

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank R. Addy, Jr. Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-10-07038
Appellate Case No. 2019-001752

Wendy C.H. Wellin,

Respondent,

v.

Peter Wellin, Cynthia W. Plum and Marjorie W. King,
Individually and as Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust, u/a/b November 2, 2009,

Appellants/Petitioners,

v.

Wendy C.H. Wellin, Individually and as Trustee of the Keith S. Wellin
Florida Revocable Living Trust u/a/d December 11, 2001, Hamilton College,
Keith S. Wellin Florida Revocable Living Trust, Campbell Hart, and Heather Lane,

Respondents.

In the Matter of: Keith S. Wellin

RETURN OF HAMILTON COLLEGE TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Wendy Wellin (“Mrs. Wellin”), as Personal Representative of the Estate of Keith S. Wellin’s (“Estate”), initiated this case in September 2014 by petitioning the South Carolina Probate Court for formal probate of her husband’s Last Will and Testament, executed June 27, 2014. Mr. Wellin’s three adult children from a prior marriage, Peter Wellin, Cynthia Plum, and Marjorie King (collectively the “Wellin Children”) responded on October 14, 2014, by filing an Answer, Counterclaims, and Counter-Petition, asserting the 2014 Will was invalid and seeking formal probate of Mr. Wellin’s Last Will and Testament executed August 30, 2011. The case was removed to the Court of Common Pleas on November 17, 2014.

On January 13, 2015, the Wellin Children filed a Motion to Stay state court proceedings, asserting parallel litigation on tort, contract, and other claims between the parties pending in federal court should be permitted to proceed. The court granted the motion and state court proceedings were stayed for two years. On October 20, 2017, the court lifted the stay expressly to “permit the probate of the Last Will and Testament of Keith S. Wellin.” Appx., pp. 12-13. Almost immediately after, the Wellin Children added nine *in personam* tort and contract claims against Mrs. Wellin, as well as a declaratory judgment claim seeking a ruling that the last versions of Mr. Wellin’s Florida Revocable Living Trust (“Revocable Trust”), executed in 2013 and 2014, were invalid, and a 2011 version of the Revocable Trust was valid. Mrs. Wellin filed a reply and asserted three claims against the Wellin Children. Each of these new claims were already pending between the Wellin Children and Mrs. Wellin in the parallel federal court action.

By design, Mr. Wellin’s “pour over” will and revocable trust work in combination to constitute a single estate plan. A determination of the validity of Mr. Wellin’s 2013 and 2014 Wills and Revocable Trusts would clear the way for the Estate to be probated while the pending

in personam claims are separately litigated, tried, and/or settled. Mr. Wellin's estate plan leaves more than \$35 million in bequests to seventeen (17) individuals, a \$20 million scholarship endowment and paintings to Hamilton College, and the residuary of the Estate to the South Carolina Coastal Community Foundation. *See*, Exhibit 1. All beneficiaries have a direct interest in a determination of which estate plan is valid so the Estate can begin to distribute bequests.¹ The fifteen beneficiaries, other than Mrs. Wellin and the Wellin Children, have no interest in the *in personam* tort and contract claims asserted between Mrs. Wellin and the Wellin Children.

On May 15, 2019, the court issued an order bifurcating trial proceedings. *See* Appx. at pp. 6-10 ("Bifurcation Order"). In so ruling, the court separated the validity issues associated with the 2013 and 2014 Wills and Revocable Trusts from the *in personam* claims. *Id.* at p. 9. The first trial to determine the governing estate plan best serves all parties, particularly the beneficiaries. In issuing the Bifurcation Order, the court avoids trying all claims in a single, lengthy, confused trial; yet, that is precisely what the Wellin Children seek through this appeal.

For the reasons set forth below, together with the grounds asserted in the Return to the Wellin Children's Petition for Writ of Certiorari, filed November 15, 2019, which Hamilton College hereby incorporates by reference, the Wellin Children's petition should be denied.

