

LAW OFFICE OF
HOWARD W. ANDERSON III, LLC

Howard W. Anderson III
Managing Attorney
Licensed in AK, GA, IL, IN, NC, SC, & TN
SC Supreme Court Certified Mediator & Arbitrator
Howard@hwalawfirm.com

By email to AWRoffice@scheduledepo.com

August 29, 2019

AWR Court Reporting
Attn: Valerie Blackwood
234 Seven Farms Dr., Suite 210
Charleston, SC 29492

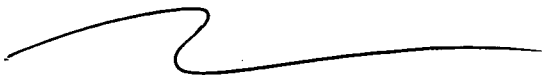
RECEIVED
SEP 03 2019
SC Court of Appeals

Re: Transcript Request

Dear Ms. Blackwood, by this letter, I hereby request a transcription of the proceedings of September 27, 2018; and June 11, 2019, in *John Roscoe Stone, III, Diane S. Douglas, and Joni S. Wofford v. Ronnie G. Stone and S. Tyler Patton*, in the Probate Court of Laurens County, No. 2011-ES-221 / 2015-GC-30-712. The transcript is necessary for the purposes of appeal. I agree to pay the scheduled charges for the preparation of the transcript.

The transcript will be used in connection with an appeal to the Court of Appeals (which has not yet been assigned an appeal number). Enclosed is the notice of appeal and the orders at issue, which may help with spellings of names and the identity of the speakers.

Sincerely,



Howard W. Anderson III

CC (by U.S. Mail):

Clerk of Court, S.C. Court of Appeals

Court Administration

Devon Puriefoy, Esq.

Thomas J. Thompson, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge
Brian C. Able, Presiding Associate Probate Judge

Common Pleas Case No. 2015-CP-30-00581
Probate Case Number 2011-ES-000221
Probate Case Number 2015-GC-30-0000712*

Appellate Case No. _____

S. TYLER PATTON,

Appellant,

v.

JOHN ROSCOE STONE, III;
DIANE S. DOUGLAS; AND
JONI S. WOFFORD,

Respondents.

NOTICE OF APPEAL

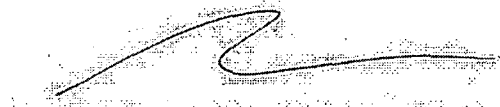
S. Tyler Patton appeals from the attached final judgment of the Honorable Brian Able, Presiding Associate Probate Judge and his order denying Appellant's motion to

* The Probate Court's Form 4 incorrectly lists the file number as 2011-GC-30-000712.

vacate, both of which orders are dated August 13, 2019. Appellant received written notice of both orders on August 14, 2019.

Appellant further appeals from all interlocutory orders that have merged into the judgment, including but not limited to the attached June 22, 2017, order of referring the Common Pleas Action to Presiding Associate Probate Judge Able for entry of final judgment. See S.C. Code § 14-3-330(1) (“[I]f no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.”).

Dated: August 26, 2019



Howard W. Anderson III
S.C. Bar #100329

LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
P.O. Box 661
176 E. Main St.
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)
864-332-9798 (f)
Lead Counsel for Appellant

Other counsel of record:

Thomas J. Thompson
Townsend & Thompson
PO Box 215
Laurens, SC 29325
Counsel for Respondents

Kimberly Thomason
Devon Puriefoy
Truluck Thomason, LLC
1011 E. Washington St.
Greenville, SC 29601
Additional Counsel for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE

CASE NO.: 2011GC3000007 & 2011ES3000221

Petitioner(s)/Plaintiff(s)

Respondent(s)/Defendant(s)

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

vs.

Ronnie G. Stone and S. Patton

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED. (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other -
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other -
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order; Statement of Judgment by the Court.

Dated at Laurens, South Carolina, this 13th day of August, 2019

Bryan C. Able
PRESIDING JUDGE

This judgment was entered on the 13th day of August, 2019, and a copy mailed first class this 14th day of August, 2019, to attorneys of record or to parties (when appearing pro se) as follows:

John Roscoe Stone, III
Diane S. Douglas
Joni S. Wofford
Thomas J. Thompson, Esq.

S. Tyler Patton
Devon Puriefoy, Esq.

Nancy K. Sims

Judicial Assistant, Probate Court, Laurens County, S.C.
(864) 984-7315

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 relieve 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.

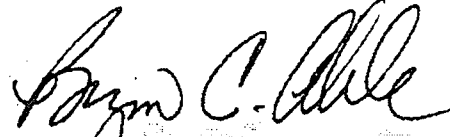
(BIB)

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



#3
BTA

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 (BA)

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

4
#4
BAA

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 set forth 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.



BRYAN C. ABLE
ASSOCIATE PROBATE JUDGE

August 13, 2019
Laurens, South Carolina

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

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

Petitioners,

vs.

Ronnie G. Stone and S. Tyler Patton,

Respondents.

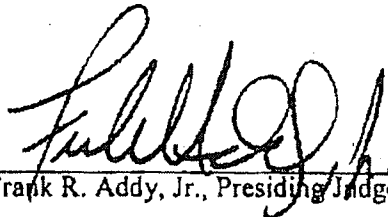
LAURENS COUNTY
CLERK OF COURT

ORDER OF REFERENCE
15-CP-30-00581

JUN 22 P 2: 46

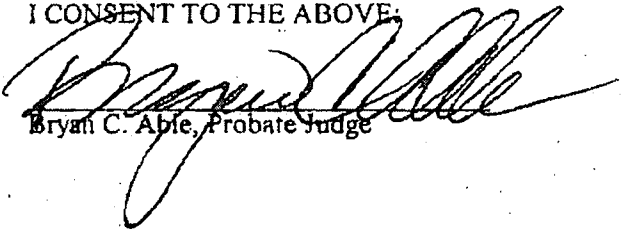
IT APPEARING to the Court that the above entitled action is an action at law,
IT IS ORDERED that the matter be and the same is hereby referred to Bryan C. Able, Probate Judge for Laurens, County, as Probate Judge to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case.


Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals or the South Carolina Supreme Court as appropriate.


Frank R. Addy, Jr., Presiding Judge

Greenwood, South Carolina
June 16, 2017

I CONSENT TO THE ABOVE:


Bryan C. Able, Probate Judge

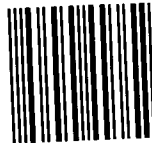
ATRUE COPY OF ORIGINAL

Lynn W. Lancaster
Laurens County CCCP & GS

Howard W. Anderson III

Law Office of Howard W. Anderson III, LLC
P.O. Box 661
Pendleton, SC 29670



1000



29211

U.S. POSTAGE PAID
FCM LG ENV
PENDLETON, SC
29670
AUG 30, 19
AMOUNT

\$1.45

R2305K136732-15

RECEIVED

SEP 03 2019

SC Court of Appeals

Clerk's office
Court of Appeals
PO Box 11629
Columbia, SC 29211