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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

Unpublished Opinion No. 2018-UP-128 (S.C. Ct.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

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

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

v.

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

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

Case No. 1998-CP-12-00325

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JUL 11 2016

SC Court of Appeals

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

Of whom, Patricia E. King is.....Appellant,
v.

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

RECORD ON APPEAL

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App 000498

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1 THE COURT: On the record. This is the
2 final hearing in the case of Patricia King and Robbie King
3 Jones, representative of W.R. King and Ellen King,
4 Plaintiffs, versus Margie B. King and Robbie Ione King --
5 and I might be mispronouncing that -- individually and as
6 Co-personal Representatives of the Estate of Christopher C.
7 King, deceased, and Nelson M. King.

8 This is a Sixth Judicial Circuit case. It
9 is in CP -- it's in 98-CP-12-00325. The last order, my
10 order in -- not the last order -- the prior order to that
11 on accounting, set for the history and the background of
12 this case, so I will not repeat that. I'll just refer to
13 it. That order was filed on March the 9th in 2011,
14 thereafter appealed and thereafter affirmed by the
15 appellate courts. And so that order is part of the record
16 and is now final.

17 The issues that I believe that we have left
18 for final hearing are as follows -- and I stated those in
19 my last order, that is the order for summary judgement
20 which was filed on March the 9th, 2015 -- and in that order
21 I stated that what was left in this case, as far as to be
22 heard, was the counterclaims of the defendants, which are
23 the following:

24 Restitution and disgorgement; civil
25 conspiracy; unjust enrichment; trespass to land;

1 conversion; intentional interference with contractual
2 relations; constructive trust; promissory estoppel;
3 trespass to chattel; and waste. Those are the only
4 remaining issues from both sides in this matter.

5 Now I just ask the attorneys, have I stated
6 that correctly?

7 MR. DUNCAN: Yes, sir.

8 THE COURT: Is that correct?

9 MR. DUNCAN: Yes, sir.

10 THE COURT: And if y'all would state your
11 names for the record. I know we know who you are, but --

12 MR. DUNCAN: Yes, sir. I'm Mike Duncan. I
13 practice law with Austin & Rogers. And I'm here on behalf
14 of the defendants.

15 THE COURT: And the defendant attorney --
16 plaintiff's attorney.

17 MR. TYLER: Plaintiff's attorney, Your
18 Honor, John Tyler. I practice with Sweeny, Wingate &
19 Barrow. And I'm here on behalf of Plaintiff Patricia King.

20 THE COURT: Thank you very much, gentlemen.
21 I appreciate that. So y'all agree that those are the only
22 remaining issues in this case.

23 MR. TYLER: I agree to that. The one I
24 didn't hear mentioned, that I'm not clear about, is action
25 for partition of real property.

1 THE COURT: I think that, that was --

2 MR. TYLER: Has that been abandoned?

3 THE COURT: I believe. Let me look at my
4 order. I think it has.

5 MR. DUNCAN: I think so.

6 THE COURT: Yeah, in that order which is on
7 appeal. 'Cause it was a denial of summary judgement. But
8 in that order is a grant of summary judgement on some
9 issues that y'all agreed to, and a denial on others. On
10 that order it stated that the following counterclaims are
11 moot. Which I'd understood the parties had agree to
12 accounting -- well, accounting had been decided.

13 Attachment to property, action for petition
14 of real property, and breach of fiduciary duty of care,
15 that's what I understood were --

16 MR. TYLER: And I wanted to make sure --

17 THE COURT: -- no longer --

18 MR. TYLER: -- we didn't get through today,
19 and still have one claim hanging out there.

20 THE COURT: Do you agree to that --

21 MR. DUNCAN: That's right.

22 THE COURT: -- Mike?

23 MR. DUNCAN: That's what your --

24 THE COURT: All right. So we --

25 MR. DUNCAN: That's correct.

1 THE COURT: We decided on what the remaining
2 issues are. And now let me ask you this, prior to
3 starting: Are any of those issues, in the in-between time
4 of the summary judgement and now, have any of those issues
5 been resolved either by settlement? Or you're withdrawing
6 them? Or any of that?

7 MR. DUNCAN: No, sir.

8 THE COURT: Okay. So all of those issues
9 are still on the table.

10 MR. DUNCAN: Yes, sir.

11 THE COURT: Then we'll go forward with them.

12 The parties have been given notice, and
13 there's one Pro Se party who I sent the notice to, who I
14 believe is Robbie King Jones. Is that --

15 MS. KING: That's correct.

16 THE COURT: -- correct? And I think she's
17 disabled. But she was given notice because she, I think
18 appeared, at one time, Pro Se in this case. And we have
19 continued sending notices to her. So the parties have been
20 noticed, the attorneys have been noticed of the final
21 hearing, and that notice is of record in the Chester County
22 Clerk of Court's office.

23 There is -- other than this preliminary
24 matter, gentlemen, which is a motion by the plaintiff in
25 limine to exclude Alexander Cornwell and Seymore Wilder

1 from testifying at the final hearing. Aside from that
2 motion that was just filed, or served yesterday -- I don't
3 know if it's been filed or not. But I guess if you give it
4 to the court, it's filed enough. Is there any other -- are
5 there any other, rather, preliminary matters than that one?

6 MR. TYLER: I guess the only preliminary
7 matter Your Honor is already aware of, and that's our
8 stipulation -- though may not have been necessary -- that
9 was just a stipulation that we sent to the court --

10 THE COURT: Yes, you did.

11 MR. TYLER: -- regarding --

12 THE COURT: And I appreciate that. And what
13 I -- and I was overlooking that. Let me get you to state
14 the stipulation for the record. Even though you sent it to
15 me by e-mail, I would rather you state it for the record.

16 MR. TYLER: Yes. The stipulation is as
17 follows:

18 The testimony and exhibits introduced as
19 evidence at the August 16, 2010 hearing can be used by
20 counsel during their opening statements, during their case
21 in chief, for impeachment purposes and/or during their
22 closing statements. Nothing in this stipulation will
23 prevent the parties from calling any witness who was
24 previously called.

25 THE COURT: (The Mr. Duncan) Is that a

1 correct statement of the stipulation --

2 MR. DUNCAN: It is, Your Honor.

3 THE COURT: -- from the defendant attorney?

4 MR. DUNCAN: It is, Your Honor.

5 THE COURT: All right. That will -- that is
6 so stipulated. Now, let me just ask you, as an
7 administrative matter on the stipulation: Does that mean if
8 I take this under advisement, that I can go back to the
9 record and use it in this case? Or are you just going to
10 refer to specific -- I mean, for the benefit of this
11 hearing, you are going to use only parts of it? Or is it
12 already in evidence, in this case, in its entirety?

13 MR. TYLER: It's already in evidence, in
14 this case, in its entirety.

15 MR. DUNCAN: That's my -- that's my
16 position. That's our position on this, is that this --
17 although, as Your Honor pointed out, it's stretched out
18 quite a while, but it's -- there was a trial held August
19 16th, 2010, of which you have the transcript, and this is
20 the continuation of that trial is how we -- how I see it.

21 THE COURT: All right. Is that --

22 MR. TYLER: That's exactly how --

23 THE COURT: -- the way --

24 MR. TYLER: -- we see it. And Your Honor
25 can use it for your purposes in refute.

1 THE COURT: All right. That transcript,
2 which is a -- I have filed with the clerk of court, I
3 think, those years ago -- and I have a copy of it, and I
4 know you gentlemen have a copy of it as well -- that
5 transcript is part of the record. Now, for the court
6 reporter's benefit, should we maybe give her something to
7 identify it? Or is well enough identified?

8 MR. TYLER: I'd be happy to provide the
9 digital copy to Madam Court Reporter, after today's
10 hearing, with -- with the exhibits, so that she has
11 everything. If that's what you're requesting.

12 THE COURT: Well, let me just state for the
13 record, I have it before me. This is the -- a transcript
14 of the hearing before me on August the 16th, 2010. And the
15 hearing was taken before Wendy Shannon Sullivan, a notary
16 public in the -- for the State of South Carolina,
17 commencing at the hour of 10:10 a.m. on Monday, August
18 16th, at the office of Harrison & Radeker, PA, 923 Calhoun
19 Street, Columbia, South Carolina 29201. That is the
20 hearing we have reference to, gentlemen?

21 MR. TYLER: Yes, Your Honor.

22 MR. DUNCAN: Yes, sir.

23 THE COURT: All right. I think that
24 sufficiently satisfies the record. And that has, I
25 believe, been filed with the clerk of court, and should be

1 up there.

2 MR. TYLER: And there were 29 exhibits with

3 --

4 THE COURT: Pardon me. Yes, there were.

5 And there were exhibits to that. And that stipulation does
6 include the exhibits to that; is that correct?

7 MR. DUNCAN: That is correct, Your Honor.

8 THE COURT: All right. Very good. All
9 right. Then I think we have -- any other preliminary
10 matters on behalf of the plaintiff?

11 MR. TYLER: Other than our motion.

12 THE COURT: Other than your motion. All
13 right. On behalf of the defendants?

14 MR. DUNCAN: No, sir, Your Honor.

15 THE COURT: Now, technically, the plaintiffs
16 are not the moving parties here; it is the defendants.
17 Because it is the counterclaims that are before the court,
18 not any of the original pleading, and what is the before
19 the court, I believe, is the counterclaim -- it's the
20 document's stated "Counterclaims, parenthesis, Amended,"
21 which were filed June the 11th, 2010 in this case -- filed
22 June the 11th, 2010.

23 Do you gentlemen agree that, that is the
24 counterclaims we are -- at issue here?

25 MR. TYLER: With the exception of the ones

1 that have been --

2 THE COURT: Decided or --

3 MR. TYLER: -- decided, or otherwise
4 dismissed. Yes, Your Honor.

5 THE COURT: Okay. All right. I agree with
6 that. And I think that defense counsel also agrees with
7 that. Is that --

8 MR. DUNCAN: That's -- that's correct, Your
9 Honor.

10 THE COURT: All right. So those -- those
11 are the -- that is the pleading that is before the court.
12 With the exception of those issues in those counterclaims
13 which have been decided or agreed to have been mooted out
14 by the parties, those are the ones that I previously
15 mentioned in my opening statement.

16 All right, gentlemen. Then let's go to the
17 -- to the plaintiff's motion, if y'all think that's what we
18 should do. From what I understand, this motion seeks to
19 exclude two witnesses, which the motion says were revealed
20 to the plaintiff yesterday, and they are Alexander Cornwell
21 and Seymore Wilder.

22 And so I have been -- there should be
23 another copy of this motion with its attachments, exhibits,
24 and which include, I think, the discovery request --
25 essentially, plaintiff's interrogatories to defendants.

1 And I think the request to produce along with the -- a
2 letter to counsel on March the 16th, by Mr. Tyler, which
3 attached a case Jumper v. Hawkin, in which I have taken a
4 look at, I think that's the only case. There may be also
5 included Bryson v. Bryson as well. And those are the
6 cases, I think, that plaintiffs rely on in excluding these
7 witnesses. So I'll be glad to hear from you, Mr. Tyler.

8 MR. TYLER: Yes, Your Honor.

9 THE COURT: (To Mr. Duncan) Well, let me ask
10 you, first: Were you planning on calling these witnesses?

11 MR. DUNCAN: Yes, sir.

12 THE COURT: Okay. Then I won't have the
13 argument then. It would be moot, 'cause they're not
14 calling them. So I understand the defendants. Do we argue
15 the motion now or later? Or how do y'all want to do that?

16 MR. TYLER: Your Honor, it would release the
17 witnesses now, if you --

18 THE COURT: I think that's provident.

19 MR. TYLER: Okay. Your Honor, as you are
20 aware, yesterday at 2:45 p.m. I received an e-mail from
21 opposing counsel, for the first time mentioning the names
22 Alexander Cornell and Seymore Wilder as witnesses that he
23 intended to call at this hearing today. In a case that is
24 now nearly 17 years old, this is the first mention of these
25 two individuals.

1 When Your Honor issued an order denying our
2 motion for summary judgement, and we knew what was left to
3 be litigated, I immediately sent -- and Your Honor also
4 noticed this final hearing -- I immediately sent a letter
5 to opposing counsel requesting that they respond to
6 discovery requests. And specifically in that letter --
7 which is Exhibit B to the brief in front of you --
8 specifically, I requested as soon as possible, "I need your
9 responses to these requests, including but not limited to
10 all documents related to your client's claims, all
11 documents which you intend to introduce at evidence at the
12 forthcoming hearing, and the list of all witnesses and a
13 brief summary of their testimony, as described in the
14 discovery request."

15 The reason for that request, Your Honor, was
16 to allow appropriate time to prepare for their testimony,
17 to depose them, if necessary, to call them on the phone and
18 discuss their testimony at length, and to determine whether
19 I needed to offer any rebuttal witnesses to their
20 testimony.

21 However, yesterday at 2:45, when I received
22 that e-mail noticing -- putting me on notice that he
23 intended to call those two witnesses, by that point my
24 ability to determine whether their depositions should be
25 taken was shot; my ability to thoroughly prepare for their

1 examination was gone. The surprise and the prejudice are
2 extremely high in this particular instance, as I've
3 outlined the Jumper case factors in my brief.

4 So, Your Honor, I believe that due to the
5 surprise and the prejudice to my client, these -- I
6 respectfully request that these witnesses be excluded from
7 testifying at today's hearing.

8 THE COURT: All right. Thank you, sir. I'm
9 going to probably, if we do a proffer here, go back to
10 those Jumper criteria.

11 (To Mr. Duncan) But in any event, Mike, how
12 do you respond to the -- to this?

13 MR. DUNCAN: Your Honor, these -- I became
14 aware of these witnesses yesterday afternoon around 12:30.
15 I had an opportunity to speak with Mr. Cornwell shortly
16 thereafter, and got -- got a hold of Mr. Wilder just
17 moments before sending an e-mail to Mr. Tyler, as -- as I
18 wasn't sure what Mr. Wilder's testimony would be, or Mr.
19 Cornwell, you know, until I spoke with them.

20 I immediately provided their names and
21 contact information to Mr. Tyler. I believe that Mr.
22 Tyler was able to reach Mr. Cornwell, and speak with him
23 and ask him any questions that, you know, Mr. Cornwell felt
24 comfortable answering. Mr. Cornwell is not -- you know, is
25 not a captive witness. He's not a -- he's not a family

1 member, anything like that. He -- he simply is a gentleman
2 who worked for a number of years, part-time, as I
3 understand it, for the -- for the Chris King Funeral Home,
4 back during the time when -- when I -- my client's husband
5 and father was operating that business, and simply would be
6 able to testify as to the transition, if you wanted to
7 discuss that -- I mean, if you want to call it that, after
8 the sickness and passing of Chris King.

9 And, you know, I -- I think there's
10 testimony in the record, from Ms. Robbie King Boyd and from
11 Mr. John Richard Christopher King, from August of 2010,
12 that is in line with Mr. Cornwell's testimony. But I want
13 would be -- I think it would be helpful to hear Mr.
14 Cornwell, to get additional information that he can
15 provide. And -- and, likewise, with -- with Mr. Wilder.
16 And, Your Honor, I -- again --

17 THE COURT: Are they the same -- they're
18 testifying to the same area -- in the same area, in the
19 same --

20 MR. DUNCAN: Generally --

21 THE COURT: Generally?

22 MR. DUNCAN: Generally speaking, I think
23 that -- that's correct. They both -- they both worked for
24 the Chris King Funeral Home during their childhood --

25 MS. KING: It was called King's Funeral

1 Home.

2 MR. DUNCAN: King's Funeral Home.

3 MS. KING: Never -- never --

4 MR. DUNCAN: Sorry. King's Funeral Home,
5 the --

6 (Crosstalk; unreportable.)

7 THE COURT: -- King's operator.

8 MR. DUNCAN: The funeral home that is at
9 Cemetery Street in Chester.

10 THE COURT: 135 Cemetery Street.

11 MR. DUNCAN: 135 Cemetery Street.

12 THE COURT: Not 129.

13 MS. KING: Right.

14 THE COURT: Is that right?

15 MR. DUNCAN: 135 Cemetery Street, that --
16 that operation. And these gentlemen who are -- I think Mr.
17 Cornwell is 55 years old and Mr. Wilder's about 50 years
18 old, so they -- they've worked there, again as I understand
19 it, since they were teenagers. And continued to work for a
20 number of years.

21 And Mr. Wilder would -- would testify about
22 -- about that. And he is -- he is now a licensed
23 mortician, I think, maybe a funeral director. He works at
24 a funeral home down in Charleston. And, you know, would
25 simply, again, testify as to his background with the King's

1 Funeral Home at Cemetery Street.

2 And again, Your Honor, I don't -- I don't
3 think their -- I first spoke to these witnesses yesterday.
4 It's not as if we have developed a great, you know,
5 rehearsed testimony for them. I mean, Mr. Tyler had the
6 same, you know, ability to speak with them as I did, as of
7 yesterday. And I just -- in the interest of justice, and,
8 you know, getting this case fully litigated, I would submit
9 their testimony. I would seek to proffer their testimony,
10 if necessary, before Your Honor, in order to support our
11 counter -- remaining counterclaims.

12 THE COURT: Let me ask you a couple of
13 questions. Would the testimony they're giving be any
14 different than the testimony that's already in the record?

15 MR. DUNCAN: Your Honor, I think it would be
16 --

17 THE COURT: How would it be different? You
18 referred to witnesses in the record, already, that
19 testified to similar. Is it cumulative kind of testimony?
20 Or is there something different? If it's cumulative, we
21 don't need them.

22 MR. DUNCAN: I think they may have a
23 different -- they were involved in a different capacity
24 than the family members who testified.

25 THE COURT: In what type of capacity?

1 MR. DUNCAN: They --

2 THE COURT: Let me do this: What I'm looking
3 at right here is the -- what's called the Jumper Standard.

4 MR. DUNCAN: Yes, sir.

5 THE COURT: Jumper -- Jumper v. Hawkins
6 criteria. So I'm kind of testing you from those criteria,
7 is what I'm -- my questions are leading to.

8 MR. DUNCAN: I think --

9 THE COURT: And so the type of witness, it's
10 a similar witness to witnesses who have already testified;
11 it's not an expert witness. It's a fact witness based upon
12 observations that occurred at a certain time, and you
13 identified the time as during the time of the defendants'
14 father's operation of the funeral home, King's Funeral
15 Home, right?

16 MR. DUNCAN: And just -- and after during
17 the time period, over the next year or so, prior to Ms.
18 Patricia King moving into that location at 135 Cemetery
19 Street.

20 THE COURT: Well, you might have to be more
21 specific on time. As I understand the time that Patricia
22 King took over, is whenever she evicted from her property
23 the folks, who is family that you represent, was in 1998 --

24 MR. DUNCAN: That's correct.

25 THE COURT: -- is that correct?

1 MR. DUNCAN: So --

2 THE COURT: And the court felt -- found
3 that, that was a different setup started at that point in
4 time. So are you saying that, that testimony relates to
5 prior to 1998?

6 MR. DUNCAN: That's correct. Up until --
7 (Crosstalk; unreportable.)

8 THE COURT: So it includes the time that
9 Chris King was alive, and then the time between Chris
10 King's death and 1998, where these folk were evicted; is
11 that right?

12 MR. DUNCAN: That's right. That is correct.
13 That is correct.

14 THE COURT: Okay. And so will be similar
15 type testimony, but you have just said it would be
16 additional testimony that is somewhat different from
17 testimony already in the record, I guess. Can you
18 elaborate a little bit on that?

19 MR. DUNCAN: Mr. Cornwell --

20 THE COURT: So the -- so number two is the
21 content of the evidence emanating from a proffered witness.

22 MR. DUNCAN: As I understand from Mr.
23 Cornwell, and I think Mr. Wilder as well, would have
24 physically gone, you know, as employees, and picked up
25 bodies. They worked -- you know, did the -- did the -- did

1 the labor in the funeral home operation, and were working
2 for this family, this side of the table, you know, the king
3 -- King's Funeral Home, which was operated by Chris King,
4 and then later on by his -- by his children and spouse for
5 that -- for that one 15 -- 15-month period after Mr. Chris
6 King's death in September 1997, up until the date of
7 eviction in December of 1998.

8 THE COURT: Well, in the content of the
9 evidence emanating from these witnesses, what would the
10 content be different than that's already in the record?

11 MR. DUNCAN: Again, I think they would --
12 they would testify as to, you know, physically, what they
13 were doing, and who they were --

14 THE COURT: How would that help us? How
15 would that help you in establishing the issues that you've
16 got to establish that we just stated a while ago?

17 MR. DUNCAN: Well, in --

18 THE COURT: What are the it -- what are the
19 -- what issues do -- what do they -- what issue do they go
20 -- their testimony go to?

21 MR. DUNCAN: In particular, a civil
22 conspiracy claim. You know, we've got -- we had testimony
23 from -- we had testimony in August of 2010 from Mr. Moze
24 Caldwell, who says, you know, he was managing the business
25 -- he was managing the King's Funeral Home, and then later

1 went to work for Patricia King. And I think these
2 gentlemen would testify to the -- to the effect that, you
3 know, Mr. Caldwell was working for these -- for the folks
4 on this side of the table.

5 THE COURT: Your side of the table --

6 MR. DUNCAN: Yes.

7 THE COURT: -- is that what you're referring
8 to?

9 MR. DUNCAN: Yes. Yes, sir. And through
10 dealings conspiring with Ms. Patricia King, he was secreted
11 away as -- Ms. Patricia King, in addition to taking --
12 getting the building, which was always in her name, that
13 she seized the business which included the -- you know, the
14 locale -- the physical locale; but more than the physical
15 locale, the goodwill associated with that business and --
16 which included the longtime manager of that -- of that
17 operation, Mr. Caldwell.

18 And I think these gentlemen who were
19 employees, and more -- in a more similar posture as
20 employees than as family members, can strengthen our claims
21 in that regard, more so than -- than the testimony that we
22 have elicited from Ms. Robbie King Boyd and Mr. John King.
23 Although, we will, you know, probably offer that additional
24 testimony, to that effect today, regardless of Your Honor's
25 ruling.

1 But I -- I do think it would be helpful to
2 the Court, and helpful to the issues in this case, if -- if
3 these two gentlemen were allowed to test.

4 THE COURT: Do you have witnesses, however,
5 to directly testify to those issues that you've just
6 stated, of their family members?

7 MR. DUNCAN: That's correct. That's
8 correct.

9 THE COURT: Okay.

10 MR. DUNCAN: I have family members.

11 THE COURT: But these are not family members
12 --

13 MR. DUNCAN: These are not --

14 THE COURT: -- situation because they were
15 not family members, because these people here are
16 interested in the outcome. Is that what --

17 MR. DUNCAN: That is -- that is correct,
18 Your Honor. I mean, certainly, they would be biased, from
19 our standpoint, and self-serving, to some extent, when our
20 family members will testify.

21 THE COURT: Let me go on to the next
22 criteria which is the nature of the failure and neglect in
23 refusal to furnish the witnesses' name. You have just said
24 that you didn't learn about it until yesterday. But this
25 case is very old; the issues have been pretty clear. Y'all

1 amended the complaint in 2010 to allege different things,
2 including accounting. So how would -- why wouldn't we have
3 known -- I think that the counterclaims that you also
4 allege -- some of which were based on previous
5 counterclaims, as I recall -- why wouldn't you have known
6 about these witnesses, or had access to them previously,
7 and been able to name them for the discovery that was --
8 the discovery, which I understand, according to the record
9 -- or the motion was served on -- in 2010. Probably around
10 the time of the amended counterclaim.

11 So I'm asking why that wouldn't have been
12 made available earlier. Now, I understand you-all appealed
13 this case, and the case was on appeal, and pretty much
14 stayed from that standpoint, and didn't come back around
15 till this court's attention until after the court of appeal
16 and the Supreme Court was finished with it, which was
17 fairly recently. But it's been with, I guess, the past
18 year. So I'm wondering why that couldn't have been made
19 available sooner.

20 MR. DUNCAN: Your Honor, I simply -- simply
21 put, I got -- I received this information about the
22 specific -- these specific individuals yesterday. I have -
23 - you know, it is offered by way of explanation, not -- not
24 an excuse, I have not been as intimately involved, I hadn't
25 been over here with you folks, but my firm certainly has

1 for a while. Although this case is -- as Your Honor has
2 pointed out, has a lengthy history that involves numerous
3 lawyers, prior to -- prior to my office, and prior or Mr.
4 Tyler's office. But in the -- in the course of
5 discussions, what I can tell you is that these two
6 individuals came to my attention yesterday.

7 THE COURT: I understand that. Let me --
8 and let me ask you this, and I'll -- it's probably more of
9 a question for opposing counsel. Is the degree -- how do
10 you see the degree of surprise to the other party? Do you
11 think that this -- the existence of these witnesses, their
12 names, would have been a big surprise based on their
13 revelation to you yesterday? Or could they have found
14 them, themselves?

15 MR. DUNCAN: I think they would have had
16 equal opportunity to be aware of these gentlemen who have
17 been -- who had worked at the King's Funeral Home, you
18 know, for a number of years. And again, I believe that
19 they would have been equally accessible to -- specifically
20 to Ms. Patricia King, as they are to Robbie King Boyd who
21 provided their names to me.

22 THE COURT: You think they could have been
23 available 'cause of the knowledge of Patricia King, the
24 plaintiff, is that what you're saying?

25 MR. DUNCAN: Yes, sir. Yes, sir. I don't -

1 - I mean, they're not -- these are not people who appeared
2 out of the blue. They simply came to my attention
3 yesterday. Again, I think they -- I'm not sure that they
4 ever worked for Ms. Patricia King, but I -- based on my
5 understanding of the operation of the King's Funeral Home,
6 she would have known these -- known these gentlemen for,
7 you know, a number of years.

8 THE COURT: I guess that the big issue any
9 time you're looking at something like this, is the
10 prejudice to the opposing party, and I suppose you could
11 always say everything is prejudicial to opposing party.
12 But prejudice is -- meaning, prejudice that it's so hurtful
13 to them, and prejudicial, that they couldn't recover any
14 other way, or they could not -- you know, they could not
15 avoid the situation that they're in now, because of you're
16 not providing it to them.

17 So I guess that would you address prejudice
18 to opposing party. I think it is more of an issue for them
19 to argue. But how would you -- how would you -- what would
20 your position be on prejudice?

21 MR. DUNCAN: Your Honor --

22 THE COURT: I think you've addressed some of
23 that, as we've gone through here, but how would you --

24 MR. DUNCAN: You know, I have -- I spoke
25 with these gentlemen -- I've never -- I never met these

1 gentlemen. I met them in the hallway in your office, an
2 hour ago. I spoke with both of them on the telephone,
3 yesterday, determined that their testimony would be useful,
4 it would be relevant. And again, I spoke to them within --
5 as to Mr. Wilder, I spoke with him within 15 minutes, ten
6 minutes of providing his name and contact information to
7 Mr. Tyler, so that the -- the prejudice that in...

8 Again, the information that these gentlemen
9 would testify to is -- is -- was as available to opposing
10 counsel, and the opposing party, as it was to me as of, you
11 know, yesterday afternoon.

12 THE COURT: So you say, essentially, that
13 testimony's already in the record -- or will be in the
14 record -- by family members you have, and is somewhat
15 cumulative; the only real difference is they are not family
16 members, and so may not be seen by the court as a -- as
17 witnesses who might be interested in the outcome. Is that
18 essentially the way --

19 MR. DUNCAN: Yes, sir. Yes, sir. That's --
20 I think that concisely sets forth --

21 THE COURT: So from that --

22 MR. DUNCAN: -- the position that --

23 THE COURT: -- standpoint, the other side
24 would have -- already has access to the testimony that's
25 going to be made, and so the prejudice to them of the issue

1 of a independent party other than an outcome -- other than
2 parties who are interest in the outcome, that is the
3 family, could be dealt with through cross-examination of
4 the -- of the witness? Is that --

5 MR. DUNCAN: Yes, sir. Yes, sir. I firmly
6 believe that to be the case, that -- that these --

7 THE COURT: All right. All right.

8 MR. DUNCAN: Yes, sir.

9 THE COURT: I think that we'd probably gain
10 enough knowledge -- anything else?

11 MR. DUNCAN: No, sir. I think that's --
12 that sets forth our position.

13 THE COURT: Okay. And I'm going to -- so
14 I'm going to get you to respond. Let's think about this.
15 I'm thinking that we ought to go ahead and proffer their
16 testimony and -- and see. I don't know there's a real
17 necessity, I just think he's characterized it pretty well,
18 and so I don't know if we really need the testimony. But
19 it's probably a good idea to do that.

20 (To Mr. Tyler) But, anyway, do you want to
21 respond to any of this at this point?

22 MR. TYLER: Yes, sir, I do. Opposing
23 counsel received the information yesterday. The discovery
24 requests were served five years ago on his client.
25 Opposing counsel may be new to this file; his firm is not.

1 Your Honor, he mentioned I had the
2 opportunity to call Mr. Cornwell. And that's true: He
3 answered his phone. And beyond a -- beyond a general
4 introduction, and a simple statement of, "I used to work at
5 the funeral home," that is essentially the information I
6 could get out of him. He was equally interested in
7 figuring out who I was.

8 And so in terms of -- in terms of my ability
9 to speak with him, as to what his testimony would be today,
10 that was nothing. And the same is true for the other
11 witness, who I was not able to reach.

12 To the extent that this -- that they would
13 offer cumulative testimony, it's not necessary. Your
14 Honor, to the extent that they would offer testimony, it's
15 highly prejudicial. Your Honor, Patricia King, under a
16 prior attorney, a long time ago in this case, provided
17 discovery responses, and listed witnesses that are part of
18 the first record on appeal, with the first appeal. Absent
19 from that list are these two gentlemen. If she'd have
20 thought that they were witnesses to this case back then,
21 she would have listed them as witnesses then. But they
22 were not listed; therefore, she was not aware of their
23 ability to testify as to the circumstances of this case.

24 The prejudice is high, because as he -- as
25 opposing counsel said, this is essentially self-serving

1 testimony. These are friends to the parties on the other
2 side. We do not have that access to them. And it's not
3 about the prejudice to me as an attorney; it's about the
4 prejudice to my client --

5 THE COURT: And you had talked about that.

6 MR. TYLER: -- Patricia King.

7 THE COURT: And I think that's the central
8 issue.

9 MR. TYLER: Yes, Your Honor. The prejudice
10 is the inability to prepare for their testimony, the
11 inability to depose them. If this were a new case, and we
12 were expedited to trial, it would almost be understood that
13 something like this would happen. This is not --

14 THE COURT: Well, it's --

15 MR. TYLER: -- a new case.

16 THE COURT: So I guess I -- the question is:
17 What would you have done differently if you had, had the
18 information earlier?

19 MR. TYLER: Well, Your Honor, I would have
20 called them. And if they refused to speak to me, and
21 provide me the details that I needed, I would have
22 discussed with my client whether we should go to the
23 expense to depose them in preparation --

24 THE COURT: Okay. So what would --

25 MR. TYLER: -- for this hearing.

1 THE COURT: -- you answer to that now, after
 2 having you called them and --
 3 MR. TYLER: Your Honor, I --
 4 (Crosstalk; unreportable.)
 5 THE COURT: -- what would you have done
 6 differently --
 7 MR. TYLER: -- would have deposed them --
 8 THE COURT: If you had learned --
 9 COURT REPORTER: One at a time, please.
 10 THE COURT: If you had learned this
 11 information, six months ago or a year ago, what would you
 12 have done differently?
 13 MR. TYLER: The first thing I would have
 14 done is called them, which --
 15 THE COURT: Which you did.
 16 MR. TYLER: Which I did. I did. I spoke to
 17 Mr. Cornwell yesterday. Based on the information that I
 18 received from our telephone call, I would have deposed him;
 19 because I was not able to determine what his testimony
 20 would be. I need to know what he's going to say. My
 21 client needs to know --
 22 THE COURT: And so that --
 23 MR. TYLER: -- he's going to say.
 24 THE COURT: -- conversation did not reveal
 25 that.

1 MR. TYLER: No, sir.

2 THE COURT: The same with both witnesses?

3 MR. TYLER: I did not speak to the other
4 witness, Your Honor.

5 THE COURT: You wouldn't get him? Or you
6 didn't try to get him? Or what?

7 MR. TYLER: Your Honor, it was three o'clock
8 the day before a trial, and I had to draft a motion to
9 exclude their witnesses.

10 THE COURT: All right. Anything else you
11 might have done other than -- differently?

12 MR. TYLER: If I'd received it six months
13 ago, we would have deposed them. That's --

14 THE COURT: That's the main --

15 MR. TYLER: -- difference.

16 THE COURT: -- issue: You would have deposed
17 them.

18 MR. TYLER: Yes, Your Honor.

19 THE COURT: So you'd have --

20 MR. TYLER: Therefore we --

21 THE COURT: -- an opportunity to --

22 MR. TYLER: We'd have the opportunity to
23 prepare. And under -- under the case I've presented to
24 Your Honor, the lack of opportunity to prepare and the lack
25 of opportunity to depose them, depose the witness, the

1 special referee found prejudicial, he excluded them; the
2 court of appeals affirmed the exclusion of those -- of that
3 witness.

4 THE COURT: All right. Thank you very much.
5 Any reply, Mike?

6 MR. DUNCAN: Your Honor, in the -- I would -
7 -

8 THE COURT: And then I'd say, let's put the
9 witness on and see what they're going to say.

10 MR. DUNCAN: Thank you. Thank you, Your
11 Honor. My reply to opposing counsel's argument is, in the
12 -- in the Jumper case that was provided to Your Honor, you
13 know, part of the language is the exclusion of a witness is
14 a sanction which should never be lightly invoked, and then
15 it sets forth these factors. And including any --
16 including any prior knowledge of the name by the other
17 party.

18 Now, Mr. Tyler, submits that, you know, Ms.
19 King didn't think of these folks at witnesses, but the --
20 it would not be correct to say that she has no knowledge of
21 the names of these people. They -- they've been around the
22 community, worked in that operation for a number of years,
23 and certainly are known to her. And, Your Honor, I would -
24 - in response to Mr. Tyler's statement, that, you know --
25 in the other case that he attached, the Bryson case in

1 which the court of appeals upheld the ruling of the special
2 referee excluding the witness, it's -- it's witness the
3 discretion of the court.

4 And that -- you know, I respectfully submit
5 that if the special referee in that case had deemed that
6 the witness would not be excluded, the court of appeals
7 would very likely have upheld that decision under the, you
8 know, discretion of use of discretion's standard. And so
9 it's -- it's up to the trial court --

10 THE COURT: Let's take a break. (To Ms.
11 King.) Do you need to go to the restroom?

12 MS. KING: Yes, sir, I do.

13 THE COURT: All right.

14 (Off the record 10:40 a.m. to 11:02 a.m.)

15 THE COURT: Mike, go ahead and make your
16 final argument. And we'll call the -- you're welcome to
17 call the witnesses.

18 MR. DUNCAN: All right, sir. Again, Your
19 Honor, I think we're -- where I was is that this -- the
20 question -- the issue as to whether a witness should be
21 allowed to testify, is addressed to the discretion of trial
22 court. And I will submit in this instance, where the case
23 is being tried before a special referee rather than a jury,
24 I think the court would be able to analyze this testimony,
25 and consider it and give it the appropriate weight without

1 the -- the harsh sanction of excluding -- of excluding a
2 witness who is present and ready to offer testimony that,
3 again, I submit would be relevant to the issues before the
4 court, and would be helpful in -- in reaching a decision.

5 THE COURT: All right. Thank you very much,
6 sir. I appreciate it. Why don't we go ahead and -- if
7 you're going to call the witnesses, go ahead and call them
8 in. And we will not have any cross-examination, I don't
9 think. I think we'll just put the evidence in the record,
10 that is a -- and I'll make a -- determine whether it will
11 be excluded or not. Is that the way to proceed?

12 MR. DUNCAN: That's fine, Your Honor. I
13 mean, but --

14 MR. TYLER: Your Honor, if you determine
15 that they should stay in the record, I certainly would want
16 the opportunity to cross-examine --

17 THE COURT: Oh, yeah. Yeah. I agree.

18 MR. TYLER: Okay. Okay. I wanted to make
19 sure this was a proffering and not a --

20 THE COURT: I understand it's a proffer.
21 And if I were to determine that they testify, then of
22 course you have the right to cross-examine.

23 MR. TYLER: Okay. So this --

24 THE COURT: If we don't then -- you know,
25 the proffer is in the record, for later one, and, you know,

1 that's the end of it --

2 MR. TYLER: Sure. Okay.

3 THE COURT: -- as far as the trial is
4 concerned. And that's the way I see it.

5 MR. TYLER: Yes, sir.

6 THE COURT: Is that the way you see it?

7 MR. TYLER: Yes, Your Honor.

8 THE COURT: Okay. All right. Go ahead and
9 call them on your proffer.

10 MR. DUNCAN: I would call Alexander
11 Cornwell.

12 THE COURT: All right. We're going to put
13 him over there, I guess?

14 MR. DUNCAN: Let's put him over there by the
15 court reporter.

16 THE COURT: Come on in, Mr. Cornwell. If
17 you'll sit over there by that court reporter, she'll tell
18 you what to do next. If you'll have a seat there. This is
19 just like you're in a courtroom up there, in all of its
20 majesty. (To Mr. Duncan) All right. The witness is yours.

21 MR. DUNCAN: Thank you. Thank you, Your
22 Honor.

23 Mr. Cornwell, if you would state your full
24 name for the record.

25 MR. CORNWELL: Alexander Cornwell.

1 COURT REPORTER: Are we going to swear him?

2 MR. DUNCAN: Your Honor, I think we would
3 still need to swear him as a -- as a witness?

4 THE COURT: We absolutely would.

5 WHEREUPON:

6 ALEXANDER CORNWELL, being duly sworn and
7 cautioned to speak the truth, the whole truth and nothing
8 but the truth, testifies as follows:

9 EXAMINATION BY MR. DUNCAN:

10 Q. And, Mr. Cornwell, again, if you would -- if you
11 would state your name. And spell -- spell your last name
12 for the court reporter.

13 A. Alexander Cornwell, C-o-r-n-w-e-l-l.

14 Q. And, Mr. Cornwell, where do you -- where do you
15 reside, sir?

16 A. You're saying where --

17 Q. Yes.

18 A. -- I live at?

19 Q. Yes, sir. Where is your -- what's your address?

20 A. Rock Hill, South Carolina.

21 COURT REPORTER: I'm sorry?

22 THE WITNESS: Rock Hill, South Carolina.

23 BY MR. DUNCAN:

24 Q. And, Mr. Cornwell, you -- as to the issues in
25 this case, you were employed at the King Funeral Home for a

1 number of years?

2 A. That's correct.

3 Q. How old are you, sir?

4 A. Fifty-five.

5 Q. And, Mr. Cornwell, when did you first go to work,
6 at the King Funeral Home at Cemetery Street in Chester?
7 Approximately.

8 A. Somewhere around '83.

9 Q. And what did -- in what capacity did you work?
10 What did you do at the time you went to work there?

11 A. I started off cleaning his cars for a couple
12 years, a few years. And then I moved on up to started
13 helping on the funerals.

14 Q. And you were -- who was your employer? Who
15 employed you?

16 A. Christopher King.

17 Q. And, Mr. Cornwell, did you work -- did you work
18 full-time or part-time? Or did -- or did it change? And
19 that's -- if you could --

20 A. It changed. It was more of a part-time, 'cause I
21 had a full-time job, also. The days I was off, I would
22 help him.

23 Q. What did -- what did you do in your full-time
24 position, Mr. Cornwell?

25 A. I was a technician at Lockhart Mill.

1 Q. So, Mr. Cornwell, did you -- albeit part-time
2 through much of that period of time, were you regularly
3 working for the King Funeral Home, beginning in 1983 and
4 continuing -- continuing until the death of Chris King?

5 A. I worked a little bit after Chris King died, up
6 until we was forced out -- or pushed out, whatever you want
7 to call it.

8 Q. All right, sir. So you would have -- you would
9 have worked there at the Cemetery Street location, up until
10 the time period that you were evicted from that property.

11 A. That's correct.

12 Q. And, Mr. Cornwell, what -- this deal with the
13 period of time after Chris King's death, from your
14 standpoint as an employee, did -- did the operation change
15 after Chris King's death, during the rest of 1997 and
16 through much of 1998?

17 A. I was working for his wife. And helping them
18 with the other employee: Moses Caldwell.

19 Q. So Ms. Margie King --

20 A. I was -- yeah, I was reporting to her.

21 Q. -- became -- became your boss.

22 A. Right. That's correct.

23 Q. And Mr. -- Mr. Moses Caldwell was also an
24 employee --

25 A. Right.

1 Q. Were there -- were there other employees at that
2 -- at that time, during nineteen -- end of 1997 and into
3 1998?

4 A. Yes. But most of the deceased. Do you want me
5 to name them?

6 Q. Sure.

7 A. Herman Brook Brown.

8 Q. Herman? I'm sorry.

9 A. Herman Brown. We called him "Brook." Carl
10 Laird, Bond Dye. Bond Dye.

11 Q. Bond?

12 A. Bond Dye.

13 Q. Do you know how -- the first name is Bond, B-o-n-
14 d?

15 A. That's all we call him is Bond Dye. Bond Dye.

16 Q. Okay. The last name D-y-e?

17 A. Yes.

18 Q. All right, sir.

19 A. And who else was there? Herman Brown and him,
20 yeah. And then there was Moses and me. And also, when the
21 guys came from school, it was him and Wilder.

22 Q. And Mr. Seymour Wilder.

23 A. Right.

24 Q. Okay. And you say "him," you pointed to Nelson.

25 A. Nelson.

1 Q. Nelson King. And did other family members,
2 besides in Ms. Margie King's family, worked as well? Other
3 children.

4 A. Yes.

5 Q. All of them?

6 A. Just John. And sometimes Marty and William.

7 THE COURT: Sometimes who?

8 THE WITNESS: Marty and William also worked
9 there.

10 MR. DUNCAN: Marty King.

11 THE WITNESS: Marty King and William King.

12 THE COURT: Will King?

13 THE WITNESS: William.

14 THE COURT: What period of times are we
15 talking about?

16 THE WITNESS: From 1993 until 1998, that's
17 what the time I was there over on 135. 1983.

18 MR. DUNCAN: '83,

19 THE WITNESS: Yeah, till nineteen --
20 whatever day it was when we was asked to get out. '98 or
21 whatever it was.

22 THE COURT: And so let me --

23 MR. DUNCAN: Go ahead, sir.

24 THE COURT: '83 to '98, is that what you're
25 talk -- is that the time period we're talking about?

1 THE WITNESS: Yes.

2 THE COURT: Yes?

3 THE WITNESS: Yes.

4 BY MR. DUNCAN:

5 Q. And, Mr. Cornwell, your -- your role -- I mean,
6 your work for Ms. Margie King, was it basically the same as
7 what you had done for her husband Chris King?

8 A. That's correct..

9 Q. And so he -- the death of Chris King did not
10 change your -- your role at the King Funeral Home.

11 A. No.

12 Q. And you would -- did you continue to operate and
13 do -- handle funerals, just as you had before?

14 A. Well, at that time the plant had shut down, so I
15 was almost like full-time. I'd get up and wash the cars,
16 and then get dressed and go to the funerals.

17 Q. At what point in time did the plant in Lockhart
18 shut down, about?

19 A. The plant in Lockhart -- for me, my employee --
20 my employed time ended in 1994.

21 Q. So beginning in 1994, you would have been a full-
22 time -- basically full-time --

23 A. No, I -- I had a little job for a couple years
24 after that. But at the time, I would say a year or so
25 before Chris King died and after, I didn't have a job.

1 Q. And so you were substantially a full-time
2 employee --

3 A. That's correct.

4 Q. -- at the King Funeral Home.

5 A. That's correct.

6 Q. All right, sir. And, Mr. Cornwell, I'll phrase
7 it this way: The operation -- Mr. King passed away -- Chris
8 King died September of 1997. From your standpoint as an
9 employee, was it business as usual up until late 1998 when
10 you were --

11 A. That's correct.

12 Q. -- evicted from --

13 A. That's correct.

14 Q. Mr. Cornwell, describe to me what -- from your
15 standpoint, what happened in late 1998 at the time that you
16 were forced out, is how you've said it a couple of times.

17 A. From the family -- from some of the family
18 members of the family, I was told that it was going to have
19 -- we was going to have to move out. They had got a
20 eviction notice, or whatever, and they was going to have to
21 move out. And all I know is we was moving.

22 Q. Was your understanding that you would continue to
23 operate a funeral home somewhere else? Or what -- what did
24 you gather from that?

25 A. No, I didn't know.

1 Q. Did you at the time -- obviously, Ms. Margie King
2 was your boss?

3 A. That's correct.

4 Q. What was Mr. Caldwell -- Mr. Moses Caldwell's
5 position? If you -- if you know.

6 A. He was a embalmer, a director, and kind of helped
7 -- you know, he was kind of like a director there are the
8 funeral home.

9 Q. Was there any other director at the funeral home?

10 A. No more than Margie, as the boss.

11 Q. So did you -- did you report, in some way, to Mr.
12 Caldwell?

13 A. Mr. Caldwell would call me, from time to time, to
14 ask me about cleaning up a car, or getting cars ready for
15 the funeral, or something like that. He would, or either
16 she would.

17 Q. At the -- at the point in time where you were
18 forced -- where you were informed that you were going to be
19 leaving Cemetery Street, did you have any discussion with
20 Mr. Caldwell about that?

21 A. No, I didn't. Because at that time, I was still
22 coming back and forth to the funeral home, but I had moved
23 to Lancaster County, maybe -- let's see -- just a few
24 months before that happened. But I was still coming back
25 and forth. And it just -- one day I come up, and they was

1 telling me we was going to be moving.