ARGUMENT

The Wellin Children throw a number of specious arguments for immediate appealability of the Bifurcation Order against the wall in hopes that at least one will stick. However,

¹ The Wellin Children's characterization of Hamilton College's (and others) attempts to bifurcate these issues as "aggressively pursued" in order to try claims "with the most difficult burden for the Wellin Children" separate from claims "with the most favorable burden for the Wellin Children," Petition at p. 4, has no support in the record. Hamilton College's interest in the Estate is unrelated to the *in personam* claims. A streamlined trial on validity the Wills and Revocable Trusts would enable the Estate to be effectively administered. Any implication that Hamilton College has a nefarious purpose in pursuing a bifurcated trial should be ignored.

immediate appealability of the Bifurcation Order is governed entirely by whether the order effectively determines one or more of the Wellin Children's remaining claims as in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) ("*Morrow*"). The Bifurcation Order is not immediately appealable under *Morrow* because no part of the court's ruling granted "potential summary judgment" against any remaining claims. The Court of Appeals properly dismissed the Wellin Children's appeal and this Court should similarly deny the Petition for a Writ of Certiorari.

The Wellin Children have derogated and disparaged the Bifurcation Order.² They imply Judge Addy had ulterior motives which are nowhere to be found in the Order. Instead, the Order does nothing more than separate legal issues in an orderly and streamlined manner, as the lower court has discretion to do. *See* Rule 42(b), S.C. R. Civ. P. (allowing separate trials "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy"). The Bifurcation Order schedules an initial trial to determine the validity of the 2013 and 2014 versions of the Will and Revocable Trust, the resolution of which would allow for the long-delayed probate of the Estate. The Order preserves for later determination the *in personam* claims between the Wellin Children and Mrs. Wellin.

While the Wellin Children assert the Bifurcation Order makes no sense (or, more pointedly, was issued expressly to harm the Wellin Children), the Order facilitates a trial of only Estate validity, in which the individual (non-family) and charitable beneficiaries have a direct interest, and therefore makes complete sense. *See* Bifurcation Order, Appx., pp. 9-10.

² The Wellin Children assert the lower court effectively misled the parties by issuing the Order "under the guise of bifurcation," (*see* Petition, pp. 1, 12) and scheduled a "precipitously scheduled" "truncated trial" (*id.*, p. 1) permitting the jury "to decide *only* the two issues strategically cherry-picked by the Estate from all of the pleadings in the case." *Id.*, p. 9. The Wellin Children repeatedly assert these "cherry-picked claims" (*id.*, pp. 3, 4), are the claims for which the Wellin Children have "the most difficult burden." *Id.*, pp. 4, 5, 6, 14.

Bifurcation allows Estate beneficiaries, like Hamilton College, to avoid expending resources on a larger, more confusing consolidated trial addressing all *in personam* claims. The Wellin Children acknowledge these claims involve different legal elements and burdens of proof. *See* Petition, pp. 4, 5, 6, 14. The majority of beneficiaries have little or no knowledge or interest in the outcome of these claims, which the Wellin Children also acknowledge. *See id.*, p. 3 n. 2 (“It is important to note the claims against Wendy seek damages...that are unrelated to [the] will...being probated.”)

The Court’s decision in *Morrow* turned on whether the order on appeal “implicates a substantial right,” pursuant to S.C. Code Ann. § 14-3-330(2). *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146-147. On this pivotal point, the order in *Morrow* was substantively distinct from the Bifurcation Order in the case at bar. In *Morrow*,

[t]he trial court granted the motion [to bifurcate], *finding that without first proving negligence against the nursing home [Magnolia] the Morrows’ claims for corporate negligence [against the Fundamental Entities] could not proceed.* Accordingly, the trial court ordered that discover and a trial on the nursing home negligence claims could go forward, and only if the Morrows were successful, a new jury could hear the corporate negligence claims in a later proceeding.

Id. at 536, 773 S.E.2d at 145 (emphasis added).

