

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge

Appellate Case No.: 2018-001605

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SC Court of Appeals

In the Matter of the Estate of Harriet Kathleen Henry Tims, Decedent,

Samuel H. Tims, individually and as Co-
Personal Representative of
the Estate of Harriet Kathleen Tims,..... Petitioner,
vs.

Michael Tims, individually and as Co-
Personal Representative of the
Estate of Harriet Kathleen Tims, ...Respondent,

and

Deborah T. Krane, individually and as Co-
Representative
of the Estate of Harriet Kathleen Tims, ...Appellant.

RECORD ON APPEAL

P. Brandt Shelbourne, Esq. (#15143)
Eric M. Campbell, Esq. (#101607)
SHELBOURNE LAW
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (ph)
843.875.2224(fax)
Counsel for Appellant

Mills Lane Morrison, Jr., Esq. (#68546)
Law Office of Darrell Thomas Johnson, Jr., LLC
Post Office Box 1125
Hardeeville, SC 29927
843.784.2142 (ph)
843.784.5770 (fax)
Counsel for Respondent Michael Tims

In the Matter of the Estate of Harriet Kathleen Henry Tims, Decedent

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE PROBATE COURT
CASE NO. 2016ES0700213

IN THE MATTER OF ESTATE OF
HARRIET KATHLEEN HENRY TIMS,

SAMUEL H. TIMS, individually and as a Co-
Personal Representative of the Estate of
Harriett Kathleen Tims,

Petitioner,

v.

MICHAEL TIMS, individually and as a Co-
Personal Representative of the Estate of
Harriett Kathleen Tims, and DEBORAH T.
KRANE, individually and as Co-Personal
Representative of the Estate of Harriett
Kathleen Tims,

Respondents.

ORDER FOR REMOVAL
TO CIRCUIT COURT

FILED
2017 JUN 13 AM 9:39
PROBATE COURT
BEAUFORT COUNTY, SC
2017 JUN 13 PM 2:58
CLERK OF COURT

This matter comes before the Court on Deborah T. Krane's Motion to Remove to Circuit Court the above-captioned formal proceeding, which was commenced by the filing of Samuel H. Tims' Summons and Petition for Declaratory Relief on May 19, 2017. The Petitioner filed an Amended Summons and Amended Petition for Declaratory Relief on May 22, 2017.

The subject Motion to Remove was filed with Respondent Krane's Answer, Counterclaims, and Crossclaims on June 6, 2017. The responsive pleading demands a jury trial and asserts that Ms. Krane has a right to the same and that the action "involves more than \$5,000.00 in value."

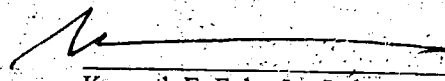
Under *S.C. Code Ann. § 62-1-302(d)(3)*, "actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value" must

be removed to the circuit court to proceed de novo, on motion of a party made not later than ten days following the date on which all responsive pleadings must be filed. The Motion herein was timely made, and the action appears removable under the statute. Moreover, such removal appears mandatory and not discretionary with the Probate Court, so no hearing is required.

Accordingly, it is ORDERED that Deborah T. Krane's Motion to Remove is granted, and the above-captioned action for declaratory relief, including all claims asserted therein by any party, is removed to the circuit to proceed de novo, pursuant to S.C. Code § 62-1-302(d).

The within removal applies only to the above-described action, and this Court retains exclusive jurisdiction over the administration of the above-referenced estate and the other formal proceedings pending herein with respect to the estate.

AND IT IS SO ORDERED.


Kenneth E. Fulp, Jr., Judge
Beaufort County Probate Court

Beaufort, South Carolina

June 13, 2017

CERTIFICATION OF COPY

This document consisting of 2 page(s) is hereby certified to be a true copy of the original document on file in the Probate Court of Beaufort County, South Carolina. In witness whereof, I have hereto set my official signature and affixed the seal of the Probate Court, at the County and State aforesaid.

Date 6/13/17 Name Diana Mitchell (Seal)
Title D clerk Beaufort County Probate Court
Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2017-CP-07-01180

In the Matter of the Estate of Harriet Kathleen
Henry Tims,)

Decedent,)

SAMUEL H. TIMS, individually and as a Co-
Personal Representative of the Estate of Harriet
Kathleen Tims,)

Petitioner,)

vs.)

MICHAEL TIMS, individually and as Co-
Personal Representative of the Estate of Harriet
Kathleen Tims and DEBORAH T. KRANE,
individually and as Co-Personal Representative
of the Estate of Harriet Kathleen Tims,)

Respondents.)

**ORDER ON CROSS SUMMARY
JUDGMENT MOTIONS**

THIS MATTER came before the Court on October 9, 2017 for a hearing on Respondent Deborah T. Krane's Motion for Summary Judgment, filed September 5, 2017, and Respondent Michael Tim's Motion for Partial Summary Judgment filed September 27, 2017¹. Having reviewed the Motions, memoranda in support and opposition thereof, filings in this matter and considered the arguments of Counsel, for the reasons contained herein, Respondent Krane's Motion for Summary Judgment is denied and Respondent Michael Tims' Motion for Partial Summary Judgment is granted.

¹ Petitioner Samuel Tims also filed a Motion for Summary Judgment on October 4, 2017 but subsequently withdrew the motion on October 10, 2017.

FACTUAL AND PROCEDURAL HISTORY

The parties in this action are siblings. A dispute has arisen between them involving real property located on Cloverdale² Drive in Beaufort County, South Carolina ("Cloverdale property"). The property in question is a 26.89 acre tract that was originally acquired by Respondent Michael Tims ("M. Tims") in 1993. It is uncontested that M. Tims purchased the property with his own funds. Resp't. M. Tims' Aff. ¶ 3.

The parties also agree that prior to the death of their mother, Harriet Kathleen Henry Tims ("Decedent"), she entered into a Land Exchange Agreement ("LEA") regarding the subject property with M. Tims. Ex. A, Am. Pet. At the time the LEA was executed on November 14, 2012, M. Tims was in danger of losing the property in question to foreclosure. *See e.g.* Resp't. M. Tims' Aff. ¶ 4; Res't Krane Mem., Oct 5, 2017. Because M. Tims was unable to refinance the property in his own name, the Decedent agreed that if the property were placed in her name, she would secure a loan from Palmetto Savings Bank to pay off M. Tims' existing Note with MCAS Federal Credit Union. Resp't. M. Tims' Aff. ¶ 6.

On November 14, 2012, the parties simultaneously executed a Deed to Real Estate, transferring title from M. Tims to the Decedent "in consideration of the sum of ONE and 00/100ths (\$1.00)." Ex. B, Am. Pet. The next day, November 15, 2012, Decedent executed a Promissory Note and Mortgage on the subject property. The Promissory Note was in the amount of Sixty-five Thousand, Two Hundred Eighty Dollars (\$65,280). Ex. C, Resp't Krane Aff. Thereafter on November 15, 2013, Decedent and Respondent M. Tims co-signed on a second loan secured by the Cloverdale property, the purpose of which was to invest in M. Tims' business located on the

² Beaufort County Tax Map Ref: R700-038-00-0052-000

subject property. Ex. E, Resp't Krane Aff. The Decedent then died on February 14, 2016 with the Cloverdale property in her name.

On March 4, 2016, following an informal application for appointment, Decedent's three children, Petitioner Samuel Tims ("S. Tims"), and Respondents M. Tims and Deborah T. Krane ("Krane") were appointed as co-personal representatives of her estate. *See* Beaufort County Probate Court Case No. 2016-ES-07-00213.

On May 19, 2017, Petitioner S. Tims filed a Summons and Petition for Declaratory Relief with the Beaufort County Probate Court. The Petition for Declaratory Relief was amended on May 22, 2017 and asks the Court to "inquire into the matters ... [and] determine the intent of the decedent when she executed the Land Exchange Agreement" pertaining to the Cloverdale property and enter a judgment declaring the rights of the parties involved in this action. Respondent M. Tims joined Petitioner's declaratory action in his Answer filed May 30, 2017.

On June 6, 2017, Respondent Krane filed a Motion to remove to the Circuit Court with her Answer asserting a Counterclaim and Crossclaims as well as demanding a jury trial on the basis that the amount in controversy is at least five thousand dollars in value. S.C. Code Ann. §62-1-302(d)(3). On June 13, 2017, the Beaufort County Probate Court issued an Order granting removal of Petitioner's action for declaratory relief, including all claims asserted therein by any party and retaining exclusive jurisdiction over the administration of the Estate and any other formal proceedings pending within the estate.

STANDARD OF REVIEW

Summary judgment is a drastic remedy that should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is appropriate when "the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The nonmoving party must come forward with specific facts showing a genuine issue for trial. *Id.* If not, summary judgment, if appropriate, and shall be entered against him. Rule 56, SCRPC.

ANALYSIS

I. Applicability of Nonclaim Statute

Krane takes the position that the Cloverdale property is an asset of the Estate of Harriet Kathleen Henry Tims, because the Decedent held title to the subject property at the time of her death. It is undisputed that neither Petitioner S. Tims nor Respondent M. Tims presented any claim against the estate within one (1) year of decedent's death relating to the subject property. Due to the non-moving parties' failure to file a claim against the estate within this time period, Respondent Krane claims to be entitled to summary judgment as a matter of law regarding any obligation of the Estate to return the property in question because these claims are now barred by South Carolina Probate Code's nonclaim statute.

In South Carolina, all claims against an estate, whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of the Decedent's death or eight (8) months after the first publication of notice. S.C. Code Ann. § 62-3-803. This statutory bar is not all encompassing. With respect to the estates of decedents and protected persons, the term claims "includes liabilities of the decedent ... whether arising in

contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent." S.C. Code Ann. § 62-1-201. However, the Probate Code expressly excludes disputes regarding the title of a decedent to specific assets alleged to be included in the estate. *Id. See also Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993) (dispute over title to a gun was not a claim for purposes of nonclaim statute).³

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

Because this action is one in which the dispute involves title to the Cloverdale property, property which Krane alleges to be included in the Decedent's estate, the nonclaim statute does not apply. Accordingly, Petitioner S. Tims and Respondent M. Tims' action is not time barred and Krane's Motion for Summary Judgement is denied.

³ Similarly, courts in other jurisdictions have generally found that disputes over title to specific items of real or personal property are not "claims" under statutory counterparts to S.C. Code Ann. § 62-3-804. *See, e.g., Matter of Estate of Powers*, 552 N.W.2d 785, 787 (N.D. 1996) (non-claim statute is not applicable to dispute involving title to vehicle asserted by virtue of joint tenancy interest); *In re Estate of Renczykowski*, 409 N.W.2d 888, 891 (Minn.App.1987) (claim for farm equipment and machinery commenced before decedent's death not barred by nonclaim statute); *Labayog v. Labayog*, 83 Hawai'i 412, 927 P.2d 420, 441 (App.1996) (motion to enforce divorce decree ordering deceased husband to convey property to children was a demand regarding title of decedent and not subject to the nonclaim statute).

II. Resulting and/or Constructive Trust

Respondent M. Tims claims entitlement to summary judgment on the issue of whether a resulting or constructive trust is or was created by the LEA and other agreements between the parties to the LEA. The evidence required to establish either a constructive or resulting trust must be clear, definite, unequivocal, and convincing. *Hodges v. Hodges*, 243 S.C. 299, 306, 133 S.E.2d 816, 819 (1963).

a. Resulting Trust

A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason, is titled in the name of another. *McDowell v. S.C. Dep't of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987). Generally, when real property is conveyed to one person but the consideration is paid by another, a presumption arises that the party who paid for it intended to benefit himself, and a resulting trust is created. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002); *Caulk v. Caulk*, 211 S.C. 573, 43 S.E.2d 600 (1947). This presumption may be rebutted and the actual intention shown by parole evidence. *Larisey v. Larisey*, 93 S.C. 450, 77 S.E. 129 (1913); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248-9, 489 S.E.2d 472, 475 (1997).

The determination of whether a resulting trust should be imposed is specific to the time of the transaction. South Carolina trust law is clear that a resulting trust "arises at the time the purchase is made. The funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Hodges v. Hodges*, 354 S.C. 299, 306-307, 133 S.E.2d 816, 819-820 (1963)(emphasis added).

It is undisputed that the property in question was transferred with the sole purpose of preventing its foreclosure. The record establishes that Respondent M. Tims purchased the property

in 1993 and in 2012 had an outstanding balance owed on the property of approximately Sixty-five Thousand and No Dollars (\$65,000.00). A recent appraisal⁴ on the subject property values it at Four Hundred Fifteen Thousand and No Dollars (\$415,000). These facts establish Respondent M. Tims, having possessed title to the property for almost twenty years, amassed considerable equity in the property, although the exact amount is unknown. After having paid the majority of the purchase price, M. Tims then placed title in his mother's name for nominal consideration in the amount of One Dollar (\$1). Thereafter, Respondent M. Tims continued to occupy the property and operate his business thereon, made all loan payments and paid expenses related to the property. Resp't M. Tims' Aff. These facts give rise to the presumption that M. Tims intended to benefit himself and a resulting trust was created.

Evidence to rebut the presumption of resulting trust must pertain to "the actual intent of him who pays the purchase price at the time of the transaction and limited according to his intention at that time..." *Larisey* at 450. Krane argues the LEA is "[a]t best, it is a contingent contract or agreement between Michael Tims and the decedent." Resp't. Krane Mem. Oct 5, 2017. This Court disagrees. The LEA states unequivocally that (1) Son (M. Tims) is the owner of the property; (2) Son (M. Tims) is indebted to MCAS Beaufort; (3) Mom (Decedent) will secure financing to pay off MCAS; (4) that Son (M. Tims) will deed the title of the property to Mom (Decedent) in Order to have a first Mortgage on the premises placed in her name.

Rather than rebut the presumption of a resulting trust in the instant case, the agreement supports the conclusion that at the time of the transfer, the Decedent was to hold the property in trust for his benefit. The Decedent's financial intervention and obligation to pay off Respondent

⁴ The appraisal is dated Feb. 14, 2016. The subject property was appraised as vacant land, and does not include any buildings on the property. *See* Beaufort County Probate Case No. 2016-ES-07-00213 at 260.

M. Tims indebtedness equates to a loan from Decedent to M. Tims. "Where a transfer of property is made to one person and the purchase price is advanced by him as a loan to another, a resulting trust arises in favor of the latter, but the transferee can hold the property as security for the loan." *Campbell v. Campbell*, 300 S.C. 68, 386 S.E.2d 305 (1989). There is no evidence that the parties intended the Decedent have an ownership interest in the subject property. This inference is further supported by language in the LEA which anticipates Mom being repaid for any monies expended upon the sale of the subject property and the property being deeded back to M. Tims at that time as his primary residence. Ex. A, Am. Pet.

Krane alleges Decedent paid significant sums of money either personally or through Ridings Corp.⁵ for improvements to the Cloverdale property and that she made all payments on the 2013 loan. See Resp't. Krane Aff. ¶7-10. "[E]vents subsequent to the purchase of the property and the transfer of the title may be considered in determining if a resulting trust was raised where they throw light on the intention with which the purchase was made," however, what is essential to the creation of a resulting trust is that the consideration for the purchase be paid at or before the time of the original transaction by the person claiming the benefit of the trust. *Ex parte Stokes*, 256 S.C. 260, 264-65, 182 S.E.2d 306, 308 (1971). At most, these facts give rise to the possibility that the Decedent may have an equitable interest in the property but it does not serve to rebut by clear and convincing evidence the presumption of a resulting trust in favor of Respondent M. Tims.

Viewing the evidence in the light most favorable to the non-moving party, the evidence clearly establishes Respondent M. Tims' paid all or some of the purchase price prior to the transfer and, in titling the property in the Decedent's name, intended to benefit himself. Respondent Krane

⁵ According to Resp. Krane, Decedent is the sole shareholder of Ridings Corporation. Resp't. Krane Aff. ¶ 2.

has failed to rebut the presumption of a resulting trust. There exists no genuine issue of material fact regarding the existence of a resulting trust and Respondent M. Tims' Motion for Partial Summary Judgment is granted.⁶

b. Constructive Trust

Because this Court finds the Decedent is the trustee of a resulting trust in favor of her son, Respondent M. Tims, it need not address the applicability of a constructive trust on these facts.

III. Jury Trial

Respondent M. Tims seeks an Order of this Court striking Respondent Krane's request for a jury trial on the basis that the complaint is equitable and her counterclaims/crossclaims are legal and permissive. Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (2004). An action to determine a resulting trust sounds in equity. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002). Defendant in action begun in equity who asserts permissive counterclaim that is legal in nature, is deemed to have waived right to jury trial on issues raised by counterclaims. *North Carolina Federal Sav. & Loan Asso. v DAV Corp.*, 294 SC 27, 362 SE2d 308. (1987). Respondent Krane's counterclaims are permissive as they involve claims regarding the handling of the Estate. Furthermore, cross-claims are always permissive and by asserting those, a party in action begun in equity loses any right it might otherwise have to jury trial on issues that cross-claims raise. *Id.* Accordingly, Respondent's Motion to strike Respondent Krane's request for a jury trial is granted.

⁶ In finding a resulting trust was created, the Court does not make any finding regarding what equitable interest, if any, the Decedent had in the subject property at the time of her death.

CONCLUSION

For the reasons stated herein, the Court finds as follows:

1. Respondent Krane's Motion for Summary Judgment barring Petitioner and Respondent M. Tims' claims on the basis of the nonclaim statute is DENIED.
2. Respondent M. Tims' Motion for Partial Summary Judgment regarding the existence of a resulting trust in his favor is GRANTED.
3. Respondent M. Tims' Motion for Partial Summary Judgment striking Respondent Krane's request for a jury trial is GRANTED.

IT IS SO ORDERED.

CARMEN TEVIS MULLEN
Fourteenth Judicial Circuit

_____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Samuel H Tims VS Michael Tims

Case Number: 2017CP0701180

Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2018-02-06 12:58:18 page 12 of 12

ELECTRONICALLY FILED - 2018 Feb 07 9:20 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180

ROA 0014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2017-CP-07-01180
	)	
IN RE: THE ESTATE OF HARRIET	)	
KATHLEEN HENRY TIMS,	)	
	)	
SAMUEL H. TIMS, individually and as a Co-	)	
Personal Representative of the Estate of Harriet	)	
Kathleen Tims,	)	
	)	ORDER GRANTING
	)	RESPONDENT KRANE'S
	)	MOTION FOR RECONSIDERATION,
	)	IN PART, AND DENYING, IN PART
Petitioner,	)	
	)	
vs.	)	
	)	
MICHAEL TIMS, individually and as Co-	)	
Personal Representative of the Estate of Harriet	)	
Kathleen Tims and DEBORAH T. KRANE,	)	
individually and as Co-Personal Representative	)	
of the Estate of Harriet Kathleen Tims,	)	
	)	
Respondents.	)	

THIS MATTER came before the Court upon Respondent Deborah Krane's Motion for Reconsideration of this Court's Order dated February 7, 2018 denying Respondent Krane's Motion for Summary Judgment and granting Respondent Michael Tims' Motion for Summary Judgment. Having fully considered the Motions in this matter as well as relevant case law, for the reasons stated below, Respondent Krane's Motion to Amend is granted, in part, and this Court's Order dated February 7, 2018 is amended to include additional findings of fact and conclusions of law. Respondent Krane's Motion to Amend is denied, in part, as to the arguments raised on the basis that previously raised are addressed in this Court's prior Order and the Court will not address new arguments which could have been raised previously but were not. *Keyes v. National R.R. Passenger Corp.*, 766 F. Supp. 277, 280 (E.D. Pa. 1991).

FACTUAL AND PROCEDURAL HISTORY

The parties in this action are siblings. A dispute has arisen between them involving real property located on Cloverdale¹ Drive in Beaufort County, South Carolina ("Cloverdale property"). The property in question is a 26.89 acre tract that was originally acquired by Respondent Michael Tims ("M. Tims") in 1993. It is uncontested that M. Tims purchased the property with his own funds. Resp't. M. Tims' Aff. ¶ 3.

The parties also agree that prior to the death of their mother, Harriet Kathleen Henry Tims ("Decedent"), she entered into a Land Exchange Agreement ("LEA") regarding the subject property with M. Tims. Ex. A, Am. Pet. At the time the LEA was executed on November 14, 2012, M. Tims was in danger of losing the property in question to foreclosure. *See e.g.* Resp't. M. Tims' Aff. ¶ 4; Res't Krane Mem., Oct 5, 2017. Because M. Tims was unable to refinance the property in his own name, the Decedent agreed that if the property were placed in her name, she would secure a loan from Palmetto Savings Bank to pay off M. Tims' existing Note with MCAS Federal Credit Union. Resp't. M. Tims' Aff. ¶ 6.

On November 14, 2012, the parties simultaneously executed a Deed to Real Estate, transferring title from M. Tims to the Decedent "in consideration of the sum of ONE and 00/100ths (\$1.00)." Ex. B, Am. Pet. The next day, November 15, 2012, Decedent executed a Promissory Note and Mortgage on the subject property. The Promissory Note was in the amount of Sixty-five Thousand, Two Hundred Eighty Dollars (\$65,280). Ex. C, Resp't Krane Aff. Thereafter on November 15, 2013, Decedent and Respondent M. Tims co-signed on a second loan secured by the Cloverdale property, the purpose of which was to invest in M. Tims' business

¹ Beaufort County Tax Map Ref: R700-038-00-0052-000

located on the subject property. Ex. E, Resp't Krane Aff. The Decedent then died on February 14, 2016 with the Cloverdale property in her name.

On March 4, 2016, following an informal application for appointment, Decedent's three children, Petitioner Samuel Tims ("S. Tims"), and Respondents M. Tims and Deborah T. Krane ("Krane") were appointed as co-personal representatives of her estate. *See* Beaufort County Probate Court Case No. 2016-ES-07-00213.

On May 19, 2017, Petitioner S. Tims filed a Summons and Petition for Declaratory Relief with the Beaufort County Probate Court. The Petition for Declaratory Relief was amended on May 22, 2017 and asks the Court to "inquire into the matters ... [and] determine the intent of the decedent when she executed the Land Exchange Agreement" pertaining to the Cloverdale property and enter a judgment declaring the rights of the parties involved in this action. Respondent M. Tims joined Petitioner's declaratory action in his Answer filed May 30, 2017.

On June 6, 2017, Respondent Krane filed a Motion to remove to the Circuit Court with her Answer asserting a Counterclaim and Crossclaims as well as demanding a jury trial on the basis that the amount in controversy is at least five thousand dollars in value. S.C. Code Ann. §62-1-302(d)(3). On June 13, 2017, the Beaufort County Probate Court issued an Order granting removal of Petitioner's action for declaratory relief, including all claims asserted therein by any party and retaining exclusive jurisdiction over the administration of the Estate and any other formal proceedings pending within the estate.

STANDARD OF REVIEW

Summary judgment is a drastic remedy that should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is

appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The nonmoving party must come forward with specific facts showing a genuine issue for trial. *Id.* If not, summary judgment, if appropriate, and shall be entered against him. Rule 56, SCRCP.

ANALYSIS

I. Applicability of Nonclaim Statute

Krane takes the position that the Cloverdale property is an asset of the Estate of Harriet Kathleen Henry Tims, because the Decedent held title to the subject property at the time of her death. It is undisputed that neither Petitioner S. Tims nor Respondent M. Tims presented any claim against the estate within one (1) year of decedent's death relating to the subject property. Due to the non-moving parties' failure to file a claim against the estate within this time period, Respondent Krane claims to be entitled to summary judgment as a matter of law regarding any obligation of the Estate to return the property in question because these claims are now barred by South Carolina Probate Code's nonclaim statute.

In South Carolina, all claims against an estate, whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of the Decedent's death or eight (8) months after the first publication of notice. S.C. Code Ann. § 62-3-803. This statutory bar is not all encompassing. With respect to the estates of decedents and

protected persons, the term claims "includes liabilities of the decedent ... whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent." S.C. Code Ann. § 62-1-201. However, the Probate Code expressly excludes disputes regarding the title of a decedent to specific assets alleged to be included in the estate. *Id. See also Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993) (dispute over title to a gun was not a claim for purposes of nonclaim statute).²

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

Because this action is one in which the dispute involves title to the Cloverdale property, property which Krane alleges to be included in the Decedent's estate, the nonclaim statute does not apply. Such a claim for specific property in the hands of the executor or personal

² Similarly, courts in other jurisdictions have generally found that disputes over title to specific items of real or personal property are not "claims" under statutory counterparts to S.C. Code Ann. § 62-3-804. *See, e.g., Matter of Estate of Powers*, 552 N.W.2d 785, 787 (N.D. 1996) (nonclaim statute is not applicable to dispute involving title to vehicle asserted by virtue of joint tenancy interest); *In re Estate of Renczykowski*, 409 N.W.2d 888, 891 (Minn.App.1987) (claim for farm equipment and machinery commenced before decedent's death not barred by nonclaim statute); *Labayog v. Labayog*, 83 Hawaii 412, 927 P.2d 420, 441 (App.1996) (motion to enforce divorce decree ordering deceased husband to convey property to children was a demand regarding title of decedent and not subject to the nonclaim statute).

representative is deemed to be a claim against the personal representative but not against the estate because, though the property is in the hands of the personal representative, it is not part of the estate and the claim for it is not a "debt" of the estate. See *Saradjian v. Saradjian*, 25 Conn.App. 411 (1991). Thus, this Court finds S.C. Code of Laws Section 62-3-804 does not apply in this instance. Accordingly, Petitioner S. Tims and Respondent M. Tims' action is not time barred and Krane's Motion for Summary Judgement is denied.

II. Resulting and/or Constructive Trust

Respondent M. Tims claims entitlement to summary judgment on the issue of whether a resulting or constructive trust is or was created by the LEA and other agreements between the parties to the LEA. The evidence required to establish either a constructive or resulting trust must be clear, definite, unequivocal, and convincing. *Hodges v. Hodges*, 243 S.C. 299, 306, 133 S.E.2d 816, 819 (1963).

a. Resulting Trust

A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason, is titled in the name of another. *McDowell v. S.C. Dep't of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987). Generally, when real property is conveyed to one person but the consideration is paid by another, a presumption arises that the party who paid for it intended to benefit himself, and a resulting trust is created. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002); *Caulk v. Caulk*, 211 S.C. 573, 43 S.E.2d 600 (1947). This presumption may be rebutted and the actual intention shown by parole evidence. *Larisey v. Larisey*, 93 S.C. 450, 77 S.E. 129 (1913); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248-9, 489 S.E.2d 472, 475 (1997).

The determination of whether a resulting trust should be imposed is specific to the time

of the transaction. South Carolina trust law is clear that a resulting trust "arises at the time the purchase is made. The funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Hodges v. Hodges*, 354 S.C. 299, 306-307, 133 S.E.2d 816, 819-820 (1963)(emphasis added). Once a resulting trust has been established, the party whose name the asset is titled, will be stripped of any equitable interest in the property, retaining only bare legal title. *McDowell v. S.C. Dep't of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987) (per curiam) (explaining that a beneficiary of a resulting trust holds the equitable interest in the property). In that instance, the titleholder is viewed as the asset's trustee, who can exercise control over the property only for the benefit of the party who holds the property's equitable interest, i.e., the property's valuable interest. *Id.*

It is undisputed that the property in question was transferred with the sole purpose of preventing its foreclosure. The record establishes that Respondent M. Tims purchased the property in 1993 and in 2012 had an outstanding balance owed on the property of approximately Sixty-five Thousand and No Dollars (\$65,000.00). A recent appraisal³ on the subject property values it at Four Hundred Fifteen Thousand and No Dollars (\$415,000). These facts establish Respondent M. Tims, having possessed title to the property for almost twenty years, amassed considerable equity in the property, although the exact amount is unknown. After having paid the majority of the purchase price, M. Tims then placed title in his mother's name for nominal consideration in the amount of One Dollar (\$1). Thereafter, Respondent M. Tims continued to occupy the property and operate his business thereon, made all loan payments and paid expenses related to the property. Resp't M. Tims' Aff. These facts give rise to the presumption that M.

³ The appraisal is dated Feb 14, 2016. The subject property was appraised as vacant land, and does not include any buildings on the property. See Beaufort County Probate Case No. 2016-ES-07-00213 at 260.

Tims intended to benefit himself and a resulting trust was created.

Evidence to rebut the presumption of resulting trust must pertain to "the actual intent of him who pays the purchase price at the time of the transaction and limited according to his intention at that time..." *Larisey* at 450. Krane argues the LEA is "[a]t best, it is a contingent contract or agreement between Michael Tims and the decedent." Resp't. Krane Mem. Oct 5, 2017. This Court disagrees. The LEA states unequivocally that (1) Son (M. Tims) is the owner of the property; (2) Son (M. Tims) is indebted to MCAS Beaufort; (3) Mom (Decedent) will secure financing to pay off MCAS; (4) that Son (M. Tims) will deed the title of the property to Mom (Decedent) in Order to have a first Mortgage on the premises placed in her name.

Rather than rebut the presumption of a resulting trust in the instant case, the agreement supports the conclusion that at the time of the transfer, the Decedent was to hold the property in trust for his benefit. Decedent's financial intervention and obligation to pay off Respondent M. Tims indebtedness equates to a loan from Decedent to M. Tims. "Where a transfer of property is made to one person and the purchase price is advanced by him as a loan to another, a resulting trust arises in favor of the latter, but the transferee can hold the property as security for the loan." *Campbell v. Campbell*, 300 S.C. 68, 386 S.E.2d 305 (1989). Viewing the evidence in the light most favorable to the non-moving party, the evidence does not rebut the presumption of a resulting trust nor does it provide clear and convincing evidence that the parties intended the Decedent to have an ownership interest in the subject property. Rather, the language in the LEA anticipates Mom being repaid for any monies expended upon the sale of the subject property and the property being deeded back to M. Tims at that time as his primary residence. Ex. A, Am. Pet.

Krane alleges Decedent paid significant sums of money either personally or through

Ridings Corp.⁴ for improvements to the Cloverdale property and that she made all payments on the 2013 loan. See Resp't. Krane Aff. ¶7-10. However, all monies allegedly expended by the Decedent took place after the deed transfer was executed on November 14, 2012, to wit: the execution of the promissory note and mortgage on November 15, 2012 (Krane Aff., Ex. C), the second mortgage executed along with M. Tims on November 15, 2013 and evidence of payments on the second mortgage (Krane Aff., Ex. F). Further, the note claimed to be of the Decedent and listing expenditures for the subject property is not dated nor does it include any identifying information. However, even if the purported note did, those expenditures alone⁵ would not be sufficient to rebut the presumption of a resulting trust at the time of the deed transfer.

"[E]vents subsequent to the purchase of the property and the transfer of the title may be considered in determining if a resulting trust was raised where they throw light on the intention with which the purchase was made," however, what is essential to the creation of a resulting trust is that the consideration for the purchase be paid at or before the time of the original transaction by the person claiming the benefit of the trust. *Ex parte Stokes*, 256 S.C. 260, 264-65, 182 S.E.2d 306, 308 (1971). The resulting trust does not come into existence because of an agreement between the parties but arises at once, by operation of law, in favor of the person paying the money at the time of the conveyance. *Saradjian v. Saradjian*, 25 Con.App. 411 (1991). Viewing the evidence in the light most favorable to Respondent Krane, at most, give rise to the possibility that the Decedent may have an equitable interest in the property but it does not serve to rebut by clear and convincing evidence the presumption of a resulting trust in favor of Respondent M. Tims.

⁴ According to Resp. Krane, Decedent is the sole shareholder of Ridings Corporation. Resp't. Krane Aff. ¶ 2.

⁵ The handwritten note lists expenditures for plumbing, electrical, refrigeration, surveyor, metal rail, concrete, rental equipment with various amounts next to each line item.

The evidence clearly establishes Respondent M. Tims' paid all or some of the purchase price prior to the transfer and, in titling the property in the Decedent's name, intended to benefit himself. Respondent Krane has failed to rebut the presumption of a resulting trust. There exists no genuine issue of material fact regarding the existence of a resulting trust and Respondent M. Tims' Motion for Partial Summary Judgment is granted.⁶

b. Constructive Trust

Because this Court finds the Decedent is the trustee of a resulting trust in favor of her son, Respondent M. Tims, it need not address the applicability of a constructive trust on these facts.

III. Jury Trial

Respondent M. Tims seeks an Order of this Court striking Respondent Krane's request for a jury trial on the basis that the complaint is equitable and her counterclaims/crossclaims are legal and permissive. Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (2004). An action to determine a resulting trust sounds in equity. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002). Defendant in action begun in equity who asserts permissive counterclaim that is legal in nature, is deemed to have waived right to jury trial on issues raised by counterclaims. *North Carolina Federal Sav. & Loan Asso. v DAV Corp.*, 294 SC 27, 362 SE2d 308. (1987). Respondent Krane's counterclaims are permissive as they involve claims regarding the handling of the Estate. Furthermore, cross-claims are always permissive and by asserting those, a party in action begun in equity loses any right it might otherwise have to jury trial on issues that cross-claims raise. *Id.* Accordingly, Respondent's Motion to strike Respondent Krane's request for a jury trial is granted.

⁶ In finding a resulting trust was created, the Court does not make any finding regarding what equitable interest, if any, the Decedent had in the subject property at the time of her death.

CONCLUSION

For the reasons stated herein, the Court finds as follows:

1. Respondent Krane's Motion for Summary Judgment barring Petitioner and Respondent M. Tims' claims on the basis of the nonclaim statute is DENIED.
2. Respondent M. Tims' Motion for Partial Summary Judgment regarding the existence of a resulting trust in his favor is GRANTED.
3. Respondent M. Tims' Motion for Partial Summary Judgment striking Respondent Krane's request for a jury trial is GRANTED.

IT IS SO ORDERED.

