that any act or thing lawfully done hereunder by my said attorney in fact shall be binding on myself, my heirs, my legal and personal representatives, and assigns, whether the same shall have been done before or after my death, or other revocation of this instrument, unless and until reliable intelligence or notice thereof shall have been received by my said attorney in fact.

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing her own estate. It is my intention that the power and authority conferred herein upon my attorney in fact shall be exercisable notwithstanding my physical disability or mental incompetence. All acts done by my attorney in fact pursuant to this power during any period of disability or mental incompetence shall have the same effect and inure to the benefit of and bind me, and my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled.

It is my express intention that after the onset of mental disability my attorney in fact shall not be required to file any inventory or accounting with the Probate Court, but my attorney in fact shall keep accurate books and records in order to account to me or my heirs or personal representatives. I direct that no surety bond or other security shall be required to be posted in any jurisdiction by my attorney in fact or any successor before or after my mental disability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5th day of October, 2006, and I direct that photographic copies of this power of attorney can be made which shall have the same force and effect as an original.


WILLIE D. WATSON

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS) REVOCATION OF POWER OF ATTORNEY

WITNESSETH that I, Willie D. Watson of the County of Laurens, State of South Carolina, do hereby revoke in its entirety that certain durable power of attorney heretofore granted unto Nancy Carol Underwood by instrument dated October 5, 2006 and recorded October 9, 2006, in the ROD/Clerk of Court Office for Laurens County in Deed Book 803, Page 1-4.

In witness whereof, I have hereunto set my hand and affixed my seal this the 18th day of June, 2009.

Janet G. Walston

Willie D. Watson (LS)
 Willie D. Watson

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS) PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named Janet G. Walston sign, seal and as his act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 18th day of June, 2009

Janet G. Walston

[Signature] (SEAL)
 Notary Public for SC
 My commission expires: 8/18/14

A TRUE COPY OF ORIGINAL
Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCOP & GS

2009005066
 OTHER DB
 RECORDING FEES \$10.00
 PRESENTED & RECORDED:
 06-18-2009 03:29 PM
 LYNN W. LANCASTER
 CLERK OF COURT
 LAURENS COUNTY, SC
 BY: ROSLYN JOHNSON CLERK
 BK: D 936
 PG: 83 - 83

HOSPITAL TRANSFER RECORD

Generations of Chapin
431 East Boundary Street
Chapin, South Carolina 29036
(803) 345-1911

Name/Last Watson First Denny MI _____ Adm Date 5/9/09

Primary Physician Name Walter James

Address _____ Phone # 227-6818

In Case of Emergency Notify Nancy Underwood

Address _____ Phone # 803-345-7393

Transfer To Lexington Medical Center

DOB 8/10/18 Social Security 248-05-4345

Medicare # 248-05-4345-A

Other Insurance Company _____ Policy # _____

Responsible Party Nancy Underwood

Medical History Angina, Arthritis, HBP, CVA

Allergies/Special Instructions N/A

Reason for Transfer

Person sending resident _____ Date _____

Personal Items _____

Generations of Chapin

431 East Boundary Street

Chapin, SC 29036

803-345-1911

803-345-6228 Fax

5-22-09

Dr. James:

Mrs. Willie D. Watson has requested that she receive 2 to 3 tablets of Senokot S tablets instead of just one daily. She said she needs this many to get results. Even though this is an over the counter medication, and if you agree, we will need a new script to change the dosage faxed to Generations. If you need to reach me call me at 803-345-1911. Her DOB is 8-10-18.

Thank You,



Tim Slice, Administrator
Generations of Chapin

Winston, Wainy

macrobid - 6 pills - 100 mg

sinopril 40 mg - 37 pills

isoprolol 25 mg - 10 pills

enicar 20 mg - 36 pills

meprazole 20 mg - 34 pills

larfarin 2.5 mg - 86 pills

simvastatin 20 mg - 34 pills

urosemide 40 mg - 21 pills

enokot-s - 83 pills

etail senokot - 7 pills

prataidine 10 mg - 25 pills - drug store

ylenol arthritis pain 650 mg - 8 pills - drug store

e. rum silver - 84 pills - drug store

- gave the pills listed above in the quantity listed above

to Mrs. Watson. Kim Moliski, care giver, Generations of

rapin

- received the pills listed above in the quantity listed above
from Kim Moliski.