2 Q. And did you -- were you told where you were
3 moving to?

4 A. They said we was moving to York Road.

5 Q. And that came to you through whom? Who informed
6 you of that?

7 A. The family members.

8 Q. And the family members being Ms. Margie and --

9 A. That's correct.

10 Q. All right, sir.

11 THE COURT: You were moving to where?

12 THE WITNESS: York Road.

13 THE COURT: Where?

14 THE WITNESS: I don't know the address --

15 MR. TYLER: York.

16 THE WITNESS: -- to it.

17 THE COURT: York Road?

18 THE WITNESS: Right.

19 MR. DUNCAN: In Chester.

20 THE WITNESS: In Chester.

21 THE COURT: Okay.

22 BY MR. DUNCAN:

23 Q. And did you move with the Margie King and her
24 children?

25 A. I came up and washed cars and worked a few

1 funerals.

2 Q. What did you know of the operation at Cemetery
3 Street, after -- after you were evicted?

4 A. Well, I can't say what the operation was at
5 Cemetery Street, 'cause I wasn't wanted there.

6 Q. You weren't wanted there?

7 A. That's correct.

8 Q. What does that mean, Mr. Cornwell?

9 A. That Ms. King didn't want me there.

10 Q. Ms. Patricia King?

11 A. That's correct.

12 Q. I mean, what -- what the nature of that? I mean,
13 did you attempt to work for Ms. Patricia King?

14 A. No.

15 Q. Did you have a discussion with her?

16 A. I had, had a couple run-ins with Ms. Patricia
17 before. We were just pushed out, you know.

18 Q. Tell me about that. Or tell the -- tell the
19 court about that. Tell the judge about that.

20 A. Well, there's a couple times we was there, and
21 her nephew Marty, and they would have some kind of bad
22 discussion. And she called the law, and we was asked to
23 leave.

24 Q. You as well?

25 A. Yes.

1 Q. Like, what? I mean, can you give me an example?

2 A. Like I said, it's been a long time. But her and
3 her nephew had a discussion, and I was along there with
4 him, so I had to go to.

5 Q. You were -- you were just present with --

6 A. Right.

7 Q. -- with Marty.

8 A. That's correct.

9 Q. With Ms. Margie's --

10 A. And I was --

11 Q. -- son.

12 A. One time I was cleaning a car there.

13 Q. And, Mr. Cornwell, you had worked with Mr. Moses
14 Caldwell, the entire time that you had been associated at
15 the King Funeral Home?

16 A. That's true.

17 Q. Were you -- were you surprised that Mr. Caldwell
18 remained at the Cemetery Street location?

19 A. Well, somewhat. I was -- thought at the time,
20 what they said, that I thought he was going to York Road
21 also.

22 Q. I mean, he had been working for Chris King's --

23 MR. TYLER: Objection. Leading.

24 THE COURT: Well, let him ask the question.
25 What's the question?

1 BY MR. DUNCAN:

2 Q. Had he been working for Chris King, and the King
3 Funeral Home, for many years?

4 A. That's correct.

5 THE COURT: Who "he"?

6 MR. DUNCAN: I'm sorry. Moses Caldwell.

7 THE WITNESS: That's correct.

8 THE COURT: Mr. Caldwell. (To Mr. Tyler) Do
9 you object to that?

10 MR. TYLER: He can proceed.

11 THE COURT: Go ahead.

12 BY MR. DUNCAN:

13 Q. And, Mr. Cornwell, you -- you described him, Mr.
14 Moses Caldwell, as the director of the -- of the funeral
15 home as of 1998, correct?

16 A. That's correct.

17 Q. And again, your testimony -- and I'm trying to
18 hear what you said -- when you were determined, when you
19 were told -- and you can -- let me ask you this:

20 Did you come to -- did you come to work at
21 Cemetery Street one day, and it just -- the ownership, or
22 the management, had changed?

23 A. I'll say it again: I was told that they was going
24 to have to move in about a week.

25 Q. Okay. All right. So about a week prior to

1 moving --

2 A. A week or two weeks. It's been a long time.
3 Something like that.

4 Q. There was a little heads-up for you, though --

5 A. Right.

6 Q. -- as an employee, that you were going to be at
7 another locale.

8 A. Right. They was going to have to move. And I
9 had a lot going on at the time, and it was like, "Okay."
10 And back to Lancaster I went. And the next time I came up,
11 I talked with Ms. King, and she had moved. And I asked her
12 this question, I said, "Moze with you-all?"

13 And she said, "No, he didn't come."

14 And that was the end of the discussion.

15 Q. Had you -- had you had any discussion with Mr.
16 Moses Caldwell, about the relocation of the King Funeral
17 Home?

18 A. No. No.

19 Q. And you -- you indicated that you didn't -- did
20 you make a decision to go with Margie King and her family,
21 her children, over to York Road?

22 A. Like I said, I probably just can't explain it
23 clear. But I know that I wasn't wanted at 135. When they
24 went, I knew I had to go.

25 THE COURT: You're referring to 135

1 Centenary?

2 MR. DUNCAN: 135 Cemetery Street.

3 THE COURT: Cemetery?

4 MR. DUNCAN: Yes.

5 BY MR. DUNCAN:

6 Q. And your -- is it fair to say that your loyalty
7 was with Chris King --

8 A. That's --

9 Q. -- had been with --

10 A. That's correct.

11 Q. -- Chris King.

12 A. That's correct.

13 Q. And, Mr. Cornwell, you described a -- one or two
14 occasions where Ms. Patricia King, you had, had some run-in
15 with her.

16 A. That's correct.

17 Q. What was Patricia King's role at the King Funeral
18 Home, from your 15 years of experience?

19 A. I barely seen Patricia King up until Chris King
20 died. And I started seeing her more then.

21 Q. Okay. You started seeing her more then. After
22 he had -- after Chris King's death, in 1997 -- September of
23 '97 -- what -- what changed? I mean, what was Patricia
24 King's involvement? To the extent that you saw it.

25 A. I just noticed she came around -- she came around

1 more. But she would be talking to Caldwell, and we just
2 continued on with Ms. King.

3 Q. So she was having discussions with Mr. Caldwell.

4 A. Yeah, she talked with him a lot.

5 Q. Do you know, Mr. Cornwell, where -- if -- where
6 Ms. Patricia King was living after her brother Chris'
7 death?

8 A. Well, I guess she's still living in Charlotte. I
9 can't answer that question.

10 Q. You simply saw her more at the Cemetery Street
11 location of King's Funeral Home.

12 A. After he died.

13 Q. Mr. Cornwell, how -- you moved over to York Road
14 with Margie King and her children.

15 A. I came around there, yes.

16 Q. And you continued to work at that -- at that
17 location?

18 A. Yes.

19 Q. How long did you work for -- for the -- for the
20 Christopher King Funeral Home?

21 A. Up until a few years ago, I still would come by
22 and clean a car, or this and that. But I went on a full-
23 time daytime job, and sometimes they'd push me on over in
24 the afternoons. So I'd say up until about -- maybe about
25 four years ago.

1 And I would say like six years ago, I went over
2 the road, driving a truck.

3 Q. Okay. Is that -- what do you -- are you employed
4 now, sir?

5 A. I'm partially disabled right now.

6 Q. Mr. Cornwell, you -- as we sit here today, are
7 you -- you'd consider yourself a friend of Ms. Margie King
8 and her children?

9 A. I do.

10 Q. And you have known them for a long time.

11 A. A long time.

12 Q. You went to work -- you are 55 years old.

13 A. Uh-huh.

14 Q. You were born in what: 1960?

15 A. 1959. August 20.

16 Q. Did you know -- did you know Chris King and his -
17 - his family before going to work there in 1983?

18 A. Well, I knew his wife, as a teacher. But I knew
19 him long before that, because he was a personal friend of
20 my mother's.

21 Q. So that -- you got to -- first got to know Chris
22 King --

23 A. I got to know him. And then I met his kids
24 through him. I had been knowing him ever since I was a
25 kid, you know.

1 Q. All right, sir. And you were born and raised in
2 Chester?

3 A. That's correct.

4 Q. Went to -- where did you go to high school?

5 A. Chester Senior High.

6 Q. And you said that you knew Ms. Margie King; she
7 was a school teacher?

8 A. Yes. Never taught me, but she was a school
9 teacher.

10 Q. So you -- you knew of her --

11 A. That's correct.

12 Q. -- as a teacher.

13 A. That's correct.

14 MR. DUNCAN: I think that's all I have at
15 this time.

16 THE COURT: (Mr. Tyler) You still want to
17 exclude him?

18 MR. TYLER: Your Honor, our motion is our
19 motion.

20 THE COURT: How is it prejudicial to you,
21 this testimony?

22 MR. TYLER: Your Honor, he began to discuss
23 communications occurring at the -- at the time of the
24 exchange. I've not had the opportunity to depose him on
25 his knowledge of those conversations.

1 THE COURT: Well, you can cross-examine him
2 right now. You know, I fail to see the prejudice, frankly.
3 But I mean, that's the standard. I agreed -- frankly,
4 before he's testifying, I was leaning toward your view
5 'cause of the time frame involved, and, you know, the
6 nature of the supposed testimony and, you know, the
7 surprise. But prejudice, which I think is the key thing, I
8 can't see how his testimony prejudices you. But, you
9 know...

10 MR. TYLER: Your ruling, Your Honor.

11 THE COURT: Okay. So I'm going to rule that
12 we're going to accept testimony. So you can go ahead and
13 cross-examine him if you want to -- (to Mr. Duncan) subject
14 to your objection -- or you don't have to cross-examine
15 him. Whatever your...

16 EXAMINATION BY MR. TYLER:

17 Q. Mr. Cornwell, my name is John Tyler. Just so I
18 get things right: Did we speak on the phone yesterday?

19 A. That's correct.

20 Q. Okay. And while you were -- you mentioned being
21 employed at King Funeral Home, starting in 1983. Did you
22 ever answer the phone at King Funeral Home?

23 A. I have answered the phone before.

24 Q. Okay. And when people would make calls to King's
25 Funeral Home, who would -- who would they generally ask to

1 speak with?

2 A. Chris King.

3 Q. People asked to speak to Mr. Caldwell?

4 A. Sometimes too.

5 Q. Who handled the funerals at the time?

6 A. I can't get into the finance part. I know Chris
7 King had a big role in most all that stuff, you know.

8 Q. Okay. Who was the funeral director? You earlier
9 testified about that.

10 A. That's what I always called Moses, was the
11 funeral director. But like I said, Chris King was my boss.

12 Q. Okay. Did you attend funerals at that time?

13 A. I did.

14 Q. Okay. And when you attended those funerals, did
15 Moses Caldwell play a role in those funerals?

16 A. Yes.

17 Q. Was he up front in those funerals?

18 A. Yes. Along with Chris King.

19 Q. Okay. Was Moses generally, did he have more of
20 the up-front presence at those funerals than Mr. King?

21 A. He was up front as far as being at the casket.
22 But Chris King was always there, 'cause he -- you know, he
23 was like the boss, you know.

24 Q. Were you at 135 Cemetery Street on December 8th,
25 1998?

1 A. Okay. Can I ask you a question? Is that the
2 date they left the funeral home?

3 Q. I'll clarify for you: On the date that they left
4 the funeral home, were you at 135 Cemetery?

5 A. No, I wasn't.

6 Q. Okay. Do you know anything about the removal of
7 property and assets from within 135 --

8 A. I wasn't --

9 Q. -- Cemetery? Okay. Do you know anything about
10 the removal of property from 135 Cemetery?

11 A. I'll say it again: I wasn't there.

12 Q. I understand that you weren't there, sir.
13 However, do you know anything about the removal of
14 property?

15 A. No, I don't.

16 Q. Did you ever remove any property from 135
17 Cemetery?

18 A. No, I didn't.

19 Q. Have you ever called the police to report
20 anything about Patricia King?

21 A. No, I haven't.

22 Q. Earlier you testified -- strike that.

23 MR. TYLER: Your Honor, can I have a moment
24 to --

25 THE COURT: Yes, sir.

1 MR. TYLER: -- consult with my client?

2 THE COURT: Yeah, you can. You're welcome
3 to --

4 MR. TYLER: I'm sorry our --

5 THE COURT: You take your time. If you need
6 to go upstairs or outside, or whatever you want to do.

7 (Off the record 11:36 a.m. to 11:47 a.m.)

8 EXAMINATION RESUMED MR. TYLER:

9 Q. Mr. Cornwell, just a couple more questions. When
10 you worked at King's Funeral Home, what time would you
11 generally come to work?

12 A. It was really no set time. It was like whatever
13 day I was off, and there would be a funeral -- one o'clock,
14 two o'clock, three o'clock, whatever. And sometime,
15 whichever funeral I would go on. Most of the time, I just
16 -- when I was living in Chester, I just stopped at the
17 funeral home.

18 Q. So you generally weren't there early in the
19 morning?

20 A. Sometimes.

21 Q. Okay. Were you usually there at night?

22 A. On my days off, I would.

23 Q. And then do you have any idea who answered the
24 phone for the funeral home during the nighttime?

25 A. A lot of times -- you -- well, you speaking of

1 what, now? At what time are you -- I mean, what years are
2 you talking about now?

3 Q. Well, during the -- during the time period that
4 you worked there, and that you observed it.

5 A. If the funeral home was closed, they answered
6 over at the house.

7 Q. Okay. And who is -- who's "they"? I'm sorry.

8 A. Margie King.

9 Q. Okay. And what -- that was during the entire --
10 your understanding, that's during the entire time that you
11 worked there?

12 A. That's correct.

13 Q. But you weren't around when those calls came in,
14 if they went over to the house; is that right?

15 A. If the funeral home was closed, the calls went to
16 the house.

17 Q. Right. But were you at the house when those
18 calls were received? That's what I'm trying to figure out.

19 A. I visit -- I visited the house a lot.

20 Q. Did you ever work for Mr. Christopher King's car
21 business?

22 A. No, I didn't.

23 Q. So at no time did you ever work for that
24 business?

25 A. I didn't work for that business.

1 Q. Did you ever go to the car lot?

2 A. I did.

3 Q. How frequently would you go to the car lot?

4 A. Again, sometime when I was off.

5 Q. And why would you go to the car lot when you were
6 off?

7 A. Friends with the family.

8 Q. Okay.

9 A. And sometime I ride down with him.

10 Q. And who is -- who is your -- I don't want to put
11 you on the spot in front of a number of people, but who is
12 your closest friend in the family? Who is your main
13 contact with the King family? Or do you have a closest
14 friend in the family?

15 A. Yes. One that's not affiliated with the funeral
16 home as much: Pansy King.

17 Q. Okay. But your close to the folks that are in
18 this room, today, from Mr. Christopher King's family.

19 A. Yes, I am. But I don't see them as often as I
20 used to.

21 Q. Did you know W.R. and Ellen King at all?

22 A. Yes, I did.

23 Q. And how well did you know W.R. King?

24 A. As a young guy coming up, W.R. -- I'm thinking
25 you're speaking of William King.

1 **Q. Christopher's father.**

2 A. Right. Christopher and him would always bring my
3 grandmother home from what we would call, back in the days,
4 "town." She lived in the country, and sometimes she didn't
5 have a ride; they would take her to the grocery store and
6 then bring her home. And I was a little boy.

7 **Q. And what Ms. Ellen King?**

8 A. I knew her from the funerals when I was young.

9 **Q. And was she working at the funeral home when you**
10 **began to work there?**

11 A. No. No.

12 **Q. Had she passed away by that point?**

13 A. I think she was -- when I started working there,
14 she was sick, kind of ill.

15 MR. TYLER: I have no further questions.

16 THE COURT: Redirect?

17 MR. DUNCAN: Thank you, Your Honor.

18 RE-EXAMINATION BY MR. DUNCAN:

19 **Q. Mr. Cornwell, the -- you testified that you were**
20 **not present on the date -- December 8th, 1998 was the date**
21 **that Mr. Tyler gave you as the eviction of the King Funeral**
22 **Home folks who you had worked for, from 135 Cemetery**
23 **Street. That's correct?**

24 A. The day that they was evicted, I wasn't there.
25 No, I wasn't.

1 Q. All right, sir. And you -- you described
2 funerals that you would work.

3 A. That's correct.

4 Q. And Mr. Christopher King would -- was involved in
5 -- in all those funerals to some -- in some capacity --

6 A. That's correct.

7 Q. -- during the entire --

8 A. That's correct.

9 Q. -- of his life.

10 A. That's correct.

11 Q. And, Mr. Cornwell, you -- you worked in a lot of
12 different capacities at the -- at the funeral home; is that
13 fair to say?

14 A. That's fair to say.

15 Q. As you -- as you developed in that business, did
16 you -- you would work the funerals? I mean, you would be
17 at the casket? Or what -- what would you do?

18 THE COURT: I'll remind you this is
19 redirect. It's not -- you know, you're limited to what
20 he's asked about. And I don't see this as anything
21 responsive to his examination.

22 MR. DUNCAN: I'll move on. I'll move on.

23 THE COURT: I can let you ask that, if
24 there's no objection to it. But I'd want to remind you
25 that you're on redirect. I don't want to --

1 MR. TYLER: Objection.

2 THE COURT: -- rehash the first. So he does
3 object. Go ahead.

4 THE WITNESS: Do you want me to answer that?

5 THE COURT: I'll let him answer that.

6 BY MR. DUNCAN:

7 Q. Answer -- answer that one.

8 A. Yeah, I would go up at the -- up with the casket
9 close -- help close it, roll it out, and roll it in.

10 Q. I think Mr. Tyler asked you a question about --
11 about finances, maybe. No?

12 MR. TYLER: I didn't ask a question about
13 it. He mentioned finances in an answer. I asked a
14 question about roles at funerals -- the funeral director.

15 MR. DUNCAN: And I remember hearing
16 "finances."

17 THE COURT: We'll take a TV timeout for a
18 moment, to take care of the phone.

19 (Off-the-record cell phone interruption.)

20 THE COURT: Okay. Go ahead. Anything else?

21 MR. DUNCAN: Thank you, sir. I don't think
22 so, Your Honor. I think I'm good.

23 THE COURT: (To Mr. Tyler) Anything else?

24 MR. TYLER: No, Your Honor.

25 THE COURT: All right. Good. Thank you,

1 sir. You're excused. Can we excuse him?

2 MR. TYLER: Yes, Your Honor.

3 THE COURT: All right. You're excused. All
4 right. You have another witness --

5 MR. DUNCAN: Yes.

6 THE COURT: -- in the proffer?

7 MR. DUNCAN: Yes. Yes, sir. His nothing is
8 Seymour Wilder.

9 (Off the record from 11:57 a.m. to 11:58 a.m.)

10 THE COURT: I understand there's an
11 objection to his testimony, based upon the motion in
12 limine. (To Mr. Tyler) Does that objection still stand at
13 this point?

14 MR. TYLER: Yes, Your Honor.

15 THE COURT: Okay. All right. Go ahead.
16 This is proffer.

17 MR. DUNCAN: Thank you, Your Honor.

18 WHEREUPON:

19 SEYMOUR WILDER, being duly sworn and cautioned to
20 speak the truth, the whole truth and nothing but the
21 truth, testifies as follows:

22 EXAMINATION BY MR. DUNCAN:

23 Q. Mr. Wilder, if you would state your name for the
24 record. And spell it, please, sir.

25 A. Seymour Andre Wilder. S-e-y-m-o-u-r-W-i-l-d-e-r.

1 Referred to as "Drake" by name.

2 Q. And, Mr. Wilder, where do you -- what's your
3 current address, sir?

4 A. 8781 Hands Walk, North Charleston, South Carolina
5 29420.

6 Q. And what do you do for a living, sir?

7 A. Mortician.

8 Q. Who do you work for?

9 A. Dickerson Mortuary.

10 THE COURT: Which one?

11 THE WITNESS: Dickerson Mortuary. D-i-c-k-
12 e-r-s-o-n Mortuary.

13 BY MR. DUNCAN:

14 Q. Is that in Charleston?

15 A. Yes, sir. North Charleston.

16 Q. North Charleston. Mr. Wilder, for purposes of
17 this trial, did you -- were you employed at the King
18 Funeral Home in Chester, South Carolina?

19 A. Employed? I would say mostly voluntary --
20 volunteered, or you could say received gratuity from both
21 through cash, and through educational, if you want to say
22 it that way.

23 Q. Is it fair -- is it fair to say you may not have
24 been a payroll employee --

25 A. Yes.

1 Q. -- but you -- you were associated doing work at
2 the King Funeral Home at Cemetery Street --

3 A. 135 Cemetery Street. Yes, sir.

4 Q. What period of time?

5 A. Say -- so anywhere from 1978 to '88, '93
6 (inaudible) --

7 COURT REPORTER: I'm sorry?

8 BY THE WITNESS:

9 A. 1978 to -- I'm trying to, you know, put years
10 together. Say '94. 1994. So, steadily, should I say.

11 Q. And, Mr. Wilder, you -- what's your -- what's
12 your date of birth?

13 A. 2/6/65. 1965.

14 Q. So you went to work -- or you began assisting at
15 the King Funeral Home as a teenager, a 13-year-old.

16 A. I'd say 14, yeah.

17 Q. Now, what did -- what did you do for the King
18 Funeral Home?

19 A. Make removals of the deceased, went on funerals,
20 set up funerals, such as place the body in the church;
21 flower floral arrangement, take out chairs, door badges,
22 register stands. All those type of things.

23 Q. It sounds -- is it fair to say that you did
24 almost everything associated with a funeral?

25 A. Yeah. Except made arrangements.

1 Q. Except made arrangements.

2 A. Right.

3 Q. That --

4 A. Which is done by a licensed person, yeah, except
5 made the arrangement.

6 Q. And --

7 A. I did go to family houses and take information,
8 though.

9 Q. Okay. You would go -- is it fair to say that you
10 would go to -- go to the homes of the deceased --

11 A. Yes.

12 Q. -- and get information --

13 A. Get information for things for his obituary or
14 the program, things like that.

15 Q. Mr. Wilder, you did not handle any financial
16 arrangements.

17 A. No.

18 Q. And you described working steadily from, like,
19 1978 through 1994.

20 A. Yeah. Thereabout, yeah.

21 Q. And you brought it up in your answer: What --
22 what kind of arrangement with your education was -- was
23 made?

24 A. Mr. King -- and even Ms. King, Patricia King --
25 even assisted in my undergrad, as well as mortuary science

1 school. Such as, when I come home on the weekends, Mr.
2 King or Ms. King -- well, during my undergraduate years,
3 should I say. When I would come home on the weekends, I
4 would work funerals; that would be -- you know, we would
5 take -- assist in funerals.

6 So going -- going back to school, Mr. King, you
7 know, maybe he'll write me a check for twenty-five/thirty
8 dollars, or give me cash or -- or -- and then that -- in
9 that time in my mortuary science school, Ms. King assisted
10 in paying my tuition.

11 Q. So, Mr. Wilder, you -- where did you attend
12 undergrad?

13 A. John C. Smith University.

14 Q. In Charlotte?

15 A. Yes.

16 Q. And you graduated from that university when, sir?

17 A. 1988.

18 Q. And then you -- you had testified about going to
19 mortuary science school.

20 A. That's 1991 to 1992, that was Gupton Jones
21 College of Funeral Services, Atlanta, Georgia.

22 COURT REPORTER: I'm sorry, repeat that.

23 THE WITNESS: Gupton Jones College of
24 Funeral Service, Atlanta, Georgia.

25 BY MR. DUNCAN:

1 Q. And, Mr. Wilder, you -- you testified that Mr.
2 Christopher King assisted you, financially, with your
3 education?

4 A. Uh-huh.

5 Q. As well as Ms. Patricia King.

6 A. Undergraduate, Mr. Christopher King. As far as my
7 mortuary science, Ms. Patricia King helped with my mortuary
8 science tuition, as well as Mr. King.

9 Q. Did Ms. Patricia King write a check to you or to
10 the school? Or do you know?

11 A. I never -- I never seen a check. All I know my
12 bills were paid. I can vaguely remember -- may have
13 brought a check to Atlanta, Mr. Herman Brown. So I never
14 saw the check, so -- but I know that it was -- my tuition
15 was taken care of.

16 Q. And you were informed that -- did Ms. Patricia
17 King tell you that she had paid that? Or --

18 A. Yeah. Because it was a discussion between Mr.
19 Chris and her, so -- and at the time, the reason for that,
20 Ms. King was running a funeral home in Charlotte, and I
21 would come home on the weekends and go to Charlotte and
22 work for Ms. King in Charlotte.

23 Q. And you're talking about the time when you were
24 in mortuary --

25 A. Right.

1 Q. -- science school.

2 A. Right.

3 Q. Had you -- where had you met Ms. Patricia King?

4 A. As a little --.

5 Q. Do you know?

6 A. -- boy. I mean, I've been knowing them all my
7 life, because their aunt lived right across the street from
8 -- when I say "them," Ms. King's aunt lived right across
9 the street from where I used to live in Peyton Street. Ms.
10 Lenore Hopkins. So I used to see them, you know. I mean,
11 everybody knew their family from the funeral business,
12 so...

13 Q. So you lived -- you lived across the street from
14 Ms. Lenore Hopkins.

15 A. Right.

16 Q. And Ms. Lenore Hopkins is aunt to Patricia --

17 A. Right.

18 Q. -- and Christopher King.

19 A. Right.

20 Q. Mr. Wilder, did -- again, you described working
21 steadily up through, like, 1994 at the Cemetery Street
22 location.

23 A. I would say yeah, that -- at that point. Because
24 I think at that point, I went to Harrisburg Funeral --
25 Harrisburg, Pennsylvania, to work in a funeral home up

1 there. So, yeah.

2 Q. Did you have any involvement at the King Funeral
3 Home, on Cemetery Street in Chester, after the death of
4 Chris King in 1997?

5 A. When I would come home, I think for about a year
6 -- I mean, 'cause at that point I was in New Mexico -- so
7 you know where I was -- at that point, when I would come
8 home, if they had a funeral, I would work on the weekends,
9 or go on the funeral, maybe.

10 Q. Was that a fairly regular things? I mean, did
11 you come home --

12 A. No, not every weekend. No.

13 Q. I understand not every weekend.

14 A. And it may have been once or twice, you know. It
15 may have been once or twice.

16 Q. How did you -- how did you become aware of the
17 relocation -- or the eviction of the -- of Chris King's
18 family from 135 Cemetery Street?

19 A. Well, basically, it was through phone
20 conversation, then through newspaper articles and, you
21 know, things of that nature. And just general conversation
22 of people in the city, you know, family members and
23 friends.

24 But basically, I think Nelson and I may have
25 talked on the phone, and they told me they got eviction.

1 And I think he said that they were going to open a funeral
2 home on York Road.

3 Q. And are you and Nelson about the same age?

4 A. Yes. Six months apart, yeah.

5 Q. And you grew up together?

6 A. Yeah, we were roommates in college, we were
7 roommates in mortuary science school. So yeah, lifelong
8 friends.

9 Q. I think maybe Mr. Tyler asked this earlier of the
10 -- another witness: But your closest relationship with the
11 people on this side of the room, would be with Nelson King?

12 A. Say that again, now.

13 Q. I didn't mean to put you on the spot like that.
14 I mean, you're obviously close with everybody on this side
15 --

16 A. Right.

17 Q. -- of the room.

18 A. Well, yeah. Yeah, because we were roommates and
19 friends, you know, through, you know, junior
20 high/elementary. I mean, you know, all the way up through
21 -- basically, yeah.

22 Q. And is it -- is it fair to say you spent a good
23 amount of time in the King home -- in Chris King's home?

24 A. Yes.

25 Q. And that's as a child, and up through the time

1 you were working there?

2 A. Yes.

3 Q. And you -- you test -- you testified that you had
4 worked a couple of funerals, at least, after Chris King's
5 death at --

6 A. Yeah. Well, I --

7 Q. -- the Cemetery Street location?

8 A. Could we go back to that relationship?

9 Q. Yes, sir.

10 A. I could say as far as the total relationship, I
11 was very close to Pat and Ms. King, 'cause I used to call
12 them "aunt." So I spent time in their home, spent the
13 night in their homes. Robbie, which is one of their
14 sisters, I lived in her house when I was in college. So to
15 say "close," I'm close to all of them.

16 Q. Okay. All right, sir. All right, sir. What in
17 your -- in the occasions that you worked funerals after Mr.
18 Chris King's death there at -- and then I'm talking about
19 in the period of time prior to the eviction, did you have
20 interaction with Mr. Moses Caldwell?

21 A. Yeah.

22 Q. Can you tell the court about that? Can you tell
23 the judge about that?

24 A. Well, I mean, Mr. -- I don't know if he was the
25 manager or general manager. I mean, that's what I've seen

1 on the programs of, lately. So at that time, I can't say
2 he had that title. But to say he gave instructions on who
3 be doing on what funeral, who be doing what, at that time I
4 would say that would be the interactions. You know, "You
5 do this" or "you're going on the funeral" or "you're going
6 to drive this car," "you're driving the hearse van,"
7 whatever. Things of that nature.

8 **Q. You would take some direction from Mr. Caldwell.**

9 A. Right. And even Nelson was there, he -- you
10 know, just depends on which funeral I was on. So at that
11 time, I can remember there were probably three or four
12 license members from Mr. Chris' family. So which will be --
13 -- I think was -- I think -- I think John was licensed at
14 that time. I'm not sure. Ms. Margie and Nelson.

15 So to per se say who gave me direction on that
16 particular funeral, I can't say who gave me direction. But
17 I know Nelson would give directions at times, Moses would
18 give directions. So, you know -- and even John, even
19 thought he may not have been licensed, but I guess by being
20 one of the family members, he had that authority, so...

21 **Q. All right, sir. You had -- you had worked for a**
22 **long time -- I mean, back to childhood.**

23 A. Right.

24 **Q. And worked with a lot of people, I would -- I**
25 **would suspect --**

1 A. Uh-huh.

2 Q. -- is that fair to say? Mr. Caldwell's -- were
3 you surprised that Mr. Moses Caldwell did not go with the
4 Chris King family when the eviction occurred?

5 A. Yes.

6 Q. Can you elaborate on that?

7 A. Well, for my business --

8 Q. Yes, sir.

9 A. -- Mr. Chris was the boss. And that's who it
10 seemed like Mr. Caldwell worked for. And we took his day-
11 to-day -- I mean, his day-to-day -- you know, at the time
12 when I was there, who he took his instructions from. And
13 all I ever known was, when we went on funerals, Mr. Chris
14 was at every funeral, you know, he was there when the
15 family went in the church, and then when they came out.
16 Mr. Caldwell may have stood at the casket, or he may have
17 directed some funerals. Nelson may have directed some
18 funerals. But Mr. King was the man. So, and he -- yeah, I
19 was totally surprised. Yeah, I could say that. Yeah. It
20 really shocked (inaudible) --

21 THE COURT: I'm sorry, would you repeat
22 that.

23 THE WITNESS: I would say I was surprised.

24 BY MR. DUNCAN:

25 Q. Did you say "shocked"?

1 A. Yeah.

2 MR. TYLER: Objection. Leading.

3 THE COURT: Say it again.

4 MR. TYLER: Objection. Leading.

5 THE COURT: Well, I think he was repeating

6 what he said.

7 MR. TYLER: He said "surprised." And he

8 said "shocked."

9 MR. DUNCAN: No, he said "shocked."

10 MR. TYLER: Did he?

11 MR. DUNCAN: Yeah.

12 THE COURT: That's what I heard.

13 MR. TYLER: Okay.

14 THE COURT: All right. Overruled. Go

15 ahead. Anything else?

16 BY MR. DUNCAN:

17 **Q. Did you have any discussions with Mr. Caldwell,**

18 **about his decision to remain at --**

19 A. No, I couldn't tell you.

20 **Q. -- Cemetery Street?**

21 A. I have no idea. No idea. Because like I said, I

22 wasn't living there during -- you know, I think you said

23 from that years' time regular. No, I would -- like I say,

24 we would be coming maybe that weekend, or a holiday of some

25 sort. I can't say.

1 I said to Mr. Caldwell, like you and I talked, I
2 say, "Are you going to do this?" You know, I couldn't say.

3 Q. Okay. All right, sir.

4 A. But just from day-to-day operations, him being at
5 the funeral home every day with Mr. Chris, that was
6 shocking to me.

7 MR. DUNCAN: I think that's all I have at
8 this time. Mr. Tyler may --

9 THE COURT: (To Mr. Tyler) So your motion is
10 on the floor; is that right? I'm going to deny the motion,
11 and let you go ahead and cross-exam if you want to. Unless
12 you want to argue it -- have an argument.

13 MR. TYLER: No. Your Honor, my argument's
14 the same.

15 THE COURT: Okay. I understand. It's in
16 the record. I don't see prejudice here --

17 MR. TYLER: Okay.

18 THE COURT: -- or surprise.

19 MR. TYLER: We would like to --

20 THE COURT: Probably cumulative testimony,
21 if anything. But --

22 MR. TYLER: We'd like to take a moment --

23 THE COURT: I'm not -- I'm not saying that's
24 what it is. I'm sorry, go ahead.

25 MR. TYLER: I would like to take a moment to

1 confer with my client.

2 THE COURT: Okay. That will be -- that will
3 be fine. We'll let you do that. So we'll take a break
4 here.

5 (Off the record from 12:17 p.m. to 12:24 p.m.)

6 THE COURT: All right. We're in cross-
7 examination. If you care to, gentlemen

8 MR. TYLER: I have no questioning, Your
9 Honor.

10 THE COURT: Okay. No questions. All right.
11 Very good. Okay. We'll dismiss him, if everybody's
12 satisfied.

13 MR. DUNCAN: Yes, he is excused.

14 THE COURT: You're excused, Sir. Thank you
15 for coming. All right. That takes care of the proffer
16 testimony. Now we'll go forward with the rest of the
17 testimony.

18 MR. DUNCAN: All right, Sir.

19 THE COURT: Here's what I would suggest.
20 It's now 12:25. I was thinking before we started, that we
21 would stop about one for lunch, so as not to beat everybody
22 up. Is that a fair schedule? Take a witness now? I don't
23 know how many -- what you've got, how long it would be.
24 But if you've got 30 minutes or so of direct, then we could
25 start his cross. Or whatever. But I was thinking about

1 stopping at one. Does that suit everybody?

2 MR. DUNCAN: What suits y'all?

3 MS. KING: John needs to get back in
4 session, so...

5 MR. DUNCAN: So we should -- we should let
6 John testify.

7 THE COURT: And stop at one for an hour, and
8 then --

9 MR. KING: That pleases me, one o'clock.

10 MR. DUNCAN: That would be fine -- I mean,
11 if -- I don't think John's testimony will be that long, and
12 maybe we can finish. I mean, his -- he's in session today,
13 legislative. So it would be good if we could finish.

14 MR. TYLER: And he's already -- he's already
15 testified on some issues, anyway. No need to get back into
16 any of that.

17 MR. DUNCAN: That's right. That's right.

18 THE COURT: You need to get him down there
19 and work on the roads, right?

20 MR. DUNCAN: Among other things. Among
21 other things.

22 THE COURT: Among other things. All right.
23 We'll --

24 MR. DUNCAN: I would call John.

25 THE COURT: -- do that, if that suits

1 everybody. We'll have John, and then we'll have -- we'll
2 have Representative King, and then we'll go to lunch, will
3 be the present schedule.

4 MR. DUNCAN: Defendants would call Mr. John
5 Richard Christopher King.

6 WHEREUPON:

7 JOHN RICHARD CHRISTOPHER KING, being duly sworn
8 and cautioned to speak the truth, the whole truth and
9 nothing but the truth, testifies as follows:

10 EXAMINATION BY MR. DUNCAN:

11 Q. And, Mr. King, if you could state your name for
12 the record, please, sir.

13 A. John Richard Christopher king.

14 MR. DUNCAN: And, Your Honor, I'm going to
15 try to -- try to do this as -- as best I can. Mr. King did
16 testify in the hearing in the trial five years ago, before
17 Your Honor.

18 THE COURT: I remember that.

19 MR. DUNCAN: I'll try not to rehash
20 everything.

21 BY MR. DUNCAN:

22 Q. Mr. King, if you could, please give us your
23 relationship to Mr. Christopher C. King.

24 A. That was my father.

25 Q. And, Mr. King, you -- you are currently -- what

1 is your current occupation, sir?

2 A. I'm a licensed funeral director, and I'm a member
3 of the South Carolina General Assembly. And I teach at
4 Clinton Junior College as an adjunct instructor.

5 Q. What do you teach at Clinton?

6 A. History.

7 Q. And that's in Rock Hill?

8 A. That's correct.

9 Q. And, Mr. King, you testified that you are a
10 licensed funeral director. You -- where do you operate
11 your funeral home business?

12 A. I've operated 703 Old York Road. And I also
13 opened a funeral home in Rock Hill, which I sold the actual
14 building and land. So just in Chester right now.

15 Q. And that's -- that's at 703 Old York Road --

16 A. Yes.

17 Q. -- in Chester.

18 A. Yes.

19 Q. And, Mr. King, the -- can you -- how old are you,
20 sir?

21 A. Thirty-eight.

22 Q. So at the -- at the time your father passed away,
23 you were 21 years old -- 21 years old?

24 A. Twenty or 21. I'm not -- I'm not sure.

25 Q. Mr. King, can you tell the Court what your --

1 excuse me. Strike that.

2 At the time of your father's death, what -- what
3 was the business that was being operated by your father at
4 the time of his death?

5 A. King -- King's Funeral Home, 135 Cemetery Street.

6 Q. And, Mr. King, did that business continue to
7 operate, after your father's death, at 135 Cemetery Street
8 for a time?

9 A. That is correct.

10 Q. What can you tell the Court in regard to the
11 eviction of your family from 135 Cemetery Street?

12 A. My father died September the 1st, 1997. I left
13 to go to school -- I want to say we buried him on the 6th,
14 and I left on the 8th. My mom sent me to Gupton Jones
15 College of Funeral Service.

16 Q. In Atlanta?

17 A. In Atlanta.

18 Q. Yes, sir.

19 A. And I would come home on the weekends. A lot of
20 the -- the disagreements was kept from me, initially. But
21 as I -- you know, because my mom wanted me to stay focused
22 in school. When I graduated, after I found out what my mom
23 was facing in reference to the eviction of the funeral
24 home, I went before the court system and had my father's
25 name added to my name.

1 And at that time, when I did that, I was given
2 that -- given "Christopher" as part of my name. I later
3 started working -- 'cause my sister and my brother-in-law
4 owned a building in Chester, which was the elementary
5 school in which I attended; they signed it over to me,
6 'cause I did not want to be left without a livelihood. And
7 I told my mom and them, that they could stay on Cemetery
8 Street and deal with the shenanigans of my aunt, but I
9 would not.

10 I -- my mother, I went to her, asked her for a --
11 a personal loan. And I think at that time, it may have
12 been from my dad's -- and I can't even remember where it
13 came from. I don't know if my brother-in-law gave it to
14 her, or if she had it from my dad passing away, or
15 whatever, but I opened up my own funeral home.

16 **Q. And I'm going to -- I'm going to just for**
17 **clarification: The building that you acquired on Old York**
18 **Road, that was transferred to you by your sister --**

19 A. Sister and brother-in-law. Well, I think my
20 brother-in-law signed his portion over to me. My sister
21 didn't.

22 **Q. Okay. And those people --**

23 A. If I'm correct. I mean --

24 **Q. -- were --**

25 A. J.R. Reid -- or Herman Reid is his legal name,

1 but they call him "J.R." And my sister is Pansy King Reid.
2 And my -- if I'm not mistaken, 'cause I talked to my
3 sister, my mom, and my brother-in-law, and I just know that
4 they facilitated in helping me acquire -- you know,
5 upfitting the funeral home. Because I wanted to, you know,
6 open up. And I was not -- but my mom and my other siblings
7 were hellbent on staying on Cemetery Street.

8 Q. Okay. All right. So the operation on -- at 703
9 Old York Road is known as the Christopher King --
10 Christopher King's Funeral Home?

11 A. That is correct. And as I said to you, I changed
12 my name. Because in South Carolina, the -- the only way
13 that you can name something -- a funeral home after you --
14 and I couldn't use the King Funeral Home -- the only way
15 you can have something named after you, is you have to have
16 that as part of your name. And that's what I was told.

17 I went before the state board. My aunt did --
18 was not aware that I had changed my name. And I remember
19 that day that they -- how they argued about me naming it
20 "Christopher King's Funeral Home."

21 And then when I showed the documentations of the
22 court, where I had "Christopher" put in my name, I was
23 honored, you know, the -- or granted that -- that
24 particular name.

25 Q. And so that -- that business, as you have

1 described, you -- you operate that as a sole
2 proprietorship?

3 A. Yes.

4 Q. And that is with your own funeral license?

5 A. License. Yes.

6 Q. You got a -- you're a licensed funeral director,
7 and you opened that facility.

8 A. I opened up the facility December, I want to say,
9 of '98.

10 Q. And, Mr. King, you -- the property -- the
11 property -- physical building at that locale, 703 Old York
12 Road, it is in your name and your sister's name?

13 A. If I'm not mistaken, yes.

14 Q. And that's Pansy King Reid?

15 A. Reid. And I'm not sure, my sister Robbie may be
16 on there. I'm not -- I'm not -- I'm not sure.

17 THE COURT: How do you spell that "Reid"?
18 R, double-e, d? Or R-e --

19 THE WITNESS: R-e-i-d.

20 THE COURT: R-e-i-d. Okay. Get that for
21 the court reporter.

22 BY MR. DUNCAN:

23 Q. Mr. King, that -- that gentleman, he's a former
24 NBA basketball player?

25 A. That's correct.

1 MR. TYLER: Tarheel, right?

2 MR. DUNCAN: Right. A Charlotte Hornet.

3 BY MR. DUNCAN:

4 Q. Mr. King, you -- I understand your testimony
5 about starting your own business. The timing of your
6 starting the business, was it about the time that your
7 mother's operation at Cemetery Street was evicted?

8 A. It was around that time. But it was the time
9 that I graduated. I graduated -- I -- the funeral service
10 school is 24 months, but because I had a college degree, I
11 think it was -- I think I had to do 18 months instead of
12 24. So it was -- when I came out, I was prepared to go
13 into my place.

14 Q. Got you. All right. And, Mr. King, you -- you -
15 - you were in Atlanta?

16 A. I was in Atlanta, yes.

17 Q. But you were --

18 A. From ninety --

19 Q. -- home on a -- you were home on the weekends?

20 A. I was in Atlanta from '93 to '98. And I came
21 home every weekend to help at the funeral home during --
22 during my dad's life. And when he got sick, I came home
23 every weekend to help my mom and my sister Robbie take care
24 of my father when -- when -- when he was diagnosed with
25 lung cancer. So I drove back and forth from Atlanta every

1 weekend.

2 Q. Were you -- you were primarily caring for your
3 father at that time, helping care for your dad?

4 A. Robbie was the primary care-giver. But I would
5 come home to work at the funeral home. And in the
6 evenings, one of us would have to sleep in the bed with
7 Dad, 'cause he would roll out. So I would -- 'cause I was
8 there during the weekend, and my mom would have to stay up
9 at night with him, I would sleep with him in the bed.

10 Q. But you -- one of the things you were doing was
11 coming home to work at the funeral home --

12 A. That's correct.

13 Q. -- during his sickness.

14 A. That's correct.

15 Q. How about after he passed away, did you continue
16 to come home and work the funeral home?

17 A. I came home every weekend of the four years of
18 college, and then the 18 months that I was at Gupton Jones.
19 The only weekends that I ever stayed in Atlanta was when we
20 had homecoming at Moorehouse. But the other weekends, I
21 would be home.

22 Q. Okay. All right. In regard to your working at
23 the funeral home after your -- after your father passed
24 away, during the period from September '97, when your
25 father passed away, up until the time your mother's

1 operation was evicted, was it business as usual? Or not so
2 much? I mean, can you describe that?

3 A. I -- I knew that it was -- there was a conflict.
4 I didn't know to what extent. And then I later learned
5 everything, as I was allowed to open. I think at that
6 point I had -- I -- I had a conversation, personally, with
7 Moses Caldwell, and asked him -- you know, I said, "I don't
8 know what's going on, but -- because I was trying to get my
9 business license for the funeral home, and I had to have a
10 licensed embalmer.

11 He told me that he was -- that -- that he would
12 be a licensed embalmer at -- at -- at the funeral home for
13 me. But I heard him -- I heard him and my aunt on the
14 phone, and I heard him talking to the state board. As he
15 would tell me one thing, but I would be listening on the
16 phone at the house, at my mom and dad's house, where he
17 would say -- he was telling me one thing, but telling the
18 board something different.

19 Q. And that something -- the something different was
20 that he wasn't coming to work for you.

21 A. That's correct.

22 Q. And that was -- was that an ongoing process? I
23 mean, this was like shortly before you went to work --
24 shortly before you opened your business?

25 A. Yes. Because you -- I -- I was asking him would

1 he help me, you know, be a licensed embalmer at my funeral
2 home. You can be licensed at both places. You can be an
3 embalmer at two different places. You can embalm for two
4 different funeral homes. So I didn't -- that's when I went
5 to my mom, and said, "What is going on?"

6 Because he told me that he would --

7 MR. TYLER: Objection.

8 A. -- he would help me.

9 MR. TYLER: Hearsay.

10 A. That he would help me --

11 THE COURT: Hold on just a second.

12 Sustained.

13 BY MR. DUNCAN:

14 Q. Without -- without saying what someone else told
15 you, you --

16 A. What I heard.

17 Q. Or what you heard. You had -- is it fair to say
18 that you had to make other arrangements at your locale?

19 A. That is correct. And that's when I got Eddie
20 Nelson and Glenn Crawford.

21 Q. To be your embalmer --

22 A. Yes.

23 Q. -- to be embalmers for you.

24 A. That's correct.

25 Q. And, Mr. King, you grew up working in the funeral

1 **home on Cemetery Street; is that fair to say?**

2 A. Yes.

3 Q. I mean, from the time you were a small child?

4 A. That's correct. We-all -- we had to do
5 something. My daddy -- I mean, in the African-American
6 community, if you own a funeral home, you -- you -- you --
7 as a child, you washing cars, answering the telephone.
8 You're doing something in the funeral business. I
9 remember, you know, my mom and my dad making programs with
10 the copier that you turn around like that (indicates) --

11 Q. Yes, sir.

12 A. -- to make programs that go to funeral services.
13 As a child, I remember having to do that, you know, 'cause
14 your arm get tired, and then they let -- you know, let the
15 kids do it. But I remember us, you know, answering the
16 telephone and doing stuff like that.