CARMEN TEVIS MULLEN
Fourteenth Judicial Circuit

_____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Samuel H Tims , plaintiff, et al VS Michael Tims , defendant, et al

Case Number: 2017CP0701180

Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2018-08-06 14:48:45 page 12 of 12

ELECTRONICALLY FILED - 2018 Aug 07 9:27 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180

STATE OF SOUTH CAROLINA

COUNTY OF: BEAUFORT

IN THE MATTER OF:
HARRIET KATHLEEN HENRY TIMS
(Decedent)

THE PROBATE COURT

CASE NUMBER: 2016ES0700213

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

Petitioner(s)
vs.

Respondent(s)

APPLICATION FOR INFORMAL

☐ PROBATE OF WILL

☒ APPOINTMENT

(check any that apply)

***PETITION FOR FORMAL**

☐ TESTACY

☐ APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s):	Samuel H. Tims	Michael L. Tims	Deborah T. Krane
Address:	169 Jasmine Hall Rd. Seabrook, SC 29940	67 Cloverdale Dr. Seabrook, SC 29940	311 Middleton Blvd. Summerville, SC 29485
Telephone (Work):			
(Home):		843-846-8060	843-871-3313
(Cell):	843-252-3823	843-830-2997	
Email:			
Relationship to Decedent:	son	son	daughter

2. Decedent Information:

Full Legal Name
(including all known names): Harriet Kathleen Henry Tims
Date of Birth: September 9, 1944
Date of Death: February 14, 2016
Age at Date of Death: 71

3. Venue for this proceeding is proper in this County because:

- ☒ Decedent was domiciled in this County at date of death:
Address: 169 JASMINE HALL ROAD, SEABROOK County: BEAUFORT State: South Carolina.
- ☐ Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death at:
Address: County: State: South Carolina
- ☐ Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

FORM #300ES (1/2016)

62-2-504, 62-3-102, 62-3-203, 62-3-301, 62-3-302, 62-3-303, 62-3-308, 62-3-311, 62-3-401, 62-3-402,
62-3-404, 62-3-409, 62-3-414, 62-3-601, 62-3-602, 62-3-704, 62-3-804, 44-23-1090, 44-23-1120

Page 1 of 6

7

ROA 0027

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
n/a			

☐ See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Samuel H. Tims	adult	169 Jasmine Hall Road, Seabrook, SC 29940	son
Michael L. Tims	adult	67 Cloverdale Drive, Seabrook, SC 29940	son
Deborah T. Krane	adult	311 Middleton Boulevard, Summerville SC 29485	daughter

☐ See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☐ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11(a). Did the Decedent own probate real estate?

☐ NO ☒ YES If yes, an approximate value of \$undetermined (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?

☐ NO ☒ YES If yes, an approximate value of \$undetermined (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?

☒ NO ☐ YES If yes, then proceed to Section II.
If No, then proceed to Section III.

II: IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☐ The original is attached.
- ☐ The original is in the Court's possession.
- ☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
- ☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
- ☐ The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: _____
Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property?

☐ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☐ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

☐ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- ☐ named as Primary Personal Representative in Will
- ☐ named as Alternate Personal Representative in Will
- ☐ nominee of Primary Personal Representative in Will
- ☐ nominee of Alternate Personal Representative in Will
- ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- ☒ other devisee of Decedent (describe): children or nominee of said devisee
- ☐ surviving spouse of Decedent or nominee of said spouse
- ☐ other heir of Decedent (describe): _____ or nominee of said heir
- ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- ☐ other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 3rd day
of March, 2016

Signature of
Applicant/Petitioner: _____

Louisa C. Braves
Notary Public for South Carolina
My Commission Expires: 3/10/2025

SWORN to before me this 3rd day
of March, 2016

Signature of Co-
Applicant/Co-Petitioner: _____

Louisa C. Braves
Notary Public for South Carolina
My Commission Expires: 3/10/2025

SWORN to before me this 3rd day
of March, 2016

Signature of Co-
Applicant/Co-Petitioner: _____

Louisa C. Braves
My Commission Expires: 3/10/2025
Notary Public for South Carolina

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed _____ and

- ☐ Codicil executed _____ and
☐ Memorandum

be informally ☐ GRANTED ☐ DENIED.

Executed this _____ day of _____, 20____

Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

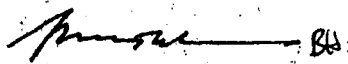
Bond

- ☐ Fiduciary Bond in the amount of \$_____
☐ Bond not required for Personal Representative nominated by Will
☒ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____

Notice to Creditors

- ☒ Required
☐ Not Required

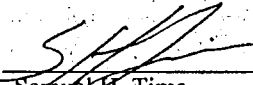
Executed this 4th day of March 2016.

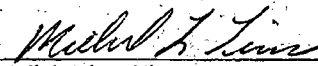

Kenneth E. Fulp, Jr., Probate Court Judge

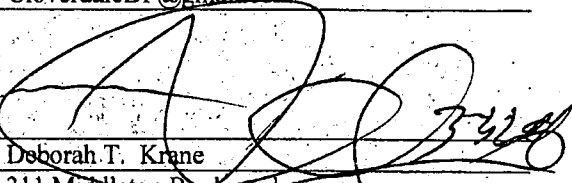
☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Name: Samuel H. Tims
Address: 169 Jasmine Hall Road
Seabrook, South Carolina 29940
Telephone (Work):
(Home):
(Cell): 843-252-3823
Email: SamuelTims74@yahoo.com

Signature: 
Print Name: Michael L. Tims
Address: 67 Cloverdale Drive
Seabrook, South Carolina 29940
Telephone (Work):
(Home): 843-846-8060
(Cell):
Email: CloverdaleDP@gmail.com

Signature: 
Print Name: Deborah T. Krane
Address: 311 Middleton Boulevard
Summerville, South Carolina 29485
Telephone (Work):
(Home): 843-871-3313
(Cell):
Email: KraneDT@hotmail.com

*Attorney: D. Cabell Gilley, Esq.
Address: Levin Gilley & Fisher, LLC
811 Craven Street
Beaufort, South Carolina 29902
Telephone: 843-522-9000
Email: DCGilley@LGFLawFirm.com

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE MATTER OF THE ESTATE OF
HARRIET KATHLEEN HENRY TIMS
(Decedent)

IN THE PROBATE COURT
FIDUCIARY LETTERS

CASE NUMBER: 2016ES0700213

- ☒ PERSONAL REPRESENTATIVE
☐ SUCCESSOR PERSONAL REPRESENTATIVE
☐ SPECIAL ADMINISTRATOR

On the 4th day of March, 2016, SAMUEL H. TIMS, MICHAEL L. TIMS, DEBORAH T. KRANE
was/were appointed and qualified as Fiduciary(ies) of the above matter by this court, with all the authority granted to a fiduciary by
law.

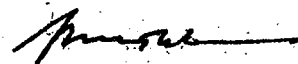
NOW, THEREFORE, LETTERS are issued, as evidence of such appointment, qualification, and authority of the above fiduciary(ies)
to do and perform all acts which may be authorized by law.

RESTRICTIONS:

NONE

FILED
2016 MAR -4 PM 3:04
PROBATE COURT
BEAUFORT COUNTY, SC

Executed this 4th day of March, 2016



Kenneth E. Fulp, Jr., Probate Judge

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN RE: THE ESTATE OF HARRIET H.)
TIMS)

SAMUEL H. TIMS, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims,)
Petitioner,)

vs)

MICHAEL TIMS, individually and as Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims and DEBORAH T.)
KRANE, individually and as Co-Personal)
Representative of the Estate of Harriet)
Kathleen Tims,)

Respondent(s).)

IN THE PROBATE COURT

CASE NO. 2016-ES-07-00213

AMENDED PETITION
FOR DECLARATORY
RELIEF

2017 MAY 22 AM 11:23
PROBATE COURT
BEAUFORT COUNTY, SC

COMES NOW the Petitioner, Samuel H. Tims (hereinafter "Samuel Tims") by and through his undersigned counsel, seeking a declaratory judgment pursuant to §15-53-30, South Carolina Code of Laws, and would respectfully show unto this Honorable Court:

1. The Petitioner, Samuel Tims, is a citizen and resident of Beaufort County, State of South Carolina, he serves as a Co-Personal Representative in this estate and is an intestate heir at law of the decedent.
2. The Respondents, Michael Tims and Deborah T. Krane, serve as Co-Personal Representatives of the Estate of Harriet Kathleen Tims and are heirs at law of the decedent.
3. This court has jurisdiction to hear this matter pursuant to §15-53-20, South Carolina Code of Laws.

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4. On or about November 14, 2012 the decedent executed a "Land Exchange Agreement" wherein it was agreed that the decedent would obtain a loan from Palmetto State Bank in the approximate amount of \$65,000 to assist Michael Tims in paying off his indebtedness to MCAS Federal Credit Union and in exchange, Michael Tims executed a Title to Real Estate conveying title to his property to the decedent so that the aforesaid financing could be secured. A copy of the Land Exchange Agreement is attached hereto as Exhibit A. A copy of the Title to Real Estate is attached hereto as Exhibit B.

5. On November 15, 2012, decedent executed a Note and Mortgage to Palmetto State Bank in the amount of \$65,280.00 which paid off Michael Tims' MCAS loan. A copy of the Mortgage is attached hereto as Exhibit C.

6. Michael Tims conveyed legal title to his property to the decedent but retained the beneficial interest; i.e. it is his residence and he operates his business on the property.

7. A controversy has arisen between the parties regarding the intent of the decedent when she entered into the transaction with Michael Tims.

8. The Respondent Deborah Krane claims the property secured by the mortgage is an estate asset by virtue of the deed conveying title to the property to the decedent and, therefore, the property is subject to distribution through the decedent's estate.

9. The Petitioner and, by all information and belief the Respondent Michael Tims, believes the Land Exchange Agreement confirms the decedent intended to hold the property in trust for the benefit of Michael Tims and the property, therefore, is not an estate asset subject to distribution through the decedent's estate.

10. The Petitioner further believes the circumstances constitute a Resulting Trust and that a Trustee should be appointed to continue to hold the property in trust until the terms of the

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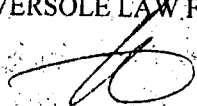
Land Exchange Agreement are fulfilled or the mortgage to Palmetto State Bank is otherwise paid off by Michael Tims.

11. The Petitioner is informed and believes that the several parties' rights, status and legal and personal relationships are affected by the Land Exchange Agreement executed by their deceased mother and that these circumstances constitute a concrete, justiciable controversy which requires court intervention to determine the rights and obligations of the parties herein.

12. The Petitioner, Samuel H. Tims, knows of no other remedy, in law or equity, to resolve the present dispute but by bringing the present action.

THEREFORE, the Petitioner, Samuel H. Tims, respectfully requests this honorable court inquire into the matters set forth herein, determine the intent of the decedent when she executed the Land Exchange Agreement and enter a judgment declaring the rights of the parties herein.

EVERSOLE LAW FIRM, P.C.



Alysoun M. Eversole, SC Bar# 0068011
1509 King Street,
Beaufort, SC 29902
(843)379-3333
aeversole@eversolelaw.com

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LAND EXCHANGE AGREEMENT

WHEREAS Harriet Tims, hereinafter referred to as Mom, and Michael Tims, hereinafter referred to as Son, wish to enter into an agreement for a land exchange.

KNOW ALL MEN BY THESE PRESENTS that the for the sum of One (\$1.00) Dollar, each to the other paid, agree as follows:

1. Son is the owner of the following land:
See attached Exhibit A
2. Son is indebted to MCAS Beaufort in the amount of approximately \$65,000.00.
3. Mom is going to secure financing in that amount from Palmetto State Bank to pay off MCAS.
4. Son will deed the title of the property to Mom in order to have a first mortgage on the premises placed the property in Mom's name.
5. Upon the sale of the premises, the amount of money owed to the bank at that time will be paid along with any taxes, insurance payments, interest or any other items paid for by Mom for the ownership, maintenance and upkeep of the property.
6. Upon the acquisition of the contract of sale of the premises, Mom agrees to deed the premises back to Son so that there will be no capital gains on the sale of the property as Son's primary residence.

The above constitutes the entire agreement of the Parties and all oral negotiations are merged herewith.

Witness our hands and seals this 14 ^{November} day of October, 2012.

WITNESSES:

Kathleen J. Braddon

Ann H. H. Hughes

Kathleen J. Braddon

Ann H. H. Hughes

Harriet H. Tims
HARRIET H. TIMS

Michael Tims
MICHAEL TIMS



ATTORNEY CERTIFICATION

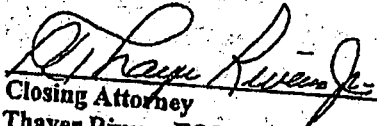
All loan documents have been duly executed by the named Borrower(s). The Mortgage represents a valid 1st lien on the described real property. I have explained to the Borrower(s) that the first payment is due on the date indicated on the Note.

All financial and insurance-related information requested by Palmetto State Bank was obtained by me and verified at the closing of this mortgage loan transaction.

Loan proceeds have been disbursed according to the Bank's Closing Instructions and all requirements thereof, except those waived by the Bank in writing, have been satisfied.

I acknowledge and agree that it is my responsibility as Closing Attorney to properly prepare, record, and deliver, in a timely manner, to Palmetto State Bank the original Note, Mortgage, and all other documents and statements related to this mortgage loan transaction.

Date 11/15/2012


Closing Attorney
Thayer Rivers, ESQ.

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That I, MICHAEL L. TIMS, in the State aforesaid, County aforesaid, (hereinafter whether singular or plural the "Grantor") in consideration of the sum of ONE and 00/100ths (\$1.00) Dollar, Love and Affection, to me in hand paid at and before the sealing and delivery of these presents by HARRIET H. TIMS, 169 JASMINE HALL ROAD, SEABROOK, SC 29940, the receipt of which is hereby acknowledged, have granted, bargained, sold and released to the Grantee, her heirs and assigns forever, the following described property, to-wit:

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Michael L. Tims by deed dated August 27, 1993 and recorded September 7, 1993 in Book 650 at Page 892 in the Office of the ROD for Beaufort County, South Carolina, and by corrective Deed recorded on August 22, 1995 in Book 797 at Page 2420 in the aforesaid office.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise

EXHIBIT A

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Harriet H. Tims by deed from Michael L. Tims by deed dated _____, 2012 and recorded _____, 2012 in Deed Book _____ at Page _____ in the Office of the ROD for Beaufort County, South Carolina.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

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incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, **HARRIET H. TIMS** her Heirs and Assigns forever.

And the Grantors do hereby bind themselves and their Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, and her Heirs and Assigns, against the Grantor and the Grantor's Successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 14th day of November in the year of our Lord two thousand twelve and in the two hundredth and thirty-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED and DELIVERED
in PRESENCE OF

James H. Hughes
Harriet H. Tims

Michael L. Tims (L.S.)
MICHAEL L. TIMS

STATE OF SOUTH CAROLINA,
COUNTY OF JASPER

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantors sign, seal and, as the Grantors' act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SUBSCRIBED AND SWORN to before me
this 14th day of November, 2012.

Harriet H. Tims (L.S.)
Notary Public of S.C.
My Commission Expires: 10-12-17

James H. Hughes
Witness

This Deed prepared by the Law Office of R. Thayer Rivers, Jr., P.O. Box 668, 304 Russell Street, Ridgeland, SC 29936, without benefit of title examination.

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CO RW
Rivers
1857

ADD DMP Record 11/16/2012 09:46:52 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	038	000	0052	0000	00

BEAUFORT COUNTY SC - ROD
BK 03190 PGS 2752-2753
FILE NUM 2012066763
11/14/2012 04:24:45 PM
REC'D BY R WEBB RCPT# 694266
RECORDING FEES 10.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

RECORDED
2012 Nov -20 11:49 AM
DEED TO REAL ESTATE Sham O. Bunn
BEAUFORT COUNTY AUDITOR

KNOW ALL MEN BY THESE PRESENTS, That I, **MICHAEL L. TIMS**, in the State aforesaid, County aforesaid, (hereinafter whether singular or plural the "Grantor") in consideration of the sum of ONE and 00/100ths (\$1.00) Dollar, Love and Affection, to me in hand paid at and before the sealing and delivery of these presents by **HARRIET E. TIMS**, 169 JASMINE HALL ROAD, SEABROOK, SC 29940, the receipt of which is hereby acknowledged, have granted, bargained, sold and released to the Grantee, her heirs and assigns forever the following described property, to-wit:

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

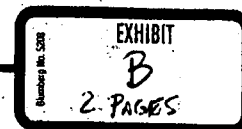
This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Michael L. Tims by deed dated August 27, 1993 and recorded September 7, 1993 in Book 650 at Page 892 in the Office of the ROD for Beaufort County, South Carolina, and by corrective Deed recorded on August 22, 1995 in Book 797 at Page 2420 in the aforesaid office.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise

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incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, **HARRIET H. TIMS** her Heirs and Assigns forever.

And the Grantors do hereby bind themselves and their Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, and her Heirs and Assigns, against the Grantor and the Grantor's Successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 14th day of November in the year of our Lord two thousand twelve and in the two hundredth and thirty-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED and DELIVERED
in PRESENCE OF

Ann Stubbins Hughes
J. J. Jett

Michael L. Tims (L.S.)
MICHAEL L. TIMS

STATE OF SOUTH CAROLINA,
COUNTY OF JASPER

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantors sign, seal and, as the Grantors' act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SUBSCRIBED AND SWORN to before me
this 14th day of November, 2012.

William W. Jett (L.S.)
Notary Public of S.C.
My Commission Expires: 10-1-17

Ann Stubbins Hughes
Witness

This Deed prepared by the Law Office of R. Thayer Rivers, Jr., P.O. Box 668, 304 Russell Street, Ridgeland, SC 29936, without benefit of title examination.

9/15/83
Rw

This document was prepared by

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 15, 2012. The parties and their addresses are:

HARRIET H TIMS
An unmarried individual
169 JASMINE HALL ROAD
SEABROOK, SC 29940

PALMETTO STATE BANK
Organized and existing under the laws of South Carolina
145 Lady's Island Drive
PO Box 219
Beaufort, SC 29901

FILED
2017 MAY 22 AM 11:23
FROM: STEPHEN
BEAUCOURT COUNTY, SC

The property is located in Beaufort County at 97 CLOVERDALE DRIVE, SEABROOK, South Carolina 29940. Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

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EXHIBIT
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9 PAGES

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3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

A. To make all payments when due and to perform or comply with all covenants.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

8. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

HARRIET H TIMS
South Carolina Mortgage
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ROA 0045

this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

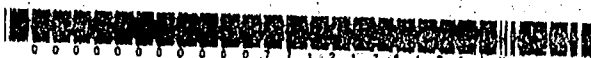
13. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

HARRIET H. TIMS
South Carolina Mortgage

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Page 3



- A. **Payments.** Mortgagor fails to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. **Death or Incompetency.** Mortgagor dies or is declared legally incompetent.
- D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.
- F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate; or conceals a material fact at the time it is made or provided.
- H. **Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

14. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of

HARRIET H. TINS
South Carolina Mortgage
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Page 4



Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

15. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

16. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

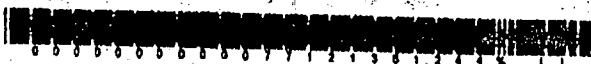
Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude.

HARRIET H TIMS
South Carolina Mortgage
SC/4XXXXXJAN00000000000648043110912N

Wolters Kluwer Financial Services ©1998, 2012 Bankers Systems™

Initials
Page 8



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25. **NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the **DATE AND PARTIES** section, or to any other address designated in writing: Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other, correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

EXHIBIT A

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Harriet H. Tims by deed from Michael L. Tims by deed dated , 2012 and recorded 11/14/12, 2012 in Deed Book 3190 at Page 2762 in the Office of the ROD for Beaufort County, South Carolina.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

177

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF BEAUFORT)

CASE NO.: 2016-ES-07-00213

IN THE MATTER OF:)
HARRIET KATHLEEN HENRY TIMS,)

Decedent.)

Samuel H. Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims,)

Petitioner,)

vs.)

ANSWER TO THE AMENDED PETITION
FOR DECLARATORY RELIEF AND
RESPONDENT'S COUNTERCLAIMS AND
CROSSCLAIMS AGAINST PETITIONER
SAMUEL H. TIMS AND CO-RESPONDENT
MICHAEL TIMS

(Jury Trial Demanded)

Michael Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims and Deborah T. Krane)
Individually and as a Co- Personal)
Representative of the Estate of Harriet)
Kathleen Tims)

Respondents.)

TO: Petitioner Samuel H. Tims, and his attorney Alysoun Eversole and Respondent Michael Tims and his attorney Mills Morrison:

Respondent Deborah T. Krane (hereinafter "Deborah Krane") by and through her attorney P. Brandt Shelbourne, and to the extent, possible The Estate of Harriet Kathleen Tims, answering the Amended Petition for Declaratory Relief of Petitioner Samuel H. Tims (hereinafter "Samuel Tims") Amended Petition herein states and alleges as follows:

**AS AND FOR A FIRST DEFENSE
(General Denial and Motion to Remove)**

1. Unless otherwise admitted, Respondent denies all of the allegations contained in Petitioner's Amended Petition and demands strict proof thereof.

This matter should be removed, and Respondent does hereby move, pursuant to South Carolina Probate Code §62-1-802 et seq., to remove this matter to Circuit Court as allowed by law as this Petition involves real property in which the Estate of Harriet Kathleen Tims and Respondent Deborah T. Krane have an interest and because Respondent Deborah T. Krane has a right to a Jury Trial and this involves more than \$5,000.00 in value.

2. Respondent admits those allegations contained in Paragraphs 1 and 2 of Petitioner's Amended Petition.

3. Defendant denies those allegations contained in Paragraph 3 of Petitioner's Amended Petition and demands strict proof thereof.

4. In response to Paragraph 4 of the Amended Petition Respondent admits that on or about November 14, 2012 the decedent executed a "Land Exchange Agreement" as attached in Exhibit A to the Amended Petition, but denies the rest of the allegations in the Paragraph 4 of Petitioner's Amended Petition as the document speaks for itself and demands strict proof thereof.

5. Respondent is without sufficient information to form a belief as to those allegations contained in Paragraph 5 of Petitioner's Amended Petition and, therefore, denies same and demands strict proof thereof.

6. Respondent denies those allegations contained in Paragraphs 6 and 7 of Petitioner's Amended Petition and demands strict proof thereof.

7. Respondent admits the property in question is or was secured by a mortgage and is an estate asset but denies the rest of the allegations in the Paragraph 8 of Petitioner's Amended Petition and demands strict proof thereof.

8. Respondent denies those allegations contained in Paragraph 9 of Petitioner's Amended Petition and believes the document speaks for itself and therefore, demands strict proof thereof.

9. Respondent denies those allegations contained in Paragraphs 10 through 12 of Petitioner's Amended Petition and demands strict proof thereof.

AS AND FOR A SECOND DEFENSE
(Failure to State a Claim)

10. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

11. Pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6), Petitioner has failed to state a claim against Respondent Deborah Krane and or the Estate of Harriet Kathleen Tims upon which relief can be granted and, therefore, Petitioner's Amended Petition against Respondent should be dismissed.

AS AND FOR A THIRD DEFENSE
(Statute of Limitations)

12. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

13. Respondent submits that the Petitioner's claims are barred by the applicable statutes of limitations.

AS AND FOR A FOURTH DEFENSE
(Laches)

14. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

15. Petitioner's claims are barred by the doctrine of laches as Petitioner and Michael Tims have failed to timely pursue any remedy or relief.

**AS AND FOR A FIFTH DEFENSE
(Lack of Standing)**

16. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

17. Petitioner lacks standing pursuant to South Carolina law to bring this action as he is not party to the Land Exchange Agreement, nor acting or able to act on behalf of the estate.

**AS AND FOR A SIXTH DEFENSE
(Lack of Jurisdiction)**

18. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

19. Petitioner seeks a court Order placing the real property in trust.

20. Upon information and belief, the Probate court does not have jurisdictional authority to execute a deed to the property removing it from the estate and putting it in the name of a trustee.

**AS AND FOR A SEVENTH DEFENSE
(Failure to Timely File Creditor Claim as Required by South Carolina Probate Court 62-3-803)**

21. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

22. Pursuant to South Carolina Probate Code Section 62-3-803, all claims against an estate whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of Harriet Kathleen Tim's death or eight (8) months after the first publication of notice.

23. The subject real property was deeded to Harriet Kathleen Tims and owned by Harriet Kathleen Tims at the time of her death.

24. Petitioner's claim that the property is not part of the Estate is founded on contract or other legal basis.

25. More than one (1) year has elapsed since decedent Harriet Kathleen Tims death and the time Petitioner presented his claim.

26. More than eight (8) months have elapsed since publication of Notice to Creditors and the time Petitioner presented his claim.

27. No other creditor claim was presented by any person against the estate regarding the real property in the current petition.

28. Because Petitioner and any other persons failed to timely file their claims Petitioner and other persons are statutorily time barred from raising claims pursuant to the Land Exchange Agreement that the estate does not own the real property in question or that it is obligated to convey it to Michael Tims or any other party or obligated to comply with the Land Exchange Agreement.

**AS AND FOR A EIGHTH DEFENSE AND FIRST COUNTERCLAIM AGAINST
SAMUEL TIMS AND FIRST CROSSCLAIM AGAINST MICHAEL TIMS
(Declaratory Judgment)**

29. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

30. This property was deeded to Harriet Kathleen Tims by the deed of Respondent Michael Tims.

31. Harriet Kathleen Tims died in possession of the subject real property.

32. The Land Exchange Agreement signed by Harriet Kathleen Tims and Michael Tims does not bind their heirs and assignees and is therefore not binding on the heirs, nor capable of being enforced against Harriet Kathleen Tim's Estate.

33. Further, if it is binding, it is a contingency contract and the parties to that Agreement have failed to meet those contingencies in a reasonable or timely fashion.

34. Respondent Deborah Krane brings this action pursuant to South Carolina Code §15-53-10 et seq, seeking determination by the Circuit Court to determine the rights of the parties including the Estate under the Agreement to the real property and to the ownership of the real property and to award to Respondent all applicable damages, including attorney fees and costs.

**AS AND FOR A NINTH DEFENSE AND SECOND COUNTERCLAIM AGAINST
SAMUEL TIMS AND SECOND CROSSCLAIM AGAINST MICHAEL TIMS
(Breach of Fiduciary Duties as Personal Representatives)**

35. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

36. That as a Personal Representative of the Estate of Harriet Kathleen Tims, Petitioner and Michael Tims owe the estate and the heirs including Respondent a fiduciary duty.

37. That upon information and belief, Petitioner and Michael Tims have breached their fiduciary duties to the estate and the heirs and Respondent by:

- a. Failing to look out for the best interest of the estate;
- b. Failing to maximize the value of the estate;
- c. Wasting estate assets by not properly taking care of said assets;
- d. Using estate assets for their own personal benefit without permission or consent of all heirs;
- e. Removing estate assets from the estate;
- f. Failing to maintain the estate asset Jasmine Hall; and

g. Failing to pay appropriate rent or compensation to the Estate for residing on and using estate property, both real and personal.

38. As a direct and proximity result of Petitioner's and Respondent Michael Tim's breach of the fiduciary duties Respondent Deborah T. Krane has suffered monetary loss and economic harm and is entitled to refund and punitive damages as determined by the trier of fact.

**AS AND FOR A TENTH DEFENSE AND THIRD COUNTERCLAIM AGAINST
SAMUEL TIMS AND THIRD CROSSCLAIM AGAINST MICHAEL TIMS
(Conversion)**

39. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

40. Upon information and belief, by using estate assets without compensating the estate including use of real and personal property and by removing funds from the estate account beyond that which the parties agreed to, Petitioner Samuel Tims and Co-Respondent Michael Tims have converted estate property to their own use to the detriment of the Estate and Respondent Deborah T. Krane.

41. The decedent's estate is entitled to a return of all estate assets converted by Petitioner Samuel Tims and Co-Respondent Michael Tims, and to compensation for the use of the real and personal property in an amount of damages to be determined by the trier of fact.

**AS AND FOR A ELEVENTH DEFENSE AND FOURTH CROSSCLAIM
AGAINST MICHAEL TIMS PLED IN THE ALTERNATIVE
(Breach of Contract)**

42. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

43. Pled solely in the alternative, if the court determines that the Land Exchange Agreement is enforceable against the Estate of Harriet Kathleen Tims, Respondent Michael Tims

is in material breach of his contractual obligations by failing to timely pay his obligations under the Agreement.

44. As a direct and proximate result of the breach, the Estate of Harriet Kathleen Tims is deprived of the benefits from the Land Exchange Agreement all in the amount to be determined by trier of fact.

**AS AND FOR A TWELFTH DEFENSE AND FOURTH COUNTERCLAIM AGAINST
SAMUEL TIMS AND FIFTH CROSSCLAIM AGAINST MICHAEL TIMS
(Injunctive Relief)**

45. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

46. Petitioner and Respondent Michael Tims are upon information and belief residing in certain real property owned by the decedent Harriet Kathleen Tims and are using certain personal property belonging to the decedent Harriet Kathleen Tims.

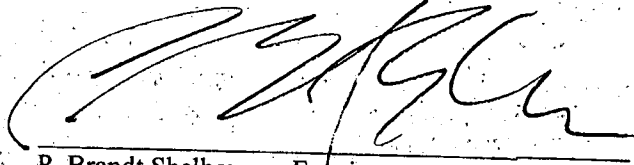
47. The use of said real and personal property without compensation to the Estate of Harriet Kathleen Tims is causing the heirs of the Estate of Harriet Kathleen Tims including Respondent Deborah T. Krane and the Estate to lose money and incur expenses.

48. The Estate and Deborah T. Krane are entitled to injunctive relief requiring Petitioner and Michael Tims to return all Estate personal property to the Estate, and to account for all funds removed from the Estate accounts and to pay fair market rent for use of the Estate real property.

WHEREFORE, Respondent Deborah Krane prays unto this Honorable Court for an Order dismissing Petitioner Samuel Tims Amended Petition, for a Judgment on Respondent's Counterclaim and for attorney's fees and costs and for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW FIRM

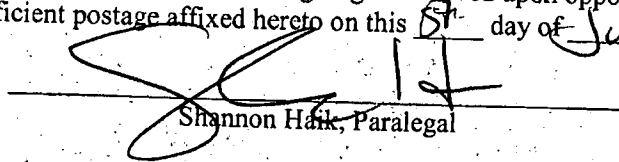


P. Brandt Shelbourne, Esquire
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEY FOR RESPONDENT
DEBORAH KRANE

June 5th, 2017
Summerville, South Carolina

Certificate of Service

The undersigned hereby certifies that the foregoing was served upon opposing counsel via first class mail with sufficient postage affixed hereto on this 5th day of June, 2017.


Shannon Hank, Paralegal

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN THE MATTER OF:)
HARRIET KATHLEEN HENRY TIMS,)

Decedent.)

Samuel H. Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims,)

Petitioner,)

vs.)

Michael Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims and Deborah T. Krane)
Individually and as a Co- Personal)
Representative of the Estate of Harriet)
Kathleen Tims)

Respondents.)

IN THE PROBATE COURT

CASE NO.: 2016-ES-07-00213

FILED
2017 JUN -6 PM 2:07
PROBATE COURT
BEAUFORT COUNTY, SC

MOTION TO REMOVE TO CIRCUIT COURT

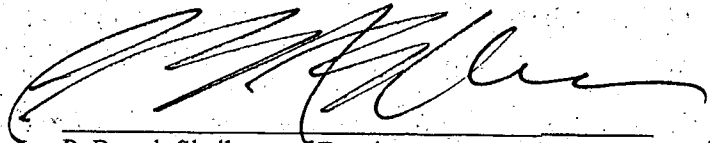
TO: Petitioner Samuel H. Tims, and his attorney Alysoun Eversole and Respondent Michael Tims and his attorney Mills Morrison:

PLEASE TAKE NOTICE that P. Brandt Shelbourne, attorney for Respondent Deborah t. Krane (hereinafter sometimes jointly referred to as " Respondent Krane") will move this Court pursuant to South Carolina Probate Code §62-1-802 et seq., to remove this matter to Circuit Court as allowed by law as this Petition involves real property in which the Estate of Harriet Kathleen Tims and Respondent Deborah T. Krane have an interest and because Respondent Deborah T. Krane has a right to a Jury Trial on the claims against her and on her counterclaims

and cross-claims and this involves more than \$5,000.00 in value. In support of this motion are appraisals of Estate assets, attached hereto as Respondent Krane's Exhibit "A".

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW FIRM



P. Brandt Shelbourne, Esquire
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEY FOR RESPONDENT
DEBORAH KRANE

June 5, 2017
Summerville, South Carolina

FILED

2017 JUN -6 PM 2: 07

PROBATE COURT
BEAUFORT COUNTY, SC

EXHIBIT "A"

315

FILED

2017 JUN -6 PM 2:07

PROBATE COURT
BEAUFORT COUNTY, SC

24 Hour Coin Laundry

RLI

ROA 0065



EquipmentAppraisals.com

Equipment Appraisals - Business Valuations

BUSINESS APPRAISAL REPORT

24 Hour Coin Laundry (Ridings Corporation, LLC.)

Located at:

**US 78 at Ladson Road
Ladson, SC, 29456
(Shopping Center - 2 units)**

Effective Date of Valuation: February 14, 2016

ELECTRONIC COPY

PREPARED BY:

**CMEA Appraisals, LLC
1121 Park West Blvd., Ste. B141
Charleston, SC, 29466**

**Steve Simmons, MCMEA, MECA, BCA, ICA, CBB, CEB
Master Certified Machinery/Equipment Appraiser
Master Equipment Certified Appraiser
Business Certified Appraiser
Inventory Certified Appraiser
Certified Business Broker
Certified Equipment Broker
Member, NEBB Institute
Member, Society of Business Analysts
Member, National Association of Certified Appraisers**

CLIENT: Deborah Krahe - LOCATION: 24 Hour Coin Laundry

**FILED
2017 JUN -6 PM 2:07
FRODO COURT
BEAUFORT COUNTY, SC**

313

ROA 0066



EquipmentAppraisals.com

Appraisals - Valuations - Equipment Re-Sales

TM

1121 Park West Blvd., Ste. B141
Charleston, South Carolina 29466

843.579.2221 Ph.
843.608.7438 Fax.

We Speak Business TM

October 16, 2016

Mrs. Deborah "Debbie" Krane
24 Hour Laundry
9585 US 78
Ladson, SC, 29456

Dear Mrs. Krane:

Please find enclosed the Valuation of The 24 Hour Coin Laundry (Ridings Corporation, LLC.). (A South Carolina based coin laundry establishment in Ladson, SC in good standing). This estimate includes all assets of the company. Liabilities of the corporation, including but, not limited to; accounts payable, and short and long-term debt, etc. are taken against the value assigned.