Willie D. Watson 6/18/89

Medical Power of Attorney Effective Upon Execution

I, Willie D. Watson, a resident of 423 Free Bridge Road, Ware Shoals, SC 29692, Social Security Number 248-05-4345 designate William R. Fuller Jr. and Lisa A. Fuller, presently residing at 8 Rose Wood Dr. Greenville, SC 29607, telephone number 864-423-1420 as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

Limitations: None. However, I designate William R. Fuller Jr. and Lisa A. Fuller to decided, at their discretion, to make changes to any medical limitations depending upon my diagnosis, prognosis, and outcome.

Inspection and Disclosure of Information Relating to My Physical or Mental Health: Subject to any limitations in this document, my agent has the power and authority to do all of the following:

1. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records;
2. Execute on my behalf any releases or other documents that may be required in order to obtain this information;
3. Consent to the disclosure of this information.

Additional Powers: Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

1. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice";
2. Any necessary waiver or release from liability required by a hospital or physician.

~~**Duration:** This power of attorney exists indefinitely from its date of execution, unless I establish herein a shorter time or revoke the power of attorney.~~

Alternative Agent: In the event that my designated agent becomes unable, unwilling, or ineligible to serve, I hereby designate Sherry L Long, presently residing at 389 Free Bridge Road Ware Shoals, SC 29692, telephone number 864-420-4057 as my as my first alternate agent

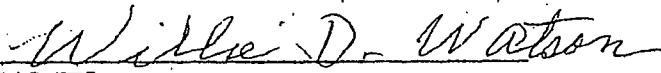
Prior Designations Revoked: I revoke any prior Medical Power of Attorney.

Location of Documents:

The original copy of this Medical Power of Attorney is located at Laurens County Court House, Laurens, South Carolina.

Signed copies of this Medical Power of Attorney have been filed with the following individuals and institutions: William R. and Lisa A. Fuller 8 Rose Wood Dr. Greenville, SC 29607. Sherry L. Long 389 Free Bridge Road, Ware Shoals, SC 29692. Willie D. Watson 423 Free Bridge Road, Ware Shoals, SC 29692.

I sign my name to this Medical Power of attorney on the date of June 20, 2009 at 926 N.E. Main Street, Simpsonville, SC 29681.


[NAME]

Statement of Witnesses

I hereby declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable medical power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed an agent by this document. I am not related to the principal by blood, marriage, or adoption. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death.

Furthermore, if I am an employee of a health care facility in which the principal is patient, I am not involved in providing direct patient care to the principal and am

not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

[Signature]
[WITNESS]

[Signature]
[WITNESS]

Subscribed and sworn to before me on June 20, 2009.

Josh T. Hermann Notary Public, Greenville, South
Carolina. My commission expires 9/23/14.

[Signature] 6/20/09
Josh T. Hermann
Greenville Co SC
my Commission expires 9/23/14

LETTER OF NOTIFICATION

TO WHOM IT MAY CONCERN:

This letter of notification is to inform the court system, family, friends, and any other institution that may need this statement for the well being of Willie D. Watson.

Effective June 18, 2009, I Willie D. Watson, am presently residing at 8 Rose Wood Dr. Greenville, SC 29607 and am under the care and supervision of William R. Fuller Jr. and Lisa A. Fuller at 8 Rose Wood Dr. Greenville, SC 29607.

I willfully give consent to William R. and Lisa A. Fuller to oversee my medical care that includes, but not limited to, medications, physician consults, and any other decisions that involve my health and well being as they are also my medial Power of Attorney.