17 Q. And the -- that was your life. I mean, that --
18 the funeral home at Cemetery Street was -- was your life;
19 assisting with your father's and -- and maybe -- in your
20 father's business.

21 A. It was totally my life, to the point to where
22 when I went to college, and they asked you -- and I wish I
23 would have had it today on the actual program -- from the
24 college when you graduate, what job are you going to have.
25 And they list where you're going to work. I said I was

1 going to work at King's Funeral Home.

2 And that -- you know, that was all -- I always --
3 my daddy always said I had to go to college and get a four-
4 year degree before I went to funeral service school. And
5 then after that, you go to funeral service school.

6 But my junior year, he was diagnosed, so I knew
7 that -- that was my ultimate goal, I would be in the
8 funeral business.

9 Q. And your plan, as you just described, was to go
10 back to the location that your grandparents and father had
11 run.

12 A. That's correct. But when my dad passed away on
13 September the 1st, we buried him on September the 6th. My
14 aunts -- I love them dearly, but they sat us around a table
15 and basically -- and Pat said for us to pack our shit,
16 'cause a new day was coming, after my dad died, in my
17 grandmomma's house, sitting around the table.

18 And I told her that day, I said that I'm going to
19 -- and my -- and my aunt tell the truth -- whenever she's
20 under oath, she'll tell you -- I told them that day, I
21 said, "My mom and them may be dealing with this, but I
22 won't. I will open up my own before I have to deal with
23 this. 'Cause my daddy worked in this business, and none of
24 y'all were there. None of y'all were there."

25 Q. Mr. King, did you -- I realize you were in

1 school. But were you involved in the finances of your
2 father's business -- funeral home business, and after he
3 passed away?

4 A. No more than he would have -- maybe ask any of
5 us, any of his children and my mom, to write a check and he
6 sign it. But I never knew what was in the bank, none of
7 that. Because that was, you know, something my daddy dealt
8 with.

9 Q. And the same -- after he passed away, the same --
10 I mean, you -- that was not your --

11 A. I don't even --

12 Q. -- situation.

13 A. I know it's strange, but I don't -- you know, I
14 may sign a check at my -- my sister may write a check for
15 me now, 'cause I'm in Columbia. But I don't really do a
16 lot -- you know, in reference to writing the checks. I
17 know what's in the bank, and stuff like that now, but I've
18 never been that financial person.

19 MR. DUNCAN: Okay. All right, sir. I think
20 that's all the questions I have. I'm sure Mr. Tyler will
21 have some.

22 MR. TYLER: Yes, I have some follow-up
23 questions.

24 EXAMINATION BY MR. TYLER:

25 Q. To be very brief, you've been cross-examined in

1 this case before, and I just only intend to ask you
2 questions about what you didn't talk about five years ago.

3 You mentioned starting up your business, you
4 know, right at the eviction right around -- right after
5 December 8th, 1998. What steps did you go through to
6 register your business when you started Christopher King's
7 Funeral Home?

8 A. I registered with LLR and got a new number. The
9 number that y'all have at King's Funeral Home is the same
10 number that my dad had: Thirty-two. I think it was thirty-
11 two. I'm six hundred. Any new business after that -- or
12 any new business that -- if my aunt had opened up a new
13 business, or if I open up a new business, it would have
14 been the six hundreds. So "32" is the number -- so yeah,
15 32 is the number on the Cemetery Street; six hundred is on
16 York Road.

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

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

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

25 A. To be honest with you, I don't remember. I may

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

6 Q. Okay. And do you remember LLR telling you that?
7 You said you weren't sure, but that may have happened. I'm
8 just trying to figure out --

9 A. I remember that me and Patricia and LLR, and all
10 of them, they had a meeting over the phone.

11 Q. Okay.

12 A. And Patricia argued it down that she didn't want
13 it to be called Christopher King's Funeral Home. And I
14 remember that distinctively. And Mrs. LouAnn Pyatt was the
15 assistant -- she was something there at LLR, if you want to
16 depose her or ask her about it. She should remember that.

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

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

22 Q. Okay.

23 A. But I did call them to tell them -- no, I sent in
24 my application, where Moses Caldwell had -- had said that
25 he was going to be my embalmer. And I found out when LLR

1 called, and I picked up the phone at my mom's house, and he
2 picked up the phone at the funeral home, that he said, no,
3 he wasn't going to do it. But his signature was on the
4 application.

5 THE COURT: To do what?

6 THE WITNESS: He would come and just do my
7 embalming for me.

8 BY THE WITNESS:

9 A. Yes, you can embalm at multiple funeral homes.
10 And I didn't realize at the time that I didn't have to
11 technically have an embalmer on the application, but I -- I
12 -- 'cause I was licensed to have a funeral home. I had not
13 taken the embalmer's part of the exam, so I couldn't embalm
14 for myself.

15 My brother Nelson was in dental school at the
16 time, so my -- I went to Moses Caldwell. I found out he
17 and Patricia were on the phone together, talking, and they
18 didn't want we could listen -- they didn't know that we
19 were listening at the house. Because if the funeral home
20 phone rung at the funeral home, we didn't answer at the
21 house during the day. But we would answer at nighttime.
22 But I started getting very suspicious, because I started
23 hearing things.

24 So I started monitoring the phone calls from the
25 house. I would hear him and Patricia, and that's when I

1 would inform my mom. And I told my mom -- it had gotten to
2 the point to where funds were being transferred, insurance
3 policies, and all kind of stuff had started happening up
4 under my momma's leadership of the funeral home. So that's
5 when I found out from LL -- well, when I found out that he
6 was lying to me --

7 THE COURT: And the LLR? Again, tell me
8 what --

9 THE WITNESS: Labor, Licensing, and
10 Regulations.

11 THE COURT: Okay.

12 BY THE WITNESS:

13 A. That's when I found out that he was telling me
14 one thing. And I felt like he was setting me up for
15 failure. So that's when I called Eddie Nelson, who was a
16 family friend, who worked for my daddy's really good
17 friend, Mrs. Collins, who owned Collins Funeral Home in
18 Camden, South Carolina -- and we always called her Aunt
19 Willie Mae. She wasn't a blood aunt, but she was a family
20 friend in the funeral business, and he did her embalming.
21 And my daddy always admired how well he embalmed. So I
22 wanted to make sure that I offered good embalming, 'cause
23 my brother couldn't be there.

24 And I called Eddie and he and Glenn Crawford from
25 Lancaster said that they would do it for me. And they did.

1 THE COURT: I'll wait until you finish. I
2 got a couple questions for him to clarify.

3 MR. TYLER: Okay.

4 BY MR. TYLER:

5 Q. You mentioned forms being transferred or
6 insurance being transferred -- transferred. What forms?
7 Or what insurance?

8 A. My mother had funerals in Chester, and Patricia
9 and Moze put that the services was in Charleston. And we
10 do assignments; my mom and them have all that information.
11 So if she lies on the stand, you -- we can prove all that.

12 But there was an insurance policy to a family --
13 my momma even had to refund money to a particular family
14 that she never even -- just to keep our good name in
15 Chester -- that we never received funds from, where Pat and
16 Moze worked together, wrote that the service was done in
17 Charlotte. And the service was done in Chester, and out of
18 her funeral home in Charlotte, not at my mom and dad's
19 funeral home in Chester. And she did the assignment --

20 MR. TYLER: I'm going to object at this
21 point. Your Honor, he's testifying to a document that's
22 not in evidence, nor has it been --

23 THE WITNESS: It's in there. It's in
24 evidence.

25 MR. TYLER: No, it's not. It's not in

1 evidence. It's not been produced. It's not been submitted
2 into evidence.

3 THE COURT: Well, you asked him the
4 question, so I'm going to overrule your objection.

5 MR. TYLER: Okay.

6 THE WITNESS: But to answer your question,
7 it's in evidence, Your Honor. We gave all those
8 documentations to our attorney during this whole process of
9 the case. And it shows a track record of how things were
10 done to us, to undermine my mom and her business, after
11 what my dad had left in his will. He didn't leave me -- he
12 didn't leave any of his children anything; he left
13 everything to his wife. I just want to say I wish that --

14 THE COURT: No, he hasn't asked you a
15 question.

16 MR. TYLER: And I'm just looking over my
17 notes to see if there's anything else here. I have no
18 further questions, Your Honor.

19 THE COURT: (To Mr. Duncan) Redirect?
20 RE-EXAMINATION BY MR. DUNCAN:

21 Q. Mr. King, you -- your testimony upon questions
22 from Mr. Tyler, is that you -- you had -- you became
23 suspicious, and began monitoring phone calls at the house -

24 -

25 A. That's correct.

1 Q. -- and that time frame, was that immediately
2 after your father's death? I mean, after the conversation
3 that you describe at the table with your aunt.

4 A. I won't say immediately after. You know, 'cause
5 I went right off to school. You know, I would come home on
6 the weekends. And my momma is soft-spoken and she really
7 doesn't really, you know, tell us everything that's --
8 she'll -- you know, she just really -- my momma is -- for
9 lack of a better word, she was -- she's more of a push-
10 over. And so she doesn't tell -- my sister and brothers
11 would tell me what was going on. My mom would try to keep
12 it from us.

13 Q. From you.

14 A. Yeah.

15 Q. Okay. But you -- you learned, though, and began
16 this process throughout the course of time in 1998?

17 A. Yes. When I would come home on the weekends.

18 Q. And you physically heard multiple phone
19 conversations between Mr. Caldwell and --

20 A. Mr. Caldwell, LLR, and Patricia. And my mom --
21 my mom, I would tell her to do the same thing. But my mom
22 is naive enough to believe that -- that she was not going
23 to be hurt, because my dad had told her that, you know,
24 everything --

25 MR. TYLER: Objection.

1 A. -- was going to be fine.

2 MR. DUNCAN: Your Honor, I don't think I
3 have any other questions. I think you said you had a
4 couple, maybe clarifying things.

5 EXAMINATION BY THE COURT:

6 Q. You just said that you heard -- overheard
7 multiple calls between LLR, Mr. Caldwell, and Patricia.
8 You heard them --

9 A. I heard probably two calls with LLR, because when
10 they would call me and tell me that Mr. Caldwell was
11 telling them one thing, I would call him back.

12 And I said, "Well, let's put him on three-way."

13 And then he would say, "Oh, yeah, yeah, yeah,
14 yeah."

15 MR. TYLER: Objection. Mr. Caldwell is not
16 a witness. It's hearsay.

17 THE WITNESS: I heard this with my ears.

18 THE COURT: He's testifying out-of-court
19 statements. So I think that, that's valid. But he's --
20 what was the nature -- so I think it's a good objection.
21 I'll sustain it.

22 EXAMINATION BY THE COURT:

23 Q. What was the nature of these phone calls?

24 A. The nature of the phone call was I fill out a
25 application, he said he was going to be my embalmer. He

1 would -- LLR called me back to tell me that I did not have
2 an embalmer. I then called on three-way with Mr. Caldwell,
3 myself, and LLR. I was told then on the phone with Mr.
4 Caldwell --

5 MR. TYLER: Objection.

6 A. -- LLR --

7 THE COURT: Overruled.

8 A. -- and myself, by Mr. Caldwell, that he would be
9 my embalmer. I would be called again, and I -- in-between
10 time would listen at the house when he was telling them one
11 thing and another, you know. And then the other thing is I
12 would hear he and Patricia on the phone, talking on
13 different occasions.

14 Q. Okay.

15 A. From Charlotte -- she was call from Charlotte to
16 the funeral home.

17 Q. And this was in relation to him being your
18 embalmer. That is Mr. Caldwell --

19 A. That's correct.

20 Q. -- is that correct? As to the number -- and you
21 said that King Funeral Home had the number 32 at the
22 funeral home board, or the LLR --

23 A. Uh-huh.

24 Q. -- whichever it was.

25 A. That's correct.

1 Q. Okay. And that number is still being used by --

2 A. The same number that was filed whenever the
3 business opened is the same number that's being used today.

4 Q. By Patricia.

5 A. By Patricia.

6 Q. And you have another number which is --

7 A. Six hundred.

8 Q. -- six hundred.

9 A. Thirty-two is the number that started up under
10 leadership of Will -- William Robert King and Ellen Nelson
11 King. Thirty-two. They were probably the thirty -- they
12 do it by the number of funeral homes in the state.

13 Q. Right.

14 A. My grandparents was number 32 in the state. I
15 want to say that's -- I want to say that's the right. It's
16 a low number. It's like a 32.

17 Q. So what does that license do? It allows you to
18 do what?

19 A. You place that on your death certificates, and
20 that's so that you can operate a funeral home. And that
21 you operate it -- that's the license number that you
22 operate that funeral home up under, and is established up
23 under.

24 So any new funeral home, even if you -- even if I
25 was still on Cemetery Street, and he changed the name to

1 Christopher King's Funeral Home, they would have to give me
2 a new number. Or either, if I kept it as King's Funeral
3 Home, and I'm a -- the owner, they would have to give me a
4 new number. Which, it would have been with the six
5 hundreds around that time, 'cause my number is six hundred.

6 Q. Did you have direct knowledge about, you said,
7 transfer of insurance --

8 A. Yes, sir.

9 Q. -- policies?

10 A. Yes, sir.

11 Q. And funds?

12 A. Yes, sir.

13 Q. What is your direct knowledge of that?

14 A. I was with my mother when she showed me the
15 paperwork -- my mother showed me the paperwork. I was with
16 my mother when she wrote a check to a family that -- of
17 funds that we never -- you may give us a ten thousand
18 dollar policy. You -- you assign five thousand over to the
19 funeral home for the expenses of the funeral home, the --
20 the insurance company will -- or you may -- the insurance
21 company will send you a check; you write whatever is the
22 remainder over to the family to give that -- give their
23 balance back to them -- or their refund back to them. They
24 may have -- I'll back up.

25 They may have three or four insurance policies.

1 One may be for ten thousand, one may be for another ten
2 thousand, whatever. But we filed assignments on each one
3 of those policies, 'cause we don't know which one may be --
4 may pay off. So in -- in essence, when you sending over to
5 all these different insurance companies, any monies that
6 come back to you, you have to refund it to the family.
7 Well, my mother noticed that the stuff never did come back,
8 she never was paid for the funerals. She never heard back
9 from the insurance companies. She contacted the insurance
10 companies, they sent her the information --

11 Q. All right. Be more specific. When did this
12 occur? And what amounts are you talking about?

13 A. I don't know the --

14 Q. That you have direct knowledge of.

15 A. I don't know the exact amounts. My mother
16 probably can -- my mom, she may be able to tell you the
17 exact amount. It may be three or four thousand dollars, if
18 not more. But it was where they --

19 Q. Do you know the names of the funerals? I mean,
20 when you --

21 A. I can remember the --

22 Q. You're talking about specific --

23 (Crosstalk; unreportable.)

24 Q. -- are you talking about specific funerals or
25 specific insurance policies?

1 A. Specific funerals that we did in Chester, that my
2 Aunt Patricia did an assignment out of the Charlotte, she
3 and Moze conspired and had the monies sent to Charlotte.
4 The funeral home did the assignment for Charlotte as if the
5 services was done in Charlotte.

6 Q. All right. You need to tell me, specifically,
7 about that. Was that -- how many of these? What were
8 they?

9 A. I'm aware of -- I'm aware of one that my mom told
10 me about. Because I went with her to -- the lady is
11 deceased now. But I went with my mother.

12 Q. Do you know what funeral it was?

13 A. It was the lady's -- I want to say it was her
14 husband or a --

15 Q. You were directly aware of this --

16 A. Yes.

17 Q. -- 'cause you were there.

18 A. Yeah, I was with my mother when she -- I wasn't --
19 - I didn't work that funeral, because it was during the
20 week. But I was with my mom when she had -- she felt so
21 bad, 'cause the lady kept calling for the money.

22 Q. Let me go through that again. I'm not sure that
23 I understand how this works.

24 A. Can I explain it to you?

25 Q. And, if you would, about the insurance policies.

1 Is this the whole pre-need process?

2 A. No, sir. No, sir.

3 Q. Not pre-need.

4 A. No, sir.

5 Q. This is insurance product.

6 A. If someone comes to the funeral home --

7 Q. Do y'all have a connection with the insurance
8 companies?

9 A. No, sir.

10 Q. You're not an agent for any insurance company.

11 A. No, sir.

12 Q. So when it comes to the insurance -- comes to you
13 and says they want -- this is before they die.

14 A. No. No, sir.

15 Q. After they're -- they die.

16 A. This particular lady --

17 Q. The family comes.

18 A. This particular lady --

19 Q. Says, "I've got an insurance policy." Right? Is
20 that --

21 A. This particular lady had a loved one that passed
22 away.

23 Q. Okay.

24 A. We provided the services, the product, and
25 everything at 135 Cemetery Street.

1 Q. Right.

2 A. She gave us an insurance policy. We do an

3 assignment on the insurance policy to pay for the --

4 Q. She does an assignment.

5 A. The family --

6 Q. She assigns the money to the funeral home, right?

7 A. To the funeral home.

8 Q. But she assigns the whole policy?

9 A. She assigns --

10 Q. Is that right?

11 A. She assigns where the -- where the money comes to

12 the funeral home.

13 Q. Okay. And --

14 A. The whole policy --

15 Q. -- I'm trying to get the process. The funeral

16 policies -- the funeral -- the policy is \$50,000, and the

17 funeral costs ten thousand. So you're talking about the

18 funeral home, if she assigns a \$50,000 policy, the funeral

19 home gets ten thousand, and you're supposed to give her

20 forty thousand back?

21 A. That's correct.

22 Q. Is that what you're describing?

23 A. Yes, sir.

24 Q. Okay.

25 A. Yes, sir.

1 Q. Is that right?

2 A. Yes, sir.

3 Q. I don't want to --

4 A. No, no. You're correct. We will receive the
5 funds at the funeral. Sometime there are multiple
6 policies. So what we will do is, because we're not sure --
7 because the insurance companies --

8 Q. Multiple policies for the same person?

9 A. For the same person. You may have one -- you may
10 have multiple policies that are five --

11 Q. You might have a five -- a two-thousand-dollar
12 policy, a five-thousand --

13 A. With different insurance companies.

14 Q. Small policies. But a funeral might cost more.

15 A. The funeral could cost more or less. But what
16 you find out is that the funeral home is not sure which
17 insurance company will pay off. So we make assignments on
18 all of the policies.

19 Q. So a person comes in and they got half a dozen
20 policies, or something.

21 A. Uh-huh.

22 Q. You have them assign all of the policies to you.

23 A. Yes. Because --

24 Q. You don't know exactly know what the funeral's
25 going to cost.

1 A. No, no. You know what the funeral is going to
2 cost, so you put that amount on there.

3 Q. I see.

4 A. But what you -- what I'm trying -- what I want to
5 explain is that, because you do multiple policies --
6 because the insurance companies -- something that we're
7 trying to do in South Carolina, the insurance companies
8 will not tell the funeral homes if the insurance policies
9 are in effect or in any good, or in force.

10 So we have to do assignments on every one of the
11 policies, no matter how much the funeral is, because you may
12 get -- some people may have had loans on their policies --
13 it's a -- it's an array of things that may have happened
14 with that policy. So you may do multiple policies. In
15 this particular case, Patricia and them diverted the funds
16 to Charlotte.

17 Q. Be specific about how that was done and how it --

18 A. There was an assignment --

19 Q. -- and the amount --

20 A. -- there was a --

21 Q. Again, you know this of your own personal
22 knowledge.

23 A. Yes. And our attorney should have it in his
24 file, 'cause we turned it over to him.

25 Q. Well, I don't need the attorney's testimony. I

1 **need your testimony.**

2 A. The -- the King's Funeral Home of Chester was
3 scratched out -- the address was scratched out, and put
4 4000 Beatties Ford Road on there. The services were not
5 handled on 4000 Beatties Ford Road, Charlotte, for that
6 service. Those services were handled in Chester, up under
7 my mom's leadership at King' Funeral Home on 135 Cemetery
8 Street. The family then called because they knew that they
9 were going to receive a refund --

10 Q. Now, be -- be more specific. When was this? And
11 what amount was involved?

12 A. It had to be between '97 and '98. I can't
13 remember back that far, Your Honor.

14 Q. Okay.

15 A. But I do know that my mom made a refund.

16 Q. Okay. And so go ahead as to what happened there
17 at that particular funeral. The funeral occurred at --

18 A. 135 --

19 Q. -- Cemetery --

20 A. -- Cemetery Street.

21 Q. Cemetery, right?

22 A. This is the assignment. King's Funeral Home 135
23 Cemetery Street is here. It is whited out and put 4000
24 Beatties Ford Road. They did not do the service. That's
25 the funeral home she owns.

1 Q. So the assignment was altered; is that what
2 you're saying?

3 A. That is correct.

4 Q. Okay. Who altered it?

5 A. It had to be -- because Mr. Caldwell and Ms. --
6 my Aunt Patricia would have had to alter that. Because I
7 know my mom ain't going to divert none of her funds to 4000
8 Beatties Ford Road.

9 Q. But you do not know the name of the funeral. Do
10 you know the amount of the funds?

11 A. I don't know the exact amount.

12 Q. So in the case that -- and your knowledge as a
13 funeral director. In the case that a assignment is whited
14 out to another -- another address, then what do you -- what
15 happens to that? What's happened --

16 A. Well, I don't know --

17 Q. -- as a result of the alteration?

18 A. I don't know what happened at other funeral
19 homes. But I know -- because I know my mother, that she
20 did not want -- first of all, the public embarrassment. So
21 what she did is she wrote a check, and refunded that family
22 out of the King Funeral Home Chester bank account and --

23 Q. This would have been the excess over the cost of
24 the funeral?

25 A. That is correct. My mom wrote -- 'cause the lady

1 -- if I'm not mistaken -- my mom would have to testify to
2 that -- if I'm not mistaken, the lady kept calling. And
3 that's when my mom said, "Well, we haven't been paid."

4 Q. And you don't know the amount.

5 A. I do not know the amount. I don't -- I want to
6 say it's no more than three -- between three and five
7 thousand dollars. I don't want to say it's any more.

8 Q. You believe it's three and five thousand.

9 A. Yeah. It could be less, but I don't think it's
10 no more.

11 Q. Your mother would know, you think?

12 A. Yeah, I'm thinking that she would know. Yes.

13 Q. Do you know of any other incidents that's
14 occurred?

15 A. I personally do not know. But those -- that was
16 -- as I fore-stated, Your Honor, my mother kept a lot from
17 me. My aunts and my family know I'm sometimes a hot-head,
18 and I would not let my mom be taken advantage of, so a lot
19 of things were kept from me.

20 THE COURT: (To Mr. Tyler) Okay. I have no
21 other questions. I guess that we would -- that would go
22 first to you. John, do you have any other questions after
23 that testimony?

24 MR. TYLER: Your Honor, I think we're on
25 redirect at this point.

1 THE COURT: Okay. All right. Are there any
2 other questions that you have, Mike?

3 MR. DUNCAN: I think I had got to the end.

4 THE COURT: Finished? All right. Those are
5 the court's questions. I always give you a chance -- an
6 opportunity to ask questions after the court's questions.
7 All right. Mike has none. Do you have any, John?

8 MR. TYLER: No, Your Honor.

9 THE COURT: Okay. All right. Then can we
10 let Mr. King get back to the State of South Carolina's
11 business?

12 MR. DUNCAN: That's fine with me.

13 THE COURT: All right. Mr. King, we will
14 excuse you, Representative King, from the rest of this
15 case. Can we excuse him for good? Unless you want --
16 y'all think you might want him later on or --

17 MR. TYLER: I have no reason to call him,
18 Your Honor.

19 THE COURT: Okay. All right. So we --
20 y'all are okay with excusing him for the trial of this
21 case?

22 MR. DUNCAN: Yes, sir.

23 THE COURT: We're going to go to lunch now,
24 if that's okay with you-guys. We'll recess until 2:15.

25 (A recess was taken from 1:11 p.m. to 2:25 p.m.)

1 THE COURT: Madam Court Reporter, we'll get
2 started.

3 (To Mr. Duncan) Call your next witness,
4 please.

5 MR. DUNCAN: Yes, sir. Defendants would
6 call Nelson C. King.

7 MR. KING: Nelson M. King.

8 MR. DUNCAN: I'm sorry, Nelson M. King.
9 Nelson M. King.

10 MR. KING: That's correct.

11 WHEREUPON:

12 NELSON M. KING, being duly sworn and cautioned to
13 speak the truth, the whole truth and nothing but the truth,
14 testifies as follows:

15 EXAMINATION BY MR. DUNCAN:

16 Q. Mr. King, what -- where do you live, sir?

17 A. I live in Rock Hill, South Carolina.

18 Q. And you are the son of Christopher C. King and
19 Margie King?

20 A. Yes, I am.

21 Q. And what do you -- what is your occupation, sir?

22 A. I'm a mortician, dentist, and contractor.

23 Q. And you -- you went to dental school?

24 A. Yes.

25 Q. Where did you go to dental school?

1 A. Howard University in Washington D.C.

2 Q. And you finished there when?

3 A. 2000.

4 Q. And, Mr. King, you are -- how old are you, sir?

5 A. Forty-nine years old.

6 Q. And, Mr. King, prior to going to dental school,
7 did you work in the King Funeral Home?

8 A. I worked at King's Funeral all my life. Even
9 when I was in dental school, I would come home on some
10 weekends, maybe once a month, to work in the funeral home.

11 Q. And so -- I mean, from your childhood; is that
12 right?

13 A. Yes, sir. From childhood.

14 Q. And, Mr. King, in keeping with the fact that
15 Judge Harrison has heard a lot of this, I'll try to move a
16 -- move along. The time period at which your -- your
17 father became ill, were you -- was that when you were
18 working on the weekends at the funeral home?

19 A. Yes, when I -- when I could come into town.

20 Q. All right. And after your -- after your father
21 passed away, did you continue to assist your mother and
22 siblings in the operation of the funeral home at Cemetery
23 Street?

24 A. Yes, I did.

25 Q. And what -- what -- were you present at a -- at a

1 **meeting after your father's death, with your Aunt Patricia?**

2 A. Yes. I just want to make a correction. John
3 said it was the day after. It was the day of the funeral.
4 That evening my Aunt Pat called us over to my -- to the
5 home house -- we called it my grandmother's house. And it
6 wasn't only Aunt Pat -- it was all my aunts, and they had
7 us to come over. And she stated that she was coming back
8 to take the business over, and that all us couldn't be
9 employed in the business; only one of us could be -- work
10 at the funeral home with Moze.

11 And at that time my brother John got up and
12 stated that he wasn't sitting in there for this. And the
13 rest of us got up and left, also. She told us that if we
14 wanted to work in the funeral business, it would only be
15 one of us. And at the time, she asked me did I wanted to
16 work there.

17 And I said, "No, this is my father's business. If
18 my whole family can't be there, I can't work neither."

19 So we got and we left the table. Prior to that,
20 my daddy ran the business up until his illness. And then
21 all of us -- you know, all of us helped out.

22 **Q. Okay. And the way -- is it fair to say that your**
23 **Aunt Patricia presented that as like an ultimatum?**

24 A. Yes, sir. That's the only way we -- we -- either
25 one of us, or none of us could work in the business. It

1 only -- it only -- it only could be one child. And before
2 I got up, I said, "Look, my father worked in this business
3 all his life. You in Charlotte, run the funeral home as a
4 lawyer."

5 And my Aunt Eez [ph] was a teacher in Michigan;
6 my other aunts were off with their spouses. None of them
7 live in the Chester -- the only person that lived in
8 Chester was my father. And he ran the business every day;
9 that was his business.

10 Q. And, Mr. King, that was the -- did you have other
11 discussions with your Aunt Pat? Or was that the end of it?

12 A. That was the -- basically, the end of it. That
13 was right after the funeral. I personally didn't have any
14 discussion, 'cause, you know, I was back and forth from
15 school. But I did come home -- probably that December
16 before -- right before we was evicted -- 'cause that's
17 before we was evicted that we got in a heated argument.
18 And, you know, they had -- the police came over and told us
19 we had to leave.

20 Q. You were present for that?

21 A. Yes, I was present for that. My brother William
22 went to jail. 'Cause we -- we grew up in that business,
23 and we felt strongly about being there. And it was a big
24 argument, and the police officer told us we had to leave.
25 And we're like, "We're not leaving."

1 And they arrested my brother on Christmas Day,
2 matter of fact. I'll never forget that.

3 **Q. Christmas Day of 1998.**

4 A. Yes. Right before we got evicted.

5 **Q. All right, sir.**

6 A. 'Cause I was out for my break. You know you get
7 a break in December. And I didn't have to go back till
8 like the second week of January.

9 **Q. And during the course of your work at the King**
10 **Funeral Home there on Cemetery Street, did you interact on**
11 **a regular basis with Mr. Moses Caldwell?**

12 A. Yeah, I inter-reacted, you know. I -- I embalm -
13 - I'm a licensed embalmer. I embalmed. I -- but to answer
14 your question, yes, I inter-reacted with him. When I
15 couldn't be with a family, you know, he met with the
16 family. We would discuss who was going to meet with the
17 family, or my father. And I would make arrangements with
18 the family. If I made arrangements with the family, I
19 would carry them all the way through.

20 As it was fore-stated earlier, you know, I go to
21 the house and make the initial setup, and get general
22 information. I set up a time for them to come in and make
23 arrangements with me. We'd make arrangements. And I would
24 take the funeral out. Of course my father would always
25 come to all the funerals. I used to pick up all the bodies

1 at night.

2 Q. Who did that?

3 A. I did.

4 Q. You would go pick up the bodies.

5 A. When I was home. Or my brothers.

6 Q. Okay. But that was part -- I mean, that was a
7 regular thing that you did.

8 A. And like John say, my father -- that was -- we
9 didn't have no -- what he said, that was it. We didn't
10 have no other choice, whether you're going to pick up a
11 body or not, you had to pick up the body. You had to work
12 in the business.

13 Q. And, Mr. King, the -- did you -- did you deal
14 with the finances of the King Funeral Home? Or was that
15 your father?

16 A. This is the way it ran: I -- if I made
17 arrangements, or if Moze made arrangements, we would do all
18 the consignments. But when the finance came to my check --
19 my father -- nobody signed checks in the business but my
20 father. Mr. Caldwell didn't have that right. I didn't
21 have that right. He and my mother signed the checks. He
22 didn't give nobody else -- I mean, that was it. I could
23 take a check to the bank for deposit, and that's it.
24 That's as close as I got to the finances.

25 Q. Okay. All right. The -- were you -- were you

1 **surprised that Mr. Moses Caldwell left your family's**
2 **business -- left you and your mom's business?**

3 A. Yeah, I was surprised. 'Cause they had a benefit
4 for my father, at Chester, when he had cancer. And he and
5 -- and people to this day tell me he got up for five
6 hundred people, and said -- told my father's -- my father
7 was sitting in a wheelchair, "That I would always be here
8 for your wife and your children. And you don't have that
9 to worry about."

10 So I was totally surprised when he didn't come
11 with -- matter of fact, when we were told that we had to
12 leave, and evicted, we had even went and set up a personal
13 office for him in the new facility, with a name tag -- or
14 with the name on his door, 'cause we thought he was coming
15 with us.

16 Q. And that was your --

17 A. Yeah.

18 Q. -- expectation.

19 A. Yes. And not only me, the whole Chester thought
20 he was coming. 'Cause they had a benefit.

21 Q. Okay. All right. Mr. King, I think that's all
22 the questions I have right now.

23 THE COURT: (To Mr. Tyler) Cross-
24 examination?

25 EXAMINATION BY MR. TYLER:

1 Q. Mr. King, was there a King's Funeral Home run by
2 your grandparents W.R. and Ellen King?

3 A. Yes. The way I understood with my father, the
4 funeral home at 129 Cemetery Street, that was the original
5 funeral home.

6 Q. Yes, sir.

7 A. And whenever it came down to 135, my father ran
8 it. He and my grandfather had discussed that, that was his
9 business. He had another brother that --

10 THE COURT: Say that again. I just didn't
11 hear you.

12 THE WITNESS: I said my father ran the
13 business at one -- initially, it was King's Funeral Home at
14 129 Cemetery Street.

15 THE COURT: Right.

16 THE WITNESS: And I was a young man. And my
17 father told me that he was getting ready -- in 1980, he was
18 going to build a funeral home at 135 Cemetery Street. And
19 that he and his father had discussed it at -- you know, the
20 business would be -- that's -- that's his business.

21 Because he had other siblings that he gone out to do -- his
22 siblings had gone out to -- to their various careers. And
23 his -- he went down to 135 and he ran it. But to answer
24 your questions, originally it started at 129 by my --

25 THE COURT: Would you just repeat that last

1 statement? I'm not hearing you too well.

2 THE WITNESS: Which one?

3 THE COURT: Well, all of it, if there's no
4 hearsay objection. But your father said that he was going
5 what?

6 THE WITNESS: When my father started, it was
7 a family -- he started at 129.

8 THE COURT: I understand that.

9 THE WITNESS: Okay. After my grandfather
10 died, he had a vision to -- to --

11 THE COURT: Your grandfather or your father?

12 THE WITNESS: My father Christopher.

13 THE COURT: All right.

14 THE WITNESS: Christopher had a vision.

15 THE COURT: Had a vision to build a funeral
16 home --

17 THE WITNESS: Yeah.

18 THE COURT: -- at 135.

19 THE WITNESS: At 135 Cemetery Street.

20 THE COURT: Is that -- that's what you said?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Okay.

23 BY MR. TYLER:

24 Q. So my question is: Were you involved in the
25 funeral home business during the time that your

1 **grandparents operated the business?**

2 A. I was always around there, yes. You know, yes, I
3 used to cut the -- my father always -- my grandfather was
4 there. But my father was the last one, okay? Just to give
5 you a little history, yes, sir, we -- my father ran the
6 business, okay? He was licensed. And, yes, I was around
7 there as a child. I used to run through the funeral home.
8 And at night I would have go and cut the light on, 'cause
9 we would keep a light on the sign at night.

10 **Q. And the -- are you familiar of the involvement of**
11 **Patricia King during the period of time that your**
12 **grandparents were running the business?**

13 A. My Aunt Pat was a lawyer in Charlotte. She would
14 come home on the weekend.

15 **Q. Okay. She was -- how was she involved in the**
16 **business, to your knowledge?**

17 THE COURT: At what point are you asking?

18 MR. TYLER: I'm asking during the time that
19 his grandparents, Christopher's parents, Patricia's
20 parents, were running the business.

21 BY THE WITNESS:

22 A. You know, again, I was young.

23 **Q. Okay.**

24 A. And, I mean, all of -- she was a lawyer in
25 Charlotte, she would come home with my grandmother. She

1 stayed with her parents. And, you know, I -- I can't
2 recall her being on any funerals. 'Cause I was young, I
3 didn't -- I mean, I was at the funeral home. But I can't -
4 - I can't recall her actually working the funerals.

5 Q. In this meeting that you mentioned, where all of
6 your aunts were present, would that include Ms. Ellen as
7 well?

8 A. Angie, who is deceased now; Aunt [inaudible], who
9 is deceased now; my Aunt Willie, who is deceased now; my
10 Aunt Ellen; my Aunt Ruby; and Pat all were present.

11 Q. Okay.

12 A. And that's when they told us that -- they called
13 us over. It was right after the funeral, maybe a couple
14 hours after the funeral, and say they wanting a meeting
15 with us. And that's when she stated that one of us we
16 choose -- preferable me -- but choose which one want to
17 work in the business. And after this -- before they could
18 finish their statement, John just went off the handle. And
19 I follow suit with my brother. All of us left.

20 Q. On --

21 A. And I felt, because that was my father's
22 business, why we had to have a ultimatum of who work in the
23 funeral business when we been there all the time.

24 Q. On December 8th, 1998, do you know whether you
25 were present at the funeral home at 135 Cemetery?

1 A. No, I know I wasn't present.

2 Q. Do you recall any furniture items being removed
3 from the building at 135 Cemetery?

4 A. I couldn't -- I wasn't present, so I don't know
5 if anything was removed or not.

6 Q. Okay.

7 A. I wasn't even in town.

8 Q. Okay. So when, later, you -- you testified that
9 later, on December 25th, 1998, the police came by and told
10 people to leave, was that 135 Cemetery?

11 A. It was at the back -- at the back, yes. Told my
12 brothers -- the gentleman -- Seymore, my brother William
13 and I, we were there.

14 Q. Okay. And what were y'all doing there?

15 A. I mean, we was at the -- we was at the funeral
16 home, and he told us we had to leave.

17 MR. TYLER: I have no further questions.

18 EXAMINATION BY THE COURT:

19 Q. Tell me what happened to the car, hearses and all
20 of that.

21 A. Excuse me?

22 Q. Well, you know, we've been talking about the
23 furniture, and nobody seems to know who took the furniture
24 out -- which is fine. I'm not going to probe into that.
25 But I'm just current about the cars, whatever happened to

1 them, and the hearses and so forth. Do you know anything -
2 - I mean, if you don't know anything about that, that's
3 fine. But at the time, whenever y'all were told to move
4 out the funeral home, and then subsequently somebody took
5 all the furniture and stuff out. 'Cause Moses Caldwell
6 testified when they started -- that they had to put
7 everything in to operate. Those were his words I quoted in
8 my order, I think. But nobody ever addressed the cars. I
9 was always curious about whatever happened about the
10 funeral cars and so forth.

11 A. Your Honor, I have no idea.

12 Q. Okay.

13 A. 'Cause I don't know --

14 Q. That's fine. That's enough for me.

15 A. -- back in 1998, I don't remember.

16 Q. I really don't know that, that's an issue in this
17 case, but --

18 MR. TYLER: Curious.

19 Q. It was maybe a -- maybe it would help us; maybe
20 it wouldn't help us. But in any event, I figured that
21 those things would be licensed by the state, and they'd
22 have licenses or tags and that kind of stuff. But I don't
23 know enough about the funeral business to know if you have
24 to have a -- tags, or special tags, or whatever. But
25 anyway, thank you for your answer.

1 THE COURT: All right. I don't have any
2 other questions. (To Mr. Duncan) Do you have any other
3 questions, Mike?

4 MR. DUNCAN: A couple. A couple, Your
5 Honor.

6 RE-EXAMINATION BY MR. DUNCAN:

7 Q. Mr. King, you -- I may have asked you at the
8 outset of your testimony: Are you 50 years old?

9 A. Forty-nine.

10 Q. Forty-nine. Sorry. I'm 49 too. So I don't want
11 to age you. You -- you were testifying in response to Mr.
12 Tyler's questions about your grandparents and their
13 operation of the funeral home at 129 Cemetery Street. And
14 you -- you were involved in -- I mean, you worked there as
15 a child, as a young teenager?

16 A. As a teenager, I was mostly -- I was -- I was
17 running around as a child.

18 Q. A little -- a little kid.

19 A. A little kid. Probably getting in the way.

20 Q. Before 1980.

21 A. Before 1980, I was in 10th grade. So I was
22 working at the funeral home.

23 Q. And that's the point at which your father opened
24 135 Cemetery?

25 A. Yes.

1 Q. And built -- built that --

2 A. 1980 the present -- Ronald Reagan was president
3 that year, I remember.

4 THE COURT: Was there a gap between the time
5 your grandparents quit operate -- quit operating and -- I
6 know that -- as I remember from the last case, a last
7 hearing, a new building was built at 135, I think.

8 THE WITNESS: My father came out of 129, so
9 there was never a gap. The business never closed. If you
10 close a business, you have to get a new permit. And
11 anytime a new business come, whether I go down the street -
12 - if I decide I want to open up a new business, I have to
13 get a new license number. Any time anyone -- if there's a
14 gap, to answer your question, you got to get a new license.

15 THE COURT: There was no gap.

16 THE WITNESS: No, sir. It's always been
17 continuous.

18 THE COURT: Well, the "35" license number
19 with the state was the same one that your father used and
20 your grandfather used, correct?

21 THE WITNESS: And the one that's being used
22 today, yes.

23 THE COURT: And the one that's being used
24 today.

25 THE WITNESS: Yes.

1 THE COURT: Does that have to be
2 transferred?

3 THE WITNESS: No, you have to get -- anytime
4 a new ownership come in, someone is claiming ownership or
5 owner, they have to get a new license.

6 THE COURT: A new license.

7 THE WITNESS: Yeah, you got to get a new
8 license or a new -- they call it a permit number.

9 THE COURT: But it's a permit number.

10 THE WITNESS: Yes. So let's say -- just
11 explain it to you --

12 THE COURT: So if a new business came into
13 the old funeral home at 35, are you telling me they would
14 need to get a new license?

15 THE WITNESS: Yes, sir.

16 THE COURT: And so there is no new license,
17 as far as you know --

18 THE WITNESS: No, sir.

19 THE COURT: -- on the current business.
20 It's the same license.

21 THE WITNESS: The same license that's been -
22 - when my father ran it, he was the sold proprietorship --
23 all his paperwork, his tax papers, saying he was sold
24 proprietorship. That's the license number he used. That's
25 the license number that's being used today. When he was a

1 sole proprietorship, it was the same license number that's
2 being used.--

3 THE COURT: How was it transferred from your
4 grandparents to your father?

5 THE WITNESS: 'Cause my father initially got
6 the license.

7 THE COURT: Your father -- as far as you
8 know --

9 THE WITNESS: Yeah, my father --

10 THE COURT: -- he would have -- the process
11 would have been --

12 THE WITNESS: Yeah.

13 THE COURT: -- he would have gone down to
14 the licensing board.

15 THE WITNESS: When they established it, yes.

16 THE COURT: When you say "they established
17 it" --

18 THE WITNESS: I guess --

19 THE COURT: -- I thought it was the same
20 business.

21 THE WITNESS: I'm talking about when they
22 established getting permits, the initial permit

23 THE COURT: What, was that a new business
24 that your father started?

25 BY MR. DUNCAN:

1 Q. And correct me, Mr. King, if I'm wrong, but I --
2 I thought your grandparents had purchased the funeral home
3 from the Ayers --

4 A. Ayers.

5 Q. -- the Ayers Family?

6 A. Ayers Family, yes.

7 Q. And at that point in time your father got a
8 permit? Or do you know?

9 A. Now, you know, I do -- if I say -- I don't know.
10 I probably wasn't even born then.

11 Q. It was before your time.

12 THE COURT: But what we do know that King's
13 Funeral Home had number 35.

14 THE WITNESS: if I'm not mistaken, I think
15 it's 81. He said "32." I think it's 81.

16 THE COURT: Or 32.

17 THE WITNESS: Thirty-two or 81. It's one of
18 those.

19 THE COURT: It was an early number.

20 THE WITNESS: Yes.

21 THE COURT: It's one of the earliest funeral
22 homes in South Carolina that got permitted.

23 THE WITNESS: Yes. And if you go -- my
24 father's sole proprietorship, and if there's a new
25 proprietorship of King Funeral Home, that should be a new

1 number. This present day, it should be 81.

2 THE COURT: I'm confused. Is it 32, or is
3 it 81?

4 THE WITNESS: I --

5 THE COURT: You don't know.

6 THE WITNESS: I -- I -- I've used it since
7 1997, but I think it's 81.

8 THE COURT: So what was 32?

9 THE WITNESS: John said "32." I don't know
10 it's -- it's either 32 or 81. I don't know the permit
11 number, that's what I'm telling you. We haven't used it --
12 we haven't been able to use that number since 1998. So I
13 don't remember the number. But in 1998 --

14 THE COURT: Do you know what number now is
15 the King Funeral Home?

16 THE WITNESS: It should be in the six
17 hundreds. 'Cause when we left, and it was a new sole
18 proprietorship, it should be a new number that should be at
19 least in the six hundreds.

20 THE COURT: So you don't know if Ms. King --
21 Patricia King got a new number or not.

22 THE WITNESS: I know she been getting a new
23 number, 'cause I checked. I checked with the state some
24 time ago when the inspector came around.

25 MR. DUNCAN: Some years ago.

1 THE WITNESS: Yes.

2 THE COURT: Okay. I don't have any other
3 questions right now about that.

4 (To Mr. Tyler) Do you have any other
5 questions, John?

6 MR. TYLER: No, Your Honor.

7 THE COURT: Mike?

8 MR. DUNCAN: I think I'm done.

9 THE COURT: Well, thank you very much,
10 Nelson.

11 THE WITNESS: Thank you for your time, Your
12 Honor.

13 THE COURT: I guess we'll change seats,
14 here.

15 MR. DUNCAN: Yes, sir. Yes, sir. And, Your
16 Honor, I'm going to call Robbie King Boyd.

17 THE COURT: All right.

18 WHEREUPON:

19 ROBBIE KING BOYD, being duly sworn and cautioned
20 to speak the truth, the whole truth and nothing but the
21 truth, testifies as follows:

22 MR. DUNCAN: Okay. You're sworn and
23 everything. Maybe -- maybe the best thing to do is, Your
24 Honor, if we could go off the record for just a moment in
25 regard to that file that you have in front of you.

1 THE COURT: We can go off the record.

2 (Off the record from 2:50 p.m. to 2:57 p.m.)

3 THE COURT: Go ahead.

4 MR. TYLER: Your Honor, we've just been
5 handed a few documents --

6 THE COURT: He hadn't introduced them yet.
7 Maybe he's not going to introduce them. I don't know.

8 MR. TYLER: Okay.

9 THE COURT: (To Mr. Duncan) Were you going
10 to introduce -- are you going to --

11 [Crosstalk; unreportable.]

12 THE COURT: -- introduce documents?

13 MR. DUNCAN: Your Honor, I am going to ask
14 Ms. Boyd some questions, and I think she will refer to
15 documents, some of which were -- one of which was referred
16 to this morning by Representative John King in his
17 testimony. And Ms. -- Ms. Boyd is more familiar with
18 those, as she was the personal representative of her
19 father's estate. And I expect that we would offer two
20 documents -- I think it's two -- it's a set of documents.
21 But one's -- one's an assignment, and then one is a
22 handwritten note, purportedly signed by Ms. Patricia King.