At your request, Inventory was estimated. An appraisal of the tangible assets was done and included herein. Please be advised the sales information provided suggested the opinion of value included the estimated inventory. Based on the information contained in the report, it is my opinion that the fair market value as an ongoing concern (FMV-OC) of 100% of the business commonly known as: 24 Hour Coin Laundry for the purposes of Estate Planning, as of February 14, 2016 is: **\$199,500**. NOTE: If any other value such as Orderly Liquidation Value (OLV) would have been used then the result would have almost certainly yielded a different value.

My opinion is based upon the assumptions and limiting conditions stated in this report and the facts and circumstances as of the valuation date. Please see the report for details.

Respectfully submitted,

Steve Simmons, MCMEA, MECA, BCA, ICA, CBB, CEB
Senior Appraiser
CME Appraisals, LLC - d/b/a EquipmentAppraisals.com

2

CLIENT: Deborah Krane - LOCATION: 24 Hour Coin Laundry

312
ROA 0067

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SUMMARY OF SALIENT FACTS

Identity of Client	Ridings Corporation, LLC. d/b/a 24 Hour Coin Laundry
Intended Users	Deborah "Debbie" Krane, Mr. Gilley/Mrs. Graves: Attorneys, Mike Tims, Sam Tims
Intended Use	Estate Planning purposes only and no other purpose
Date Report Written:	October 16, 2016
Sales History of Business	The preparer is not aware of the history of the subject business or prior sales thereof outside the opinion and data disclosed within.
Class of Business	24 hour coin laundry service center
Current Business Operation	24 hour coin laundry service center
Status	Business is in operating condition as of Evaluation
Effective Date of Evaluation	February 14, 2016
Date of Site Inspection	On or about September 29, 2016
Final Estimate of Value	<u>\$199,500</u>
Ridings Corporation, LLC.	Herein: "24 Hour Coin Laundry"



ELECTRONIC COPY

4

CLIENT: Deborah Krane - LOCATION: 24 Hour Coin Laundry

3.10
ROA 0069

SCOPE OF WORK

The Preparer has been asked to provide an Valuation effective February 14, 2016 of certain machinery/equipment, tangible items, and the general business as an on-going concern and known as: 24 Hour Coin Laundry; located at US 78 at Ladson Road, Ladson, SC, 29456 for the purposes of Estate Planning.

It has been requested that the Valuation be reported as an estimation of the Fair Market Value as an On-going Concern (FMV-OC) and includes an appraisal of the tangible assets and an estimation of the inventory at cost. It should be noted that if these items should sell under any other scenario, such as in an Orderly Liquidation fashion or a Forced Liquidation fashion (quick sale), then different values, no doubt lesser values would be realized.

STATEMENT

Since this report has been purchased by the Client (See "Summary" within this report), it is assumed by the preparer that it is to be used by the addressee in determination of value at that point in time. Use of this report by others should be done so with the understanding that no risk or guarantees have been purchased by the owner of the report nor through the fee paid to the preparer. The preparer reserves the right to recall all copies of this report to correct any omission or error.

Information, estimates and opinions furnished the preparer and contained in this report were obtained from sources considered reliable and believed to be true and correct; however, no responsibility for the accuracy of such items furnished to the preparer can be assumed by the preparer. No liability or responsibility is expressed for results from actions taken by anyone as a result of this report. Further, there is no accountability, obligation, or liability to any third party.

Matters of legal nature or tax consequences have not necessarily been considered in this report. The reader should consult a competent attorney and/or CPA for information and opinions in those areas.

This Valuation is the opinion of the evaluator/preparer and is based on information provided by the client. This report is not certified. Matters of legal opinion, governing law(s), tax laws or implications have not been considered. Such opinions, legal matters and implications are the responsibility of the client and/or reader and qualified legal and public accounting professionals in good standing should be consulted as needed.

It is the assumption of the evaluator/preparer that the business, business assets are in good working order and that the business and assets shall transfer in operating condition. Changes in market condition, day to day operation, equipment or other material facts may affect the value and render the opinion of the evaluator/preparer obsolete. This opinion is as of the day set forth: February 14, 2016 and based on data, facts, information and other sources and resources believed to be reliable at that time.

DATA USED IN THIS REPORT

(Includes but may not be limited to):

2013-2015 Tax Returns	SC Sec. of State Corporation Report
Asset Schedule	Preparer's Experience
Client Interview(s)	Water bills/Power bills
Business Reference Guide(s)	BizBuySell.com ® Comp Report(s)
PricePoint™ Business Pricing and Analysis Software	

Since the conclusions by the report are based upon judgments, isolation of any single element as the sole basis of comparison to the whole report may be inaccurate. The client and/or reader(s) should perform any and all due diligence necessary when drawing conclusions, using this report to render financial and business decisions or purchasing any or all of the assets of business evaluated.

The purpose of this report is to familiarize a potential buyer with this business. The conclusions reached within this report are purely subjective and are solely the opinions of the preparer who makes no warranties as to their accuracy. As a potential buyer you should verify all the information to his/her satisfaction.

2015 BUSINESS REFERENCE GUIDE ©

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-07-1180

IN THE MATTER OF ESTATE OF)
HARRIET KATHLEEN HENRY)
TIMS,)

SAMUEL H. TIMS, individually and)
As a Co-Personal Representative of)
The Estate of Harriet Kathleen Tims,)

v.)

ANSWER AND CROSS CLAIMS
OF MICHAEL TIMS TO CROSS CLAIMS
OF DEBORAH T. KRANE

MICHAEL TIMS, individually and)
As a Co-Personal Representative of)
The Estate of Harriet Kathleen Tims,)
And DEBORAH T. KRANE,)
Individually and as a Co-Personal)
Representative of the Estate of)
Harriet Kathleen Tims,)

Respondents.)

TO: BRANDT SHELBOURNE, ESQUIRE: ATTORNEY FOR DEBORAH T. KRANE:

Michael Tims responds to the Answer and Cross Claims by Deborah T. Krane as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not specifically admitted or qualified is denied and Michael Tims demands strict proof thereof.
2. Paragraphs 1 through 28, inclusive, are responses to Samuel Tims' original petition and require no response, except that Michael Tims denies the allegations in said Paragraphs to the extent they are inconsistent with the original Petition.
3. Responding to Paragraph 29, Michael Tims incorporates by reference his responses and allegations contained in the preceding paragraphs.

4. Paragraph 30 is admitted with the caveat that the deed was subject to the land exchange agreement.
5. Paragraphs 31 through 34 are denied.
6. Responding to Paragraph 35, Michael Tims incorporates his responses and allegations contained in the preceding paragraphs.
7. Paragraph 36 is admitted.
8. Paragraphs 37 and 38 are denied.
9. Responding to Paragraph 39, Michael Tims incorporates his responses and allegations contained in the preceding paragraphs.
10. Paragraphs 40 and 41 are denied.
11. Responding to Paragraph 42, Michael Tims incorporates his responses and allegations contained in the preceding paragraphs.
12. Paragraphs 43 and 44 are denied.
13. Responding to Paragraph 45, Michael Tims incorporates his responses and allegations contained in the preceding paragraphs.
14. Paragraphs 46, 47 and 48 are denied.

FOR A SECOND DEFENSE

15. The responses and allegations contained in the preceding paragraphs are incorporated by reference herein.
16. Deborah Krane's claims are barred by the doctrine of unclean hands.

FOR A THIRD DEFENSE

17. The responses and allegations contained in the preceding paragraphs are incorporated by reference herein.

18. Deborah Krane's claims are barred by the doctrine of laches.

FOR A FOURTH DEFENSE

19. The responses and allegations contained in the preceding paragraphs are incorporated by reference herein.

20. Deborah Krane's claims are barred by estoppel.

FOR A FIFTH DEFENSE AND CROSS CLAIM AGAINST DEBORAH KRANE

21. The responses and allegations contained in the preceding paragraphs are incorporated by reference herein.

22. Deborah Krane owes a fiduciary duty to Samuel Tims and Michael Tims in her capacity as Co-Personal Representative of the Estate of Harriet Kathleen Tims.

23. Deborah Krane has breached this fiduciary duty in the following manner:

- a. Failing to honor the Land Exchange Agreement
- b. Failing to account for all assets of the estate.
- c. Attempting to influence and distort values of estate assets and assets which should be the sole property of Michael Tims.

FOR A SIXTH DEFENSE AND CROSS CLAIM AGAINST DEBORAH KRANE

24. The responses and allegations contained in the preceding paragraphs are incorporated by reference herein.

25. On or about November 14, 2012, Harriet Tims executed that certain Land Exchange Agreement and agreed to obtain a loan from Palmetto State Bank for about \$65,000.00 to assist Michael Tims in paying off his indebtedness to MCAS Federal Credit Union and, in

exchange, Michael Tims executed a Title to Real Estate conveying title to his property on Cloverdale Road to Harriet Tims so that the aforesaid financing could be secured.

26. The Land Exchange Agreement is a part of the record already.
27. On November 15, 2012, Harriet Tims executed a Note and Mortgage to Palmetto State Bank in the amount of \$65,280.00 to pay off Michael Tims' MCAS Federal Credit Union loan.
28. The Mortgage is part of the record.
29. Michael Tims conveyed legal title to the Cloverdale property to Harriet Tims, but retained beneficial interest. Michael Tims lives on the Cloverdale property and operates a deer processing business on said property.
30. A controversy has arisen between the parties regarding the intent of the parties in entering into the Land Exchange Agreement and with regard to the legal status of the Cloverdale property.
31. Deborah Krane claims the Cloverdale property is an estate asset and subject to distribution via intestate succession.
32. Michael Tims and Samuel Tims both contend that Harriet Tims intended to hold the Cloverdale property in trust for Michael Tims, per the Land Exchange Agreement, and that the Cloverdale property is not an estate asset.
33. Michael Tims and Samuel Tims both contend that the circumstances constitute a resulting trust and that the Cloverdale property should be conveyed back to Michael Tims when the terms of the Land Exchange Agreement are fulfilled and the Mortgage to Palmetto State Bank is paid off by Michael Tims.

34. A justiciable controversy exists and Michael Tims has no adequate remedy at law. Michael Tims will suffer irreparable harm if the Court does not exercise its powers, declare that a resulting trust exists and that Michael Tims is entitled to a return of title to the Cloverdale property upon compliance with the Land Exchange Agreement and payment of the Palmetto State Bank Mortgage:

WHEREFORE, Michael Tims prays that the Court inquire into the matter and dismiss Deborah Krane's cross claims, grant Michael Tims' crossclaims and grant such other relief as may be just and proper.

Respectfully submitted.

Dated: June 27, 2017

Hardeeville, South Carolina

s/

Law Offices of Darrell Thomas Johnson, Jr., LLC

Mills Morrison

Mills L. Morrison, Jr.

SC Bar No. 68546

Post Office Box 1125

Hardeeville, South Carolina 29927

(843) 784-2142

Attorney for Michael Tims

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-1180
IN THE MATTER OF:	)	
HARRIET KATHLEEN HENRY TIMS,	)	
	)	
Decedent.	)	
	)	
Samuel H. Tims, individually and as a Co-	)	
Personal Representative of the Estate of	)	
Harriet Kathleen Tims,	)	
	)	
Petitioner,	)	ANSWER AND REPLY OF DEBORAH T.
	)	KRANE TO CROSSCLAIMS OF MICHAEL
	)	TIMS
vs.	)	
	)	
Michael Tims, individually and as a Co-	)	
Personal Representative of the Estate of	)	
Harriet Kathleen Tims and Deborah T. Krane)	)	
Individually and as a Co- Personal	)	
Representative of the Estate of Harriet	)	
Kathleen Tims	)	
	)	
Respondents.	)	

TO: Respondent Michael Tims and his attorney Mills Morrison:

Respondent Deborah T. Krane (hereinafter "Deborah Krane") by and through her attorney P. Brandt Shelbourne, and to the extent, possible The Estate of Harriet Kathleen Tims, answering the Cross Claims of Respondent Michael Tims (hereinafter "Michael Tims") as follows:

FOR A FIRST DEFENSE

1. Unless otherwise admitted, Respondent denies all of the allegations contained in Respondent's Michael Tims' Answer and Cross Claims and demands strict proof thereof.
2. Paragraphs 1 through 14 do not require an answer, but to the extent they do, Respondent Deborah T. Krane denies those allegations and demands strict proof thereof.

3. In response to paragraph 15, Respondent repeats each and every allegation as set forth above as if set out fully verbatim herein.

4. Respondent denies those allegations contained in Paragraph 16 and demands strict proof thereof.

5. In response to paragraph 17, Respondent repeats each and every allegation as set forth above as if set out fully verbatim herein.

6. Respondent denies those allegations contained in Paragraph 18 and demands strict proof thereof.

7. In response to paragraph 19, Respondent repeats each and every allegation as set forth above as if set out fully verbatim herein.

8. Respondent denies those allegations contained in Paragraph 20 and demands strict proof thereof.

9. In response to paragraph 21, Respondent repeats each and every allegation as set forth above as if set out fully verbatim herein.

10. In response to paragraph 22, Respondent Deborah T. Krane admits that a personal representative owes a fiduciary duty to the estate and to all heirs in the estate, but to the extent that paragraph 22 alleges breach of said duty, Respondent Deborah T. Krane denies same and demands strict proof thereof.

11. Respondent denies those allegations contained in Paragraph 23 and demands strict proof thereof.

12. In response to paragraph 24, Respondent repeats each and every allegation as set forth above as if set out fully verbatim herein.

13. In response to paragraph 25, Deborah T. Krane admits that Harriet Kathleen Tims entered into an agreement with Michael Tims with regard to real property, but as the document speaks for itself, Deborah T. Krane denies any allegation contrary to the express language of that document and demands strict proof thereof.

14. In response to paragraph 26, Deborah T. Krane admits that the document is attached as an exhibit to the complaint, but denies that it has been admitted to the "record".

15. In response to paragraph 27, Deborah T. Krane admits that Harriet Kathleen Tims executed a mortgage when purchasing the property but denies that her reason to do so was solely to pay off Michael Tims' loan and therefore demands strict proof thereof.

16. In response to paragraph 28, Deborah T. Krane admits that the document is attached as an exhibit to the complaint, but denies that it has been admitted to the "record".

17. Deborah T. Krane admits as much of paragraph 29 as alleges that Michael Tims conveyed legal title to Harriet Kathleen Tims, but denies that Michael Tims was the sole beneficiary of the property and demands strict proof thereof. Deborah T. Krane further believes that Michael Tims does live on the property and operates a deer processing business on the property, but does not admit to Michael Tims' ownership of either the home or business and demands strict proof thereof.

18. In response to paragraph 30, Deborah T. Krane admits that the Cloverdale property is the subject of this litigation and that there is a legal conflict over it because of the position taken by Michael Tims and Samuel Tims, but denies anything further and demands strict proof thereof.

19. Respondent admits those allegations contained in paragraph 31.

20. In response to paragraph 32, Deborah T. Krane admits that it appears from the pleadings that Michael Tims and Samuel Tims contend that Cloverdale is not part of the Estate of Harriet Kathleen Tims, but Deborah T. Krane does not have actual knowledge of the rest of Michael Tims or Samuel Tims contentions unless pled in the court, and therefore must deny the remainder of paragraph 32, and demand strict proof thereof.

21. In response to paragraph 33, other than the pleadings and correspondence amongst the parties, Deborah T. Krane has no actual knowledge of what Michael Tims and Samuel Tims contend and therefore denies the same and demands strict proof thereof.

22. Deborah T. Krane denies the allegations of paragraph 34 and demands strict proof thereof.

**AS AND FOR A SECOND DEFENSE
(Failure to State a Claim)**

23. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

24. Pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6), Michael Tims has failed to state a claim against Respondent Deborah Krane and or the Estate of Harriet Kathleen Tims upon which relief can be granted and, therefore, Respondent Michael Tims Crossclaims against Respondent should be dismissed.

**AS AND FOR A THIRD DEFENSE
(Statute of Limitations)**

25. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

26. Respondent submits that the Respondent Michael Tims claims are barred by the applicable statutes of limitations.

AS AND FOR A FOURTH DEFENSE

(Laches)

27. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

28. Respondent Michael Tims claims are barred by the doctrine of laches as Petitioner and Michael Tims have failed to timely pursue any remedy or relief.

AS AND FOR A FIFTH DEFENSE

(Lack of Standing)

29. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

30. Respondent Michael Tims lacks standing pursuant to South Carolina law to bring this action as he is not acting in the best interests of the Estate.

AS AND FOR A SIXTH DEFENSE

(Lack of Jurisdiction)

31. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

32. Respondent Michael Tims seeks a court Order placing the real property in trust.

33. Upon information and belief, the Probate court does not have jurisdictional authority to execute a deed to the property removing it from the estate and putting it in the name of a trustee.

AS AND FOR A SEVENTH DEFENSE

(Failure to Timely File Creditor Claim as Required by South Carolina Probate Code Section 62-3-803)

34. Respondent repeats each and every allegation set forth above as if set out fully verbatim herein.

35. Pursuant to South Carolina Probate Code Section 62-3-803, all claims against an estate whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of Harriet Kathleen Tims' death or eight (8) months after the first publication of notice.

36. The subject real property was deeded to Harriet Kathleen Tims prior to her death and was owned by Harriet Kathleen Tims at the time of her death.

37. Respondent Michael Tims' claim that the property is not part of the Estate is founded on contract or other legal basis.

38. More than one (1) year has elapsed since decedent Harriet Kathleen Tims death and the time Respondent Michael Tims presented his claim.

39. More than eight (8) months have elapsed since publication of Notice to Creditors and the time Respondent Michael Tims presented his claim.

40. No other creditor claim was presented by any person against the estate regarding the real property in the current petition.

41. Because Respondent Michael Tims and all other persons failed to timely file their claims Michael Tims and Petitioner and other persons are statutorily time barred from raising claims pursuant to the Land Exchange Agreement that the estate does not own the real property in question or that the Estate is obligated to convey it to Michael Tims or any other party or obligated to comply with the Land Exchange Agreement.

WHEREFORE, having fully responded to the Crossclaims of Respondent Michael Tims, Respondent Deborah T. Krane prays unto this Honorable Court for an Order dismissing Respondent Michael Tims' Cross Claims as well as the claims of Petitioner Samuel Tims, for an

Order granting the relief Deborah T. Krane seeks in her pleadings filed herein, and for attorney's fees and costs and for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW FIRM

s/ P. Brandt Shelbourne

P. Brandt Shelbourne, Esquire

131 E. Richardson Avenue

Summerville, SC 29483

(843) 871-2210

ATTORNEY FOR RESPONDENT

DEBORAH KRANE

Dated: July 10, 2017
Summerville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN RE: THE ESTATE OF HARRIET H. TIMS)

SAMUEL H. TIMS, individually and as a Co-Personal Representative of the Estate of Harriet Kathleen Tims,)

Petitioner,)

vs)

MICHAEL TIMS, individually and as Co-Personal Representative of the Estate of Harriet Kathleen Tims and DEBORAH T. KRANE, individually and as Co-Personal Representative of the Estate of Harriet Kathleen Tims,)

Respondent(s).)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-07-1180

PETITIONER'S RESPONSE
TO RESPONDENT DEBORAH
T. KRANE'S ANSWER TO
AMENDED PETITION FOR
DECLARATORY RELIEF
AND COUNTERCLAIMS AND
CROSSCLAIMS

COMES NOW the Petitioner, Samuel H. Tims, by and through his undersigned counsel, responding to Respondent Deborah T. Krane's Answer to the Amended Petition for Declaratory Relief and Respondent Deborah Krane's Counterclaims and Crossclaims:

1. Any allegations contained in the Respondent's Answer not specifically admitted or denied herein are denied and strict proof demanded thereof.
2. Petitioner is not required to admit or deny the allegations in Paragraphs 1 through 29 of the Respondent's Answer.
3. Petitioner admits the allegations contained in Paragraph 30 of the Answer.
4. Petitioner denies the allegations contained in Paragraphs 31, 32, and 33 of the Answer.

5. Paragraph 34 of the Answer is administrative which Petitioner is not required to admit or deny.
6. Petitioner answers Paragraph 35 as previously set forth herein.
7. Petitioner admits the allegations contained in Paragraph 36 of the Answer.
8. Petitioner denies the allegations contained in Paragraph 37 of the Answer.
9. Paragraph 38 calls for a legal conclusion which Petitioner is not required to admit or deny.
10. Petitioner answers Paragraph 39 as previously set forth herein.
11. Petitioner denies the allegations contained in Paragraphs 40 and 41 of the Answer.
12. Petitioner answers Paragraph 42 as previously set forth herein.
13. Petitioner denies the allegations contained in Paragraphs 43 and 44 of the Answer.
14. Petitioner answers Paragraph 45 as previously set forth herein.
15. Petitioner denies the allegations contained in Paragraphs 46, 47, and 48 of the Answer.

RESPECTFULLY SUBMITTED;

EVERSOLE LAW FIRM, P.C.

s/Alysoun M. Eversole
Alysoun M. Eversole, SC Bar# 0068011
1509 King Street,
Beaufort, SC 29902
(843)379-3333
aeversole@eversolelaw.com

Beaufort, South Carolina
11th day of July, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-07-1180

IN THE MATTER OF:)
HARRIET KATHLEEN HENRY TIMS,)

Decedent.)

Samuel H. Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims,)

Petitioner,)

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

vs.)

Michael Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims and Deborah T. Krane)
Individually and as a Co- Personal)
Representative of the Estate of Harriet)
Kathleen Tims)

Respondents.)

TO: Petitioner Samuel H. Tims and his attorney Alysoun Eversole and Respondent Michael Tims and his attorney Mills Morrison:

PLEASE TAKE NOTICE that Respondent Deborah T. Krane, by and through her attorney of record, will move before this Court within ten (10) days or as soon thereafter as may be heard for Summary Judgment against all causes of action alleged by the Petitioner Samuel H. Tims and Respondent Michael Tims on the grounds that, taking the facts in a light most favorable to the non-moving parties, movant Deborah T. Krane is entitled to Summary Judgment as a matter of law as the non-moving parties have failed to timely file a claim with the estate and

are time barred from asserting a claim against the estate based on contract or tort, or other grounds.

This motion shall be supported by such memorandum of law filed with the Court and such other and further documentation as may be submitted.

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW FIRM

s/ P. Brandt Shelbourne

P. Brandt Shelbourne, Esquire

131 E. Richardson Avenue

Summerville, SC 29483

(843) 871-2210

ATTORNEY FOR RESPONDENT

DEBORAH KRANE

Dated: August 31, 2017
Summerville, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CASE NO. 2017-CP-07-1180
IN THE MATTER OF ESTATE OF)	
HARRIET KATHLEEN HENRY)	
TIMS,)	
)	
SAMUEL H. TIMS, individually and)	
As a Co-Personal Representative of)	
The Estate of Harriet Kathleen Tims,)	NOTICE OF MOTION AND MOTION
)	FOR PARTIAL SUMMARY JUDGMENT
v.)	BY MICHAEL TIMS
)	
MICHAEL TIMS, individually and)	
As a Co-Personal Representative of)	
The Estate of Harriet Kathleen Tims,)	
And DEBORAH T. KRANE,)	
Individually and as a Co-Personal)	
Representative of the Estate of)	
Harriet Kathleen Tims,)	
)	
Respondents.)	
)	

TO: BRANDT SHELBOURNE, ESQUIRE: ATTORNEY FOR DEBORAH T. KRANE:

YOU WILL TAKE NOTICE that Michael Tims will move before this Court in Ten days or as soon thereafter as counsel may be heard for an Order granting summary judgment on his Cross Claim against Deborah Krane, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Specifically, Michael Tims will show that there is no genuine issue of material fact with regard to the declaratory judgment claim and that the trust issue is an interpretation of a written document which is a matter for the Court. Michael Tims relies upon the record in this case, as well as such memoranda, affidavits, and other documents which may be filed up to the time of hearing. Pursuant to Rule 11, this is a motion for summary judgment and no duty of consultation exists. Furthermore, consultation would serve no useful purpose.

Respectfully submitted.

Dated: September 27, 2017
Hardeeville, South Carolina

s/

Law Offices of Darrell Thomas Johnson, Jr., LLC

Mills Morrison

Mills L. Morrison, Jr.

SC Bar No. 68546

Post Office Box 1125

Hardeeville, South Carolina 29927

(843) 784-2142

Attorney for Michael Tims

ELECTRONICALLY FILED - 2017 Sep 27 2:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN RE: THE ESTATE OF HARRIET H.
TIMS

SAMUEL H. TIMS, individually and as a Co-
Personal Representative of the Estate of
Harriet Kathleen Tims,

Petitioner,

vs

MICHAEL TIMS, individually and as Co-
Personal Representative of the Estate of
Harriet Kathleen Tims and DEBORAH T.
KRANE, individually and as Co-Personal
Representative of the Estate of Harriet
Kathleen Tims,

Respondent(s).

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-07-1180

NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT BY SAMUEL H.
TIMS

TO: P. BRANDT SHELBOURNE, ESQUIRE, Attorney for Deborah T. Krane.

YOU WILL PLEASE TAKE NOTICE that the Petitioner, Samuel H. Tims; by and through his undersigned counsel, within ten (10) days or as soon thereafter as may be heard, hereby moves this Honorable Court for an Order Granting Summary Judgment to him pursuant to Rule 56, South Carolina Rules of Civil Procedure. In support of this motion, the Petitioner would show that there is no genuine issue of material fact in Petitioner's declaratory relief claim. This motion is based upon the pleadings, public records and affidavits that will be submitted prior to the hearing and upon South Carolina law. This motion may be further supported by a Memorandum of Law filed prior to the hearing.

Respectfully Submitted,

By: s/Alysoun M. Eversole
Alysoun M. Eversole, Bar #0068011
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902
Phone: (843) 379-3333
Fax: (843) 379-5558
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
28th day of September 2017

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-07-1180

IN THE MATTER OF:)
HARRIET KATHLEEN HENRY TIMS,)
Decedent.)

Samuel H. Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims,)
Petitioner,)

**MEMORANDUM IN SUPPORT OF
DEBORAH T. KRANE'S MOTION
FOR SUMMARY JUDGMENT**

vs.)

Michael Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims and Deborah T. Krane)
Individually and as a Co- Personal)
Representative of the Estate of Harriet)
Kathleen Tims)
Respondents.)

TO: PETITIONER SAMUEL H. TIMS AND HIS ATTORNEY, Alysoun Eversole,
ESQ., AND RESPONDENT MICHAEL TIMS AND HIS ATTORNEY, MILLS
MORRISON, ESQ.:

On May 22, 2017 Petitioner Sam Tims filed a Petition for Declaratory Judgment in the Beaufort County Probate Court asking the court "inquire into the matters... [and] determine the intent of the decedent..." Sam Tims alleges that a Land Exchange Agreement (hereinafter "LEA"), signed by his mother, the decedent Harriet Tims and his brother Michael Tims is a trust document and that Estate of Harriet Tims is required to return the real property that is the subject matter of the LEA known as Cloverdale and titled in Harriet Tims' name, to Michael

Tims. Michael Tims joined in allegations and request for relief against the Estate. Because this matter is founded on contract – the LEA, and because it is a contract or agreement between a decedent and Michael Tims, South Carolina law requires that the claim be presented against the Estate within eight (8) months of the Estate publishing the Notice to Creditors or one (1) year from the decedent's death, whichever is sooner. See S.C. Code Section 62-3-801(a), et al. Because neither Petitioner or Michael Tims timely filed their claims with the Beaufort County Probate Court against the Estate, Respondent Deborah Tims is entitled to Summary Judgment as a matter of law on the Petitioner's and Michael Tims' claims that the LEA requires that the property be transferred back to Michael Tims or is somehow creates a resulting trust. Regardless of how Petitioner and Michael Tims attempt to define the LEA, it is still at best, according to their arguments, an obligation of the Estate to deed the Cloverdale property back to Michael Tims at some point in the future, either by way of contract or trust agreement.

Harriet Tims and Michael Tims signed the LEA on or about November 14, 2012. See Land Exchange Agreement, a copy of which is attached as Exhibit "A" to Sam Tims' Petition; Michael Tims' deposition. At the time, Michael Tims was in danger of losing the property in question to foreclosure. See Michael Tims' deposition. In order to avoid Michael losing the property to foreclosure, Harriet Tims agreed that if the property were put in her name, she would execute a Note and Mortgage to pay off Michael's existing Note. See Michael Tims' deposition. See Deed from Michael Tims to Harriet Tims, a copy of which is attached as Exhibit "B" to Sam Tims' Petition; and Palmetto Savings Bank Note and Mortgage to Harriet Tims, copies of which are attached as Exhibit "C" to Sam Tims' Petition.

With the Cloverdale property titled in her name, Harriet Tims died on February 14, 2016. Petitioner and Respondents Michael Tims and Deborah T. Krane, Harriet Tims' children,

were appointed Co-Personal Representatives of the Estate. Notice to Creditors was published in the Beaufort Gazette on March 10, 2016, March 17, 2016 and March 24, 2016. Thereby starting the statutory time period in which creditors or claimants were required to file claims. The LEA is between Michael Tims and Harriet Tims. Neither Michael Tims, nor Petitioner Sam Tims filed any claim with the Beaufort County Probate Court regarding the LEA within the statutory eight (8) month period. See Michael Tims' deposition.

STATEMENT OF LAW

"Pursuant to the general statutory scheme of the Probate Code, all claims against a decedent's estate ... must be presented after a personal representative is appointed and within the time limits prescribed by section 62-3-803, which our appellate courts have designated as a 'nonclaim statute'." Beach First National Bank v. Estate of Hover, 407 S.C.194, __, 754 S.E.2d 275, 879-880 (2014). "All claims against a decedent's estate ... whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, ... are barred against the estate, the personal representative, and the heirs and devisees of the decedent ... unless presented within the earlier of the following: (1) one year after the decedent's death; or (2) ... within the time provided in Section 62-3-801(a) for all creditors barred by publication." See S.C. Code Ann. § 62-3-803(a) (emphasis added). Section 62-3-801(a) provides notice that upon publication, creditors of the estate must "present their claims within eight months after the date of the first publication of the notice or be forever barred." See S.C. Code § 62-3-801(a).

Neither the Petitioner Sam Tims or Michael Tims presented any claim against the estate within one (1) year of decedent's death, let alone the requisite eight months from publication of the Notice to Creditors. Harriet Tims died February 14, 2016 and the Notice of Creditors was

first published March 10, 2016. Claims against the Estate needed to be presented and filed by November 10, 2016; eight (8) months from the March 10, 2016 publication. Even if using one (1) year from date of death, claims would need to be filed by February 14, 2017.

While a claimant may deliver or mail a written statement of the claim to the personal representative, they also “must file a written statement of the claim ... with the probate court” See S.C. Code § 62-3-804(1)(a) (emphasis added). “The claim is considered presented upon the filing of the statement of claim with the court.” *Id.* “An untimely claim filed pursuant to a statute of nonclaim is automatically barred, so that the filing of a claim within the period specified is mandatory.” *Beach First National Bank v. Estate of Hover*, 407 S.C. at ___, 754 S.E. 2d at 882, quoting 34 C.J.S. Executors and Administrators § 556 (Supp. 2013). “A nonclaim statute is a self-contained statute which absolutely prohibits the initiation of litigation based on it after a prescribed period.” *Id.* at ___, 754 S.E. 2d at 881. “[N]oncompliance eliminates a claimant’s right of action against a decedent’s estate and, in turn, deprives the court of the power to adjudicate the claim. See 54 C.J.S. Limitations of Actions § 33 (Supp. 2013). (“Nonclaim statutes operate to bar untimely claims without any action by the opposing party and deprive a court of the power to adjudicate those claims.” (emphasis added)).” *Id.* at ___, 754 S.E. 2d at 882.

Taking all the facts, and any inferences arising therefrom, in a light most favorable to Sam Tims and Michael Tims, they can point to no evidence that a claim was timely presented to the Beaufort County Probate Court in this matter. The failure to timely present and file a claim with the probate court bars any claim against the Estate that the LEA requires that the Cloverdale property be returned or deeded back to Michael Tims. The LEA is on its face an agreement between Michael Tims and the decedent. On its face it is contingent on Michael Tims paying certain sums back to the decedent. It is at the very least a legal argument against the Estate.

Even if we assume for the sake of argument only that it is a Trust Agreement between Michael Tims and the decedent, it is still an alleged obligation of the decedent to deed the property back to Michel Tims at some point after it was executed. The alleged legal obligation of the decedent, and now the estate, demands that notice of the alleged legal obligation must be presented by way of a claim against the estate within the statutory time limits and by the statutory method. Petitioner and Michael Tims failed to do this. Their claims are barred.