Willie D. Watson

Willie D. Watson

6-20-09

Date

Cc: Willie D. Watson
William R. Fuller Jr.
Lisa A. Fuller
Sherry L. Long

ACKNOWLEDGMENT OF RECEIPT

GENERATIONS OF CHAPIN
431 EAST BOUNDARY STREET
CHAPIN, SOUTH CAROLINA 29036
(803) 345-1911

I ACKNOWLEDGE RECEIPT OF, HAVE READ AND UNDERSTAND THE FOLLOWING SECTIONS:

- ADMINISTRATION POLICY STATEMENT
- ADMISSION POLICY
- FORMS OF PAYMENT POLICY
- RATES AND ITEMIZED STATEMENTS
- CLOTHING AND PERSONAL ITEMS
- LEAVES
- ALCOHOLIC BEVERAGE POLICY
- OVER THE COUNTER MEDICINE POLICY
- DISCHARGES
- ASSISTIVE DEVICES
- FOOD IN ROOMS
- GRATUITIES
- PARKING
- SMOKING
- TELEPHONES, TELEVISION AND RADIOS
- TRANSFERS
- VALUABLES AND MONEY
- VISITORS
- RELIGIOUS SERVICES
- GRIEVANCE POLICY AND PROCEDURES
- MEDICAL CARE POLICY
- HEALTH RECORD
- ACTIVITIES AND RECREATION
- WITNESSING OF LEGAL DOCUMENTS
- ADVANCE DIRECTIVES
- OMNIBUS ADULT PROTECTION ACT
- RESIDENT BILLS OF RIGHTS

THE FEE OF \$ 2700 PER MONTH FOR ROOM AND BOARD IS THE RATE OF ADMISSION.

Denny Watson
SIGNATURE OF RESIDENT/RESPONSIBLE PARTY

5-06-09
DATE

[Signature]
WITNESS

5-06-09
DATE

C:\Documents and Settings\Jim\Desktop\generations\admission\ACKNOWLEDGEMENT OF RECEIPT FORM.wpd

AGENCY I.D.
CC-320600

TOWN OF CHAPIN
INCIDENT REPORT

CASE NUMBER

061809401

NCIC
INO. ENTD.

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. MF - MISSING PERSON	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	20		<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
2.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			
3.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) GENERATIONS OFF OF E.BOUNDARY, CHAPIN SC ZIP CODE 29036 WEAPON TYPE

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK			LOCATION NO.
06/18/2009	1400		06/18/2009	1700	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME
					06/18/2009	1628	1631	1700

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE			
SLICE, TIMOTHY HEYWARD	#1	#2	#3	J	S	O	U	W	M	40	N	H	H

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
171 ELM CREEK DR.	CHAPIN	SC	29036	

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE			
WATSON, WILLIE D	#1	#2	#3	O	S	O	U	W	F	-90	N	H	H

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
--------	--------	------	------	---	--	--	--	--	--	--	--	--	--

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
431 E.BOUNDARY ST	CHAPIN	SC	29306	

VISIBLE INJURY (VICT. 1) YES NO EXPLAIN --
 VICTIM (NO. 1) USING: ALCOHOL: YES NO UNK. DRUGS: YES NO UNK.

TWO-MAN VEH. ONE-MAN VEH. DETECTIVE/SPL.ASMT. OTHER ALONE ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown

<input type="checkbox"/> SUSPECT	SUBJECT NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
<input type="checkbox"/> RUNAWAY	PERSON, UNKNOWN/UNTRACKED	U	U	00	U					

WANTED
 WARRANT
 ARREST

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.

JAIL
 SUMMONS

SUBJECT (NO. 1) USING:ALCOHOL: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK.	ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DATE/TIME OF OFFENSE	DATE/TIME OF ARREST
DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNK. TYPE:	TOTAL # ARRESTED 0	06/18/2009	1400