This Court held the *Morrow* order “effectively grant[ed] the Fundamental Entities [the corporate owners of the nursing home] potential summary judgment on the issues of direct corporate liability,” by ruling there would be no second trial if plaintiffs lost in the first phase. *Id.* at 539, 773 S.E.2d at 146. During oral argument, the justices accurately described the order as “de facto summary judgment”³ because it, in effect, summarily dismissed the Morrows’ claims of direct liability against the corporate owners if they failed to prove in the first trial that

³ *See* Jan. 13, 2015, oral argument in *Morrow* at 7:42, available online at <http://media.sccourts.org/videos/2012-212871.mp4> (last accessed Nov. 18, 2019); *id.* at 9:02-9:38 (Justice Toal describing order as: “strik[ing] the complaint against the five named defendants and prevent[ing] any pursuit of those claims, unless Morrow obtained a favorable jury verdict in the first trial.”).

Magnolia Place was negligent in providing care. The Court held such a “potential summary judgment” implicated a “substantial right” of the Morrows and was immediately appealable under § 14-3-330(2). *Id.* This Court’s first footnote in *Morrow* is significant⁴:

Defense Counsel candidly admitted ... that if the Morrows’ claims [in the first trial]⁵ w[er]e unsuccessful he would argue that *based on the “bifurcation” order*, summary judgment on the claims of corporate liability would be proper.

Id. at 539 n. 1, 773 S.E.2d at 146 n. 1 (emphasis added).

Whether an order on appeal “implicates a substantial right” is determined by neither the opposing party’s assertion of the potential effect of bifurcation, nor the lower court’s extrinsic intent. The sole question is: what does *the order* do? *See id.* In other words, can a party point to a ruling *in the order* that effectively grants summary judgment on at least one remaining claim? The Wellin Children cannot show the Bifurcation Order summarily disposed of any remaining claims. Therefore, this Court should conclude *Morrow* is distinguishable and deny the Petition.

The Wellin Children appear to argue that a bifurcation order can implicate a substantial right if it provides that determinations in a first trial will have preclusive effects on issues in later proceedings. However, the outcome of the first phase of *any* bifurcated trial necessarily has preclusive effect on remaining issues in the case. For example, if a court bifurcates issues of liability and damages into separate trials, the parties cannot dispute the first-phase liability determination during a later damages phase. Likewise, a decision of no liability in the first phase would preclude a second damages trial altogether. Similarly, if multiple claims in a case are separated into two trials, the final determination of claims in the first trial would bar the same

⁴ The Wellin Children noticeably omitted reference to this footnote in their Petition.

⁵ The footnote contains an apparent typographical error, stating “if the Morrows’ claims against the Fundamental Entities was successful...” The Court meant if the Morrow’s claims *in the first trial* were unsuccessful. The claims in the first trial were against Magnolia Place, not the Fundamental Entities.

parties from relitigating those claims in subsequent litigation. *See Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”).

The Wellin Children’s position on implied implicated substantial rights in bifurcation proceedings is wholly at odds with court decisions denying the immediate appealability of most bifurcation orders. The cases cited by this Court in *Morrow* demonstrate that bifurcation orders, generally speaking, are not immediately appealable. 412 S.C. at 540, 773 S.E.2d at 147 (citing *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence not immediately appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues of liability and damages not immediately appealable)). In the absence of “potential judgment” in the bifurcation order itself, as in *Morrow*, the preclusive characteristics of all bifurcated trials do not make such orders immediately appealable.

In this case, the Wellin Children assert the 2013 and 2014 Wills are invalid and a 2011 Will should be probated. They also assert the 2013 and 2014 Revocable Trusts are invalid and a 2011 Revocable Trust is valid. While validity of the Will is not at issue in the federal court, the Wellin Children assert an identical declaratory judgment claim regarding the Revocable Trusts in that forum. In addition, the Wellin Children have asserted *in personam* claims against Mrs. Wellin in both state and federal court.⁶ The Bifurcation Order requires that the validity issues related to the 2013 and 2014 Wills and Revocable Trusts be tried separately from the pending *in personam* tort and contract claims. *See* Bifurcation Order, Appx., pp. 6-10. Because the

⁶ *See* First Amended Complaint, filed Mar. 30, 2016 as Docket No. 195, *Peter Wellin, et al., v. Wendy Wellin, et al.*, C/A No. 2:14-cv-4067 (“*Wellin III*”).

declaratory judgment claim related to the Revocable Trusts in the state court and the federal actions are identical and the parties in both actions are identical, res judicata will likely preclude re-litigation of the declaratory judgment claim in federal court once it is decided by a jury in the first phase of trial in state court.