23 THE COURT: And those are the documents he
24 holds in his hand?

25 MR. DUNCAN: Yes, sir.

1 THE COURT: Okay.

2 MR. DUNCAN: Yes, sir. And that Ms. Boyd --

3 THE COURT: Well, we probably should mark
4 them for introduction, should we not? If you're planning
5 on introducing them and then -- if he would -- if he
6 objects to them, then we'll have a record as to what they
7 are. And if you don't have copies of it, maybe we'll make
8 copies of them.

9 MR. DUNCAN: I do have copies.

10 THE COURT: So what I would suggest -- and
11 y'all can do it any way you want to -- but if you plan to
12 introduce them, I think I would ask her to identify them so
13 they'll be here in the record. And then if he objects to
14 them, I can make a ruling so the record will be -- is that
15 a satisfactory way to do that, gentlemen?

16 MR. DUNCAN: That is -- that is
17 satisfactory.

18 THE COURT: Okay. All right, sir.

19 MR. TYLER: And so --

20 THE COURT: Do you want to put the originals
21 in, or copies of the originals? Or what do you want to do?
22 What do you want the court reporter to handle --

23 MS. KING: Copies.

24 MR. DUNCAN: I guess a copy of the --

25 THE COURT: That would be fine. If he can

1 look at the copies, then we can replace the originals with
2 a copy if -- if John is satisfied that they are the same.
3 So why don't you hand them over the copies, and if he's
4 okay with that, the copies are the same as the originals,
5 we'll let them --

6 MR. DUNCAN: That one is a copy.

7 THE COURT: -- put them in for -- or
8 introduce them as a proposed exhibit. So is that -- is
9 that it right there?

10 MR. DUNCAN: Yes, sir.

11 THE COURT: All right. I'm not trying to
12 tell you-all how to --

13 MR. TYLER: No, Your Honor.

14 THE COURT: I want to keep a record if we --
15 particularly if we're going to have any appeals here. So,
16 all right, you're offering that -- let us get her to
17 introduce it, first. Hand it to her and let her identify
18 it.

19 So this document will be in evidence for
20 identification, and then you can move -- determine if
21 you're going to move it, and he can object. That's the
22 kind of thing that we ought to -- the way we ought to do
23 it. Again, I think that will keep the record straight.

24 MR. DUNCAN: I would -- I would propose that
25 document that you have --

1 THE COURT: Well, let's just give it to her
2 and let her identify what it is. And let her just -- we
3 are using -- for the record, she has the originals. And
4 there are copies of the originals that we're going to put
5 into evidence, substituting for the originals, for
6 introduction, these copies. So now you're going to have
7 your witness introduce what they are -- or tell us what
8 they are.

9 EXAMINATION BY MR. DUNCAN:

10 Q. Ms. Boyd, you -- you are named, obviously, as a
11 defendant in this lawsuit, as the -- both individually and
12 as personal representative of the estate of your father
13 Christopher C. King, correct?

14 A. Yes.

15 Q. And as part of your record-keeping as personal
16 representative of that estate, did you come -- become aware
17 of certain documentation having to do with the funeral home
18 business at 135 Cemetery Street?

19 A. Actually, before my father passed, I was his
20 power of attorney. I was appointment as power of attorney.
21 And so I was with him from the day he was diagnosed until
22 the day he died. I didn't miss a day, 24/7, for the entire
23 time.

24 So I was with him during his daily business
25 operations and...

1 THE COURT: And so what?

2 A. And so yes. Do you have a question?

3 Q. You did become aware of some certain documents.

4 A. These documents, yes.

5 Q. And these -- these documents specifically -- can
6 you identify that document that is on letterhead?

7 THE COURT: Are there two documents? Or
8 one?

9 MR. TYLER: It's two sets of documents.

10 THE COURT: All right. So we'll make this -
11 - one set has got several, multiple pages?

12 MR. DUNCAN: Yes, sir.

13 THE COURT: We'll make it, like, 1A, B, C.
14 And we'll make the other one 2A, B, C?

15 MR. DUNCAN: That will --

16 THE COURT: That will make it clear. All
17 right.

18 MR. DUNCAN: That's fine with me.

19 THE COURT: All right. So for introduction,
20 what is that? What is the first one?

21 THE WITNESS: The first document is the
22 assignment that was changed from 135 Cemetery Street to
23 4000 Beatties Ford Road. And I have a transit permit --
24 burial permit that states that the deceased, John Owens
25 Family, chose King Funeral Home, Chester, South Carolina,

1 which is at 135 Cemetery Street. And then the family went
2 on to do an assignment, and it was part of Mr. Caldwell's
3 job to do the assignments for my mother. And he typed in
4 4000 Beatties Ford Road. And if you look at the document
5 closely, you can see it's one --

6 THE COURT: I don't want you to testify
7 about it. I just want you to identify what it is, first.

8 THE WITNESS: These are assignments.

9 THE COURT: Okay. Now let's hand that to
10 the court reporter as Plaintiff's 1 for identification.

11 MR. TYLER: And, Your Honor, I object to --

12 THE COURT: Well, let's get it marked up.

13 COURT REPORTER: You said Plaintiff's 1?

14 THE COURT: I believe it is.

15 MR. DUNCAN: Defendant's 1. Defendant's 1.

16 THE COURT: Defendant's 1. Yeah, I said
17 "plaintiff."

18 (DEFENDANT'S EXHIBIT NO. 1 MARKED FOR
19 IDENTIFICATION (4 PAGES) - ASSIGNMENTS)

20 THE COURT: The defendant is the moving
21 party with the burden, here, is what the deal is.

22 Okay. Now, so we have Plaintiff's 1 --
23 pardon me -- Defendant's 1 in for introduction.

24 (To Mr. Tyler) Now, do you have an objection
25 to that?

1 MR. TYLER: Yes, Your Honor. We object. We
2 served discovery, specifically a request to produce, in
3 February of 2010 in this matter. We followed up by letter,
4 prior to this trial. And specifically, we requested -- and
5 these are attached to our motion to exclude, which you've
6 already reviewed today --

7 THE COURT: Is that part of the record of
8 this case, in the clerk's office in Chester County?

9 MR. TYLER: The discovery requests?

10 THE COURT: If you're going to talk about,
11 and try to make an objection based on discovery, you better
12 put it in evidence, is what I would say.

13 MR. TYLER: All right. I filed the --

14 THE COURT: The motion.

15 MR. DUNCAN: -- motion that I filed, there
16 are attachments to the motion which is --

17 THE COURT: Okay. So it's in the record.

18 MR. TYLER: Yes, Your Honor. It's been
19 filed --

20 THE COURT: That was my question.

21 MR. TYLER: -- with the court by letter
22 today --

23 THE COURT: All right.

24 MR. TYLER: -- and it's on today's record --

25 THE COURT: All right.

1 MR. TYLER: -- as well.

2 THE COURT: All right. Good. So what he's
3 saying is, that the discovery request that relates to this
4 objection is a part of his motion in limine, that he's
5 early argued regarding the two witnesses, correct?

6 MR. TYLER: Yes, Your Honor.

7 THE COURT: Okay. So go ahead.

8 MR. TYLER: And that exhibit -- Exhibit A to
9 that motion included our request to produce. And Items 6,
10 11, and 12 certainly cover these documents. Item 12 in
11 itself, "Any other documents or materials which you intend
12 to introduce in the trial of this case" certainly covers
13 this.

14 Specifically, No. 6, "All insurance payments
15 and policies paid, or which should have been paid, to
16 King's Funeral Home or Christopher King's Funeral Home,
17 during the time frame alleged in Defendant Margie King's
18 Answer to the Amended Complaint and Counterclaim."

19 Your Honor, certainly 12, and even more
20 specifically 6, covers this particular item, Defendant's
21 Exhibit No. 1.

22 THE COURT: Okay. (To Mr. Duncan) Response?

23 MR. DUNCAN: Your Honor, frankly, Mr. --
24 Representative King's testimony this morning prompted Ms.
25 -- Ms. Boyd to say, "Wait a minute. I know -- I mean, I

1 know this document -- these documentation -- this document
2 exists. I mean, I've seen it before back in -- back in
3 time."

4 And, apparently, it was delivered -- I mean,
5 it was found in my -- in my office, but it was apparently
6 delivered in 1997 -- 1998 -- excuse me -- nineteen -- I
7 think shortly after the filing of this suit, to Attorney
8 Russ Foster, I believe.

9 THE WITNESS: Attorney Gaston.

10 MR. DUNCAN: Attorney Gaston. Okay. I
11 mean, I -- it looked like it was in a file that in Russ
12 Foster's office at some point in time. So whether it ever
13 got to the attorney's for Patricia King, I cannot, with
14 certainty, say that. It -- it may well have in the course
15 of all this time. And I'm certainly not suggesting that
16 Mr. Tyler had it. I would, you know, submit and say that
17 it -- Representative King testified as to this, this
18 morning. I -- I don't recall -- I don't know if there was
19 an objection to not to --

20 THE COURT: There was.

21 MR. DUNCAN: -- his testimony. I think,
22 obviously, that test -- that objection was overruled as
23 Representative King testified at some length about it. And
24 --

25 THE COURT: Well, he testified that the --

1 there was existence of such a document.

2 MR. DUNCAN: Or of such an assignment.

3 THE COURT: He shouldn't have been able to
4 testify as to the contents of it. And I don't think he
5 did, other than maybe that it was marked out. It seems
6 like that's what I recall about the testimony.

7 MR. DUNCAN: And he testified --

8 THE COURT: But the record will speak for
9 itself. But go ahead.

10 MR. DUNCAN: And he testified as to a
11 estimated dollar amount, and obviously, we would seek to
12 accompany his testimony with the correct dollar figure
13 here.

14 THE COURT: All right. This is a document
15 about assignment of insurance policies, right?

16 MR. DUNCAN: It is.

17 THE COURT: All right. I want -- all right.
18 Item 6 as -- other than the gentleman, and whatever you're
19 going to produce at trial -- six says all insurance
20 payments and policies paid, or what should have been paid
21 to King's Funeral Home -- or Christopher King's Funeral
22 Home during the time frame. Wouldn't that -- this document
23 be in the nature of that?

24 MR. DUNCAN: It's in the nature of that.
25 It's certainly not a policy.

1 THE COURT: It's not a policy. It has -- it
2 has to do with insurance payments.

3 MR. DUNCAN: It does have to do with
4 insurance payments. It's an assignment.

5 THE COURT: It's an assignment of --

6 MR. DUNCAN: It's an assignment.

7 THE COURT: -- of a payment.

8 MR. DUNCAN: It's an assignment. It's it
9 not a -- again, not -- obviously, not a policy. It's a
10 one-page document.

11 THE COURT: Aside from the issue of what
12 might have been presented a long time ago to other
13 attorneys, y'all filed an amended counterclaim in 2010.
14 And his discovery request was made subsequent to that, so
15 it's kind of like a new ball game as far your claims were
16 concerned. So I think that's what these discovery requests
17 related to.

18 (To Mr. Tyler) is that correct?

19 MR. DUNCAN: I'm going to -- sorry to
20 interrupt.

21 THE COURT: But y'all --

22 MR. DUNCAN: But the counterclaims --

23 THE COURT: -- y'all set me straight on
24 that.

25 MR. DUNCAN: The counterclaims were filed --

1 the -- the discovery requests predate the amended
2 counterclaims.

3 MR. TYLER: Yes, Your Honor, they do.

4 THE COURT: Well, you were getting ready for
5 the trial at that point in time.

6 MR. TYLER: We were. And it was when we
7 first received the file. We -- we lifted language directly
8 out of their counterclaims. All of those counterclaims
9 were incorporated by referencing to the amended
10 counterclaims --

11 THE COURT: So it -- so, essentially, he --
12 he -- he asserted the same counterclaims, but added some
13 new ones.

14 MR. TYLER: Yes, Your Honor. And this -- to
15 put it just bluntly, this request says, okay, "You say
16 this. Give us the documents that show it."

17 THE COURT: Did he put -- did the original
18 complaint allege -- counterclaims allege conversion and all
19 that? I believe that's more of what this relates to,
20 probably, is that claim.

21 MR. TYLER: Your Honor, the request does not
22 mention conversion. The request mentions all insurance
23 payments and policies paid, or which should have been paid,
24 which is the extent of his -- Mr. King's testimony, earlier
25 today, these documents specifically, or anything you intend

1 to introduce in the trial of this case.

2 THE COURT: And you say the reason you
3 didn't give them to him yesterday, or whenever, is because
4 it only occurred to y'all today, after Mr. John King's
5 testimony, that there might be a document that existed,
6 that would support his testimony. Is that what --

7 MR. DUNCAN: That's -- that is correct.
8 That is correct. And during the -- during the lunch break,
9 Ms. King -- Ms. Boyd located that document.

10 THE COURT: Well, why isn't that a
11 disadvantage to the plaintiff?

12 MR. DUNCAN: Your Honor, I've -- I
13 understand it's a -- it's a disadvantage to the --

14 THE COURT: I mean, we're going more to the
15 heart of one of your claims here, I think.

16 MR. DUNCAN: Well, it --

17 THE COURT: I certainly was interested in
18 it, whenever I heard the testimony. I might have been
19 wrong. I haven't decided this case yet, and we got a long
20 way to go.

21 MR. DUNCAN: Yes, sir.

22 THE COURT: But it seems to me that they
23 relate to some of your claims directly.

24 MR. DUNCAN: I think it does.

25 THE COURT: And if he didn't have this,

1 beforehand, he's just getting it. And he's asked for it,
2 beforehand, some time ago. It seems like to me it would be
3 unreasonable for me to let you-all use these documents that
4 he hadn't seen before now. So anything else? Any other
5 argument?

6 MR. DUNCAN: Your Honor, we're in the --
7 obviously, at -- at this point in time, we have -- it's --
8 the point has been made that this is a very old case. No
9 question about that. But I do, you know, feel obligated, I
10 feel strongly, that -- that everything that can be
11 presented, should be presented today. Or that, you know,
12 if Mr. Tyler seeks an adjournment to go over this, that's -
13 - that's fine with me.

14 I mean, obviously, we would like to move
15 ahead with the case. But if -- if -- I do think that the
16 testimony, as relates to this document, and obviously would
17 assert that the document itself is the best -- the best
18 evidence of the -- of the sit -- of the proof of this
19 matter, rather than simply having Ms. Boyd testify as to
20 her recollection of what went on in 1997.

21 THE COURT: She hasn't testified anything
22 yet. We'll have to see what the objection's going to be.

23 MR. DUNCAN: That's right.

24 THE COURT: But, thank you. Anything else?
25 Any other argument?

1 MR. DUNCAN: No, sir. Not that hadn't
2 already been made.

3 THE COURT: Well, I'll sustain the objection
4 and not allow the document into evidence. So it's in the
5 record. Now, isn't there another document --

6 MR. DUNCAN: There is.

7 THE COURT: -- that you wanted to introduce?

8 MR. DUNCAN: There is.

9 THE COURT: Let's go to that document.

10 MR. DUNCAN: All right, sir.

11 THE COURT: If you want to get it in the
12 record.

13 MR. DUNCAN: I do.

14 THE COURT: And I'll rule on it.

15 MR. DUNCAN: I do. And --

16 THE COURT: Okay. Why don't we go through
17 the same exercise with that one, so y'all will have a clear
18 record? And my suggestion would be to hand it to the
19 witness and let her identify it, and let the court reporter
20 mark it, and then see if there's an objection.

21 MR. DUNCAN: All right, sir.

22 THE COURT: I think that would be the most
23 orderly way to do it.

24 BY MR. DUNCAN:

25 Q. Ms. Boyd, there -- did you, also in the course of

1 your service as your father's personal representative, come
2 across a handwritten letter in -- in the items associated
3 with the King Funeral Home?

4 A. Yes, I did.

5 Q. And that letter, who is it -- who is it
6 purportedly from? Who is it --

7 A. It's from --

8 Q. -- from and to?

9 A. It's from my Aunt Pat to Moses Caldwell, with
10 blank checks, basically stating that he can do as he feel
11 with the checks. And this is when we --

12 MR. TYLER: And I object to any further
13 testimony.

14 THE COURT: You're right. She's -- you can
15 only identify the document at this point; not testify about
16 it. So is that -- if you identify the document's a letter
17 from your aunt -- the plaintiff here to Moses Caldwell?

18 THE WITNESS: It's a letter to my aunt -- I
19 mean, to Moses Caldwell from my aunt, with three blank
20 checks.

21 THE COURT: Okay. All right. Is there an
22 objection to it?

23 MR. TYLER: Yes, Your Honor. And this will
24 be marked as Defendant's Exhibit --

25 THE COURT: Two.

1 MR. TYLER: -- I believe. And I object on
2 the same grounds as -- as I've previously made on the other
3 documents, regarding the request of production that we
4 served a long time ago. Specifically, Item 11: "Produce
5 copies of all correspondence, notes, files, records, e-
6 mails, phone records, bank records, contracts, deeds,
7 certificates of title, checks, or loan documents relating
8 to the claims set forth in Defendant Margie King's Answer
9 to the Amended Complaint and Counterclaim."

10 This is a -- this is a note. It's
11 correspondence. It contains checks. This is right with
12 the parameters of Request No. 11. It's also within the
13 parameters of Request No. 12: "Any other documents or
14 materials which you intend to introduce in the trial of
15 this case."

16 THE COURT: All right. Thank you, sir.
17 Anything else?

18 MR. TYLER: No, Your Honor.

19 THE COURT: (To Mr. Duncan) Do you have a
20 response?

21 MR. DUNCAN: Specifically, as to checks as
22 referenced in No. 11, these are blank checks as -- as
23 opposed to copies of any, you know, cancelled check or
24 anything like that. The checks are only significant as to
25 the -- as an enclosure with the note -- I mean, with the

1 correspondence. So that would be a statement in regard to
2 that. The -- the note to Mr. Caldwell, again, is just part
3 of something that Ms. Boyd is aware of -- became aware of --
4 -- recalled, as we sat here this morning.

5 THE COURT: Okay. I will sustain the
6 objection and not allow the exhibit as evidence.

7 Now, having done that, do you have anything
8 else from the witness?

9 MR. DUNCAN: Yes, sir. Yes, sir, I do.

10 THE COURT: Having ruled the document out,
11 we'll go ahead and proceed and see where we go from here.

12 MR. DUNCAN: All right, sir. Thank you,
13 sir.

14 BY MR. DUNCAN:

15 Q. Ms. Boyd, the -- if you could -- I'm sorry. When
16 did -- when were you appointment -- approximately when were
17 you appointed as power -- as attorney-in-fact for your
18 father Christopher King?

19 A. I don't know the exact date. I can just tell you
20 that I was teaching school in Washington D.C. And the --
21 the end of the school year ended in June, so I went
22 straight home to my father. 'Cause he was sick. And then
23 we drove straight to Michigan, to my first cousin who died
24 with cancer, and then we -- he flew back to Durham, to
25 Duke. I drove back.

1 And once he got home, shortly thereafter -- I
2 don't -- I don't know the dates -- he appointed me as power
3 of attorney.

4 Q. Ms. Boyd, let me -- to try to narrow it down
5 some, you said it was the summertime right after you got
6 out of school.

7 A. I'm thinking June/July, but I'm not sure, of --

8 THE COURT: She was actually --

9 A. -- of '96.

10 THE COURT: -- co-personal representative,
11 right, with her mother?

12 MR. DUNCAN: That -- that's correct. That
13 is correct.

14 THE COURT: So Exhibit 1 of the old -- I was
15 looking at the same thing.

16 BY MR. DUNCAN:

17 Q. But -- but I think -- at least for purposes of
18 this question, that was -- you were his sole power of
19 attorney -- attorney-in-fact? Or was your mom on that as
20 well? Or do you know?

21 A. I can't remember. I just know that I handled --
22 my mother, she continued to teach, because my father -- she
23 had the insurance. So I was my father's primary care-giver
24 than power of attorney. I'm not sure if she was on there
25 or not.

1 Q. And, Ms. Boyd, I'm -- just was your -- was your
2 father -- was that just a couple of months before he passed
3 away? Or was he sick for a year?

4 A. He was sick for well over a year. And that's
5 when I know the power of attorney was done, well before,
6 you know, he got down and he couldn't do much.

7 Q. So the -- the time period that you're testifying
8 about, the summer, is like a year before he passed away?

9 A. No, I'm -- it was like June of '96.

10 Q. Okay.

11 A. So, yes.

12 Q. And he passed away in September of '97?

13 A. Correct.

14 Q. Okay. All right. Okay. And you were -- up
15 until the time you were appointment as his attorney-in-fact
16 by -- by power attorney, is it fair to say that you were
17 not intimately familiar with his financial affairs?

18 A. Well, I -- me and my father were very close. So
19 I knew about, you know, some things. I was in D.C.
20 teaching. And I -- when I was in D.C. teaching, I was not
21 intimately involve -- involved with his financial affairs.
22 But once I moved back, after June of '96, I was.

23 Q. And a little bit of a rude question to ask a
24 lady: But you are how old?

25 A. I think, 47.

1 Q. So in -- you were born in 1960 --

2 A. '67.

3 Q. -- seven.

4 A. Correct.

5 Q. So you were 29 years old, or so, at the time that
6 your father named you as attorney-in-fact.

7 A. Yes.

8 Q. And at that -- the beginning of that point in
9 time, you handled -- did you handle his finances on a -- a
10 regular basis through that attorney -- power of attorney?

11 A. I did.

12 Q. And did that include making deposits of King
13 Funeral Home funds, and that kind of thing?

14 A. Well, some. But not on a regular. Because we
15 were in --

16 (Off-the-record interruption.)

17 BY THE WITNESS:

18 A. The business aspect, where my father was sick,
19 when we were not -- that was entrusted to Mr. Caldwell.
20 'Cause we drove back and forth to Duke, and we would stay
21 up there two or three days at a time. So when he was
22 feeling well, we would go to the funeral home and take care
23 of business matters. And then not only that, during that
24 time he was all -- he filed to the Supreme Court for mayor,
25 so we were down at the city trying to take care of a little

1 bit of that. So when we weren't there, he entrusted Moze
2 Caldwell to maybe make deposits. And I don't know if my
3 mom made deposits or not, because, you know, she worked and
4 -- I don't know, but...

5 Q. Okay. All right.. Did that -- did that continue
6 up -- up until the time of your father's death?

7 A. Yes.

8 Q. And that process that you just described --

9 A. Yes.

10 THE COURT: And it began in 1997, right?

11 THE WITNESS: 1996.

12 THE COURT: Six. Okay. And that's when you
13 were appointed personal representative -- or pardon me --
14 power of attorney.

15 THE WITNESS: I think so. I'm not sure of
16 the exact date.

17 BY MR. DUNCAN:

18 Q. But you -- you -- you're comfortable that it was
19 after the school year in 1996.

20 A. Yes.

21 Q. Sometime in the summer of --

22 A. Yes.

23 Q. -- '96. Okay. And then upon your father's death
24 in September of 1997 --

25 THE COURT: No, it was '98, wasn't it?

1 THE WITNESS: September the 1st, 1997.

2 Which was Labor Day.

3 THE COURT: Okay. I'm sorry. Excuse me.

4 In '96, you started. '97 was the --

5 THE WITNESS: '96 was when I started --

6 [Crosstalk; unreportable.]

7 THE WITNESS: -- as POA. '97 is the date of
8 death.

9 THE COURT: Okay. Thank you, ma'am. That's
10 right.

11 BY MR. DUNCAN:

12 Q. After -- after his death, you -- you and your
13 mother applied to be personal representatives over his --
14 over your father's estate?

15 A. Yes.

16 Q. And were you the -- for lack of a better term,
17 were you the primary person to handle the affairs of his
18 estate?

19 A. I think we did it together.

20 Q. Okay. And you've obviously been here all day
21 today. Were you present at a meeting, as previously
22 described by both your brothers, John and Nelson, with your
23 aunts in regard to the King Funeral Home business?

24 A. Yes.

25 Q. On the day of your father's funeral?

1 A. Yes, sir.

2 Q. Ms. Boyd, can you describe that -- as you -- as
3 you recall that being?

4 A. Basically, we were called in and were given an
5 ultimatum. And that's all I can really, you know,
6 remember. 'Cause it was a very stressful time for me.
7 Because I was my father's care-giver. And then, you know,
8 it just happened right after his death. And it's still
9 going on.

10 THE COURT: Take your time. And we'll be
11 glad to stop, if you'd like, too.

12 (Off the record from 3:27 p.m. to 3:28 p.m.)

13 BY MR. DUNCAN:

14 Q. All right. Ms. Boyd, were you -- I understand
15 you had been assisting with your father's business, in your
16 father's affairs --

17 A. Correct.

18 Q. -- you know, in total as -- as power of attorney.
19 Had you worked in the funeral home business in -- in recent
20 years? Shortly before his death, I'm saying.

21 A. Well, I -- from high school, I went straight to
22 college, did a four-year college. And after college, I
23 went to straight to D.C. And I didn't come back home till
24 '96. But I would come home on a regular -- if not every
25 weekend, every -- you know, two or three times a month.

1 But I was not as active in the funeral home as my brothers.
2 But, you know, I would help do programs, answer the phone.
3 And even when my father got sick, 'cause I was at the
4 house, I would even make night calls or removals.

5 Q. You'd go get bodies.

6 A. Correct.

7 Q. So beginning, really, in 19 -- the summer of '96,
8 you were pretty involved in the -- in the operation of the
9 funeral business.

10 A. I would say I became a lot more involved after
11 his death. Because when he was sick, I was there. And if
12 my mom was at the house -- because my brothers were in
13 school, I would assist any kind of way that I could to keep
14 the business going.

15 Q. So during that year that your father was sick,
16 you were -- you were concerned about taking care of him,
17 his health.

18 A. That was my top priority and only priority, yes.

19 Q. And following his death, you -- you began to be
20 more involved in the funeral business.

21 A. Correct. I was just trying to continue the
22 legacy.

23 Q. And, Ms. Boyd, you -- you did that for the next
24 year or so?

25 A. I continued until we were removed.

1 Q. And, Ms. Boyd, you -- your earlier testimony was
2 that Mr. -- when you were taking your father to Duke for
3 treatment, and be gone for two or three days at a time,
4 that Mr. Caldwell -- Moses Caldwell was handling aspects of
5 the funeral home business?

6 A. Correct.

7 Q. And what -- can you describe Mr. Caldwell's
8 position at the -- at the funeral home?

9 A. I would describe it, in layman's term -- terms,
10 and not in funeral director's terms or the funeral service
11 terms, as a manager. So he was someone that my father
12 entrusted with his business. And I looked up to him as a
13 uncle. He was like a family member. He was around since I
14 was born. So, you know, he trusted him.

15 And I remember Mr. Caldwell coming to the house
16 and having a conversation 'cause -- with me and my father,
17 telling us that, you know, he was going to be there with us
18 till the end, and "Don't worry. Everything's, you know,
19 going to be okay."

20 Because when my father had his treatments, and we
21 drove back down the road, he wouldn't feel like going to
22 the funeral home right away. So Moze would walk down to
23 our house -- because it was like the funeral home. My
24 grandparent's house and my aunt's house and our house, it
25 was all in walking distance. He would just walk down and

1 would have conversations. And he continually assured us
2 that, you know, he would be there for us.

3 Q. Ms. King -- excuse me. Ms. Boyd, did you feel
4 betrayed by Mr. Caldwell?

5 A. Yes. I still do. I feel betrayed by my Aunt
6 Pat, my Aunt Eez, my Aunt Robbie, my whole entire family --
7 besides my siblings and my mother. We grew up. We were
8 very close. We did everything together. I were more like
9 -- my first cousins were more like my sisters and brothers.
10 And now we don't even speak. We can have family
11 gatherings. My children do not know my aunts. They don't
12 know their first cousins.

13 We are a vary strong family. And if you can sit
14 here and listen to the testimony, we all believe in
15 education and taking care of each other. And here we are,
16 today, fighting over this. Which my father grew. Yes, the
17 business came from the heirs to my grandparents, but the
18 business was not like it was. My father was a grassroots
19 person. He got out and he grew the business.

20 Before he died, he had over 90 percent of the
21 business in Chester County. It reached into Fairfield
22 County, York County, and Lancaster County. That's what 135
23 Cemetery Street is living off of now: My father's legacy,
24 my father's hard work, his blood and sweat. He was the one
25 that stressed and got cancer because he's the one that was

1 working. He was the one in the battlefield for that
2 business. It was not my Aunt Pat. She was in Charlotte
3 running her funeral home and her law practice.

4 And we had to make sacrifices. My momma had to
5 continue to work. She couldn't be there with her husband,
6 because she had to have insurance. I was there because I
7 didn't have a family. So I was the one -- I made a
8 sacrifice to be there so my brothers can continue their
9 education. And, you know, it's all just taken from us,
10 just because she has a law degree and she know how to
11 maneuver the system.

12 THE COURT: Do y'all want to stop and take a
13 break now?

14 THE WITNESS: I don't need a break. I want
15 to just finish it.

16 THE COURT: Do you need some water?

17 THE WITNESS: I don't need any water. Thank
18 you.

19 THE COURT: Yes, ma'am.

20 MR. DUNCAN: Your Honor, I don't -- I don't
21 think I have any other questions at this time. I think
22 that's what I have.

23 THE COURT: I just have a couple.

24 MR. TYLER: Your Honor, can I just say for
25 the record, we --

1 THE COURT: No, I'm going to get -- I'm
2 going to ask -- I'm going to ask my questions after you.

3 MR. TYLER: Okay. Well, I was just -- I was
4 just going to state for the record, that we've asked our
5 questions, previously, of Ms. Boyd. No need to go into
6 further testimony from our end today. Unless there's
7 something that you raise that we need to respond to.

8 THE COURT: Thank you.

9 EXAMINATION BY THE COURT:

10 Q. You know, this case has always been very
11 difficult, a legal analysis, because of the facts of what
12 happened here. Let me just call your attention back to the
13 inventory and appraisalment that was filed as Exhibit 1 in
14 the other hearing. And I'll hand you this and let you look
15 at it. And I'm not going to have a whole lot questions
16 about it.

17 But the Inventory and Appraisalment in section --
18 or Schedule E, which says it's for a jointly-owned property
19 with a right of survivorship, it listed King's Funeral Home
20 135 Cemetery Street, equity and building and land, and then
21 it had King's Funeral Home 135 Cemetery Street business
22 sole proprietorship. So it recognized that title and the
23 land and building was in -- perhaps separate from the
24 business, is the way I see that.

25 And in the attachment to that form, to further

1 elaborate on it, it had -- in four, again it represented
2 King's Funeral Home 135 Cemetery Street business sole
3 proprietorship. And it had King's Funeral Home 135
4 Cemetery Street equity and building and land. It didn't
5 have any values there. And this is an inventory and
6 appraisalment. And it was never evaluated, that I could
7 see. In fact, on the recap on the front it has a zero
8 value. I was just wondering if anything was filed further
9 after that, that clarified those values.

10 A. No, sir. And I don't know how to put a value on
11 it.

12 Q. Yes, ma'am.

13 A. I still don't.

14 Q. Okay. Let's forge ahead.

15 THE COURT: (To Mr. Tyler) Do you have any
16 questions as a result of that question by the court?

17 MR. TYLER: No, Your Honor. We've already -

18 -

19 THE COURT: Mike?

20 MR. TYLER: --asked her questions on the
21 inventory and appraisalment.

22 THE COURT: Thank you very much. Mike, do
23 you have any questions?

24 MR. DUNCAN: I don't think so.

25 THE COURT: Thank you very much, ma'am.

1 All right. You're welcome to call your next
2 witness.

3 MR. DUNCAN: Your Honor, I think defendants
4 rest at this time.

5 THE COURT: Motion?

6 MR. TYLER: Yes, Your Honor. I have a
7 motion for directed verdict as to multiple of the
8 defendants' claims.

9 First, Your Honor, as to their claim for
10 constructive trust. And this is really related as well to
11 their claim for promissory estoppel. As Your Honor is
12 aware, a constructive trust will arise whenever
13 circumstances under which property was acquired make it
14 inequitable that it should be retained by the one holding
15 legal title. There is there is case law out there that
16 establishes that the standard of proof is clear and
17 convincing evidence.

18 Your Honor, there's case law that
19 establishes that the -- that the very purpose of -- and I'm
20 quoting from Yadkin Valley Bank & Trust versus Oak Tree
21 Homes, July 20th, 2014 court of appeals opinion. The very
22 purpose of this statute of frauds is defeated where the
23 sole proof of the existence and contents of the document
24 relied upon to avoid the statute is the testimony of the
25 plaintiff.

1 Your Honor, in terms of this construct trust
2 claim, the only testimony we have heard is of the
3 plaintiff; and it really does not establish -- come close
4 to be clear and convincing evidence standard to thwart the
5 statute of frauds and somehow allow a constructive trust to
6 be created for real property that is titled in the name of
7 Patricia King.

8 Related to that, Your Honor --

9 THE COURT: This is related only to the real
10 property is what I am looking at, is what the claim is.

11 MR. TYLER: That's my understanding for
12 constructive trust, Your Honor.

13 THE COURT: Okay. You want to let -- it
14 seem like to me, if you're through with the arm on
15 constructive trust, it would probably be better to let him
16 -- let him respond on each one of your arguments, rather
17 than wait until the end. Would that be --

18 MR. TYLER: I think --

19 THE COURT: -- okay with you?

20 MR. TYLER: I think that makes sense, Your
21 Honor. And I'm happy to go ahead and put promissory
22 estoppel in there, since they're sort of related. They're
23 related to the same deal, according to their complaint.

24 THE COURT: Okay. Yeah, go ahead. We'll
25 talk about that.

1 MR. TYLER: They asserted the same arguments
2 in their counterclaims for promissory estoppel as they
3 asserted for constructive trust. There are four elements
4 to recover under a theory of promissory estoppel: The
5 presence of a promise unambiguous in its terms; reasonable
6 reliance on the promise; the reliance was expected and
7 foreseeable; and injury in reliance on the promise. Here,
8 the promise would have to come from Patricia King. And
9 that's what they're claiming. That's the only -- that
10 would be the purpose of such a cause of action.

11 They've presented no evidence whatsoever as
12 to a promise made by Patricia King to --

13 THE COURT: I think there's evidence in the
14 original record, probably. Not any today. I think there
15 is some evidence in the original record. Anyway, go ahead.

16 MR. TYLER: Well, to the -- to the extent --

17 THE COURT: And that is incorporated. I'd
18 have to go back and look at it.

19 MR. TYLER: Yes, Your Honor. And reasonable
20 reliance on the promise must be established also. That
21 promise was that they claim in the -- in their amended
22 counterclaims was related to the 1980, \$90,000 loan to
23 build the building at 135 Cemetery Street. In order to
24 establish reasonable reliance on the alleged promise, they
25 would have needed to show bank records where they actually

1 paid the -- paid off that loan, and paid that loan.
2 Instead, the evidence of record that we've established
3 previously is that Ms. King paid off that loan, and so that
4 promise is there for promissory estoppel and for
5 constructive trust. And so in neither of those cases have
6 they met their burden of proof.

7 THE COURT: I think I found in the other
8 order that she had paid off the loan, did I not?

9 MR. TYLER: Yes, Your Honor.

10 THE COURT: And that's what I remember. I
11 do remember the allegations that the deal was in the
12 beginning, that Chris was going to buy it as a lease
13 purchase-kind of thing. And, really, that was not
14 developed. I think it -- you know, I was attracted to that
15 argument, but I -- I didn't see it was developed any
16 further than that.

17 And just hearing the testimony, you kind of
18 have to make some assumptions of what probably happened,
19 because so much time has past and memories fade. But that
20 seemed like it would be logical of what the deal was when
21 the brothers and the sisters were kind of working together
22 at that point in time, that the deal might have been. I
23 thought there might have been some substance to that. But
24 there was no real -- really no testimony to that effect
25 beyond that, that they understood that's what it was.

1 I think a couple of the family members of
2 the -- of Chris' children testified to that in the original
3 record. I remember that pretty clearly. And that was one
4 of the reasons why I was thinking, as I looked over these,
5 why there might be a construct trust claim and a promissory
6 estoppel claim, frankly. And that's what my notes
7 indicate.

8 All right. Is there any other argument on
9 the constructive trust? And constructive trust is one of
10 the highest burdens in the civil law to establish that.
11 And in fact, I think what you would be arguing is that --
12 if there is some indication in the record, because of that
13 notation in the -- they were thinking that notation in the
14 -- the Exhibit 1 in the -- in the record that they were
15 thinking that they had equity in it. So that allowed me to
16 think that they had some belief that they had some equity
17 in it, because they stated that in the filings with the
18 probate court.

19 But one of the reasons I was asking the
20 questions that I was about value, is that was -- seemed to
21 never have been fleshed out. But it seemed to me that,
22 that -- there is some evidence of that, but I don't think
23 it meets the burden of the law in establishing it. Is
24 there any other argument you have on that --

25 MR. TYLER: Your Honor, it --

1 THE COURT: -- motion?

2 MR. TYLER: Are you talking to me, Your
3 Honor?

4 THE COURT: Either one. You --

5 MR. TYLER: Yeah, it may -- it may be a mere
6 scintilla, but it's not clear and convincing.

7 THE COURT: Yeah, there is some evidence in
8 the record. I don't think it's -- from what I see, it's
9 not clear and convincing. And that's the standard of
10 constructive trust. And the promissory estoppel is a
11 separate type of proof. But there's a -- there is a --
12 it's a promise, and it's unambiguous and so forth, and I
13 don't believe that, that's established in this record, that
14 I would see.

15 (To Mr. Duncan) You're welcome to make
16 further arguments on that.

17 MR. DUNCAN: Your Honor, on the -- on the
18 constructive trust, I -- you know, I don't -- I don't
19 believe that we can meet that higher standard, the clear
20 and convincing standard of evidence. I think for purposes
21 of a directed verdict, I think there is evidence in the --
22 in the record, sufficient to defeat that motion for
23 directed verdict on the -- on the promissory estoppel in
24 the testimony offered in the previous hearing back in
25 August 2010, specifically noted testimony of Ms. Robbie

1 King Boyd. I have listed page 21 of her testimony, lines
2 18 through -- 8 through 16; pages 27, lines 7 through 13;
3 and 27, lines -- well, inclusive, lines 3 through 22. So
4 just three through 22 on page -- on page 27 of her
5 testimony in the prior hearing.

6 You know, there was a promise of a, you
7 know, return of the property -- or that the property was
8 not -- was not deeded, fully and absolutely in fee simple
9 absolute with no expectation of it ever coming back. And
10 there was reliance particularly given -- reasonable
11 reliance, which would have been expected and foreseeable,
12 particularly given the familial relationship between
13 Christopher King and his sister Patricia, who, you know, is
14 -- was the lawyer in the -- in the family. And he, you
15 know, turned to her for assistance in that matter.

16 And then, of course, the -- the last element
17 of that claim would be that injury and reliance on the
18 promise. And I -- clearly, there was injury in that the --
19 as it's been described in pretty good detail this
20 afternoon, Mr. Chris King's family was -- you know,
21 unceremoniously evicted from that property --

22 THE COURT: Well, she owned it -- she owned
23 the property, did she not? I mean, y'all have made a big
24 thing about that. And as far as the family is concerned,
25 it's regretful. I mean, I hated to have to listen to that.

1 I know y'all hated to have to even talk about it again --

2 MR. DUNCAN: Sure.

3 THE COURT: -- 'cause it's a hurtful,
4 painful thing for everybody. And I respect that. And I
5 understand that. But in the end, as a matter of law -- and
6 that's what I've had to deal with in this case, in looking
7 at it through the eyes of the law, I -- you know, and the
8 claims here -- you know, it's -- it's different. And so
9 she owned it, and so she had a right to evict them.
10 Whether or not it was morally, family, that sort of thing.
11 So looking at it from my standpoint, without the family
12 aspect of it, I have to conclude, you know, that she had a
13 right to do that. In fact, she could have done it a lot
14 earlier than she did.

15 I think that the fact that there was a
16 business run there, and there was family relationship, and
17 there was a business that had been passed on made it more
18 complicated. But as far as she having a right to evict
19 them, she certainly did. And, you know, John very
20 forcefully, and in his independent way, said, you know,
21 "Hey, wait a minute. You know, I'm going to go do
22 something else here."

23 And that was clear in that last trial
24 hearing, and it was again in this hearing. And he
25 supported the family, but he also did his own thing. And

1 so there's some issues that I wanted to discuss with y'all
2 in a minute. But I certainly understand the fact that --
3 you know, that meeting that y'all talk about, that was so
4 traumatic for everyone, also involved, you know, some
5 rights. And as far as the constructive trust and
6 promissory estoppel, what I'll do -- you've practically
7 conceded that because of the standard of the law, which is,
8 you know, clear and convincing. I'll grant his motion on
9 directed verdict.

10 As far as promissory estoppel, I want to
11 take a further look at that. Frankly, that's not saying
12 I'm going to grant it or not, or whatever I'm going to do,
13 but I do want to look at that. And so I will take a look
14 at it. But as far as constructive trust, you know, there
15 are some elements of that here, there are some pled, there
16 is some evidence in the record, but it's not established
17 clear and convincing in my view. And so I would have to
18 grant that motion and a directed verdict stay.

19 I know that in a non-jury situation,
20 directed verdict and deciding the case are very similar.
21 But there's a different legal standard, I think, connected
22 with the fact-finder finding the case after it's all over,
23 and ruling on directed verdict -- verdict. And I just
24 don't want to get into, you know, making some mistake about
25 that. And so I would rather go back and look at the

1 record, without making a decision on promissory estoppel.
2 So that's the way I would rule on that.

3 (To Mr. Tyler) All right. John, you have
4 further motions?

5 MR. TYLER: Yes, Your Honor. As to their
6 counterclaim for waste. Waste is a claim related to injury
7 to lands, houses, gardens, trees, or other corporeal
8 hereditaments done or permitted by the tenant of an estate,
9 less than a fee to the prejudice of him in reversion or
10 remainder. That's a bit of a archaic way to explain the
11 Doctrine of Waste. Although, it's a 2011 case, Judy versus
12 Judy 393 S.C. 160.

13 THE COURT: Have you cited that anywhere
14 else in your argument?

15 MR. TYLER: Your Honor, I believe I would
16 have cited it in my memorandum of law in support of my
17 motion for summary judgement --

18 THE COURT: Okay.

19 MR. TYLER: -- previously, which is on
20 record.

21 THE COURT: Yeah.

22 MR. TYLER: What they have to show, they
23 have to show that Ms. Patricia was a tenant, in that she
24 was somehow, you know, destroying value of the land.
25 Instead, we have the exact -- the exact opposite. She

1 owned the land, and she built a building and improved the
2 value of it. This claim just has no position in this case.
3 And, Your Honor, I'd respectfully request that you grant my
4 motion for directed verdict.

5 THE COURT: Let's look at the allegations
6 again. If you'll give me a second here. Waste, did you
7 say, relates to land. Is that the way you argued it?

8 MR. TYLER: Yes, Your Honor.

9 THE COURT: Because in the -- Paragraph 72
10 is alleging that Christopher King and the Estate of
11 Christopher King, and its successors and heirs, including
12 the Kings, had a pecuniary interest in the funeral home
13 business. It's not talking about the land, I don't think,
14 in 72.

15 MR. DUNCAN: It's not.

16 THE COURT: So then the -- you indicate the
17 plaintiffs -- their theory would be that they had an
18 equitable interest, I guess, in the land, would have to be
19 the theory. 'Cause she clearly had legal title to it.

20 MR. TYLER: Your Honor, the factors that are
21 considered in waste from -- from that -- a claim for waste
22 from that Judy versus Judy case are the nature, purpose,
23 and duration of the tenancy, the character of property;
24 whether acts complained of are related to use and enjoyment
25 of property; whether use is reasonable in circumstances;

1 and whether acts complained of are reasonably necessary to
2 effect --

3 THE COURT: Does waste only relate to real
4 property? I mean, what this interest here is either an
5 equitable interest or a interest in the funeral home, which
6 is a -- personal property, not real property. And so -- is
7 the way I see it. I mean, they've plead it. So I guess it
8 would have to be them telling us what they were intending
9 to. But your arguing that waste relates only to real
10 property.

11 MR. TYLER: Yes, Your Honor.

12 THE COURT: And they seem to be talking
13 about personal property -- or at the most, talking about an
14 equitable interest in real estate. Okay.

15 (To Mr. Duncan) I'll be glad for you, Mike,
16 to --

17 MR. DUNCAN: Your Honor, we --

18 THE COURT: -- flesh that out and tell us
19 how, in the record here, we've got waste.

20 MR. DUNCAN: Again --

21 THE COURT: Or any shot at it.

22 MR. DUNCAN: Your Honor, the -- I would -- I
23 would respectfully disagree with Mr. Tyler's
24 characterization as waste can only relate to real property.
25 Our fourteenth counterclaim -- is the fourteenth

1 counterclaim, and you have looked at it in Paragraph 72
2 through 74, has -- has to do -- and I think -- I think you
3 have correctly characterized it as -- as in -- at least in
4 part, as an equitable claim. And I -- that's set forth in
5 -- you know, in the inventory that was filed on behalf of
6 Chris King's estate.

7 THE COURT: There is that allegation, and
8 there is that assertion. So they were making that
9 assertion back as early as '98, whenever they filed --

10 MR. DUNCAN: Right. At the -- at the point
11 in time of -- of the filing of the estate documents, there
12 was recognition on behalf of the estate that there was an
13 interest here. At least -- you know, an equitable interest
14 in the -- in the ongoing funeral home --

15 THE COURT: And I ruled that they owned the
16 business. I ruled that it was a -- it was owned by Chris
17 King, that it was a -- you know, he owned it. It was --
18 that's the way I ruled, that it wasn't a -- and, you know,
19 there was -- it's his business. They've all stated that
20 today, they stated that in the record before, that it was a
21 proprietorship owned by Chris King. And that's the way I
22 held, consistent with their testimony, that, that's what
23 the business was; that at some point in time, Chris King
24 became the proprietor of it.