Petitioner and Michael Tims may argue that because they are seeking a declaratory judgment that the LEA is actually a resulting trust, they are exempt from the statutory requirements of timely presentation. This South Carolina Code § 62-3-801, et. al, however, is a nonclaim statute and bars all claims which are not timely filed against the estate. See Beach First National Bank v. Estate of Hover, Supra. Otherwise, there would be no limit as to when a petitioner could file a claim. Petitioner's claim begs the question of when would it be too late to file a claim or ask for a Declaratory Judgment. Under Petitioner's theory, there is no time limitation. For example, if the LEA were an agreement between the decedent and a third party, under Petitioner's logic, the Estate could never close and distribute the estate assets free of unsecured liens because someone in Petitioner's position could always assert that the LEA was actually a trust and the property should revert to Michael Tims. The statutory provisions for creditor claims of the South Carolina Probate Code clearly do not allow this. "[T]he purpose of the nonclaim statute ... is to expedite and resolve claims against a decedent's estate with finality. See In re Estate of Ongaro, 998 P.2d 1097, 1102 (Colo. 2000) (en banc) (analyzing nonclaim statute and stating, "Allowing creditors to toll claims against estates would frustrate the speedy and efficient settlement of estates and distribution of assets"); Ragan v. Hill 337 N.C. 667, 447 S.E. 2d 371, 374 (1994) (The time limitations prescribed by [the nonclaim statute] allow the

personal representative to identify all claims to be made against the assets of the estate early on in the process of administering the estate. The statute also promotes the early and final resolution of claims by barring those not presented within the identified period of time)." Beach First National Bank v. Estate of Hover, 407 S.C. at ___, 754 S.E. 2d at 885. Likewise, Petitioner's and Michael Tims' equity allegations play no part in their application of the nonclaim statute. "[E]quitable considerations are not a factor in the claims-barring analysis." Id. at ___, 754 S.E. 2d at 882.

While the Cloverdale property does have a mortgage on it to secure a Note taken out by the decedent, the LEA and the arguments surrounding its interpretation are not actions to "enforce a mortgage, pledge, lien or other security interest" See S.C. Code § 62-3-803(d)(1). The LEA is not a mortgage, pledge, lien or other security interest. At best it is a contingent contract or agreement between Michael Tims and the decedent. Petitioner's and Michael Tims' claims are claims founded on "contract, tort, or other legal basis ..." and have to be timely presented.

CONCLUSION

Because neither Petitioner or Michael Tims timely presented a notice of claim with the Beaufort County Probate Court as to the Estate's alleged obligation to deed the Cloverdale property back to Michael Tims, Petitioner and Michael Tims cannot now come into Court seeking adjudication of the Estate's liability under the LEA and Movant Deborah T. Krane is entitled to Summary Judgment as a matter of law on Petitioner's and Michael Tims' claims that the Cloverdale property is somehow held in trust by the decedent estate or that the estate is obligated to deed the property back to Michael Tims under the LEA.

RESPECTFULLY SUBMITTED,
SHELBOURNE LAW FIRM

s/ P. Brandt Shelbourne
P. Brandt Shelbourne, Esquire
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEY FOR RESPONDENT
DEBORAH KRANE

Dated: October 5, 2017
Summerville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-07-1180

IN THE MATTER OF ESTATE OF)
HARRIET KATHLEEN HENRY)
TIMS,)

SAMUEL H. TIMS, individually and)
As a Co-Personal Representative of)
The Estate of Harriet Kathleen Tims,)

v.)

MICHAEL TIMS, individually and)
As a Co-Personal Representative of)
The Estate of Harriet Kathleen Tims,)
And DEBORAH T. KRANE,)
Individually and as a Co-Personal)
Representative of the Estate of)
Harriet Kathleen Tims,)

Respondents.)

MICHAEL TIMS'
MEMORANDUM IN OPPOSITION TO
DEBORAH KRANE'S MOTION FOR
SUMMARY JUDGMENT AND IN SUPPORT
OF MICHAEL TIMS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

TO: BRANDT SHELBOURNE, ESQUIRE: ATTORNEY FOR DEBORAH KRANE:

Michael Tims files this Memorandum in Opposition to Deborah Krane's Motion for Summary Judgment and in support of his Motion for Partial Summary Judgment. Michael Tims will show that Deborah Krane's Motion should be denied for a whole host of reasons. Michael Tims will show that he is entitled to judgment as a matter of law on his and Samuel Tims' claims for declaratory judgment seeking to impose a resulting or constructive trust on the real property which is the subject of this action. Michael Tims further seeks an Order of this Court striking Deborah Krane's request for a jury trial on the basis that the complaint is equitable and her counterclaims are legal and permissive. Michael Tims relies upon the record in this case and such other memoranda, affidavits or other documents which may be submitted prior to hearing.

BACKGROUND

This case involves a dispute over real property located in Beaufort County located on Cloverdale Road in the Seabrook/Dale section. The property in question was paid for and acquired by Michael Tims and has been owned by Michael Tims for some period of time. Michael Tims and his family reside on the property and he operates a deer processing business on it as well. Michael Tims had a loan on the property with MCAS Beaufort for approximately \$65,000.00. Although there is a dispute as to actual value, there is no dispute that the value of the property far exceeds \$65,000.00. In 2012, in a convoluted series of events, not really the fault of Michael Tims, the loan company put the loan in default and commenced foreclosure proceedings. Michael Tims was unable to refinance the property in his name and his mother, Harriet Tims, offered to assist. The agreement between Michael Tims and Harriet Tims was that Michael would deed the property to Harriet, Harriet would secure a loan against the property from Palmetto State Bank, Michael Tims would continue paying the new loan and, when the loan was paid off, Harriet would reconvey the property to Michael. The parties reduced the agreement to writing which is attached to this Memorandum (the "Land Exchange Agreement").

Michael Tims deeded the property to Harriet Tims for no consideration, Harriet Tims took a loan from Palmetto State Bank to pay off MCAS, and the parties executed the Land Exchange Agreement simultaneously. Subsequent to the loan closing, Michael Tims continued to live in the property as his primary residence and primary place of business. Michael Tims paid all loan payments, all taxes and all other expenses associated with the property. Neither Harriet Tims, nor anyone in the family, treated the property as the property of Harriet Tims. The loan is current at the present time, but has not been paid off. Michael Tims continues to make payments on the loan,

continues to make all payments relative to the property and continues to occupy the property as his primary residence and primary place of business.

Harriet Tims passed away in 2016. All three of her children, being Michael Tims, Deborah Krane and Samuel Tims, were appointed as co-personal representatives. Not long after the appointment, relations between the parties deteriorated and the administration of the estate came to a standstill. As of this writing, an Inventory and Appraisement has not been filed, because the co-personal representatives cannot agree on the assets of the estate or the values to place upon the assets of the estate. Deborah Krane takes the position that the Cloverdale property is an asset of the estate and Samuel Tims and Michael Tims contend it is Michael Tims' property by constructive or resulting trust and, therefore, not an asset of the estate.

ARGUMENT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. In the present case, Deborah Krane is not entitled to summary judgment and Michael Tims and Samuel Tims are entitled to summary judgment on their claim for declaratory judgment. Furthermore, Deborah Krane is not entitled to a jury trial, because the complaint is equitable and the counterclaim legal and permissive.

Deborah Krane contends that Michael Tims and Samuel Tims' claims regarding the Cloverdale property are barred for failure to file a creditor's claim. This argument is wrong for a whole host of reasons.

1. This action is a declaratory judgment action to determine the rights of the parties as they currently are, not to create rights which previously did not exist. The Land Exchange Agreement and the parties' conduct, both before and after Harriet Tims' death, show that

the property should equitably be Michael Tims' property, held in trust by Harriet Tims, and not an asset of the estate.

2. If the property is not an asset of the estate, then Deborah Krane's arguments do not apply.

If a person holds property in a trust, that property is not part of their estate when they die. People often create trusts and place property in these trusts to avoid the Probate process. Michael Tims has a vested interest in the property which existed prior to Harriet Tims' death and which now continues after her death.

3. The personal representatives are, themselves, not in agreement as to how to treat the property. Michael Tims and Samuel Tims contend it is not an asset of the estate and Deborah Krane contends it is an asset of the estate. Pursuant to S.C. Code Ann. § 62-3-802(a), the defense of limitations may be waived by the personal representatives. It is not a jurisdictional defense.

4. An action for the recovery of real property must be brought within ten years. The earliest this period would commence is in 2012 when the parties entered the Land Exchange Agreement. Actually, this period has not even yet commenced, as shown below.

5. The Land Exchange Agreement states, in pertinent part: "Upon the acquisition of the contract of sale of the premises, Mom agrees to deed the premises back to Son[.]" The parties' understanding was that meant the property would be deeded back when the loan from Palmetto State Bank was paid off. In any event, there has been no acquisition of a contract for sale and the loan has not been paid off. Michael Tims' right to have the property reconveyed to him is not triggered until one of these events occurred. Therefore, Michael Tims does not yet have a claim for the return of the property.

6. S.C. Code Ann. § 62-3-803(a) states: "All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; are barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent; unless presented within the earlier of the following: (1) one year after the decedent's death; (2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication." A few things are pertinent here: (1) As shown above, Michael Tims does not have a claim for return of the property until acquisition of a contract of sale or the payoff of the loan. Neither of those events occurred before the decedent's death and neither has yet occurred. (2) The current action is equitable, not legal, and this statute does not mention equitable claims.
7. S. C. Code Ann. § 62-3-803(c) states: "All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows: (1) a claim based on a contract with the personal representative within eight months after performance by the personal representative is due; or (2) any other claim, within the later of eight months after it arises, or the time specified in subsection (a)(1)." As stated previously, Michael Tims does not have a claim for the return of the property until the

acquisition of a contract for sale or repayment of the loan; depending on how the Land Exchange Agreement is interpreted. Neither of these events occurred prior to the decedent's death and neither has yet occurred and so this limitation, if it applies, has not yet begun to run. Furthermore, this limitation does not even apply, because the current claim is equitable and, therefore, not subject to the creditor's claims limitations.

8. S.C. Code Ann. § 62-3-803(d) states, in pertinent part: "Nothing in this section shall be construed as placing a limitation on the time for: (1) commencing a proceeding to enforce a mortgage, pledge, lien, or other security interest upon property of the estate (3) collecting compensation for services rendered to the estate or reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate." Michael Tims' interest in the property, if not as a beneficiary of a trust, can certainly be construed as a "mortgage, pledge, lien or other security interest." Furthermore, the money spent by Michael Tims to service the loan and keep up the property are certainly "services rendered to the estate or expenses" advanced by the personal representative."

9. This action being one at equity, the question becomes whether the doctrine of laches might bar Samuel Tims' and Michael Tims' claims. Laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. In general, one with a remainder interest in a trust is not guilty of laches if he sues promptly after his interest vests. *See eg. Eldridge vs. Eldridge*, 398 S.C. 113, 728 S.E.2d 24 (S.C. 2012) In this case, Michael Tims' interest has not vested, because there has been no acquisition of a contract for sale and the loan from Palmetto State Bank has not been paid off.

10. The circumstances of this case create either a resulting trust or a constructive trust.
11. Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another. The general rule is that when real estate is conveyed to one person and the consideration paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself, and accordingly a resulting trust is raised in his behalf. The presumption, however, may not be in accord with the truth. It may be rebutted and the actual intention shown by parol evidence. See eg. Hayne Federal Credit Union vs. Bailey, 327 S.C. 242, 489 S.E.2d 472 (S.C. 1997)
12. The Court in *Hayne* looked at such factors as the beneficiary of the trust paying all costs of acquiring the property, the beneficiary occupying the house after closing, the beneficiary paying all taxes and insurance and the beneficiary being responsible for caring for the house, financially and physically. All of those elements are present in the Tims' situation. It is uncontested that Michael Tims has paid all expenses relative to the property, has made all loan payments, has maintained the property financially and physically and paid all money to acquire the property. Harriet Tims has zero investment in the property. The Court in *Hayne* actually found that there was no resulting trust, because the father put title in the son's name in order to defraud creditors. One who seeks equity must do equity and the Court will not enforce a resulting trust set up to defraud creditors. In the Tims' situation, neither Harriet Tims nor Michael Tims intended to defraud anyone nor did they defraud anyone.
13. The undisputed facts in this case establish a resulting trust which this Court should enforce.

It is undisputed that Michael Tims paid for the property. It is undisputed that Michael Tims

has occupied the property as his primary residence and primary place of business. It is undisputed that Michael Tims has paid all expenses relative to the property and all loan payments to Palmetto State Bank. It is undisputed that Michael Tims has been caring for the property both financially and physically. By her refusal to acknowledge Michael Tims' interest, Deborah Krane seeks a windfall at Michael Tims' sole expense.

14. A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. It is resorted to by equity to vindicate right and justice or frustrate fraud. Because an action to declare a constructive trust is in equity, the Court may find the facts in accordance with its own view of the evidence. A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title. A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. A constructive trust arises whenever a party has obtained property which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid or property transferred by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty. The burden is on the plaintiff to establish a constructive trust by clear and convincing evidence. Although fraud is generally cited as an element to establish a constructive trust, a party need not show actual fraud. Further, equity is less than demanding and quite flexible in prescribing the elements essential to a constructive trust. *See eg. Carolina Park Associates, LLC, vs. Marino, 400 S.C. 1, 732 S.E.2d 876 (S.C., 2012)*

15. While the relationship between Harriet Tims and Michael Tims is most applicable to that of a resulting trust, the situation between the Estate of Harriet Tims (and, specifically, Deborah Krane) is more along the lines of a constructive trust. Deborah Krane arguably has acquired title to the property (and the benefit of the money Michael Tims has expended on the property) under circumstances that make it inequitable for her to keep it. Deborah Krane's holding title and refusing to acknowledge Michael Tims' interest shows fraud, bad faith, an abuse of confidence and breach of fiduciary duty. It is noteworthy that Samuel Tims, who is in the same position as Deborah Krane and stands to have no interest in the property if his and Michael Tims' claims prevail, joins Michael Tims in seeking to impose a resulting or constructive trust.

16. The Court should grant Samuel Tims' and Michael Tims' requests for declaratory judgment and declare that the Cloverdale property is held by the Personal Representatives of the Estate of Harriet Tims as trustees in trust for Michael Tims and is to be returned to Michael Tims upon the acquisition of a contract of sale or the payoff of the Palmetto State Bank loan.

17. Deborah Krane has requested a jury trial in her Answer and Counterclaim/Crossclaim. The action brought by Samuel Tims and joined by Michael Tims is one at equity and there is no entitlement to a trial by jury in an equitable action. See eg. Lester vs. Dawson, 327 S.C. 263, 491 S.E.2d 240 (S.C. 1996). Deborah Krane has brought counterclaims for breach of fiduciary duty. Where the complaint is equitable and the counterclaim legal and permissive, the Defendant waives his right to a jury trial. Johnson vs. South Carolina National Bank, 292 S.C. 51, 354 S.E.2d 895 (S.C. 1987) Deborah Krane's counterclaims are permissive. They involve complaints about the other handling of the estate. Actually,

in her deposition, she could not say what her counterclaims were about. They have nothing to do with Samuel Tims' and Michael Tims' claims for declaratory judgment. Deborah Krane's request for a jury trial should be stricken. In any event, Deborah Krane is not entitled to a jury trial on the declaratory judgment claims and that should be decided by the Court.

CONCLUSION

Based upon the foregoing, this Court should enter an Order to the following effect:

1. Deborah Krane's Motion for Summary Judgment should be denied, because the property at issue is not an asset of the estate, Michael Tims' claim for the return of the property has not yet ripened and for all of the other reasons given above.
2. The Court should grant Samuel Tims' and Michael Tims' claims for a declaratory judgment to the effect that the Personal Representatives of the Estate of Harriet Tims as trustees hold title to the Cloverdale property in trust for Michael Tims and that Michael Tims may have the property deeded back to his name upon payoff of the Palmetto State Bank loan or acquisition of a contract for sale.
3. Deborah Krane's request for a jury trial should be stricken, because the complaint is equitable and the counterclaim is legal and permissive.

Respectfully submitted:

Law Offices of Darrell Thomas Johnson, Jr., LLC

Dated: October 5, 2017
Hardeeville, South Carolina

s/

Mills Morrison

Mills L. Morrison, Jr.
S.C. Bar No. 68546
Post Office Box 1125
Hardeeville, South Carolina 29927
(843) 784-2142
Attorney for Michael Tims

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) LAND EXCHANGE AGREEMENT

WHEREAS Harriet Tims, hereinafter referred to as Mom, and Michael Tims, hereinafter referred to as Son, wish to enter into an agreement for a land exchange.

KNOW ALL MEN BY THESE PRESENTS that the for the sum of One (\$1.00) Dollar each to the other paid, agree as follows:

1. Son is the owner of the following land:

See attached Exhibit A
2. Son is indebted to MCAS Beaufort in the amount of approximately \$65,000.00.
3. Mom is going to secure financing in that amount from Palmetto State Bank to pay off MCAS.
4. Son will deed the title of the property to Mom in order to have a first mortgage on the premises placed the property in Mom's name.
5. Upon the sale of the premises, the amount of money owed to the bank at that time will be paid along with any taxes, insurance payments, interest or any other items paid for by Mom for the ownership, maintenance and upkeep of the property.
6. Upon the acquisition of the contract of sale of the premises, Mom agrees to deed the premises back to Son so that there will be no capital gains on the sale of the property as Son's primary residence.

The above constitutes the entire agreement of the Parties and all oral negotiations are merged herewith.

Witness our hands and seals this 14 day of ^{November} October, 2012.

WITNESSES:

Kathleen Beardon

Lyndell D. Hughes

Kathryn Leichter

Am. H. H. Hughes

Harriet A. Tins
HARRIET H. TINS

Michael J. Tims
MICHAEL TIMS

EXHIBIT A

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Harriet H. Tims by deed from Michael L. Tims by deed dated _____, 2012 and recorded 11/14/12, 2012 in Deed Book 3190 at Page 2762 in the Office of the ROD for Beaufort County, South Carolina.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-07-1180

IN THE MATTER OF ESTATE OF)
HARRIET KATHLEEN HENRY)
TIMS,)

SAMUEL H. TIMS, individually and)
As a Co-Personal Representative of)
The Estate of Harriet Kathleen Tims,)

v.)

AFFIDAVIT OF MICHAEL TIMS

MICHAEL TIMS, individually and)
As a Co-Personal Representative of)
The Estate of Harriet Kathleen Tims,)
And DEBORAH T. KRANE,)
Individually and as a Co-Personal)
Representative of the Estate of)
Harriet Kathleen Tims,)

Respondents.)

PERSONALLY APPEARED before me, MICHAEL TIMS, who, being first duly sworn,
testified as follows:

1. I am over 21 and am otherwise competent to give the testimony in this Affidavit. This Affidavit is based upon my personal knowledge.
2. Harriet Tims is my mother and Samuel Tims and Deborah Krane are my siblings. Samuel Tims, Deborah Krane and I are the co-personal representatives of the Estate of Harriet Tims.
3. This action involves a dispute as to title of real property located in Beaufort County known as 26.89 acres located on Cloverdale Road in Dale. I purchased the property with my own funds.

4. On or about November 14, 2012, Harriet Tims executed that certain Land Exchange Agreement and agreed to obtain a loan from Palmetto State Bank for about \$65,000.00 to assist me in paying off my indebtedness to MCAS Federal Credit Union and, in exchange, I executed a Title to Real Estate conveying title to my property on Cloverdale Road to Harriet Tims so that the aforesaid financing could be secured.
5. The Land Exchange Agreement is a part of the record already.
6. On November 15, 2012, Harriet Tims executed a Note and Mortgage to Palmetto State Bank in the amount of \$65,280.00 to pay off my MCAS Federal Credit Union loan.
7. The property is worth substantially more than \$65,280.00.
8. I conveyed legal title to the Cloverdale property to Harriet Tims for no consideration, but retained beneficial interest. My family and I live on the Cloverdale property and I operate a deer processing business on said property.
9. Since the execution of the Land Exchange Agreement and loan closing, I have paid all expenses relative to the property. I have made all loan payments. I have maintained the property, financially and physically, and I have paid all money to acquire the property. Harriet Tims has zero investment in the property. Deborah Krane has zero investment in the property.
10. A controversy has arisen between the co-personal representatives regarding the intent of the parties in entering into the Land Exchange Agreement and with regard to the legal status of the Cloverdale property.
11. Deborah Krane claims the Cloverdale property is an estate asset and subject to distribution via intestate succession.

12. Samuel Tims and I both contend that Harriet Tims intended to hold the Cloverdale property in trust for me, per the Land Exchange Agreement, and that the Cloverdale property is not an estate asset.

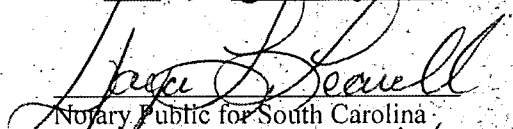
13. I note that Samuel Tims stands to gain nothing if his and my claims for declaratory judgment prevail. Deborah Krane, however, seeks a windfall for herself when the facts clearly indicate a resulting trust.

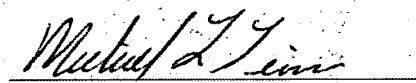
14. Samuel Tims and I both contend that the circumstances constitute a resulting trust and that the Cloverdale property should be conveyed back to me when the terms of the Land Exchange Agreement are fulfilled and the Mortgage to Palmetto State Bank is paid off by

15. The loan to Palmetto State Bank has not been paid off. There has been no "acquisition of a contract for sale" as contemplated in the Land Exchange Agreement either.

Sworn to and Subscribed before me

This 7 day of October, 2017


Notary Public for South Carolina
My Commission Expires: 08/28/22


Michael Tims

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT)

CASE NO.: 2017-CP-07-1180

IN THE MATTER OF:)
HARRIET KATHLEEN HENRY TIMS,)

Decedent:)

Samuel H. Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims,)

Petitioner,)

**DEBORAH T. KRANE'S MEMORANDUM
IN OPPOSITION TO RESPONDENT
MICHAEL TIMS'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

vs.)

Michael Tims, individually and as a Co-)
Personal Representative of the Estate of)
Harriet Kathleen Tims, and Deborah T.)
Krane, Individually and as a Co- Personal)
Representative of the Estate of Harriet)
Kathleen Tims,)

Respondents.)

TO: PETITIONER SAMUEL H. TIMS AND HIS ATTORNEY, ALYSOUN EVERSOLE,
ESQ., AND RESPONDENT MICHAEL TIMS AND HIS ATTORNEY, MILLS
MORRISON, ESQ.:

Movant Michael Tims is not entitled to partial Summary Judgment on his causes of action or as to Deborah T. Krane's cross claims as there are questions of fact as to the allegations set forth in Tims' cross claims against Krane. If the Court does not grant Krane's motion for Summary Judgment this case and the allegations contained therein should be tried by a jury as requested. Specifically, Michael Tims alleges that he is entitled to Summary Judgment on the issue of whether a resulting trust is or was created by a Land Exchange Agreement (hereinafter

"LEA") and other oral agreements between the parties to the LEA. A copy of the LEA is attached as an exhibit to Krane's memorandum of law in support of her motion for summary judgment. On its face Michael Tims' Motion alleges that his claims require "interpretation" of the LEA. That in and of itself raises questions of fact. As detailed below, this allegation requires that Respondent Michael Tims prove the fact that a resulting trust was created.

Michael Tims is only entitled to Summary Judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP (emphasis added). Here there are genuine issues of material fact as to whether the LEA is a resulting trust.

On its face the LEA does not mention anything about a trust. The LEA states that the decedent would secure financing to pay off Michael Tims' debt to "MCAS Beaufort" and in exchange, Michael Tims would deed the property to the decedent. The decedent was to deed the property back to Michael Tims "[u]pon the acquisition of the contract of sale of the premises" Taking the facts in a light most favorable to the non-moving party, it is apparent that the obligation to deed the property back to Michael Tims is at best an Agreement contingent on acquiring a "contract of sale" for the property.

Taking the facts in a light most favorable to the non-moving party shows that Harriet Tims incurred debt and paid off Michael Tims's debts in exchange for the property. See Krane affidavit. Harriet Tims paid for improvements to the property. See Id. Harriet Tims made loan payments on the second mortgage taken out on the property. See Id. When asked to disclose her interest in the property to a Palmetto State Bank, when applying for the second loan, Harriet Tims avowed that she was the sole owner of the property. See Id. She did not state that she held

the property in trust or that her title to the property was in any way affected. Indeed, at closing on the first loan, her attorney confirmed that title to the property was in the name of Harriet Tims and that she "good, valid and marketable title to the property." See *Id.* There was no qualification as to the ownership interest in the property.

These facts and the inferences arising therefrom are contrary to Michael Tims' assertion that Harriet Tims created a resulting trust. Michael Tims did not provide the Decedent with the funds to purchase the property or to pay off his loan. See Michael Tim's deposition. The decedent incurred the debt on the property and used the loan from Palmetto Savings Bank to pay off the Note and Mortgage that Tims had signed. Under the terms of the LEA, Respondent Michael Tims is not required to do anything other than transfer the title. Nor is the decedent required to do anything unless there is a contract of sale. Tims' argument that this the contingent obligation of Harriet Tims to transfer the property back to Tims upon Tims paying off the mortgage is also not supported by the plain language of the LEA, let alone a basis for Summary Judgment. Accordingly, there is no evidence in the written document itself of the existence of a resulting trust, and, therefore, this is a genuine issue of material fact.

Additionally, in order for Respondent Michael Tims to avail himself of an equitable remedy, he must show that there is not an adequate remedy available at law. This also creates an issue of fact for the Court to consider. Respondent Michael Tims failed to pursue any other legal action regarding this issue, and he solely relies on the doctrine of resulting trust. There were, in fact, remedies available to the Respondent, which he failed to utilize. The availability of such remedy is a question of fact for the court. Accordingly, summary judgment is not appropriate.

Further, Respondent Michael Tims's Cross-Claim for a resulting trust illustrates the existence of an issue of material fact. Paragraph 31 of Michael Tims' cross claim indicates that

Respondent Michael Tims contends "that Harriet Tims intended to hold the Cloverdale property in trust" This reference to intent is not mentioned in the LEA itself and it makes no reference to a trust or to Respondent Michael Tims having equitable title or beneficial interest. Instead, Respondent Michael Tims will be required to produce parole evidence in order to prove the intent of the parties. Consistent with this, Respondent Michael Tims in his Paragraph 30 of his Cross Claim also admits "[a] controversy has arisen between the parties regarding the intent of the parties" thereby providing additional reasoning for denying the motion for partial summary judgment.

In Tims' Memorandum in Support of his Motion for Summary Judgment, Tims argues for the first time that there also may be a constructive trust. This is not pled in any of the pleadings and there is absolutely no support for that claim whatsoever. As Tims points out, a constructive trust arises under limited circumstances and the burden is on Tims to show by clear and convincing evidence that Krane or the Estate of Harriet Tims holds the property by way of a constructive trust.

The property was not transferred by accident. Tims cites no facts to support that. The transfer was in consideration of Harriet Tims paying off the existing Note in Tims' name. There was no fraud by Harriet Tims nor is that alleged by Tims. There is no allegation by Tims that his mother engaged in bad faith, abuse of confidence or a violation of a fiduciary duty giving rise to an obligation of to make restitution. And even if there was, the facts, taken in a light most favorable to the non-moving party establish that there are questions of fact as those allegations.

Tims attempts to bootstrap in an argument that the constructive trust principals should apply to Krane, alleging that she acquired title to the property and did so by fraud, and other nefarious acts. This is a bizarre argument, not alleged in any of Tims' pleadings. His allegations

of breach of fiduciary duty against Krane that are pled do not allege that she has acquired the property and is holding it in a constructive trust. And even if Tims had so alleged, he would have to prove these allegations by clear and convincing evidence and would not be entitled to summary judgment considering that the property is still titled in Harriet Tims' name.

Lastly, Tims alleges that he is entitled to have Krane's request for a jury trial dismissed. Krane agrees that it is inappropriate for a jury to decide equitable issues. However, Sam Tims' Petition, which is the genesis for this matter before the court, requests declaratory judgment and Michael Tims, the movant, joins in this request. Both Krane and Michael Tims have alleged breach of fiduciary duties and all the claims, if Krane's motion for summary judgment is not granted, involve issues of fact regarding the intent of the parties. Declaratory Judgment is not an equitable remedy, but rather a remedy founded by statute. The allegations of fraud, breach of fiduciary duty are questions of fact for a jury if requested. In this case the entire case should be tried before a jury with the jury deciding the legal issues and the court deciding any equitable issues.

CONCLUSION

Because the facts and inferences therefrom, taken in a light most favorable to Deborah Krane, show that there are genuine issues of fact, and because Krane is entitled to a jury trial on her legal claims, Tims' Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW FIRM

s/ P. Brandt Shelbourne

P. Brandt Shelbourne, Esquire

131 E. Richardson Avenue

Summerville, SC 29483

(843) 871-2210

ATTORNEY FOR RESPONDENT

DEBORAH KRANE

Dated: October 4, 2017
Summerville, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-07-1180

IN THE MATTER OF:
HARRIET KATHLEEN HENRY TIMS,

Decedent.

Samuel H. Tims, individually and as a Co-
Personal Representative of the Estate of
Harriet Kathleen Tims,

Petitioner,

AFFIDAVIT OF DEBORAH T. KRANE

vs.

Michael Tims, individually and as a Co-
Personal Representative of the Estate of
Harriet Kathleen Tims and Deborah T. Krane)
Individually and as a Co- Personal
Representative of the Estate of Harriet
Kathleen Tims

Respondents.

PERSONALLY appeared before me, Respondent, DEBORAH T. KRANE, who, being first duly
sworn, deposes and states as follows:

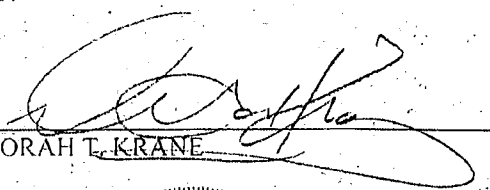
1. I am an heir of my mother Harriet Kathleen Henry Tims.
2. My mother was the sole shareholder of Ridings Corporation.
3. She entered into a Land Exchange Agreement (hereinafter "LEA") with my brother Michael Tims on November 14, 2012, and the property was deeded into her name. See Deed and LEA, copies of which are attached hereto as Exhibit "A".
4. The closing attorney issued Title Insurance to my mother certifying that the Title to the property was vested in the name of Harriet H. Tims. See Investors Title Insurance Company Schedule A, a copy of which is attached hereto as Exhibit "B". Further, the

closing attorney certified that he examined the title to the property and that in his opinion Harriet H. Tims "has good, valid and marketable title to the property" See R. Thayer Rivers, Jr. letter to Palmetto State Bank, November 13, 2012.

5. At the time of the LEA, she signed a Note and Mortgage with Palmetto Savings Bank, copies of which are attached hereto as Exhibit "C". She was personally obligated on the Note and Mortgage.
6. I am aware that Michael Tims claims that he paid the Note, however, he has failed and refused to produce tax returns showing that he used his funds to pay the Note.
7. In addition to being solely responsible for the amount owed on the 2012 Note, Harriet Tims paid significant sums of money either personally or through Ridings Corp. for improvements to the Cloverdale property. These include, but are not limited to the following:
 - a. \$110.00 to the SC Secretary of State to incorporate a business on the property;
 - b. \$1,650.00 to Gasque & Associates for engineering on the property;
 - c. \$5,020.00 for a well on the property;
 - d. \$1,250.00 to Londono Engineering, LLC for work on the property;
 - e. \$1,173.40 to Beaufort County for building code permits;
 - f. \$645.54 to Lowcountry Concrete.
8. My mother's notes show that she considered that she paid \$4000.00 for plumbing on the property; \$5,250.00 for electrical work; and \$200.00 for a surveyor. See Note, a copy of which is attached hereto as Exhibit "D".
9. Additionally, my mother applied for and received a second loan that was co-signed by Michael Tims on or about November 15, 2013. She mortgaged the Cloverdale property to secure this Note. The purpose of this loan was for her to invest in the deer processing business that was on the property. See Business Purpose Statement, a copy of which is attached hereto as Exhibit "E".
10. All payments on the 2013 loan were made by Harriet Tims through Ridings Corp. until her death. See copies of cancelled checks attached hereto as Exhibit "F".
11. Further, when my mother applied for the 2013 Loan, she completed a loan application on or about October 9, 2013 in which she listed Cloverdale as being her property since she acquired it in 2012. She did not consider or state that it was held in trust or held

for the benefit of Michael Tims. See Loan Application, a copy of which is attached hereto as Exhibit "G".

FURTHER THE AFFIANT SAYETH NOT!


DEBORAH T. KRANE

SWORN TO before me this
day of October 2017.
Shannon Haik (LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: June 28, 2017



EXHIBIT "A"

2
CO RW
River
1057

ADD DMP Record 11/16/2012 09:46:52 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	038	000	0052	0000	00

BEAUFORT COUNTY SC - ROD
BK 03190 PGS 2752-2753
FILE NUM 2012066763
11/14/2012 04:24:45 PM
REC'D BY R WEBB RCPT# 694266
RECORDING FEES 10.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

RECORDED
2012 Nov-20 11:49 AM
DEED TO REAL ESTATE Sharon Q. Bunn
BEAUFORT COUNTY AUDITOR

KNOW ALL MEN BY THESE PRESENTS, That I, **MICHAEL L. TIMS**, in the State aforesaid, County aforesaid, (hereinafter whether singular or plural the "Grantor") in consideration of the sum of ONE and 00/100ths (\$1.00) Dollar, Love and Affection, to me in hand paid at and before the sealing and delivery of these presents by **HARRIET H. TIMS**, 169 JASMINE HALL ROAD, SEABROOK, SC 29940, the receipt of which is hereby acknowledged, have granted, bargained, sold and released to the Grantee, her heirs and assigns forever, the following described property, to-wit:

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Michael L. Tims by deed dated August 27, 1993 and recorded September 7, 1993 in Book 650 at Page 892 in the Office of the ROD for Beaufort County, South Carolina, and by corrective Deed recorded on August 22, 1995 in Book 797 at Page 2420 in the aforesaid office.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise

incident or appertaining thereto.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, **HARRIET H. TIMS** her Heirs and Assigns forever.

