STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF LAURENS)

ORDER

John Roscoe Stone, III, Diane S. Douglas, and Joni S. Wofford,
Petitioners,

vs.

Ronnie G. Stone and S. Tyler Patton,
Respondents.

2011-ES-30-221

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AUG 13 2019
LAURENS COUNTY, SC
PROBATE COURT

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SEP 03 2019
SC Court of Appeals

Date of Hearing: June 11, 2019
Presiding Judge: Bryan C. Able
Attorney for the Petitioners: Thomas J. Thompson
Attorney for the Respondents: Devon Puriefoy
Court Reporter: Nancy Sims

FACTUAL AND PROCEDURAL BACKGROUND

This action was instituted by the Petitioners during 2015 against Respondents. The case was initially filed in this Court, then transferred to the Laurens County Court of Common Pleas and thereafter remanded to this Court for final disposition.

Respondent, Ronnie G. Stone died on or about March 16, 2018 and thereafter Petitioners dismissed the action against her and/or her estate.

The matter was heard on September 27, 2018 and the Petitioners proceeded solely against Respondent, S. Tyler Patton, on his alleged failure to discharge his fiduciary duties in connection with a trust created by the Last Will and Testament of Everett H. Stone, hereinafter referred to as "Decedent".

An order was prepared after the September 27, 2018 hearing by Petitioner's attorney; however, due to a miscommunication on the part of Petitioner's attorney this court prematurely signed an order dated December 3, 2018, hereinafter referred to as the "Initial Order".

Patton timely filed and served a Motion to Vacate, Alter, and Amend (Rule 59 and 60, SCRCP) resulting in an order of this court dated February 27, 2019, "the Second Order" which vacated in part the Initial Order. After the Initial Order was vacated in part, the court revised/replaced the Initial Order with an order dated May 7, 2019, hereinafter referred to as "the third Order".

Patton, as to the third Order, timely filed and served a second Motion to Vacate, Alter, and Amend (Rule 59 and 60, SCRCP) to which Petitioners timely filed and served a written response.

Patton's Motion, as mentioned in the immediately preceding paragraph came on to be heard on Tuesday, June 11, 2019 at the Probate Court for Laurens County, Laurens County Judicial Complex, Laurens, South Carolina. Present for the hearing were Petitioners, Diane S. Douglas and Joni S. Wofford, and their attorney, and Devon Puriefoy, attorney for Patton.

During the course of the above mentioned hearing, Petitioners *sua sponte* reduced their claim from 3,097 shares to 2,413 shares of Aon, Inc. stock hereinafter referred to as "the stock", the reduction represents the number of shares of the stock traded/sold by Respondent, Ronnie Stone, prior to the trust being

transferred to Patton.

Patton, in his second Motion to Vacate, Amend, or Alter argues that the facts and conclusions of law as contained in the Third Order are not supported by the record and/or the relief awarded to the Petitioners was not consistent with the record.

Patton, in light of his most recent motion asserts that since he was allowed to testify over Petitioners' objection that he relied on the advice of a third party (a stock broker with Edward Jones) he should not be held liable for the selling, disposal, and/or transferring of the stock, i.e. the courts finding that Patton violated his fiduciary duties was misplaced in the light of Patton's trust decisions were at the direction of his stock broker, who in Patton's opinion was an expert and experienced investor and who orchestrated the sales of the stock.

The fact that Patton was allowed to testify over Petitioners' objection does not relief Patton of failing to comply with Rule(8)(c), SCRCP, as Petitioners were not and could not be expected to defend an affirmative defense not raised in Patton's pleadings. See *Parrish v. Allison* 376 SC 308, 656 S.E. 2d 382 Ct. of Appeals (Dec. 19, 2007).

Further, the court's allowance of the subject testimony does not *ipso facto* establish that Patton acted appropriately with respect to the fiduciary duties imposed upon him by the terms of Decedent's Last Will and Testament.

The court considered Patton's challenged testimony concerning his alleged reliance on the advice of a third party and found such testimony to be unpersuasive and even if true, did not absolve Patton from following the clear and unambiguous terms of ITEM IV of Decedent's Last Will and Testament, and further the stock broker could not have acted without Patton's consent and Patton, under the trust's terms, was not accorded the right to consent to a sale of the stock.

It is true that the South Carolina Trust Code bestows a number of powers on a trustee, that may not be specified in the trust instrument; however, Section 62-7-815(a)(2) of the 1976 South Carolina Code of Laws, as amended must be adhered to especially as this code section limits the general powers of the trustee to the terms of the trust (emphasis added).

Patton's Motion also took issue with the language of the trust provision and argued a reading of the subject article empowers the trustee to sell shares of the stock (this argument is brought up for the first time by Patton's motion to vacate, alter, and/or amend and consequently is untimely); however, the court's reading of said item does not in any sense of the word give Patton any powers, except two: 1. Hold the corpus of the trust for the remaindermen and 2. Distribute the interest and dividends generated by the trust to the life tenant. This article is clear and unambiguous and free from patent or latent ambiguities. The construction of the trust language advocated by Patton strains credulity and requests a forced interpretation of otherwise plain and uncomplicated language.

Lastly, Patton argues he cannot be held accountable for the misdeeds of his predecessor, Respondent, Ronnie G. Stone, and cites Section 62-7-812 of the 1976 South Carolina Code of Laws, as amended as authority for this proposition. The court need not address this final argument, as same was mooted when Petitioners reduced their demand that Patton be responsible for reimbursement of 2,413 shares of the stock as opposed to 3,097 shares of the stock, the reduction represents the number of shares disposed of or sold or traded by the deceased Respondent, Ronnie G. Stone, when she acted as Personal Representative and/or Trustee in the matter.

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CONCLUSIONS OF LAW

Based on the foregoing, the Court denies Patton's Motion to Vacate the Third Order and grants Patton's Motion to Alter or Amend by changing the number of shares of the stock required to be replaced from 3,097 shares to 2,413 shares.

NOW, THEREFORE, the Court shall issue its Fourth Order of even date herewith reflecting that the number of shares for which Patton is responsible for replacing is reduced from 3,097 to 2,413,

AND IT IS SO ORDERED.

BRYAN C. ABLE
PRESIDING ASSOCIATE
PROBATE COURT JUDGE

August ~~July~~ 13, 2019
Laurens, South Carolina

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