25 They've been in their daddy's business since

1 they, you know, were little children and so forth. And so
2 I held that way. I totally agreed with that concept. And
3 so as far as the business is concerned, he did own it; it
4 was a -- it was a sole proprietorship. And it passed to
5 them, clearly. Clearly, the real estate belonged to her;
6 no contest about that. The issue is when we get in-between
7 the operation of that business out there, and it looks like
8 that some of the goodwill went over to the new operator,
9 and the license went over to the new operator. And one of
10 the things that I curious about, was did any of the
11 insurance money and so forth go over from the rightful
12 owners to this person. So that's the way that I kind of
13 see this case, and have -- I think my rulings are
14 consistent with that.

15 But as far as a waste, to me waste is so
16 associated with real property and not personal property,
17 that I can't -- I cannot -- I can't see that there's any
18 evidence that we can conclude that there's a waste here. I
19 just don't think so.

20 But is there any further argument? I think I can
21 decide that on a -- on such a motion, rather than holding
22 it. I don't think I could ever look at the record and find
23 anything different. But y'all go ahead.

24 (To Mr. Duncan) And do you need to stop a
25 minute and talk to your clients? And which I'm happy for

1 you to do that. We can take a little break here.

2 MR. DUNCAN: Your Honor, I don't -- I don't
3 think that's -- that's necessary, you know, given -- given
4 your --

5 THE COURT: I haven't ruled -- I haven't
6 ruled yet.

7 MR. DUNCAN: I understand. But given your
8 view of the -- the issue pertaining only to the real
9 property, then I think our -- our agreement is focused on
10 other aspects other than the --

11 THE COURT: And there are --

12 MR. DUNCAN: -- real property.

13 THE COURT: -- other aspects. This business
14 is clearly one of the controlling aspect. The real
15 property -- there was never an issue about the real
16 property, other than that y'all allege there's a
17 possibility of constructive trust and so forth. But that
18 was never developed, that I -- that I see here. And, you
19 know, and they -- and it probably couldn't have been
20 developed. But it hadn't been developed, and so that's why
21 I was -- you know, had ruled in his favor on the
22 constructive trust issue.

23 But so the -- you know, we -- we can go down
24 here and argue, and I think we should go down and argue
25 every one of these, and I haven't made any ruling other

1 than that I granted a motion on constructive trust. I
2 withheld any ruling on promissory estoppel, and we're on
3 waste. And I'm thinking waste is a theory dealing with
4 real property, not personal property. And that's where I
5 am. And I was just giving you an opportunity to make
6 further argument on that. I could -- you know, I mean,
7 surely, I can be wrong. All of us in this room can be.

8 MR. DUNCAN: Your Honor, I think that's --
9 that's the issue. I mean, if -- if it -- and Your Honor,
10 as the finder of facts and the judge of the law in this
11 case, and if your position is that it pertains only to real
12 property, then I -- I don't -- for purposes of the record,
13 I don't concede that. But that's -- I understand that your
14 ruling would be in favor of Mr. Tyler on that point.

15 And then the -- our issue would be whether
16 we want to take that any further as to whether that should
17 pertain to something other than real property as to that
18 cause of action.

19 THE COURT: Okay. Let me decide two ways.
20 I don't think there's any evidence in this record, either
21 today or any other record, that would establish that
22 whether, you know, it has to do with real property or
23 personal property. So I just don't think that there's any
24 -- and I'll grant the motion as to waste.

25 Okay. The next? So I granted a motion for

1 directed verdict on the waste cause of action.

2 MR. TYLER: Next, Your Honor, would be their
3 counterclaim for trespass to land.

4 THE COURT: Yeah, I don't see any trespass
5 here. But go ahead and argue it. Go ahead and argue it.

6 MR. TYLER: Okay. I don't see any trespass
7 here. There's no -- there's been no evidence presented
8 regarding interference with one's right to the exclusive
9 peaceable possession of his property. Instead, what's been
10 determined and found already in this case, and is the law
11 of the case, that 135 Cemetery belongs to Patricia King,
12 and there's been no testimony of trespass anywhere else at
13 any other property.

14 THE COURT: Well, here -- here's my question
15 about it, and has been since I first read this allegation
16 several years ago, was they say in their -- that they --
17 trespass to the chattel, which is personal property owned
18 by the Kings, and converting -- continued to convert
19 trespass various items of personal property owned by the
20 Kings. So my --

21 MR. TYLER: That's the trespass to chattel
22 claim, Your Honor.

23 THE COURT: Well, okay. That's not what
24 you're --

25 MR. TYLER: I'm talking about trespass to

1 land.

2 THE COURT: Oh, that's two different claims?

3 MR. TYLER: Yes, Your Honor.

4 MR. DUNCAN: Yes, sir. Yes, sir.

5 THE COURT: I don't think so.

6 MR. DUNCAN: There's the seventh
7 counterclaim is the --

8 MR. TYLER: Starts on Paragraph 28.

9 MR. DUNCAN: -- trespass to land.

10 THE COURT: Which counterclaim is it?

11 MR. TYLER: Paragraph 28. It's the seventh
12 counterclaim.

13 THE COURT: Oh, okay.

14 MR. DUNCAN: Twenty-right through thirty --

15 THE COURT: You're right. All right. Go
16 ahead. You want to argue any more about that?

17 MR. TYLER: That's all I've got to say.

18 MR. DUNCAN: Your Honor, if I could.

19 THE COURT: Go ahead.

20 MR. DUNCAN: If I could take just a moment
21 and speak with my clients. If I could do that, could I --

22 THE COURT: Yeah, you want us to go out? Or
23 you want to go out?

24 MR. DUNCAN: We could --

25 MR. TYLER: We could step out. It's just

1 the three of us.

2 THE COURT: Well, let me ask you -- you
3 know, I'm thinking about short-circuiting this, this thing
4 has been 15 years in the making. I think that this record
5 needs to be just as clear as it can be on what we've done
6 here.

7 MR. DUNCAN: All right, sir.

8 THE COURT: And it suits me perfectly fine
9 for y'all to argue this completely, all the way out. So,
10 you know, I asked you at the very beginning of the case,
11 did you want to drop anything? And you said "no." And you
12 made some runs here, you've had some eloquent testimony
13 here, but one of the -- you know, Christopher's daughter.
14 And I totally respect the King family. And so I want us to
15 get through this completely. So, you know, if y'all are
16 tired of arguing, and want to --

17 MR. DUNCAN: No. No, sir.

18 THE COURT: -- then that's fine.

19 MR. DUNCAN: I'll argue from --

20 [Crosstalk; unreportable.]

21 THE COURT: -- I'll respect what y'all want
22 to do. But I honestly would like for us to -- this is our
23 chance. I mean, you've been at this since 1998, or before.
24 And so we need to give this a full and fair and final
25 effort to get it all laid out here on the table.

1 There are things that we likely cannot
2 control based on the way things have developed. But, you
3 know -- and based on the way the law is and the way, you
4 know, the facts are, that we can't control. But I do want
5 to say let's work through this. If we need to stop, if we
6 need to take a break, if we need to do anything else, let's
7 do that. But I want y'all to be completely -- have the
8 floor and have the courthouse, and make every opportunity
9 to do. And if I'm mistaken on this, I trust that the
10 Supreme Court or Court of Appeals will reverse me. I hope
11 that you won't have to spend more money in that direction,
12 though. So I'll get out and -- we'll move out of here.

13 (Off the record from 4:08 p.m. to 4:28 p.m.)

14 THE COURT: We are back on the record. And
15 we are hearing motions for directed verdict. And we have
16 gone through Waste, and we're on Trespass to Land. And
17 that's where we are, which is the seventh counterclaim.

18 MR. DUNCAN: I'm sorry, have you finished
19 your argument on that point?

20 MR. TYLER: Yeah, I'm done arguing trespass
21 to land.

22 MR. DUNCAN: All right, sir.

23 THE COURT: All right.

24 MR. TYLER: Unless I need to respond to him.

25 THE COURT: I'd be glad to hear from you,

1 Mike.

2 MR. DUNCAN: Your Honor, as I -- as I read
3 the -- that counterclaim, it may not be as artful as it --
4 as it should be in our allegations. But I do not believe -
5 - again, I'm -- I don't like to concede anything. But I do
6 not believe that -- that we, as the defendants in the
7 lawsuit, can establish a trespass to land. Given -- given
8 the state of the record and the prior ruling in this case,
9 that the -- the land itself, the land located at 135
10 Cemetery Street is titled in the name of Patricia King, and
11 that's what our -- you know, we are claiming a -- to the
12 extent we are claiming a trespass to that land, it is land
13 that is in the -- you know, in the name of the title-
14 holder. And I don't believe we can establish that claim.

15 THE COURT: Yeah, I don't either. I thought
16 maybe I wasn't looking that -- you know, you -- if you
17 claimed an equitable interest in it, there may be some
18 theory that, yeah, you know, that you were claiming that
19 she trespassed. But I don't know that a equitable owner
20 could claim that a legal owner is trespassing on land,
21 either.

22 So I -- I think -- all right. So I grant
23 the motion on trespass to land. I'll grant the directed
24 verdict motion. All right. Next motion?

25 MR. TYLER: Your Honor, I would make a

1 directed verdict motion on their claim for civil
2 conspiracy. The elements of civil conspiracy are a
3 combination of two or more persons for the purpose of
4 injuring the claimant, which causes him special damage.

5 THE COURT: Okay.

6 MR. TYLER: Your Honor, there's been
7 discussion of Ms. King and Mr. Caldwell talking.

8 THE COURT: I took notice of that.

9 MR. TYLER: There has been no establishment
10 of the second element, that, that was for the purpose of
11 injuring the claimant.

12 Furthermore, the -- under common law --
13 well, under case law Gordon v. Busby 397 S.C. 119, again
14 referenced in our summary judgement brief, the gravamen of
15 the tort of civil conspiracy is the damage resulting to the
16 claimant from an overact done pursuant to a common design.
17 And, Your Honor, they've not established, with
18 particularity, damages.

19 THE COURT: Here's the allegation in
20 Paragraph 14: From the time beginning with the date
21 plaintiff's took possession of the funeral home -- which I
22 would think would be that eviction date -- which would be
23 in '98 and -- whatever that date was in '98. I have it
24 written down here somewhere.

25 MR. DUNCAN: December.

1 THE COURT: It is in '98 that we're talking
2 about, right?

3 MR. DUNCAN: December of '98.

4 MR. TYLER: December 8th.

5 THE COURT: December of '98. That's right.
6 'Cause we talked about Christmas Day. So the allegation is
7 that from that point on, December of 1998 forward, that
8 they continually met and conspired to receive and retain an
9 unearned and unlawful income from the funeral home
10 business, and otherwise. In furtherance of the conspiracy,
11 the plaintiffs file this legal action in 1988 -- 1998 after
12 the death of Chris -- Christopher.

13 So the dates we're talking about is from
14 December of 1998 forward. And we're looking for
15 conspiracy. Is there any real evidence in the record that
16 there was conspiring after that date to -- to injure the
17 defendants?

18 MR. DUNCAN: I believe there is, Your Honor.

19 THE COURT: All right. Give it to me.

20 MR. DUNCAN: I believe there is. As of
21 December 8th, 1998, the -- upon the eviction of the Margie
22 King family -- and I can describe it however -- Chris King
23 family, from 135 Cemetery Street, the expectation of the
24 witnesses who have testified here and -- you know, most --
25 I think most pointedly, in the last witness. So maybe

1 that's just fresher in my mind. But Ms. Boyd's testimony
2 about Mr. Caldwell's -- her description was betrayal of her
3 family in discussion conspiring with Patricia King, John --
4 John King saying that, you know, "He was coming to work for
5 me. He told me he was coming to work for me as an
6 embalmer. And he was going to assist in my business, in my
7 -- in my new business."

8 But, in fact -- in point, and in fact, he
9 was working behind the scenes with -- with Ms. Patricia
10 King. And I -- I believe, most certainly, for the purpose
11 of injuring the defendants in this case, that -- you know,
12 the only -- the only result to be -- to be had in this
13 situation, where the business had been an ongoing business
14 for -- and if we're talking about Chris King's business,
15 since 1980, at the time that the funeral home was
16 established at 135 Cemetery Street, an ongoing business for
17 18 years, and then it was -- you know, they were evicted.

18 And again, I'm not talking about the
19 building, specifically. Although, it's evicted from the
20 business operation at that locale. And I believe that Ms.
21 Patricia King -- I believe that there is evidence in the
22 record that Ms. Patricia King and Mr. Moses Caldwell did
23 conspire, did have a combination for the purpose of
24 injuring these parties who are the main defendants in this
25 case, and caused them damage in the loss of the goodwill

1 and the ongoing nature of that business, that -- you know,
2 John King -- you know, to his credit, started a new funeral
3 business down the road. But he started that business from
4 scratch.

5 THE COURT: He may have done that regardless
6 of what happened here, because of his independent nature.
7 But --

8 MR. DUNCAN: He may have.

9 THE COURT: -- I don't -- I don't know.

10 MR. DUNCAN: He may have.

11 THE COURT: It's kind of neither here nor
12 there.

13 MR. DUNCAN: He may have.

14 THE COURT: He seems to be --

15 MR. DUNCAN: He may well have --

16 THE COURT: -- that kind of -- that's what
17 he said.

18 MR. DUNCAN: He may well have started that
19 business --

20 THE COURT: And he appreciated the family,
21 loved the family, but he -- he needed to be his own kind of
22 man, I guess.

23 MR. DUNCAN: But in any --

24 THE COURT: And he --

25 MR. DUNCAN: -- in any event, the business

1 that had been ongoing at --

2 THE COURT: Well, I don't think the business
3 there went. I think that was a new business there. You
4 know, I ruled that the -- that the -- that the Cemetery
5 Street, their location was a -- was a new business started
6 by Patricia. I kind of felt like almost I was forced to do
7 that, based on the facts of the law. But in any event,
8 that's what I ruled.

9 I have always been worried that what she did
10 receive was a name that I couldn't see that she paid any
11 value for, and she received goodwill, and she got the
12 license. Those are things that I can see that she got.
13 The record, however, does not input any values on that,
14 does not establish what damages might be.

15 If, in fact, they had goodwill and -- even
16 if there was goodwill associated with that, John ended up
17 with the telephone number, as I remember. She ended up
18 with the name. The name had -- obviously had value. But
19 he also, you know, changed his name and the name
20 Christopher King certainly had credibility and had goodwill
21 associated with it in the community.

22 But then there was that location that had
23 the history. And the problem here in this case -- one of
24 the problems from the beginning, she ended up owning it,
25 the land. And that essentially -- the reason that all of

1 that occurred was whatever happened between she and her
2 brother. And, you know, that -- but that's the way it
3 happened. And that's the what these children of Chris King
4 ended up with is -- is -- is that. But surely, the name
5 "King Funeral Home" had some value. And clearly, there was
6 goodwill associated with the name.

7 And then if -- now, the record is not
8 totally crystal clear on this license number 32, or 81, or
9 whatever it is. And I do remember Mr. -- I can't remember
10 his name now.

11 MS. BOYD: Caldwell.

12 THE COURT: The manager was very proud that
13 Mr. Chris took him down to Columbia and made him manager
14 and that sort of thing. So I perceived right then, that
15 there was something about the license and the name that was
16 important and -- with the state. And so if, in fact, it is
17 that license that started back with their predecessors in
18 interest, their grandparents, then she ended up with that.
19 And that probably had some value in itself.

20 Because the way y'all testified -- and I
21 asked questions about it: Was there another number? Was
22 there a new number? When John got his business, he had to
23 get a new number of six hundred or whatever. And so that
24 was not fully explored here, you know. I was interested in
25 it, or attracted to that, those kinds of circumstances.

1 But I can't get a handle on their being a damage to that,
2 other than I'd have to purely speculate.

3 And as Ms. King -- Ms. Boyd testified
4 earlier, whenever she was trying to value that on the
5 record, that she didn't know what value to put on it. That
6 happens so often with businesses, and that is why values
7 come out about in the marketplace, of what somebody's
8 willing to buy and what somebody's willing to sell it for.
9 And that's kind of the way value is determine, unless you
10 have expert witnesses come and testify as to what is the
11 value of this ongoing business. We don't have any
12 testimony like that in the record here. And maybe none was
13 even possible.

14 So what I'm saying to you from what he is
15 arguing, is okay, maybe there's some elements of conspiracy
16 because you've got these conversations with Mr. -- what was
17 his name?

18 MS. BOYD: Caldwell.

19 MR. DUNCAN: Caldwell.

20 THE COURT: Caldwell. -- and Patricia,
21 that's kind of real smokey. I mean, just -- you had those
22 two witnesses come in here and testify that there was a
23 conversation. Well, that doesn't prove anything. They
24 could have been talking about the time of day or whatever.
25 It's very possible Mr. Cornwell was -- is that his name

1 again?

2 MR. DUNCAN: First witness of the day?

3 THE COURT: No, I'm talking about --

4 MR. TYLER: Caldwell.

5 MS. BOYD: Caldwell.

6 MR. TYLER: Moses.

7 THE COURT: Caldwell.

8 MR. DUNCAN: Caldwell.

9 THE COURT: Caldwell.

10 MR. DUNCAN: Moses.

11 THE COURT: I got as much of a gentleman and
12 that sort of thing as Mr. Caldwell was, I think in the end
13 Mr. Caldwell was probably looking out for number one, and
14 he was looking out for his own interests and -- as most of
15 us would do. And he was very closely connected to the
16 family, loved all the family, I do believe -- at least
17 that's the way it seemed for a long period of time -- but
18 in the end, he was seeing disarray and so forth, and I
19 think that he was not wanting to be associated with that.

20 So in any event, Mr. Caldwell -- I didn't
21 see him as -- I don't see him as a -- some big conspirator.
22 If he was, I don't see any damages proven. But go ahead
23 and tell me. So that's the way I'm thinking. And the only
24 reason I'm telling you this, is to expose the way I'm
25 thinking. As you walk out of this room, you, you know,

1 won't be able to respond to that, so I'm being honest with
2 you as much as I can, to give you my take on what I've
3 heard.

4 MR. DUNCAN: Your Honor, I think in regard
5 to --

6 THE COURT: We're talking about the
7 conversion claim.

8 MR. DUNCAN: Civil conspiracy.

9 THE COURT: Oh, pardon me.

10 MR. DUNCAN: Civil conspiracy.

11 THE COURT: Not conversion. Conspiracy.

12 MR. DUNCAN: You know, I differ on the
13 evidence testimony --

14 THE COURT: Well, please -- please --

15 MR. DUNCAN: -- particularly -- particularly
16 --

17 THE COURT: -- give me another version of
18 it.

19 MR. DUNCAN: -- with, again, Ms. -- Mr. King
20 -- Representative King -- John King described, you know,
21 hearing telephone conversations where -- that were directly
22 in conflict with what Mr. Caldwell was telling him. I
23 mean, you -- I understand what you just said about he's
24 looking out for himself, and trying, you know, to make the
25 best decision for himself.

1 But he was trying to ride the fence. He was
2 going to -- he was telling John King, "You know, I'm going
3 to -- I'm going to come work for you. I'm going to be your
4 embalmer. I'm going to do this." And, you know, in the
5 same breath, and in the same day, he's making telephone
6 calls to Ms. Patricia King, saying, you know, "I'm not --
7 I'm not going to have anything to do with your nephew's
8 business. I'm going to go -- I'm going to be your guy."

9 THE COURT: How does that prove some kind of
10 conspiracy? In the end, I found that there was some new
11 business here created -- I mean, that's what I found.
12 That's in the record. That's been appealed. And that's
13 what I found, that there was this new business. I think
14 that, that's been a -- probably correct. But it's the
15 ruling, whether it is or it isn't.

16 MR. TYLER: And the court of appeals upheld
17 it.

18 MR. DUNCAN: I can't -- I can't complain
19 about it. I can't --

20 THE COURT: And so --

21 MR. DUNCAN: I can't --

22 THE COURT: And so I'm --

23 MR. DUNCAN: -- I can't complain about it.

24 THE COURT: -- wondering what is it that
25 they conspired to do? What did they conspire to --

1 conspire to do? I mean --

2 MR. DUNCAN: They conspired to damage these

3 folks --

4 THE COURT: And how did they get --

5 MR. DUNCAN: -- these folks --

6 THE COURT: -- and how did --

7 MR. DUNCAN: -- out of business.

8 THE COURT: -- how did they get damaged?

9 MR. DUNCAN: They kept all the goodwill

10 associated with the name --

11 [Crosstalk; unreportable.]

12 THE COURT: -- what's the value of the

13 goodwill?

14 MR. DUNCAN: The value of the goodwill, I

15 would submit to Your Honor is -- is set forth in the

16 testimony of the accountant, for one, who testified -- Mr.

17 Ledbetter, I think is his name.

18 THE COURT: Right.

19 MR. DUNCAN: -- he testified last time. And

20 I -- I'm doing this from memory. I had it here, and Your

21 Honor had --

22 THE COURT: Did he testify as to goodwill?

23 MR. DUNCAN: He testified as to what the

24 ongoing value of the business is. I mean, they -- they're

25 doing funerals -- I mean, the -- it's -- as an ongoing --

1 as a -- as a business that -- you know, as opposed to the
2 business that you're left with. And again, what John King
3 did is -- in starting his own business, he started from
4 scratch. But the rest of the family, you know, Ms. Margie
5 King and the other children who were associated with the
6 King Funeral Home, were left with nothing; were left with,
7 you know, no value -- no goodwill of the name that their
8 father and grandparents had established over 40-plus years
9 in the King Funeral Home, in the African-American
10 community, being the place to go in Chester County to get a
11 funeral -- to have a funeral.

12 And I think -- I -- I'm trying not to
13 overstate Mr. Caldwell's value here, 'cause I think Nelson
14 King and other members of the King family could do the same
15 thing. But Mr. Caldwell was there, and was there every
16 day, as opposed to the King children who had gone off to
17 school and would, you know, go kind of be in and out.

18 Moses Caldwell had been there every day.
19 And I think Patricia acquiring him, combining with him to
20 get him to abandon the -- Margie King and her children's
21 family, was a extremely damaging point, something that hurt
22 them -- hurt that family in the community, in terms of
23 being able to attract business -- to keep the business that
24 had been established.

25 And the testimony of Mr. Ledbetter is, you

1 know, they're doing a hundred -- I think he said a hundred
2 funerals a year -- averaging a hundred funerals a year.
3 And this was in 2010, so the -- I think his figure was
4 about \$5,000 per funeral. Which I think, based on, you
5 know, what I know about funerals, generally, that sounds
6 low to me now. But, you know, that would give, you know,
7 an estimate of damages going -- relating back to the time
8 period in which this business was taken.

9 THE COURT: Okay. All right. (To Mr.
10 Tyler) Any response to that?

11 MR. TYLER: No, Your Honor.

12 THE COURT: All right. I'm going to deny
13 that motion. All right. Go ahead. Next one?

14 MR. TYLER: Your Honor, they have brought a
15 claim for intentional interference with contractual
16 relations. And the elements of such a cause of action are
17 the existence of a valid contract, the wrongdoer's
18 knowledge thereof, his intentional procurement of its
19 breach, the absence of justification, and resulting
20 damages.

21 There has been no contract specifically
22 identified, no wrongdoer's knowledge asserted, no -- no
23 resulting damages specifically identified.

24 THE COURT: Anything else?

25 MR. TYLER: No, Your Honor.

1 THE COURT: (To Mr. Duncan) Response?

2 MR. DUNCAN: One moment. I'll get to that.
3 There's been -- there was testimony today, and I think in
4 the August 2010 hearing, at least from John King,
5 consistent with his testimony today, that on at least one
6 occasion -- I think two occasions -- but on one that he
7 noted, that he was present when his mother had to deliver
8 funds to a family, that they had, had -- that the Chris
9 King -- excuse me -- that the King Funeral Home had a -- an
10 assignment from an insurance company. And as I read that
11 cause of action, that is what we have alleged is the -- and
12 interacting with potential customers, also.

13 I mean, that's a -- there's a secondary
14 thing, that's -- there's one specific in Paragraph 41 that
15 deals with the insurance company and assignment in the
16 letterhead in Paragraph 42. But then Paragraph 43, the
17 plaintiffs have interacted, dealt with potential customers,
18 current customers, diverted sales from the funeral home
19 business to the plaintiffs personal use, and interfered
20 with the Kings' contractual relations with these existing
21 and potential customers and potential -- folks who had used
22 the King Funeral Home for their -- for their ancestors, and
23 would have -- would have come back to the King Funeral Home
24 -- or come back to this family rather than going to
25 Patricia King, absent her intentional interference with

1 those -- with those contracts.

2 THE COURT: (To Mr. Tyler) Anything else?

3 MR. TYLER: I mean, that -- that family
4 history is entirely speculative. And there's no testimony
5 in the record to support it.

6 THE COURT: (To Mr. Duncan) I don't think
7 that you carried your burden of proof on that. I don't
8 think that -- the fact-finder could, you know, do anything
9 with the testimony here on the record. So I'm going to
10 grant that motion.

11 MR. TYLER: Your Honor, my next motion is as
12 to defendants claim for trespass to chattel. There's South
13 Carolina law case of Pharis v. Monsanto -- I'm sorry.
14 There's not a clear South Carolina law case spelling out
15 what is a trespass to chattel. But a general definition
16 from the Pharis v. Monsanto case is, that a trespasser to
17 chattel -- a person as a trespasser to chattel if he was
18 intentionally using or intermeddling of a chattel in
19 possession of another.

20 Specifically, the language used in their
21 counterclaim is that plaintiffs have committed several
22 trespasses to chattel owned by the Kings, and have
23 converted and continue to convert and trespass various
24 items of personal property owned by the Kings to their own
25 use.

1 Personal property is what "chattel" is, Your
2 Honor. But there's been no testimony to establish any
3 trespass to chattel. The only testimony relating to
4 personal property, if any, is the removal of all of the
5 property out of the 135 Cemetery building. And Your Honor
6 asked earlier, "What happened to the hearses?" That
7 question's not been answered. And no evidence has been
8 presented.

9 THE COURT: Well, let me ask you this: What
10 about the name of the business, wouldn't that be personal
11 property?

12 MR. TYLER: Your Honor, that's intangible.
13 That's --

14 THE COURT: It's not personal property?

15 MR. TYLER: Your Honor, a name --

16 THE COURT: It is intangible, I think --

17 MR. TYLER: The name of the business is
18 intangible and --

19 THE COURT: It can be considered a chattel?

20 MR. TYLER: So then the damage, there's no
21 testimony establishing any damage associated with it.

22 THE COURT: What about that Ledbetter
23 testimony as to the business made?

24 MR. TYLER: That was testimony as to --

25 THE COURT: I mean, I should go back and

1 look at that. I haven't looked at that in a while.

2 MR. TYLER: Well, that's just testimony as
3 to, Your Honor, how the business has functioned under
4 Patricia King and under Moses Caldwell.

5 THE COURT: Okay.

6 MR. TYLER: I mean, that -- that's -- that's
7 a -- that's merely a statement of some years it breaks even
8 and makes money, other years it doesn't. It was the year
9 2000 through 2009, in draft form, which was presented, and
10 the average was \$4,400 of net profit per year.

11 THE COURT: Okay. Okay. (To Mr. Duncan)
12 How would you argue thought? Anything else?

13 MR. DUNCAN: Your Honor, I've -- I
14 respectfully submit that the name would -- the name of the
15 business would fall under this cause of action as a -- as a
16 chattel, as a personal -- as a personal property, albeit an
17 intangible benefit asset --

18 THE COURT: How do you trespass on a name,
19 though? I mean, she took it. She didn't just trespass on
20 it.

21 MR. TYLER: Your Honor --

22 THE COURT: She took the name. She kept on
23 using the name. The sign stayed up there. I think there's
24 a picture of the sign in the -- in the other record. So --

25 MR. DUNCAN: If it -- if it --

1 THE COURT: -- she took the name.

2 MR. DUNCAN: If it --

3 THE COURT: She kept the name --

4 MR. DUNCAN: -- dovetails into a -- our
5 conversion action, maybe. I -- I think that at this stage
6 of the proceeding, for purposes of a directed verdict, that
7 we do have -- we have evidence in the record, sufficient to
8 withstand a directed verdict. And in keep -- and, you
9 know, maybe I -- maybe the transcript is incorrect on this
10 point. But I have in Ledbetter's testimony -- just as Mr.
11 Tyler was speaking, I've got the -- page 243, I've got the
12 court saying the average down here, that's \$44,023.73. The
13 average net profit over the years of 2000 to 2009, that's -
14 - I mean, again, that the figure I have written here, or,
15 you know, transcribed here.

16 MR. TYLER: Yeah, Your Honor, I'm familiar
17 with -- there was a -- the sheet that he produced showed
18 and calculated that average. And I've brought copies of
19 that for everyone. And this is -- this is in -- this is
20 what he was testifying based on. Your Honor asked a
21 question if it was forty-four thousand, four hundred
22 twenty-three seventy-three, and he agreed. But clearly,
23 the average net profit is \$4,423.73.

24 THE COURT: Okay.

25 MR. TYLER: And he testified as to that in

1 his direct -- direct examination.

2 THE COURT: Okay.

3 MR. TYLER: Those numbers just don't average
4 forty-four.

5 THE COURT: I got you. All right. Anything
6 else on the trespass to chattel argument?

7 MR. DUNCAN: Your Honor, no, sir. Not on
8 that -- not on that.

9 THE COURT: I don't think this is trespass
10 to chattel. I'm going to grant the motion. Okay. What
11 else have we got?

12 MR. TYLER: Your Honor, I guess what we have
13 -- what we have left, and why I have saved these for last -
14 -

15 THE COURT: Restitution and disgorgement?
16 And that's --

17 MR. TYLER: It is conversion --

18 THE COURT: Conversion.

19 MR. TYLER: -- restitution and disgorgement
20 and unjust enrichment. Unjust -- unjust enrichment is
21 really the cause of action, and restitution and
22 disgorgement is really the --

23 THE COURT: Remedy?

24 MR. TYLER: And so, really, those -- those
25 are together.

1 THE COURT: I don't disagree with that.

2 MR. DUNCAN: I agree with that. I agree
3 with that.

4 MR. TYLER: And I -- a party is -- under
5 South Carolina law, a party is unjustly enriched when it
6 retains a benefit at the expense of another party. And --

7 THE COURT: So we'll treat unjust enrichment
8 and restitution and disgorgement as one claim. Is that all
9 right with both of y'all?

10 MR. TYLER: That's fine --

11 THE COURT: Disgorgement --

12 MR. TYLER: -- with me.

13 THE COURT: Restitution and disgorgement
14 being the remedy?

15 MR. DUNCAN: It's the remedy for that --
16 that claim.

17 THE COURT: All right.

18 MR. DUNCAN: That's fine. I agree with
19 that.

20 THE COURT: Okay.

21 MR. TYLER: And so the -- to prevail under
22 the doctrine, they must show that they conferred a non-
23 gratuitous benefit on the other party, that the other party
24 realized that benefit, and that it would be inequitable for
25 the other party to retain the benefit without paying its

1 value.

2 THE COURT: Very simple elements.

3 MR. TYLER: And in their counterclaim, they
4 -- they reference that they have collected, utilized, and
5 retained income from the funeral home business, in an
6 improper and unlawful manner. And, Your Honor, you've
7 already held that the funeral home business that they were
8 retaining that income from is the business of Ms. Patricia
9 King.

10 THE COURT: Okay. Go ahead. I realize that
11 I ruled that way.

12 MR. TYLER: Okay. And so it would not be
13 inequitable for --

14 THE COURT: But if she took the name, and if
15 she converted, that would not -- should be possibly
16 unjustly -- an unjustly enriched.

17 MR. TYLER: If they had established that,
18 and if they had established any damages associated with it.

19 THE COURT: All right. Okay. All right.
20 Anything else?

21 MR. TYLER: No, Your Honor.

22 THE COURT: (To Mr. Duncan) Argument?

23 MR. DUNCAN: I think, you know, what -- what
24 Mr. Tyler's motion there asserts is that Ms. Patricia King
25 was in the same boat as John King, in December of 1998;

1 that she was starting a business from scratch. And that's
2 just not true. That's -- that's not even close to true.
3 It had been a long-established business. And I understand
4 Your Honor's ruling. But it wasn't a startup business, and
5 the benefit that Ms. Patricia King has derived from that
6 beginning -- from that business from the outset from the
7 day she walked in the door was she had customers.

8 She had a clientele associated with that
9 operation, with the operation of the King Funeral Home,
10 that relied on the license number 81, and the presence of
11 the longtime manager -- who Chris King had taken down to
12 Columbia, in 1991, I believe, per Mr. Caldwell's testimony.
13 He worked there a lot longer than that, but he had become,
14 you know, established through Chris King's contacts and his
15 efforts to get him established with the State of South
16 Carolina, some seven years before.

17 THE COURT: Where is the evidence in the
18 record that she had that? Where is the evidence? Where
19 are the customers that came to her, that wouldn't have come
20 to her had it not been named King? Where is that evidence?

21 MR. DUNCAN: I think I --

22 THE COURT: Would we have to guess about it?

23 MR. DUNCAN: No, sir. I think we have --

24 THE COURT: I mean, how --

25 MR. DUNCAN: -- testimony that --

1 THE COURT: Where do I get it? I've been
2 struggling with that since I first heard this case. How do
3 we -- you know, how do you -- how do you show that? I
4 don't think I've seen it so far. But if you'll point me to
5 it, I would certainly be more than happy to --

6 MR. DUNCAN: I think that I --

7 THE COURT: -- review it.

8 MR. DUNCAN: I think our -- we had testimony
9 today, that, you know, it -- that there was -- that it was
10 an ongoing -- you know, that business was established and -
11 -

12 THE COURT: I don't think there's any doubt
13 about that. It had been going on since the '30s or the
14 '40s. And then Chris came in, as his sister just said --
15 or his daughter just said earlier -- that he built -- that
16 he had 90 percent of the business in Chester County there
17 for a while. I'm firmly convinced that, that's the case;
18 that there was a business there that had value. And then
19 you had this business that John created was a new business
20 over there, though he did have benefit of the funeral
21 home's telephone number.

22 But he had some benefit from that, I would
23 think, from the telephone number. 'Cause y'all testified -
24 - there was testimony early on, that, that telephone number
25 was in the national funeral home thing. And whenever

1 people in California wanted to have a funeral in Chester
2 County, they would call that telephone number, and it would
3 ring over to Christopher King Funeral Home and not the King
4 Funeral Home. So I remember all of that. And so it was a
5 benefit from both sides.

6 The problem is the record is sort of devoid
7 of -- of who those -- who that business was. I mean, you
8 can guess that, that happened. You can guess that when she
9 came in, that because there was a business at that
10 location, that it came from -- from the fact that they had
11 the good name and reputation of the community. But I don't
12 think it's a -- in the record, I don't think that the
13 damages are there. I don't think it's established as the -
14 - to that aspect. I'm attracted to it. I'm interested in
15 it. But I think it -- that's one of the things I think is
16 very hard to prove in this case. But I don't -- I just
17 don't think it's there.

18 But, you know, I want to hear some more
19 about it. And I'll be glad to hear some more.

20 MR. DUNCAN: All right, sir.

21 THE COURT: If you care to go on about it.
22 I mean, seriously, I -- you know, I'm trying -- I've tried
23 to be fair from the beginning on -- I know what happened
24 here. I mean, everybody's knows what -- everybody's been
25 listening to this case for at least two days. And this

1 family's been living together for all these years. I mean,
2 they all have independent memories and so forth, of what
3 happened, and what should have happened and so forth. But
4 whenever you take a family situation and you -- and you
5 take the law and all of its structures, and you try to fit
6 in, you know, the family situation of facts into the laws
7 that we have, in a court and with the proofs that we have,
8 that's whenever it becomes extremely difficult to sort it
9 all out.

10 And so what we've got here is a different
11 family situation. And we're stuck with the law being what
12 it is, and the proof being what it is. And I'm saying I'm
13 having a real problem with this proof. I'd be glad to help
14 you, if I could. But I'm -- you know, if it's there, it's
15 there. But I -- I'm having to struggle here, to see that
16 it's been established.

17 MR. DUNCAN: The --

18 THE COURT: So lead me to the --

19 MR. DUNCAN: Well, the -- the point of this
20 unjust enrichment and showing, you know, it's an equitable
21 -- it's an equitable --

22 THE COURT: I totally understand. I was the
23 master in equity for 8 or 9 years. I'm familiar with that.

24 MR. DUNCAN: You understand -- you
25 understand that concept --

1 THE COURT: I think I do --

2 [Crosstalk; unreportable.]

3 MR. DUNCAN: -- if anybody in the room, I
4 mean -- maybe not anybody in the state, but anybody in the
5 room that --

6 THE COURT: Well, you didn't even give me
7 the state, you gave me the -- you're only giving me the
8 room.

9 MR. TYLER: Maybe the block, Your Honor.

10 THE COURT: How about the block, yeah? I'm
11 of course being facetious.

12 MR. DUNCAN: The county. I can give you the
13 county.

14 THE COURT: No, I'm being facetious, of
15 course.

16 MR. DUNCAN: I can give you the county.

17 THE COURT: But let's get back to the
18 business at hand here.

19 MR. DUNCAN: Yes, sir. Yes, sir.

20 THE COURT: And we're arguing the unjust
21 enrichment claim here.

22 MR. DUNCAN: There is a benefit. And, you
23 know, Your Honor, I -- I'm going to be -- be forth about
24 it. But if there wasn't a benefit to be established here -
25 -

1 THE COURT: Well, it's a non-gratuitous
2 benefit.

3 MR. DUNCAN: A non-gratuitous. In other
4 words, it's not a gift.

5 THE COURT: That's right.

6 MR. DUNCAN: I mean, we -- we -- this
7 family, Margie King and her children, did not -- certainly
8 did not intend --

9 THE COURT: And the second element --

10 MR. DUNCAN: -- to give --

11 THE COURT: -- and then the other is that
12 the other party retained it? Isn't that the second
13 element?

14 MR. DUNCAN: Yes, sir. The other party
15 realized that benefit, conferred a non-gratuitous benefit
16 that the other party realized that benefit, and it would be
17 inequitable for the party --

18 THE COURT: To keep --

19 MR. DUNCAN: -- to retain the benefit
20 without paying his value. And that's -- I'm citing Mr.
21 Tyler's --

22 THE COURT: All right. Any other argument
23 on it?

24 MR. DUNCAN: It simply is that if -- if it
25 didn't matter -- if she had -- if Ms. King had not acquired

1 a non-gratuitous benefit, you know, why didn't she call it
2 the "Patricia King Funeral Home," or the, you know, "Pat
3 King Funeral Home"? It obviously had some benefit of being
4 the King Funeral Home and being in that locale.

5 THE COURT: It obviously did.

6 MR. DUNCAN: And that's -- again, for this
7 purpose, I just respectfully submit that we admit our
8 burden to avoid a directed verdict.

9 THE COURT: All right. Anything else?

10 MR. TYLER: Your Honor, just that, that
11 third element, it would be inequitable for the other party
12 to retain the benefit without paying its value, I don't
13 think they've set forth --

14 THE COURT: If they proved that --

15 [Crosstalk; unreportable.]

16 THE COURT: -- I think that, that's the --
17 you know, absolutely the case. All right. I'm going to
18 deny the motion.

19 Let's move on to conversion. Is that where
20 we are?

21 MR. TYLER: All right.

22 THE COURT: I think -- is that the last one?

23 MR. TYLER: Yes. Yes, Your Honor. And so,
24 Your Honor, conversion is the unauthorized assumption and
25 exercise of the right of ownership over goods or personal

1 chattels belonging to another, to the alteration of the
2 condition, or the exclusion of the owners rights.

3 THE COURT: Okay. Try this one on.

4 MR. TYLER: All right. I have --

5 THE COURT: Try this one on before you make
6 that argument -- well, go ahead. You want to state the
7 elements there?

8 MR. TYLER: Your Honor, in terms of -- in
9 terms of what is and what is not a chattel, I think that's
10 an important distinction to make. The case law states that
11 they have to establish either title to or right to possess
12 the property in question. And, Your Honor, the court has
13 been very reluctant to extend a claim for conversion to
14 intangible assets. And what we're talking about with the
15 name of a business, is indeed an intangible asset. And
16 then --

17 THE COURT: What about goodwill: the same
18 thing?

19 MR. TYLER: Goodwill, Your Honor, is an
20 intangible --

21 THE COURT: The same -- the same -- goodwill
22 and name of business. And, in fact, they're associated
23 together, wouldn't you say -- is that what you would say?
24 Although, a business could have a independent name. It
25 could be --

1 MR. TYLER: And goodwill --

2 THE COURT: -- protected and --

3 MR. TYLER: -- comes from other sources

4 other than a name. Like, perhaps --

5 THE COURT: It does.

6 MR. TYLER: -- an old funeral director who's

7 been there for a long time --

8 THE COURT: A person. Yeah. Yeah. Yeah.

9 MR. TYLER: -- or a location owned by

10 someone.

11 THE COURT: Okay. Anything else?

12 MR. TYLER: No, Your Honor.

13 THE COURT: (To Mr. Duncan) Your argument.

14 MR. DUNCAN: Your Honor, I think my -- my

15 position is that the goodwill and the -- to the extent

16 those are --

17 [Crosstalk; unreportable.]

18 MR. DUNCAN: -- separate and I think I do --

19 the name -- the name -- the goodwill, the right -- the

20 license, those --

21 THE COURT: Well, I think that's what she

22 ended up with out of that business, probably. I think.

23 MR. DUNCAN: Ms. Patricia King obviously

24 ended up with those things.

25 THE COURT: And maybe there's some other

1 things, but I'm not --

2 MR. DUNCAN: She certainly ended up with
3 those things. And, you know, I don't mean to -- I don't
4 mean to say that Mr. Caldwell is not a free agent, and
5 can't do what he wants to, but she ended up with him too.
6 And that's -- you know, that's part of our -- part of our
7 claim is that -- that those -- there's some wrongful
8 shenanigans, I guess, is -- I think is the term that Rep
9 King used in regard to that.

10 ~ But this unauthorized assumption and
11 exercise of the right of ownership over these goods, the
12 goodwill, the name, the license, at least those is -- has
13 occurred here, or we have produced evidence sufficient to
14 avoid a directed verdict on that cause of action as well.

15 THE COURT: Well, let me ask you this: Why
16 didn't -- what happened is that they abandoned the
17 business. There wasn't any other business started, I mean,
18 in any name --

19 MR. DUNCAN: Well, I'm -- I'm sorry.

20 THE COURT: I mean, he said he did his
21 independently. I mean, did they not abandon -- they didn't
22 start another business.

23 MR. DUNCAN: They did not start another
24 business other than the --

25 THE COURT: She started another business.

1 MR. DUNCAN: Well, she --

2 THE COURT: It's her building. She could do
3 whatever she wanted to. She could put a liquor store in
4 there, I guess --

5 MR. DUNCAN: Obviously, she --

6 [Crosstalk; unreportable.]

7 MR. DUNCAN: -- and the point --

8 THE COURT: -- would have made it --

9 MR. DUNCAN: But, Your Honor, I think -- I
10 think that's --

11 THE COURT: But she didn't.

12 MR. DUNCAN: -- the point. She didn't. She
13 -- she --

14 THE COURT: She likely saw value, and she'd
15 been in the funeral --

16 MR. DUNCAN: And she likely saw --

17 THE COURT: -- business --

18 MR. DUNCAN: -- value, and she knew it --

19 THE COURT: -- so all those things fit
20 together. That's exactly right. So but did they not
21 abandon the business?

22 MR. DUNCAN: They abandoned the location --

23 THE COURT: Well, they had to --

24 [Crosstalk; unreportable.]

25 MR. DUNCAN: -- well, that's right.

1 THE COURT: Couldn't they have rented
2 another location and kept on? I mean, John was clearly
3 out. I mean, he made that clear on the night of -- in
4 1998, he made it clear that he was going on -- going on his
5 own way. So why -- why -- why didn't they -- why wasn't it
6 the fact that they abandoned it?

7 MR. DUNCAN: Yeah, I think that -- I think
8 that the point --

9 THE COURT: We hadn't talked about that at
10 all.

11 MR. DUNCAN: -- I think the point is the
12 King Funeral Home and John -- and John King -- Rep John
13 King testified today, there was a big deal about the name,
14 you know. And he couldn't get the name. He tried to get
15 the name King Funeral Home, and the state --

16 THE COURT: They wouldn't let him.

17 MR. DUNCAN: -- wouldn't let him. And then
18 he -- but for him going to court -- to the family court and
19 getting his father's -- you know, taking his the name
20 "Christopher" along with his, you know, birth name of John
21 Richard King, that allowed him -- since -- since he was
22 legally established as John Richard Christopher King, he
23 could call his funeral home the Christopher King Funeral
24 Home, 'cause that's his name. But the name that had been
25 in place wasn't no -- wasn't any way for this family to get

1 that name --

2 THE COURT: What if they'd have gone --

3 MR. DUNCAN: -- and --

4 THE COURT: -- up to the state and said,
5 "Hey, wait a minute. She doesn't have any right to this
6 name and this license"?

7 MR. DUNCAN: Well, you --

8 THE COURT: What about that?

9 MR. DUNCAN: -- Your Honor, we --

10 THE COURT: Couldn't they have gone up there

11 --

12 MR. DUNCAN: -- we --

13 THE COURT: -- and gone to the state and
14 said, "I've got license 32. She doesn't have it. She's
15 got some new business there."