However, unlike in *Morrow*, the Bifurcation Order in this case does not determine as a matter of law whether res judicata bars relitigation of the Wellin Children's declaratory judgment claim (or any other claim) in the state or federal action. Such a determination would only be established by subsequent ruling by the state or federal court. A motion on the basis of res judicata would be premature until a determination on the validity issues in the state court trial. Unlike the order in *Morrow*, nothing in *the Bifurcation Order itself* predetermines these issues. As a consequence, the Bifurcation Order is not immediately appealable because it contains no ruling on any remaining claims, whether in state or federal court.⁷

The Court has consistently held interlocutory appeals of bifurcation orders under § 14-3-330(2) are permitted only where the alleged error cannot be corrected by a new trial. *See Flagstar*, 533 S.C. at 72, 533 S.E.2d at 333 (“Moreover, after trial, Royal will be free to advance on appeal that the trial judge abused his discretion in ordering bifurcation and that it has thereby been effectively deprived of a fair and/or fully informed fact finder. An abuse of discretion, if any, by the trial court in its ruling can be corrected at that time.”); *Senter*, 533 S.C. at 77, 533 S.E.2d at 577 (“The trial court's order in this case was discretionary, and an abuse of discretion, if any, which deprives petitioner of a fair trial can be corrected on appeal following trial on all

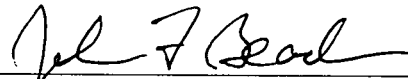
⁷ The trial court's “finding” in the Bifurcation Order that “resolution of [the phase 1] issues will *likely* result in resolution of *much of* the federal litigation” (emphasis added) is legally insignificant to whether the Bifurcation Order is immediately appealable. Unlike the trial court's ruling in *Morrow*, this “finding” is in no way specific enough to serve as a basis for summary judgment on any of the Wellin Children's remaining claims.

issues.”) (citation omitted). In the present case, any error in the Bifurcation Order can be corrected on appeal following trial on all issues.

CONCLUSION

Because the Bifurcation Order did not grant potential summary judgment on any of the Wellin Children’s remaining *in personam* tort and contract claims, the Order is not immediately appealable pursuant to extant case authority, including *Morrow*. For these reasons, as well as the reasons set forth in the Return filed by Mrs. Wellin and the Estate to the Wellin Children’s Petition for Writ of Certiorari, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,



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November 18, 2019

EXHIBIT 1

STATE OF SOUTH CAROLINA)	REVOCABLE TRUST AGREEMENT
)	BETWEEN
)	KEITH S. WELLIN, AS SETTLOR
)	AND
COUNTY OF CHARLESTON)	AS TRUSTEE

The Keith S. Wellin Florida Revocable Living Trust

This Amended and Restated Agreement of the Keith S. Wellin Florida Revocable Living Trust is made and executed between Keith S. Wellin (hereinafter referred to as the Settlor) as both Settlor and as Trustee this 27th day of June, 2014. This instrument amends and restates in its entirety that certain revocable trust agreement originally executed by Keith S. Wellin as Settlor and Trustee on the 11th day of December, 2001 and last amended and restated on the 2nd day of October, 2013, and constitutes the entire trust agreement as of this date. Edward G. R. Bennett, as Special Trustee of this Trust under Order of the Charleston County Probate Court dated August 15, 2013, executes this Amended and Restated Agreement specifically consenting to and accepting the amendments provided for herein. No person shall need, nor have the right to, refer to any prior version or amendments of this Trust prior to the date hereof, this instrument constituting the entire agreement as of this date.

