

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas**

Edgar W. Dickson, Circuit Court Judge

**Appellate Case No. 2019-001065
Dorchester County Case No(s). 2019-CP-18-0677 and 2017-CP-18-1816**

In Re: The Estate of Doris Duane Colucci

**Michael C. Fox, Named Personal Representative
in the Last Will of Doris Duane Colucci Appellant,**

v.

**Andrew W. Chandler, in his capacity as Special
Administrator of the Estate of Doris Duane Colucci,
Michael C. Fox, Successor Trustee of the
Colucci Living Trust, dated February 24, 2005,
Michael Fredrick Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman, Jr.....Respondents.**

**APPENDIX TO APPELLANT'S RETURN TO RESPONDENT CHANDLER'S MOTION
TO STRIKE MATTER FROM THE RECORD ON APPEAL**

RECEIVED

FEB 18 2020

SC Court of Appeals

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APPENDIX

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IN THE PROBATE COURT

CASE NO.: 2017-ES-18-00294

IN RE: THE ESTATE OF DORIS)
DUANE COLUCCI, A.K.A. DORIS)
D. COLUCCI,)

**MOTION FOR DISCLOSURE OF
ALL EX PARTE COMMUNICATIONS
AND FOR RECUSAL AND/OR
DISQUALIFICATION OF THE
HONORABLE MARY BLUNT AND
ALL AFFILIATED PERSONS**

TO THE HONORABLE MARY BLUNT, PROBATE JUDGE FOR DORCHESTER COUNTY:

John Antonio hereby moves by and through his undersigned attorney and Guardian Ad Litem, for an Order (1) which provides for recusal and disqualification of Judge Mary Blunt and all affiliated persons in this matter; and (2) requiring full and complete disclosure of all ex parte communications which have taken place in this matter.

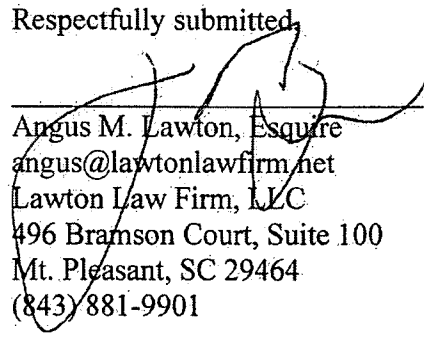
This motion is based on: the violations of the South Carolina Code of Judicial Conduct; the unreasonable and unnecessary delay the Court has caused in granting Mr. Antonio access to his funds; the ex parte communications which have taken place in this matter; the failure to disclose those ex parte communications to all interested persons; the apparent prejudice shown towards John Antonio; and the appearance of impropriety in the way that this matter has been handled. The motion is also based on lack of due process in the way that the matter has been handled in violation of the South Carolina and U.S. Constitutions.

This Motion will be supported by the record in this matter, and a memorandum of law which will be presented and filed with the court, with all related attachments.

By the signature below, the undersigned attorney hereby confirms that consultation with opposing counsel, the Court, or other parties in this matter would not serve any useful purpose.

given the Court's lack of response to counsel's previous requests for a hearing and for disclosures of ex parte communications.

Respectfully submitted,



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Lawton Law Firm, LLC
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Mt. Pleasant, SC 29464
(843) 881-9901

Mt. Pleasant, SC

Dated: 1-24-20

Attorney for John Antonio

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-ES-18-00294
	)	
IN RE: THE ESTATE OF DORIS	)	<u>MEMORRANDUM IN SUPPORT OF</u>
DUANE COLUCCI, A.K.A. DORIS	)	<u>MOTION FOR DISCLOSURE OF</u>
D. COLUCCI,	)	<u>ALL EX PARTE COMMUNICATIONS</u>
	)	<u>AND FOR RECUSAL AND/OR</u>
	)	<u>DISQUALIFICATION OF THE</u>
	)	<u>HONORABLE MARY BLUNT AND</u>
	)	<u>ALL AFFILIATED PERSONS</u>
	)	

TO THE HONORABLE MARY BLUNT, PROBATE JUDGE FOR DORCHESTER COUNTY:

John Antonio hereby submits the following memorandum of law in support of his motion for an Order (1) recusing and disqualifying Judge Mary Blunt and all affiliated persons in this matter; and (2) requiring full and complete disclosure of all ex parte communications which have taken place in this matter.

FACTS

This matter originated out of the Estate of Doris Colucci, a probate matter that was initiated soon after Doris Colucci was killed by her husband Ivo Colucci on April 14, 2017.

During the initial stages of the estate administration, the Dorchester County Probate Court issued an Order requiring that John Antonio have a Guardian ad Litem ("GAL") appointed to protect his interest. (A copy of the Order is attached hereto, along with the exhibits referenced herein, and other documents supporting this Motion.) A Charleston attorney, Glenn Churchill, was selected by the Dorchester County Probate Court to act as John Antonio's GAL. The Order states "The Court has been informed by persons associated with John Antonio, as well as attorneys and fiduciaries associated with the case, that he (John Antonio) may have special needs to the extent that he lacks sufficient understanding or capacity to make responsible decisions regarding

his person or property". The persons "affiliated with John Antonio" have never been disclosed to Mr. Antonio or his attorney.

Thereafter, Mr. Antonio was directed to see Dr. William Mulbry, Jr., a psychiatrist, for an evaluation. Dr. Mulbry performed the evaluation on Mr. Antonio, and he prepared a report for the court. (A copy of Dr. Mulbry's report, dated June 23, 2017 is attached hereto.)

In addition to the matter involving John Antonio, Doris Colucci's death spawned several lawsuits among the various members of the Colucci family, including a wrongful death case against Ivo Colucci ("the wrongful death case"). That case was originally filed on October 19, 2017 by attorneys Elizabeth Palmer, Andrew Gowdown, and Brew Hagood with the Rosen Hagood Firm. Judge Blunt had selected the Rosen Hagood firm to handle Doris' wrongful death case, despite the fact that the law firm had no relationship with Doris Colucci or the beneficiaries in the case.

There were only two (2) statutory beneficiaries that would receive any proceeds from the wrongful death case, namely John Antonio and Michael Colucci, the only natural children of Doris Colucci. After two years of litigation, the wrongful death lawsuit was settled, and the settlement was approved by an Order of the Charleston County Circuit Court on July 2, 2019. Soon after the settlement was approved, Michael Colucci received his proceeds from the wrongful death case.

Despite the fact that his mother's wrongful death case was resolved over six months ago, John Antonio has not received any funds from that case. For those six months, Mr. Antonio's funds have been sitting in the trust account of the Rosen Firm, and Mr. Antonio has not been able to access those funds for any purpose, including his living expenses. During that six month period, Mr. Antonio's attorney and GAL have made significant efforts to allow Mr. Antonio to access his funds, including (1) meeting with Judge Blunt to discuss Mr. Antonio's receipt of the funds; (2)

sending multiple emails to Judge Blunt requesting that Mr. Antonio's funds be disbursed (copies of emails are attached); (3) meeting with a financial planner selected by Judge Blunt to discuss the handling of Mr. Antonio's funds; (4) writing letters to Judge Blunt regarding Mr. Antonio's capacity (letters from GAL to Judge Blunt attached); and (5) filing a Motion seeking authorization to disburse the funds. None of those efforts have been successful.

On November 4, 2019, Judge Blunt sent Mr. Antonio's counsel a letter requesting information about Mr. Antonio. That letter was also signed by John Freeman, an ethics professor from the University of South Carolina School of Law. (A copy of Judge Blunt's letter is attached.) In that letter, Judge Blunt states:

"Concerns were brought to the court and to court appointed fiduciaries about the capacity of John Antonio to manage and receive assets either through the estate or through settlement proceeds. (Page 1, paragraph 2);

"In 2010, . . . , Dan M. David (an attorney previously involved in the case) received a public reprimand . . ." (Footnote 4, page 2);

"There is a risk that Michael Colucci may attempt to gain access to John Antonio's funds." (Page 5, paragraph 2).

Mr. Antonio's counsel is not aware of anything in the record to support these statements from the Court.

Given the questions raised by Judge Blunt's letter, Mr. Antonio's counsel sent an email to Ms. Palmer at the Rosen Hagood Firm, seeking disclosure of any ex parte communications with the court relating to John Antonio. (Copy of email attached.) Ms. Palmer did not provide any response to this request, and no disclosures of any ex parte communications were provided.

On November 6, 2019, Mr. Antonio's counsel also sent a letter to Ms. Palmer at the Rosen Firm, again asking for disclosures of any ex parte communications with the Dorchester Probate Court. (A copy of that letter attached.) Ms. Palmer provided no response to this second request

for disclosures of ex parte communications, and no disclosures were provided of any ex parte communications with the court. In fact, Ms. Palmer has never responded in any way to either the email or the letter requesting disclosures of all ex parte communications.

On November 14, 2019, Mr. Antonio's counsel sent a letter to Judge Blunt and Professor Freeman, responding to their request for information. (A copy of this letter was also sent to the attorneys at the Rosen Firm that handled the wrongful death case, and a copy of Mr. Lawton's letter is attached.) Counsel's letter addressed all of the issues raised by the Court, and it also requested that the Court disclose all information regarding any ex parte communications that had taken place in this matter. Despite this third request for disclosures of ex parte communications, neither Judge Blunt, nor any members of the Rosen firm, have provided any disclosures of any ex parte communications.

There have been proceedings related to the instant matter where ex parte communications have been apparent. On January 9, 2019, there was a hearing on a motion filed by Beth Palmer on behalf of Andrew Chandler, the special administrator of Doris Colucci's estate. In that motion, Mr. Chandler and/or Ms. Palmer sought sanctions against Michael Fox, the trustee of the Colucci Living Trust, and his attorney. In Andrew Chandler's testimony relating to the hearing, he testified that he had a phone conference with Judge Blunt the day before the hearing. After the hearing, Judge Blunt sanctioned Mr. Fox, finding that Andrew Chandler's Motion for Sanctions should be granted in its entirety. (See page 27 of the transcript from the hearing on January 9, 2019. Copies of the pertinent pages of the transcript are attached, along with Judge Blunt's later email.) That Order granting sanctions against Mr. Fox is currently on appeal.

It is important to note that Mr. Fox, as trustee of Colucci Living Trust, has also requested disclosure of any ex parte communications that have taken place in this matter, and no disclosures

have been provided to Mr. Fox either. On October 4, 2019, Mr. Fox's attorney served Beth Palmer with Interrogatories and Requests for Production, seeking disclosure of any ex parte communications that have taken place in this matter. Those Interrogatories also sought disclosure of any legal authorities that would allow such communications to take place. Rather than respond to the questions presented, and rather than disclosing any ex parte communications, Ms. Palmer filed a Motion for a Protective Order, requesting that no such discovery should take place. That Motion is still pending.