16 MR. DUNCAN: Again, I -- I think Rep King's

17 --

18 THE COURT: I mean, is that possible?

19 MR. DUNCAN: -- testimony today was that --
20 that he -- you know, he wanted to take advantage of the
21 name. You know, he wanted to take advantage of that name,
22 you know, starting his own business. But the state
23 wouldn't do that. I mean, they said there's a license
24 already in that name --

25 THE COURT: And it's for that --

1 MR. DUNCAN: -- and he can't --
2 THE COURT: -- location --
3 MR. DUNCAN: You can't have it --
4 THE COURT: -- specific to the location.
5 MR. DUNCAN: I'm not sure if it's --
6 THE COURT: Is that right?
7 MR. DUNCAN: -- specific to the location or
8 specific --
9 THE COURT: Or to the funeral director --
10 MR. DUNCAN: -- to the -- to the name -- I
11 mean, to the establishment --
12 THE COURT: To the name?
13 MR. DUNCAN: -- of the name. I think it's
14 the name, not the -- not the location. I mean, I think he
15 could --
16 THE COURT: And so she --
17 MR. DUNCAN: -- move the --
18 THE COURT: -- appropriated the name, right?
19 MR. DUNCAN: Correct. Correct. And --
20 MR. TYLER: Your Honor, it's -- the record
21 already establishes that as of 1991, she was already
22 running a business named King's Funeral Home --
23 MR. DUNCAN: In North Carolina.
24 MR. TYLER: -- in Charlotte. It's not --
25 the name was not new to her.

1 MR. DUNCAN: But it's -- it's new to her in
2 South Carolina, where -- which is where the license is
3 issued. The South Carolina license. I'm just -- I'm --
4 Your Honor, I'm just trying to address the --

5 THE COURT: I understand.

6 MR. DUNCAN: -- the idea of your -- you
7 know, your question about abandoning the business. I don't
8 --

9 THE COURT: Well, you --

10 MR. TYLER: Your Honor --

11 [Crosstalk; unreportable.]

12 THE COURT: -- I'm trying to deal with this
13 at every -- consider every possible approach that we can --
14 we can make to it -- to it, and --

15 MR. DUNCAN: I appreciate that. I
16 appreciate your giving us an opportunity to talk about it,
17 as opposed to, you know, ruminating about it later and then
18 we go away.

19 THE COURT: I'm thinking. Okay. I had
20 forgotten about that. But I don't know what that's --
21 whether -- I mean, my question related to what the State of
22 South Carolina did in regard to that, and why they ended up
23 -- I mean, it's got to be that it's somewhat unique to the
24 location and the name -- I guess the name. And so John was
25 going to want to operate a funeral home with that name, and

1 they wouldn't let him. Which is fairly logical that you
2 don't have --

3 MR. TYLER: His testimony was not that
4 unqualified.

5 THE COURT: Say it again.

6 MR. TYLER: The testimony was not so
7 unqualified that he absolutely tried and they wouldn't let
8 him. He -- when I asked, he said he -- he might have, and
9 then there was -- I mean, and if -- and if that's enough to
10 overcome my motion for directed verdict, then so be it.
11 But we're not speaking in absolutes.

12 THE COURT: Well, that's true. And is there
13 anything else? 'Cause I'm ready to rule on it.

14 MR. DUNCAN: No, sir. Except I would --

15 THE COURT: Sir?

16 MR. DUNCAN: Well, I do have -- I do have
17 something. I have two -- two things.

18 THE COURT: I was going to deny the motion.
19 If you want to keep on going, I'll be glad --

20 MR. DUNCAN: Then I will shut up then.

21 THE COURT: Okay. Motion's denied.
22 Anything else? That's it, isn't it? Or you got -- or have
23 you got testimony --

24 MR. TYLER: Well, I was just -- I would just
25 clarify, Your Honor, they brought a separate cause of

1 action for punitive damages.

2 THE COURT: Yeah, that's -- that's --

3 MR. DUNCAN: We dealt with that.

4 THE COURT: We've dealt with that. That's
5 not on the table at all. Punitive damages is not a
6 separate cause of action. I think I ruled that somewhere,
7 and nobody appealed that.

8 MR. DUNCAN: That's right. That's right.

9 MR. TYLER: And I just wanted to clarify,
10 because that's one of their counterclaims.

11 THE COURT: Okay. So I would suppose that
12 what's next would be, you to present whatever case you want
13 to present. Isn't that --

14 MR. TYLER: Yes, Your Honor.

15 THE COURT: -- where we would be?

16 MR. TYLER: Yes, Your Honor.

17 THE COURT: All right. Now it is after five
18 o'clock --

19 MR. DUNCAN: I'm sorry.

20 THE COURT: Go ahead.

21 MR. DUNCAN: I just wanted to kind of see
22 what we have remaining. We have a civil conspiracy claim,
23 we have a conversion claim, we have an unjust enrichment
24 claim.

25 THE COURT: Right.

1 MR. DUNCAN: And you took under advisement,
2 as I understood, promissory estoppel.

3 THE COURT: Well, I'm going to just deny the
4 promissory estoppel. So we'll be on equal footing on
5 everything. And --

6 MR. DUNCAN: So there are four causes of
7 action --

8 THE COURT: So you've got four causes of
9 action left that he needed to respond to if he wants to.

10 MR. DUNCAN: All right, sir.

11 THE COURT: All right. So let's begin. I
12 mean, I --

13 MR. DUNCAN: There's conversion, unjust
14 enrichment --

15 THE COURT: Well, those are -- you're going
16 to call unjust enrichment and the remedy the same one,
17 right?

18 MR. DUNCAN: Well, unjust enrichment. The
19 restitution was a -- what is the remedy --

20 MR. TYLER: What is the remedy.

21 MR. DUNCAN: -- for that.

22 THE COURT: Okay. All right. Restitution.
23 And then we've got conversion --

24 MR. DUNCAN: Conversion. Yes, sir.

25 THE COURT: -- and then we've got --

1 MR. DUNCAN: Civil conspiracy.

2 THE COURT: Yeah.

3 MR. DUNCAN: And we've got a promissory
4 estoppel claim.

5 THE COURT: Okay. I think that's probably
6 where we should be. Now, I think it's really too late to
7 start -- how many --

8 MR. TYLER: I have one witness to call.

9 THE COURT: You have one witness?

10 MR. TYLER: Yes, Your Honor. And I'm not
11 going to --

12 THE COURT: I'd really like to --

13 MR. TYLER: -- read over --

14 THE COURT: -- finish up --

15 MR. TYLER: -- the --

16 THE COURT: -- if we can, but I don't want
17 to wear everybody out.

18 MR. DUNCAN: It suits me --

19 THE COURT: You-all --

20 MR. DUNCAN: -- it suits me to finish. I
21 mean, you're -- he's -- he's taken leave from the
22 Legislator this afternoon --

23 MR. TYLER: She's come from out of town.

24 THE COURT: Well, I'm happy to finish.

25 MR. DUNCAN: (To the reporter) You all

1 right, Madam Court Reporter?

2 THE COURT: Do y'all want to take a short
3 break here? Or just continue for -- I'll open this door so
4 we can get some air moving through here. Do y'all want to
5 take a quick break -- bathroom break?

6 MR. TYLER: I'm okay. And I really -- most
7 of her testimony relevant to this, has already been
8 established. I'm not going back into that. I'm going to
9 ask some follow-up questions based on some testimony
10 presented today.

11 THE COURT: Okay. Well, we'll just keep
12 going forward.

13 MR. TYLER: Okay.

14 THE COURT: All right. I'm going to need to
15 -- you're going to have only one witness that's going to be
16 the plaintiff?

17 MR. TYLER: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. TYLER: Your Honor, I call to the
20 witness stand, Plaintiff Patricia E. King.

21 THE COURT: All right. We'll let you
22 testify right where you are. But you need to get sworn in,
23 and the court reporter's going to do that.

24 WHEREUPON:

25 PATRICIA E. KING, being duly sworn and cautioned

1 to speak the truth, the whole truth and nothing but the
2 truth, testifies as follows:

3 EXAMINATION BY MR. TYLER:

4 Q. Ms. King, we're going to jump right in to where
5 we left off over five years ago. We're going to skip a lot
6 of background stuff. And I just have a handful of
7 questions for you.

8 How long have you been operating different --
9 involved with or operating different entities named King's
10 Funeral Home?

11 A. Ever since my daddy and momma was living.

12 Q. Okay. Talk about your -- how many different
13 King's Funeral Homes have there been, that you've been
14 involved with?

15 A. One in Chester, one in Great Falls, and one in
16 Charlotte, North Carolina.

17 Q. The one in Chester is at 135 Cemetery Street.

18 A. Yes. I was involved when one was moved from 127
19 Cemetery Street, not 129. That's my resident. Like he
20 say, 127 Cemetery Street, when my mother and father was
21 living, I was at home and I worked in the funeral home. My
22 brother Chris was also there. But he left and we went to
23 drive for Judge -- Mr. Paul Hemphill, Judge Hemphill.

24 THE COURT: I'm not being clear about that.
25 There was a funeral home at 127 --

1 THE WITNESS: Yeah, he say it was 129. It
2 wasn't 129. One twenty-nine is where I lived. My mother -

3 -

4 THE COURT: Right.

5 THE WITNESS: -- my mother and father.

6 THE COURT: Right.

7 THE WITNESS: It was 127 next door to my
8 residence.

9 THE COURT: Okay. Was it a funeral home?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 THE WITNESS: And then we moved it to 135
13 Cemetery Street.

14 THE COURT: Okay. I got it. And the
15 funeral home that your parents operated was at 127?

16 THE WITNESS: And then they moved it down to
17 135.

18 THE COURT: And they moved it down.

19 THE WITNESS: Yeah. My mother was living at
20 that time.

21 THE COURT: All right.

22 BY MR. TYLER:

23 Q. And we've already discussed the ownership of the
24 building and land at 135. So the Great Falls King's
25 Funeral Home, is -- does that operate under the same

1 license as the Chester Great --

2 A. I think it is --

3 Q. -- King's Funeral Home?

4 A. It's a chapel. It's a chapel. It's a laid-out
5 chapel, so I don't think we have to have a license for
6 that.

7 Q. And how long has that been --

8 A. Oh, for --

9 Q. -- in operation?

10 A. In the '80s. Might have been in the '70s.

11 Q. And then the Charlotte King's Funeral Home.

12 A. Oh, my brother and I -- he -- I bought that in --
13 I think in the '70s.

14 THE COURT: The brother. Who your brother?
15 Christopher?

16 THE WITNESS: Edward J. King, the first.

17 THE COURT: Who's that?

18 THE WITNESS: Edward --

19 THE COURT: Edwin [sic]?

20 THE WITNESS: -- Johnson King. We called
21 him "Sonny." S-o-n-n-y.

22 BY MR. TYLER:

23 Q. And, Ms. King, since you started operating
24 businesses -- any business named King's Funeral Home, has
25 anyone ever requested that you cease using the name King's

1 **Funeral Home?**

2 A. No.

3 Q. You've never been notified that you should cease
4 **using the name King's Funeral Home?**

5 A. When I heard about -- it was in November, I
6 think, of 19 -- maybe 1997 or '98, I was sitting in my
7 office, and the state board called me. I think the name of
8 what she referred to is Louella.

9 She said, "Did you know John Richard had called
10 down here and said he was closing up 135 Cemetery Street?"

11 I said, "I had no idea."

12 "He's going to move it on Old York Road."

13 And I said, "No, sir -- no, ma'am."

14 I got up and I called down to Chester, I called
15 Columbia --

16 THE WITNESS: Excuse me, I have to stand up.
17 My leg gets stiff.

18 THE COURT: Do you want to stop and take a
19 break?

20 THE WITNESS: No, that's okay.

21 (The witness stands.)

22 BY THE WITNESS:

23 A. And I also called Moze. He said he hadn't heard
24 of it, nothing like that. So that's the first I heard of
25 it, when he say John Richard wanted to close up the funeral

1 home at 135 Cemetery and move to Old York Road.

2 Q. Ms. King, there's been some question about this
3 today: If you -- if you believed that somehow you were not
4 entitled to use the name King's Funeral Home, would you
5 have used it?

6 A. No, I would not.

7 THE COURT: Is it all right with you-all if
8 I open this door?

9 MR. TYLER: Please.

10 MR. DUNCAN: Yes, sir. Thank you.

11 BY MR. TYLER:

12 Q. How much money do you think you loaned to Chris
13 King over the years?

14 A. Oh, over \$500,000. Or in that vicinity. It
15 might be in the four hundred thousand.

16 Q. Can you recall specific --

17 A. One time it was 90,000, I got a loan. Then I
18 went back and got another loan 'cause he had a Chester
19 Chrysler and Plymouth; he filed bankruptcy, and he was
20 going to jail, and I had to bail him out. I borrowed
21 \$225,000 from Mechanics of Columbus bank.

22 Q. And did his estate offer to pay off that loan?

23 A. No. I asked them to, and they refuse.

24 Q. So what did you have to do in order to pay off
25 that loan?

1 A. I had to pay it myself. We -- it was a balloon -
2 -- my sister Robbie and I, which I think Judge Harris has
3 some dealing with when it first started in Chester. She
4 and I went to the Mechanics and Farmer's Bank, and borrowed
5 the money. And the balloon payment came, and so we had to
6 refinance. And Robbie put up her home in Charlotte, North
7 Carolina, Hyde Park. And I put up the building in Chester,
8 South Carolina, 135 Cemetery Street.

9 Q. So she put up her home, and you put up your
10 building.

11 A. I did.

12 Q. Now, let me change gears for a second. The name
13 "The Original King's Funeral Home," is there anything
14 behind that?

15 A. Yes. We used "The Original King's Funeral Home,"
16 and I think when John mention that someone called the
17 board, and said, "We're using The Original King's Funeral
18 Home," I think that's when they had a funeral home in -- in
19 Rock Hill. 'Cause they were using King's Funeral Home name
20 in Rock Hill. They had a funeral home name King's Funeral
21 Home in Rock Hill.

22 And so the board or someone contacted Moze, and
23 he say, "You can't use 'The Original King's Funeral Home.'"
24 So we took out "the original," and started using "King's
25 Funeral Home."

1 Q. So early on when you started your business, after
2 December of 1998, you attempted to use the name "The
3 Original King's Funeral Home."

4 A. Yeah. 'Cause we had it on the fan. And I think
5 that it was a -- I don't know if it was Nelson or John
6 Richard, one of them, they contacted the board.

7 THE COURT: When are we talking about?

8 MR. TYLER: We're talking about after
9 December 8th, 1998, when she started her business.

10 THE COURT: After December 1998, she tried
11 to -- (to the witness) would you state that again?

12 THE WITNESS: We used "The Original King's
13 Funeral Home" that my mother and father had started. And -
14 -

15 THE COURT: You went -- you used that? Or
16 you went and asked --

17 THE WITNESS: We were going to --

18 THE COURT: -- them?

19 THE WITNESS: We was going to -- we had put
20 it on our fans, "The Original King's Funeral Home."

21 THE COURT: And so what happened?

22 THE WITNESS: Someone contacted the board.
23 I don't know if it was John Richard, Nelson, or one of
24 them, and say that we couldn't use "The Original" funeral
25 home. They contact us, so we took off "The Original" and

1. used "King's Funeral Home." We complied with the request
2 of the board.

3 BY MR. TYLER:

4 Q. Now I want to ask you a couple of questions about
5 Mr. Caldwell. How long has Mr. Caldwell been involved with
6 King family business?

7 A. He came to my mother and father, when we was at
8 127 Cemetery Street, when he was in high school. He was
9 working for Springs Mill. He -- and he was a bus driver.
10 He came after school, and he would stay until late at
11 night. 'Cause we lived right next door. He would close up
12 the funeral home at night. My dad -- he worked for my
13 daddy. Chris was not there. He worked for my mother and
14 father, and I was there. And my daddy told me, he say, "As
15 long as there's a King --

16 MR. DUNCAN: Your Honor, I'm going to object
17 to --

18 THE WITNESS: Well, I was advised.

19 MR. DUNCAN: -- that.

20 THE COURT: Hold on. Let me --

21 MR. DUNCAN: I'm going to object to what her
22 father said to her.

23 THE COURT: Sustained.

24 THE WITNESS: Well --

25 MR. TYLER: You can't talk about --

1 THE WITNESS: I understand.

2 THE COURT: You can't talk about that.

3 BY THE WITNESS:

4 A. Well, as long as there was a King's Funeral Home,
5 Moses Caldwell was supposed to be employed there. And
6 which, I carried out my daddy's wishes and my mother.

7 Q. Have you ever answered the phones at King's
8 Funeral Home?

9 A. Yes. And I can explain that to you.

10 Q. What years, please?

11 THE COURT: You answered what? I'm sorry.

12 MR. TYLER: The telephones, what years?

13 THE COURT: In what manner did she answer
14 it? I didn't hear that part.

15 MR. TYLER: Has she answered the telephones
16 at King's Funeral Home --

17 THE COURT: The King's Funeral Home?

18 MR. TYLER: -- at -- in any way --

19 THE COURT: Since you have been --

20 MR. TYLER: -- what years --

21 THE COURT: -- specific about the names
22 earlier --

23 MR. TYLER: Well, she's going to give you a
24 history, Your Honor. I can't testify for her.

25 THE COURT: I'm not asking you to. I just

1 can't hear you because you are behind her.

2 MR. TYLER: I'm sorry.

3 THE COURT: And so --

4 MR. TYLER: I'll lean forward.

5 THE COURT: If you will restate the
6 question.

7 MR. TYLER: Sure.

8 BY MR. TYLER:

9 Q. Ms. King, through the history of King Family
10 Funeral Homes, what different roles have you played? And
11 have you ever answered the telephones?

12 A. I would answer at nights. When I was there with
13 my mother and father, we had a telephone number area (803)
14 didn't have area codes at that time -- 385-5578. If it
15 rang in the resident, I would answer that.

16 Q. And that --

17 A. And then --

18 Q. That was part of your job?

19 A. Yeah, I answered that. And my daddy, my momma
20 was there, I would -- we would run the funeral home. And I
21 would take him to visit families, and my mother also, and
22 then -- go ahead.

23 Q. What about when your brother Christopher ran a
24 business named King's Funeral Home, did you have any
25 involvement then? Answer the phones then?

1 A. Oh, yeah, I answered the phone until I was in
2 high school. My daddy had a cafe; I would go up there
3 every Friday and help my daddy in the cafe. And I would
4 come home with my mother and answer the phone and do chores
5 around the house.

6 THE COURT: And that was when you were --

7 THE WITNESS: In high school, yes.

8 BY MR. TYLER:

9 Q. I'm asking about when --

10 THE COURT: In high school?

11 Q. -- when your brother Christopher ran a funeral
12 home as sole proprietor in the 1980s.

13 A. Well, I don't think he ran a sole proprietor. I
14 heard them say that. Now, my mother was living during that
15 time in the '80s. My mother, myself, and Chris, we were
16 all there together, and Moses. I would -- and there's a
17 man came, named Mr. Pal Jagers, he would open at six
18 o'clock in the morning. So I would let him answer the
19 phones. But I would pick up, see who was on.

20 And when I got ready to go to my office in
21 Charlotte, North Carolina, I would go down to the funeral
22 home every morning, and I talked to Chris. Sometime he
23 would be there, and sometime not.

24 But I would talk to Moze, and I'd say, "I'm
25 getting ready to go."

1 I went to Charlotte, and I come back at nights
2 and tend to my mother, and I would answer the phone. When
3 a death call came, I would call Moze. Moze would -- in
4 turn, I would tell him who it was dead. In turn, we'd call
5 Chris.

6 THE COURT: What period of time was this?

7 THE WITNESS: This was in the '80s. The
8 '70s or '80s --

9 THE COURT: And can you be more specific?

10 THE WITNESS: Well, it was in the first --
11 well, continued from the '70s until the '80s. Because I
12 passed the board in '70 -- in '75. And I would still --

13 THE COURT: So it was --

14 THE WITNESS: -- some home.

15 THE COURT: -- from '70 to sometime in the
16 '80s.

17 THE WITNESS: Eighties and '90s, until Chris
18 died.

19 BY MR. TYLER:

20 Q. And when people would call King's Funeral Home,
21 who do they normally ask to speak to?

22 A. Well, I'll tell you the truth: They ask to speak
23 to Moses Caldwell.

24 Q. Why?

25 A. Because Chris was running a car lot dealership in

1 the '80s, and he would be gone all day down to Chester
2 Chrysler and Plymouth. And I think when -- I think Drake,
3 I'm not too sure, and Cornwell I'm not too sure. But he
4 would -- they would be down there, I think with Nelson
5 also. So he would be gone all day. And they would ask for
6 Moses Caldwell. Moze did the embalming. Moze did the
7 planning. And if we had any money to deposit, I would
8 deposit before I went to Charlotte, or either Moze
9 Caldwell, or even Mr. Pal Jagers..

10 MR. DUNCAN: I'm sorry, the last name was
11 what?

12 THE WITNESS: Pal, P-a-l, Jagers, J-a-g-g-
13 e-r-s.

14 MR. TYLER: And I beg your pardon. Give me
15 -- give me one moment here.

16 THE COURT: Yeah, let me just take -- I've
17 got make a phone call.

18 (Off the record from 5:36 p.m. to 5:41 p.m.)

19 EXAMINATION RESUMED BY MR. TYLER:

20 Q. I have one more question, Ms. King. Do you know
21 what happened any limousines and hearses that were at the
22 building in 1998, at 135 Cemetery?

23 A. I do.

24 Q. What happened?

25 A. I was coming from Columbia, South Carolina, Moze

1 was on a service in Edgemoor, South Carolina -- or Fort
2 Lawn. And I had a young man named Ken Watson who worked
3 for me, and when I came back, they had -- the Kings here --
4 it was Little Robbie, I think -- and I don't know if it was
5 John Richard, but I know -- I don't know if it was Nelson,
6 but they had a wrecker truck out there, and moved all of
7 the cars, the -- all the furniture, the embalming room
8 table. And I think at some point they had them limousines,
9 or the hearses.

10 And they called the board on us. They called the
11 board and say we did not have anything operating, didn't
12 have no caskets or nothing. And our constituent --

13 THE COURT: Who called the board?

14 THE WITNESS: I don't know who called, but -
15 -

16 THE COURT: Somebody called the board.

17 THE WITNESS: Yes, the Kings. I don't know
18 which one.

19 BY THE WITNESS:

20 A. And the board called Moze, the representative,
21 and our constituent Barron Funeral Home -- who has a
22 funeral home there -- you know, he called us and said,
23 "Don't worry. I will give you anything you want. And if
24 you get a body, we'll give you the embalming room too."

25 I think they had one embalmer. I'm not too sure,

1 but they took my daddy's old embalming room table. And we
2 were back in business. I had to buy -- I had to replace
3 everything. And Moze didn't have any money. Because at
4 some point, and I think it's in the record, Margie had
5 taken my name off the bank account. My name was on there,
6 Chris name, and my momma's. And after my mother died,
7 nobody's name was on there but Chris and myself. And we
8 had to start from zero. And I would give Moze checks out
9 of my personal account in Charlotte, North Carolina, to
10 operate.

11 And my sister Robbie bought a van, a white
12 van, and put it in the business.

13 THE COURT: How long was the business down?

14 THE WITNESS: Well, when we stopped
15 operating?

16 THE COURT: Yes, ma'am.

17 THE WITNESS: We didn't -- we never stopped
18 operating. Because like I said, Barron Funeral Home made -
19 - they came to our aid. And the board was very patient
20 with us, until we could get some more merchandise in there,
21 and some rolling stock. And I called my representative
22 over the sale of limousines, Mr. O'Neal, and I bought two
23 limousines and a hearse. I think it was a hearse..

24 MR. TYLER: I have no further questions,
25 Your Honor.

1 THE COURT: Thank you. All right. So you
2 bought hearses and --

3 THE WITNESS: Cars, yeah, vehicles --

4 THE COURT: Cars.

5 THE WITNESS: -- to operate.

6 THE COURT: Okay. (To Mr. Duncan) Cross-
7 examination?

8 MR. DUNCAN: Thank you, Your Honor.

9 EXAMINATION BY MR. DUNCAN:

10 Q. Ms. King, you -- you testified you passed the
11 North Carolina bar in 1975? Did I get that right?

12 A. I'm thinking it was in '75. But it's been about
13 45 years ago.

14 Q. And in the --

15 A. '75. '72.

16 Q. And in the early to mid-Seventies.

17 A. Yeah. 'Cause I passed before my daddy died. And
18 he was elated that I passed.

19 Q. And your father passed away in '75?

20 A. '75.

21 Q. So in any event, you were admitted to the North
22 Carolina Bar prior to your father's death.

23 A. That's correct.

24 Q. And you were -- you were testifying on questions
25 of Mr. Tyler, that you answered the telephone as a young

1 lady --

2 A. I did.

3 Q. -- as a teenager.

4 A. I did.

5 Q. And that -- when -- let me ask you, when you --
6 when you passed the Bar, did your primary occupation then
7 become being an attorney?

8 A. Well, that was one. And also, a funeral
9 director. I've been licensed ever since I was 18 years
10 old.

11 Q. So you got a license when, Ms. King?

12 A. When I was in high school, from the South
13 Carolina Board. I think it was about 18. 'Cause I have my
14 license number in my head: 1350. I think it's 1350. I
15 renew them every -- every year. I don't have to renew
16 them, because I've been practicing over 25 years.

17 THE COURT: Practicing what --

18 THE WITNESS: Funeral home director.

19 THE COURT: -- the law or the funeral
20 business?

21 THE WITNESS: I've been practicing law for
22 over 40 years.

23 THE COURT: Right.

24 THE WITNESS: And the funeral director over
25 25 in both states, so I don't have to take the CLE classes

1 anymore.

2 BY MR. DUNCAN:

3 Q. So you -- where were you living in 19 -- at the
4 time you passed the board -- the North Carolina Bar?

5 Excuse me.

6 A. I was living in Chester.

7 Q. Did you live in your -- in the home with your
8 parents?

9 A. With my mother and --

10 Q. With your mother --

11 A. -- father.

12 Q. -- just --

13 A. Before he died, with my mother and father.

14 Q. And after your -- after your father passed away,
15 did you remain in the house --

16 A. I would come home every --

17 Q. -- with your mother?

18 A. Yeah, with my mother.

19 Q. Well, I --

20 A. Yeah, I remained in the resident with my mother.

21 Q. At what point did you move to Charlotte?

22 A. I moved to Charlotte -- well, I didn't completely
23 move. I moved up there with my sister Robbie. I would go
24 up there and stay with her, because she had a hip
25 operation. And my sister was down for the operation, so I

1 went back and forth. But I completely moved up there -- I
2 don't want to tell you, I don't know the year, but I did
3 move in with her because she was getting old. But I would
4 go home every so often, two or three times a week, to stay
5 overnight. And, but I was still involved with the funeral
6 directing.

7 **Q. Well, you --**

8 A. Can I just say something?

9 **Q. Sure.**

10 A. When my mother died, I would come home -- I would
11 go to practice law in Charlotte by about twelve o'clock. I
12 would come home and take my mother to funerals. And we
13 would go to funerals. And she would read the obituary, or
14 either I would read the obituary. So I did -- I was
15 actively in the funeral business also.

16 **Q. And that was as long as your mother was alive?**

17 A. Uh-huh.

18 **Q. Okay.**

19 A. And then I -- after she died --

20 **Q. After she passed away, what -- did anything --**

21 A. And I would --

22 **Q. -- change?**

23 A. No, I still would come home. Because I would
24 check the books, the funeral books, and I would make the
25 deposits. Moze would go to the bank, I would go to the

1 bank, or Mr. Pal Jagers. As long as my brother lived,
2 that was our relationship.

3 Q. You testified about the different funeral homes
4 that you had involvement with, and the -- you go back to
5 the King Funeral Home at 127 Cemetery Street -- have I got
6 the name right?

7 A. That's right. That was -- that was the first
8 funeral home outside of the funeral home my daddy got
9 burned out years ago. They wasn't even born. They don't
10 even know anything about that.

11 Q. And that -- I'm sorry, say that again about the -
12 -

13 A. My daddy was burned out of the funeral home.

14 Q. Where was that located?

15 A. That was down -- I think it was on Gaston Street,
16 down before you get to Springs Street. There was a mill
17 there. But he was right on the corner. And a fire was
18 that night. We heard everything. And Dad say, "Oh, my
19 goodness. Somebody called me."

20 And we -- we -- my daddy went down, and he had a
21 body in there. And the man who lived across the street,
22 named John Wiley Ayers, he's my daddy's friend, he went in
23 there and got that body and took it over to his house, on
24 his shoulders. See, I know all about that. They don't
25 know anything about that.

1 Q. All right.

2 A. Yeah.

3 Q. And that's -- that's pretty far back.

4 A. Oh, yeah.

5 Q. Was that in the '50s?

6 A. I don't know. It's probably before -- well,
7 something like that. It might have been in the late '50s..
8 I was a little girl. 'Cause I used to go around with my
9 momma and daddy.

10 Q. All right. And the property located -- the
11 funeral home that was at 127 Cemetery Street, was next door
12 to the house where your mother and father lived.

13 A. That's right.

14 Q. And that business operated until about 1980?

15 A. That's when my daddy, before he died --

16 Q. And he died in '75.

17 A. Yeah. -- he had contacted a funeral supply up in
18 Cincinnati, Ohio, to draw some plans for the funeral home
19 which is located on 135 Cemetery Street. We had plans for
20 the same kind of funeral home in Charlotte, North Carolina.
21 I still have the plans.

22 Q. And you --

23 A. He wanted --

24 Q. -- you then -- you had located your primary
25 residence --

1 A. Was in Chester.

2 Q. -- by 1980 became Charlotte?

3 A. No, sir.

4 Q. No, it did not?

5 A. Residence 129 Cemetery Street.

6 Q. When did you -- when did you open -- no, I'm
7 sorry. The funeral home you described in Charlotte, that -
8 - that funeral home was originally opened by your brother
9 Edward?

10 A. In the '60s.

11 Q. In the '60s.

12 A. Uh-huh.

13 Q. And then it continued to be operated by him and
14 his children?

15 A. No.

16 Q. Or just him?

17 A. Just him.

18 Q. All right.

19 A. Now, he did have a flower shop in there. He let
20 his wife make flowers. But he was the primary owner. And
21 I used to help him out. My sister Robbie and Willie Mae --
22 I had two sisters up there. They would go and help him,
23 and they would help him answer the phone at night. Mr.
24 Aaron Young -- Mr. Aaron lived across the street, and when
25 he left going home -- he lived up the street -- he would

1 transfer the phone, I think, to Aaron or -- oh, no. I'm
2 sorry. When I started running the funeral home in the '80s
3 or something -- 'cause him and his wife got a divorce, and
4 he left town.

5 Q. Okay. Let me get that. Your brother, who you
6 know -- you called "Sonny."

7 A. Uh-huh.

8 Q. Sonny operated that funeral home in Charlotte for
9 about 20 years?

10 A. Might have been. I know it was in the '60 --
11 'cause I went to law school -- no, I graduated from
12 college. And I taught -- Sonny and I taught together in
13 Chester, South Carolina, before he went to Charlotte.
14 That's how it was.

15 Q. Okay. And then he began operating the funeral --

16 A. He went and --

17 Q. -- the funeral business --

18 A. -- then got a --

19 Q. -- which is called King Funeral Home?

20 A. That's correct.

21 Q. And he acquired the license up in North Carolina?

22 A. Uh-huh. And I had --

23 Q. And --

24 A. At that time, I took the board and I got my
25 license.

1 Q. I'm sorry, I took the board in --

2 A. In North Carolina.

3 Q. -- North Carolina? When did -- when was that?
4 When, about?

5 A. I don't know. But I had them for over 20 years,
6 or more.

7 Q. Let me ask it this way: Did you get your funeral
8 director's license in North Carolina, after you had gotten
9 your Bar license?

10 A. I don't -- I don't know. But I know I had them
11 over 20 years or more. I don't know which one came first.

12 Q. Okay. All right. And you -- you took over the
13 operation of the Charlotte funeral home upon the divorce of
14 your brother?

15 A. My brother and his wife got divorced, and he got
16 in some kind of -- him and his wife had a argument
17 somewhere down here in Columbia, South Carolina. My sister
18 was home, I think it was during the Fourth of July, we came
19 down here to see him. And we went to a lawyer's office.
20 And I don't know who they was, but after that, I think he
21 went off. And I think he went to stay with my sister in
22 Michigan for a while. And I was running the funeral home
23 business. I was still practicing law.

24 Q. And that was about when? About when?

25 A. I don't know. It had to be before my mother

1 died, I believe. I'm not exactly -- before my mother died.
2 So it had to be in the '70s -- late '70s/early '80s.
3 'Cause she died in '86 or '87.

4 Q. Before your mother died.

5 A. Yes. I'm almost sure.

6 Q. When did your brother -- did your brother Sonny
7 return to Charlotte to run that --

8 A. Yes.

9 Q. -- funeral home?

10 A. He ran it on Sylvania Avenue.

11 Q. He came back?

12 A. Yeah. Because by that time -- let me explain so
13 you understand.

14 Q. Sure.

15 A. I was up in my office on East Trade Street, in my
16 law office, he came there one day and he brought the deeds
17 and everything. He said, "I been to a lawyer. I had my
18 wife to sign off all her rights. I want to give it to
19 you."

20 I said, "Sonny, I don't want no part of it."

21 He said, "I want you to have it, 'cause I know
22 you will take care of it."

23 Then we drew up a contract. And I -- I save all
24 my documents, the check I paid, and I -- when he came back
25 from Columbia, from my sister's house, I said, "Sonny,

1 you're my brother. You can continue to run that funeral
2 home."

3 And he ran it.

4 Q. Until the time he died?

5 A. He ran it from -- then we moved on Beatties Ford
6 Road.

7 Q. But he continued --

8 A. Oh, yeah.

9 Q. -- to run the funeral home --

10 A. He continued.

11 Q. And he continued operating until his death? Or
12 what?

13 A. Yes, sir. He had just come from a funeral that
14 Sunday, and he died that Monday.

15 Q. Do you remember when that was?

16 A. That was in March. He died March 19th.

17 Q. Of what year?

18 A. 1991.

19 Q. And upon -- upon Sonny's death, you took over
20 that operations?

21 A. I let his wife -- ex-wife, they were divorced,
22 and a man named George Slay, which had been with him for a
23 while, I let George run the business, him and his wife --
24 ex-wife -- for about six months. They abandoned the
25 funeral home.

1 I came out there, I said -- I said, "Helen --
2 that was my niece. She came out there. I said, "You want
3 to stay in this and you run it?"

4 And she said, "I'll let you know." She hadn't
5 let me know from this day. So I moved out there. I moved
6 my office out there in '91. And I asked my nephew Sonny --
7 Sonny, Jr., did he want to stay there. I think he -- let
8 me see. I want to get it right. I think Sonny stayed
9 there for a while, a week or so, and then he left. I got
10 him an apartment, 'cause he said he didn't want to stay
11 there no more. And that's when I was -- had to move out
12 there. And I been there ever since.

13 THE COURT: Since '91?

14 THE WITNESS: Yes, sir.

15 BY MR. DUNCAN:

16 Q. And, Ms. King, was there -- was there a lawsuit
17 that took place as -- in conjunction with the operation of
18 that funeral home in 1991?

19 MR. TYLER: Objection, Your Honor. We're
20 beyond the scope of direct --

21 THE COURT: Hang on a second --

22 [Crosstalk; unreportable.]

23 COURT REPORTER: One at a time, please.

24 MR. DUNCAN: I'm sorry.

25 THE COURT: Objection overruled. Go ahead.

1 We'll listen and see how far it goes.

2 THE WITNESS: Repeat the question.

3 BY MR. DUNCAN:

4 Q. Was there a lawsuit that took place in connection
5 with the -- your assuming operation of the King Funeral
6 Home in Charlotte, North Carolina.

7 A. There was.

8 MR. TYLER: Objection as to relevance, Your
9 Honor.

10 THE COURT: Okay. How is this relevant?

11 MR. DUNCAN: Your Honor, it's -- it's very -
12 - it's very similar to the situation we find ourselves in
13 here. A brother in the funeral business died, and Ms.
14 Patricia had the building, and the family abandoned it,
15 according to Ms. King. And I'm just trying to explore that
16 a little bit.

17 THE COURT: I'll sustain the objection.

18 MR. TYLER: Thank you.

19 MR. DUNCAN: All right. I'll move -- I'll
20 move on.

21 BY MR. DUNCAN:

22 Q. Ms. King, the -- you testified that you were --
23 you had to assume the operation of the Charlotte funeral
24 home at about -- in about 1991, correct?

25 A. Yes.

1 Q. And you moved your law office over next door, or
2 on the same street?

3 A. No.

4 Q. I'm sorry.

5 A. It's a driveway. You come down the driveway, the
6 building was on the left-hand side, a office on the right-
7 hand. And that's where my brother used to live.

8 Q. Your brother --

9 A. 'Cause I converted it to a office.

10 Q. You converted --

11 A. His house to --

12 Q. -- the home where your brother lived --

13 A. Uh-huh.

14 Q. -- into an office where your -- where you
15 practice law --

16 A. Yes, sir.

17 Q. -- still today?

18 A. Uh-huh.

19 Q. All right. All right.

20 A. So it would make it easier, I can do my law
21 office, and then I go over there and do the funeral
22 planning and -- excuse me -- my nephew Sonny's son was my
23 embalmer for so -- for a long time.

24 Q. What was his name, Ms. King?

25 A. William. William Hayden King.

1 Q. Was an embalmer.

2 A. Uh-huh.

3 Q. And so as of -- as of 1991, you -- you were
4 operating the King Funeral Home in Charlotte.

5 A. Uh-huh.

6 Q. And you were having a law practice in Charlotte,
7 there in Beatties Ford Road.

8 A. That's correct.

9 Q. And, Ms. King, is it your testimony that you were
10 still actively -- very actively involved at the Chester --

11 A. Uh-huh.

12 Q. -- King Funeral Home?

13 A. I would go back and forth. I still got my
14 residence there.

15 Q. Were you -- where were you -- were you living --
16 did you have a residence in Charlotte?

17 A. I stayed with my sister I'm domiciled at, but I
18 have a resident in South Carolina.

19 Q. Let me -- let me ask you this: Where did you --
20 I'm trying to -- where were you registered to vote --

21 A. South Carolina.

22 Q. -- in the '90s? Was that always?

23 A. I'm still a registered voter in South Carolina.

24 Q. Never been registered --

25 A. No, sir.

1 Q. -- in North Carolina. And so your -- your
2 residence in Chester was the home where your parents had
3 lived?

4 A. 129 Cemetery Street.

5 Q. Does that continue today?

6 A. Oh, yes.

7 Q. And you also spend time in Charlotte at your
8 sister --

9 A. Yes. And she had --

10 Q. -- Robbie's --

11 A. Ever since she had the -- the stroke, I stay
12 there with her most of the time. You know, I come to
13 Chester, and when I -- sometimes when the weather is good,
14 I get her in the car and we drive to Chester. And that's
15 mostly on the weekends when I'm not busy.

16 Q. And that's your -- that is your sister Robbie
17 King --

18 A. That's correct.

19 Q. -- Jones, who's named --

20 A. Uh-huh.

21 Q. -- in this lawsuit. Ms. King, you testified that
22 you had made a loan specifically of \$225,000 to your late
23 brother Chris; is that right?

24 A. To pay off his bankruptcy. The bank -- he filed
25 bankruptcy in consideration, I guess, to pay off that loan

1 when he owned Chester Chrysler and Plymouth.

2 Q. And, Ms. King, you -- there's been testimony
3 about Chris King's estate here today. And did you file a
4 claim against his estate?

5 A. I did. Because I had loaned him \$175,000 to keep
6 him out of trouble. And also, I lent him \$60,000 to keep
7 his house from going to foreclosure.

8 Q. What --

9 A. But he took care of that.

10 Q. So what claim did you file with the probate
11 court?

12 A. One hundred and seventy-five thousand dollars, I
13 gave to him. I went to Mechanic's Farmers Bank. I made a
14 check out to Patricia King, and I endorsed it and gave it
15 to my brother, 'cause I didn't want him to go to jail. In
16 conjunction with that bankruptcy he filed --

17 Q. So you gave him \$175,000 cash?

18 A. In a check.

19 Q. Okay. I misunderstood what you said.

20 A. No, I said I made a check in Patricia King's
21 name, and I endorse it and gave it to my brother. Sure
22 did.

23 Q. All right.

24 THE COURT: The question was did she file a
25 claim against his --

1 MR. DUNCAN: Yes, the estate in the -- in
2 the probate court. I thought I heard "yes."

3 THE WITNESS: Yes. And my sister did, too,
4 I think it was. I'm not too sure.

5 BY MR. DUNCAN:

6 Q. Did the claim get resolved?

7 A. No, they never paid it.

8 THE COURT: The 175,000 --

9 THE WITNESS: Well, yes, sir.

10 THE COURT: -- claim you're talking about?

11 THE WITNESS: They never paid that. 'Cause
12 I think somebody was -- I don't know who, or whatever, they
13 contested it or something. I don't know. But it's never
14 been paid.

15 BY MR. DUNCAN:

16 Q. As far as you know, the estate was closed?

17 A. I don't think it was closed by that time, or I
18 couldn't have filed a claim if it was closed.

19 Q. Okay. I'm sorry. I didn't make that clear. Is
20 the estate closed now?

21 A. I guess it is. I don't know. I didn't check.
22 'Cause I say, "Forget about it. They don't want to pay
23 me." I say, "Forget about it."

24 I gave that to my brother 'cause I loved him. We
25 grew up together. And when he left -- when he left the

1 funeral home -- see, they didn't tell it all. He left that
2 funeral home and went and stayed with Judge Hemphill --

3 MS. BOYD: You're lying.

4 A. -- for a long time.

5 MS. BOYD: I'm going to tell the court that
6 you're lying. You are a liar, and you know it.

7 THE COURT: (To Mr. Duncan) You probably
8 ought to see if you can get a handle on her.

9 THE WITNESS: The record will speak for
10 itself.

11 (Ms. Boyd leaves the proceedings.)

12 BY MR. DUNCAN:

13 Q. Ms. King, you are discussing your brother Chris
14 working for Judge Hemphill.

15 A. Uh-huh.

16 Q. Is that when your parents were still alive?

17 A. Yeah. He got mad. He got mad because he wanted
18 my daddy to sign his interest over to the funeral home.
19 And -- and one day -- you hadn't heard the worst. He had
20 the -- Judge Hare to come out there while I was at work,
21 and try to make my momma sign over. She refused to do it.
22 So he coerce -- he tried to coerce and get the funeral
23 home, but my momma wouldn't do it. My daddy didn't do it
24 'cause he say he had other children.

25 Q. And again, this was -- this was obviously while

1 your father was still alive.

2 A. Oh, yeah.

3 Q. Okay.

4 A. But after he died, my housekeeper kept my momma;
5 she told me when I got home --

6 MR. DUNCAN: I'm sorry, Your Honor. That's
7 not --

8 THE WITNESS: Well, I will -- I will -- I'll
9 rephrase --

10 [Crosstalk; unreportable.]

11 THE COURT: Hold on a minute. Answer the
12 question he asked then.

13 MR. DUNCAN: I think I'm going to get a
14 question.

15 BY MR. DUNCAN:

16 Q. Ms. King, the -- I'm going to -- I'm going to try
17 to get this straight about the name. You -- you called the
18 -- down to the South Carolina --

19 A. No, they called me.

20 Q. -- board. They called you.

21 A. Yeah, they called me.

22 Q. What was the discussion -- The Original King
23 Funeral Home, was that -- you said that was on your fans?
24 Like, on the -- on the fans that you --

25 A. Now, let's -- let's go back --

1 **Q. All right. Let's do that.**

2 **A. -- step by one. When I first heard that 135**
3 **Cemetery going to be closed, because someone -- and Ms.**
4 **Louella, I was informed that John Richard had called the**
5 **board and said that, "Did you know that 135 Cemetery was**
6 **going to be closed? They moved -- they shutting up this**
7 **location and going to move up to York Road."**

8 I said, "Ms. Louella, I have not heard of that."

9 I immediately got on the phone --

10 THE COURT: They're shutting that down and
11 going where?

12 THE WITNESS: To Old York Road, where they
13 are now.

14 BY MR. DUNCAN:

15 **Q. Ms. King, let me interrupt your answer there for**
16 **a second. You continued to maintain -- after your**
17 **discussion with the person at LLR, or at the state board,**
18 **you continued to have the same license and operate the**
19 **funeral home at 135 Cemetery Street.**

20 THE COURT: Before she answers that -- and
21 I'd like -- I'm interest in her answer -- what period of
22 time are we talking about here?

23 MR. DUNCAN: I think --

24 THE COURT: She said the state called her.
25 That would have been --

1 BY MR. DUNCAN:

2 Q. Ms. King, is this in -- like the end of 1998,
3 first of 1999?

4 A. It was before -- it was in the '90s, I guess,
5 before --

6 Q. After your brother Chris had passed away.

7 A. I think -- yeah, I think it was, if I'm not
8 mistaken.

9 Q. All right.

10 THE COURT: Go ahead. She was following up
11 on her answer when I interrupted. And all of that, I
12 wanted to hear.

13 BY MR. DUNCAN:

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

17 A. No. My mother and father.

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

21 A. Uh-huh.

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

23 A. I suppose so. It's still on the wall.

24 Q. And it's still on the wall today?

25 A. Yes, sir.

1 Q. And, Ms. King, was that the end of that
2 discussion with the state board, that you kept that license
3 number, and you kept the name King Funeral Home?

4 A. Uh-huh. 'Cause they called me two or three
5 times. John Richard tried to get the name, and they told -
6 - it was three times they called. He used -- he tried to
7 get the name one time, and I think it was indicated he
8 couldn't do that. And then he tried to do another name,
9 and he already testified he had to go and change his name
10 to Christopher -- John Richard Christopher King.

11 Q. Yes, ma'am. And that was two times. And then
12 you said --

13 A. About three times. About two to three times, he
14 tried. 'Cause they called me. Now, he never did -- I
15 don't know if he ever tried it as John Richard King. I
16 don't know, but he might have.

17 Q. What about -- again, Mr. Tyler was questioning
18 you about The Original King Funeral Home. And I -- and I -
19 - is that -- is it five words: The Original King Funeral
20 Home?