ON THE ABOVE DATE AND TIME R/O WAS DISPATCHED TO GENERATIONS IN REFERENCE TO A MISSING PERSON. R/O MET WITH COMPLAINANT(TIMOTHY HEYWARD SLICE) WHO STATED THAT SUBJECT(WILLIE D WATSON) HAD BEEN MISSING SINCE AROUND 1400. COMPLAINANT STATED THAT HER PHONE WAS MISSING FROM HER ROOM AND HER PURSE BUT HER CLOTHES WERE STILL THERE. COMPLAINANT STATED THAT HE TRIED TO CONTACT SUBJECT BY PHONE BUT HAD NEGATIVE CONTACT. R/O WAS ABLE TO CONTACT SUBJECT BY PHONE AND R/O ASKED SUBJECT WHO SHE WAS WITH AND SUBJECT STATED SHE DID NOT HAVE TO SAY. R/O ASKED SUBJECT HOW SHE WAS GOING TO TAKE HER BLOOD THINNER MEDICINE AND SUBJECT STATED THAT SHE WOULD GET MORE. R/O LET THE COMPLAINANT TALK TO THE SUBJECT. SUBJECT TOLD COMPLAINANT THAT SHE WAS IN GREENWOOD TAKING CARE OF BUSINESS AND WOULD BE BACK BUT SHE DID NOT KNOW WHEN. COMPLAINANT TOLD R/O SUBJECT COULD LEAVE WHEN SHE WANTED BUT SHE WAS SUPPOSE TO LET SOMEONE KNOW WHICH SHE DID NOT DO SO. SUBJECT LATER CONTACT R/O BY PHONE AND STATED SHE WAS FAXING SOMETHING TO THE PD. SUBJECT FAXED R/O A COPY OF A REVOCATION OF POWER OF ATTORNEY. NOTHING FURTHER AT THIS TIME.



JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)							TOTAL VALUE
Burned							
Count/Forged							
Dest./Damaged							
Recovered							
ad							
en							
Unknown							
SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED	<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 18	<input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR UNDER 18	<input type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 272 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUSTODY							
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER		

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

REVOCATION OF POWER OF ATTORNEY

WITNESSETH that I, Willie D. Watson of the County of Laurens, State of South Carolina, do hereby revoke in its entirety that certain durable power of attorney heretofore granted unto Nancy Carol Underwood by instrument dated October 5, 2006 and recorded October 9, 2006, in the ROD/Clerk of Court Office for Laurens County in Deed Book 803, Page 1-4.

In witness whereof, I have hereunto set my hand and affixed my seal this the 18th day of June, 20 09.

Janet G. Walston
[Signature]

Willie D. Watson (LS)
Willie D. Watson

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named Janet G. Walston sign, seal and as his act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 18th day of June, 20 09

Janet G. Walston

[Signature] (SEAL)
Notary Public for SC
My commission expires: 8/18/14

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County, CCP & GS

2009005066
OTHER DB
RECORDING FEES \$10.00
PRESENTED & RECORDED
06-18-2009 03:29 PM
LYNN W. LANCASTER
CLERK OF COURT
LAURENS COUNTY, SC
BY: ROSLYN JOHNSON CLERK
BK: D 936
PG: 83 - 83

Exh 3 Townsend

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

**IRREVOCABLE TRUST AGREEMENT
FOR THE BENEFIT OF
WILLIE DENDY LEE WATSON**

This agreement made this 2nd day of April 2009 by and between Willie Dendy Lee Watson by her attorney-in-fact, Nancy Carol Underwood, hereinafter referred to as the "Trustor," and Nancy Carol Underwood and John H. Watson, hereinafter referred to "Trustees."

In consideration of the mutual covenants and promises set forth herein Trustor and Trustee agree that this trust known as the Willie Dendy Lee Watson Irrevocable Trust shall be for the sole benefit of Willie Dendy Lee Watson under the terms and conditions hereinafter set forth:

SECTION ONE

TRANSFER IN TRUST

Trustor assigns, transfers and conveys to Trustees the property described in Exhibit "A," attached and incorporated by reference. Receipt of such property is hereby acknowledge by Trustee. Such property, hereafter designated as the trust estate, shall be held by the Trustees in trust for the benefit of Willie Dendy Lee Watson for the uses and purposes and on the terms and conditions set forth herein.

SECTION TWO

DISPOSITION OF PRINCIPAL AND INCOME

Trustees shall administer and manage the trust estate, collect the income therefrom, and, after payment of all taxes and assessments thereon and all charges incident to the management thereof, apply and dispose of the net income and the principal of the trust estate as follows:

(a) Willie Dendy Lee Watson shall receive or shall be disbursed for the benefit of Willie Dendy Lee Watson all of the net income and any principal deemed necessary for the upkeep, maintenance and support of Willie Dendy Lee Watson in the manner to which she is accustomed.