At this point, the trustee of the Colucci Living Trust and two of the beneficiaries of that trust have asked for disclosures of any ex parte communications. Despite repeated requests by different parties for that information, not a single disclosure has been provided, either by the attorneys involved or the Court. Accordingly, Mr. Antonio has filed this motion seeking full disclosures of any ex parte communications, and recusal/disqualification of all court personnel that have taken part in any such prohibited communications.

Please also note that Mr. Antonio wants to see that his mother's estate is properly handled, in a process that is free of bias, prejudice or the appearance of impropriety. He also wants to make sure that due process is provided to all interested parties.

LEGAL AUTHORITY

1. EX PARTE COMMUNICATIONS ARE EXPRESSLY PROHIBITED BY THE SOUTH CAROLINA CODE OF JUDICIAL CONDUCT.

Canon 3 of the S.C. Code of Judicial Conduct provides that a judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside of the presence of the parties concerning a pending matter. (Note: there are limited exceptions to the rule, none of which apply here.)

As previously noted, Judge Blunt's letter of November 4, 2019 and her Order relating to John Antonio dated May 23, 2017 confirm that Judge Blunt has gained access to information that is not in the record and in communications that took place without Mr. Antonio or his attorney being present. Further, the transcript from the hearing on January 9th, 2019 confirms that there have been ex parte communications between Mr. Chandler and the Court relating to this matter. Any such communications are a clear violation of Canon 3 of the S.C. Code of Judicial Conduct.

2. THE COURT IS REQUIRED BY THE SOUTH CAROLINA CODE OF JUDICIAL CONDUCT TO DISCLOSE ALL EX PARTE COMMUNICATIONS; NO SUCH DISCLOSURES HAVE BEEN PROVIDED IN THIS CASE.

In the comments to Canon 3 of the S.C. Code of Judicial Conduct, it states "A judge must disclose to all parties all ex parte communications . . . regarding a proceeding pending or impending before the judge." (Emphasis added.) In this case, as outlined above, multiple requests have been made for disclosures of any ex parte contacts to the attorneys, and at least one request has been made to the court for such disclosures. No disclosures have been made despite the express requirement that all such communications must be provided to all counsel of record.

Based on the requirements of the South Carolina Code of Judicial Conduct, Mr. Antonio and his counsel are requesting that all information be disclosed, including but not limited to (a) all emails exchanged between any parties/attorneys and the court; (b) all bills relating to attorney's fees or fees charged by the Special Administrator which contain entries for communications with the court; (c) the opportunity to interview and depose if necessary the attorneys and parties that have engaged in such communications (to make sure that all verbal communications are disclosed); and (d) a disclosure of any legal authorities which allow any such communications. In the absence of such disclosures, the parties cannot be assured that due process has been followed in this matter.

3. A JUDGE MAY NOT INDEPENDENTLY INVESTIGATE FACTS IN A CASE AND MUST CONSIDER ONLY THE EVIDENCE PRESENTED.

Canon 3. Section 5 of the South Carolina Code of Judicial Conduct provides that a judge shall perform judicial duties without bias or prejudice, and the comments to the rule state: “a judge must not independently investigate facts in a case and must consider only the evidence presented.” (Emphasis added.) These rules have been violated.

As set out above, Judge Blunt and Professor Freeman have signed off on a letter that contains information that is not contained anywhere in the record in this case. Undersigned counsel has pointed this out to Judge Blunt and Professor Freeman, and the Court has not disclosed the source of the information in question.

4. UNDER SOUTH CAROLINA LAW, A JUDGE MUST RECUSE HIM OR HERSELF IN A MATTER WHERE THE JUDGE’S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED.

Canon 3, Section E of the South Carolina Code of Judicial Conduct provides that “a judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer; or personal knowledge of disputed evidentiary facts concerning the proceeding.” Furthermore, according to South Carolina case law, a judge’s impartiality can be reasonably questioned when his factual findings are not supported by the record. Ellis v. Proctor and Gamble, 315 S.C. 283, 433 S.E.2d 856 (S.Ct. 1993).

The following statements in the letter signed by Judge Blunt on November 4, 2019 show that Judge Blunt has already decided the issue of whether John Antonio needs a conservator:

“It is unclear what this finding means (referencing Dr. Mulbry’s statements in his letter); however the finding that John Antonio needs at least a limited

conservatorship is clear from the overall reading of the thirteen page report” (footnote 7, page 3);

“Professor Freeman accordingly recommends that a formal conservatorship action be initiated in accordance with Dr. Mulbry’s report. He recommends that the court shall issue an order directing the appropriate party to bring the conservatorship proceeding. If the appropriate party declines to do so, the court should initiate such an action sua sponte.” (Page 4)

Judge Blunt has made these decisions (1) without regard for the evidence in the record; (2) without regard to the applicable South Carolina statutes relating to incapacitated persons and the probate code; (3) without considering information from the GAL that Judge Blunt appointed; and (4) without considering any information to be presented at a hearing. It also appears that her decision is at least partly based on information gained outside of the record and through ex parte communications, which have not been disclosed.

CONCLUSION

During the proceedings in this matter, Judge Blunt has consulted with John Freeman, a former ethics professor at the University of South Carolina School of Law. Professor Freeman has written an article which deals with the issues set forth herein, and it provides some guidance on the matters at hand. See John P. Freeman, *Appearance of Impropriety, Recusal, and the Segars-Andrews Case*, 62 S. C. L. Rev. 485 (2011). In his article, Professor Freeman writes:

At the center of the judicial role is the requirement that judges be fair to each side and partial to neither. Thus, judges called on to decide recusal motions must above all be sure that they conduct their decision making in accordance with the command of Canon 2A—namely, “in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” This means that judges faced with possible grounds for recusal need to confront and resolve the issue directly. This also means that judges need to make full and timely disclosure of all material facts on the record and that parties must be encouraged to review the facts carefully before advising the court of their positions. Freeman, page 512.

His article also states:

(R)ulings issued in cases where the existence of an appearance of impropriety is alleged against a judge need to confront that issue, rule on it, and provide reasons supporting the ruling. Rulings that dance around the issue, or avoid it entirely, resolve nothing and are counterproductive in that they enhance the complaining party's suspicion that, in the vernacular, "The fix is in." Freeman, page 505.

In this case, there have been no disclosures of the ex parte communications, despite the requirements of the South Carolina Code of Judicial Conduct, and direct requests made by multiple parties for disclosures. Rather than confronting the issue by making full and timely disclosures as suggested by Professor Freeman, Judge Blunt has avoided the issue, by failing to respond to a written request for disclosures of all ex parte communications.

For all of the aforementioned reasons, John Antonio hereby seeks an Order which (1) requires the Court and all other parties to disclose all ex parte communications that have taken place in this matter; (2) allows Mr. Antonio's counsel to interview and question under oath if necessary the attorneys and parties that have participated in any such communications; (3) allows Mr. Antonio's counsel to obtain all documents, emails, bills, and/or other documents that relate to ex parte communications; and (4) disqualifies and/or finds that Judge Blunt and all affiliated persons must be disqualified and/or recused in this matter.



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Mt. Pleasant, SC
Dated: 1-24-20

Attorney for John Antonio

PROBATE JUDGE
DORCHESTER COUNTY

2020 JAN 24 PM 12: 53

PROBATE JUDGE
DORCHESTER COUNTY
STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE PROBATE COURT
CASE NO. 2017-GC-18-00004

2017 APR 20 PM 1: 01

IN THE MATTER OF:
IVO FRANCESCO COLUCCI

ORDER
(Emergency Ex Parte)

2017 APR 20 PM 1: 01

CERTIFIED
PROBATE JUDGE
DORCHESTER COUNTY
Mary Q. Blunt

Based on the Motion to Secure Assets filed by John Sinclair, III, the Court-appointed attorney for Ivo Francesco Colucci (Mr. Colucci), the Court finds that it is in the best interest of Mr. Colucci that his assets be secured. Mr. Colucci has a considerable financial estate, including multiple homes, properties, and business interests, all of which have assets capable of conversion. Mr. Colucci is not in a position to secure or protect his assets or the assets of his business entities.

In order to ensure that Mr. Colucci's financial estate is properly secured and protected, access to Mr. Colucci's said properties and business interests shall be limited to only those persons duly authorized to enter upon said properties by the Court-appointed Emergency Temporary Conservator, Christa Yantis, CPA (Ms. Yantis). Further, Ms. Yantis shall have the exclusive authority to dictate the manner and parameters of said access, and no other person shall be allowed to remove, alter, sell, convert, or dispose of Mr. Colucci's assets without Mr. Yantis's express permission.

IT IS SO ORDERED!

April 20, 2017
St. George, South Carolina

Mary Q. Blunt
Hon. Mary Q. Blunt
Probate Judge
Dorchester County Probate Court



DORCHESTER COUNTY PROBATE COURT

5200 EAST JIM BILTON BLVD.
ST. GEORGE, SC 29477

www.dorchestercounty.net

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:53

MARY BLUNT
Probate Judge

RUSSELL A. DEMOTT
Associate Judge

MOLLY D. EDWARDS
Associate Judge

May 11, 2017

Lester S. Schwartz, Esquire
Post Office Box 30356
Charleston, SC 29417

Re: In the Estate of: DORIS DUANE COLUCCI
Case Number: 2017ES1800294

Dear Counsel:

In staffing on this file, it has come to the Court's attention that John Martin Antonio, son of the deceased, is, to some extent, a special needs individual. We are asking for some clarity on the extent of Mr. Antonio's special needs, since he has executed documents submitted to the Court and may have need to again in the future. The Court wants to ensure that no fiduciary accommodations are required on his behalf to move forward.

We await your prompt compliance with this request, and we invite you to call if you have any questions. You may contact me directly at (843) 832-0282.

Sincerely,

Devan Kociuruba
Estate Clerk

05/12/2017 11:17 LESTER

PROBATE JUDGE
DORCHESTER COUNTY P.002/003

2020 JAN 24 PM 12: 53

LESTER S. SCHWARTZ
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May 12, 2017

Dorchester County Probate Court
Attention: Ms. Devan Kociuruba, Estate Clerk
5200 East Jim Bilton Boulevard
St. George, S.C. 29477

RE: John Martin Antonio ("John")
In Matter of: Estate of Doris Duane Colucci
Dorchester County Probate Court Case No.: 2017-ES18-00294

Dear Devan:

I am in receipt of your letter dated May 11, 2017, inquiring about John. I have met with John several times and have been in communication with him since his Mother's death on April 14, 2017. John is autistic, but is certainly not mentally impaired or mentally incompetent.

