

TYLER PATTON and CY M. PATTON.

ITEM VII: I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament, my wife, **RONNIE G. STONE**, and direct that she shall serve without bond. If for any reason she is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint a substitute or successor Personal Representative my brother, **FRANK B. STONE**, and direct that he shall serve without bond.

ITEM IX: I hereby nominate, constitute and appoint as Trustee **S. TYLER PATTON**, and direct that he shall serve without bond. If for any reason he is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint a substitute or successor Trustee, **CY M. PATTON**, and direct that he shall serve without bond.”

Wife closed Decedent’s estate on or about August 27, 2012.

Stone upon learning Wife and Patton liquidated/sold all 3,097 shares of Aon, Inc. stock, hereinafter sometimes referred to as the “Stock” filed suit against Wife and Patton, seeking, in the main, a restoration of the 3,097 shares of the Stock.

Stone’s pleadings alleged, several causes of action, namely, an accounting, conversion, civil conspiracy, fraud and breach of fiduciary duties.

Wife and Patton timely filed and served Answers and Counterclaims and raised as affirmative defenses; failure to state a cause of action, laches and unclean hands.

Stone timely filed and served Replies to the Counterclaims of Wife and Patton.

Stone served Wife and Patton with a number of Requests to Admit (Rule 26 SCRPC) relative to their sale/disposal of the 3,097 shares of the Stock and while Wife and Patton replied in writing to the Requests to Admit they in no manner denied the fact that they had sold/disposed of all shares of the Stock and as a consequence such fact(s) were exclusively admitted at trial. See Scott v. Greenville Housing Authority 353 SC 639 597 SE 2nd 151 (App. 2003)

Wife died on or about March 16, 2018 and at trial Stone dismissed their claims as to her and/or her estate and proceeded solely against Patton.

Based on the Court’s file, Requests to Admit, testimony and Exhibits, the Court finds the following facts were proved to the satisfaction of court and the below outlined relief is appropriate under the circumstances.

FINDINGS OF FACT

I find this action was instituted pursuant to the South Carolina Trust Code Section 62-7-101, et seq. of the 1976 South Carolina Code of Laws, as amended.

I further find venue is proper in Laurens County, South Carolina pursuant to Section 62-7-204 (c) of the 1976 South Carolina Code of Laws, as amended.

I further find the Trust which is the subject matter within action was created pursuant to Section 62-7-401 (a) (1) (i) of the 1976 South Carolina Code of Laws, as amended.

I further find Wife by accepting appointment as Personal Representative of her husband’s estate solemnly agreed to perform the duties and discharge the trust of the office of Personal Representative which includes acting in the best interests of Stone pursuant to Section 62-3-703 (a) of the 1976 South Carolina Code of Laws, as amended.

I further find by accepting the appointment as Trustee, Patton became obligated by Section 62-7-804 of the 1976 South Carolina Code of Laws, as amended to administer the Trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the Trust. In

*2 (initials)

satisfying this standard Patton was required to exercise reasonable care, skill and caution so as to act in the best interest of Wife and Stone.

I further find Decedent at his death, owned 3,097 shares of the Stock and Decedent's Will provides in clear and unambiguous language as follows: "I give to my Trustees hereinafter named, all of my shares of Aon, Inc. and Piedmont Natural Gas Company, to be held and administered for the benefit of my Wife, Ronnie G. Stone for the term of her natural life. Commencing with the date of my death, my Trustee shall pay or apply for the benefit of my Wife during her lifetime all of the dividend interest income trust in convenience installments, but no less frequently than quarter annually. Upon the death of my Wife, I direct that my Trustee distribute all of my shares of the stock in Aon, Inc. stock equally to my children, John Roscoe Stone, III, Diane S. Douglas, and Joni S. Wofford.

The Will does not include any discretionary power to sell, change, distribute, convert, or otherwise deplete the shares of the Stock during Wife's lifetime.

I further find Edward D. Jones and Company, L.P. served as the brokerage house for all of the below outlined stock transactions and hereinafter is referred to as "Edward Jones".