And the Grantors do hereby bind themselves and their Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, and her Heirs and Assigns, against the Grantor and the Grantor's Successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 14th day of November in the year of our Lord two thousand twelve and in the two hundredth and thirty-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED and DELIVERED
in PRESENCE OF

James H. Hughes

Michael L. Tims (L.S.)
MICHAEL L. TIMS

J. J. [illegible]

STATE OF SOUTH CAROLINA,)

PROBATE

COUNTY OF JASPER)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantors sign, seal and, as the Grantors' act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SUBSCRIBED AND SWORN to before me

this 14th day of November, 2012.

James H. Hughes (L.S.)
Notary Public of S.C.
My Commission Expires: 10-1-17

James H. Hughes
Witness

This Deed prepared by the Law Office of R. Thayer Rivers, Jr., P.O. Box 668, 304 Fussell Street, Ridgeland, SC 29936, without benefit of title examination.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) LAND EXCHANGE AGREEMENT

WHEREAS Harriet Tims, hereinafter referred to as Mom, and Michael Tims, hereinafter referred to as Son, wish to enter into an agreement for a land exchange.

KNOW ALL MEN BY THESE PRESENTS that the for the sum of One (\$1.00) Dollar each to the other paid, agree as follows:

1. Son is the owner of the following land:
See attached Exhibit A
2. Son is indebted to MCAS Beaufort in the amount of approximately \$65,000.00.
3. Mom is going to secure financing in that amount from Palmetto State Bank to pay off MCAS.
4. Son will deed the title of the property to Mom in order to have a first mortgage on the premises placed the property in Mom's name.
5. Upon the sale of the premises, the amount of money owed to the bank at that time will be paid along with any taxes, insurance payments, interest or any other items paid for by Mom for the ownership, maintenance and upkeep of the property.
6. Upon the acquisition of the contract of sale of the premises, Mom agrees to deed the premises back to Son so that there will be no capital gains on the sale of the property as Son's primary residence.

The above constitutes the entire agreement of the Parties and all oral negotiations are merged herewith.

Witness our hands and seals this 14 ^{November} day of October, 2012.

WITNESSES:

Kathleen Beardon

Harriet H. Tims
HARRIET H. TIMS

Ann H. Hughes

Michael L. Tims
MICHAEL TIMS

Kathleen Beardon

Ann H. Hughes

EXHIBIT "B"



Investors Title Insurance Company

P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

SCHEDULE A

File No.: 27-2012-129 Policy No.: SC270220120051
Loan No.:
Address Reference: 97 Cloverdale Drive, Seabrook, SC 29940
Amount of Insurance: \$ 65,280.00 Premium: \$ 228.00
Date of Policy: 11/14/2012 at 4:24 a.m./p.m

1. Name of Insured: Palmetto State Bank, ISAOA, ATIMA
2. The estate or interest in the Land that is encumbered by the Insured Mortgage is: fee simple
3. Title is vested in: Harriet H. Tims
4. The Insured Mortgage and its assignments, if any, are described as follows: Mortgage to secure an indebtedness of \$65,280.00, dated November 15, 2012, executed by Harriet H. Tims in favor of Palmetto State Bank and filed for record at 4:24 p.m. on 11/14/2012 and recorded in Record Book 03190 at Page 2754 in the Office of the Register of Deeds for Beaufort County, South Carolina.
5. The Land referred to in this policy is described as follows: See attached Exhibit "A"
6. This policy incorporates by reference those ALTA endorsements selected below:
 - ☐ 4-06 (Condominium)
 - ☐ 4.1-06
 - ☐ 5-06 (Planned Unit Development)
 - ☐ 5.1-06
 - ☐ 6-06 (Variable Rate)
 - ☐ 6.2-06 (Variable Rate--Negative Amortization)
 - ☐ 3.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):
 - ☐ 9-06 (Restrictions, Encroachments, Minerals)
 - ☐ 13.1-06 (Leasehold Loan)
 - ☐ 14-06 (Future Advance-Priority)
 - ☐ 14.1-06 (Future Advance-Knowledge)
 - ☐ 14.3-06 (Future Advance-Reverse Mortgage)
 - ☐ 22-06 (Location) The type of improvement is a _____, and the street address is as shown above.

Issued through the Office of:
R. Thayer Rivers, Jr.

Form No. 110-06-A

ALTA Loan Policy (06-17-06)

November 13, 2012

ATTENTION: JAN MALINOWSKI
Palmetto State Bank

RE: LOAN TO HARRIET TIMS

Dear Mr. Malinowski:

At your request, we have examined title to the following described property:

SEE EXHIBIT A.

Subject to the below enumerated exceptions, it is the opinion of this office that Harriet H. Tims has a good, valid and marketable title to the property described in Exhibit A.

Exception Number 1: All matters as to survey, to include exact amount of acreage and location of improvements.

Exception Number 2: 2012 Property Taxes which are being paid at closing.

Exception Number 3: Possible unfilled mechanic's or materialman's liens

Thank you and kindest regards.

Most sincerely,

R: Thayer Rivers, Jr.

R. Thayer Rivers, Jr.

RTRJr.:kjb
Enclosure

EXHIBIT "C"



LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
7712136	HARRIET H TIMS		11/15/12	59C
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$85,280.00	Not Applicable	6.250%	11/15/17	Commercial
Creditor Use Only				

PROMISSORY NOTE

(Commercial - Single Advance)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 15, 2012. The parties and their addresses are:

LENDER:

PALMETTO STATE BANK
145 Lady's Island Drive
PO Box 219
Beaufort, SC 29901
Telephone (843) 524-3300

BORROWER:

HARRIET H TIMS
169 JASMINE HALL ROAD
SEABROOK, SC 29940

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, any participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.
- G. Dollar Amounts. All dollar amounts will be payable in lawful money of the United States of America.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$85,280.00 (Principal) plus interest from November 15, 2012 on the unpaid Principal balance until this Note matures or this obligation is accelerated.**3. INTEREST.** Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.250 percent (Interest Rate).

- A. Post-Maturity Interest. After maturity or acceleration, interest will accrue ON THE SAME BASIS AS INTEREST ACCRUES PRIOR TO MATURITY PLUS FIVE (5) PERCENTAGE POINTS, EFFECTIVE 15 DAYS AFTER MATURITY.
- B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.
- C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et seq.
- D. Accrual. Interest accrues using an Actual/365 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges:

- A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.
- Loan Origination. A(n) Loan Origination fee of \$50.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

- A. Late Charge. If a payment is more than 15 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment. I will pay this late charge promptly but only once for each late payment.

6. PAYMENT. I agree to pay this Note in 60 payments. This Note is amortized over 180 payments. I will make 59 payments of \$559.79 beginning on December 15, 2012, and on the 15th day of each month thereafter. A single "balloon payment" of the entire unpaid balance of Principal and interest will be due November 15, 2017.

HARRIET H TIMS
South Carolina Promissory Note
SCJ4XXXXJAN000000000648043110912N

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Initials
Page 1



Each payment I make on this Note will be applied first to interest that is due, then to principal that is due, then to escrow that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

7. **PREPAYMENT.** I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.
8. **LOAN PURPOSE.** The purpose of this Loan is REFINANCE
9. **SECURITY.** The Loan is secured by separate security instruments prepared together with this Note as follows:

Date of Security Document

NOVEMBER 15, 2012

10. **DEFAULT.** I will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

A Payments. I fail to make a payment in full when due

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you

C. Death or incompetency. I die or am declared legally incompetent

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note

E. Other Documents. A default occurs under the terms of any other Loan Documents:

F Other Agreements. I am in default on any other debt or agreement I have with you

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H Judgment I fail to satisfy or appeal any judgment against me

1. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change

K. Property Transfer. I transfer all or a substantial part of my money or property

L. **Property Value.** You determine in good faith that the value of the Property has declined or is impaired

M. Insolvency. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

- 11 **DUE ON SALE OR ENCUMBRANCE.** You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable

12. **WAIVERS AND CONSENT** To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note

- (1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signor

(3) You may release, substitute or impair any Property securing this Note

(4) You, or any institution participating in this Note, may invoke your right of set-off

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.

B. No Waiver By Lender: Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon your strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. REMEDIES. After I default, you may at your option do any one or more of the following:

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document

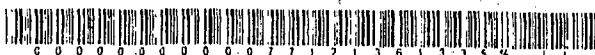
C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

HARRIE H TIMS
South Carolina Promissory Note
SC/4XXXXXXJAN0000000000C648043110912N

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My right to receive money from you includes any deposit or share account balance I have with you, any money owed to me on an item presented to you or in your possession for collection or exchange, and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you sever.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after the occurrence of an Event of Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15 COMMISSIONS I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. **INSURANCE:** I agree to obtain the insurance described in the Loan Agreement.

A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing the Loan.

B. Insurance Warranties. I agree to purchase any insurance coverages that are required; in the amounts you require, as described in this or any other documents I sign for the Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you, as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

18 APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

19. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall incur to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

20. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, with respect to this loan, you fail to fulfill any necessary requirements or limitations of Sections 13(a), 32 or 35 of Regulation Z or if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

21. INTERPRETATION: Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

22. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any correct and complete financial statements or other information you request. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

20. CREDIT INFORMATION. I agreed to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

24. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you or any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

25 SIGNATURES. By signing under seal, I agreed to the terms contained in this Note. I also acknowledge receipt of a copy of this Note

HARRIET H TIMS
South Carolina Promissory Note
5C/4XXXXXJAN000C0000000648043110912N

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9
15th
Ave

BEAUFORT COUNTY SC - ROD
BK 03190 PGS 2754-2762
FILE NUM 2012066764
11/14/2012 04:24:45 PM
REC'D BY R WEBB RCPT# 694266
RECORDING FEES 15:00

ELECTRONICALLY FILED - 2017 Oct 09 9:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180

Space Above This Line For Recording Data

This document was prepared by

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is November 15, 2012. The parties and their addresses are:

MORTGAGOR:

HARRIET H TIMS

An unmarried individual

169 JASMINE HALL ROAD

SEABROOK, SC 29940

LENDER:

PALMETTO STATE BANK

Organized and existing under the laws of South Carolina

145 Lady's Island Drive

PO Box 219

Beaufort, SC 29901

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor does hereby grant, bargain, convey and mortgage to Lender, the following described property:

See Attached Legal Description

The property is located in Beaufort County at 97 CLOVERDALE DRIVE, SEABROOK, South Carolina 29940.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

HARRIET H TIMS
South Carolina Mortgage
SC/4XXXXXJAN00000000000648043110912N

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2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time and from time to time will not exceed \$65,280.00. Any limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 7712136, dated November 15, 2012, from Mortgagor to Lender, with a loan amount of \$65,280.00 and maturing on November 15, 2017.

B. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by

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this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

13. DEFAULT. Mortgagor will be in default if any of the following events (known separately and collectively as an Event of Default) occur:

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A. Payments: Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Death or Incompetency. Mortgagor dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

1. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

14. REMEDIES. On or after the occurrence of an Event of Default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of an Event of Default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of

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Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

15. COLLECTION EXPENSES AND ATTORNEYS' FEES. On, or after the occurrence of an Event of Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

16. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES: As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude

1. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

17. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

18. **INSURANCE.** Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals shall include a standard "mortgage clause" (or "lender loss payable clause") endorsement that names Lender as "mortgagee" and "loss payee". If required by Lender, all insurance policies and renewals will also include an "additional insured" endorsement that names Lender as an "additional insured". If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

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19. **ESCROW FOR TAXES AND INSURANCE.** Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION: Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, ADDITIONAL DOCUMENTS AND RECORDING FEES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATA AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any other correct and complete information Lender requests to effectively mortgage or convey the Property. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

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SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

Harriet H. Sims Date 11/15/2012 (Seal)
HARRIET H TIMS
Individually

Ann R. Hughes Date 11-15-12
(Witness)

Kathleen A. Altabella Date 11-15-12
(Witness)

ACKNOWLEDGMENT.

State OF SC, County OF Jasper ss.

I, a notary public, do hereby certify that HARRIET H TIMS, an unmarried individual, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 15 day of NOV, 2012

Kathleen A. Altabella
Signature of Notary Public

My commission expires: 10-13-17

HARRIET H TIMS
South Carolina Mortgage
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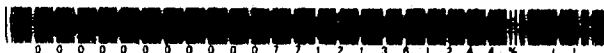


EXHIBIT A

"All that certain piece, parcel or lot of land, situate, lying and being in Dale Community in Beaufort County, South Carolina containing 26.89 acres, more or less, on a plat entitled "Plat showing Boundary Survey Prepared for Erma Lee Dennis" made by David E. Gasque, R.L.S., on August 19, 1993 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Plat Book 47 at Page 69.

This conveyance is made by the Grantors and accepted by the Grantees subject to those restrictions, easements and/or rights-of-way applicable to this property and as set forth in the instruments recorded in the said Beaufort County Records."

This being the same property conveyed to Harriet H. Tims by deed from Michael L. Tims by deed dated _____, 2012 and recorded 11/14/12, 2012 in Deed Book 3190 at Page 2762 in the Office of the ROD for Beaufort County, South Carolina.

Beaufort County Tax Map Ref.: 700-038-00-0052-0000

EXHIBIT "D"

Plumbing 4000 Pd

Electrical 5250 Pd

Refrigeration 2000

Surveyor 500-Pd 200

Metal Rail 2000

Concrete 2000

Rental Equip 500

~~Tables~~ 16250

- 5750

- 10500

Tables

Fence

EXHIBIT "E"

BUSINESS PURPOSE STATEMENT

Borrower's Name & Address HARRIET H TIMS 169 JASMINE HALL ROAD SEABROOK, SC 29940	Lender's Name & Address PALMETTO STATE BANK 145 Lady's Island Drive PO Box 219 Beaufort, SC 29901
--	--

I, HARRIET H TIMS as (or on behalf of) Borrower, state as follows:

- The proceeds of the loan or other extension of credit, evidenced by COMMERCIAL PROMISSORY NOTE
DATED 11/15/2013 (identify document), will be used in the following
type of business: GAME PROCESSING
- The proceeds of the loan and/or other extensions of credit will be used primarily for agricultural, commercial,
investment, or business purposes, the exact nature which is as follows: INVESTMENT IN BUSINESS
- The proceeds of the loan shall not be used for or applied to the purchase of or maintenance of real estate
occupied by Borrower as Borrower's residence without Lender's prior written consent.
- Borrower is exercising and will continue to exercise actual control over the managerial decisions of the
business concerning the use of funds and/or credit to be derived from the loan agreements between the
Lender and the business.
- The loan is not secured by an assignment of wages, salaries or compensation for the services of Borrower
nor by the household furniture or other goods of Borrower used for personal, family or household purposes.
- All statements made herein are true, correct and accurate.

NOTICE

ANY PERSON KNOWINGLY MAKING A FALSE STATEMENT ON ANY APPLICATION FOR A LOAN MAY BE
SUBJECT TO A FINE AND IMPRISONMENT UNDER THE PROVISIONS OF 18 U.S.C.A. SECTIONS 1014 &
1344 AND APPLICABLE STATE LAW.

Dated: 11/15/2013

Signed: Harriet H Tims

HARRIET H TIMS

Business Purpose Statement
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BPS 2/20/2007
VMPC 108 107021.00
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BUSINESS PURPOSE STATEMENT

Borrower's Name & Address	Lender's Name & Address
MICHAEL L TIMS 67 CLOVERDALE DRIVE SEABROOK, SC 29940	PALMETTO STATE BANK 145 Lady's Island Drive PO Box 219 Beaufort, SC 29901

I, MICHAEL L TIMS as (or on behalf of) Borrower, state as follows:

1. The proceeds of the loan or other extension of credit, evidenced by COMMERCIAL PROMISSORY NOTE
DATED 11/15/2013 (identify document), will be used in the following
type of business: GAME PROCESSING

2. The proceeds of the loan and/or other extensions of credit will be used primarily for agricultural, commercial,
investment, or business purposes, the exact nature which is as follows: INVESTMENT IN BUSINESS

3. The proceeds of the loan shall not be used for or applied to the purchase of or maintenance of real estate
occupied by Borrower as Borrower's residence without Lender's prior written consent.

Borrower is exercising and will continue to exercise actual control over the managerial decisions of the
business concerning the use of funds and/or credit to be derived from the loan agreements between the
Lender and the business.

5. The loan is not secured by an assignment of wages, salaries or compensation for the services of Borrower
nor by the household furniture or other goods of Borrower used for personal, family or household purposes.

6. All statements made herein are true, correct and accurate.

NOTICE

ANY PERSON KNOWINGLY MAKING A FALSE STATEMENT ON ANY APPLICATION FOR A LOAN MAY BE
SUBJECT TO A FINE AND IMPRISONMENT UNDER THE PROVISIONS OF 18 U.S.C.A. SECTIONS 1014 &
1344 AND APPLICABLE STATE LAW.

Dated: 11/15/2013

Signed: Michael L Tims

MICHAEL L TIMS

Business Purpose Statement
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VMPC108 (0702).00 Page 1 of 1

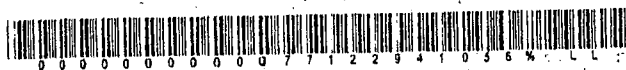


EXHIBIT "F"

Print

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RESIDENTIAL LOT LOANS 7712294
Printed by: JAN MALINOWSKI

PALMETTO STATE BANK

12/16/2015 6:00:30 PM
Reporting Institution:

HARRIET H. TIMS

HARRIET H. TIMS
MICHAEL L TIMS
67 CLOVERDALE RD
SEABROOK SC 29940

Relationship	Date of Birth	Phone Number	Tax Identification
Owner/Signer	*** ** *	*****	SSN ***-**-****
Owner/Signer	*** ** *	*****	SSN ***-**-****

Additional Relationships
Tax Name: HARRIET H. TIMS
See Mailing Information

*2015
26.8 years*

Mailing Label

HARRIET H. TIMS
MICHAEL L TIMS
67 CLOVERDALE RD
SEABROOK SC 29940

Loan To Date

Date	Description	Transaction Amount	Principal	Interest	Principal Balance
Nov 15, 2013	Original Rate	Interest Rate:	6.980000		
Nov 15, 2013	PRINCIPAL ADVANCE	\$53,000.00	\$63,000.00		\$63,000.00
Dec 23, 2013	Interest Payment	\$361.43		\$361.43	\$63,000.00
Jan 14, 2014	Interest Payment	\$373.47		\$373.47	\$63,000.00
Feb 04, 2014	Principal Payment	\$26.53	\$26.53		\$62,973.47
Feb 04, 2014	Interest Payment	\$373.47		\$373.47	\$62,973.47
Mar 06, 2014	Interest Payment	\$337.14		\$337.14	\$62,973.47
Apr 01, 2014	Principal Payment	\$26.69	\$26.69		\$62,946.78
Apr 01, 2014	Interest Payment	\$373.31		\$373.31	\$62,946.78
May 06, 2014	Interest Payment	\$361.04		\$361.04	\$62,946.78
Jun 10, 2014	Interest Payment	\$373.16		\$373.16	\$62,946.78
Jul 08, 2014	Interest Payment	\$361.13		\$361.13	\$62,946.78
Aug 11, 2014	Interest Payment	\$373.15		\$373.15	\$62,946.78
Sep 05, 2014	Interest Payment	\$373.16		\$373.16	\$62,946.78
Oct 14, 2014	Principal Payment	\$1,946.78	\$1,946.78		\$61,000.00
Oct 14, 2014	Interest Payment	\$361.11		\$361.11	\$61,000.00
Nov 19, 2014	Principal Payment	\$4,000.00	\$4,000.00		\$57,000.00
Nov 19, 2014	Interest Payment	\$361.25		\$361.25	\$57,000.00
Dec 16, 2014	Principal Payment	\$4,000.00	\$4,000.00		\$53,000.00
Dec 16, 2014	Interest Payment	\$330.06		\$330.06	\$53,000.00
Jan 22, 2015	Principal Payment	\$5,000.00	\$5,000.00		\$48,000.00
Jan 22, 2015	Interest Payment	\$314.96		\$314.96	\$48,000.00
Feb 19, 2015	Interest Payment	\$291.24		\$291.24	\$48,000.00
Mar 10, 2015	Interest Payment	\$257.00		\$257.00	\$48,000.00
Apr 08, 2015	Interest Payment	\$284.55		\$284.55	\$48,000.00
May 15, 2015	Interest Payment	\$275.36		\$275.36	\$48,000.00
Jun 09, 2015	Interest Payment	\$284.55		\$284.55	\$48,000.00
Jul 13, 2015	Interest Payment	\$275.37		\$275.37	\$48,000.00
Aug 10, 2015	Interest Payment	\$284.55		\$284.55	\$48,000.00

http://navigator/LAS_LAS1151/LAS1151.ASPX?Action=QUICKPRINT&XMLGuid=E20AA971-DEE3-... 12/16/2016

ROA 0151

ELECTRONICALLY FILED - 2017 Oct 09 9:02 AM - BEAUFORT - COMMONPLEAS - CASE#2017CP070180

Print

Page 2 of

RESIDENTIAL LOT LOANS 94
Printed by: JAN MALINOWSKI

PALMETTO STATE BANK

12/15/2016 6:00:30 PM
Reporting Institution:

Date	Description	Transaction Amount	Principal	Interest	Principal Balance
Sep 11, 2015	Interest Payment	\$234.55		\$234.55	\$49,000.00
Oct 19, 2015	Regular Payment	\$2,000.00	\$1,697.92	\$312.08	\$46,312.08
Oct 19, 2015	Principal Payment	\$314.96	\$314.96		\$45,997.12
Nov 18, 2015	Principal Payment	\$3,997.12	\$3,997.12		\$42,000.00
Nov 18, 2015	Interest Payment	\$237.49		\$237.49	\$42,000.00
Dec 16, 2015	Principal Payment	\$4,000.00	\$4,000.00		\$38,000.00
Dec 16, 2015	Interest Payment	\$243.24		\$243.24	\$38,000.00
Jan 25, 2016	Principal Payment	\$5,000.00	\$5,000.00		\$33,000.00
Jan 25, 2016	Interest Payment	\$225.03		\$225.03	\$33,000.00
Feb 16, 2016	Interest Payment	\$206.15		\$206.15	\$33,000.00
Mar 15, 2016	Principal Payment	\$23.15	\$23.15		\$32,976.85
Mar 15, 2016	Interest Payment	\$183.00		\$183.00	\$32,976.85
Apr 14, 2016	Interest Payment	\$195.49		\$195.49	\$32,976.85
May 17, 2016	Principal Payment	\$12.61	\$12.61		\$32,964.24
May 17, 2016	Interest Payment	\$189.18		\$189.18	\$32,964.24
Jun 15, 2016	Principal Payment	\$4.58	\$4.58		\$32,959.66
Jun 15, 2016	Interest Payment	\$195.42		\$195.42	\$32,959.66
Jul 15, 2016	Principal Payment	\$10.92	\$10.92		\$32,948.74
Jul 15, 2016	Interest Payment	\$189.08		\$189.08	\$32,948.74
Aug 13, 2016	Interest Payment	\$250.00		\$250.00	\$32,948.74
Sep 15, 2016	Interest Payment	\$140.64		\$140.64	\$32,948.74
Oct 19, 2016	Principal Payment	\$1,759.72	\$1,759.72		\$31,189.02
Oct 19, 2016	Interest Payment	\$189.02		\$189.02	\$31,189.02
Oct 31, 2016	Automatic Late Charge	\$100.00			\$31,189.02
Nov 01, 2016	Principal Payment	\$189.02	\$189.02		\$31,000.00
Nov 02, 2016	Late Charge Waive (Manual)	\$100.00			\$31,000.00
Nov 30, 2016	Automatic Late Charge	\$209.23			\$31,000.00
Dec 08, 2016	Principal Payment	\$4,000.00	\$4,000.00		\$27,000.00
Dec 08, 2016	Interest Payment	\$185.72		\$185.72	\$27,000.00

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

67-252/332 1563

DATE 12/21/2013 ☒ Shield

PAY TO THE ORDER OF Palmetto State Bank \$ 361.43

Three Hundred Sixty one and 43/100 DOLLARS


PALMETTO STATE BANK
 1110 D STREET
 BEAUFORT, S.C. 29501

MEMO [REDACTED] 94 [Signature]

[REDACTED] [REDACTED]

1563 \$361.43 12/23/2013

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

07-259/632. 1575

DATE 1/14/14

PAY TO THE ORDER OF Palmetto State Bank \$373.47

Three Hundred Seventy-three and 47/100 DOLLARS

PALMETTO STATE BANK
 BEAUFORT, S.C. 29901

MEMO Loan # [REDACTED] 94

[Signature]

1575 \$373.47 1/14/2014

ROA 0154

RIDINGS CORPORATION

169 JASMINE HALL RD.
SEABROOK, SC 29940

61-759/532

1588

DATE

2/4/2014

Shield

PAY TO THE
ORDER OF

Palmetto State Bank

\$ 400.00

Four Hundred and 00/100

DOLLARS



PALMETTO
STATE BANK

P.O. BOX 218
SEAFORT, S.C. 29901

MEMO

[REDACTED] 94

Barrett H. Jones

1588 \$400.00 2/4/2014

RIDINGS CORPORATION
 189 JASMINE HALL RD.
 SEABROOK, SC 29940

67-59/532 1596

DATE: 3/6/14

PAY TO THE ORDER OF: Palmetto State Bank

\$ 337.14

Three Hundred Thirty-seven and 14/100 DOLLARS

PALMETTO STATE BANK
 100 N. 3rd St.
 BEAUFORT, S.C. 29901

MEMO: Loan to [REDACTED] 94

[REDACTED]

ROA 0156

1596 \$337.14 3/6/2014

RIDINGS CORPORATION
169 JASMINE HALL RD.
SEABROOK, SC 29040

67-258/537

1602

DATE

4/1/14

Shield

PAY TO THE
ORDER OF

Palmetto State Bank
Four Hundred ~~700~~ ⁴⁰⁰

\$ 400 ^{XX}/₁₀₀

DOLLARS

100



PALMETTO
STATE BANK

P.O. BOX 211
BEAUFORT, S.C. 29502

MEMO

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

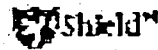
David H. Lee

1602 \$400.00 4/1/2014

RIDINGS CORPORATION
169 JASMINE HALL RD.
SEABROOK, SC 29940

67-259/532

1617

DATE 5/6/14 

PAY TO THE
ORDER OF

Palmetto State Bank

\$ 361⁰⁴/₁₀₀

Three Hundred Sixty-one⁰⁴/₁₀₀

DOLLARS 



PALMETTO
STATE BANK
P.O. BOX 232
BEAUFORT, N.C. 28501

MEMO

[REDACTED] 94

[Signature]

ROA 0158

1617 \$361.04 5/6/2014

Loan Payment \$373.16 for [REDACTED] 1988

0000000000

RECEIVED
FROM



Palmetto
STATE BANK

Member FDIC

Equal Housing Lender

DATE 6/10/2014

THE SUM OF three hundred and seventy-three and 16/100 \$

NAME H.A. Ridinger Corp.

ADDRESS [REDACTED]

SIGNATURE Per phone instructions Harriet H. [REDACTED]

CHECKING WITHDRAWAL 051

AMOUNT

373.16

ACCOUNT NUMBER

051

0 \$373.16 6/10/2014

CH 2501 HBC

RECEIVED
FROM



CHECKING WITHDRAWAL 22

DATE 7/8 20 14

THE SUM OF Fourteen Hundred Twenty Five 17/100 \$

NAME Bidings Corporation

ADDRESS _____

SIGNATURE Per Harriet Tims phone call

351 pm

AMOUNT

1425.17

ACCOUNT NUMBER

~~XXXXXXXXXXXX~~

051

ROA 0160

) \$1,425.17 7/8/2014

CHK 2201 119-0

RECEIVED
FROM



CHECKING WITHDRAWAL 051

DATE

8/11/14

20

THE SUM OF

1437.19

NAME

Ridings Corp.

ADDRESS

SIGNATURE

Per phone. Harriet Tims Ror

LOAN Payment 6978313
7/12/2014

AMOUNT

\$

1437.19

ACCOUNT NUMBER

[REDACTED]

051

0 \$1,437.19 8/11/2014

RIDINGS CORPORATION
169 JASMINE HALL RD.
SEABROOK, SO 29940

87-721532

1665

DATE

9/5/14

Shield™

PAY TO THE
ORDER OF

Palmetto State Bank

\$ 373 ¹⁶/₁₀₀

Three Hundred Seventy-Three ¹⁶/₁₀₀

DOLLARS



PALMETTO
STATE BANK

P.O. BOX 212
BEAUFORT, S.C. 29901

Robert A. Lins

MEMO

[REDACTED]

[REDACTED]

1665 \$373.16 9/5/2014

RIDINGS CORPORATION 169 JASMINE HALL RD. SEABROOK, SC 29940		BT-259/532	1677
DATE <u>10/14/14</u>		Shield™	
PAY TO THE ORDER OF	<u>Palmetto State Bank</u>	<u>\$2307.89</u>	
<u>Two thousand three hundred and seven / 100</u>		DOLLARS	
PALMETTO STATE BANK P.O. BOX 119 SEAFORT, S.C. 29901			
MEMO	<u>[REDACTED]</u>	<u>Harriet H. [REDACTED]</u>	

1677 \$2,307.89 10/14/2014

ROA 0163

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

61-287532 1690

DATE 11/19/14 

PAY TO THE ORDER OF Palmetto State Bank \$ 4,361.25

Forty Three Hundred Sixty one 1/100 DOLLARS

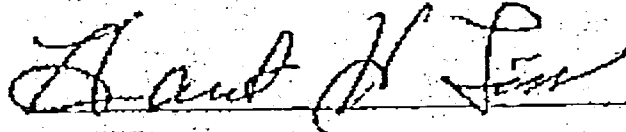

 PALMETTO
 STATE BANK
 P.O. BOX 219
 BEAUFORT, S.C. 29901

MEMO [REDACTED] 94 [REDACTED]

[Signature]

1690 \$4,361.25 11/19/2014

ROA 0164

RIDINGS CORPORATION 169 JASMINE HALL RD. SEABROOK, SO 22940		67-258/332	1700
DATE <u>12/16/14</u>		POSTED	
PAY TO THE ORDER OF	<u>Palmetto State Bank</u>	<u>\$ 4330.06</u>	
<u>Four Thousand Three Hundred Thirty & 06/100</u>		DOLLARS	
PALMETTO STATE BANK P.O. BOX 219 BEAUFORT, S.C. 29901		 MEMO <u>74</u>	

1700 \$4,330.06 12/16/2014

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

1710
 DATE 1/22/15

PAY TO THE ORDER OF Palmetto State Bank \$ 5314.96
Five Thousand Three Hundred Forty DOLLARS

PALMETTO
 STATE BANK
 BEAUFORT, S.C. 29901

Lenth 94
 MEAKY

David H. Lenth

1710 \$5,314.96 1/22/2015

ROA 0166

HIDINGS CORPORATION
162 JASMINE HALL RD.
SEABROOK, GG 29940

67-229/532

1719

DATE 2/18/15 

PAY TO THE
ORDER OF

Palmetto State Bank

\$291.24

Two Hundred Ninety-one & 24/100

DOLLARS 



PALMETTO
STATE BANK
P.O. BOX 218
BEAUFORT, N.C. 28501

MTA

[Redacted] 94

[Signature]

AT

1719 \$291.24 2/18/2015

ROA 0167

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29948

67-259/632 1733

DATE 3/10/15

PAY TO THE ORDER OF Palmetto State BK \$ 257.00

Two Hundred Fifty-seven DOLLARS

PALMETTO STATE BANK
 P.O. BOX 115
 BEAUFORT, S.C. 29901

94

MEXICO

[Signature]

1733 \$257.00 3/10/2015

ROA 0168

RIDINGS CORPORATION 169 JASMINE HALL RD. SEABROOK, SC. 29940		87-294/572 1743
DATE <u>4/8/15</u>		Shield™
PAY TO THE ORDER OF	<u>Palmetto State Bank</u>	<u>\$ 284.56</u>
<u>Two Hundred Eighty-four & 56/100</u>		DOLLARS
 PALMETTO STATE BANK P.O. BOX 219 BEAUFORT, S.C. 29901	<u>Paul H. Liss</u>	
MICRO	94	

1743 \$284.56 4/8/2015

ROA 0169

RIDINGS CORPORATION
 160 JASMINE HALL RD.
 SEABROOK, SC 29940

67-289532 1760

DATE 5/15/15

PAY TO THE ORDER OF Palmetto State Bk. \$275.36

Two Hundred Seventy-five and 36/100 DOLLARS

PALMETTO STATE BANK
 P.O. BOX 219
 BEAUFORT, S.C. 29901

MEMO 94

[Signature]

1760 \$275.36 5/15/2015

ROA0170

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

57-253/532 1770

DATE 6/9/15

PAY TO THE ORDER OF Palmetto State Bank \$ 284.55

Two Hundred Eighty four & 55/100 DOLLARS


 PALMETTO
 STATE BANK
 P.O. BOX 416
 BEAUFORT, S.C. 29901

MICR 94 Harriet H. Lins

1770 \$284.55 6/9/2015

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

67-279/512 1780

DATE 7/11/15

PAY TO THE ORDER OF Palmetto State Bank \$275.37

Two Hundred Seventy-five and 37/100 DOLLARS

PALMETTO STATE BANK
 P.O. BOX 819
 BEAUFORT, S.C. 29901

MEMO 94

Robert A. Jones

1780 \$275.37 7/13/2015

ROA 0172

RIDINGS CORPORATION
 189 JASMINE HALL RD.
 SEABROOK, SC 29940

07-299/532 1789

DATE 8/10/15

PAY TO THE ORDER OF Palmetto State Bank \$ 284.55

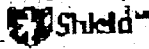
Two Hundred Eighty-four and 55/100 DOLLARS