I am aware that persons with autism can range from the low spectrum to the high spectrum. A person at the low spectrum would be an individual with low intelligence and poor communication skills and possibly no ability to speak. Such an individual at the low spectrum with low intelligence and deficient communication skills would likely require a Court appointed Guardian or Conservator, unless that individual had the requisite "contractual capacity" to execute a power of attorney appointing an agent.

John is not a person on the low spectrum. John is an adult with high functioning autism, who at the very least has normal intelligence, if not high intelligence. John also has normal communication and verbal skills. Had I not been informed prior to my first meeting with John that he had autism, I would not have realized it.

John graduated from Summerville High School in 1982. I am informed that John received a certificate of perfect attendance from first (1st) through twelfth (12th) grade. John attended trade school after high school, and has been employed for many years. John is literate, has a valid driver's license, and owns and drives his own truck. But for the high functioning autism, John seems normal to me in all other respects in intelligence, awareness, understanding, opinions, and communication skills.

*only fax received
no hard copy of letter
was received by
Court - Mr. [unclear]
- [unclear] -
[unclear]*

Letter to Ms. Kociuruba
Friday, May 12, 2017
Page 2

LESTER S. SCHWARTZ ATTORNEY AT LAW

I would also state that, from my observation, John has handled the horrific event of his Mother's death and the lack of civility among certain family members normally and with wisdom, respect, and understanding.

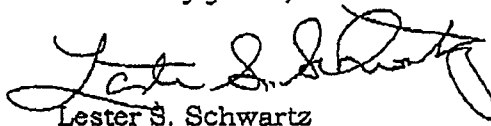
With respect to John's legal capacity to execute legal documents, John has the requisite "contractual capacity" to execute a power of attorney, as the Principal, as well as the much lower requisite "testamentary capacity" to execute a Last Will And Testament, as the Testator.

In my opinion, John does not require fiduciary accommodations for this matter to move forward.

Please inform me if you require any additional information from me concerning your inquiry.

With kind regards, I am

Sincerely yours,



Lester S. Schwartz

By Fax: (843) 832-0222 &
By E-mail: dkociuruba@dorchestercounty.net
LSS/lis

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:53

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE PROBATE COURT
CASE NO. 2017-ES-18-00294

IN THE ESTATE OF:)
DORIS DUANE COLUCCI)

ORDER APPOINTING A
DESIGNATED EXAMINER AND
TEMPORARY GUARDIAN *AD LITEM*
(Sua Sponte)

PROBATE JUDGE
DORCHESTER COUNTY
2017 MAR 23 PM 3:06

This matter came before the Court on its own motion to appoint a Designated Examiner for John Martin Antonio, who is the son and heir of the Decedent, Doris Duane Collucci. The Court has been informed by persons associated with John Martin Antonio, as well as attorneys and fiduciaries associated with this case, that he may have special needs to the extent that he lacks sufficient understanding or capacity to make responsible decisions regarding his person or property.

Recently, John Martin Antonio signed the following legal documents: (i) a Renunciation of Right to Administration and/or Nomination and/or Waiver of Bond (Renunciation) and (ii) a Specific Limited Durable Power of Attorney dated May 17, 2017 (DPOA). These documents have been filed with the Court.

Based on the concerns raised by persons familiar with John Martin Antonio and the Court's duty to insure that adequate representation is provided for a person alleged to be incapacitated, the Court finds it is necessary to appoint a Designated Examiner to evaluate John Martin Antonio and a Temporary Guardian *ad litem* to protect his interest in this matter.

THEREFORE, it is ORDERED, ADJUDGED, and DECREED that to better understand John Martin Antonio's capacity and to ensure that his interests as well as assets are protected, the Court hereby appoints L. William Mulbry, M.D. (Dr. Mulbry) as a Designated Examiner for John Martin Antonio. Dr. Mulbry shall be compensated from the assets of the Estate of Doris Duane Colucci. Dr. Mulbry is required to submit an Affidavit of Fees and Costs

WMB
5/23/17

to the Court at the time of invoicing. The Court will issue an Order Approving Costs and Fees in the amount determined by the Court.

AND IT IS FURTHER ORDERED that in this role, Dr. Mulbry shall meet with John Martin Antonio and conduct a sufficient investigation to make a recommendation to this Court regarding (i) John Martin Antonio's capacities, (ii) if a need exists for a Guardian and/or Conservator for John Martin Antonio, (iii) any limitations that should be placed on a Guardian and/or Conservator if appointed, and (iv) if John Martin Antonio has capacity to sign and understand legal documents, including the previously filed Renunciation and DPOA.

AND IT IS FURTHER ORDERED that Dr. Mulbry shall make his recommendations in a report and file it with the Court within two weeks, or after further extension granted by this Court as requested by Dr. Mulbry.

AND IT IS FURTHER ORDERED that pending the recommendation of Dr. Mulbry, the Court appoints Glenn P. Churchill, Esquire (Mr. Churchill) as Temporary Guardian *ad litem* and attorney for John Martin Antonio. The Court may modify this to a full appointment upon the recommendation of Dr. Mulbry. Mr. Churchill shall be compensated at a rate of \$200.00/hour from the assets of the Estate of Doris Duane Colucci. Mr. Churchill is required to submit an Affidavit of Fees and Costs to the Court at the time of invoicing. The Court will issue an Order Approving Costs and Fees in the amount determined by the Court.

AND IT IS FURTHER ORDERED that Dr. Mulbry and Mr. Churchill shall have access to all reports, records, and information relevant to John Martin Antonio in order to ascertain the facts. Dr. Mulbry and Mr. Churchill are authorized to have access to records prepared or related to any medical and psychological treatment of John Martin Antonio and to discuss John Martin Antonio's medical and psychological treatment with any medical or health

care professional who has provided professional services to the alleged incapacitated person. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(1)(i), the Health Insurance Portability and Accountability Act (HIPPA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

AND IT IS FURTHER ORDERED that to facilitate reasonable investigation of information pertaining to John Martin Antonio, Dr. Mulbry and Mr. Churchill shall have access to John Martin Antonio and to all records and information, including authorization to speak with interested persons; including but not limited to the following sources: the legal guardian, law enforcement agencies, health care providers, mental health care providers, residential care providers; other care providers, the Department of Social Services (if applicable), the Department of Mental Health (if applicable), the Department of Health and Human Services (if applicable), schools, school officials, vocational rehabilitation centers (if applicable), and any financial institution in which it is believed that there are funds on deposit belonging to the alleged incapacitated person (if applicable).

AND IT IS FURTHER ORDERED that Dr. Mulbry and Mr. Churchill are also entitled to receive copies of any existing Will, Power of Attorney, Health Care Power of Attorney and/or Living Will executed by John Martin Antonio.

IT IS SO ORDERED!

May 23, 2017
St. George, South Carolina

Mary Blunt

Hon. Mary Q. Blunt
Probate Judge
Dorchester County Probate Court

IN THE PROBATE COURT

DEMAND FOR NOTICE IN AN ESTATE

2017 NOV -1 CASE NUMBER: 2017-ES-18-00294

CHERYL GRANA
CLERK OF COURT
ORCHESTER COUNTY

2017-CP-18-1816

400 MURRAY BOULEVARD, SUMMERVILLE, SC 29483

I demand receipt of a copy of the following item(s) pertaining to the above estate. By filing this "Demand for Notice," I understand that it is the responsibility of the Personal Representative to provide me with a copy of all documents he/she files in this estate. **I understand this Demand shall expire one year from date of filing.**

☐	Application for informal probate and/or informal appointment
☐	Petition for formal probate and/or formal appointment
☐	Information to Heirs and Devisees
☐	Proof of Publication of Notice to Creditors
☐	Inventory and Appraisement (including Supplementary, Amended or Corrected)
☐	Application for Settlement
☐	Accounting (Interim or Final)
☐	Proposal for Distribution
☐	Notice of Right to Demand Hearing
☐	Any petition and corresponding order
☐	Any hearings, Right to Appear, or Notice of Appearance
☐	Other (specify): ANY AND ALL DETAILS OF THE ESTATE

Executed this 19 day of OCTOBER, 2017.

Print Name: MICHAEL COLUCCI

Address: 7674 LEGARE ROAD

EDISTO ISLAND, SC 29438

Telephone (Work):

(Home):

(Cell): (843)603-0645

Email: COLUCCI2376@GMAIL.COM

Relationship to Decedent/Estate: SON OF DORIS DUANE COLUCCI

Attorney: ANGUS M. LAWTON

Address: 496 BRAMSON COURT, SUITE 100
MT. PLEASANT, SC 29464

Telephone: (843)881-9901

Email: angus@lawtonlawfirm.net

***A Demand for Notice requires a \$5.00 filing fee.**

STATE OF SOUTH CAROLINA

ISSUED BY THE PROBATE COURT IN THE COUNTY OF CHARLESTON

IN RE: THE ESTATE OF DORIS DUANE
COLUCCI AKA DORIS D. COLUCCI

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:54

SUBPOENA IN A CIVIL CASE

Case Number: 2017-ES-18-00294

Pending in Dorchester County

TO: FOX-CORDAY CO., ATTN: MICHAEL FOX, 4621 Durant Ave., North Charleston, SC 29405

☐ YOU ARE COMMANDED to appear in the above-named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:

See Exhibit A.

PLACE ROSEN, ROSEN & HAGOOD, LLC 151 MEETING STREET, SUITE 400 CHARLESTON, SC 29401	DATE AND TIME February 23, 2018 at 10:00 AM
--	---

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

<i>Mary L. Blunt</i> Attorney/Issuing Officer's Signature	2/16/2018 Date	The Honorable Mary L. Blunt Print Name
--	-------------------	---

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

PROBATE JUDGE
SOUTH CAROLINA
2020 JAN 24 PM 12:54

EXHIBIT A

The following definitions apply to the requests below:

The term "Colucci Entities" shall mean Ivo Francesco Colucci, Doris Duane Colucci, and any business/entity with which they are/were affiliated, including, but not limited to: Terrivo Enterprises, LLC, I&M Colucci (a South Carolina Partnership), I&M Enterprises, LLC, I&D Enterprises, LLC, and H.I.D., LLC.