I further find Wife, as Personal Representative of Decedent's estate transferred 3,097 shares of the stock to an account with Edward Jones bearing account number 216-14345-1-5 (the Estate Account).

I further find Wife on or about November 28, 2011 liquidated 680 shares of the Stock and purchased other securities with the proceeds, and she transferred the acquired securities to her individual account with Edward Jones, account number 216-14711-1-1, without notice to Stone.

I further find Wife on December 5, 2011 transferred the Stock remaining in the "Estate Account" (2,413 shares) to the individual account with Edward Jones mentioned in the immediately preceding paragraph.

I further find Wife on July 5, 2012 transferred the Stock (2,413 shares) from her individual account to the Edward Jones account entitled "Everett H. Stone Family Trust Account" bearing account number 216-15073-1-0, which was controlled solely by Patton and thereafter Patton sold or otherwise disposed of the Stock and he no longer holds in Trust any shares of the Stock, and all these sales/dispositions were done without notice to Stone.

I further find Wife at her death held no interest or ownership in or to the Stock.

I further find Wife, knew or should have known, that she nor Patton had any discretionary powers or authority with reference to the Stock, and could not depart from the clear and unambiguous language of the subject Trust and knew or should have known that she and Patton were obligated to keep the initial 3,097 shares of the Stock for her benefit and the benefit of Stone as provided by Section 62-7-815 (a) (2), of the 1976 South Carolina Code of Laws, as amended.

I further find Patton, knew or should have known that he lacked any discretionary powers or authority with reference to the Stock, and could not depart from the clear and unambiguous language of the subject Trust and knew Wife as well as himself were obligated to keep the initial 3,097 shares of the Stock in Trust for Wife and Stone as provided by Section 62-7-815 (a) (2), of the 1976 South Carolina Code of Laws, as amended.

I further find Patton, over the objection of Stone, testified that he sold the Stock based on the advice of his Stock Broker, who held the subject account; however, because Patton did not plead this defense in his June 8, 2015 answer to the Petition, that defense was waived, and he may not claim same now.

See Rule 8 (c) SCRPC, which provides, in part, as follows "In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of

the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.”

I further find Wife in her capacity as Personal Representative of the Estate and Patton in his capacity as Trustee owed Stone the duty of acting in the best interest Stone, and also were required to act in good faith with full disclosure to Stone of all known information that was of importance or material to Stone’s interest.

I further find Wife and Trustee withheld information related to the Stock and disposed of Stock all of which was material to Stone’s interest and their silence and disposition of the Stock constituted a breach of their fiduciary duties and Stone is entitled to damages for such breaches.

I further find the construction of the Will is a matter of law for the Court.

I further find in construing a Will, a Court should give effect to the expressed intention of the Testator. In ascertaining this intent, a Court’s first reference is always to the Will’s language itself. In construing the language of a Will, the Court must give words their ordinary, plain meaning unless it is clear the Testator intended a different sense, or unless such meaning would lead to an inconstancy with the Testator’s declared intention. In determining the Testator’s intent, the Court should read the Will as a whole in an attempt to harmonize all its provisions. An interpretation that fits into the whole scheme or plan of the Will is the most apt to be the correct interpretation of the intent of the Testator.

I further find the undisputed and unambiguous language of the Will gave Stone a vested remainder in the testator’s shares of Aon, Inc stock, *itself*, and not proceeds or any equivalent or value of the stock.

I further find the Will gave Wife a life estate in the Stock. “There is no special language required for the creation of a life estate[.]” *Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005) (citation omitted). “[W]here an estate or interest is given in words of clear and ascertained legal signification, *it shall not be enlarged*, cut down, or destroyed by superadded words in the same or subsequent clauses, unless they raise an irresistible inference that such was the intention.” *Schroder v. Antipas*, et al., 215 S.C. 552, 556, 56 S.E.2d 354, 355 (1949) (quoting *Adams, et al. v. Verner*, 102 S.C. 7, 11, 86 S.E. 211, 212 (1915) (emphasis added).