(b) This trust agreement shall terminate upon the death of Willie Dendy Lee Watson and the proceeds remaining in trust shall distributed to the estate of Willie Dendy Lee Watson to be disposed of in accordance with the terms and conditions of her Last Will and Testament dated October 5, 2006..

SECTION THREE

ADDITIONS TO TRUST

JHW
AW

Trustor and any other person shall have the right at any time to add property acceptable to Trustee to this trust. Such property, when received and accepted by Trustee, shall become part of the trust estate.

**SECTION FOUR
IRREVOCABILITY OF TRUST**

This trust shall be irrevocable and shall not be revoked or terminated by the Trustor or any other person, nor shall it be amended or altered by Trustor or any other person.

**SECTION FIVE
POWERS OF TRUSTEE**

In the administration of this trust Trustees shall, in addition to all powers granted by law, have the following powers, all of which shall be exercised in a fiduciary capacity and primarily in the interest of the beneficiary, Willie Dendy Lee Watson:

My Trustees are authorized in their absolute discretion with respect to any property, real or personal, at any time held under any provision of this my Will and the Trust created hereunder 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 Trustees' own stock, regardless of any lack of diversification, risk or non-productivity, as long as it is deemed 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 trust estate or even the entirety thereof.

2. To invest and reinvest all or any part of my 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 trusts, investment trusts, whether of the open and/or closed fund types, and participation in common collective or pooled trust funds of my Trustees, 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,

JHW *AW*

constituting a part of my trust estate, for cash or upon credit; to exchange any property of my trust estate for other property, at such times and upon such terms and conditions as they may deem best, and no person dealing with them shall be bound to see to the application of any monies paid.

4. To hold any securities or other property in their own name as Trustees, in their own name, in the named 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 trust estate in cash and uninvested for such period or periods of time as they 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 Trust estate at shareholders' meetings in person or by special, limited, or general proxy and in general, to exercise all of the rights, powers and privileges of an owner in respect to any securities constituting a part of my 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 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 Trustees 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 they may deem advisable in connection therewith.

9. To borrow money and to encumber, mortgage or pledge any asset of my trust estate for a term within or extending beyond the term of the trust estate, in connection with the exercise of any power vested in my Trustees.

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 estate.

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 Trustees, 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 their own negligence; and to close out, liquidate or sell the business at such time and upon such terms as they shall deem best.

14. To collect, receive, and receipt for rents, issues, profits, and income of my Trust estate.

15. To insure the assets of my trust estate against damage or loss and Trustees 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 or dual positions to deal with themselves in their 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 trust estate as my Trustees 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 Trustees needful for the proper administration of my trust estate; and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he/she was selected and retained with reasonable care.

19. To determine, irrespective of statute or rule of law, what shall be fairly and equitably charged or credited to income and what to principal, notwithstanding any determination by the courts or by any custom or statute, and whether or not to establish depreciation reserves.

20. To hold and retain the principal of my 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 Trustees' 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 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.

22. To exercise any power herein granted with reference to the control, management, investment, or disposition of my Trust estate, as my Trustees, without having to declare in which capacity it is acting.

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

SECTION SIX

LIMITATION OF POWERS

Should either of the Trustees at time resign pursuant to the terms of this instrument, the remaining Trustee shall thereupon appoint a successor Trustee. In the event of the failure, refusal or inability of the remaining Trustee to appoint a successor Trustee, the trust may secure at the expense of the trust the appointment of successor Co-Trustee by order of a court of competent jurisdiction.

SECTION SEVEN

PAYMENT OF DEATH TAXES

Trustee is authorized and directed to pay out of the principal of the trust estate the proportionate share of any succession, legacy, inheritance, death, transfer or estate taxes, including any interest and penalties thereof, that may be assessed by reason of the death of trustor. In making such payment, Trustee may rely on the written statement of the executor or administrator of the estate of trustor as to the proportionate share of such taxes and chargeable to

J.H.W. *N.A.V.*

the trust estate.

SECTION EIGHT
INVASION OF PRINCIPAL

In the event that the net income of this trust is at any time insufficient to provide for the care, comfort, maintenance, and support of Willie Dendy Lee Watson, Trustees, in their uncontrolled discretion, may pay or apply for such purposes such sums from the principal of the trust estate as Trustees may deem proper, considering any other sources of income of such Willie Dendy Lee Watson.