The term "document(s)" shall mean all writings, including all handwritten, typed, printed, or photocopied matter, all recordings, and graphic matter of any kind, including the originals and all the duplicates, carbon copies or any other nonidentical copies, whether different from the originals by reason of any notations or changes made on such copies, or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, calendars, applications, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, computations, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice communications, resumes, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, all drafts, alterations, modification changes and amendments of any of the foregoing, graphic or oral recordings or representations of any kind, (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, e-mails, recordings, motion pictures), and any electronic, mechanical or electrical records or representations of any kind, (including, without limitation, tapes, cassettes, disks, recordings, computer memories), or any other recorded information of any kind whatsoever, within the knowledge, possession, custody, control or subject to the control of, or accessible to you.

The term "electronically stored information" shall mean information recorded in a form that requires a computer or other machine to process it and that otherwise satisfies the definition of a record, and should be afforded the broadest possible definition and include (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically or optically stored as:

1. *Digital communications (such as e-mail, voicemail, instant messaging);*
2. *Word processing documents (such as Word or Word Perfect documents and drafts);*
3. *Spreadsheets and tables (such as Excel or Lotus 123 worksheets);*
4. *Accounting work papers and drafts;*
5. *Accounting application data;*
6. *Image and facsimile files (such as .pdf, .tiff, .jpg, .gif images);*
7. *Sound recordings (such as .wav and .mp3 files);*
8. *Video and animation (such as .avi and .mov files);*
9. *Databases (such as Quickbooks, Access, Oracle, SQL and SAP server data);*
10. *Contact and relationship management data (such as Outlook and ACT!);*
11. *Calendar and diary application data (such as Outlook PST, Yahoo, blog tools);*
12. *Presentations (such as Powerpoint);*
13. *Network access and server activity logs;*
14. *Project management application data;*
15. *Computer aided design/drawing files; and*
16. *Back-up and archival files (such as .zip and .gho).*

PROBATE JUDGE
WINCHESTER COUNTY
2020 JAN 24 PM 12: 54

DOCUMENTS TO BE PRODUCED:

1. All correspondence (including emails) to, from, or concerning the Colucci Entities (defined above) from 1/1/14 to present.
2. All documents provided to you by the Colucci Entities (or anyone acting on their behalf) from 1/1/14 to present.
3. General ledgers for each of the Colucci Entities from 1/1/14 to present.
4. Profit and loss statements for each of the Colucci Entities from 1/1/14 to present.
5. Balance Sheets for each of the Colucci Entities from 1/1/14 to present.
6. All monthly, quarterly, or annual account statements from 1/1/14 to present for any and all investment accounts, retirement accounts, 401(k) accounts, annuity accounts, brokerage accounts, or other accounts owned, either individual or jointly, by and of the Colucci Entities.
7. All federal and state tax returns, both original and amended, from 1/1/2014 to present prepared by you or in your possession prepared for or at the request of one or more of the Colucci Entities.
8. Copies of all tax preparer work papers in your possession relating to the tax returns described in No. 7 above.
9. Copies of all auditor work papers in your possession, including permanent files, relating to any of the Colucci Entities from 1/1/14 to present.
10. Copies of all compiled and/or audited financial statements for any of the Colucci Entities from 1/1/14 to present.
11. All monthly bank account records, reconciliations, canceled checks, deposit slips and check registers from 1/1/14 to present related to any one of the Colucci Entities.
12. All monthly credit card records, statements, and reconciliations from 1/1/14 to present related to any one of the Colucci Entities.
13. Copies of all W-2s, 1099s, and K-1s related to the Colucci Entities from 1/1/14 to present.
14. Copies of your invoices for work performed for one or more of the Colucci Entities from 1/1/14 to present.
15. Any and all monthly mortgage statements, mortgage loan documentation, monthly equity line statements, and/or other loan/mortgage/lien documentation from 1/1/14 to present concerning or relating to all real estate owned, individually or jointly, by one or more of the Colucci Entities.
16. All documents related to any loan either given or received by any of the Colucci Entities, including, but not limited to promissory notes, loan agreements, amortization schedules, and records of payments, from 1/1/00 to present.

17. All financial statements (including any audited statements, reviews, compilations, or otherwise) from 1/1/14 to present related to any of the Colucci Entities.
18. All QuickBooks or other electronic data related to any one of the Colucci Entities from 1/1/14 to present.
19. All estate planning documents related to Ivo or Doris Colucci in your possession.
20. All documents relating to the Colucci Living Trust or any other trust related to one or more of the Colucci Entities.
21. All notes, memos, and journals related to one or more of the Colucci Entities.
22. All organizational documents with any amendments for each of the Colucci Entities.
23. All Federal tax elections filed and IRS acceptance letters received for any of the Colucci Entities.
24. All IRS and/or state notices for any of the Colucci Entities dated 1/1/14 to present.
25. All asset purchase agreements, invoices, and/or documents related to the purchase of any assets held by any of the Colucci Entities.
26. All inside and outside basis schedules maintained for the partners or shareholders of each of the Colucci Entities.

PROBATE JUDGE
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER) CASE NO.: 2017-CP-18-1816

IN RE: THE ESTATE OF DORIS)
DUANE COLUCCI, AKA DORIS D.)
COLUCCI,)

MICHAEL C. FOX, NAMED PERSONAL)
REPRESENTATIVE IN THE LAST WILL)
OF DORIS COLUCCI,)

Petitioner,)

Versus)

ANDREW W. CHANDLER, ESQUIRE,)
IN HIS CAPACITY AS SPECIAL)
ADMINISTRATOR OF THE ESTATE OF)
DORIS DUANE COLUCCI, MICHAEL C.)
FOX, SUCCESSOR TRUSTEE OF THE)
COLUCCI LIVING TRUST, DATED)
FEBRUARY 24, 2005, IVO FRANCESCO)
COLUCCI, MICHAEL FREDERICK)
ANTONIO COLUCCI, HENRY BURKES,)
AND RICHARD HYMAN, JR.,)

Respondents.)

**ORDER GRANTING SUMMARY
JUDGMENT AND ORDERING
PROBATE OF WILL DATED
JUNE 18, 2013**

THIS MATTER was before the Court on Motion for Summary Judgment filed by Christa M. Yantis as Conservator for Ivo Francesco Colucci seeking, among other things, probate of a Last Will and Testament of Doris Duane Colucci dated June 18, 2013, and filed with the Dorchester County Probate Court on August 24, 2017 (hereinafter "the Will"). Petitioner Michael C. Fox is named as successor personal representative under the Will and filed a Petition for Formal Testacy that was removed to this Court. This order addresses only that portion of the motion relating to the probate of the Will.

Pursuant to S.C. Code Ann. § 62-3-405, the Court may probate the Will on the pleadings before it with no testimony:

If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of Section 62-3-409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit (including an affidavit of self-proof executed in compliance with Section 62-2-503) or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

S.C. Code Ann. §62-3-405.

At the call of the motion, no party raised any objection to the Will being probated. A review of the pleadings before the Court indicates that all parties are in agreement that the Will is the Last Will and Testament of Doris Duane Colucci. According, the motion is properly granted as to the prayer for probate of the Will only and the Will is entered into probate.

THEREFORE IT IS ORDERED that the Last Will and Testament of Doris Duane Colucci dated June 18, 2013 is probated as the Will of Doris Duane Colucci.

AND IT IS SO ORDERED!

Edgar W. Dickson
Presiding Judge

This _____ day of _____, 2018

At _____, South Carolina

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:55



Dorchester Common Pleas

Case Caption: Estate of Doris Duane Colucci VS Ivo Francesco Colucci , defendant,
et al
Case Number: 2017CP1801816
Type: Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2018-08-27 09:43:43 page 3 of 3

ELECTRONICALLY FILED - 2018 Aug 27 10:01 AM - DORCHESTER - COMMON PLEAS - CASE#2017CP1801816

PROBATE JUDGE
DORCHESTER COUNTY
STATE OF SOUTH CAROLINA) PROBATE COURT
COUNTY OF DORCHESTER) CASE NO.: 2017-ES-10-00294
2020 JAN 24 PM 12:55

Page 1

IN RE: THE ESTATE OF DORIS DUANE
COLUCCI,

MICHAEL C. FOX, NAMED PERSONAL
REPRESENTATIVE IN THE LAST WILL
OF DORIS DUANE COLUCCI,

-VS-

ANDREW CHANDLER, IN HIS CAPACITY
AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF DORIS DUANE COLUCCI,
MICHAEL C. FOX, SUCCESSOR
TRUSTEE OF THE COLUCCI LIVING
TRUST, DATED FEBRUARY 24, 2005,
IVO FRANCESCO COLUCCI, MICHAEL
FREDERICK ANTONIO COLUCCI, JOHN
MARTIN ANTONIO, HENRY BURKES,
AND RICHARD M. HYMAN, JR.,

EMERGENCY HEARING BEFORE HONORABLE MARY L. BLUNT

Date Taken: Wednesday, January 9th, 2019
Time Taken: 12:09 p.m.
Location: Dorchester County Courthouse
5200 Highway 78
St. George, South Carolina 29477
Reported By: Judy W. Galuppo, Court Reporter
Job No.: 453298