If at any time the Settlor fails to qualify or ceases to act as Trustee, Wendy C. H. Wellin shall serve as Trustee. If at any time Wendy C. H. Wellin fails to qualify or ceases to act as Trustee, Dr. Layton McCurdy shall choose a successor Trustee.

This Trust shall continue to be known as The Keith S. Wellin Florida Revocable Living Trust.

Background

The Settlor is married to Wendy C. H. Wellin ("Wendy") and has three children from a previous marriage whose names are Marjorie W. King, Peter J. Wellin and Cynthia W. Plum. The word "issue" will include the Settlor's children as well as the Settlor's other descendants.

Any determination that the Settlor is a disabled person and is therefore unable to serve or to continue to serve as Trustee shall be made by written opinion of two licensed physicians or psychiatrists, one of whom shall be the Settlor's regular physician (if he then has one) and the other (or both, as the case may be) shall be appointed unanimous agreement of his wife, Wendy C. H. Wellin, and his friend, Dr. Layton McCurdy. A judicial determination of the Settlor's incapacity need not be made. When applicable, any person may rely upon an acknowledged certification by the Successor Trustee that the Settlor has been determined disabled under the procedure provided for herein such that the Successor Trustee has full authority and power to act as Trustee hereunder.

4.1.1.5 Finally, proportionately from the gift(s) passing pursuant to Section 5.3.3 (but, as to taxes coming from Section 5.3.3, only if Wendy has predeceased the Settlor and the gifts under such Section are passing to Wendy's issue), below, to the extent thereof.

4.1.2 **Tax Apportionment - GST Tax.** Any GST taxes payable from assets of this Trust shall be paid as follows:

4.1.2.1 First, proportionately from the gifts passing pursuant to Sections 5.3.7 and 5.3.8, above, after the payment of any estate taxes, as provided in Section 4.1.1, above, until the amount passing under each of Section 5.3.7 and 5.3.8 is no less than the sum of Ten Million Dollars (\$10,000,000); and

4.1.2.2 Then, such taxes shall be paid from each gift against which the taxes are imposed.

4.2 **Retirement Accounts.** In the event that this Trust (or any Trust created hereunder) is designated as the beneficiary of any life insurance policy or any retirement account (including, but not limited to, an Individual Retirement Account (IRA) or a 401(k) plan), the proceeds of any such policy or account received by the Trust (or any Trust created hereunder) shall not be made available by the Trustee to the Personal Representative for the payment of any estate administration expenses, including taxes.

4.3 **Assets Received Via Power of Appointment.** The Settlor has been granted a power of appointment over the 2003 KSW Family Trust which is specifically exercised in his Will which appoint such assets as directed in Section 5.5, below. The Settlor recognizes that he is restricted from exercising the power of appointment in a manner which benefits any persons other than his issue. As such, and notwithstanding any provision to the contrary in this Article or this Agreement as a whole, the assets which have been appointed as directed in Section 5.5, below, through the exercise of the power of appointment referenced above shall not be made available to the Settlor's Personal Representative for any reason, including for the payment of any estate administration expenses, or bequests under the Settlor's Will.

ARTICLE 5

Distributions of Property and Division into Trusts

Upon the Settlor's death and after the distributions specified above, and subject to the provisions of Articles 7 and 18, below, the balance of the Trust Estate (the "Trust Residue") shall be distributed as follows:

5.1 **Tangible Personal Property.** The Trustee shall make the following distributions of tangible personal property:

5.1.1 Gift of Paintings to Hamilton College. If Wendy does not survive the Settlor, the Trustee shall distribute the following five paintings to Hamilton College, of Clinton, New York:

1. "Flower Girl by the Seine, Paris" 1889 by Childe Hassan;
2. "Red Trail" 1928 by Oscar Bluemner;
3. "Paris Music Hall" 1914 & 1940 by Everett Shinn;
4. "The Wave" 1913 by Bellows; and
5. "Segovia Girl" 1912 by Robert Henri;

provided that the paintings shall be used by Hamilton College for exhibition purposes only and shall not be sold. In addition, the first four paintings listed above (Section 5.1.1, items #1 through #4), namely, "Flower Girl by the Seine, Paris;" "Red Trail;" "Paris Music Hall;" and "The Wave," shall be exhibited under the caption "In Memory of Wendy & Keith Wellin." The fifth painting (Section 5.1.1, item #5), namely, "Segovia Girl," shall be exhibited under the caption "In Memory of Ruth and Elmer Wellin."