PALMETTO STATE BANK
 P.O. BOX 218
 BEAUFORT, S.C. 29901

MEMO 994

David L. Jones

1789 \$284.55 8/10/2015

RIDINGS CORPORATION 169 JASMINE HALL RD. SEABROOK, SC 29940		67-259/532	1807
DATE <u>9/10/15</u>			
PAY TO THE ORDER OF	<u>Palmetto State Bank</u>	<u>\$284.55</u>	
<u>Two Hundred Eighty four</u>		<u>55</u> DOLLARS	
 PALMETTO STATE BANK P.O. BOX 118 BEAUFORT, S.C. 29901		<u>Harriet H. Lewis</u>	
MEMO <u>84</u>		<u>MP</u>	

ROA 0174

1807 \$284.55 9/11/2015

RIDINGS CORPORATION 169 JASMINE HALL RD. SEABROOK, SC 29940		1816
PAY TO THE ORDER OF <u>Palmetto State Bank</u>		DATE <u>Oct 19, 15</u>
<u>Twenty three hundred forty</u>		<u>\$2314.96</u>
PALMETTO STATE BANK BEAUFORT, S. C. 29901		DOLLARS
MEMO <u>94 12,000</u>		<u>Robert H. Jones</u>

1816 \$2,314.96 10/19/2015

RIDINGS CORPORATION 109 JASMINE HALL RD. SEASBROOK, SC 29949		67-29/532 1825
DATE <u>11/16/15</u>		1825
PAY TO THE ORDER OF <u>Palmetto State Bank</u>	<u>\$4,234.61</u>	1825
<u>Forty-two Hundred thirty-four and 61/100</u>	DOLLARS	1825
 PALMETTO STATE BANK P.O. BOX 219 BEAUFORT, S.C. 29901	<u>Robert H. Sims</u>	1825
MEMO <u>94</u>	1825	1825

1825 \$4,234.61 11/18/2015

ROA 0176

RIDINGS CORPORATION
 169 JASMINE HALL RD.
 SEABROOK, SC 29940

67-2501532 1839

DATE 12/16/15

PAY TO THE ORDER OF Palmetto State Bank \$4,243.24

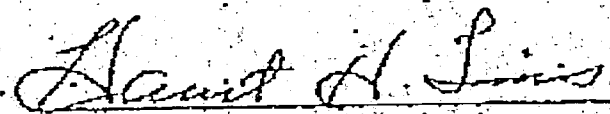
Four thousand two hundred forty-three and 24/100 DOLLARS

PALMETTO STATE BANK
 P.O. BOX 110
 BEAUFORT, S.C. 29901

MEMO

[Signature]

1839 \$4,243.24 12/16/2015

RIDINGS CORPORATION 189 JASMINE HALL RD. SEABROOK, SC 29940		ST-259/532	1954
DATE: 1/26/16		Shield	
PAY TO THE ORDER OF	Palmetto State Bank	\$5226.00	XX
Five thousand two hundred and twenty six		DOLLARS.	
 PALMETTO STATE BANK P.O. BOX 219 BEAUFORT, S.C. 29901			
MEMO: [REDACTED] 94.		[REDACTED]	

1954 \$5,226.00 1/26/2016

RIOWNS CORPORATION 1805 1230 PAGE 1

RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE 9/8/15

PAY TO THE ORDER OF BS & SC \$129.29

One hundred Twenty nine and 29/100 DOLLARS

PALMETTO STATE BANK

David H. Line

1805 \$129.29 9/11/2015

RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE 9/11/15

PAY TO THE ORDER OF Palmetto State Bank \$1064.04

One thousand sixty four and 4/100 DOLLARS

PALMETTO STATE BANK

David H. Line

1806 \$1,064.04 9/11/2015

RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE 9/11/15

PAY TO THE ORDER OF Palmetto State Bank \$284.55

Two hundred Eighty four and 55/100 DOLLARS

PALMETTO STATE BANK

David H. Line

1807 \$284.55 9/11/2015

RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE 9/12/15

PAY TO THE ORDER OF Greenington \$1000.00

One Thousand and 00/100 DOLLARS

PALMETTO STATE BANK

David H. Line

1808 \$1,000.00 9/16/2015

0933 230981 0007
RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE 9/15/15

PAY TO THE ORDER OF Sc Dot of Rain \$257.00

Two hundred Fifty seven and 00/100 DOLLARS

PALMETTO STATE BANK

David H. Line

1809 \$257.00 9/24/2015

RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE Sep 28, 2015

PAY TO THE ORDER OF Kenn Cupts \$2500.00

Two thousand Five hundred and 00/100 DOLLARS

PALMETTO STATE BANK

David H. Line

1810 \$25,000.00 9/23/2015

DEPOSIT SLIP
RIOWNS CORPORATION
180 JASANYE HALL RD
SEABROOK, NC 28586

DATE 9/30/15

AMOUNT \$ 1567.00

700.00

PALMETTO STATE BANK

\$ 2267.00

\$2,267.00 9/30/2015

CHECKING DEPOSIT
DATE 9/11/15

DEPOSIT TO Palmetto State Bank

FROM RIOWNS Corp 169 Insurance Health

SEABROOK, NC 28586

AMOUNT \$ 4630.00

\$4,630.00 9/1/2015

EXHIBIT "G"

Palmetto State Bank

PERSONAL FINANCIAL STATEMENT

AS OF: _____

TO: Palmetto State Bank

Name: Narriet H. Tins Date of Birth: 1944
 Address: 167 Jasmine Lane Social Security No. [REDACTED]
 CSZ: 29770 Residence Phone: 813-845-3100
 Position or Occupation: Owner/Operator
 Business Name: Palmetto State Bank
 Business Address: 0580 4th St Business Phone: 813-845-3100
 CSZ: 29770
 This is a () check box ☒ Individual financial statement. ☐ Joint financial statement with spouse. If Joint, complete the following:

Spouse: _____ Date of Birth: _____
 Social Security No. _____
 Position or Occupation: _____
 Business Name: _____
 Business Address: _____ Business Phone: _____
 CSZ: _____

YOU MAY APPLY FOR CREDIT INDIVIDUALLY OR JOINTLY WITH ANOTHER PARTY

If you are applying for joint credit with another party (other than your spouse), the joint applicant must complete a separate financial statement. Reflect in this statement, your personal financial condition as well as the financial condition of your spouse if:

1. You are applying for credit jointly with your spouse, or
2. You are relying on your spouse's income or assets in requesting credit, or
3. You are providing this statement to support previously extended joint credit with your spouse

* List all amounts in dollars. Omit Cents

ASSETS	AMOUNT
Deposits in Banks & Other Financial Inst. (From Sch 1 pg 3)	1500
Cash Value of Life Insurance (From Sch 2 pg 3)	17500
Notes and Accounts Receivable	
Marketable Stocks & Bonds (Sch 3 pg 2)	
Stocks in Closely Held Corporations (Sch 4 pg 2)	
Assets of Proprietorships	750,000
Assets in Partnerships & Joint Ventures	
Vehicles, Boats, Machinery, & Equipment (Sch 5 pg 2)	30,000
Wholly Owned Real Estate (Sch 6 pg 2)	
Partially Owned Real Estate (Sch 7 pg 3)	600,000
Vested Interest in Pension/Retirement Accts (Sch 8 pg 3)	
Personal Property Furniture etc.	20,000
Vehicles, Boats, Machinery, & Equipment (Sch 5 pg 2)	

TOTAL ASSETS 1,318,500

LIABILITIES AND NET WORTH	AMOUNT
Other Loans Payable (Sch 9 pg 3)	
Loans on Life Insurance (Sch 2 pg 3)	-0-
Taxes Due - Income	-0-
Credit Card or Accounts Payable	14500
Liabilities of Proprietorships	-0-
Liab of Partnerships/Joint Ventures	-0-
Loans on Vehcl, Boats, Mach, & Equip (Sch 5 pg 2)	-0-
Loans on Wholly Owned Real Estate (Sch 6 pg 3)	262,500
Total Liabilities	277,000
Net Worth	1,036,500

TOTAL LIABILITIES & NET WORTH 1,318,500

Please complete all appropriate schedules. If space is inadequate, attach an additional sheet.

Palmetto State Bank Personal Financial Statement

PAGE 2

Name: _____ Date: 10/9/13

Schedule 1 - DEPOSIT ACCOUNTS

NAME OF FINANCIAL INSTITUTION AND LOCATION	DEMAND DEPOSITS	TIME DEPOSITS
~~Bank of America~~	6500	
BoA	1500	

Schedule 2 - LIFE INSURANCE

Section 2 - LIFE INSURANCE						
Name of Person Insured	Beneficiary	Face Amount	Cash Value	Policy Loans	Policy Assigned?	If Assigned, to whom?
LESTER, RAY	WILLIAM L. RAY	\$25,000.00	\$7.00		NO	
TOTALS						

Schedule 3 - MARKETABLE STOCKS/BONDS NYSE, AMEX, NASDAQ

(If stocks or bonds are held in a brokerage account, just summarize account as one entry and attach statement)

[illegible]

Schedule 4 - STOCK IN CLOSELY HELD CORPORATIONS (Please provide F/S if total value exceeds 10% of your net worth)

[illegible]

Schedule 5 - VEHICLES, BOATS, MACHINERY, AND EQUIPMENT

[illegible]

Palmetto State Bank Personal Financial Statement

Name _____

Date: _____

PAGE 1

Schedule 6 - WHOLLY OWNED REAL ESTATE

[illegible]

Schedule 7 - PARTIALLY OWNED REAL ESTATE

[illegible]

Schedule B - VESTED INTEREST IN PENSION/RETIREMENT ACCOUNTS

MEMBER'S VESTED INTEREST IN PENSION/RETIREMENT ACCOUNTS			
ACCOUNT TYPE	IN NAME OF	INVESTED WITH	MARKET VALUE
N/A DATE			
TOTAL			

Schedule 9 - OTHER LOAN PAYABLES

NAME OF LENDER	ORIGINAL DATE	ORIGINAL AMOUNT	LOAN BALANCE	REPAYMENT TERMS	PAYMENT AMOUNT	COLLATERAL PLEDGED	OTHER COMAKERS ENDORSERS
VISA BRAND			10500		200		
VISA BRT			1000		100		
VISA CAR MIO			5000		150		
DISCOUNT			1000		50	NONE	NONE
					500		
			19500				

Palmetto State Bank Personal Financial Statement

PAGE 4

Name: H. TinsDate: 10-9-13

SOURCE OF INCOME		CONTINGENT LIABILITIES	
FOR YEAR ENDED _____		Are you indirectly liable for obligations of others? <u>NO</u>	
(Attach a copy of your most recent Income Tax Return and K-1's)		If yes, list and describe. If the obligation is for a business or if you need additional space, list and describe on an attachment.	
Salaries - Yours	<u>Please refer</u>	Name of Borrower	_____
Salaries - Your spouses, if applicable	<u>to</u>	Total Amount Owed	_____
Bonuses & Commissions	<u>for return</u>	Lender	_____
Dividends		Description	_____
Interest		Name of Borrower	_____
Net Profits from:		Total Amount Owed	_____
Rental Property		Lender	_____
Proprietorships		Description	_____
Partnerships		Total Amount as endorser, cosigner, or guarantor	_____
Joint Ventures		PERSONAL INFORMATION	
Business Real Estate		Number of Dependents	
Other Income: (Alimony, child support or separate maintenance payments must be itemized if you do not wish to have it considered as a loan for repaying IRS debt)		Are you obligated to pay alimony, child support, or separate maintenance payments? If so, provide details: <u>NO</u>	
Social Security	<u>14,578</u>	Are you a defendant in any suits or legal actions? If so, describe: <u>NO</u>	
TOTAL INCOME		Have you ever declared bankruptcy or had any judgments recorded against you? If so, explain circumstances. (Please include dates, location, amounts): <u>NO</u>	
		Do you have a MFT? <u>YES</u>	
		If so, who is the executor? <u>Michael Tins & Deborah Krane</u>	
		Do you have disability insurance? <u>NO</u>	
		If so, what is the monthly amount? _____	
		What years are covered? _____	

REPRESENTATIONS AND WARRANTIES

The information contained in this statement is provided to induce Palmetto State Bank ("PSB") to extend or to continue the extension of credit to the undersigned or to others upon the guaranty of the undersigned. The undersigned acknowledge and understand that PSB is relying on the information provided herein in deciding to grant or continue credit or to accept a guaranty thereof. Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct, and complete. Each of the undersigned agrees to notify PSB immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in this statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its obligations to PSB. In the absence of such notice or a new full written statement, this should be considered a continuing statement and substantially correct. If the undersigned fail to notify PSB as required above, or if any information herein should prove to be inaccurate or incomplete in any material respect, PSB may declare the indebtedness of the undersigned or the indebtedness guaranteed by the undersigned, as the case may be, immediately due and payable. PSB is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein and to determine the creditworthiness of the undersigned. The undersigned authorize any person or consumer reporting agency to give PSB any information they may have on the undersigned. Each of the undersigned authorizes PSB to answer questions about PSB's credit experience with the undersigned. As long as any obligation or guaranty of the undersigned to PSB is outstanding, the undersigned shall supply annually an updated financial statement. This personal financial statement and any other financial or other information that the undersigned give PSB shall be PSB's property.

THE UNDERSIGNED HAVE READ AND FULLY UNDERSTAND THE FOREGOING REPRESENTATIONS AND WARRANTIES

DATE

YOUR SIGNATURE

DATE

YOUR SIGNATURE

This statement received by: _____

Date _____ Branch _____

PERSONAL FINANCIAL STATEMENT

(Copy this form if necessary. You may supply your own current signed and dated financial statement in lieu of this form, but please add any information requested below which does not appear on your statement. This page must be completed for each principal of applicant.)

Name of Principal: Harriet H. Tims
 Residence Address: 169 Jasmine Hall Rd Residence Phone: 893 846 6823
 City, State, Zip Code: Seabrook, SC 29540
 Applicant's Legal Name: Harriet Henry Tims DBA: _____
 Figures as of: Oct 3, 2012 Figures are: ☐ Estimates ☐ Audited ☒ Unaudited

ASSETS (Omit Cents)		LIABILITIES (Omit Cents)	
Cash on Hand and in Banks	19,000	Credit Card Debts	9,700
Savings Accounts	880	Student Loans	-
Certificates of Deposit	-	Installment Loans 1)	-
IRA or Other Retirement Accounts	-	2)	-
Accounts & Notes Receivable	2,000	Monthly Payments \$	-
Life Insurance - Cash Surrender Value Only	17,140	Loans Against IRA or Other Retirement Accounts	-
Stocks and Bonds not held in Retirement Accounts	-	Loans on Life Insurance	-
Real Estate Owned (from below)	290,000	Mortgages on Real Estate (from below)	203,312
Automobiles - Present Value	25,000	Automobile Loans	3,785
Valuable Personal Property	15,000	Unpaid Taxes	-
Loans to Businesses Owned	-	Loans from Businesses Owned	-
Net Worth of Businesses Owned: (List)	750,000	1)	-
1) Ridings Corp DBA		2)	-
2) 24 Hour Coin Laundry		TOTAL LIABILITIES	267,997
TOTAL ASSETS:	1,119,020	NET WORTH (ASSETS - LIABILITIES)	912,223

Source of Income	Contingent Liabilities
Salary	As Endorser or Co-Maker
Net Investment Income	Legal Claims & Judgments
Real Estate Income	Provision for Federal Income Tax
Other Income (Describe below)	Other Special Debt
Description of Other Income	
From Business	50,000
Social Sec	13,380

SCHEDULE OF REAL ESTATE OWNED (If Additional Properties Owned, Attach Separate Schedule)							
Address of Property	Date of Purchase	Purchase Price	Type of Property	Present Market Value	Amt. of Mortgages & Liens	Gross Rental Income	Mortgage Payments
169 Jasmine Hall Rd Seabrook SC 29540	1978		Residence	290,000	203,312		1064.04

I/we warrant that this information is accurate, true, and correct and hereby authorize the release of all credit or financial

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2017-CP-07-1180
IN RE: THE ESTATE OF HARRIET H. TIMS	)	
	)	
SAMUEL H. TIMS, individually and as a Co-Personal Representative of the Estate of Harriet Kathleen Tims,	)	
Petitioner,	)	WITHDRAWAL OF MOTION FOR SUMMARY JUDGMENT
vs	)	
	)	
MICHAEL TIMS, individually and as Co-Personal Representative of the Estate of Harriet Kathleen Tims and DEBORAH T. KRANE, individually and as Co-Personal Representative of the Estate of Harriet Kathleen Tims,	)	
	)	
Respondent(s).	)	

Petitioner, Samuel H. Tims, by and through his undersigned counsel, hereby withdraws the Motion for Summary Judgment dated September 28, 2017, and filed with the Clerk of Court on October 4, 2017.

Respectfully Submitted,

By: s/Alysoun M. Eversole
Alysoun M. Eversole, Bar #0068011
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902
Phone: (843) 379-3333
Fax: (843) 379-5558
ATTORNEY FOR PETITIONER

Beaufort, South Carolina
10th day of October 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2017-CP-07-1180
IN RE: THE ESTATE OF HARRIET	)	
KATHLEEN HENRY TIMS	)	
	)	
SAMUEL H. TIMS, individually and as a Co-	)	
Personal Representative of the Estate of	)	
Harriet Kathleen Tims,	)	
Petitioner,	)	MOTION FOR
	)	RECONSIDERATION
vs	)	
	)	
MICHAEL TIMS, individually and as Co-	)	
Personal Representative of the Estate of	)	
Harriet Kathleen Tims and DEBORAH T.	)	
KRANE, individually and as Co-Personal	)	
Representative of the Estate of Harriet	)	
Kathleen Tims,	)	
	)	
Respondent(s).	)	

Please take notice that Deborah Krane, by and through her attorney P. Brandt Shelbourne, will move this Court pursuant to South Carolina Rule of Civil Procedure 59 for reconsideration of the Court's Order dated February 7, 2018. Krane's Motion for Reconsideration is for reconsideration of the Court's denial of Krane's Motion for Summary Judgement and the Court's granting of Michael Tims' Motion for Summary Judgement and seeks rulings on matters that that the Court either did not address, or for which Krane is uncertain as to the reasons for its decision and to seek for the Court to reconsider its findings and correct its errors based on the record and the law.

As to the Court's Denial of Krane's Motion for Summary Judgement

Krane moved for Summary Judgment on the grounds that South Carolina Probate Code section 62-3-803 requires that "all claims against a decedent's estate ... absolute or contingent ... founded on contract ... or other legal basis" have to be brought within eight (8) months after the publication of notice of a decedent's death, and that this includes liabilities of the decedent. SC Code Section 62-3-803. The Court denied the application of the aforementioned claims barring statute on the grounds that it did not apply because there is a dispute as to the title of the property.

While there is a dispute over the property and over the intent of the parties or the interpretation of the Land Exchange Agreement (LEA), there is no dispute as to who owned the property or regarding the title to the property at the time of Harriet Tims' death. The property is titled in the name of the decedent Harriet Tims. There is a deed of record in the name of Harriet Tims. Michael Tims' acknowledges that he deeded the property to Harriet Tims. Sam Tims' Amended Petition, which started this matter, states in paragraph 4 that the property is titled in Harriet Tims' name. Section 62-1-201(4), upon which the Court appears to base its denial of Krane's Summary Judgment motion, holds that "claims" do not include "disputes regarding title of a decedent ... to specific assets alleged to be included in the estate." Here, however, as indicated above, there is no dispute as to who held title to the property when Harriet Tims died.

The Court's Order does not point out what facts set forth by Michael Tims establish what the dispute to the title is. Michael Tims states in his memorandum that he deeded the property to Harriet Tims. The title was in her name. He does not deny this. There is no real question as to whether the decedent Harriet Tims has or had title. The only dispute is whether that title should

be construed as being held in trust, but that does not change the ownership or title of the property, but rather the obligation or liability of the decedent or her estate. And even if it did raise an issue that could be construed as a dispute as to a decedent's title to property, it is merely an allegation and not facts establishing that dispute. It is not a dispute over the decedent's title to land. At best the LEA can be construed as requiring Harriet Tims to deed the property back to Michael Tims at some point in the future. This does not change the title as of Harriet Tims' death, but is only whether she has an obligation to deed it back to Michael Tims.

This is not heirs' property. There is not a cloud on the title. There is no question but that the property was titled in Harriet Tims' name when she died. Nor are there facts that contradict that this property should be included in the Estate as of the time of Harriet Tims' death. As Krane's affidavit points out in paragraphs 3 and 4, the property was deeded to Harriet Tims and the "closing attorney issued Title Insurance to [Harriet Tims] certifying that the Title to the property was vested in the name of Harriet H. Tims" and that she had "good, valid and marketable title to the property" The Court's Order fails to consider these facts or to point out what facts if any Michael Tims offers to rebut them.

While Michael Tims alleges that there is a dispute, as the Court recognized, "the opponent cannot simply rest on the mere allegations or denial contained in the pleadings." Here Michael Tims does not provide any facts or evidences that the actual title, the ownership, to the property is in dispute. His argument is solely that Harriet Tims was holding it for him and needed to eventually deed it back to him. For this reason Krane's Motion for Summary Judgment should have been granted, or failing that, the Court should set forth the facts that Michael Tims' provided showing that the title was actually in dispute rather than mere allegations of that fact.

As an additional argument, that Michael Tims' claim that he is entitled to ownership of the property should be viewed as a contractual claim and is therefore subject to the claims barring statute can be viewed by looking at this matter hypothetically. Paragraph 6 of the LEA specifically states that "[u]pon the acquisition of the contract of sale of the premises, Mom agrees to deed the premises back to Son" So, hypothetically If Harriet Tims had not died, and Michael Tims had presented his mother with a "contract of sale of the premises" as set forth in paragraph 6 of the LEA, and Harriet Tims failed and refused to deed the property back to Michael Tims, he would have had the right to sue for enforcement of the contract terms. If he did not provide a "contract of sale of the premises" Harriet Tims, per paragraph 6 of the LEA was not obligated to deed the property back to Michael Tims. Michael Tims can cite to no language that would hold that if he did not present the "contract of sale of the premises" he could still demand that Harriet Tims deed him back the property because she supposedly held it in trust. Under the express terms of the LEA, her only obligation to deed it back to Michael Tims was upon presentation of the "contract of sale of the premises", not some other undescribed or undefined event. Thus, because the LEA would be enforced as a contract, the claim should have been made within the statutory period.

Further, the Court, in granting Michael Tims' Motion for Summary Judgment acknowledges that the property is titled in Harriet Tims' name by reason of the Court's discussion of and rationale for the resulting trust. The resulting trust is not a dispute over who has title, but rather the obligation of the title holder to deed the property back to the prior title holder.

**As to the Court Granting Michael Tims' Motion for Summary Judgment on the
Land Exchange Agreement**

Krane also asks the Court to reconsider its granting of Summary Judgment to Michael Tims on his Motion for Summary Judgment. Krane believes that in taking the facts and inferences arising therefrom in a light most favorable to Krane, it is inappropriate to grant Summary Judgment and hold that as a matter of law the LEA is actually a Resulting Trust.

The Court should reconsider the language in the Land Exchange Agreement (hereinafter "LEA"), paragraph 6 that specifically says that "[u]pon the acquisition of the contract of sale of the premises, Mom agrees to deed the premises back to Son" She can only deed something to which she holds title. The Order does not explain how the property will be transferred back to Michael Tims. The LEA by its own terms acknowledges that Harriet Tims would deed the property back upon the receiving a contract of sale of the premises. Taking this language alone in a light most favorable to Krane indicates that the LEA is a contingent contract, contingent on Michael Tims' acquiring a contract of sale for the premises.

As Krane noted in the hypothetical above, if Harriet Tims had not died and Michael Tims had presented his mother with a "contract of sale of the premises" as set forth in paragraph 6 of the LEA, and Harriet Tims failed and refused to deed the property back to Michael Tims, his claim would have been for breach of the LEA. Even if Michael Tims alleged that his mother held the property as a resulting trust, she could point to paragraph 6 and refuse to deed the property back to him absent a contract for sale of the premises. And while the Court acknowledges Krane's argument which is based on the fact that the LEA specifically uses the words "upon presentation" the decedent was to deed the property back, the Court does not state why this fact does not make the LEA a contingent contract rather than a resulting trust.

The Court's Order also makes findings of fact that are contrary to the facts taken in a light most favorable to Krane. Krane alleges and sets forth in her affidavit filed with the Court that Michael Tims did not have considerable equity in the property and that Harriet Tims had contributed to the property. Her affidavit notes that Michael Tims had failed to file federal and state tax returns so there is no support that he had made contributions to the property. Despite this, the Court found that Michael Tims "made all loan payments and paid expenses related to the property" ignoring Krane's affidavit that he did not make all loan payments and pay the expenses. The Court essentially weighs the facts rather than taking them in a light most favorable to Krane.

The Court actually takes the facts and inferences in a light most favorable to Michael Tims in granting Michael Tims' motion and finds that from the facts, there exists a resulting trust. Krane cannot prove a negative. For purposes of this argument, she cannot prove that there was not a resulting trust. What she can do and did do is provide facts in the language of the LEA itself and in her affidavit that rebut the arguments of Michael Tims. For this reason the Court should reconsider its granting the Motion for Summary and set aside its Order.

Taking the facts in a light most favorable to Krane, Harriet Tims went in debt in exchange for title to this property at the time she acquired the property. This is supported by the LEA itself and by Krane's affidavit. The Court's Order does not address how this did not make a difference.

The Court acknowledges that to prove his case that a resulting trust exists, Michael Tims must prove it by clear and convincing evidence, but does not cite or quote that evidence when taking the facts in a light most favorable to Krane. The Court finds what Harriet Tims' intent was from the LEA. But Michael Tims offers no facts, affidavits or testimony as to what Harriet

Tims' actual intent was and the Court does not cite to any, but rather simply states her intent. The Court also goes on to find that it was Krane that failed to prove that the LEA was not a resulting trust, holding that Krane had to prove it was not a resulting trust by clear and convincing evidence.

The Court's Order also misconstrues the express terms of the LEA which says that Harriet Tims would be repaid for any money expended upon the sale of the subject property and the property being deeded back to Michael Tims omitting the language that says that those events happen "upon the sale of the premises" This presupposes that the property would be sold, and not that Michael Tims would simply repay what he had borrowed. Further, the LEA specifically stated that Harriet Tims' "agrec[ment] to deed the premises back" was "upon the acquisition of the contract of sale of the premises" and not beforehand. Without the acquisition of a contract of sale, mom – Harriet Tims – did not have to deed the property back to Michael Tims. And if he or she did so acquire a contract for sale and Harriet Tims refused to deed the property back to Michael Tims, his option was to sue for breach of the LEA.

Krane also believes the Court needs to address how the alleged resulting trust will operate and the terms under which the title to the property will be returned to Michael Tims. If the property is titled in Harriet Tims' name, then the Estate would have to deed the property over to Michael Tims. (Of course this would undercut the argument that there is a dispute to the title of the property.) The Order would then need to determine the circumstances and details under which that would happen, including, but not limited to addressing how much money Michael Tims had to pay back, and when and if the Estate had to deed the property, and what "equity" the Estate had in the property. If Harriet Tims does not own the property, the Order will need to be followed up with a Court issued deed to the property.

The Order fails to address what and when that property is to be retitled in the name of Michael Tims. It cannot remain in Harriet Tims' name as the Estate needs to close and the property be distributed. Either the Estate owns the property and has to distribute it or it does not own the property and the Court has to issue a deed. As there are no facts or evidence establishing when this is to occur or if it should occur, it is all the more reason for the Court not to grant Summary Judgment on the issue prior to full trial on this issue.

As to The Court's Order Striking Krane's Jury Trial Request

Krane asks that the Court reconsider Krane's request for a jury trial on the counterclaims Krane raised in her answer. Krane alleges as an alternate defense and cross claim that Michael Tims is in breach of the LEA agreement. This breach of contract arises directly from the dispute over the property and the effect of the LEA and Krane should be allowed to argue this to a jury of her peers.

[Remainder of page intentionally left blank; signature page to follow]

Conclusion

Based on the above arguments, Deborah Krane requests that the Court reconsider its Order denying Krane Summary Judgment on the timeliness of Michael Tims' allegations against the Estate and to reconsider its Order granting Summary Judgment against Krane and refusing to allow her legal counterclaims and crossclaims to be tried in front of a jury.

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW FIRM

s/ P. Brandt Shelbourne

P. Brandt Shelbourne, Esquire

131 E. Richardson Avenue

Summerville, SC 29483

(843) 871-2210

brandt@shelbournelaw.com

ATTORNEY FOR RESPONDENT

DEBORAH KRANE

February 19, 2018
Summerville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge

Case No.: 2017-CP-07-01180

Samuel H. Tims, individually and
as Co-Personal Representative for
the Estate of Harriet K. Tims, ... Petitioner,

vs.

Deborah T. Krane, individually
and as Co-Personal Representative
for the Estate of Harriet K. Tims, ... Appellant,

and

Michael Tims, individually and as
Co-Personal Representative for the
Estate of Harriet K. Tims, ... Respondent.

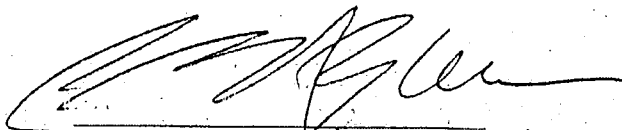
NOTICE OF APPEAL

Appellant Deborah T. Krane respectfully appeals the Order of the Hon. Carmen T. Mullen, Circuit Court dated February 7, 2018, granting summary judgment to Respondent and striking Appellant's demand for a jury trial, and the Order of the Hon. Carmen T. Mullen, Circuit Court dated August 6, 2018, denying Appellant's Motion for Reconsideration. Appellant received written notification of the August 6, 2018 Order on August 7, 2018. A copy of the written orders are attached hereto as "Exhibit A" and "Exhibit B", respectively.

CASE NO.: 2017-CP-07-01180
RE: Notice of Appeal

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW



P. Brandt Shelbourne, Esq.
Eric M. Campbell, Esq.
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (p)
843.875.2224 (f)
COUNSEL FOR APPELLANT

Other Attorneys of Record:

Mills Morrison, Jr. Esq.
Law Offices of Darrell Thomas Johnson, Jr., LLC
Post Office Box 1125
Hardeeville, SC 29927
843.784.2142 (p)
843.784.5770 (f)
COUNSEL FOR RESPONDENT

Parties appearing *Pro Se*:

Samuel Tims
169 Jasmine Hall Rad.
Seabrook, SC 29940
PRO SE PETITIONER

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO: 2017-CP-07-01180

In the Matter of the Estate of Harriet Kathleen)
Henry Tims,)

Decedent,)

**ORDER ON CROSS SUMMARY
JUDGMENT MOTIONS**

SAMUEL H. TIMS, individually and as a Co-)
Personal Representative of the Estate of Harriet)
Kathleen Tims,)

Petitioner,)

vs.)

MICHAEL TIMS, individually and as Co-)
Personal Representative of the Estate of Harriet)
Kathleen Tims and DEBORAH T. KRANE,)
individually and as Co-Personal Representative)
of the Estate of Harriet Kathleen Tims,)

Respondents.)

THIS MATTER came before the Court on October 9, 2017 for a hearing on Respondent Deborah T. Krane's Motion for Summary Judgment, filed September 5, 2017, and Respondent Michael Tim's Motion for Partial Summary Judgment filed September 27, 2017¹. Having reviewed the Motions, memoranda in support and opposition thereof, filings in this matter and considered the arguments of Counsel, for the reasons contained herein, Respondent Krane's Motion for Summary Judgment is denied and Respondent Michael Tims' Motion for Partial Summary Judgment is granted.

¹ Petitioner Samuel Tims also filed a Motion for Summary Judgment on October 4, 2017 but subsequently withdrew the motion on October 10, 2017.

FACTUAL AND PROCEDURAL HISTORY

The parties in this action are siblings. A dispute has arisen between them involving real property located on Cloverdale² Drive in Beaufort County, South Carolina ("Cloverdale property"). The property in question is a 26.89 acre tract that was originally acquired by Respondent Michael Tims ("M. Tims") in 1993. It is uncontested that M. Tims purchased the property with his own funds. Resp't. M. Tims' Aff. ¶ 3.

The parties also agree that prior to the death of their mother, Harriet Kathleen Henry Tims ("Decedent"), she entered into a Land Exchange Agreement ("LEA") regarding the subject property with M. Tims. Ex. A, Am. Pet. At the time the LEA was executed on November 14, 2012, M. Tims was in danger of losing the property in question to foreclosure. *See e.g.* Resp't. M. Tims' Aff. ¶ 4; Res't Krane Mem., Oct. 5, 2017. Because M. Tims was unable to refinance the property in his own name, the Decedent agreed that if the property were placed in her name, she would secure a loan from Palmetto Savings Bank to pay off M. Tims' existing Note with MCAS Federal Credit Union. Resp't. M. Tims' Aff. ¶ 6.

On November 14, 2012, the parties simultaneously executed a Deed to Real Estate, transferring title from M. Tims to the Decedent "in consideration of the sum of ONE and 00/100ths (\$1.00)." Ex. B, Am. Pet. The next day, November 15, 2012, Decedent executed a Promissory Note and Mortgage on the subject property. The Promissory Note was in the amount of Sixty-five Thousand, Two Hundred Eighty Dollars (\$65,280). Ex. C, Resp't Krane Aff. Thereafter on November 15, 2013, Decedent and Respondent M. Tims co-signed on a second loan secured by the Cloverdale property, the purpose of which was to invest in M. Tims' business located on the

² Beaufort County Tax Map Ref. R700-038-00-0052-000

subject property. Ex. E, Resp't Krane Aff. The Decedent then died on February 14, 2016 with the Cloverdale property in her name.

On March 4, 2016, following an informal application for appointment, Decedent's three children, Petitioner Samuel Tims ("S. Tims"), and Respondents M. Tims and Deborah T. Krane ("Krane") were appointed as co-personal representatives of her estate. *See* Beaufort County Probate Court Case No. 2016-ES-07-00213.