MAGNA LEGAL SERVICES
WWW.MAGNALS.COM
866.624.6221

Page 2 1 A-P-P-E-A-R-A-N-C-E-S 2 Appearances for the Petitioner Michael C. Fox 3 By: Gordon Garrett, Esquire 4 GARRETT LAW OFFICES 5 1075 East Montague Avenue 6 Charleston, South Carolina 29405 7 843.556.5515 8 Office@garrettlawsc.com 9 Appearances for the Special Administrator Andrew 10 Chandler 11 By: Elizabeth J. "Beth" Palmer, Esquire 12 ROSEN ROSEN & HAGOOD, LLC 13 151 Meeting Street, Suite 400 14 Charleston, South Carolina 29401 15 843.577.6726 16 Bpalmer@rhlawfirm.com 17 Appearances for the Conservator Ms. Yantis 18 By: David C. Holler, Esquire 19 LEE ERTER WILSON HOLLER & SMITH, LLC 20 126 N. Main Street 21 Sumter, South Carolina 29150 22 803.778-2471 23 Davidholler@leeandmoise.com 24 Appearances for Michael Colucci and John Antonio 25 By: Angus M. Lawton, Esquire LAWTON LAW FIRM, LLC 496 Bramson Court, Suite 100 Mount Pleasant, South Carolina 29464 843.881.9901 Angus@lawtonlawfirm.net Appearances for Stephan Colucci By: Eduardo K. Curry, Esquire THE CURRY LAW FIRM, LLC Post Office Box 42270 North Charleston, South Carolina 29423 843.767.5284 Currylawfirm@bellsouth.net	Page 3 1 APPEARANCES CONTINUED 2 Appearances for Robert Colucci 3 By: P. Brandt Shelbourne, Esquire 4 SHELBOURNE LAW FIRM 5 131 E. Richardson Avenue 6 Summerville, South Carolina 29483 7 843.871.2210 8 Brandt@shelbournelaw.com 9 Also Present 10 Stephan Colucci 11 Samo Colucci
Page 4 1 INDEX TO EXAMINATION 2 Page 3 Andrew Chandler Sworn 10 4 Direct Examination by Mr. Garrett 10 5 Reporter's Certificate 58 6 INDEX TO EXHIBITS 7 Petitioner's 8 No. Description Page 9 G Entered Into Evidence 46 10 Repsodent's 11 No. Description Page 12 No Exhibits Marked or Offered	Page 5 1 - - - 2 THE COURT: I have the sign-in sheet for 3 everyone that is here. We received an affidavit from 4 Ms. Yantis prior to the hearing. Are there any other 5 matters we need to take up before we go on the 6 record? 7 MR. GARRETT: No. 8 MS. PALMER: Not from us, Your Honor. 9 THE COURT: Today is January 9th, 2019. 10 We're here today in the Estate of Doris Colucci. 11 It's Case No. 2017-ES-18-00529. 12 I have numerous parties and their 13 attorneys present in the courtroom. So I am just 14 going to go down my list. 15 I have Andrew Chandler, who is the 16 special administrator, and his attorney, Beth Palmer. 17 I have attorney Brandt Shelbourne, who 18 represents Robert Colucci. 19 Eduardo Curry, who represents Stephan 20 Colucci. 21 David Holler, who represents Christa 22 Yantis, who is the conservator for Ivo Colucci. 23 Gordon Garrett and Ryan Love are the 24 attorneys for the Colucci Trust and Michael Fox. 25 And Angus Lawton, who is the attorney for

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1 attack of any nature upon any provision of my will or 2 any codicil to it shall be paid from my Probate Estate 3 as expenses of administration." 4 Q Would you agree that it's a provision of 5 Doris Colucci's will that Michael Fox be appointed as 6 the personal representative? 7 A Say that again. 8 Q Would you agree that the will says that 9 it's a provision of the will that Michael Fox be 10 appointed as the successor personal representative? 11 A I would agree that Doris Colucci's will 12 names as one of the successor personal representatives 13 Michael Fox. 14 Q The damages that you're requesting that I 15 pay for trying to have Michael Fox appointed as the 16 personal representative, Doris Colucci has directed 17 that those be paid out of the estate?. 18 A No, Mr. Garrett. I'm telling you that my 19 expenses associated with you trying to have me 20 restrained and removed for baseless reasons is why I 21 have asked the court to assess you my fees. Not to 22 have Mr. Fox appointed. This says, "expenses to 23 resist any contest." I don't ever recall contesting 24 her will. 25 Q Do you believe that you're filing to	1 prevent the appointment of a personal representative 2 was an effort to resist Michael Fox being appointed as 3 the personal representative? 4 A No. I believe I was answering a petition 5 on which I was formally served. I don't recall 6 challenging the will. 7 Q Now, you had just stated earlier in your 8 testimony that you've discussed this case regularly 9 with the court. 10 A I don't believe I said regularly. I 11 believe I said I seek the court's guidance where 12 necessary. I have filed a variety of applications. I 13 have filed a variety of petitions. 14 Q When is the last time you had a telephone 15 conversation with Judge Blunt? 16 A Probably yesterday, because I saw the 17 court's deference to hold emergency hearing today. 18 Q Was I present at that conversation? 19 A No. 20 Q Do you believe that you and I are both 21 parties to this action? 22 A Mr. Garrett, I am appointed by the court. 23 I'm a court-appointed fiduciary. I can always speak 24 to the court. I am not a lawyer in this action, 25 Mr. Garrett. I am a court-appointed fiduciary. And I
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1 am permitted to speak to the judges whenever they're 2 willing to speak to me. 3 Q Do you believe the Estate of Doris 4 Colucci should be completed with you as the special 5 administrator? Or that the South Carolina Probate 6 Court requires appointment of a personal 7 representative? 8 A First, let me say I do not believe that 9 the Probate Code requires appointment of a personal 10 representative. I don't believe that at all. There's 11 many, many estates in which there's only a special 12 administrator. James Brown, as an example, a rather 13 famous man here in South Carolina. So no, there's no 14 requirement that a personal representative be 15 appointed in an estate. What was the first part of 16 your question? That I think I should be special 17 administrator? I serve at the pleasure of the court. 18 So long as the court asks me to serve, I will do so. 19 Q Do you feel you have a duty to the 20 Colucci Living Trust? 21 A Do I believe I have a legal duty? 22 Q Yes. 23 A In what way? 24 Q To act in its best interest, to make sure 25 that it gets funded, to make sure that money flows	1 through the trust, the terms of the will are complied 2 with? 3 A Yes. I believe that the designee of this 4 will is the Colucci Family Trust, yes, and I believe 5 the funds would flow through the Colucci Family Trust, 6 yes. 7 For example, I had noticed you of this 8 hearing today as a proposal for distribution. I have 9 made one distribution to you already. I proposed to 10 distribute cash to you. So yes, I'm doing exactly 11 what you're suggesting I have to do. That was today, 12 or is today. However, you tried to restrain me from 13 making distribution, so -- anyway, go ahead. 14 Q Do you have any ballpark idea what your 15 current fees are that you charged the estate at this 16 time? 17 A I mean, I don't recall. I think it's 18 something -- I think from your petition you said it 19 was \$89,000, and it's probably something in the 20 neighborhood of \$105,000 now. I mean, the last six 21 months that's probably -- or \$110,000. I'll note to 22 you that my fees collected is something like 3 percent 23 of the estate, whereas a PR commission would have been 24 5 percent of the estate. So I think that you're 25 suggesting that my fees are excessive or lavish or

PROBATE JUDGE
DORCHESTER COUNTY
2019 JAN 24 PM 12:55

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF DORCHESTER) CASE NO: 2017-ES-18-00294
IN RE: THE ESTATE OF DORIS)
DUANE COLUCCI, AKA DORIS D.)
COLUCCI,)
MICHAEL C. FOX, NAMED PERSONAL)
REPRESENTATIVE IN THE LAST WILL)
OF DORIS COLUCCI,)
Petitioner,)
v.)
ANDREW W. CHANDLER, ESQUIRE,)
IN HIS CAPACITY AS SPECIAL)
ADMINISTRATOR OF THE ESTATE OF)
DORIS DUANE COLUCCI, MICHAEL C.)
FOX, SUCCESSOR TRUSTEE OF THE)
COLUCCI LIVING TRUST, DATED)
FEBRUARY 24, 2005, IVO FRANCESCO)
COLUCCI, MICHAEL FREDERICK)
ANTONIO COLUCCI, JOHN MARTIN)
ANTONIO, HENRY BURKES, AND)
RICHARD M. HYMAN, JR.,)
Respondents.)

PROBATE JUDGE
DORCHESTER COUNTY
2019 FEB -7 PM 3:30

ORDER

This matter came before the Court on Petitioner Michael Fox's Petition for Removal of Special Administrator pursuant to S.C. Code Ann. § 62-3-611. For the reasons set forth herein, and after considering the evidence presented, law, and arguments of counsel, this Court finds that the Petition should be denied and that certain costs and fees should be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111.

PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Respondent Andrew W. Chandler, Esquire, was appointed Special Administrator of the

Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will nominates Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Petitioner Fox as a successor trustee. On October 27, 2017, Petitioner Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Petitioner Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. To date, no decision has been rendered by the Circuit Court on Petitioner Fox's Petition for Appointment as personal representative. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Respondent Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

On January 4, 2019, Petitioner Fox filed a Petition for Removal of Special Administrator¹ as well as a Motion for Removal, seeking to remove the Petition for Removal of Special Administrator to the Dorchester Court of Common Pleas. By Order filed on January 8, 2019, this Court denied the Motion for Removal on the basis that a petition seeking removal of a Special Administrator is not removable to the circuit court as a matter of right pursuant to S.C. Code Ann. § 61-1-302.

Also on January 8, 2019, Respondent Chandler filed a Motion for Emergency Hearing, requesting that Petitioner Fox's Petition for Removal of Special Administrator be scheduled for an emergency hearing and that the Estate's costs and fees incurred in responding to, and defending, Petitioner Fox's Petition, be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111. The request for an emergency hearing was granted, and that hearing was held on January 9, 2019. In attendance were: Gordon Garrett, Esquire, and Ryan Love, Esquire, counsel for Petitioner Fox; Respondent Chandler with his attorney, Elizabeth Palmer, Esquire; David Haller, Esquire, counsel for Christa M. Yantis, as Conservator for Ivo Colucci, and Alice Norton, as Guardian for Ivo Colucci; Brandt Shelbourne, Esquire, counsel for Robert Colucci; Eduardo Curry, Esquire, counsel for Stefan Colucci; and Angus Lawton, Esquire, counsel for Michael Antonio and Michael Colucci.

APPLICABLE LAW

A personal representative, which is defined to include a special administrator, is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703; S.C. Code Ann. §

¹ While titled "Petition for Removal of Special Administrator," the Petition attaches a Motion to Restrain Special Administrator, previously filed by Petitioner Fox in the Circuit Court on November 26, 2018, and requests that this Court grant the relief sought therein. As such, before this Court is both Petitioner Fox's request that Respondent Chandler be removed and also that he be restrained.

62-1-201. A special administrator must "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession" and has a duty "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. §§ 62-3-703(a), 62-3-709. A special administrator "shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate." S.C. Code Ann. § 62-3-703(a).

"A person interested in the estate may petition for removal of a [special administrator] for cause at any time." S.C. Code Ann. § 62-3-611(a). "Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a [special administrator] or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the [special administrator] has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office." S.C. Code Ann. § 62-3-611(b). The power to remove a special administrator "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

FINDINGS OF FACT & CONCLUSIONS OF LAW

I. S.C. Code Ann. § 62-3-615 does not require the removal of Respondent Chandler.

Petitioner Fox contends that S.C. Code Ann. § 62-3-615 requires that he, or one of the other individuals named as successor personal representatives in Decedent's Will, be appointed as special administrator and, therefore, Respondent Chandler's appointment must be terminated. That section provides as follows:

§ 62-3-615. Special administrator; who may be appointed.