SECTION NINE
ALLOCATION OF PRINCIPAL INCOME

Except as otherwise specifically provided in this agreement, Trustees shall have full power and authority to determine, in their absolute discretion, what shall constitute principal of the trust estate, gross income from the trust estate, and net income of the trust estate distributable under the terms hereof.

SECTION TEN
ACCOUNTING

Trustees at any time shall be entitled to render to the current income beneficiary or beneficiaries of the trust estate an account of the acts of Trustees and transactions with respect to the income and principal of the trust estate from the date of the creation of the trust or from the date of the last previous account of Trustees, and such beneficiary or beneficiaries shall have full power and authority on behalf of all persons now or hereafter interest in the trust to finally settle and adjust such account. Approval of such account by such beneficiary or beneficiaries shall constitute a full and complete discharge and release of Trustees from all further liability, responsibility and accountability for or with respect to the acts and transactions of Trustees as set forth in such account, both as to income and principal.

SECTION ELEVEN
PAYMENTS TO MINORS

Trustees in their sole discretion may pay any principal or income applicable to the use of a minor to the parent or guardian, to a person having care and control of such minor, or directly to such minor, or Trustees may apply the same for the minor's benefit, and any payment so made

shall be a full and sufficient discharge of Trustees with respect thereto. Also, Trustees may accumulate for the benefit of any minor any part or all of the income applicable to such minor's use as Trustees in their sole discretion may deem advisable. Such accumulated income may be paid to such minor on his or her attaining the age of twenty-one (21) years.

**SECTION TWELVE
GOVERNING LAW**

The validity, construction and effect of this agreement and of the trust created hereunder and its enforcement shall be determined by the laws of the State of South Carolina.

IN WITNESS WHEREOF, Trustor and Trustees have executed this agreement at Laurens, South Carolina this 2nd day of April 2009.

WITNESSES:

Ernan H. Smith
[Signature]

Trustor:

Willie Dendy Lee Watson by her attorney in fact Nancy Carol Underwood
Willie Dendy Lee Watson by her attorney-in-fact, Nancy Carol Underwood

Ernan H. Smith
[Signature]

Trustees:

Nancy Carol Underwood
Nancy Carol Underwood
John H. Watson
John H. Watson

Ernan H. Smith
[Signature]

Beneficiary:

Willie Dendy Lee Watson by her attorney in fact Nancy Carol Underwood
Willie Dendy Lee Watson by her attorney-in-fact, Nancy Carol Underwood

J.H.W. *N.C.U.*

EXHIBIT A

1. First Citizens Bank & Trust Co. CD Account #000340199058986
2. First Citizens Bank & Trust Co. CD Account #000340199435986
3. The Palmetto Bank Account #300910001766
4. 26.73 acres, more or less, located in the County of Laurens, State of South Carolina being the identical property conveyed to Willie Dendy-Lee Watson by deed of Paul Massey recorded in Deed Book 220 at Page 127. Less and except 0.5 acres sold to Sherry L. Long.
5. 1990 Toyota automobile, 4 door sedan, VIN #4T1SV21E5LU147052

OKW *2/11*

page 7 of 16

WARE SHOALS CENTER FOR FAMILY MEDICINE

April 23, 2009

To Whom It May Concern:


Re: Willie D Watson
SSN 248-05-4345

Ms Willie D. Watson is a patient of mine at Ware Shoals Center for Family Medicine. She is a 90 year old white female with a history of hypertension, hypercholesterolemia, hyponatremia, and atrial fibrillation who had a stroke in July 2008. After hospitalization and short term rehab she continued to have residual deficits with generalized weakness in the left arm and weakness in the left leg more prominent in the quadriceps. She has a shuffling gait that is unsteady. At a prior office visit she could walk 50 feet but only with the assistance of another person.

As for her activities of daily living, she can brush her teeth and wash without assistance but she requires assistance in dressing. She cannot negotiate stairs but she can feed herself and toilet independently. She is mentally competent but cannot ambulate independently. Although she can walk short distances with her walker, she primarily uses a wheelchair and she can only leave her immediate premises with the assistance of another person. She is also unable to prepare meals on her own.