If Wendy does survive the Settlor, the paintings referenced in this Section 5.1.1 shall pass to Wendy for her lifetime, and upon her death, shall pass pursuant to the previous paragraphs of this Section 5.1.1.

If Hamilton College is unwilling to accept this gift subject to the foregoing conditions, then this gift shall lapse, and Trustee shall distribute each of such paintings to the Settlor's wife, Wendy, pursuant to Section 5.1.2, below, if she survives the Settlor.

5.1.2 Gift of Tangible Properties to Spouse. If the Settlor's wife, Wendy, survives the Settlor, the Trustee shall distribute to Wendy the balance of the Settlor's personal effects and other tangible personal property of a non-investment nature including, but not limited to, such items as the Settlor's clothing, jewelry, furniture, furnishings, art objects, boats, and automobiles customarily located in, but not limited to, the following locations:

1. 126 Tradd Street, Charleston, South Carolina;
2. 34 Seaside Farm Drive, Friendship, Maine; and
3. 1013 Middle Street, Sullivan's Island, South Carolina.

5.1.3 Gift of Tangible Properties to Spouse's Issue. If the Settlor's wife, Wendy, does not survive the Settlor, the Trustee shall distribute to Wendy's issue, per stirpes, who survive the

Settlor, the Settlor's personal effects and other tangible personal property of a non-investment nature, including, but not limited to, such items as the Settlor's clothing, jewelry, furniture, furnishings, art objects, boats, automobiles and paintings, customarily located in the three following locations:

1. 136 Tradd Street, Charleston, South Carolina, and
2. 1013 Middle Street, Sullivan's Island, South Carolina.

Any items of tangible personal property not distributed pursuant to this Section 5.1.3 shall be distributed as part of the residuary under Section 5.3, below.

5.2 Specific Devises. The Trustee shall distribute the following sums of money to each of the following friends, employees and former employees who survives the Settlor:

5.2.1 The sum of Twelve thousand five hundred dollars (\$12,500.00) to Raul Rios, of 409 W. Allen, Falfurrias, Texas 78355;

5.2.2 The sum of Fifteen thousand dollars (\$15,000.00) to Mary Martinez, of 204 W. Potts Street, Falfurrias, Texas 78355;

5.2.3 The sum of Twelve thousand five hundred dollars (\$12,500.00) to Celia Sally Simpson, of 1110 Blucher, Falfurrias, Texas 78355;

5.2.4 The sum of Twelve thousand five hundred dollars (\$12,500.00) to Filemeno Guerra, of 207 W. Adams, Falfurrias, Texas 78355;

5.2.5 The sum of Twelve thousand dollars (\$12,000.00) to Louise Reed, of P.O. Box 26, 15 Homeland Lane, Friendship, Maine 04547;

5.2.6 The sum of Twelve thousand dollars (\$12,000.00) to Barbara Nystrom, of P.O. Box 283, 27 Cottage Drive, Friendship, Maine 04547;

5.2.7 The sum of Twelve thousand dollars (\$12,000.00) to Tammy Barter, of P. O. Box 283, 27 Cottage Drive, Friendship, Maine 04547;

5.2.8 The sum of Thirty thousand dollars (\$30,000.00) to Alma and Jerry Johnson, or the survivor, of River South Plantation, 200 Tomlinson Road, Stockton, Georgia 39641;

5.2.9 The sum of Fifteen thousand dollars (\$15,000.00) to Margaret Stripling, of River South Plantation, 200 Tomlinson Road, Stockton, Georgia 39641;