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

This section is inapplicable to the matter before the Court and provides no basis for the removal of Respondent Chandler.² Contrary to the assertion of Petitioner Fox, Respondent Chandler was not appointed as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 but was instead appointed pursuant to S.C. Code Ann. § 62-3-617. See Consent Order for the Appointment of a Special Administrator at 4, July 10, 2017. The statute cited by Petitioner Fox relates to a temporary appointment process for a special administrator. However, pursuant to this Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator, Respondent Chandler was appointed pursuant to a formal proceeding that grants a special administrator the full duties and responsibilities

² The Court would further note that, contrary to Petitioner Fox's argument, this section, even when applicable, does not provide for the automatic appointment of a nominated personal representative as special administrator. Rather, just as with the appointment of a personal representative, there must first be a determination by a court of competent jurisdiction that the individual is available and qualified.

as a personal representative. Therefore, Petitioner Fox's request that the Court remove Respondent Chandler as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 is inappropriate and contrary to the current posture of this case.

II. The Special Administrator's fees, and those of his attorney, are not excessive and provide no basis for his removal as Special Administrator.

Petitioner Fox contends that the fees paid from the Estate to Respondent Chandler and his counsel for matters related to the administration of the Estate, as well as the contingency fee of 40% related to the wrongful death lawsuit that is pending, are excessive but he has failed to present evidence to substantiate this claim. Rather, Petitioner Fox makes the assumption that the fees paid to Respondent Chandler and his counsel, totaling approximately \$165,000.00 as shown on the last Accounting filed by Respondent Chandler, are improper.³ The Court disagrees and would further note that Respondent Chandler and his counsel are compensated for their work in this matter at an hourly rate of \$200.00, which is substantially less than their standard hourly rates. Further, this Court has reviewed the detailed invoices submitted by Respondent Chandler, and on each occasion, has found them to be appropriate.

The fees collected by Respondent Chandler and his counsel in the amount of \$165,849.91 that are challenged by Petitioner Fox are approximately 5.7% of the value of the Estate at the time of Decedent's death (\$2,865,316.20). The statutorily allowed commission for personal representatives is 5% of the appraised value of the personal

³ That Petitioner Fox made this claim of excessive fees without support is evidenced by the following statement in his Petition: "The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting the records." The Court finds it concerning that Petitioner Fox would accuse two members of the Bar of excessive billing without having any knowledge as to the nature and extent of work performed by Respondent Chandler and his counsel.

property of the probate estate (plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or court order). S.C. Code Ann. § 62-3-719. Fees incurred by a personal representative's attorney are generally paid out of an estate in addition to those paid to the personal representative. As such, just on its face, the amount paid here to Respondent Chandler and his counsel is reasonable given that, jointly, it is just slightly above that which is customarily allowed solely for the personal representative. Moreover, the Court has reviewed the reasonableness of these fees taking into consideration the novel and complex nature of the legal issues that have been addressed by Respondent Chandler and his counsel, the nature and quality of the work that has been performed, and the benefit that the Estate has derived from that work and confirms and concludes that the fees are reasonable and appropriate.

Likewise, Petitioner Fox's assertion that the contingency fee agreement between the Estate and Rosen, Rosen & Hagood, LLC ("RRH"), for the prosecution of the pending wrongful death lawsuit is excessive is without merit. Petitioner Fox contends that the contingency fee agreement, which provides for legal fees of 40% of the recovery from the wrongful death lawsuit, and which was previously approved by this Court, is "lavish" and "extraordinary." Petitioner Fox failed to present any argument or evidence substantiating his claim that the contingency fee agreement is unreasonable, and the Court takes notice that the contingency fee agreement is typical of those in other personal injury actions. The Court finds no basis on which to revisit its prior determinations that this agreement and the hiring of RRH to prosecute the wrongful death lawsuit are appropriate.

In questioning the fees RRH are receiving to serve as attorney for Respondent Chandler in matters related to the administration of the Estate as well as the contingency

fee arrangement related to the pending wrongful death lawsuit, Petitioner Fox tried to establish that the law firm was double billing. Counsel for Respondent Chandler explained on the record RRH's billing practices with this case and how they actually benefit the Estate:

Related to the fees issue, there are these allegations, I think, of double dipping. This arises out of the fact that my law firm is handling both the wrongful death action, obviously on contingency basis because it's a wrongful death, and also representing Mr. Chandler as his attorney as he administers the estate. Now, part of the administration of the estate includes the Slayer action which is currently pending. It would not be unusual for Mr. Chandler or for this Court to appoint two separate law firms to represent [him], one to do the wrongful death and one to represent Mr. Chandler in the administration. If that was the case here, the [estate] would be charged for the discovery that's being done in these cases. So the Slayer case and the wrongful death, we have effectively combined or consolidated them for the purposes of discovery, because the discovery is very similar in the two of them. We have not charged one penny to the estate for any of the discovery. None of the expert witness fees, none of the court reporter fees. . . . [T]he fact that my firm is representing both has benefited the estate.

Hearing Transcript, pp. 49-50.

Therefore, by allowing RRH to serve the dual role as attorney for Respondent Chandler in his administration of the Estate and pursuing the Slayer case as well as representing him in the pending wrongful death case, the Estate is receiving a substantial benefit. The Estate is not having to pay for any attorney's fees or costs associated with the discovery RRH has done in pursuit of the Slayer case. RRH will only be compensated for their time and the costs they have incurred from the settlement proceeds of the wrongful death action. If the Court had allowed Respondent Chandler to engage separate attorneys to handle the slayer cases and the wrongful death, the Estate would have been liable to pay the attorney handling the Slayer case for their time and costs incurred in completing the

discovery for that case in addition to what RRH will already receive as compensation from the wrongful death action.

Based on the foregoing, the Court finds that the fees paid to Respondent Chandler and his counsel are reasonable, the rate at which they are being compensated is reasonable, and that the work performed by Respondent Chandler and his counsel, which has involved novel and complex legal issues, has directly benefited the Estate.

III. The Special Administrator has appropriately collected and distributed the Estate's assets.

As a Special Administrator with all the powers of a general personal representative, Respondent Chandler is required to settle and distribute the Estate as expeditiously and efficiently as is consistent with the best interests of the estate. S.C. Code Ann. § 62-3-703. Petitioner Fox contends that Respondent Chandler has "unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci." Petitioner Fox also takes issue with the manner in which Respondent Chandler has effectuated distributions to the Trust, stating: "On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt."

These claims are without merit and provide no basis for the removal of Respondent Chandler. Petitioner Fox has failed to present evidence that there has been any unreasonable delay in distributing the Estate's assets to the Trust. The Trust, of which Petitioner Fox is the trustee, did not become the devisee of the Estate until the Will was probated on August 27, 2018. Given the circumstances surrounding the administration of this Estate, including, but not limited to, ongoing litigation and outstanding tax issues and

potential tax liability, the Court finds that Respondent Chandler's actions with regard to the distribution of assets to the Trust have been proper and appropriate.

The Court further takes notice that Petitioner Fox and his counsel have taken measures to frustrate Respondent Chandler's distribution of Estate assets to the Trust. On November 19, 2018, counsel for Petitioner Fox refused to accept certain assets that the Estate distributed to the Trust, assets which were listed on the Proposal for Distribution filed by Respondent Chandler on or about September 24, 2018, and served on counsel for Petitioner Fox. Petitioner Fox and his counsel also attempted to hinder the sale of a ring by the Special Administrator. The Special Administrator had obtained an Order from this Court approving the sale of the ring to create liquid assets in the Estate. Petitioner Fox filed a Application to Restrain the Special Administrator from selling the ring, and then withdrew the Application. Additionally, while Petitioner Fox takes issue with the lack of cash distributed to the Trust from the Estate, Petitioner Fox was on notice that Respondent Chandler filed a second Proposal for Distribution on November 20, 2018, proposing the distribution of \$10,000.00 to the Trust. A hearing on that Proposal for Distribution was initially scheduled for January 9, 2019. However, Petitioner Fox filed his Petition for Removal of Special Administrator with the stated intention of postponing the hearing on the Proposal for Distribution, which would result in the distribution of cash to the Trust being postponed.

Petitioner Fox also states that "complaints have been raised to [his] counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance." Petitioner Fox failed to present any evidence supporting this claim and the Court finds that this is not a basis for Respondent Chandler's removal.

IV. The Special Administrator has not breached any duties owed to the Colucci Living Trust concerning the provision of information or the reimbursement of the Trustee's costs.

Petitioner Fox claims that Respondent Chandler has failed to provide him with information, stating that "[o]utside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisement and the estate account." The documents to which Petitioner Fox refers are attached to his Petition, namely, the Inventory and Appraisement which was filed in April 2018 and the Accounting which was filed in July 2018. The Trust did not become the devisee of the Estate until August 27, 2018. Prior to that time, Respondent Chandler had no duty to provide Petitioner Fox with any information given that Petitioner Fox neglected to file a Demand for Notice. Furthermore, the Estate file is a public record and was available to Petitioner Fox to review anytime. Petitioner Fox has failed to substantiate his claim that Respondent Chandler failed to provide him with information that Respondent Chandler had a duty to provide to him.

Petitioner Fox also appears to argue that Respondent Chandler acted improperly by not reimbursing him, as Trustee of the Colucci Living Trust, for "his costs to probate the [Decedent's] Last Will." The Court finds no impropriety on the part of Respondent Chandler and Petitioner Fox failed to present any authority to support his contention that Respondent Chandler is required to reimburse such costs. The Court further takes notice that Petitioner Fox has not submitted any request for payment to Respondent Chandler. The Court makes no determination as to whether those costs are properly reimbursed by the Estate, but only notes that Petitioner Fox had the opportunity to submit a claim for payment pursuant to the procedure set forth in S.C. Code Ann. § 62-3-804.

V. The Special Administrator's use of Estate funds to object to the appointment of Petitioner Fox as personal representative of the Estate is not grounds for his removal.

After being served with Petitioner Fox's Petition for Formal Testacy and Appointment, which was removed to Circuit Court, Respondent Chandler submitted an Answer and Objection and, at a hearing, argued that the appointment of Petitioner Fox would not be in the best interests of the Estate. Petitioner Fox argues in his Petition that Respondent Chandler "has acted unreasonably and against the interest[s] of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci." The Court disagrees.