On May 19, 2017, Petitioner S. Tims filed a Summons and Petition for Declaratory Relief with the Beaufort County Probate Court. The Petition for Declaratory Relief was amended on May 22, 2017 and asks the Court to "inquire into the matters ... [and] determine the intent of the decedent when she executed the Land Exchange Agreement" pertaining to the Cloverdale property and enter a judgment declaring the rights of the parties involved in this action. Respondent M. Tims joined Petitioner's declaratory action in his Answer filed May 30, 2017.

On June 6, 2017, Respondent Krane filed a Motion to remove to the Circuit Court with her Answer asserting a Counterclaim and Crossclaims as well as demanding a jury trial on the basis that the amount in controversy is at least five thousand dollars in value. S.C. Code Ann. §62-1-302(d)(3). On June 13, 2017, the Beaufort County Probate Court issued an Order granting removal of Petitioner's action for declaratory relief, including all claims asserted therein by any party and retaining exclusive jurisdiction over the administration of the Estate and any other formal proceedings pending within the estate.

STANDARD OF REVIEW

Summary judgment is a drastic remedy that should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is appropriate when "the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The nonmoving party must come forward with specific facts showing a genuine issue for trial. *Id.* If not, summary judgment, if appropriate, and shall be entered against him. Rule 56, SCRCP.

ANALYSIS

I. Applicability of Nonclaim Statute

Krane takes the position that the Cloverdale property is an asset of the Estate of Harriet Kathleen Henry Tims, because the Decedent held title to the subject property at the time of her death. It is undisputed that neither Petitioner S. Tims nor Respondent M. Tims presented any claim against the estate within one (1) year of decedent's death relating to the subject property. Due to the non-moving parties' failure to file a claim against the estate within this time period, Respondent Krane claims to be entitled to summary judgment as a matter of law regarding any obligation of the Estate to return the property in question because these claims are now barred by South Carolina Probate Code's nonclaim statute.

In South Carolina, all claims against an estate, whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of the Decedent's death or eight (8) months after the first publication of notice. S.C. Code Ann. § 62-3-803. This statutory bar is not all encompassing. With respect to the estates of decedents and protected persons, the term claims "includes liabilities of the decedent ... whether arising in

contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent." S.C. Code Ann. § 62-1-201. However, the Probate Code expressly excludes disputes regarding the title of a decedent to specific assets alleged to be included in the estate. *Id.* See also *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993) (dispute over title to a gun was not a claim for purposes of nonclaim statute).³

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

Because this action is one in which the dispute involves title to the Cloverdale property, property which Krane alleges to be included in the Decedent's estate, the nonclaim statute does not apply. Accordingly, Petitioner S. Tims and Respondent M. Tims' action is not time barred and Krane's Motion for Summary Judgement is denied.

³ Similarly, courts in other jurisdictions have generally found that disputes over title to specific items of real or personal property are not "claims" under statutory counterparts to S.C. Code Ann. § 62-3-804. See, e.g., *Matter of Estate of Powers*, 552 N.W.2d 785, 787 (N.D. 1996) (non-claim statute is not applicable to dispute involving title to vehicle asserted by virtue of joint tenancy interest); *In re Estate of Renczykowski*, 409 N.W.2d 888, 891 (Minn.App.1987) (claim for farm equipment and machinery commenced before decedent's death not barred by nonclaim statute); *Labayog v. Labayog*, 83 Hawai'i 412, 927 P.2d 420, 441 (App.1996) (motion to enforce divorce decree ordering deceased husband to convey property to children was a demand regarding title of decedent and not subject to the nonclaim statute).

II. Resulting and/or Constructive Trust

Respondent M. Tims claims entitlement to summary judgment on the issue of whether a resulting or constructive trust is or was created by the LEA and other agreements between the parties to the LEA. The evidence required to establish either a constructive or resulting trust must be clear, definite, unequivocal, and convincing. *Hodges v. Hodges*, 243 S.C. 299, 306, 133 S.E.2d 816, 819 (1963).

a. Resulting Trust

A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason, is titled in the name of another. *McDowell v. S.C. Dep't of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987). Generally, when real property is conveyed to one person but the consideration is paid by another, a presumption arises that the party who paid for it intended to benefit himself, and a resulting trust is created. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002); *Caulk v. Caulk*, 211 S.C. 573, 43 S.E.2d 600 (1947). This presumption may be rebutted and the actual intention shown by parole evidence. *Larisey v. Larisey*, 93 S.C. 450, 77 S.E. 129 (1913); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248-9, 489 S.E.2d 472, 475 (1997).

The determination of whether a resulting trust should be imposed is specific to the time of the transaction. South Carolina trust law is clear that a resulting trust "arises at the time the purchase is made. The funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Hodges v. Hodges*, 354 S.C. 299, 306-307, 133 S.E.2d 816, 819-820 (1963)(emphasis added).

It is undisputed that the property in question was transferred with the sole purpose of preventing its foreclosure. The record establishes that Respondent M. Tims purchased the property

in 1993 and in 2012 had an outstanding balance owed on the property of approximately Sixty-five Thousand and No Dollars (\$65,000.00). A recent appraisal⁴ on the subject property values it at Four Hundred Fifteen Thousand and No Dollars (\$415,000). These facts establish Respondent M. Tims, having possessed title to the property for almost twenty years, amassed considerable equity in the property, although the exact amount is unknown. After having paid the majority of the purchase price, M. Tims then placed title in his mother's name for nominal consideration in the amount of One Dollar (\$1). Thereafter, Respondent M. Tims continued to occupy the property and operate his business thereon, made all loan payments and paid expenses related to the property. Resp't M. Tims' Aff. These facts give rise to the presumption that M. Tims intended to benefit himself and a resulting trust was created.

Evidence to rebut the presumption of resulting trust must pertain to "the actual intent of him who pays the purchase price at the time of the transaction and limited according to his intention at that time..." *Larisey* at 450. Krane argues the LEA is "[a]t best, it is a contingent contract or agreement between Michael Tims and the decedent." Resp't. Krane Mem. Oct 5, 2017. This Court disagrees: The LEA states unequivocally that (1) Son (M. Tims) is the owner of the property; (2) Son (M. Tims) is indebted to MCAS Beaufort; (3) Mom (Decedent) will secure financing to pay off MCAS; (4) that Son (M. Tims) will deed the title of the property to Mom (Decedent) in Order to have a first Mortgage on the premises placed in her name.

Rather than rebut the presumption of a resulting trust in the instant case, the agreement supports the conclusion that at the time of the transfer, the Decedent was to hold the property in trust for his benefit. The Decedent's financial intervention and obligation to pay off Respondent

⁴ The appraisal is dated Feb 14, 2016. The subject property was appraised as vacant land, and does not include any buildings on the property. See Beaufort County Probate Case No. 2016-ES-07-00213 at 260.

M. Tims indebtedness equates to a loan from Decedent to M. Tims. "Where a transfer of property is made to one person and the purchase price is advanced by him as a loan to another, a resulting trust arises in favor of the latter, but the transferee can hold the property as security for the loan." *Campbell v. Campbell*, 300 S.C. 68, 386 S.E.2d 305 (1989). There is no evidence that the parties intended the Decedent have an ownership interest in the subject property. This inference is further supported by language in the LEA which anticipates Mom being repaid for any monies expended upon the sale of the subject property and the property being deeded back to M. Tims at that time as his primary residence. Ex. A, Am. Pet.

Krane alleges Decedent paid significant sums of money either personally or through Ridings Corp.⁵ for improvements to the Cloverdale property and that she made all payments on the 2013 loan. See Resp't. Krane Aff. ¶7-10: "[E]vents subsequent to the purchase of the property and the transfer of the title may be considered in determining if a resulting trust was raised where they throw light on the intention with which the purchase was made," however, what is essential to the creation of a resulting trust is that the consideration for the purchase be paid at or before the time of the original transaction by the person claiming the benefit of the trust. *Ex parte Stokes*, 256 S.C. 260, 264-65, 182 S.E.2d 306, 308 (1971). At most, these facts give rise to the possibility that the Decedent may have an equitable interest in the property but it does not serve to rebut by clear and convincing evidence the presumption of a resulting trust in favor of Respondent M. Tims.

Viewing the evidence in the light most favorable to the non-moving party, the evidence clearly establishes Respondent M. Tims' paid all or some of the purchase price prior to the transfer and, in titling the property in the Decedent's name, intended to benefit himself. Respondent Krane

⁵ According to Resp. Krane, Decedent is the sole shareholder of Ridings Corporation: Resp't. Krane Aff. ¶ 2.

has failed to rebut the presumption of a resulting trust. There exists no genuine issue of material fact regarding the existence of a resulting trust and Respondent M. Tims' Motion for Partial Summary Judgment is granted.⁶

b. Constructive Trust

Because this Court finds the Decedent is the trustee of a resulting trust in favor of her son, Respondent M. Tims, it need not address the applicability of a constructive trust on these facts.

III. Jury Trial

Respondent M. Tims seeks an Order of this Court striking Respondent Krane's request for a jury trial on the basis that the complaint is equitable and her counterclaims/crossclaims are legal and permissive. Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (2004). An action to determine a resulting trust sounds in equity. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002). Defendant in action begun in equity who asserts permissive counterclaim that is legal in nature, is deemed to have waived right to jury trial on issues raised by counterclaims. *North Carolina Federal Sav. & Loan Assn. v. DAV Corp.*, 294 SC 27, 362 SE2d 308. (1987). Respondent Krane's counterclaims are permissive as they involve claims regarding the handling of the Estate. Furthermore, cross-claims are always permissive and by asserting those, a party in action begun in equity loses any right it might otherwise have to jury trial on issues that cross-claims raise. *Id.* Accordingly, Respondent's Motion to strike Respondent Krane's request for a jury trial is granted.

⁶ In finding a resulting trust was created, the Court does not make any finding regarding what equitable interest, if any, the Decedent had in the subject property at the time of her death.

CONCLUSION

For the reasons stated herein, the Court finds as follows:

1. Respondent Krane's Motion for Summary Judgment barring Petitioner and Respondent M. Tims' claims on the basis of the nonclaim statute is DENIED.
2. Respondent M. Tims' Motion for Partial Summary Judgment regarding the existence of a resulting trust in his favor is GRANTED.
3. Respondent M. Tims' Motion for Partial Summary Judgment striking Respondent Krane's request for a jury trial is GRANTED.

IT IS SO ORDERED.

CARMEN TEVIS MULLEN
Fourteenth Judicial Circuit

_____, 2018
Beaufort, South Carolina

ELECTRONICALLY FILED - 2018 Sep 04 11:03 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180
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Beaufort Common Pleas

Case Caption: Samuel H Tims VS Michael Tims
Case Number: 2017CP0701180
Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142

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EXHIBIT B

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2017-CP-07-01180

IN RE: THE ESTATE OF HARRIET)
KATHLEEN HENRY TIMS,)

SAMUEL H. TIMS, individually and as a Co-)
Personal Representative of the Estate of Harriet)
Kathleen Tims,)

Petitioner,)

vs.)

MICHAEL TIMS, individually and as Co-)
Personal Representative of the Estate of Harriet)
Kathleen Tims and DEBORAH T. KRANE,)
individually and as Co-Personal Representative)
of the Estate of Harriet Kathleen Tims,)

Respondents.)

**ORDER GRANTING
RESPONDENT KRANE'S
MOTION FOR RECONSIDERATION,
IN PART, AND DENYING, IN PART**

THIS MATTER came before the Court upon Respondent Deborah Krane's Motion for Reconsideration of this Court's Order dated February 7, 2018 denying Respondent Krane's Motion for Summary Judgment and granting Respondent Michael Tims' Motion for Summary Judgment. Having fully considered the Motions in this matter as well as relevant case law, for the reasons stated below, Respondent Krane's Motion to Amend is granted, in part, and this Court's Order dated February 7, 2018 is amended to include additional findings of fact and conclusions of law. Respondent Krane's Motion to Amend is denied, in part, as to the arguments raised on the basis that previously raised are addressed in this Court's prior Order and the Court will not address new arguments which could have been raised previously but were not. *Keyes v. National R.R. Passenger Corp.*, 766 F. Supp. 277, 280 (E.D. Pa. 1991).

FACTUAL AND PROCEDURAL HISTORY

The parties in this action are siblings. A dispute has arisen between them involving real property located on Cloverdale¹ Drive in Beaufort County, South Carolina ("Cloverdale property"). The property in question is a 26.89 acre tract that was originally acquired by Respondent Michael Tims ("M. Tims") in 1993. It is uncontested that M. Tims purchased the property with his own funds. Resp't. M. Tims' Aff. ¶ 3.

The parties also agree that prior to the death of their mother, Harriet Kathleen Henry Tims ("Decedent"), she entered into a Land Exchange Agreement ("LEA") regarding the subject property with M. Tims. Ex. A, Am. Pet. At the time the LEA was executed on November 14, 2012, M. Tims was in danger of losing the property in question to foreclosure. *See e.g.* Resp't. M. Tims' Aff. ¶ 4; Res't Krane Mem., Oct 5, 2017. Because M. Tims was unable to refinance the property in his own name, the Decedent agreed that if the property were placed in her name, she would secure a loan from Palmetto Savings Bank to pay off M. Tims' existing Note with MCAS Federal Credit Union. Resp't. M. Tims' Aff. ¶ 6.

On November 14, 2012, the parties simultaneously executed a Deed to Real Estate, transferring title from M. Tims to the Decedent "in consideration of the sum of ONE and 00/100ths (\$1.00)." Ex. B, Am. Pet. The next day, November 15, 2012, Decedent executed a Promissory Note and Mortgage on the subject property. The Promissory Note was in the amount of Sixty-five Thousand, Two Hundred Eighty Dollars (\$65,280). Ex. C, Resp't Krane Aff. Thereafter on November 15, 2013, Decedent and Respondent M. Tims co-signed on a second loan secured by the Cloverdale property, the purpose of which was to invest in M. Tims' business

¹ Beaufort County Tax Map Ref: R700-038-00-0052-000

located on the subject property. Ex. E, Resp't Krane Aff. The Decedent then died on February 14, 2016 with the Cloverdale property in her name.

On March 4, 2016, following an informal application for appointment, Decedent's three children, Petitioner Samuel Tims ("S. Tims"), and Respondents M. Tims and Deborah T. Krane ("Krane") were appointed as co-personal representatives of her estate. See Beaufort County Probate Court Case No. 2016-ES-07-00213.

On May 19, 2017, Petitioner S. Tims filed a Summons and Petition for Declaratory Relief with the Beaufort County Probate Court. The Petition for Declaratory Relief was amended on May 22, 2017 and asks the Court to "inquire into the matters... [and] determine the intent of the decedent when she executed the Land Exchange Agreement" pertaining to the Cloverdale property and enter a judgment declaring the rights of the parties involved in this action. Respondent M. Tims joined Petitioner's declaratory action in his Answer filed May 30, 2017.

On June 6, 2017, Respondent Krane filed a Motion to remove to the Circuit Court with her Answer asserting a Counterclaim and Crossclaims as well as demanding a jury trial on the basis that the amount in controversy is at least five thousand dollars in value. S.C. Code Ann. §62-1-302(d)(3). On June 13, 2017, the Beaufort County Probate Court issued an Order granting removal of Petitioner's action for declaratory relief, including all claims asserted therein by any party and retaining exclusive jurisdiction over the administration of the Estate and any other formal proceedings pending within the estate.

STANDARD OF REVIEW

Summary judgment is a drastic remedy that should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is

appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The nonmoving party must come forward with specific facts showing a genuine issue for trial. *Id.* If not, summary judgment, if appropriate, and shall be entered against him. Rule 56, SCRCP.

ANALYSIS

I. Applicability of Nonclaim Statute

Krane takes the position that the Cloverdale property is an asset of the Estate of Harriet Kathleen Henry Tims, because the Decedent held title to the subject property at the time of her death. It is undisputed that neither Petitioner S. Tims nor Respondent M. Tims presented any claim against the estate within one (1) year of decedent's death relating to the subject property. Due to the non-moving parties' failure to file a claim against the estate within this time period, Respondent Krane claims to be entitled to summary judgment as a matter of law regarding any obligation of the Estate to return the property in question because these claims are now barred by South Carolina Probate Code's nonclaim statute.

In South Carolina, all claims against an estate, whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of the Decedent's death or eight (8) months after the first publication of notice. S.C. Code Ann. § 62-3-803. This statutory bar is not all encompassing. With respect to the estates of decedents and

protected persons; the term claims "includes liabilities of the decedent ... whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent." S.C. Code Ann. § 62-1-201. However, the Probate Code expressly excludes disputes regarding the title of a decedent to specific assets alleged to be included in the estate. *Id.* See also *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993) (dispute over title to a gun was not a claim for purposes of nonclaim statute).²

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

Because this action is one in which the dispute involves title to the Cloverdale property, property which Krane alleges to be included in the Decedent's estate, the nonclaim statute does not apply. Such a claim for specific property in the hands of the executor or personal

² Similarly, courts in other jurisdictions have generally found that disputes over title to specific items of real or personal property are not "claims" under statutory counterparts to S.C. Code Ann. § 62-3-804. See, e.g., *Matter of Estate of Powers*, 552 N.W.2d 785, 787 (N.D. 1996) (nonclaim statute is not applicable to dispute involving title to vehicle asserted by virtue of joint tenancy interest); *In re Estate of Renczykowski*, 409 N.W.2d 888, 891 (Minn.App.1987) (claim for farm equipment and machinery commenced before decedent's death not barred by nonclaim statute); *Labayog v. Labayog*, 83 Hawaii 412, 927 P.2d 420, 441 (App.1996) (motion to enforce divorce decree ordering deceased husband to convey property to children was a demand regarding title of decedent and not subject to the nonclaim statute).

representative is deemed to be a claim against the personal representative but not against the estate because, though the property is in the hands of the personal representative, it is not part of the estate and the claim for it is not a "debt" of the estate. See *Saradjian v. Saradjian*, 25 Conn.App. 411 (1991). Thus, this Court finds S.C. Code of Laws Section 62-3-804 does not apply in this instance. Accordingly, Petitioner S. Tims and Respondent M. Tims' action is not time barred and Krane's Motion for Summary Judgement is denied.

II. Resulting and/or Constructive Trust

Respondent M. Tims claims entitlement to summary judgment on the issue of whether a resulting or constructive trust is or was created by the LEA and other agreements between the parties to the LEA. The evidence required to establish either a constructive or resulting trust must be clear, definite, unequivocal, and convincing. *Hodges v. Hodges*, 243 S.C. 299, 306, 133 S.E.2d 816, 819 (1963).

a. Resulting Trust

A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason, is titled in the name of another. *McDowell v. S.C. Dep't. of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987). Generally, when real property is conveyed to one person but the consideration is paid by another, a presumption arises that the party who paid for it intended to benefit himself, and a resulting trust is created. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002); *Caulk v. Caulk*, 211 S.C. 573, 43 S.E.2d 600 (1947). This presumption may be rebutted and the actual intention shown by parole evidence. *Larisey v. Larisey*, 93 S.C. 450, 77 S.E. 129 (1913); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248-9, 489 S.E.2d 472, 475 (1997).

The determination of whether a resulting trust should be imposed is specific to the time

of the transaction. South Carolina trust law is clear that a resulting trust "arises at the time the purchase is made. The funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Hodges v. Hodges*, 354 S.C. 299, 306-307, 133 S.E.2d 816, 819-820 (1963)(emphasis added). Once a resulting trust has been established, the party whose name the asset is titled, will be stripped of any equitable interest in the property, retaining only bare legal title. *McDowell v. S.C. Dep't of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987) (per curiam) (explaining that a beneficiary of a resulting trust holds the equitable interest in the property). In that instance, the titleholder is viewed as the asset's trustee, who can exercise control over the property only for the benefit of the party who holds the property's equitable interest, i.e., the property's valuable interest. *Id.*

It is undisputed that the property in question was transferred with the sole purpose of preventing its foreclosure. The record establishes that Respondent M. Tims purchased the property in 1993 and in 2012 had an outstanding balance owed on the property of approximately Sixty-five Thousand and No Dollars (\$65,000.00). A recent appraisal³ on the subject property values it at Four Hundred Fifteen Thousand and No Dollars (\$415,000). These facts establish Respondent M. Tims, having possessed title to the property for almost twenty years, amassed considerable equity in the property, although the exact amount is unknown. After having paid the majority of the purchase price, M. Tims then placed title in his mother's name for nominal consideration in the amount of One Dollar (\$1). Thereafter, Respondent M. Tims continued to occupy the property and operate his business thereon, made all loan payments and paid expenses related to the property. Resp't M. Tims' Aff. These facts give rise to the presumption that M.

³ The appraisal is dated Feb 14, 2016. The subject property was appraised as vacant land, and does not include any buildings on the property. See Beaufort County Probate Case No. 2016-ES-07-00213 at 260.

Tims intended to benefit himself and a resulting trust was created.

Evidence to rebut the presumption of resulting trust must pertain to "the actual intent of him who pays the purchase price at the time of the transaction and limited according to his intention at that time..." *Larisey* at 450. Krane argues the LEA is "[a]t best, it is a contingent contract or agreement between Michael Tims and the decedent." Resp't. Krane Mem. Oct 5, 2017. This Court disagrees. The LEA states unequivocally that (1) Son (M. Tims) is the owner of the property; (2) Son (M. Tims) is indebted to MCAS Beaufort; (3) Mom (Decedent) will secure financing to pay off MCAS; (4) that Son (M. Tims) will deed the title of the property to Mom (Decedent) in Order to have a first Mortgage on the premises placed in her name.

Rather than rebut the presumption of a resulting trust in the instant case, the agreement supports the conclusion that at the time of the transfer, the Decedent was to hold the property in trust for his benefit. Decedent's financial intervention and obligation to pay off Respondent M. Tims indebtedness equates to a loan from Decedent to M. Tims. "Where a transfer of property is made to one person and the purchase price is advanced by him as a loan to another, a resulting trust arises in favor of the latter, but the transferee can hold the property as security for the loan." *Campbell v. Campbell*, 300 S.C. 68, 386 S.E.2d 305 (1989). Viewing the evidence in the light most favorable to the non-moving party, the evidence does not rebut the presumption of a resulting trust nor does it provide clear and convincing evidence that the parties intended the Decedent to have an ownership interest in the subject property. Rather, the language in the LEA anticipates Mom being repaid for any monies expended upon the sale of the subject property and the property being deeded back to M. Tims at that time as his primary residence. Ex. A, Am. Pet.

Krane alleges Decedent paid significant sums of money either personally or through

Ridings Corp.⁴ for improvements to the Cloverdale property and that she made all payments on the 2013 loan. See Resp't. Krane Aff. ¶7-10. However, all monies allegedly expended by the Decedent took place after the deed transfer was executed on November 14, 2012, to wit: the execution of the promissory note and mortgage on November 15, 2012 (Krane Aff., Ex. C); the second mortgage executed along with M. Tims on November 15, 2013 and evidence of payments on the second mortgage (Krane Aff., Ex. F). Further, the note claimed to be of the Decedent and listing expenditures for the subject property is not dated nor does it include any identifying information. However, even if the purported note did, those expenditures alone⁵ would not be sufficient to rebut the presumption of a resulting trust at the time of the deed transfer.

"[E]vents subsequent to the purchase of the property and the transfer of the title may be considered in determining if a resulting trust was raised where they throw light on the intention with which the purchase was made," however, what is essential to the creation of a resulting trust is that the consideration for the purchase be paid at or before the time of the original transaction by the person claiming the benefit of the trust. *Ex parte Stokes*, 256 S.C. 260, 264-65, 182 S.E.2d 306, 308 (1971). The resulting trust does not come into existence because of an agreement between the parties but arises at once, by operation of law, in favor of the person paying the money at the time of the conveyance. *Saradjian v. Saradjian*, 25 Con.App. 411 (1991). Viewing the evidence in the light most favorable to Respondent Krane, at most, give rise to the possibility that the Decedent may have an equitable interest in the property but it does not serve to rebut by clear and convincing evidence the presumption of a resulting trust in favor of Respondent M. Tims.

⁴ According to Resp. Krane, Decedent is the sole shareholder of Ridings Corporation. Resp't. Krane Aff. ¶2.

⁵ The handwritten note lists expenditures for plumbing, electrical, refrigeration, surveyor, metal rail, concrete, rental equipment with various amounts next to each line item.

The evidence clearly establishes Respondent M. Tims' paid all or some of the purchase price prior to the transfer and, in titling the property in the Decedent's name, intended to benefit himself. Respondent Krane has failed to rebut the presumption of a resulting trust. There exists no genuine issue of material fact regarding the existence of a resulting trust and Respondent M. Tims' Motion for Partial Summary Judgment is granted.⁶

b. Constructive Trust

Because this Court finds the Decedent is the trustee of a resulting trust in favor of her son, Respondent M. Tims, it need not address the applicability of a constructive trust on these facts.

III. Jury Trial

Respondent M. Tims seeks an Order of this Court striking Respondent Krane's request for a jury trial on the basis that the complaint is equitable and her counterclaims/crossclaims are legal and permissive. Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (2004). An action to determine a resulting trust sounds in equity. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002). Defendant in action begun in equity who asserts permissive counterclaim that is legal in nature, is deemed to have waived right to jury trial on issues raised by counterclaims. *North Carolina Federal Sav. & Loan Asso. v DAV Corp.*, 294 SC 27, 362 SE2d 308. (1987). Respondent Krane's counterclaims are permissive as they involve claims regarding the handling of the Estate. Furthermore, cross-claims are always permissive and by asserting those, a party in action begun in equity loses any right it might otherwise have to jury trial on issues that cross-claims raise. *Id.* Accordingly, Respondent's Motion to strike Respondent Krane's request for a jury trial is granted.

⁶ In finding a resulting trust was created, the Court does not make any finding regarding what equitable interest, if any, the Decedent had in the subject property at the time of her death.

CONCLUSION

For the reasons stated herein, the Court finds as follows:

1. Respondent Krane's Motion for Summary Judgment barring Petitioner and Respondent M. Tims' claims on the basis of the nonclaim statute is DENIED.
2. Respondent M. Tims' Motion for Partial Summary Judgment regarding the existence of a resulting trust in his favor is GRANTED.
3. Respondent M. Tims' Motion for Partial Summary Judgment striking Respondent Krane's request for a jury trial is GRANTED.

IT IS SO ORDERED.

CARMEN TEVIS MULLEN
Fourteenth Judicial Circuit

_____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Samuel H Tims , plaintiff, et al VS Michael Tims , defendant, et al
Case Number: 2017CP0701180
Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2018-08-06 14:48:45 page 12 of 12

ELECTRONICALLY FILED - 2018 Sep 04 11:03 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180
ELECTRONICALLY FILED - 2018 Aug 07 9:27 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701180

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge

Case No.: 2017-CP-07-01180

Samuel H. Tims, individually and
as Co-Personal Representative for
the Estate of Harriet K. Tims, ... Petitioner,

vs.

Deborah T. Krane, individually
and as Co-Personal Representative
for the Estate of Harriet K. Tims, ... Appellant,

and

Michael Tims, individually and as
Co-Personal Representative for the
Estate of Harriet K. Tims, ... Respondent.

PROOF OF SERVICE

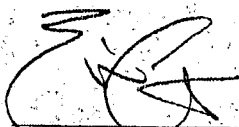
The undersigned hereby certifies that, on this day, he served the Appellant's
Notice of Appeal upon all Parties by placing a copy of the Notice in the U.S. Mail,
sufficient postage affixed thereto and addressed to the below-named individuals at the
stated address for each:

Mills Morrison, Jr. Esq.
Law Offices of Darrell Thomas Johnson, Jr., LLC
Post Office Box 1125
Hardeeville, SC 29927

Samuel Tims
169 Jasmine Hall Rd.
Seabrook, SC 29940

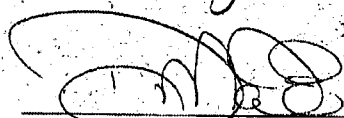
THIS 31st DAY OF AUGUST, 2018.

SHELBOURNE LAW



P. Brandt Shelbourne, Esq.
Eric M. Campbell, Esq.
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (p)
843.875.2224 (f)
COUNSEL FOR APPELLANT

SWORN TO BEFORE ME THIS 31st
DAY OF August, 2018.



Print Name: Dana Male
Notary Public for the State of S.C.
My Commission Expires: 2-10-2019

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2016-ES-07-00213

SAMUEL H. TIMS, ET AL

PLAINTIFFS

VERSUS

MICHAEL TIMS, ET AL

DEFENDANTS

OCTOBER 9, 2017

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

BEFORE

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFFS
SAMUEL TIMS:

HON. ALYSOUN M. EVERSOLE
EVERSOLE LAW FIRM
1509 KING STREET
BEAUFORT, SOUTH CAROLINA 29902
843-379-3333
aeversole@eversolelaw.com

ON BEHALF OF DEFENDANTS
DEBORAH KRANE:

HON. P. BRANDT SHELBOURNE
brandt@shelbournelaw.com
HON. ERIC M. CAMPBELL
SHELBOURNE LAW FIRM
131 EAST RICHARDSON AVENUE
SUMMERVILLE, SOUTH CAROLINA 29483
843-871-2210

ON BEHALF OF DEFENDANT
MICHAEL TIMS:

HON. MILLS L. MORRISON, JR.
300 MAIN STREET
POST OFFICE BOX 1125
HARDEEVILLE, SOUTH CAROLINA 29927-1125

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 2:55 P.M.

2 BY THE COURT:

3 THE COURT: All right.

4 MR. SHELBOURNE: Thank you, your Honor. This is
5 Brandt Shelbourne on behalf of Deborah Krane. May it
6 please the Court.

7 THE COURT: Yes, sir.

8 MR. SHELBOURNE: We have filed a motion for summary
9 judgment in this case on some claims that have been made
10 against the estate of Harriet Tims, by way of -- just
11 procedurally, this is before you on some removal from
12 the probate court action. Harriet Tims and her son,
13 Michael Tims, entered into a land exchange agreement,
14 which is attached, I believe, to Ms. Eversole's
15 petition, Sam Tims' petition. Harrett Tims is survived
16 by Sam Tims, Michael Tims, Deborah Krane. So there are
17 three children.

18 THE COURT: Okay.

19 MR. SHELBOURNE: In 2012, November 2012, the land
20 exchange agreement was signed. That, I believe, is in
21 the record. The decedent died on or about February 14,
22 2016. On March 10, 2016, the notice of creditors was
23 put in the newspaper. All three of these siblings were
24 appointed as the personal representative.

25 We have moved for summary judgment pursuant to

1 South Carolina Code Section 62-3-803. I shouldn't say
2 we -- we moved pursuant to Rule 56, but relying on the
3 803 statute of the probate code, which requires that the
4 claims against the estate be filed within eight months
5 from the notice of creditors. Even if we use a one-
6 year's period, which is also could be allowed under the
7 -- after the decedent's death if we hadn't published, if
8 the notice hadn't been published, it still would have
9 required either November 16, if you're using the eight
10 months; or February 2017. Ms. Tims is -- excuse me.
11 Mr. Sam Tims' motion was filed in May 2017, several
12 months after that period. So -- along with Mr. Michael
13 Tims then joined in that as well. We believe those
14 claims are outside the statute.

15 This is not a statute of limitations, your Honor.
16 This is a non-claims statute, which is totally different
17 than a statute of limitations. And I cited in my memo,
18 your Honor, in case you've read it the *Hover* case, which
19 is a 2014 case. Ironically, it came out of this court,
20 I believe. I'm not sure who the judge was, but it came
21 out of Beaufort County Probate Court, and then up to the
22 Supreme Court. And that court was dealing with a
23 mortgage, and basically said to the bank, sorry, your
24 deficiency judgment can't -- you can't bring it. They
25 argued in that case, well, we didn't know we had it yet;

1 we hadn't gotten the judgment or it wasn't in default.
2 Similarly, this contract, this land exchange agreement,
3 has a contingency that the land that was deeded from
4 Michael Tims in 2012 to Harriet Tims was to be returned
5 to Michael Tims upon the sale -- the contract of sale
6 being presented and some monies being paid. Michael
7 Tims alleges that it's not contingent on a sale of the
8 property; it's contingent on the payments; but they
9 admit the payments haven't been made. And so, the
10 payment is due -- some of the payments have been made,
11 they say. We don't dispute that. But the final payment
12 was due in November of this year, and it hasn't been
13 made.

14 And the statute is fairly clear and fairly strict
15 when it says all claims against the decedent's estate
16 whether due or to become due absolutely are contingent,
17 based on the contract tort or other legal basis. I
18 mean, it is -- the legislature has included an expansive
19 reading of this to include that has to be brought within
20 one year, or the eight months, if the notice to
21 creditors is published, which it was in this case.

22 THE COURT: Okay.

23 MR. SHELBOURNE: Your Honor, the only exception for
24 that is if it's a security instrument. Commencing or
25 proceeding to enforce a mortgage pledge lien or the

1 security instrument. This is not a security instrument.
2 There's no security. Harriet Tims did not give security
3 to Michael Tims when -- she gave security to the bank.
4 She borrowed money from Palmetto Savings Bank to pay off
5 a note, the mortgage, that Michael Tims had that was in
6 foreclosure, but she gave security to the bank. The
7 bank's not a party. They're not moving to foreclose on
8 this.

9 And I would note there is no foreclosure action
10 filed by any of the parties. They are essentially
11 alleging that this is a resulting trust. Mr. Michael
12 Tims' recent memo says it's also a constructive trust,
13 which wasn't pled. We don't believe it's either of
14 those. But even so, even if it is, what they're asking
15 for, the legal -- what they're asking for is that the
16 estate return the property, because it is deeded in
17 Harriet Tims' name, return the property to Michael Tims
18 or to a trustee. Even so, that's something against the
19 estate, asking the estate to do something. And we don't
20 believe that that's appropriate at this time, due to the
21 non-claims statute. Thank you, your Honor.