21 A. He had it on a fan one time.

22 Q. And let me ask -- let me try to ask that better.
23 Was it those five words: The Original King Funeral Home?

24 A. How many words that The Original Kings -- I guess
25 it was. Let me explain why that happened. He put it on

1 the front -- the fan in memory of my mother and father, it
2 had a picture on it.

3 Q. "He" being --

4 A. Moses. It said "The Original King's Funeral Home
5 in Memory of the Founders." Then I think somebody from the
6 King family -- I don't know if it's John Richard or what --
7 they called the board on us. The board indicates, "Well,
8 just take 'the' out of there."

9 Which we did. We took the t-h-e and we took the
10 -- we never did get any more fans on The Original King's
11 Funeral Home. We dropped it. And we just used King's
12 Funeral Home, as the -- as the board advised us we could
13 do.

14 Q. Ms. King, did the name -- since your parents had
15 operated the funeral home, first at one twenty --

16 A. Seven.

17 Q. -- seven Cemetery Street in Chester, it had
18 always been called King's -- King's Funeral Home?

19 A. That's correct, the best of my knowledge.

20 THE COURT: Can you be specific?

21 THE WITNESS: I think it was.

22 THE COURT: As far as the name is concerned.

23 BY MR. DUNCAN:

24 Q. The name is King, K-i-n-g, Funeral Home? Or
25 King's --

1 A. Yeah, and the apostrophe S.

2 Q. King's Funeral Home. And in your discussions
3 with the board, after your brother's death, did you -- did
4 you ever apply for another name?

5 A. I didn't have no reason to; the board had
6 approved that.

7 Q. Didn't apply for a new --

8 A. 'Cause I'm a King myself.

9 Q. Didn't apply for a new number, either.

10 A. No. Because the board had granted us that.

11 Q. And your -- the funeral home in Charlotte -- the
12 funeral home in Charlotte, that your brother Sonny started,
13 was also known as King's --

14 A. That's correct.

15 Q. -- Funeral Home? You testified about getting
16 your license, am I -- is that the right term, in North
17 Carolina?

18 A. Yeah, my funeral --

19 Q. Licensed funeral director.

20 A. Funeral director's license.

21 Q. I'm trying to figure out how that -- that works.
22 So you had a licensed number for that funeral home in
23 Charlotte?

24 A. I got a pre-need license and I got a operating
25 license, I think. One license is 311. And I'm not too

1 sure of the other one. But I know it's 311.

2 Q. When you took over the operation of the Charlotte
3 funeral home, did you have to get a new number?

4 A. I can't recall. But I called the board and I
5 told them I was taking over. I can't recall if I did or
6 not, I maybe just let the same license -- I don't want to
7 tell you I did or I didn't.

8 Q. And you -- as you sit here, is it the same
9 answer, you don't recall whether you filled out an
10 application in North Carolina?

11 A. No, I don't. But I -- I got -- I'm registered in
12 the State of North Carolina at the North Carolina Board of
13 Funeral Directors.

14 Q. But in South Carolina, you absolutely did not
15 fill out a new application upon your taking over --

16 A. No, because Moses Caldwell --

17 Q. -- 135 Cemetery Street.

18 A. -- had his license as a general manager.

19 Q. So you really -- so there's a license number on
20 the -- on the door, or on the wall --

21 A. On the wall.

22 Q. -- on the way, that your grandparents. --

23 A. My parents.

24 Q. -- applied for --

25 A. Not my grandparents.

1 Q. I'm sorry, I -- I kept saying that.

2 A. I understand.

3 Q. And that's -- and listen, you must --

4 A. I must look young.

5 Q. Your parents --

6 A. Yes.

7 Q. -- got many years ago.

8 A. Uh-huh.

9 Q. And that license remains on the wall today.

10 A. Yes, sir. And I got my mother's license. And

11 her license was -- I got them framed in my room at home, in

12 my resident. And my dad's, too, I think.

13 Q. Your mother's and your father's.

14 A. I believe so. I know my mother's. I don't know

15 about my father's.

16 Q. And you -- you are a licensed funeral director in

17 South Carolina as well, correct?

18 A. That's right. For many years since I was 18 --

19 Q. Since you were 18.

20 A. -- years old. I believe I was 18, 'cause my

21 daddy took me to Fort Mill to Mr. Ford at that time.

22 Q. Ms. King, did your -- your business in Charlotte,

23 the funeral -- running a funeral home and running a law

24 practice --

25 A. Yes, sir.

1 Q. -- that has continued now for near about 25
2 years?

3 A. What? What you're --

4 Q. I'm saying your operation of those two businesses
5 in Charlotte, North Carolina, the funeral home and your law
6 practice, you've been doing both of those since you took
7 over from your brother after his death.

8 A. I was doing law practice downtown, and running --
9 going back and forth. Over at Sylvania Avenue, I had a man
10 in there named Mr. Brown, who my sister placed there
11 through the -- she met at the schoolhouse -- and he was
12 running the business. And anytime somebody wanted to come
13 over, their family would call me, "Is this Ms. Patricia?"
14 And that's what they called me.

15 I'll say, "Yes, it is."

16 Q. I didn't ask that question well. I understand
17 you've been practicing law for --

18 A. Ever since in the '70s.

19 Q. In the '70s. And then you took over the funeral
20 business in 1991.

21 A. Uh-huh.

22 Q. And you've continued to do both of those.

23 A. Yes, sir.

24 Q. And the Chester funeral home operation, you --
25 you're going to -- I can't put words in your mouth. You

1 will tell me. So is it fair to say that -- that you were a
2 hands-off person as to the Chester, South Carolina funeral
3 home operations?

4 A. I don't know what you mean by "hands off."

5 Q. I'll try again. That you basically have Mr.
6 Moses Caldwell running that operation on a day-to-day basis
7 --

8 A. That's -- that's right.

9 Q. -- without much involvement with you.

10 A. I don't know about that, now. I call -- we talk
11 every day, sometimes two or three times a day.

12 Q. How often do you go to the funeral home in
13 Chester?

14 A. Well, I hadn't been because of the weather. I
15 take my sister down there on the weekends. On Sundays, if
16 I'm not busy, we ride down there and check things out. And
17 we go by the funeral home, and me and Moze talk. But see,
18 I can't take her out when it's cold weather.

19 Q. So on a -- I understand you make phone calls.

20 A. Uh-huh.

21 Q. But physically going down to Chester, have you --
22 I'm trying to get a ballpark. Since the first of this
23 year, in the last four months, you've been there --

24 A. I'll say about four or five times.

25 Q. There you go. Thank you.

1 A. I'm estimating.

2 Q. Okay. All right.

3 A. 'Cause the weather was bad.

4 Q. From your information, from your discussions with
5 Mr. Caldwell -- and let me go -- can you -- can you go back
6 to the beginning of 1999, when you began the -- took over
7 the operation at Cemetery -- 135 Cemetery Street --

8 A. I think it was 1998.

9 Q. December 1998 --

10 A. That's correct:

11 Q. -- as I recall.

12 A. Uh-huh.

13 Q. All right. Well, I was going to ask you if -- if
14 you can estimate -- if you know of your knowledge, an
15 estimation of the number of funerals that are handled out
16 of that location in -- at 135 Cemetery Street.

17 A. I think the record speaks to that.

18 MR. TYLER: Your Honor, these questions were
19 all asked of her and Moses Caldwell, previously.

20 THE COURT: Well, let's let him go on with
21 them.

22 BY MR. DUNCAN:

23 Q. Whatever answer you gave five years ago, you stay
24 with that; is that right?

25 A. Well, I thought we was talking in that perimeter,

1 and you say '98 until --

2 Q. Well, I'm -- I'm saying -- I mean, I think the --
3 I think the testimony back then went back to the time you
4 began operating.

5 A. I think it was testified that he did about a
6 hundred, I think, at that time.

7 Q. How about do you know since that time? And
8 that's been five years ago.

9 A. I guess he does about the same. I'm estimating,
10 but if I had have known that, I would have had Mr.
11 Ledbetter to bring the records down here. Because we -- we
12 have an accountant.

13 Q. Yes, ma'am.

14 A. And he does -- he does all that accounting.

15 Q. Again, as of -- you -- I understand what you said
16 a moment ago, that you'd been down to Chester about four
17 times, maybe, this year --

18 A. Yeah, it's been --

19 Q. -- estimate.

20 A. -- because it's been very cold.

21 Q. I understand.

22 A. See, I got somebody to stay with my sister now
23 while I'm down here.

24 Q. Have you been to -- in the -- in the last year,
25 have you been to -- you been to any funerals in the Chester

1 -- put on by the Chester King's Funeral Home?

2 A. I don't know. I might have. I been down there,
3 'cause some of my friends have died. And I might have been
4 down there to view the bodies. But I don't know if I
5 actively went to the funeral, because of -- like I said,
6 when my sister had the stroke, I used to go down there
7 every day or -- and stay overnight, not every day, two or
8 three or four times a week. But now I can't do that, I'll
9 be honest with you, 'cause I can't leave her till my
10 healthcare provider come in.

11 Q. Do you -- do you know -- and I understand that
12 you're not going down there very much. But do you know
13 what -- do you know what -- and I'm sorry. Strike all of
14 that.

15 Are you -- are you operating the Charlotte
16 funeral home, basically, every day? I mean, you go --

17 A. Oh, yeah.

18 Q. -- in every day?

19 A. Uh-huh.

20 Q. What does a -- what's a funeral cost?

21 A. I do mostly cremations now.

22 Q. Okay. And so that's less than fifteen hundred --

23 A. I know I do --

24 Q. -- dollars?

25 A. I do funerals and I do cremations. Mostly

1 cremations.

2 Q. And a cremation, is it fair to say --

3 A. Well, it --

4 Q. -- a thousand --

5 A. -- depends on what --

6 Q. -- or fifteen hundred dollars?

7 A. Somewhere along in there. Maybe twenty-two.

8 Whatever you -- whatever they want. Some people don't want
9 nothing but a straight cremation. Some want one with a
10 service. It just varies.

11 Q. When you -- do you know, in Chester, South
12 Carolina, what a funeral --

13 A. No, I told you --

14 Q. -- average funeral --

15 A. -- Mr. -- Mr. Caldwell and Mr. Ledbetter, when he
16 reports to Mr. Ledbetter, and Mr. Ledbetter keep a record
17 of all the funerals he has.

18 Q. And that's just not something that you and Mr.
19 Caldwell talk about --

20 A. We talk about --

21 Q. -- on a frequent --

22 A. -- it every day. Every time I call him, he say
23 such-and-such is dead. But, you know, I don't write them
24 down because he keeps the record. And I think Mr.
25 Ledbetter testified to that.

1 Q. So I mean, that's just not something that you
2 keep -- keep track of on a regular basis.

3 A. No, I call him every day and he -- he call me.
4 If he got a body in the middle of the night, he call me.
5 We just have that working relationship like I had with my
6 brother.

7 Q. Ms. King, I'm about through. And I'm sure
8 everybody's happy about that. Ms. King, do you -- you've
9 been here all day.

10 A. Uh-huh.

11 Q. Do you agree with the testimony of your niece and
12 nephews, with regard to the meeting that was held on the
13 day of their father's funeral --

14 A. I disagree. I'm going to tell you --

15 Q. All right. Please do.

16 A. I called --

17 Q. Tell me -- tell me your version --

18 A. I called Margie up, and she did not even come
19 over there; she said she was busy, and she had people
20 coming in.

21 Q. And this was -- is this on the day --

22 A. That's immediate --

23 Q. -- of your -- is this on the day of your --

24 A. After the --

25 Q. -- brother's funeral?

1 A. After the funeral.

2 Q. The same day.

3 A. Yeah, Margie didn't even come over there.

4 Q. Okay. All right.

5 A. I think William came -- that's my nephew.

6 Q. Yes, ma'am.

7 A. Brother William came. William Robbie. He's
8 named after my daddy. I think Nelson, John Richard -- and
9 tell all I can -- Robbie might have come, but I do remember
10 those three.

11 Q. You remember William, Nelson, and John Richard.

12 A. I believe that was it.

13 Q. And you never --

14 A. And we discussed -- and my sister was there,
15 'cause they were there for the funeral. And we discussed,
16 and I told them, I said, "We can incorporate the business."
17 William -- my -- my nephew Williams said, "Okay.
18 I'll work on that incorporation."

19 And I said, "We can continue, but we got to
20 incorporate." I did say that. So we discussed other
21 things, I can't remember everything, and after that I -- my
22 sister and them, I think we went back to Charlotte the next
23 day, or whatever. Then I called William --

24 Q. I'm sorry, let me -- let me stop you just a
25 minute. The part of John Richard saying "I'm going to

1 **operate my own business," do you remember that?**

2 A. I don't. He might have said that. 'Cause when I
3 say "incorporate," William say he would do -- get all the
4 paperwork done. And I said, "Okay. William --

5 THE WITNESS: Excuse me. Let me turn the
6 phone off.

7 (Off-the-record interruption.)

8 BY THE WITNESS:

9 A. So I did say "incorporate." Margie was not at
10 that meeting. She said she couldn't come, she had company
11 coming in, and she was busy. So two or three days later I
12 called William, I said, "William, how are you coming with
13 the incorporation papers?"

14 And he said, "We decided not to do that."

15 I tried to work along with them, and they did not
16 do it.

17 Q. And so, ultimately, it resulted in a -- an
18 eviction action in 1998.

19 A. I think I did that before my brother died.

20 Q. Okay. All right. So you were -- you were asking
21 to have your brother evicted prior to his death; is that
22 right?

23 A. 'Cause the contract ended. We had a option in
24 there, we could renew it every so many years. And he
25 didn't do it. And so before the time ran out, I think

1 that's how it was. I don't want to mislead you. But I
2 said, "The time is up. Time is up."

3 Q. Okay.

4 A. But I -- they stayed there for about a year. And
5 let me add to this too: When they were running the funeral
6 home, I was down there one day to make arrangements for a
7 funeral -- Moze was on a funeral, and William, my nephew,
8 he was sitting outside, people was coming in, and he direct
9 them up to Margie's house.

10 Margie at that time took the name -- took the
11 name -- my name off the bank account, she took the
12 telephone -- disconnected the telephone at my -- my momma's
13 house, and she took all the computers and everything from
14 Moses. Moses didn't do anything -- well, whatever it was.
15 Whatever machine she had at that time, she took everything
16 up to Chris' house -- my brother's house, and the bank --
17 and the -- and the money too. And all they did was come
18 down there. Moses going to funerals, he embalmed, and he -
19 - all they do was come down there, all dressed up ready for
20 the funeral.

21 MR. DUNCAN: Ms. King, I think that's all
22 the questions I have.

23 THE WITNESS: Thank you.

24 THE COURT: (To Mr. Tyler) Redirect?

25 MR. TYLER: No questions, Your Honor.

1 THE COURT: I have a couple.

2 EXAMINATION BY THE COURT:

3 Q. Ms. King, I found in my order dated five years
4 ago, which was appealed by these folks over here, and later
5 affirmed by the appellate court, that Chris operated a sole
6 proprietorship known as King's Funeral Home for many years
7 until he died. Who owns the name to King's Funeral Home?

8 A. Who owns it now?

9 Q. Who owns the name?

10 A. I do. King's Funeral Home.

11 Q. You own the name to King's Funeral Home?

12 A. Uh-huh. That's what my mother and father, they -

13 -

14 Q. How -- how --

15 A. -- named it.

16 Q. -- how did you get the name -- how did you -- how
17 did you come to own the name King's Funeral Home?

18 A. Through my mother and father.

19 Q. Did Chris own the name King's Funeral Home when
20 he was sole proprietor?

21 A. He operated under the name King's --

22 Q. He didn't own the funeral -- the name --

23 A. Uh-uh. Not to my knowledge.

24 Q. Who owned it while he was operating it all --

25 A. The business. King's Funeral Home --

1 Q. Say it again.

2 A. King's Funeral Home --

3 Q. It wasn't incorporated. It wasn't a partnership.
4 It wasn't --

5 A. No.

6 Q. -- an LLC. Who owned it?

7 A. I guess --

8 Q. He was the sole proprietor.

9 A. Well, I think I just did that because of -- he
10 wanted to do that. I didn't involve with him, but I did go
11 down there and work. And he -- he just operated under
12 King's Funeral Home.

13 Q. He operated under King's Funeral Home.

14 A. Yes, he did while --

15 Q. Was he entitled to use the name?

16 A. Well, I guess he was. When you say "entitled," I
17 don't know what that means.

18 Q. How did you become entitled to use the name
19 King's Funeral Home?

20 A. Because I'm a King. And I was a part of the --
21 running the operation of the funeral home.

22 Q. Does the name King's Funeral Home have any value?

23 A. I don't know of anything about value.

24 Q. Money. Is it worth anything?

25 A. Well, if we get the business, it is.

1 Q. Okay. As a lawyer you're familiar with the
2 concept of goodwill as it relates to a business.

3 A. Yes.

4 Q. You are?

5 A. Uh-huh.

6 Q. Did the business of King's Funeral Home have any
7 goodwill connected to it whenever you became the
8 proprietor?

9 A. Oh, yeah.

10 Q. And what would that -- what amount would have
11 been, in your estimation, that -- the worth of the
12 goodwill?

13 A. I don't -- I don't know. Because if you're
14 talking about how many funerals you have, that might be
15 goodwill. Because I used to go back and forth, and people
16 knew me down in Chester, so, you know, I -- my name stood
17 out. So I was part of the goodwill of the business.

18 Q. So the name King's Funeral Home would have some
19 value to it.

20 A. To me, yes.

21 Q. And it had value to it when Chris --

22 A. When my momma and daddy was living. 'Cause they
23 build it.

24 Q. Did you pay anything for the value of King --

25 THE WITNESS: Excuse me. I thought I had

1 turned this off.

2 (Off-the-record interruption.)

3 BY THE WITNESS:

4 A. Yeah. When I --

5 Q. What did you pay for it? And who did you pay?

6 A. Well, I invested in it, because they moved
7 everything out. And I had to restock it for the goodwill -
8 - for the operation of the business. I had to put my cash
9 money in it. We started on zero.

10 Q. Aside from the things like cars and -- and desks
11 and chairs and that sort of thing, the name itself would
12 have some value, would it not?

13 A. Yeah, my -- yeah. Uh-huh.

14 Q. And --

15 A. But at that time I took it over, I don't know how
16 much value it was. Because we had to start from zero.

17 Q. But it did have some value.

18 A. While my momma and daddy was working and I was
19 working in the business. My name means so much. But it
20 wouldn't have been anything if Moses Caldwell hadn't taken
21 it over, so he --

22 Q. Well, let me ask -- go ahead. It wouldn't have
23 been anything Moses, 'cause he contributed to the value --

24 A. Yeah, he did.

25 Q. -- the goodwill?

1 A. And he still is. It was worth nothing when --
2 when they moved out. Moses Caldwell -- everybody called
3 for Moses Caldwell. 'Cause Chris, my brother, wasn't
4 there. Even when he was living, he was down at the car lot
5 24 hours a day -- or 12 hours a day. So everybody -- Moses
6 had the -- Moses Caldwell, he could move out right now and
7 have a empty building, he could go down -- go down next
8 door --

9 **Q. So he was the key to the business.**

10 A. He's the key man.

11 **Q. Why did he stay with you and not go with them?**

12 A. I don't know. Because he didn't tell me who he
13 was going with until I found out that he was going to stay
14 with me. I had discussed it with him, and he wouldn't give
15 me a decision. That was his own thing. I guess 'cause he
16 had been there, and he worked for my daddy. My daddy had
17 indicated that as long as there was a King's Funeral Home,
18 he could have a position there.

19 **Q. So you consider that you own the name King's**
20 **Funeral Home now?**

21 A. Oh, yes.

22 **Q. And how did you get it?**

23 A. Through my momma and daddy. And I worked in the
24 business.

25 **Q. Is there any paper or any transaction that gave**

1 **you the name?**

2 A. No, I was born a King. And everybody knew me.
3 And through my -- I used to work in the business. I used
4 to go home and go on funerals.

5 Q. But that name has a unique life of its own
6 besides your life, does it not?

7 A. If it pass on. That's why I wanted to
8 incorporate.

9 Q. Why did it pass on to you and not the other part
10 of the family?

11 A. Because --

12 Q. Chris King.

13 A. Because Chris was a heir of my mother and father.
14 And -- and my sisters and brothers, at that time were
15 living, they were next of kin.

16 Q. So y'all all would have --

17 A. They were --

18 Q. -- known the name -- owned the King's Funeral
19 Home name?

20 A. They would have had a share in it.

21 Q. Why don't they have a share now?

22 A. Because -- because it's in my name. And when I
23 get through with all this here, I got to take care of a lot
24 of business.

25 Q. How is it in your name?

1 A. Huh?

2 Q. How did it come in your -- to be in your name?

3 A. Well, I --

4 Q. You understand the question?

5 A. Because from my mother and father, it was King's
6 Funeral Home. And I worked in the business. And we
7 continue the name King's Funeral Home.

8 Q. Wouldn't you agree that Christopher King had the
9 name, or owned the name, during the time of his life?

10 A. And I also worked in the business: Patricia King.
11 So we worked together. So we continued the name King's
12 Funeral Home.

13 Q. Would Chris have been King's Funeral Home when he
14 was alive?

15 A. Yeah, he -- he worked in it like I worked in it.

16 Q. Well, he was the sole proprietorship, signed
17 papers over to you that said he was sole proprietor and --
18 and the mortgage, I believe, in the testimony of the other
19 case was, that you signed individually to a mortgage, and
20 he signed as sole proprietor --

21 A. I did that because he --

22 Q. Is that right?

23 A. -- because he was down here running it. And I
24 was running it too. And the bank -- the lady said -- at
25 the bank, she said, "You sign it like this on the advice of

1 Ms. Sandra Hodge."

2 Q. But it was signed Chris --

3 A. Yeah.

4 Q. -- King as sole proprietor, wasn't it?

5 A. Uh-huh.

6 Q. It didn't have your name as the sole proprietor,
7 right?

8 A. It had it individually.

9 Q. Had your name, individually.

10 A. Uh-huh. If we were changing names right to Moses
11 Caldwell, he would still get the business 'cause they think
12 Moses was a -- they always said, "Hi, Mr. King. Hi, Mr.
13 Moses King." They do that. So, you know, if they would
14 change the name right now to Moses Caldwell Funeral Home,
15 he would still get the business. They had a funeral home
16 in Charlotte -- in Rock Hill named King's Funeral Home.

17 Q. Well, that's been one of the perplexing things
18 for me in this case. And I guess that's a difficult
19 answer.

20 THE COURT: I don't think I have any other
21 questions. Do either of the lawyers have any other
22 questions after those?

23 MR. DUNCAN: I've got not many, but a couple
24 -- but a few.

25 RE-EXAMINATION BY MR. DUNCAN:

1 Q. The Chrysler dealership, you -- Ms. King, you've
2 testified about the Chrysler dealership that your brother
3 Chris --

4 A. Ran.

5 Q. -- operated.

6 A. Uh-huh.

7 Q. Ran. And that he was down there 12 hours a day.

8 A. Yeah, he was down there. 'Cause when Nelson
9 lived with my sister, I think -- I'm not too sure, but I
10 let him -- got him some money to buy a part to go down
11 there, something like that.

12 Q. You -- you --

13 A. Yeah, I would -- I would give him money all the
14 time.

15 Q. You were talking about how that people would call
16 and ask to speak to Mr. Caldwell, 'cause --

17 A. Chris was not --

18 Q. -- your brother was down at the dealership.

19 A. Yeah.

20 Q. Do you know when that dealership operated? I'm
21 just asking.

22 A. It must have been in the '80s. 'Cause I think it
23 closed down in eighty -- the thing closed down in '87 or
24 '89, somewhere along in there. I'm not too --

25 Q. Do you know --

1 A. -- sure.

2 Q. Okay. And do you know how long it was a
3 business, an ongoing business?

4 A. No, I don't know. A couple years.

5 Q. Couple years. Okay.

6 A. Not too long. 'Cause I used to go out to the
7 Chrysler dealership in Charlotte, North Carolina, to take
8 things out there for him. I tried to help him as much as I
9 could.

10 Q. And let me -- one -- one other follow-up to
11 something you said in response to Judge Harrison.

12 THE WITNESS: I don't know how to turn this
13 thing off.

14 MR. TYLER: Let me see if I can get that for
15 you.

16 (Off-the-record interruption.)

17 BY MR. DUNCAN:

18 Q. I think you said this, and I want to clarify: You
19 said people come in the business, you -- you hear people
20 come in the King's Funeral Home and think that Moses
21 Caldwell is Moses King.

22 A. They call him Moses King. Sure do.

23 Q. They think he's -- they think he's a King, 'cause
24 he's been there for a long time.

25 A. That's right. And it wasn't for Moses down

1 there, when Chris was at the car lot, or whatever, Moze
2 going to get the business. He can move right down the
3 street.

4 Q. As Moses King.

5 A. Yeah, Moses is deacon in the church. He was on
6 the hospital board. He's known all around. He's a
7 Methodist. And he -- he goes to the -- he's just a well
8 liked person. Everybody likes him.

9 Q. But there are people that think his last name is
10 King.

11 A. I don't think the name is -- think his last name
12 is King. That's just something they call, "Hey, Moze" or
13 "Hey, Moze King." "Hey, Moze Caldwell." He just --
14 different times, people call.

15 MR. DUNCAN: I think that's all.

16 THE COURT: Anything else? Okay. This is
17 y'all's last shot, now, probably. All right. I think that
18 we're through, then. And if there are no other witnesses.

19 MR. TYLER: No other witnesses, Your Honor.

20 THE COURT: All right. Now, we've argued
21 along the way, here and there, about -- about various
22 issues. And so I -- I think we're about argued out for
23 today. And what I was thinking -- we'll get off the record
24 here in just a minute. Is there anything else we need to
25 put on the record?

1 MR. TYLER: I would renew my directed
2 verdict for the record.

3 THE COURT: Oh, okay. There are a couple of
4 things. Of course, we'll want a -- to have an original
5 transcript, which -- many times there's a misunderstanding
6 between lawyers about the transcript. I know that y'all
7 ordered it. But I consider it a court's transcript, I
8 believe. But how do y'all view the transcript? I need to
9 have one in the record at the courthouse, I guess.

10 MR. TYLER: Your Honor, in the past, just in
11 the course of this case, we've split the cost.

12 THE COURT: Okay. (Mr. Duncan) Do you have
13 a problem with that?

14 MR. DUNCAN: (Shakes head.)

15 THE COURT: So I'll order you pay the court
16 reporter upon her presentation of the bill within ten days.

17 MR. TYLER: And that's how we've done it for
18 --

19 THE COURT: Okay. Yeah.

20 MR. TYLER: -- for their motions, for our
21 motions for --

22 THE COURT: Yeah. And let's just continue
23 that. But I wanted to clarify that for the court reporter.
24 And she'll produce an original, and we'll file that with
25 the court. I want a copy. I don't want to -- I have no

1 funds out of which to buy a copy. And she's not my court
2 reporter, so we'll have to figure that out. She might --
3 you know, can we figure that out off the record? Or do we
4 need to discuss it on the record?

5 We've done this before, and figured it out
6 on the record. And I just can't remember what we did. I
7 do want to have an original transcript. I do want the file
8 it with the clerk. And then the rest of it is how y'all
9 get a transcript, I guess, we need to decide that. 'Cause
10 she charges. And I'll be glad -- since it's the court's
11 transcript, I can use that transcript and unseal it.

12 But I'd just as soon file it with the court,
13 you know, sealed. If there are appeals, you'll have to
14 deal with the transcript. But you don't necessarily need
15 to deal with the official transcript that's filed. So I'm
16 going to probably want a copy, depending on where we go.
17 But I will just discuss that with y'all and the court
18 reporter later.

19 And y'all can make your own arrangements
20 about the court reporter. She's going to produce at least
21 one, and I think one comes with a copy, too, I suppose.
22 And since y'all are splitting it, why don't we figure out
23 what we're going to do about that?

24 What I'm going to do is to get y'all both --
25 and I don't normally do this, but I'm going to get you both

1 to furnish orders here. And I'd ask you to put them in
2 Word so that I can -- I think that the last -- the order --
3 the main order, I think I'd asked y'all to provide orders.
4 And you did. And I went -- went a separate direction. But
5 I did use some of the information that y'all had in there
6 out of Word, I think. So I don't like to make you go to
7 the trouble to do something that I wouldn't use, but I feel
8 like in this case we ought to do that.

9 What time frame do y'all think would be good
10 to get those proposed -- I'm going to -- I'm thinking we're
11 going to do proposed orders rather than briefs. I don't
12 want to spend your client's money -- any more money than is
13 necessary. And I think that an order might be the --
14 probably the most efficient and cost-effective way to deal
15 with this, rather than a board. And then maybe a -- an
16 order --

17 MR. TYLER: Rather than closing statements.

18 THE COURT: Is that all right with y'all?

19 MR. TYLER: That's fine with us. And rather
20 than closing statements, Your Honor?

21 THE COURT: If y'all want to us to do a
22 separate day and we'll have closing statements. Or if you
23 want to just use your orders as your closing statements.
24 I'll do whatever you care.

25 MR. TYLER: Your Honor, when we have the

1 claim -- the hearing on the accounting, it was late in the
2 day just like this, we just -- we just -- didn't do closing
3 statements; we just submitted proposed orders. And I'm
4 fine with that with that practice.

5 THE COURT: I don't need them, frankly. I
6 don't think they would assist me, particularly. I have
7 made a lot of notes during the day. I've got the
8 transcript if I need it. And so I don't think that I need
9 to hear closing arguments, unless y'all want to make them.

10 MR. DUNCAN: Your Honor, I don't -- again,
11 taken into account that this is a non-jury matter, and that
12 your experience in, you know, hearing cases over the years,
13 I don't think there's anything that Mr. Tyler's going to
14 say, or I'm going to say, that's going to, you know, sway
15 you at -- at this -- at this point in time. And I don't --
16 I certainly don't want to spend my client's money, coming
17 back, you know, on another day to -- to hear myself talk to
18 you.

19 THE COURT: All right. We've spent a lot of
20 client's money over the years. And there's this proceeding
21 to have to pay for. And it's a day-long, we're paying
22 lawyers and special referee, the court reporter. So I want
23 to try to be as efficient with your client's money as we
24 can be. And I hate to even ask you to do orders, but I
25 really think it's the kind of case that we ought to do

1 that.

2 MR. DUNCAN: I'm fine with that. I'm fine
3 with that.

4 MR. TYLER: I figure we've got 15 days? Is
5 that enough?

6 MR. DUNCAN: The only -- I guess my only
7 question in that regard, Your Honor, is about the
8 transcript. You know, it's -- this is going to be a
9 lengthy transcript, and it's going to take our court
10 reporter some time to do that. I don't know that I need
11 it, but I might. Lawyers -- lawyers -- I've -- I have
12 noted a couple of times today -- and no disrespect to John
13 Tyler, and I hope he takes none to me -- but lawyers hear
14 things differently. And as we sit here, I hear what I want
15 to hear, and he hears what he wants to hear. And there was
16 at least one occasion where he characterized John Richard
17 King's testimony, that I was like that is the opposite of
18 what he said. And I -- it probably wasn't, but that's the
19 way I heard it. And --

20 THE COURT: All right. So let's give you
21 time to get a copy of the transcript.

22 MR. DUNCAN: I think that's what I'm going
23 to do.

24 THE COURT: Madam Court Reporter, let me
25 just ask you how long would it take before -- now, this is

1 no hurry. But what is your usual time?

2 COURT REPORTER: Usually have 30-day
3 turnaround on hearings, which is what this is --

4 THE COURT: All right. Why don't we say --

5 COURT REPORTER: -- unless you-all specify
6 otherwise.

7 MR. DUNCAN: I don't -- I don't think we
8 want it expedited. I mean, I think we -- I think we can
9 operate with that.

10 THE COURT: All right. She's going to give
11 me the official transcript, right?

12 COURT REPORTER: And you're going to file
13 the original with the courthouse, and then --

14 THE COURT: I'll file the original with the
15 courthouse.

16 COURT REPORTER: You-all want copies? Or
17 no?

18 MR. DUNCAN: Can I talk about that with you?

19 COURT REPORTER: Yes.

20 MR. DUNCAN: In a moment -- I mean, no need
21 to be on the record. I don't think this needs to be on the
22 record.

23 THE COURT: I may either use the original or
24 I -- you know, open it up and make a copy of it. Which I
25 know court reporters don't like to do that. But being that

1 in occupying the position as judge rather than lawyer here,
2 it's kind of a little bit different situation. I have no
3 ability to have a court reporter of my own, so I have to
4 depend on the court reporter that the parties bring. I'll
5 just decide about that. I'll figure that out.

6 You give me the transcript. If I need to open
7 it, I'll open it. If I need to get a copy, you -- you --
8 one copy comes with the transcript, right?

9 How do y'all want to do that? I mean, y'all
10 are splitting the cost. Do y'all want to talk about that -
11 -

12 MR. TYLER: Let's not decide right now.

13 THE COURT: All right. Let's not decide
14 that right now. She's going to give me an original and a
15 copy. And then we can figure out what y'all are going to
16 do later.

17 MR. DUNCAN: And that's going to be roughly
18 30 days.

19 THE COURT: She'll get it -- she'll get it
20 to me in 30 days. And y'all order if you want copies. And
21 then after that, what do you want? The proposed orders
22 with 15 days after that? Or what, do you want longer?

23 MR. DUNCAN: Doesn't that cause you a
24 problem? I mean, that's summertime. I don't know if that
25 causes you a problem. You've got little kids, so tell me -

1 -

2 THE COURT: Well, y'all could start drawing
3 them now, you know, while it's fresh --

4 MR. TYLER: I'll tell you what: If that's
5 going to be a problem, I will e-mail Your Honor. I just
6 don't have my schedule in front of me right now. I think -
7 - I don't know what's going to happen on June 14th, or
8 13th, or whatever is 15 days from 30 days.

9 THE COURT: I'm flexible about it, but then
10 I'm wanting to -- you know, the parties deserve for us to
11 get this litigation over with.

12 MR. TYLER: That's right. That's why I'm
13 going to check my calendar first thing tomorrow.

14 THE COURT: Okay. Why don't we say roughly
15 in 15 days afterwards. And y'all look at your calendars.
16 Why don't y'all look at your calendars. You two consult --
17 you two consult and then get in touch with me.

18 MR. DUNCAN: Okay.

19 THE COURT: All right.

20 MR. DUNCAN: And just roughly, I'm looking
21 June the -- June 15th is a Monday. I mean, I don't know if
22 that --

23 MR. TYLER: Yeah, I don't know what's --

24 MR. DUNCAN: You just don't know.

25 THE COURT: Why don't we tentatively say

1 briefs by June the 15th?

2 MR. TYLER: Okay.

3 THE COURT: We can e-mail each other --

4 MR. TYLER: Proposed orders?

5 THE COURT: -- and have a different date
6 than that.

7 MR. TYLER: Okay. Proposed orders by June
8 15th?

9 THE COURT: Proposed orders. I'm sorry.

10 MR. TYLER: Okay.

11 THE COURT: Not briefs. I believe that what
12 we should do here. Y'all did proposed orders before,
13 didn't you?

14 MR. TYLER: That's right.

15 THE COURT: Yeah. Okay. Let's keep -- keep
16 the pattern. That worked out okay, I guess. I don't know.
17 We got an appeal from it, though. We may hear -- now we're
18 disposing the motions -- I'm going to make sure that we
19 clean up here what we've got done. We have -- you made
20 your motions; I have heard them. They're on the record.
21 I've denied some and granted some.

22 MR. DUNCAN: We --

23 THE COURT: Sir?

24 MR. DUNCAN: I'm sorry. I guess the only --
25 the only thing you denied of mine, that I want to make sure

1 is preserved for the record, we offered a couple of
2 exhibits. Well, the witnesses you heard. And you allowed
3 their testimony --

4 THE COURT: Right.

5 MR. DUNCAN: -- over his objection. You
6 granted his objection to documents that we proposed to
7 enter.

8 THE COURT: Right.

9 MR. DUNCAN: And I just wanted to make sure
10 that we obviously intended to offer those. And, you know -
11 -

12 THE COURT: It's in the record. It's
13 clearly in the record. Did you want to add anything to it?

14 COURT REPORTER: I need to add something.
15 Exhibit 2 was never entered into --

16 THE COURT: It's not going to be entered
17 into evidence. Neither one of them, Exhibit 1 or Exhibit
18 2. They were enter -- they were in evidence for -- they
19 were not in evidence. They were offered for
20 identification. So there are two -- 1 and 2 are for
21 identification, they were never in evidence.

22 COURT REPORTER: Two was never marked.

23 MR. DUNCAN: Marked.

24 THE COURT: Well, let's mark 2 now. We'll
25 mark 2 for --

1 COURT REPORTER: I needed to speak up before
2 we go running out of here and it's not clear for the
3 record.

4 (DEFENDANT'S EXHIBIT NO. 2 MARKED FOR
5 IDENTIFICATION - HANDWRITTEN LETTER; COPIES OF
6 BLANK CHECKS)

7 THE COURT: The intention was that I thought
8 I noticed that you hadn't marked that. And I guess we
9 didn't make that clear. But that should have been marked
10 as 2. And I denied -- you know, I -- I didn't allow it
11 into evidence. So that's what you wanted preserved, right?

12 MR. DUNCAN: That's right. The Exhibit No.
13 2 is a handwritten note and --

14 THE COURT: And check -- blank checks.

15 MR. DUNCAN: Checks. Blank checks.

16 THE COURT: Right.

17 MR. DUNCAN: A two-page document, two pages.

18 THE COURT: Do y'all want to look at the
19 exhibits and just make sure that's correct before she goes
20 and packs her satchel? If you want to look at it, let's do
21 so.

22 MR. DUNCAN: Sure.

23 THE COURT: Before we get away. We want to
24 make sure we got what you want in the record. And y'all
25 look at them and change them and --

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MR. TYLER: That's a good idea.

(Off-the-record discussion.)

THE COURT: So y'all are satisfied with those as being offered and not admitted for --

MR. DUNCAN: Yes, sir.

THE COURT: Okay. Those are in the -- in the record as having been introduced, but the Court ruled not to admit them. Anything else in the way of housekeeping?

MR. TYLER: No, Your Honor.

THE COURT: Okay. Are we off --

MR. DUNCAN: I don't think so.

THE COURT: All right. Anything else for the record? Otherwise, I'll tell her to close it down.

All right. Thank you, Ma'am. We are through for the day. Off the record.

Further deponent sayeth not.

(There being no further questions, the deposition concluded at 6:56 p.m.)

1 CERTIFICATE OF REPORTER

2 I, PATRICIA G. BACHAND, COURT REPORTER AND NOTARY
3 PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE,
4 HEREBY CERTIFY THAT THE FOREGOING 299 PAGES CONSTITUTE A
5 TRUE AND CORRECT TRANSCRIPTION OF SAID HEARING.

6 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
7 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
8 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
9 INTERESTED IN SAID CAUSE.

10 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
11 WAS THEREAFTER SEALED BY ME AND DELIVERED TO JAMES C.
12 HARRISON, JR., ESQ., HARRISON & RADEKER, PA, 923 CALHOUN
13 STREET, COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS
14 SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR
15 FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING
16 WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

17 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
18 31ST DAY OF MAY 2015.

19
20 _____
21 PATRICIA G. BACHAND, COURT REPORTER
22 MY COMMISSION EXPIRES APRIL 9, 2017
23
24
25

John E. Tyler

From: Mike Duncan <wmduncan@AustinRogersPA.com>
Sent: Friday, June 26, 2015 5:14 PM
To: Jim Harrison
Cc: John E. Tyler
Subject: King v. King--Defendants' proposed Order
Attachments: Order as to Remaining Counterclaims 6.26.2015.doc

Judge Harrison,

Attached is the proposed Order on behalf of the Defendants.

Thank you for your continued assistance in this case.

Mike

W. Michael Duncan, Esquire
Austin & Rogers, PA
PO Box 11716
Columbia, South Carolina 29211
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STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
)

) Case No.: 1998-CP-12-00325
)

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

) Plaintiffs,
)

) v.
)

) **ORDER**
) **(As to Defendants' Counterclaims)**
)

) Margie B. King and Robbie Patricia Ione
) King, Individually and as Co-personal
) representatives of the Estate of Christopher
) C. King, deceased, and Nelson M. King,
)

) Defendants.
)

INTRODUCTION

This matter came before the Court for the final day of trial on April 29, 2015. The first day of trial was held on August 16, 2010 on Defendants' Counterclaim for an accounting. The Court issued its Order, which was filed on March 9, 2011, on the Accounting Counterclaim in which the Court denied Defendants' request for an accounting. Defendants appealed the Court's Order. The South Carolina Court of Appeals affirmed the Court's Order in Unpublished Opinion No. 2012-UP-365, which was filed June 20, 2012. Defendants then filed a Petition for Writ of Certiorari to the South Carolina Supreme Court which was denied. The Findings of Fact and Conclusions of Law set forth in the Court's March 9, 2011 Order therefore are the Law of the Case. The provisions of that Order are incorporated herein by reference. The lengthy procedural history of this case is set forth in pages 1-5 of the March 9, 2011 Order and need not be repeated herein.

Subsequent to the South Carolina Supreme Court's denial of the Defendants' Petition for Writ of Certiorari, the case was remanded to the jurisdiction of Special Referee James C. Harrison for hearing of the remaining Counterclaims set forth by the Defendants. Plaintiffs had filed a Motion for Summary Judgment and Dismissal of Defendants' Amended Counterclaims, on March 25, 2011 following the issuance of the March 9, 2011 Order. The hearing of that Motion was stayed pending the appeal of that March 9, 2011 Order. A hearing was held on August 5, 2014. Through their counsel, the parties provided supplemental memorandums in support of their respective positions after the hearing. Defendants conceded in their supplemental

memorandum that certain counterclaims were moot by virtue of the March 9, 2011 Order that was affirmed on appeal. Those moot claims were: Appointment of Receiver; Accounting; Attachment to Property; Action for Partition of Real Property; and Breach of Fiduciary Duty of Care. The Court granted Plaintiffs' Motion for Summary Judgment on the five Counterclaims that Defendants conceded were moot, by its Order filed March 9, 2015. In that March 2015 Order, the Court denied Plaintiffs' Motion as to the remaining ten Counterclaims. The Court's ruling thus left ten Counterclaims to be heard at trial. Those Counterclaims are as follows; Restitution and Disgorgement¹; Civil Conspiracy; Unjust Enrichment; Trespass to Land; Conversion; Intentional Inference with Contractual Relations; Constructive Trust; Promissory Estoppel; Trespass to Chattel; and Waste.

Following testimony and evidence offered by Defendants, the Plaintiffs moved for a directed verdict on all nine Counterclaims. The Court heard arguments from counsel for both parties and ruled on the directed verdict motions. The Court orally granted the Plaintiffs' Motion for directed verdict on the claim for Constructive Trust, finding that the Defendants could not meet the heightened evidentiary standard of clear and convincing evidence necessary to sustain that claim. The Court also granted directed verdicts on the Counterclaims for Waste; Trespass to Land; Trespass to Chattel; and Intentional Interference with Contractual Relations. The Court orally denied the directed verdict motions on Defendants' four other Counterclaims. Plaintiffs then offered the testimony of Patricia King and rested their case. Plaintiffs renewed their motions for directed verdict on the four Counterclaims that remained; the Court denied those motions at the conclusion of the trial.

After considering the testimony and exhibits offered into evidence and considering the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Patricia King (hereinafter sometimes referenced as, "Patricia") mailed a Notice to Vacate to Christopher C. King, (hereinafter sometimes referenced as "Chris") on August 20, 1997 informing him that he was to vacate the premises located at 135 Cemetery Street, Chester, South Carolina within thirty (30) days. Christopher C. King was very ill at that time suffering from cancer. He died twelve days later on September 1, 1997. On the day of Christopher C. King's funeral, September 6, 1997, Patricia King and her sisters including Plaintiff Robbie King Jones, met with several of the children of Chris King, including his son John R.C. King and

¹ Counsel for Defendants agreed that Restitution and Disgorgement is the remedy for Defendants' claims for Unjust Enrichment so nine Counterclaims remained for trial.

Defendants Robbie P. I. King Boyd and Nelson M. King., and informed them that they had to vacate the premises located at 135 Cemetery Street.

2. Patricia King is an attorney who has been a member of the North Carolina Bar for over forty (40) years. She filed an eviction action in November 1998, against the members of her brother Chris King's family who were continuing to operate King's Funeral Home located at 135 Cemetery Street.

3. Patricia King and at least one other of her sisters sought to remove Chris King's wife, Margie King and their children from 135 Cemetery Street immediately after Chris King's funeral on September 6, 1997. Margie King and her children vacated the funeral home located at 135 Cemetery Street, on or about December 8, 1998.

4. Chris King owned and operated King's Funeral Home, as sole proprietor of the business from at least July 16, 1980 until his death on September 1, 1997.

5. Moses Caldwell has worked at King's Funeral Home since 1964. He worked for Chris King from 1980-1997 and became manager of King's Funeral Home in 1991 when Chris King took him to the South Carolina State Board of Funeral Service. The testimony of all parties and the testimony of Moses Caldwell established that he was a key employee and integral to the success of King's Funeral Home. Moses Caldwell continued to work for Margie King and her children from the time of Chris King's death on September 1, 1997, until on or about December 8, 1998. The children of Christopher and Margie King felt betrayed when Moses Caldwell remained as manager of King's Funeral Home at 135 Cemetery Street following Patricia King's eviction action.

6. King's Funeral Home, located at 135 Cemetery Street, averaged performing a little over one hundred funerals per year from 2000-2009, per the testimony of manager Moses Caldwell. Mr. Caldwell further testified that the average cost of funerals at King's Funeral Home for that time period was \$5,000 - \$5,500. Gross income from funeral services for that period of time was therefore approximately \$500,000/year.

7. During Christopher King's ownership of King's Funeral Home as a sole proprietorship of from 1980-1997, King's Funeral Home performed a significant percentage of the funerals in the Chester area for African-American families.