As Special Administrator, Respondent Chandler is required to use the authority conferred upon him by the Probate Code for the best interests of the successors to the Estate, which, in this case, is the Trust. S.C. Code Ann. § 62-3-703. He is also required to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." S.C. Code Ann. § 62-3-709.

Respondent Chandler testified at length as to the basis for his objection to Petitioner Fox's appointment as personal representative of the Estate.

Q: What was your basis for Mr. Fox to be disqualified?

A: Let me back up and say, when you filed formal probate, it was removed at your request. I was served. I answered, as is required. I'd have to review my answer. And I'm happy, if you want to hand me my answers. But as I recall, by that point, because it had been several months, but at that point we were fully engaged in the administration of this estate. Which is not a simple estate. And so there's -- there has been or there is a vast array of litigation. But I'd have to review my answer. But as I recall, I believe Mr. Fox, or anyone else, frankly, nothing necessarily to do with Mr. Fox, it would be very inefficient for the court to appoint someone at that point as the personal representative because we'd already begun the process and were involved in a variety of pieces of litigation. It's, again, a complex estate. It had lots of moving parts. And the time it takes to be up to speed

on all of those issues is not insignificant. And so at some point, it is not in the best interest of the beneficiaries.

...

It would be very difficult and would be costly for anyone else at that point to have been appointed, in my view. At the end of the day it's for the court to determine who the fiduciary is. It's not me who decides that. It's for the court to determine who is qualified, who is appropriate. In simple cases, perhaps it's easiest just to follow the will. This is not a simple case, Mr. Garrett. This is a very complex case.

On top of that, Mr. Fox, it just so happens, who had been a longtime friend of the Coluccis, had done their bookkeeping and tax returns for years, decades perhaps, would likely have been a witness. It turns out he is a witness. And he has been deposed and will be deposed. So as I predict, he potentially had a conflict. That may not be true of the next person in line. Although, Henry Burkes is also a witness to this killing. And that may not have been true of the next person in line. But again, it is a complex estate, it is costly to transfer it to someone else.

However, as special administrator, and being involved with a very complex case, which thankfully a lot of it has been resolved, but we still have ongoing litigation, it was just extremely inefficient and foolish, in my opinion, to transfer it to anyone else.

Hearing Transcript, pp. 16-19.

The estate is so complex that Petitioner Fox's attorney, Gordon Garrett, offered to hire Mr. Chandler as an expert if Mr. Chandler would agree to allow Petitioner Fox to serve as the Personal Representative.

Q. Did I offer to retain you as an expert to work for the Estate of Doris Colucci prior to the hearing in Court of Common Pleas in the summer of 2017⁴?

A. Did you ask me to?

Q. Serve as an expert if Mr. Fox was appointed as the personal representative?

A. Let me tell you what I recall from that conversation which occurred outside of Judge Dickson's courtroom. What I recall is, you said, well, if Mr. Fox is appointed – or if you agreed to have Mr. Fox appointed – which again I'm telling you I couldn't have agreed to that because that's not my role – but if Mr. Fox were to be appointed, you know, we could hire you, Andrew, and Ms. Palmer, to continue to do what you do. But in the meantime, we'll also be in there, and then whatever you would do.

And from my perspective, that is in no way beneficial to the beneficiaries

⁴ The hearing was in the summer of 2018 not 2017.

of this estate, which now it turns out that the designee, Mr. Fox, has accepted trusteeship. That is in no way beneficial to those beneficiaries, whoever they may have been, to go from the fees that we are charging, which by the way are a fraction of my regular billing rate, to add two more people and add their rate. I mean, how is that beneficial or helpful to the estate? No way do I think that's appropriate. And I think I told you such. But I don't know that I realized that it was a job offer.

Hearing Transcript, pp. 21-22.

The Court has a voluminous Estate file on this matter with over one thousand documents, and a sister guardianship and conservatorship file which is equally voluminous. The Estate file is rife with litigation and complex issues. On file with the Court are a large web of business interests involved in litigation and negotiation including I&M Colucci, HID LLC, and Terrivo Enterprises LLC. All of these businesses held real property that have complicating factors. The Estate also has multiple parcels of real property in multiple jurisdictions and multiple states with various ownership interests. There is litigation that was in place before Mrs. Colucci's death and after her death. For example, there is litigation involving the Slayer case, wrongful death, I&M Colucci, and Terrivo Enterprises LLC. Numerous attorneys are involved in the case representing various parties and interests which further complicates the Estate.

Additionally, there are ongoing and significant tax issues that the Special Administrator is attempting to resolve. For example, Mr. Chandler testified that Petitioner Fox, who had been the Colucci's long-time bookkeeper and tax preparer, had filed a tax return that is "patently wrong on its face ... that works a tremendous hardship on the estate and the beneficiaries of the estate." Hearing Transcript p. 40. Mr. Chandler testified at length about the complicating tax issues facing the Estate.

Q. Are you aware that Ms. Palmer requested Michael Fox to prepare a Schedule K for an LLC called HID?

Q. [Chandler] What do you mean by "Schedule K"?

A. [Garrett] A partnership return.

Q. Okay. So that's a different number. But yes, I am aware of that.

Q. So you believe that Mr. Fox was competent to prepare that document?

A. What I know is that HID is managed and controlled by Henry Burkes, whose name we've heard before. And he is the manager of that company. He hired Mr. Fox to prepare tax returns for that company. Ms. Doris Colucci owned 30 percent in that company. That's it. She doesn't control anything in that company. Mr. Burkes controls -- he prepares tax returns, not me. In fact, Mr. Fox prepared a tax return which is patently wrong on its face, and we simply asked him to correct the K1's, which by the way, if they're not corrected -- and I'll also note, Mr. Garrett, that Mr. Fox replied to your email saying he'll be glad to amend them. And then you in December decided, nevermind, we're not going to do that. But that works at tremendous hardship on the estate and the beneficiaries of the estate. Because if Mr. Fox does not amend that return, or Mr. Burkes does not amend that return properly and make a sub 4 election on the return and produce a K1 that is accurate, the estate of Doris Colucci would potentially lose a basic step up in its assets which negatively impacts the beneficiaries of that estate. So yes, I'm aware of that.

Q. But you're also a member of HID?

A. I am. Well, I'm not, but the estate is.

Q. The estate is. And you're capable of preparing the proper tax [return]?

A. I'm not qualified. I don't have the books and the things that are required to prepare returns, Mr. Garrett. Mr. Burkes has those items. He hires who he wants to prepare the returns. If he hired Mr. Fox, that's fine. If he thinks that's the proper person, great. But the return is not properly prepared. And it was filed improperly. For example, he listed [I&D], which is an accommodation party. It does not have an EIN. It is not a taxpayer. He filed that return on the IRS. That is absolutely an improperly filed return. It will be pulled. Mr. Colucci and Doris Colucci's estate are going to have issues because of that, because you can't file a return without an EIN. And I would think Mr. Fox would know that.⁵

Hearing Transcript pp. 39-41.

⁵ Mr. Chandler is a Certified Specialist in Estate Planning and has an L.L.M. in Taxation.

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled. Therefore, the Court finds no impropriety in Respondent Chandler's actions in objecting to the appointment of Petitioner Fox as personal representative of the Estate. Respondent Chandler is required to take all steps to protect the Estate and preserve its assets, and the Court is satisfied that his objection was based on a valid concern that the interruption of his administration of the Estate would not be in the best interests of the Estate or the Trust, its sole devisee, as it would result in unnecessary delay and expense.

Petitioner Fox also argues that, "[h]ad the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns." The Court is aware of no legal duty on the part of Respondent Chandler to take this action, nor did Petitioner Fox present any authority to support his contention that such a duty exists.

VI. The award of costs and expenses against Petitioner Fox is appropriate.

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111. Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.⁶

⁶ Rule 11 of the South Carolina Rules of Civil Procedures states that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion or other paper;

The Court finds that justice and equity require that Petitioner Fox pay the Estate's costs and expenses, including reasonable attorney's fees, incurred in responding to his Petition to Remove Special Administrator. Respondent Chandler and his counsel have submitted Affidavits of Fees and Costs which this Court has considered and finds to be appropriate.

IT IS HEREBY ORDERED that Petitioner Fox's Petition for Removal of Special Administrator is **DENIED**; and

IT IS FURTHER ORDERED that Petitioner Fox, pursuant to S.C. Code Ann. § 62-1-111, shall pay costs and expenses, including reasonable attorney's fees, incurred by the Estate in responding to the Petition to Remove Special Administrator in the amount of \$10,882.96.

AND IT IS SO ORDERED!

Mary Blunt
The Honorable Mary Q. Blunt
Dorchester County Probate Court

February 7, 2019
St. George, South Carolina

that to the best of his knowledge, information and belief there is good grounds to support it; and that it is not interposed for delay." Based on Attorney Garrett's presentation of the case, it is clear that his intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate. Further, he failed to present any evidence to show that he had good grounds to support his Petition.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:55

THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

In Re:

№ 2017-CP-18-1816

The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal
Representative in the Last Will of Doris
Duane Colucci,

Plaintiff,

vs.

Andrew Chandler, in his capacity as
Special Administrator of the Estate of
Doris Duane Colucci, Michael C. Fox,
Successor Trustee of the Colucci Living
Trust, dated February 24, 2005, Ivo
Francesco Colucci, Michael Frederick
Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman,
Jr,

Defendants.

Order

THIS MATTER comes before this Court on a Petition for Formal Testacy and Appointment filed in the Dorchester County Probate Court on October 30, 2017, and subsequently removed to this Court. This Petition was heard on August 13, 2018, and on August 27, 2018, this Court admitted the Last Will and Testament of Doris Duane Colucci to probate and took the matter of appointment of the Personal Representative under advisement. After careful consideration of the arguments of counsel and the record, this Court finds as follows:

The Last Will and Testament of Doris Duane Colucci, executed June 18, 2013, was admitted to probate on August 27, 2018 with no objection from any party. This Will named the following persons, in order of priority, as Personal Representative of the state: (1) Ivo Colucci, (2) Michael C. Fox, (3) Henry Burkes, (4) M. Richardson Hyman, Jr., Esq.

This Court finds Michael C. Fox is qualified to serve as the Personal Representative of the Estate of Doris Colucci, and hereby appoints him to serve in this position in accordance with the Last Will.¹ See S.C. Code §§ 62-3-203, 62-3-414 & 62-3-618.