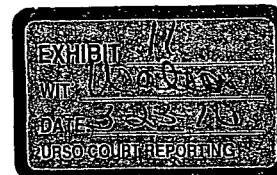
It is my opinion as her primary care physician, that she is unable to live independently and requires 24 hour supervision. If further information is needed, please contact my office.

Sincerely,



H. Coleman Robinson, M.D.

HCR/rh



STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

REVOCATION OF POWER OF ATTORNEY

WITNESSETH that I, Willie D. Watson of the County of Laurens, State of South Carolina, do hereby revoke in its entirety that certain durable power of attorney heretofore granted unto Nancy Carol Underwood by instrument dated October 5, 2006 and recorded October 9, 2006, in the ROD/Clerk of Court Office for Laurens County in Deed Book 803, Page 1-4.

In witness whereof, I have hereunto set my hand and affixed my seal this the 18th day of June, 2009

Janet G. Walston
[Signature]

Willie D. Watson (LS)
Willie D. Watson

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named Janet G. Walston sign, seal and as his act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 18th day of June, 2009

Janet G. Walston

[Signature] (SEAL)
Notary Public for SC
My commission expires: 8/18/14

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCP & CS

2009005066
OTHER DB
RECORDING FEES \$10.00
PRESENTED & RECORDED
06-18-2009 03:29 PM
LYNN W. LANCASTER
CLERK OF COURT
LAURENS COUNTY, SC
BY: ROSLYN JOHNSON CLERK
BK: D 936
PG: 83 - 83

am of sound body and mind, that I have not been coerced, nor am I under duress, nor unduly influenced, and these are my true wishes. I have gone to great lengths to ensure that my wishes are known and I would state that any Court should adhere to my wishes if so presented with any contest to this Codicil.

I previously granted my daughter Nancy Underwood a durable general power of attorney with the understanding that it was to be used only should I become incompetent or unable to handle my own affairs. It is my opinion that she abused her discretion and used the Power of Attorney for her and my son's benefit by creating a trust in order to secure their inheritance and take all my rights away to my own property and assets. I was unaware that the Power of Attorney was in effect and was advised by my daughter Nancy's attorney that it would not go into effect until I was unable to handle my own affairs and was a precautionary measure until that time. Nancy Underwood abused her power and created the trust without permission from me at a time that I was handling my own affairs.

Nonetheless, I wanted to explain that I am fully aware of my actions in amending my Last Will And Testament under date of October 5th, 2006 referenced in the Trust which Trust, I believe, should be invalidated because it does not accurately effectuate my wishes. I recite each and every Item in my October 5th, 2006 Will so no confusion exists regarding my true intentions.

W.D.W

ITEM ONE: I HEREBY CHANGE ITEM I AS FOLLOWS: I HEREBY REQUEST A CHURCH SERVICE AND OPEN CASKET. IN LIEU OF FLOWERS, I REQUEST DONATIONS TO CHARITY.

ITEM TWO: I HEREBY DELETE ITEM TWO AS MY HUSBAND IS DECEASED.

ITEM THREE: I HEREBY DELETE ITEM THREE *IN TOTO*.

ITEM FOUR: I HEREBY DELETE ITEM FOUR *IN TOTO*.

ITEM FIVE: I HEREBY DELETE ITEM FIVE *IN TOTO*.

ITEM SIX: I HEREBY ALTER AND REVISE ITEM SIX TO STATE SPECIFICALLY: "I give, devise and bequeath all 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 Codicil, absolutely in fee simple to my daughter, Sherry Lee Long, to be hers solely. If Sherry Lee Long should predecease me, then in that event only, I hereby give, devise and bequeath all 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 Codicil, absolutely in fee simple to my grandson, WILLIAM ROBERT FULLER. Should he predecease me, then, in that event, I hereby give, devise and bequeath absolutely in fee simple all of my property of every kind and description to my grandson's wife, Lisa Fuller and their two children, Rebecca Fuller and Robbie Fuller share and share alike." All other terms of Item Six my Last Will and Testament dated October 5th, 2006 are hereby void and deleted.