22 THE COURT: Yes, sir.

23 MR. MORRISON: Lots of reasons why that is wrong.
24 I'm saying with our random --

25 THE COURT: I like how you started that, Mr.

1 Morrison.

2 MR. MORRISON: A little background here. This
3 property we're talking about is 26 acres, on which
4 Michael Tims lived and his family lived. Have lived for
5 many -- they bought the property themselves. They've
6 lived there for many years. They paid for it. In 2012,
7 he had a small, like a \$65,000.00 loan against the
8 property with MCAS Credit Union. That went into
9 foreclosure for a whole bunch of -- I think MCAS was
10 getting investigated at the time or -- but anyway, it
11 went into foreclosure. Michael Tims was unable to
12 refinance, so his mother offered to help him out.

13 THE COURT: Okay.

14 MR. MORRISON: And the idea was that they would --
15 Michael Tims would gift the property to his mother, and
16 that she would then take out a loan to -- to refinance
17 or to pay off the MCAS loan. And they took a loan with
18 Palmetto State Bank and paid off the MCAS loan; got it
19 out of foreclosure; and then, they entered into this
20 land exchange agreement, which is -- which somewhat
21 memorializes their agreement. But the agreement was
22 that Michael Tims would continue to make payments on the
23 property, which he has. He says there are some payments
24 haven't been made, but they're all -- they're current as
25 far as I -- is the information I have.

1 THE COURT: Okay.

2 MR. MORRISON: And while the loan is still
3 outstanding, the loan has not been re-paid. I think the
4 land exchange agreement mentioned some -- it would be
5 transferred back to Michael Tims when there was a
6 contract for sale.

7 THE COURT: Okay.

8 MR. MORRISON: There's no contract for sale. And
9 then, his mother died, apparently intestate. There was
10 some evidence of a will, but then, the will has not been
11 found. And in any event, all three children are now co-
12 personal representatives of the estate. Two of them
13 want to, you know, recognize the situation as a
14 resulting trust or constructive trust, and it's Michael
15 Tims' property when the loan is paid off or when there's
16 a contract for sale. But then, obviously, one personal
17 representative wants to say it's an estate asset, you
18 know, and subject to an equitable distribution. So
19 there's a dispute.

20 This is not a typical situation where there's a
21 creditor out there against the estate. This is a
22 situation -- there's co-personal representatives that
23 can't agree on how to treat the asset. And the
24 situation's a classic example of a resulting trust.
25 Michael Tims transfers the property for no consideration

1 to his mother; mother, you know, is holding it for him
2 for him to -- until he can re-pay the note; and there's
3 no evidence that -- of him -- of anybody defrauding any
4 third parties or -- with the transaction.

5 THE COURT: Who paid for the costs that were
6 associated with refinancing or transferring it to the
7 mother?

8 MR. MORRISON: I believe that was part of the loan.
9 But if Michael Tims -- my understanding, Michael Tims
10 has paid everything.

11 THE COURT: Okay.

12 MR. MORRISON: Harriet Tims has not paid anything
13 on the property.

14 THE COURT: Okay.

15 MR. SHELBOURNE: The loan was --

16 MR. MORRISON: I'm not finished.

17 MR. SHELBOURNE: The loan was -- just to answer
18 that, your Honor.

19 THE COURT: Yes.

20 MR. SHELBOURNE: The loan was signed by Harriet
21 Tims.

22 THE COURT: Okay.

23 MR. SHELBOURNE: And at the time she signed the
24 note and mortgage, she -- the property was deeded to
25 her; she signed the note and mortgage; and then, that

1 money, she used to pay off Michael Tims' debt.

2 THE COURT: Okay. Okay.

3 MR. MORRISON: But Michael Tims has paid, made all
4 the payments, you know, relative to the loan and
5 relative to the closing, relative to this property, I
6 mean, as far as we can see. So, you know, a couple of
7 -- a couple of reasons why the statute doesn't apply.
8 Number one, now, he mentions it's a very broad -- the
9 creditors' claims statute's very broad, but does not
10 mention equitable claims. It has a loan they contract
11 toward, but it does not mention that it includes
12 equitable claims with it, which this is. Number 1.

13 Number 2; it says contract claims. There hasn't
14 been a breach of a contract, because the loan has not
15 been paid off.

16 THE COURT: Okay.

17 MR. MORRISON: And it hasn't -- and, you know, the
18 contract for sale hasn't been presented. So he doesn't
19 have a breach of contract claim until one of those two
20 things happen.

21 THE COURT: Okay.

22 MR. MORRISON: And then, of course, there's an
23 exception for mortgages, securities, or other liens. We
24 take it, you know, that if it somehow doesn't -- if it's
25 not a resulting trust or that a conservative -- Michel

1 Tims' conservator is said to have a lien against -- an
2 equitable lien against the estate for all the monies
3 he's paid on the property for the equity he had in the
4 property before he deeded the property to Harriet Tims.
5 And so, it could be recognized under that exception
6 somehow.

7 Our position is that it's clearly a resulting
8 trust. You know, it has all the elements of one. It's
9 an equitable action. The triggers for returning the
10 property to Michael Tims have -- have not yet happened,
11 so he doesn't have a claim for the return of the
12 property yet, until one of those two things happen. And
13 we have listed a lot of reasons in our memorandum, which
14 I'm sure you've seen and read.

15 THE COURT: Okay.

16 MR. MORRISON: And we would rely on that as well.
17 Thank you.

18 THE COURT: Give me just a minute, you all.

19 Okay. All right. Anything else? Do you want to
20 respond or?

21 MR. SHELBOURNE: Yes, your Honor, Ms. Eversole does
22 also. She's actually the moving party. I don't want to
23 cut her off.

24 THE COURT: Okay. Please.

25 MS. EVERSOLE: I'm the plaintiff.

1 THE COURT: Please.

2 MS. EVERSOLE: And my client, Sam, is sort of stuck
3 in the middle of this argument. And the reason that we
4 brought it to begin with is because there was no
5 consensus on whether the property should be included on
6 the inventory and appraisal or, you know, the probate
7 estate.

8 THE COURT: Okay.

9 MS. EVERSOLE: And basically, it's very simple, our
10 perspective on it. I think that the land sale agreement
11 is a security interest, because it has to do with land.
12 There is a condition preceding that has to occur before
13 the land can be transferred back to Michael Tims. So,
14 therefore, to me, it's simple that 62-3-803(d)(1) would
15 apply, and that this incident or this circumstance is
16 not bound by Mr. Michael Tims having to make a claim
17 against the estate on this.

18 THE COURT: Yes, sir.

19 MR. SHELBOURNE: Thank you, your Honor. Very
20 briefly, your Honor. At most, it's a contingent
21 contract, contingent on him paying. If he doesn't pay,
22 the property stays in Harriet Tims' name. It is in
23 Harriet Tims' name. That was deeded to her when the
24 close -- the closing attorney avowed to the title
25 insurance company that she had good, clear, marketable

1 title to the property. It's in her name; there's no
2 question about that. We took Michael Tims' deposition
3 last week; admitted it's in her name; so I don't think
4 there's any dispute as to that. So it's not really a
5 question of what are we agreeing to do with it.

6 We can certainly agree to, outside of -- to a
7 family settlement agreement. That's not what we're
8 arguing here. What we're arguing here is that they
9 cannot make a legal claim, or even an equitable claim.
10 The *Hover* case, your Honor, the *Hover* case, your Honor,
11 in the third section says that:

12 *Furthermore, even though a decision in*
13 *favor of the estate may appear inequitable,*
14 *equitable considerations are not a factor in*
15 *claims barring analysis.*

16 They go on to say in their conclusion that:

17 *We decline to let the fact that the man*
18 *can't exercise his deficiency judgment because*
19 *it's contrary to the terms of the probate code*
20 *and the intent of the legislature. The purpose*
21 *of the non-claims statute is to expedite and*
22 *resolve claims against the decedent's estate*
23 *with finality.*

24 And the point of this is, is that, had this not
25 been a family situation, that they haven't gotten along

1 -- and I'll be first to admit they have not gotten
2 along. If it hadn't been dragged out, there would be an
3 eight-month period when that estate closes, when that
4 estate closes, and you can't -- and if -- what they're
5 arguing is that someone could come in three months, four
6 months, five months after the estate time bar is over
7 and file a claim, and say, hey, wait a minute, this
8 property now comes back to us or goes back to Michael
9 Tims. And we would -- I don't think that's the intent
10 of the legislature. I think the legislature's -- that
11 the intent is clear. Hover points that out, your Honor,
12 and I'd ask for summary judgment.

13 THE COURT: Yes.

14 MS. EVERSOLE: I'd like to just respond to that,
15 your Honor. The purpose of the limitations on claims
16 and a claims period is for that it establishes when a
17 creditor can file suit, or whether they can file suit,
18 make a claim. And if the claim is going to be paid by
19 the estate, then the plaintiff can file suit. And so,
20 it begs the question here, what is Mr. Shelbourne's
21 client trying to accomplish here? Trying to stop the
22 lawsuit, the declaratory action, from going forward as
23 to what this is, whether it's a constructive trust or a
24 resulting trust or whatever? I guess that's what it is.
25 He doesn't say that, but I don't know what else, what

1 other result, there could be. And that's another reason
2 that I'm saying this is a security interest with this
3 land sale contract would change it -- takes it outside
4 of Subparagraph (a) of the statute. Thank you.

5 THE COURT: Doesn't the probate code exclude
6 disputes in reference to family property, this window of
7 time? Does it not?

8 MS. EVERSOLE: Well --

9 MR. SHELBOURNE: I'm not aware -- I'm not aware of
10 that, your Honor.

11 THE COURT: My law clerk wants us to read the
12 definition of claim. So.

13 LAW CLERK CRYSTAL SWINFORD: It says:

14 *Claims in respect --*

15 This is where the probate code in their -- the
16 definition section, 62-1-201:

17 *Claims in respect to estates and decedents*
18 *and protected persons includes liabilities of*
19 *the decedent or protected person, whether arising*
20 *in contract or tort or otherwise, and liabilities*
21 *of the estate, which arise to or after the death*
22 *of the decedent, or after the appointment of a*
23 *conservator, including funeral expenses and*
24 *expenses of administration. The term does not*
25 *include estate or inheritance taxes or demands*

1 or dispute regarding title of a decedent or a
2 protected person to a specific asset alleged
3 to be included in the estate.

4 MR. SHELBOURNE: Your Honor, we don't disagree with
5 that. Our argument is that the title -- there's no
6 question as to who has the title.

7 THE COURT: Title.

8 MR. SHELBOURNE: The question is whether she's
9 obligated to return it now.

10 THE COURT: Return it back.

11 MR. SHELBOURNE: That's correct. Or even later,
12 once they pay the money.

13 THE COURT: Yes, Mr. Morrison.

14 MR. MORRISON: Yeah, I would just like to say, you
15 know, that this is a -- title to the property is in
16 question, and this lawsuit is about resolving where the
17 title lies. If there's a resulting trust, then the
18 equitable title would be in Michael Tims upon -- or he'd
19 have an equitable claim to have the property returned
20 once he re-pays the mortgage or once there's a contract
21 for sale, according to the land exchange agreement. And
22 of course -- but that's the title to the property. And
23 then, you say 62-3-803, all claims against the
24 decedent's estate which arise at or after the death of
25 the decedent. If, once he pays off -- his claim to have

1 the property to return has not arisen yet.

2 THE COURT: Right. Okay. All right. Let me do
3 this. Let me re-read the evidence. Just let me look at
4 it again.

5 MR. MORRISON: Okay.

6 THE COURT: Is there any question he has paid as
7 he's supposed to, up until now?

8 MR. MORRISON: No.

9 MR. SHELBOURNE: Yes.

10 MR. MORRISON: No, there isn't.

11 THE COURT: Well.

12 MR. SHELBOURNE: There is a question -- that goes
13 to some of -- their the motion for summary judgment as
14 to whether -- he made payments, but we -- Harriet Tims
15 also made payments on behalf of the benefit of the
16 property.

17 THE COURT: Okay.

18 MR. SHELBOURNE: That's if -- and we don't know --
19 I don't think that makes a difference for purposes of
20 our motion. It does make a difference for purpose of
21 their motion.

22 THE COURT: His motion, yes.

23 MR. SHELBOURNE: Yeah.

24 MR. MORRISON: We have canceled checks showing that
25 he's made every -- every loan payment.

1 THE COURT: Okay.

2 MR. MORRISON: We asked Ms. Krane at her deposition
3 if she had any evidence that Harriet Krane [sic] made
4 any payments to the estate. She said she didn't know of
5 anything.

6 THE COURT: Okay. Okay. All right. Let me go
7 read about this.

8 MR. MORRISON: Okay.

9 THE COURT: Re-read them. Okay?

10 MR. MORRISON: Thank you.

11 THE COURT: Let me take a look at it. I actually
12 may have -- I'm just going to let you know right now, I
13 may have a few more questions. And I'm just going to
14 email them to you, and if you all would just respond to
15 them, I appreciate that, but I may need some help.
16 Okay?

17 MR. SHELBOURNE: Thank you.

18 THE COURT: Okay. I appreciate it.

19 MR. SHELBOURNE: Thank you.

20 END PROCEEDING 3:15 P.M.

CERTIFICATE OF REPORTER

OCTOBER 9, 2017 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina at the time of this hearing, do hereby certify that the foregoing October 9, 2017 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of Samuel H. Tims, et al, versus Michael Tims, et al, Beaufort County, Court of Common Pleas, Case Number 2016-ES-07-00213; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the original of this transcript requested by Hon. Eric M. Campbell. Pursuant to SCACR 607, requests for copies of this transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature November 5, 2018.

s/wanda h. rowe
Wanda H. Rowe, CVR-M

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

FILED

IN THE PROBATE COURT

NOTICE TO CREDITORS

IN THE MATTER OF THE ESTATE OF
HARRIET KATHLEEN HENRY TIMS
(Decedent)

MAY 03 2016

PROBATE COURT
BEAUFORT COUNTY, SC

CASE NUMBER: 2016ES0700213

***NOTICE TO CREDITORS OF ESTATES**

All persons having claims against the following estates **MUST** file their claims on FORM #371ES with the Probate Court of
BEAUFORT County, the address of which is 102 RIBAUT ROAD, BEAUFORT, SC 29902

within eight (8) months after the date of the first publication of this Notice to Creditors or within one (1) year from date of death, whichever is earlier (SCPC 62-3-801, *et seq.*), or such persons shall be forever barred as to their claims. All claims are required to be presented in written statements on the prescribed form (FORM #371ES) indicating the name and address of the claimant, the basis of the claim, the amount claimed, the date when the claim will become due, the nature of any uncertainty as to the claim, and a description of any security as to the claim.

Estate: HARRIET KATHLEEN HENRY-TIMS

Date of Death: 02/14/2016

Case Number: 2016ES0700213

Personal Representative: SAMUEL H. TIMS

Address: 169 JASMINE HALL ROAD SEABROOK, SC 29940

Attorney, if applicable: D. CABELL GILLEY

Address: c/o POST OFFICE BOX 2358, BEAUFORT, SC 29901

Co-Personal

Representative: MICHAEL L. TIMS

Address: 67 CLOVERDALE DRIVE SEABROOK, SC 29940

Attorney, if applicable: _____

Address: _____

INSTRUCTIONS: Publication to be in BEAUFORT GAZETTE, a newspaper of general circulation in
BEAUFORT County. Publish only this (*) portion of this form. Notices may be combined by listing individualized statements of the information concerning each of the estates under one heading consisting of the notice text. Publish once a week for three successive weeks.

File a copy of this form with proof of its publication with the Probate Court.

CERTIFICATE OF PUBLICATION

I hereby certify that on these dates 03/10/2016, 03/17/2016, and 03/24/2016, I did publish the
Notice to Creditors in BEAUFORT GAZETTE, a newspaper of general circulation in BEAUFORT COUNTY in
accordance with law.

SWORN to before me this 27th day of

April 2016

Amy L. Roh

Notary Public for South Carolina

My commission expires 11/27/22

Newspaper
Representative
Signature: _____
Print Name: _____
Address: _____

Telephone: _____
Email: _____

71 Cloverdale Drive

262

**SUMMARY APPRAISAL REPORT OF
THE PROPERTY LOCATED AT**

71 Cloverdale Dr.

Seabrook, SC 29940

as of

February 14, 2016

for

Estate of Harriet H. Tims
811 Craven Street
Beaufort, SC
29902

by

BUNDY APPRAISAL & MANAGEMENT, INC.

P O BOX 1225, 1204 BOUNDARY STREET
BEAUFORT, SC 29901

BUNDY APPRAISAL & MANAGEMENT, INC.
P O BOX 1225, 1204 BOUNDARY STREET
BEAUFORT, SC 29901
843-524-2207

August 11, 2016

Estate of Harriet H. Tims
811 Craven Street
Beaufort, SC
29902

Property - 71 Cloverdale Dr.
Seabrook, SC 29940
Client - Estate of Harriet H. Tims
File No. - 116072
Case No. -

Dear Mr. Gilley:

In accordance with your request, I have prepared an appraisal of the real property located at 71 Cloverdale Dr., Seabrook, SC.

The purpose of the appraisal is to provide an opinion of the market value of the property described in the body of this report.

Enclosed, please find the report which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data, led the appraiser to the conclusion that the market value, as of February 14, 2016 is:

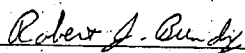
\$415,000

The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

Respectfully submitted,

BUNDY APPRAISAL & MANAGEMENT, INC.


Robert J. Bundy
SC Certification #CG110

**Summary Appraisal Report
LAND APPRAISAL REPORT**

File No: 116072

IDENTIFICATION

Owner: Tims, Harriet H. Est. of
 Property Address: 71 Cloverdale Dr. Census Tract 0001.00 Map Reference R700 038 000 0052 0000
 City: Seabrook County: Beaufort State: SC Zip Code: 29940
 Legal Description: Deed Book 3190 starting at Page 2752 recorded in the Beaufort County Register of Deeds Office
 Sale Price: \$N/A Date of Sale: N/A Property Rights Appraised: ☒ Fee ☐ Leasehold ☐ De Minimis PUD
 Actual Real Estate Taxes: \$451.83 (2015) (yr.)
 Client: Estate of Harriet H. Tims Address: 811 Craven Street, Beaufort, SC, 29902
 Occupant: Michael L. Tims Appraiser: Robert J. Bundy Instructions to Appraiser: Market Value
 Intended User: Estate of Harriet H. Tims Intended Use: Estate Settlement

NEIGHBORHOOD

Location: ☐ Urban ☒ Suburban ☒ Rural
 Built Up: ☐ Over 75% ☒ 25% to 75% ☐ Under 25%
 Growth Rate: ☐ Fully Dev. ☒ Rapid ☐ Steady ☐ Slow
 Property Values: ☐ Increasing ☒ Stable ☐ Declining
 Demand/Supply: ☒ Shortage ☐ In Balance ☐ Over Supply
 Marketing Time: ☒ Under 3 Mos. ☐ 4-6 Mos. ☐ Over 6 Mos.
 Present Land Use: 35 % 1 Family 0.5 % 2-4 Fam 0.5 % Apts. 5 % Condo 5 % Commercial
 100.000000 1 % Industrial 58 % Vacant 58 % Wood/Farm Land
 Change in Present Land Use: ☒ Not Likely ☐ Likely (*) ☐ Taking Place (*)
 (*) From Owner To Tenant % Vacant 58
 Predominant Occupancy: ☒ Owner ☐ Tenant ☐ % Vacant
 Single Family Price Range: \$40,000 to \$1,000,000 Predominant Value: \$200,000
 Single Family Age: NEW yrs. to 75 yrs. Predominant Age: 20 yrs.
 Employment Stability ☐ Good ☒ Avg. ☐ Fair ☐ Poor
 Convenience to Employment ☐ ☒ ☐ ☐
 Convenience to Shopping ☐ ☐ ☒ ☐
 Convenience to Schools ☐ ☐ ☐ ☒
 Adequacy of Public Transportation ☐ ☐ ☐ ☒
 Recreational Facilities ☐ ☐ ☐ ☒
 Adequacy of Utilities ☐ ☒ ☐ ☐
 Property Compatibility ☐ ☐ ☐ ☒
 Protection from Delinquent Conditions ☐ ☐ ☒ ☐
 Police and Fire Protection ☐ ☐ ☒ ☐
 General Appearance of Properties ☐ ☒ ☐ ☐
 Appeal to Market ☐ ☒ ☐ ☐

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, noise) The neighborhood is located approximately ten miles from downtown Beaufort. There are major employment centers very close by, located within the neighborhood are schools, neighborhood retail shops and houses of worship. The Beaufort Memorial and Naval Hospitals are within a twenty minute drive as is major shopping areas.

SITE

Dimensions: See Attached Plat = 26.89+ Acres Corner Lot ☐
 Zoning Classification: Rural Present Improvements: ☒ do ☐ do not conform to zoning regulations
 Highest and best use: ☒ Present use ☐ Other (specify) _____
 Elec. ☒ Public ☐ Other (Describe) _____
 Gas ☐ _____
 Water ☐ _____
 San. Sewer ☐ _____
 OFF SITE IMPROVEMENTS
 Street Access: ☐ Public ☒ Private
 Surface: WEATHER DIRT
 Maintenance: ☐ Public ☒ Private
 Storm Sewer ☐ Curb/Gutter ☐ Street Lights
 Sidewalk ☐ _____
 Topo: Predominantly level at road grade with slight slope towards the marsh
 Size: 26.89+ Acres
 Shape: Irregular
 View: Wooded & marsh
 Drainage: Appears Adequate
 Is the property located in a HUD identified Special Flood Hazard Area? ☐ No ☒ Yes
 Comments (favorable or unfavorable including any apparent adverse easements, encroachments or other adverse conditions) The site is predominantly level with a slight slope towards the marsh. I did not walk the entire site. I did look at it using Beaufort County GIS, looking at the topography maps and the aerial photos. According to F.E.M.A. flood rate map 450025 0040D dated 9-29-1986 the subject is located in zone A-11. There is a creek that could be accessed by a dock at the southern end of the subject, however the dock would have to be roughly 400+ feet long.

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.

For the Market Data Analysis: ☒ See grid below: ☐ See narrative attachment.

ITEM	Subject Property	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	71 Cloverdale Dr. Seabrook, SC 29940	1 Rail Bed Rd. Sheldon, SC 29941	232 Morgan Road Seabrook, SC 29940	148 Browns Island Rd Seabrook, SC 29940
Proximity to Subj.		3.91 miles W	1.08 miles W	0.72 miles W
Sales Price	\$ N/A	\$ 435,000	\$ 75,000	\$ 350,000
Price		\$ 18,542	\$ 20,325	\$ 17,157
Data Source	Inspection	Blt. Only Asses./MLS	Blt. Only Asses./MLS	Blt. Only Asses.
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
	N/A	09/18/2015	10/02/2015	06/05/2015
Location	Rural	Rural	Rural	Rural
Site/View	Wooded & Marsh	Wooded/Tidal Creek	Wooded/Marsh	Wooded & Tidal Creek
Site Area	26.89+ Acres	23.46+ Acres	3.69+ Acres	20.40+ Acres
Processing Bldg	Septic System, Well	None	House in need of repair	Metal bldg dock
Dist. Map Parcel	700-38-52	700-38-177	700-37-51	700-37-135, 141
Sales or Financing Concessions				
Not Adj. (Total)		☒ Plus ☐ Minus \$ 44,950	☒ Plus ☐ Minus \$ 348,000	☒ Plus ☐ Minus \$ 82,350
Indicated Value of Subject		Gross 30.3% Net 10.3% \$ 479,950	Gross 484.0% Net 484.0% \$ 423,000	Gross 37.8% Net 17.8% \$ 412,350

Comments on Market Data: The market data used in this report was gathered by me. I attempted to verify the data either from the buyer, seller, real estate agent, multiple listing services and/or from public records. Data obtained from outside sources are believed to be true and accurate, however no guarantee is made by me. The metal building was classified by me as a Fair Class S Cold Storage Facility, this classification in page in section 14 on page 24 of the February 2016 edition of the Marshall and Swift Commercial Cost Handbook. *** See Additional Comments ***

Comments and Conditions of Appraisal: Due to the fact that the house on the site is not to be included in this report and the only other improvements are the metal building, a private well and septic system. The subject is being appraised as vacant land with depreciated value of the improvements included. The Income Approach is not applicable, therefore it has not been used in this report.

Final Reconciliation: In my opinion, the direct sales comparison approach of vacant land with the depreciated values of the improvements added, is the best indicator of the subject's market value. Therefore I have relied on it solely in this appraisal. Due to it's similarity in size and it's proximity to the subject, it is my opinion that comparable number two best represents the subject's indicated market value. In my opinion as of the date of this appraisal the subject's indicated market value was \$415,000.00. This is a retrospective appraisal. I looked at the subject on August 2, 2016, however in my opinion there have been no major changes to the subject from the date of this report to the date which I looked at it.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF February 14, 2016 to be \$415,000

BUNDY APPRAISAL & MANAGEMENT, INC.

ADDITIONAL COMMENTS

File No. 116072

Intended User	Estate of Harriet H. Tims		
Property Address	71 Cloverdale Dr.		
City	Seabrook	County	Beaufort
		State	SC
Client	Estate of Harriet H. Tims	Zip Code	29940

SCOPE OF THE APPRAISAL

I looked at and took pictures of the site. I then researched sales of similar type properties in the Beaufort County area, through the Beaufort County Public Records and the Beaufort Multiple Listing Service. Sales used in this appraisal report were analyzed as to economic and physical factors which affect them and adjusted accordingly. I spoke to Realtors, sellers, or purchasers of the comparables.

The intended user of this report is the client. The intended use of this appraisal report is for internal decision making. This report is subject to the stated scope of work, purpose of the appraisal, and the reporting requirements of this appraisal and the definition of market value as determined by the client. No additional intended users are identified by them. This appraisal report may not meet reporting requirements of other person or originations not shown as intended users. Any additional requirements made by other persons or originations not shown as intended user will result in additional fees.

I certify that I have the knowledge and experience to complete this appraisal assignment. I further certify that I have completed the continuing education requirements for the state of South Carolina.

INTENDED USE

Internal Decision Making

COMMENTS ON MARKET DATA

Comparable number one required a plus adjustment for the lack of a processing building, septic system and well. If this site had a dock it would access Whale Branch River, therefore it's site view is superior to the subject and required a minus adjustment.

According to the listing agent of comparable number two, the house was in fair condition. Therefore in my opinion the house offset the presence of the processing building on the subject and no adjustment was required.

Comparable number three has a metal shed and private dock on it. In my opinion these items offset the presence of the processing building on the subject and no adjustment was required. The dock on this site is approximately 130 feet long, making it's site view superior to the subject and requiring a minus adjustment.

There is an accepted theory that smaller tracts of land sell for more per unit of comparison than larger tracts. In my opinion this is the case with comparable number two. Therefore it required a minus adjustment for this theory.

All comparables required a plus adjustment for the difference in site size, which was computed at \$15,000.00 per acre.

All comparables are affected by the same economic factors as the subject.

PHOTOGRAPH ADDENDUM

Intended User Estate of Harriet H. Tims

Property Address 71 Cloverdale Dr.

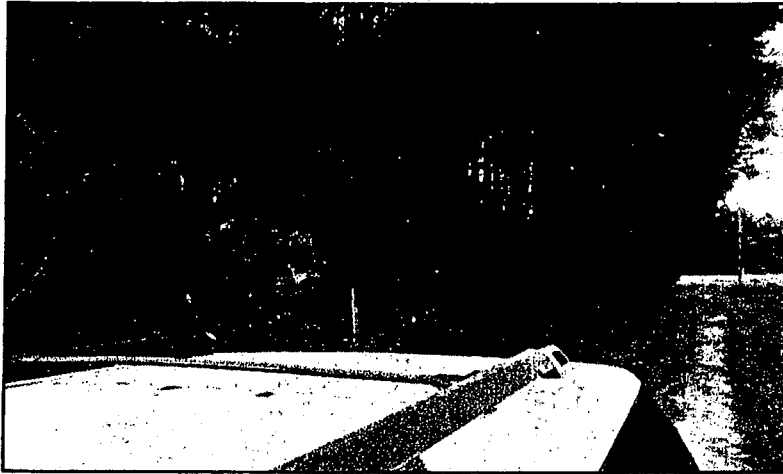
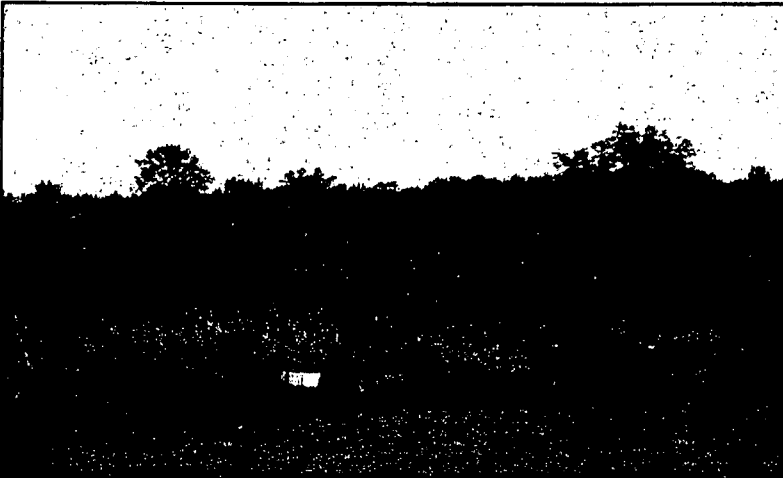
City Seabrook

County Beaufort

State SC

Zip Code 29940

Client Estate of Harriet H. Tims

FRONT VIEW OF
SUBJECT PROPERTYREAR VIEW OF
SUBJECT PROPERTYSTREET SCENE OF
SUBJECT PROPERTY

File No. 118072

PHOTOGRAPH ADDENDUM

Intended User Estate of Harriet H. Tims

Property Address 71 Cloverdale Dr.

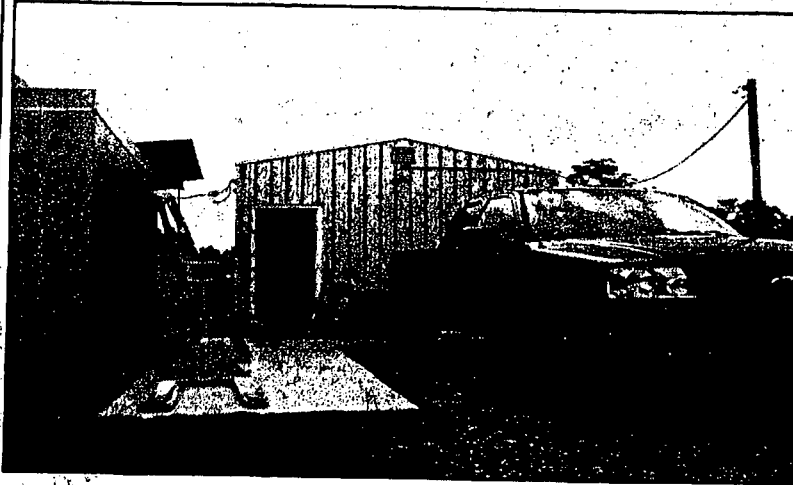
City Seabrook

County Beaufort

State SC

Zip Code 29940

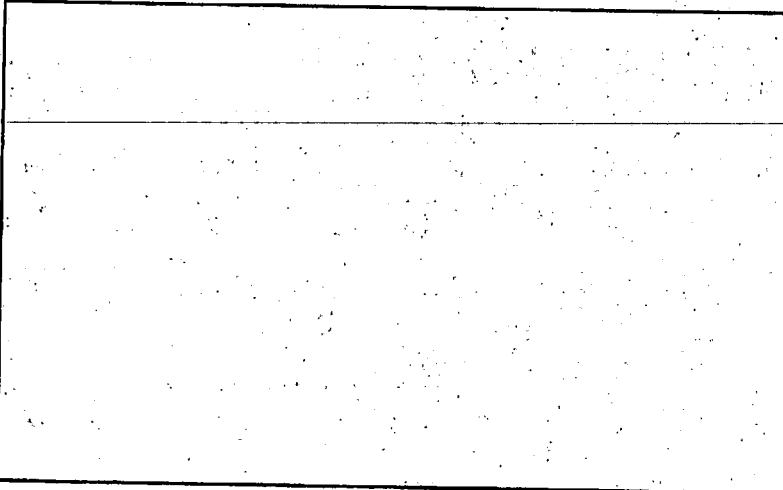
Client Estate of Harriet H. Tims



PROCESSING PLANT



INTERIOR VIEW



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge

Appellate Case No.: 2018-001605

RECEIVED
APR 05 2019
SC Court of Appeals

In the Matter of the Estate of Harriet Kathleen Henry Tims, Decedent,

Samuel H. Tims, individually and as Co-
Personal Representative of
the Estate of Harriet Kathleen Tims, ... Petitioner,
vs.

Michael Tims, individually and as Co-
Personal Representative of the
Estate of Harriet Kathleen Tims, ... Respondent,

and

Deborah T. Krane, individually and as Co-
Representative
of the Estate of Harriet Kathleen Tims, ... Appellant.

CERTIFICATION OF COUNSEL

P. Brandt Shelbourne, Esq. (#15143)
Eric M. Campbell, Esq. (#101607)
SHELBOURNE LAW
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (ph)
843.875.2224(f)
Counsel for Appellant

Pursuant to Rule 210(g), of the South Carolina Appellate Court Rules, the undersigned, attorney in this matter for the Appellant, certifies that this Record on Appeal includes all matters proposed to be included by the parties and not any other material.

RESPECTFULLY SUBMITTED,

SHELBOURNE LAW



P. Brandt Shelbourne, Esq. (# 15143)

Eric M. Campbell, Esq. (# 101607)

131 E. Richardson Avenue

Summerville, SC 29483

843.871.2210 (p)

843.875.2224 (f)

COUNSEL FOR APPELLANT

March 31st, 2019