5.2.10 The sum of Fifteen thousand dollars (\$15,000.00) to Helen Harris, of River South Plantation, 200 Tomlinson Road, Stockton, Georgia 39641;

5.2.11 The sum of Fifteen thousand dollars (\$15,000.00) to Maria Consolo, of 222 Centre Avenue #6J, New Rochelle, New York 10805; and

5.2.12 The sum of Three hundred thousand dollars (\$300,000.00) to Denise Beliard, of 96 Ter, Rue De Longchamp, 92200 Neuilly-sur-Seine, France.

5.3 Residuary Distribution. After distribution of the property specified in all prior Articles and Sections of this Trust, the balance of the Trust Residue shall be distributed as follows:

5.3.1 Real Property. Any real property, including any interests in any entities which own real property that the Settlor has used for his personal use, shall be distributed to the Settlor's wife, Wendy. If she does not survive the Settlor, such property shall be distributed to the issue, per stirpes, of the Settlor's wife Wendy.

5.3.2 Contingent Gift for Wendy. Prior to the execution of this Agreement, the Settlor transferred approximately Twenty Five Million Dollars (\$25,000,000) in Berkshire Hathaway Class A stock to his wife, Wendy. If for any reason this gift is invalidated or set aside in whole or in part, the Trustee shall transfer to the Settlor's wife, Wendy, an amount that, when added with the amount of the gift not invalidated or set aside, will equal Twenty Five Million Dollars (\$25,000,000). Likewise, at the time of the execution of this Agreement, the Settlor has significant obligations to the IRS for taxes incurred in 2013 (which amount may vary depending on the outcome of the litigation begun by the Settlor against his children) and to UBS for a line of credit. Should Wendy have paid, or be required to pay, whether before or after the Settlor's death, some or all of either of these obligations or other obligations on the Settlor's behalf, the Trustee shall distribute to Wendy an amount equal to the amounts she has paid on the Settlor's behalf, plus reimbursement for any income taxes she has incurred from selling assets to raise cash to make such payments.

If Wendy does not survive the Settlor, the amount distributable under this Section 5.3.2 shall instead be distributed to Wendy's issue, per stirpes.

5.3.3 Additional Gift for Wendy (or her Issue). In addition to the contingent gift provided for under §5.3.2, above, the Trustee shall distribute the sum of Twenty Five Million Dollars (\$25,000,000) to the Settlor's wife, Wendy; provided, however that this sum shall be reduced by fifty percent (50%) of the balance of any qualified retirement accounts (including, but not limited to, IRAs or 401(k)s) which name Wendy as the beneficiary. For purposes of calculating the amount set forth in the previous sentence, the balance of the IRA shall be the balance as finally determined for Federal Estate tax purposes related to the Settlor's estate.

If the Settlor's wife, Wendy, does not survive the Settlor, the amount provided for in this Section 5.3.3 shall be distributed to Wendy's issue, per stirpes; provided, however that this sum shall be reduced by fifty percent (50%) of the balance of any qualified retirement accounts (including, but not limited to, IRAs or 401(k)s) which name Wendy's issue as the beneficiaries.

5.3.4 Gift for Grandchildren. The sum of Two Million Dollars (\$2,000,000) shall be distributed to each of the Settlor's grandchildren and each grandchild of the Settlor's wife, Wendy; provided, however, that if any of the Settlor's grandchildren or Wendy's grandchildren are under the age of thirty (30), such grandchild's share shall be held in a separate Trust pursuant to the provisions of Article 6, below.

*MJM
FAS
K.C.*

Subject to the provisions of Section 11.11, below, if feasible, the distributions directed in this Section 5.3.4 shall be made in Berkshire Hathaway stock.

5.3.5 Gifts for Daughters. The sum of Five Million Dollars (\$5,000,000) shall be distributed to each of the Settlor's daughters, Cynthia W. Plum and Marjorie W. King, such distributions, however, to be subject to the provisions of Articles 7 and 18, below. If either of Cynthia or Marjorie should predecease the Settlor, the gift for such predeceased daughter shall lapse.