W.D.W.

ITEM SEVEN: I HEREBY ALTER AND REVISE ITEM SEVEN TO STATE SPECIFICALLY: "I hereby nominate, constitute and appoint my daughter, SHERRY LEE LONG, as Personal Representative of this my Last Will and Testament. If my daughter, SHERRY LEE LONG, predeceases me or we die in a common disaster, then and in that event only, I hereby nominate, constitute and appoint WILLIAM ROBERT FULLER as Successor Personal Representative of this my Last Will and Testament and direct that my Personal Representative shall serve without bond, granting unto my Personal Representative the full power and authority to sell or convey any and all real or personal property that in her/his

absolute discretion may be necessary or convenient in the administration of my estate, without requiring the approval of any court, and without limitation as to time.

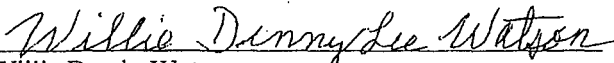
ITEM EIGHT: I HEREBY DECLARE ITEM EIGHT TO REMAIN UNCHANGED.

I hereby add **ITEM NINE** to my October 5th, 2006 Last Will And Testament in the following manner:

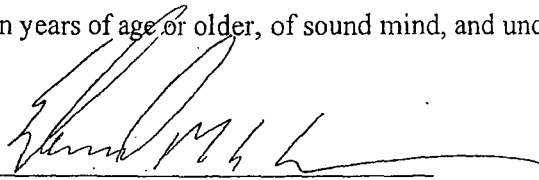
ITEM NINE: "I hereby give devise and bequeath to my son, John Hubert Watson and my daughter, Nancy Carol Underwood the sum of ONE DOLLAR (\$1.00) each to be theirs absolutely and forever and no more from my estate as both my son John Hubert Watson and daughter Nancy Carol Underwood whom I gave made many advancements and both have been well provided for during my life."

I subscribe my name to this codicil this 12th day of January, 2010, at Greenwood South Carolina, in the presence of the below named witnesses, who subscribe their names here in my presence.


I, **WILLIE DENDY WATSON**, the Testator, sign my name to this instrument this 12th day of January, 2010, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Codicil to my Last Will and Testament and that I sign it willingly; that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.


Willie Denny Watson

We, Edward S. McCallum and Michelle Powers, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare generally and to the undersigned authority, that **WILLIE DENDY WATSON**, the Testatrix, signs and executes this instrument as her codicil to her last will, and that she signs it willingly; and that each of us, in the presence and hearing of the testatrix, hereby signs this codicil as witness to the testatrix 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.



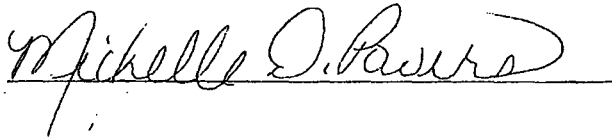
WITNESS

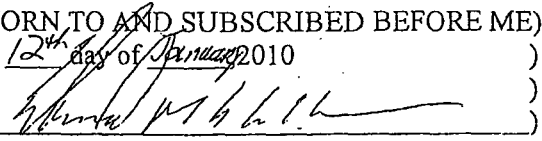

WITNESS

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

W.D.W.

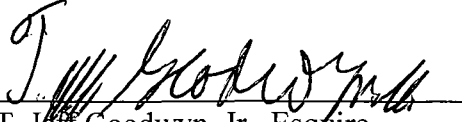
SUBSCRIBED, sworn to, and acknowledged before me by **WILLIE DENDY WATSON**, the Testatrix, and subscribed and sworn to before me by Edward McCallum and Michelle Powers the witnesses, this 12th day of January, 2010.



SWORN TO AND SUBSCRIBED BEFORE ME)
this 12th day of January 2010)
)
Notary Public for South Carolina)
My Commission Expires: 11/30/15)

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.



T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, SC 29205
(803) 251-4517 (office)
(803) 251-4527 (fax)
jgoodwyn@goodwynlaw.com
Attorney for Appellant.

March 18, 2013

RECEIVED

MAR 08 2013

SC Court of Appeals