I further find Wife and Patton had no power of sale, power of alienation or power to encumber the Aon, Inc. stock. See, as to the Wife’s lack of power as executor, e.g., *Smith v. Heyward*, 115 S.C. 145, 105 S.E. 275, 281 (1920) (Executors have only a “power to sell so much of the estate as may be necessary to raise a fund sufficient to carry out the provisions of the will. Beyond that the executors have no power to sell.”). As to Wife’s lack of power as life tenant: “The courts of South Carolina have traditionally followed the property rule that a purchaser cannot purchase more than his grantor owns.” “A life tenant [Wife] can convey no more than his life estate.” *F.C. Enterprises, Inc. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) (citations omitted); *Hutto v. Ray*, 192 S.C. 364, 6 S.E.2d 747 (1940); *Belue v. Fetner*, 251 S.C. 600, 164 S.E.2d 753 (1968). “Therefore, [this] restraint imposed is a restraint that exists inherently in every life estate.” *Wise v. Poston*, 281 S.C. 574, 579, 316 S.E.2d 412, 415 (Ct. App. 1984). As to Trustee’s lack of power, see, e.g., *Estate of Stevens v. Lutch*, 365 S.C. 427, 617 S.E.2d 736 (Ct.App.2005) (relying on the trust language as most persuasive of settlor’s intent regarding existence of any discretionary power of trustee). Extrinsic evidence is not admissible to alter the plain language of a trust instrument. *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 658, 640 S.E.2d 480, 485 (Ct. App. 2006).

By the terms of paragraph IV of Will person or persons to take the Aon, Inc. Stock were certain and the event on which they were to take was bound to occur. Enjoyment of the estate was postponed for no other purpose than to provide for Wife during her lifetime, and the existence of the preceding estate was the only impediment to the enjoyment of the estates as remainder. When the Will took effect, Stone had the

present capacity to take the instant the life estate ended. Therefore, Stone's remainder was vested.

I further find Wife and Patton are further bound by their admissions that they disposed of the Stock.

I further find it is a general rule of law that when a Trustee departs from the directives contained in the Trust Instrument, he is liable for any loss occasioned irrespective of good faith or his best judgement. See Beacham v. Ross, et al. 187 SC 398, 198 S.E. 369 (1938).

I further find Stone is entitled to a restoration by Patton of 2,413 shares of the Stock.

I further find that the per share value of the Stock was \$145.97 per share on March 16, 2018, the date of Wife's death.

CONCLUSIONS OF LAW

Based on the facts herein above set forth, I conclude as follows:

- a. This Court has jurisdiction of the parties and the subject matter of the within action;
- b. All necessary parties are before the Court and the matter is ready for a final disposition;
- c. Patton violated his fiduciary duties to Stone by selling/disposing of 2,413 shares of Aon, Inc. stock;
- d. Wife and/or Wife's estate having been dismissed as a party respondent and has no obligation to Stone; and
- e. The remedy for Patton's breach of his fiduciary duties is to require Patton to deliver 2,413 shares of Aon, Inc. stock to Stone, as below outlined.


NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Patton by selling/disposing of 2,413 shares of Aon, Inc. stock breached his fiduciary duties to Stone and Stone is entitled to the relief setforth below.
2. Patton is hereby ordered to render a full, complete and accurate written accounting of his management of the subject Trust for the entire period since he became involved with same, and he shall within thirty (30) days of the within Order file same with the Court.
3. Patton is removed from his position of Trustee with regard to the Everett Stone Family Trust and is immediately replaced by Petitioner, Joni S. Wofford, and a certified copy of this Order shall serve as his authority to so act.

Patton shall restore to the corpus of the Everett Stone Family Trust 2,413 shares of Aon, Inc. stock not later than September 30, 2019

AND IT IS SO ORDERED.

August
13, 2019
Laurens, South Carolina


BRYAN C. ABLE
ASSOCIATE PROBATE JUDGE