5.3.6 Gift for Hamilton College. The sum of Twenty Million Dollars (\$20,000,000) to Hamilton College in Clinton, New York to endow one or more scholarships for the benefit of children of Hamilton College graduates.

5.3.7 Gift for Coastal Community Foundation. ~~The lesser of (i) Ten Million Dollars (\$10,000,000), or (ii) fifty percent (50%) of the balance of the Trust Residue, after all dispositions in previous Articles of this Agreement, in Sections 5.1, 5.2, and in the previous provisions of this~~

*K.C. FAS
W.C.*

Section 5.3, shall be distributed to the Coastal Community Foundation of South Carolina, Inc., Charleston, South Carolina to create a partially endowed donor advised fund advised by the Settlor's wife, Wendy. If Wendy does not survive the Settlor, the gift under this Section 5.3.7 shall lapse.

WJL
KL
PPS

~~5.3.8 Gift for Medical University of South Carolina Foundation. The balance of the Trust Residue shall be distributed to the Medical University of South Carolina Foundation to be used as directed by the Settlor's wife, Wendy. If Wendy does not survive the Settlor, the funds shall benefit the Wendy and Keith Wellin Head and Neck Cancer Clinic under the direction of Doctors Terry A. Day and Betsy Davis.~~

5.4 Abatement. At the time of the execution of this Agreement, the Settlor is in litigation with his children with respect to certain transfers and estate planning transactions which took place between 2009 and 2013. The Settlor realizes that the size of his estate, and his ability to make gifts under this instrument will be dramatically affected by the outcome of this litigation. As the Settlor cannot reliably estimate the amount of assets available for distribution at his death, he wishes to provide for the order in which the distributions above shall abate, in the event there are insufficient assets to satisfy all of those gifts.

5.4.1 First, the gifts set forth in Sections 5.3.7 and 5.3.8, above, proportionately;

5.4.2 Next, the gift set forth in Section 5.3.6, above;

5.4.3 Next, the gifts set forth in Sections 5.3.5, above, proportionately;

5.4.4 Next, the gifts set forth in Section 5.3.4, above, proportionately;

5.4.5 Next, the gift set forth in Section 5.3.3, above;

5.4.6 Next, the gift set forth in Section 5.3.2, above;

5.4.7 Next, the gift set forth in Section 5.3.1, above;

5.4.8 Next, the gifts set forth in Section 5.2, above, proportionately;

5.4.9 Next the gifts set forth in Section 5.1.2 or 5.1.3, above, as applicable; and

5.4.10 Finally, the gift set forth in Section 5.1.1, above.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank R. Addy, Jr., Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

Case No. 2014-CP-10-07038
Appellate Case No. 2019-001752

Wendy C. H. Wellin,.....Respondent,

v.

Peter Wellin, Cynthia W. Plum and Marjorie W. King,
Individually and as Co-Trustee and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, Appellants,

v.

Wendy C. H. Wellin, Individually and as Trustee of the Keith S. Wellin
Florida Revocable Living Trust u/a/d December 11, 2001, Hamilton College,
Keith S. Wellin Florida Revocable Living Trust, Campbell Hart,
and Heather Lane, Respondents.

In the Matter of: Keith S. Wellin

PROOF OF SERVICE

I, the undersigned paralegal of the law firm of Adams and Reese LLP, attorneys for Hamilton College, do hereby certify that on November 18, 2019, I have served all counsel in this action with a copy of the documents below specified via electronic mail and United States Mail to the following addresses:

List of Documents Served:

1. Return of Hamilton College to Petition for a Writ of Certiorari; and
2. this Proof of Service.

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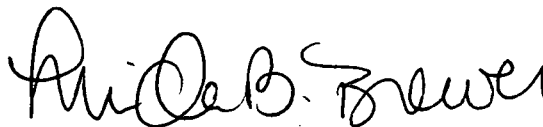
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November 18, 2019.