8. Patricia King acknowledged that the name King's Funeral Home had value in December 1998 and continues to have value as part of goodwill. She further acknowledged that Moses Caldwell was a part of the goodwill of King's Funeral Home as, "the key man." Patricia King did not pay any money to the Defendants for the goodwill of King's Funeral Home.

9. King's Funeral Home is facility number 81, as provided by the South Carolina State Board of Funeral Service and has used that facility number since its inception in the 1930s or 1940s.

10. Although Patricia King began operating her own sole proprietorship at 135 Cemetery Street in December 1998, she had the benefit of 17-18 years of goodwill established by the work of her brother Christopher King and the presence of Chris King's key manager Moses Caldwell.

11. Moses Caldwell's salary at King's Funeral Home as of August 2010 was \$600/week.

CONCLUSIONS OF LAW

This Court, based on the Findings of Fact hereinabove, makes the following Conclusions of Law:

1. Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights. To maintain an action for conversion, the party must establish either title to or right to possession of the personal property in issue. Weinberg v. Wallace, 314 S.C. 183, 442 S.E.2d 211 (Ct. App. 1994). Defendants allege that Plaintiffs have unlawfully retained the income from King's Funeral Home since she took over the business in December, 1998. However, because Patricia King is the owner (sole proprietor) of King's Funeral Home, she cannot be liable for conversion of the income from King's Funeral Home. Defendants' Counterclaim for Conversion is therefore not a viable claim.

2. Promissory Estoppel has four elements: "(1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury in reliance on the promise" Craft v. S. Carolina Commission for Blind, 385 S.C. 560, 685 S.E.2d 625 (Ct. App. 2009). Defendants have alleged that Plaintiffs promised to deed the property located at 135 Cemetery Street back to Chris King and/or his Estate. However, the alleged promise required the full repayment of a loan to Plaintiffs which Chris King was not able to pay, due to his extended illness from cancer and then his death on September 1, 1997. Therefore, Defendants' claim for Promissory Estoppel fails.

3. Unjust Enrichment is established when a party, "...has and retains benefits or money which in justice and equity belong to another". Dema v. Tenet Physician Servs. -Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The remedy for unjust enrichment is restitution. See Sauner v. Pub. Serv. Auth. of S.C. 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003)

(‘Restitution is a remedy designed to prevent unjust enrichment.’). To recover restitution in the context of unjust enrichment, a plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value. Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012); Niggel Assocs., Inc., v. Polo’s of N. Myrtle Beach, Inc., 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988). Here, Defendants conferred the goodwill of King’s Funeral Home which Chris King had developed over seventeen years as sole proprietor, to Plaintiff Patricia King. Patricia King realized value from that goodwill from the moment she established her sole proprietorship in December 1998. She had the advantage of the good name of King’s Funeral Home which her brother Chris King had cultivated since taking over the business from their parents. It is undisputed that Patricia King did not pay the Defendants anything for the value of the name King’s Funeral Home. It would be inequitable for Patricia to retain the benefit without paying the Defendants for the value. The new sole proprietorship owned by Patricia King as of December 1998 was far from a start-up business. It had significant value as a result of the name and manager Moses Caldwell, such that it generated an average gross revenue of \$500,000/year from 2000-2009. Although goodwill is difficult to evaluate in any small business, the revenue generated on an annual basis provides an adequate basis to quantify that value. The Court finds that an award of One Hundred Thousand (\$100,000) Dollars as restitution for the value of the name is a reasonable sum for Plaintiffs to pay for this equitable claim.

4. Civil Conspiracy consists of three elements; “(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.” Benedict College v. National Credit Systems, Inc., 400 S.C. 538, 735 S.E.2d 518 (Ct. App. 2012). “In a civil conspiracy claim, injury to the plaintiff need not be the only purpose behind the tortfeasor’s conduct; many conspiracies will be at least partly motivated by the tortfeasor’s desire to protect or benefit the tortfeasor’s own lot. To be actionable, therefore, a conspiracy’s ‘primary purpose or object’ must be ‘to injure the plaintiff’” Lee v. Chesterfield Gen. Hosp., Inc., 289 S.C. 6, 13, 344 S.E.2d 505, 511 (2006); see also Pye v. Estate of Fox, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). As the proof developed in the trial, Plaintiffs began conspiring to oust the Defendants beginning on the day of Chris King’s funeral. The conspiracy between Patricia King and Robbie King Jones continued throughout 1998 culminating in the filing of this civil action in November, 1998 and an ejectment action in Chester County Magistrate’s Court at that same

time. The conspiracy also included the acquisition of key man Moses Caldwell to manage King's Funeral Home as he had since 1991 under the tutelage of Chris King.

The special damages incurred by the Defendants as a result of the conspiracy included the loss of the valuable services of thirty-four year employee Moses Caldwell to Patricia King's new business. Special damages also include the attorney's fees and costs incurred for the defense and of this action and prosecution of the counterclaim for civil conspiracy since 1998. It is somewhat of a challenge to categorize attorney's fees for only the claim of civil conspiracy but given the protracted nature of this litigation, attorney's fees in the sum of Twenty-Five Thousand (\$25,000) Dollars appears to be reasonable. A reasonable calculation of special damages for the loss of manager, Moses Caldwell would be his average salary for a period of one year which according to his testimony equals Thirty Thousand (\$30,000) Dollars.

5. Punitive damages are recoverable for the tort of civil conspiracy where willfulness is shown by clear and convincing evidence. Peoples Fed. Sav. & Loan Assn. of S.C. v. Res. Planning Corp., 358, S.C. 460, 596 S.E.2d 51 (2004). Defendants plead in their counterclaim that the Plaintiffs conspired illegally and unlawfully and seek punitive damages for their willful conduct. Defendants have met their burden of proof and are entitled to punitive damages. In considering punitive damages, I am mindful of the factors set forth in Jenkins v. Few, 391 S.C. 209, 705 S.E.2d 457 (Ct. App. 2010) (citing Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (2009)). This case cites a three part test to consider in considering the award of punitive damages, to wit: 1) the degree of reprehensibility of the conduct 2) the disparity between the actual harm suffered and the amount of punitive damages awarded and 3) the difference between punitive damages awarded by the fact finder and those awarded in similar cases. In considering the factor of the reprehensibility of the conduct in this case, the timing of Plaintiffs' actions in regard to the civil conspiracy is the thing that I find most reprehensible. Plaintiffs, primarily Plaintiff Patricia King, took steps to injure the Defendants at the time when they were most vulnerable. Patricia King sent a Notice to Vacate to her brother Chris King while he was dying (only twelve days before his death) requiring him to vacate the premises at 135 Cemetery Street within 30 days. The Plaintiffs then compounded this action by calling a meeting at the King home place on the day of Chris King's funeral where Plaintiffs told Chris King's children that they had to get out of the building at 135 Cemetery Street immediately. The degree of injury to the Defendant Margie B. King, the widow of Chris King and to two of his children Robbie P. I. King Boyd and Nelson M. King was devastating. The intentional actions of the Plaintiffs at the time of their brother's death were incredibly insensitive and reprehensible such

that a substantial award of punitive damages is appropriate. As to the second factor, the punitive award set forth below is within reasonable relation to the actual damages. The amount of punitive damages that I find appropriate is about 7.25 times the amount of the actual damages for the civil conspiracy claim and that ratio is in line with several South Carolina cases cited in Mitchell v. Fortis Ins. Co., supra, 686 S.E. 2d at 188. As to the third factor, I have not located a similar case. Taking these three factors into account, I find that an award of Four Hundred Thousand (\$400,000) Dollars punitive damages is appropriate.

THEREFORE, IT IS ORDERED that:

- (1) Defendants cannot recover on their counterclaims for conversion or promissory estoppel;
- (2) Defendants are awarded One Hundred Thousand (\$100,000) Dollars as restitution on their counterclaim for unjust enrichment;
- (3) Defendants are awarded special damages (actual damages) on their civil conspiracy counterclaim of Thirty Thousand (\$30,000) for the loss of key employee Moses Caldwell and Twenty-Five Thousand (\$25,000) Dollars for reasonable attorney's fees;
- (4) Defendants are awarded Four Hundred Thousand (\$400,000) Dollars punitive damages on their civil conspiracy counterclaim;

AND IT IS SO ORDERED, this the ____ day of _____ 2015.

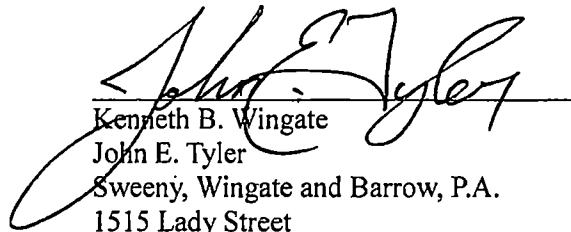
Columbia, South Carolina

James C. Harrison, Jr.
Special Referee

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED
JUL 11 2016
SC Court of Appeals


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July 11, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

RECEIVED

Case No. 1998-CP-12-00325

JUL 11 2016

SC Court of Appeals

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

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

v.

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

PROOF OF SERVICE

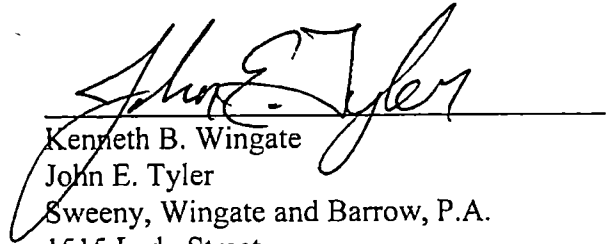
I certify that I have served the Final Brief of Appellant, the Certificate of Counsel and the Record on Appeal on Respondents Margie B. King and Robbie Ione King, Individually, and as Co-Representatives of the Estate of Christopher C. King (deceased) by depositing a copy of the same in the United States Mail, Postage Prepaid, on July 11, 2016, to Margie B. King and Robbie Patricia Ione King, 228 East Black Street, Rock Hill, South Carolina 29730.

I further certify that I have served the Final Brief of Appellant, the Certificate of Counsel and the Record on Appeal on Respondent Nelson M. King, by depositing a copy of the same in the United States Mail, Postage Prepaid, on July 11, 2016, to Nelson M. King, 1517 Shadewood Court, Rock Hill, South Carolina 29732.

I further certify that I have served the Final Brief of Appellant, the Certificate of Counsel and the Record on Appeal on Robbie King Jones, by depositing a copy of the same in the United States Mail, Postage Prepaid, on July 11, 2016, to Robbie King Jones, 4332 Hyde Park Drive, Charlotte, North Carolina 29216.

(SIGNATURE PAGE TO FOLLOW)

July 11, 2016

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
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James C. Harrison, Jr., Special Referee

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Case No. 1998-CP-12-00325

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King (deceased) and Nelson M. King.....Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING RELIEF WHICH RESPONDENTS DID NOT SEEK?
2. DID THE TRIAL COURT ERR IN GRANTING RELIEF WHICH WAS INCONSISTENT WITH THE RECORD OF THIS CASE?

STATEMENT OF THE CASE

This aged case involves the dispute of family members over fractional shares of a funeral home business in Chester, South Carolina—King's Funeral Home. Appellant Patricia King filed a complaint in the above-referenced case on or about November 12, 1998. The Complaint alleged causes of action against Respondents for breach of contract, recourse against accommodation party, accounting and distribution of profits, appointment of receiver, injunction, fraudulent conveyance, breach of trust, conversion, failure to pay rent, and ejectment. (R. pp. 30-48). Among other things, Appellant's Complaint asserted that she had a one-ninth ownership interest in King's Funeral Home.

Respondents filed an Answer and Counterclaim on or about December 11, 1998. The Answer raised five defenses and asserted counterclaims against Appellant for intentional interference with contractual relations, conversion, action for partition of real property, a claim based on constructive trust, and promissory estoppel. (R. pp. 49-58). Subsequently, the case was referred to Special Referee James Harrison by Order of Reference signed by the Honorable Lee S. Alford on May 18, 2001 and filed on May 30, 2001. (R. pp. 3-4).

During this time, and until he abandoned her case, Appellant was represented by an attorney Cletus Okpalaeké, who was later disbarred. *See In re Okpalaeké*, 374 S.C. 186, 648

S.E.2d 593 (2007). Subsequent to the 2001 Order of Reference, on August 6, 2004, an order of dismissal signed by Judge Kenneth Goode dismissed Appellant's complaint and preserved Respondents' counterclaims. Due partly to the acts and omissions of Mr. Okpalaeke, Appellant's action was dismissed with prejudice for failure to prosecute. Respondents' counterclaims, however, were preserved for litigation. By Order filed March 28, 2007, this Court affirmed Judge Goode's 2004 Order of dismissal.

After this Court's ruling and until January 2010, the parties obtained new counsel and attempted to settle. When settlement attempts proved unsuccessful, Appellant retained the undersigned to defend against the Respondents' counterclaims. In June 2010, Respondents filed amended counterclaims and Appellant replied shortly thereafter. (R. pp. 59-68). In their amended counterclaims, the Respondents asserted the following causes of action:

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

See Def.'s Am. Countercl., June 11, 2010. (R. pp. 59-68). On August 16, 2010, the Special Referee held an evidentiary hearing to determine whether the Respondents were entitled to an accounting. At the August 16, 2010 evidentiary hearing, counsel for

Respondents called three witnesses: Respondent Robbie Patricia Ione King, John R. Christopher King, and tax attorney David Siddons. Appellant called three witnesses: Moses Caldwell, tax preparer George Ledbetter, and Appellant Patricia King. (R. pp. 69-491). After carefully reviewing the testimony of the witnesses and the documents admitted into evidence, the Special Referee denied Respondents' counterclaim for an accounting. (R. pp. 5-17).

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

By motion dated March 25, 2011, Appellant moved for summary judgment as to Respondents' remaining counterclaims. In their brief, the Defendants conceded the following counterclaims to be moot: Accounting, Attachment of Property, Action for Partition of Real Property, and Breach of Fiduciary Duty of Care. Upon hearing the motion on April 5, 2015, the Special Referee issued an Order filed on March 9, 2015, holding that punitive damages is an element of damages and not a separate tort claim, and holding that the remaining counterclaims for final hearing in this case were:

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

(R. pp. 18-19).

On April 29, 2015, the lower court held an evidentiary hearing on these remaining counterclaims. At the hearing, Respondents presented the testimony of Alexander Cornwell, Seymour Wilder, John R. C. King, Nelson M. King, and Robbie King Boyd. Appellant presented the testimony of Patricia King. (R. pp. 492-791).

At the close of the evidence offered by Respondents, Appellant made motions pursuant to Rule 50(a) SCRCF for directed verdict as to each of the Respondents' remaining claims. The court granted Appellant's directed verdict motions dismissing the following counterclaims: Constructive Trust, Trespass to Land, Intentional Interference with Contractual Relations, Trespass to Chattel, and Waste. The court denied Plaintiff's motions for directed verdict as to the following claims:

1. Unjust Enrichment / Restitution and Disgorgement¹
2. Civil Conspiracy
3. Conversion
4. Promissory Estoppel

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

After receiving the transcript of the hearing and reviewing proposed orders from both sides, the Special Referee issued his Final Order, which was filed September 21, 2015. (R. pp. 20-27). Though the undersigned did not receive a copy of the order from the Special

¹ While Defendants in their Amended Counterclaims pled these as two separate causes of action, Defendants agreed at the 4/29/2015 hearing that this is a cause of action for Unjust Enrichment seeking the remedy of Restitution and Disgorgement. (R. p. 694, line 2).

Referee until September 28, 2015, the Special Referee informed all counsel of the existence of the order on September 18, 2015, via email. In an abundance of caution and in light of the Court of Appeals' holding in *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina LLC*, App. Case No. 2015-000157 (Aug. 26, 2015) that "the time for initiating the appeal [begins] to run 'from receipt of written notice of entry of the order,' not 'receipt of the decision,'" the undersigned obtained the order directly from the Clerk of Court's office after its filing and filed a Motion to Alter or Amend pursuant to Rule 59(e) on September 28, 2015. The Special Referee granted in part and denied in part Appellant's Motion to Alter or Amend. (R. pp. 28-29). Appellant received notice of the entry of this order via email on October 7, 2015. On November 5, 2015, Appellant timely filed her Notice of Appeal as to the Orders referenced above. Appellant brings this appeal on a limited issue: whether the trial court was right to grant relief which the Respondents did not seek, the name King's Funeral Home.

Throughout the seventeen year litigation of this ancient case, Respondents never once sought for the lower court to award the use of the name "King's Funeral Home."

FACTS

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

C. King.

W. R. King and Ellen King had nine children. Among those children were Appellant Patricia E. King as well as Christopher C. King, deceased, the husband and father of Respondents. In 1975, W. R. King died intestate. Prior to 1980 and during the life of Ellen King, Christopher King ran a business named "King's Funeral Home" at 127 Cemetery Street as a sole proprietor (hereinafter "Christopher's KFH"). (R. pp. 9-12).

In September 1997, Christopher King died of cancer. After his death, Christopher's KFH located at 135 Cemetery Street was run by his widow, Respondent Margie King, and his surviving children, Respondent Robbie Patricia Ione King, Respondent Nelson M. King, and John R. Christopher King. (R. pp. 12-13). The family of Christopher King continued to operate this business, located at 135 Cemetery Street, until December 1998. On December 8, 1998, the family of Christopher vacated the premises. (R. p. 13). On the same day, someone simultaneously removed from the building most of the operating assets of Christopher's KFH, including vehicles, caskets, embalming table and supplies, pews and other items. (R. p. 12). On that day, John King opened a new business named "Christopher King's Funeral Home," located at 703 Old York Road in Chester, South Carolina. (R. p. 13). He kept the telephone number of Christopher's KFH which was owned and operated by Christopher King, (803)377-1144. (R. p. 13). Appellants kept the BB&T bank account for Christopher's KFH which was owned and operated by Christopher King and removed Appellant's name from the account. (R. p. 399, lines 3-4). The family of Christopher King still operates this funeral home.

After the family of Christopher King vacated Patricia King's property located at 135

Cemetery Street, Appellant Patricia King began operating in her building and on her property a sole proprietorship named “King’s Funeral Home” (hereinafter “Patricia’s KFH). (R. p. 13). None of the assets owned by the previous occupant—the funeral home business run by Christopher King and his family—were available to Appellant. (R. p. 13). To date, Appellant Patricia King operates her funeral home in the building and on the property located at 135 Cemetery Street in Chester, South Carolina.

ARGUMENTS

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

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

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

Appellant had no notice that Respondents could be awarded the name King’s Funeral Home. Throughout the seventeen-year course of litigation—pleadings, amended pleadings, countless hearings, nearly a dozen attorneys, two merits hearings, discovery, and multiple appeals—Respondents never sought the name King’s Funeral Home. After the final hearing, Respondents submitted a Proposed Order in which they listed everything they believed they

were entitled to receive. (R. p. 792-799). Respondents' proposed order is devoid of any such award. Rather, the Special Referee reached this conclusion of his own volition, without notice to either party. In fact, the Special Referee's Order contains the following: "The Court is aware of the fact that [Respondents] have not specifically requested *in specie* restitution, but I find that this remedy is reasonably pled by [Respondents] in their prayer 'for other and further relief as is equitable in the circumstances and (as) this Court deems just and appropriate.'" (R. p. 26, ¶ 5).

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

The same analysis applies in the case at hand. Though they could have pled for such relief in their Counterclaims or Amended Counterclaims, and though they could have argued for such relief at multiple hearings throughout the seventeen year history of this litigation, at no point did the Respondents request the use of the name King's Funeral Home. Instead, the Special Referee found that a vague prayer for relief covered a very specific remedy. In doing so, the Court relied on Rule 54(c) as interpreted by *Battery Homeowners Ass'n v. Lincoln Fin.*

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

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

This Court need look no further than Respondents' proposed Order where Respondents clarified the relief they were seeking under the unjust enrichment claim: the monetary value of "the goodwill of King's Funeral Home which Chris King had developed over seventeen years as sole proprietor." (R. p. 797). The Special Referee rightly held that Respondents failed to establish the value of this claim: "There is no evidence in the record of the value in monetary terms of the name King's Funeral Home." (R. p. 26).

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

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

During the pendency of this litigation, Respondents sought monetary damages

associated with the business King's Funeral Home. They attempted to establish that they had an interest in the business run by Patricia King. After failing to establish any ownership interest in Appellant's business, they attempted to establish an entitlement to the monetary value associated with the goodwill of King's Funeral Home cultivated by Chris King.

Thus, Appellant was on notice that Respondents sought the value associated with goodwill. Therefore, at trial, Appellant put forth evidence defending against this claim. On Schedule E of the Inventory and Appraisalment which Respondents filed on behalf of the estate of Christopher King (R. p. 427-433), they specifically listed King's Funeral Home as an asset. (R. p. 429). The value Respondents assigned to the business was zero. (R. p. 427). Respondents' own admission is the only evidence in the record establishing the value of the claim they sought—zero. Again, the Special Referee rightly held that Respondents failed to prove the value of their only viable claim.

For the reasons stated *supra* and those state *infra* under the law of the case analysis, therefore, since the Appellant did not have notice of the issue, she was not able to offer evidence which could have swayed the court, such as whether the Respondents ever sought to register the name with the South Carolina Secretary of State or whether Respondents ever abandoned a trademark with the United States Patent and Trademark Office. The Special Referee spontaneously injected and granted a new remedy not sought by the parties and one which the Appellant did not have the opportunity to defend. Although the Special Referee finds that ordering Patricia King to cease using the name King's Funeral Home is an equitable remedy, equity does not yield to her legal rights and constitutional right of due process for the opportunity to defend against a claim that resulted in an adverse ruling. The evidence

established that the name “King’s Funeral Home” has been in the King family since W.R. and Ellen King started a business approximately 75 years ago. Such an award should not be made without Appellant having the opportunity to defend against it.

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

Even if the ownership of the name had at one time been before the trial court, the relief granted was inconsistent with the trial court’s prior ruling. Furthermore, the relief granted is improper because the Respondents’ failed to exhaust their administrative remedies.

A. The prior order by the Special Referee precluded the Court’s ability to award ownership of the name to Respondents.

As a gateway issue for the litigation of all of their claims and pursuant to the counterclaim for an Accounting, the Special Referee held an evidentiary hearing to determine whether Respondents were entitled to an accounting. (R. p. 69-491). The ownership of the business King’s Funeral Home was the focus of this hearing and the Special Referee’s Order denying the counterclaim. (R. p. 5-17).

During the pendency of this action, the South Carolina Supreme Court has held as follows:

Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. C.J.S. Appeal & Error § 991 (2008); see also Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); In re Morrison, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); Cooper Tire & Rubber Co. v. Perry et al, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case);

Watkins v. Hodge, 232 S.C. 245, 247–48, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal).

Judy v. Martin, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009) (emphasis added). Since the South Carolina Court of Appeals upheld S.R. Harrison’s Order, it is the law of the case and precluded Respondents from relitigating issues that should have been raised on appeal as well as issues that were rejected by the Court of Appeals. Therefore, the Order in its entirety contains the law of this case, and any further consideration of those issues ruled upon by the trial court is precluded.

The Special Referee’s Order as to Accounting found that Appellant is the sole proprietor of the business King’s Funeral Home. That Order holds that “[t]he funeral home business that Patricia has been operating since 1998 is a new business entity that Patricia started. . . . [T]hat business is a separate entity and not a continuation of the business operated by Chris.” (R. p. 16). The testimony of the August 16, 2011 hearing and the exhibits admitted into evidence during that hearing establish that Patricia E. King is the sole proprietor and rightful owner of the King’s Funeral Home. The order further held that the assets required to operate a funeral home were removed from the building prior to Appellant’s starting her sole proprietorship. (R. p. 12). The Order denying the claim for an accounting was affirmed by this Court and is the law of this case. *Judy v. Martin*, 381 S.C. 455, 674 S.E.2d 151 (2009).

After Respondents failed to establish any ownership right to Appellant’s business, Respondents lost the ability to seek ownership of the business and its assets. When the trial court found that Patricia King is the rightful owner of the business currently operating as

King's Funeral Home, by reasonable inference, any and all assets of that business are necessarily Appellant's. The Special Referee's subsequent ruling that a particular asset of the business—the name of the business—contradicts his prior ruling and therefore, under the law of the case doctrine, that portion of the order should be vacated.

B. The remedy awarded is improper because Respondents failed to exhaust available administrative remedies.

Additionally, the remedy awarded is improper as the Respondents failed to exhaust the administrative remedies necessary to obtain the name “King's Funeral Home.” The general rule in South Carolina is that “administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule.” *Hyde v. South Carolina Dept. of Mental Health*, 314 S.C. 207, 422 S.E.2d 582 (1994).

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

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

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

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

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

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

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

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

(R. p. 583, line 17 -- p. 584, line 5; p. 584 lines 17-21).

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

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

17 A. No. My mother and father.

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

21 A. Uh-huh.

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

23 A. I suppose so. It's still on the wall.

24 Q. And it's still on the wall today?

25 A. Yes, sir.

1 Q. And, Ms. King, was that the end of that
2 discussion with the state board, that you kept that license

3 number, and you kept the name King Funeral Home?
4 A. Uh-huh. 'Cause they called me two or three
5 times. John Richard tried to get the name, and they told -
6 - it was three times they called. He used -- he tried to
7 get the name one time, and I think it was indicated he
8 couldn't do that. And then he tried to do another name,
9 and he already testified he had to go and change his name
10 to Christopher -- John Richard Christopher King.

...

24 Q. The name is King, K-i-n-g, Funeral Home? Or
25 King's --

1 A. Yeah, and the apostrophe S.

2 Q. King's Funeral Home. And in your discussions
3 with the board, after your brother's death, did you -- did
4 you ever apply for another name?

5 A. I didn't have no reason to; the board had
6 approved that.

7 Q. Didn't apply for a new --

8 A. 'Cause I'm a King myself.

9 Q. Didn't apply for a new number, either.

10 A. No. Because the board had granted us that.

11 Q. And your -- the funeral home in Charlotte -- the
12 funeral home in Charlotte, that your brother Sonny started,
13 was also known as King's --

14 A. That's correct.

(R. p. 752, line 14 – p. 753, line 10; p. 754, line 24 – p. 755, line 14).

Even though Appellant was not afforded the opportunity to defend against the relief awarded, the testimony of John R. C. King together with Appellant Patricia King establishes that Respondents did not file anything with the South Carolina Board of Funeral Service seeking the name “King’s Funeral Home.” To the extent that this division of LLR denied Respondents the right to use the name King’s Funeral Home, the same should have been appealed to the Administrative Law Court consistent with SC Code § 40-1-160 and the *Hyde* case.

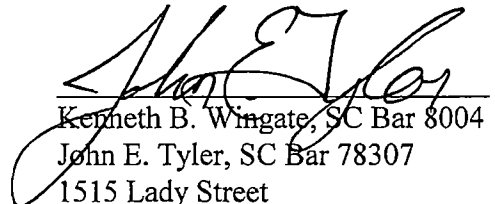
Therefore, the Special Referee's holding for Patricia E. King to cease the use of the name "King's Funeral Home" was improper because the Defendants failed to exhaust the appropriate administrative remedies before bringing an action with the court. Furthermore and related to arguments raised *supra*,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

CONCLUSION

For the reasons stated, the Court should overturn the portion of the Order and findings of the Special Referee which would require Appellant Patricia King to cease using the name "King's Funeral Home."

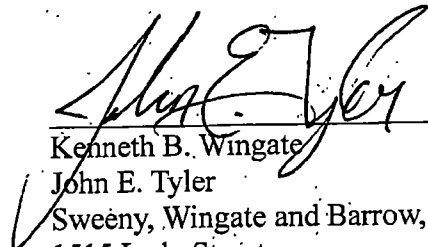
SWEENEY, WINGATE & BARROW, P.A.

July 11, 2016


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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief complies with Rule 211(b),
SCACR.


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July 11, 2016

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

RECEIVED

Case No. 1998-CP-12-00325

JUL 11 2016

SC Court of Appeals

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

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

v.

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

PROOF OF SERVICE

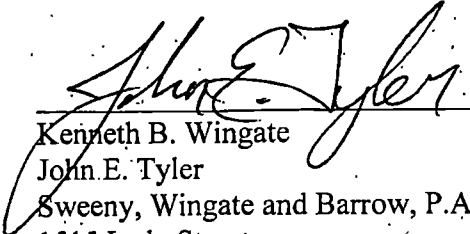
I certify that I have served the Final Brief of Appellant, the Certificate of Counsel and the Record on Appeal on Respondents Margie B. King and Robbie Ione King, Individually, and as Co-Representatives of the Estate of Christopher C. King (deceased) by depositing a copy of the same in the United States Mail, Postage Prepaid, on July 11, 2016, to Margie B. King and Robbie Patricia Ione King, 228 East Black Street, Rock Hill, South Carolina 29730.

I further certify that I have served the Final Brief of Appellant, the Certificate of Counsel and the Record on Appeal on Respondent Nelson M. King, by depositing a copy of the same in the United States Mail, Postage Prepaid, on July 11, 2016, to Nelson M. King, 1517 Shadewood Court, Rock Hill, South Carolina 29732.

I further certify that I have served the Final Brief of Appellant, the Certificate of Counsel and the Record on Appeal on Robbie King Jones, by depositing a copy of the same in the United States Mail, Postage Prepaid, on July 11, 2016, to Robbie King Jones, 4332 Hyde Park Drive, Charlotte, North Carolina 29216.

(SIGNATURE PAGE TO FOLLOW)

July 11, 2016



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

Of Whom Patricia E. King is the Appellant,

v.

Margie B. King and Robbie Patricia Ione King,
individually and as co-personal representatives of the
Estate of Christopher C. King, deceased, and Nelson M.
King, Respondents.

Appellate Case No. 2015-002289

Appeal From Chester County
James C. Harrison, Jr., Special Referee

Unpublished Opinion No. 2018-UP-128
Submitted September 1, 2017 – Filed March 21, 2018

AFFIRMED

Kenneth B. Wingate and John Earle Tyler, both of
Sweeny Wingate & Barrow, PA, of Columbia, for
Appellant.

Margie B. King, Robbie Patricia Ione King, and Nelson
M. King, all of Rock Hill, pro se.

PER CURIAM: Patricia E. King appeals an order by the special referee awarding Respondents use of the business name "King's Funeral Home," arguing the special referee erred by granting such relief because (1) Respondents did not seek it and she was therefore denied due process, (2) factual findings in a prior order, which was affirmed on appeal, precluded the award under the law of the case doctrine, and (3) Respondents failed to exhaust administrative remedies. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *Blanton v. Stathos*, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002) ("Due process is flexible and calls for such procedural protections as the particular situation demands."); *id.* at 542, 570 S.E.2d at 569 ("The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."); Rule 54(c), SCRCR ("Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."); *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our [c]ourt looks for guidance to cases interpreting the federal rules."); *Robinson v. Lorillard Corp.*, 444 F.2d 791, 803 (4th Cir. 1971) (recognizing Rule 54(c), FRCP, "has been liberally construed, leaving no question that it is the court's duty to grant whatever relief is appropriate in the case on the basis of the facts proved").

As to issue 2: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.").

As to issue 3: *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994) ("Whether administrative remedies must be exhausted is a matter within the trial [court]'s sound discretion and [its] decision will not be disturbed on appeal absent an abuse thereof."); *Stinney v. Sumter Sch. Dist.* 17, 391 S.C. 547, 550 n.1, 707 S.E.2d 397, 398 n.1 (2011) ("When an administrative remedy is not available for the injury suffered, the doctrine of exhaustion is not

applicable."); *id.* at 550 n.1, 707 S.E.2d at 398-99 n.1 ("This . . . suit was a tort claim, not a statutory violation for which the legislature has provided an administrative remedy. For that reason, exhaustion simply is inapplicable to the . . . suit.").

AFFIRMED.¹

LOCKEMY, C.J., and KONDUROS and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

86369

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

Case No. 1998-CP-12-00325

RECEIVED
APR 05 2018
SC Court of Appeals

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

Of whom, Patricia E. King is.....Appellant,
v.

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

PETITION FOR REHEARING

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Rock Hill, South Carolina 29732
Respondent, pro se

On April 29, 2015, the lower court held an evidentiary hearing on all remaining claims in this action. Rather than hearing closing arguments, the Special Referee requested each side submit proposed orders. In Respondents' Proposed Order, Respondents conceded that they failed to establish their claims multiple claims. (R. pp. 792-799). Therefore, only two causes of action remained for the Special Referee to address: Unjust Enrichment and Conversion.

After receiving the transcript of the hearing and reviewing proposed orders from both sides, the Special Referee issued his Final Order, which was filed September 21, 2015. (R. pp. 20-27). The Order awarded no monetary damages to Respondents. The Order required that Appellant Patricia King cease using the name King's Funeral Home and awarded use of the same name to Respondents. The undersigned filed a Motion to Alter or Amend pursuant to Rule 59(e) on September 28, 2015. The Special Referee issued a final order granting in part and denying in part Appellant's Motion to Alter or Amend. (R. pp. 28-29). Appellant received notice of the entry of the final order via email on October 7, 2015. On November 5, 2015, Appellant filed a Notice of Appeal as to limited issues contained in the orders referenced above. After Appellant filed an initial brief and designation of matter, prior counsel for Respondents successfully petitioned this Court to be relieved as counsel and Respondents proceeded *pro se* without filing a response or otherwise engaging in the appeal in any manner.

1. The record was finalized and the Final Brief of Appellant was filed on July 11, 2016. On September 1, 2017, the Clerk of Court submitted the case on the record and briefs to be decided without oral argument. Put simply the issue addressed in the Appeal whether the trial court erred in granting the name "King's Funeral Home" to Respondents.

On March 21, 2018, the Court issued Unpublished Opinion No. 2018-UP-129 affirming the lower court's order.

The Opinion states, as follows:

As to issue 1: *Blanton v. Stathos*, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002) ("Due process is flexible and calls for such procedural protections as the particular situation demands."); *id.* at 542, 570 S.E.2d at 569 ("The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."); Rule 54(c), SCRCP ("Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."); *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) ("In construing the South Carolina Rules of Civil Procedure, our [c]ourt looks for guidance to cases interpreting the federal rules."); *Robinson v. Lorillard Corp.*, 444 F.2d 791, 803 (4th Cir. 1971) (recognizing Rule 54(c), FRCP, "has been liberally construed, leaving no question that it is the court's duty to grant whatever relief is appropriate in the case on the basis of the facts proved").

...
As to issue 3: *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994) ("Whether administrative remedies must be exhausted is a matter within the trial [court]'s sound discretion and [its] decision will not be disturbed on appeal absent an abuse thereof."); *Stinney v. Sumter Sch. Dist.*, 17, 391 S.C. 547, 550 n.1, 707 S.E.2d 397, 398 n.1 (2011) ("When an administrative remedy is not available for the injury suffered, the doctrine of exhaustion is not applicable."); *id.* at 550 n.1, 707 S.E.2d at 398-99 n.1 ("This . . . suit was a tort claim, not a statutory violation for which the legislature has provided an administrative remedy. For that reason, exhaustion simply is inapplicable to the . . . suit.").

Pursuant to Rule 221, S.C.R.A.P., the Appellant Patricia King petitions the Court for rehearing on the ground that the Court overlooked or misapprehended the following points as noted below and as more fully discussed in the Final Brief of Appellant filed by Patricia King, which is incorporated herein as if fully restated:

1. **The Court overlooked or misapprehended the argument that Appellant was denied due process.** Both Appellant's Final Brief and the Court's Opinion cite *Blanton v.*

Stathos. In order to interpret *Blanton* and Rule 54(c), S.C.R.C.P., the Court's Opinion relies upon *Robinson v. Lorillard Corp*, 444 F.2d at 803. The facts of the *Robinson* case are distinct from this appeal, but the *Robinson* case's analysis of exceptions to the general rule are applicable.

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

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

Though the facts of the case are distinguishable, the rule as fully set forth by *Robinson* applies to this Appeal. The *Robinson* case sets forth a general rule and multiple exceptions to the general rule. The general rule is articulated as follows: "[Rule 54(c)] has been liberally construed, leaving no question that it is the court's duty to grant whatever

relief is appropriate in the case on the basis of the facts proved.” *Robinson* at 803. But there are two exceptions to the general rule outlined in the *Robinson* case and important to its holding:

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

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

In our case, because the obligation to provide back pay stems from the same source as the obligation to reform the seniority system, any general defenses relevant to the back pay award were equally relevant to the suit for injunctive relief. Any specific defenses related only to computation of back pay may be raised during the process of assessing individual back pay claims, possibly before a special master. The defendants have in no way been prejudiced by the belated claim.

Id. at 803. (emphasis added).

The substantial prejudice exception applies to Appellant. Respondents' failure to seek the particular relief substantially prejudices Appellant because all of her defenses presented at trial were geared toward the monetary damages sought by Respondents. As argued in Appellant's Final Brief, since Appellant did not have notice of the issue, she was not able to offer evidence which might have swayed the court as to the proper owner of the name, such as whether the Respondents ever sought to register the name with the South Carolina Secretary of State, whether Respondents ever abandoned a trademark with the United States Patent and Trademark Office, or other defenses unique to the specialized area of law associated

with trademark claims. In the cross-examination of Respondents' witnesses and in the direct examination of Appellant, Appellant successfully defended against the remedy sought by Respondents and the remedy that is customary to the claims brought by Respondents—a monetary award. Therefore, Appellant has been substantially prejudiced, and "Rule 54(c) does not sanction the granting of relief not prayed for in the pleadings." *Id.* at 803.

As for the other exception, the Respondents have indicated no desire for the remedy ordered by the Special Referee, therefore it should not be enforced. The record before this Court establishes the following: (1) Respondents did not plead the remedy awarded during the twenty years of this litigation; (2) Respondents did not seek the remedy awarded at any of the multitude of motions hearings and merit hearings during the twenty years of litigation; (3) Respondents did not offer testimony at any hearing about entitlement to the remedy; (4) Respondents specifically referenced all remedies they desired in their proposed order submitted subsequent to the final hearing, and that proposed order is devoid of any reference to the remedy awarded; and (5) Respondents have made no response in this Appeal which is entirely limited to the remedy awarded by the Special Referee.

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

2. **The Court overlooked or misapprehended the argument that Respondents failed to exhaust administrative remedies.** Appellant, in the alternative, argued that, even if the Respondents could be found to have been seeking the remedy awarded, they failed to

exhaust the administrative remedies that would have been associated with such a pursuit. Both Appellant and the Court cite *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. at 208, 442 S.E.2d at 582. In further addressing this argument, the Court's Opinion relies upon a footnote in *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. at 550 n.1, 707 S.E.2d at 398 n.1. The facts of the *Stinney* case are distinct from this appeal. The *Stinney* plaintiffs sued, in tort, the administrative board which denied plaintiffs their rights. The suit included a claim for the board's failure to follow disciplinary procedures. The equivalent in this action would be if Respondents believed that the South Carolina Board of Funeral Services (hereinafter, "Board") denied them their rights and therefore they sued the Board. The Board is the administrative authority governing funeral homes, including their licensure. However, in distinction from the *Stinney* case, the Board is not a party to this action.

There is evidence in the Record and in Appellant's Final Brief that Respondents attempted to register the name "King's Funeral Home" with the Board, and that the Board instructed that they could not use that name. There is evidence in the record that Appellant Patricia King followed appropriate formalities with the Board in maintaining the license of King's Funeral Home. To the extent that this division of LLR denied Respondents the right to use the name King's Funeral Home, the same should have been appealed to the Administrative Law Court consistent with SC Code § 40-1-160, as that is where any dispute over use of the name King's Funeral Home arose and that is the court which may have appropriate jurisdiction to address such issues.

Respondents' failure to exhaust administrative remedies after contacting the Board serves as further indication that Respondents were not seeking the name King's Funeral Home during the pendency of this litigation. Had they engaged in the administrative remedy process,

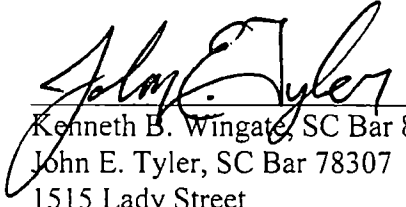
Appellant would have had notice and opportunity to defend against such a claim, as she is the proprietor of the business registered with the Board as King's Funeral Home. Therefore, Appellant respectfully requests the Court reconsider its Opinion.

CONCLUSION

WHEREFORE, for the reasons stated above, the Appellant Patricia King respectfully requests that the Court reconsider its Opinion and overturn the portion of the Order and findings of the Special Referee which would require Appellant Patricia King to cease using the name "King's Funeral Home."

SWEENEY, WINGATE & BARROW, P.A.

April 5, 2018


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**Attorneys for Appellant Patricia
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SWEENY WINGATE & BARROW P.A.

April 5, 2018

Reply to: Main Office
John E. Tyler
(803) 256-2233 x711
jet@swblaw.com

VIA HAND-DELIVERY

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

RE: Margie B. King v. Patricia King
Court of Appeals Case No. 2015-002289
Our File: 4022-7231

RECEIVED
APR 05 2018
SC Court of Appeals

Dear Ms. Kitchings:

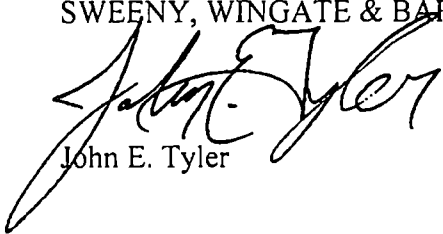
Enclosed please find the original and seven (7) copies of Respondent's Petition for Rehearing and the original and one copy of the Proof of Service in the above-referenced case. Please file the original and six copies of the main document and return a filed stamped copy to me of the same, and a filed stamped copy of the Proof of Service to our courier.

By copy hereof, all parties of record are being served with the above.

Thank you for your assistance in this matter and should you have any questions or concerns, please do you hesitate to contact me.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.


John E. Tyler

JET/smt

Enclosures

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

Case No. 1998-CP-12-00325

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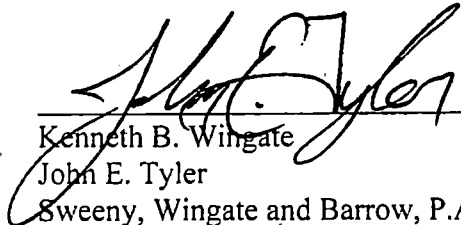
I certify that I have served the Petition for Rehearing on Respondents Margie B. King and Robbie Ione King, Individually, and as Co-Representatives of the Estate of Christopher C. King (deceased) by depositing a copy of the same in the United States Mail, Postage Prepaid, on April 5, 2018, to Margie B. King and Robbie Patricia Ione King, 228 East Black Street, Rock Hill, South Carolina 29730.

I further certify that I have served the Petition for Rehearing on Respondent Nelson M. King, by depositing a copy of the same in the United States Mail, Postage Prepaid, on April 5, 2018, to Nelson M. King, 1517 Shadewood Court, Rock Hill, South Carolina 29732.

I further certify that I have served the Petition for Rehearing on Robbie King Jones, by depositing a copy of the same in the United States Mail, Postage Prepaid, on April 5, 2018, to Robbie King Jones, 4332 Hyde Park Drive, Charlotte, North Carolina 29216.

(SIGNATURE PAGE TO FOLLOW)

April 5, 2018



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Attorneys for Appellant Patricia King

The South Carolina Court of Appeals

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

Of Whom Patricia E. King is the Appellant,

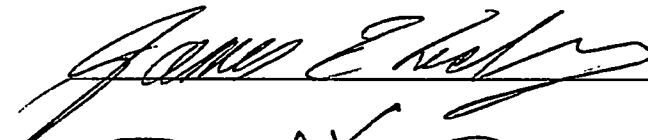
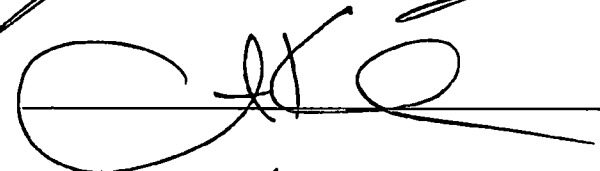
v.

Margie B. King and Robbie Patricia Ione King,
individually and as co-personal representatives of the
Estate of Christopher C. King, deceased, and Nelson M.
King, Respondents.

Appellate Case No. 2015-002289

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

FILED

May 24, 2018

App 000845

cc: Kenneth B. Wingate, Esquire
John Earle Tyler, Esquire
Margie B. King
Robbie Patricia Ione King
Nelson M. King
James C. Harrison, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee

RECEIVED

JUN 25 2018

S.C. SUPREME COURT

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

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

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

v.

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

PROOF OF SERVICE

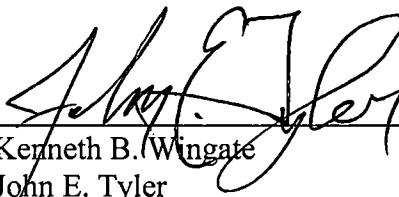
I certify that I have served the Appendix on Respondents Margie B. King and Robbie Ione King, Individually, and as Co-Representatives of the Estate of Christopher C. King (deceased) by depositing a copy of the same in the United States Mail, Postage Prepaid, on April 5, 2018, to Margie B. King and Robbie Patricia Ione King, 228 East Black Street, Rock Hill, South Carolina 29730.

I further certify that I have served the Appendix on Respondent Nelson M. King, by depositing a copy of the same in the United States Mail, Postage Prepaid, on June 25, 2018, to Nelson M. King, 1517 Shadewood Court, Rock Hill, South Carolina 29732.

I further certify that I have served the Appendix on Robbie King Jones, by depositing a copy of the same in the United States Mail, Postage Prepaid, on June 25, 2018, to Robbie King Jones, 4332 Hyde Park Drive, Charlotte, North Carolina 29216.

(SIGNATURE PAGE TO FOLLOW)

June 25, 2018

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line.

Kenneth B. Wingate

John E. Tyler

✓ Sweeny, Wingate and Barrow, P.A.

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

Attorneys for Petitioner Patricia King