This Court additionally orders that the Special Administrator Mr. Andrew Chandler, Esq., and any former special administrators, forward Mr. Fox all records of the Estate forthwith for Mr. Fox's review to ensure that there has been no waste, abuse, or fraud within the Estate and to fulfill the duties bestowed upon him by the Decedent. This Court further orders that the Special Administrator Mr. Chandler and the Personal Representative Mr. Fox work together for the benefit of the Estate.

Based on the removal order of the Probate Court, the Probate Court retained jurisdiction on all other issues other than what was indicated on the removal order. Other than this Court's decision above, all additional issues and motions are remanded back to the Probate Court in compliance with its removal order, unless the Probate Court has vested the Circuit Court with the power to decide the matter.²

IT IS SO ORDERED.

Edgar Dickson
Circuit Court Judge

St. George, South Carolina

¹ The Court has been made aware that property located at 39-41 Mary Street, Charleston, SC is scheduled to close on or about February 21, 2019. The property is owned by I&M Colucci, a general partnership, of which Mrs. Colucci's estate owns a twenty-five and a half (25.5%) interest. Nothing in this order should be construed as to limit the ability of Michael C. Fox, as Personal Representative of the Estate of Doris Duane Colucci, from acting on behalf of the Estate in the business of I&M Colucci, a general partnership, and he is authorized to execute any and all documents necessary to act on behalf of the Estate's interest in the partnership to effectuate the sale of 39-41 Mary Street.

² Pending before this Court are also a Petition to Restrain the Special Administrator and a Motion to Dismiss this Petition. Both of these motions are moot and therefore will not need to be addressed by the Circuit Court.



Dorchester Common Pleas

Case Caption: Estate of Doris Duane Colucci , plaintiff, et al VS Ivo Francesco Colucci , defendant, et al
Case Number: 2017CP1801816
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-02-12 16:12:31 page 3 of 3

PROBATE JUDGE
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN RE: THE ESTATE OF DORIS
DUANE COLUCCI, AKA DORIS D.
COLUCCI,

ELIZABETH J. PALMER, ESQUIRE, ON
BEHALF OF ROSEN HAGOOD, LLC,

Applicant,

v.

MICHAEL C.FOX, IN HIS CAPACITY AS)
PERSONAL REPRESENTATIVE OF THE)
ESTATE OF DORIS DUANE COLUCCI,)
MICHAEL C. FOX, IN HIS CAPACITY)
AS SUCCESSOR TRUSTEE OF THE)
COLUCCI LIVING TRUST, DATED)
FEBRUARY 24, 2005, IVO FRANCESCO)
COLUCCI, MICHAEL FREDERICK)
ANTONIO COLUCCI, JOHN MARTIN)
ANTONIO, HENRY BURKES, AND)
RICHARD M. HYMAN, JR.,)

Respondents.

IN THE PROBATE COURT
2017 JAN 24 PM 12:56

CASE NO: 2017-ES-18-00294

**EMERGENCY APPLICATION
FOR RESTRAINT OF
PERSONAL
REPRESENTATIVE**

TO: ATTORNEY FOR RESPONDENT MICHAEL C. FOX

PLEASE TAKE NOTICE that Applicant Elizabeth J. Palmer, Esquire, on behalf of Rosen Hagood, LLC, will move before the Presiding Judge of the Probate Court for the First Judicial Circuit at the Dorchester County Probate Court at 5200 E. Jim Bilton Blvd., St. George, SC 29477, as soon as possible should a hearing be required, for an Order Restraining Personal Representative. The grounds for this Application are as follows:

1. The Decedent was killed by her husband on April 14, 2017.

2. Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

3. By Order filed July 24, 2017, this Court approved Mr. Chandler's hiring of Rosen Hagood, LLC ("RH"), to "represent him in his capacity as Special Administrator of the Estate in connection with the investigation and pursuit of all litigation matters and claims related to the Estate."

4. RH has represented Mr. Chandler in the administration of the Estate since that time, including filing two lawsuits in October 2017: (1) a wrongful death action pending in Charleston County Court of Common Pleas; and (2) a Petition to Determine Heirs, which was brought pursuant to the "Slayer's Act" and is pending in Dorchester County Court of Common Pleas.

5. In August 2017, Decedent's purported Last Will and Testament, dated June 18, 2013, was filed with this Court.

6. It was not until October 30, 2017, that Michael C. Fox, who is named as a successor personal representative in the Will, filed a Petition for Formal Testacy and Appointment, seeking to have the Will admitted to probate and to have himself admitted as personal representative of the Estate.

7. A hearing on the Petition was held on August 13, 2018, and, by Order filed August 27, 2018, the Dorchester County Court of Common Pleas ordered that the Will be admitted to probate. A decision concerning the appointment of Mr. Fox as personal representative was taken under advisement.

8. Following the admission of the Will to probate, and with full knowledge of the fact that Mr. Fox was named as a successor personal representative of the Estate, this Court entered a Modified Order for the Appointment of a Special Administrator, dated August 27, 2018, which found that “[t]he continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent’s Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.” Modified Order attached as Exhibit 1.

9. On February 13, 2019, the Dorchester County Court of Common Pleas issued its Order concerning the appointment of Mr. Fox, ordering that Mr. Fox be appointed as personal representative.

10. The appointment of Mr. Fox terminated Mr. Chandler’s appointment as Special Administrator pursuant to S.C. Code Ann. § 62-3-618.

11. As a result of the termination of Mr. Chandler’s appointment, RH became a creditor of the Estate and, as such, pursuant to S.C. Code Ann. § 62-1-201(23), an “interested person.” RH Creditor’s Claim is attached as Exhibit 2.

12. RH is making this Application pursuant to S.C. Code Ann. § 62-3-607(a) because Mr. Fox’s appointment as personal representative unreasonably jeopardizes the interests of the Estate and those interested in it.

13. Mr. Fox has demonstrated on numerous occasions that his intentions do not align with, and run afoul of, the best interests of the Estate and the timely and efficient administration of the Estate. For example, on more than one occasion Mr. Fox has taken measures to frustrate the administration of the Estate and Mr. Chandler’s attempts to distribute Estate assets to its sole devisee, the Colucci Living Trust. A

description of these measures, as well as this Court's determination that "[Mr.] Fox and his counsel have taken measures to frustrate [Mr.] Chandler's distribution of Estate assets to the Trust" is contained in this Court's Order, filed on February 7, 2019, which denied Mr. Fox's petition seeking the removal of Mr. Chandler as special administrator. See Order, attached as Exhibit 3, p. 10.

14. In fact, this Court ordered that Mr. Fox pay the Estate the attorneys' fees and costs incurred in defending Mr. Fox's Petition for Removal of Special Administrator, presumably because of the Court's determination that he "failed to present to this Court any evidence or law in support of his arguments that cause exists to remove [Mr.] Chandler as Special Administrator." Order, p. 16. Additionally, the Court noted that, based on the presentation of the case, it was clear that the "intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate." Order (Ex. 3), pp. 16-17, fn. 6.

15. Additionally, the Estate is facing complicated tax issues which Mr. Fox is not fit and able to handle (largely due to the fact that he may bear some responsibility for those issues which may have detrimental impacts on the Estate). Some of those issues are described in this Court's Order, pp. 13-16 (Ex. 3).

16. As it pertains to the handling of the two pending lawsuits described *infra*, ¶ 4, Applicant has concerns that Mr. Fox's allegiance and long-time friendship with Ivo Colucci, the primary defendant in both actions, poses a conflict of interest and would interfere in his ability to pursue the highest and best recovery for the Estate. Mr. Fox was

deposed as a fact witness in both of these lawsuits on January 25, 2019, and testified that Mr. Colucci, who shot and killed the Decedent, was his "best friend."¹

17. To be sure, at this juncture in the administration of the Estate, nearly two years following Decedent's death, changing the fiduciary, regardless of who that replacement may be, would inevitably result in delay and waste, all to the detriment of the Estate. This Court has already determined the following:

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled.

Order (Ex. 3), p. 16.

18. Pursuant to S.C. Code Ann. § 62-3-607, Applicant requests that the Court restrain Mr. Fox, on a temporary basis until a hearing can be held, as general Personal Representative, from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607.

WHEREFORE, Applicant Elizabeth J. Palmer, on behalf of Rosen Hagood, LLC, requests that the Court restrain Michael C. Fox as general personal representative of the Estate of Doris Duane Colucci from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607, both temporarily and, following a hearing, indefinitely, and for such other and further relief as this Court may deem just and proper.

¹ Applicant has attempted to obtain a copy of the transcript of Mr. Fox's deposition but was informed that the court reporter would not release it as she is waiting for counsel for Mr. Fox to provide her with certain exhibits.

ROSEN HAGOOD, LLC



H. Brewton Hagood
Andrew D. Gowdown
Elizabeth J. Palmer
151 Meeting Street, Suite 400
Charleston, South Carolina 29401
(843) 577-6726

Charleston, South Carolina
February 13, 2019

PROBATE JUDGE
DORCHESTER COUNTY
JAN 24 PM 12:56

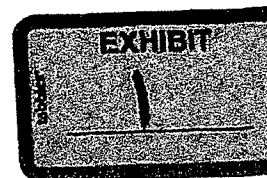
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE MATTER OF THE ESTATE)
OF DORIS DUANE COLUCCI,)
ALSO KNOWN AS DORIS D.)
COLUCCI)
IN THE PROBATE COURT)
CASE NO. 2017-ES-18-00294)
MODIFIED ORDER FOR THE)
APPOINTMENT OF A SPECIAL)
ADMINISTRATOR)

PROBATE JUDGE
DORCHESTER COUNTY
2019 FEB 13 PM 12:11
JUL 27 PM 12:16

This modification of the Probate Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator is in response to the Order dated August 27, 2018, of the Honorable Edgar Dickson of the First Judicial Circuit granting Summary Judgement for the Probate of the Last Will of Doris D. Colucci. Based on the Order probating the Last Will of Doris D. Colucci, the Probate Court makes the following modifications to its July 10, 2017 Consent Order for the Appointment of a Special Administrator:

1. The administration of the probate Estate of Doris D. Colucci (the "Decedent") shall proceed pursuant to the terms of the Last Will of Doris D. Colucci;
2. The sole devisee under the Last Will of Doris D. Colucci is the "Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto" and, therefore, all assets that will be distributable out of the Decedent's Estate shall be transferred to the then-serving Trustee of the Colucci Living Trust, unless otherwise ordered by this Court;
3. The Court has appointed Andrew W. Chandler, Esquire, as the Special Administrator for the Decedent's Estate;
4. Andrew W. Chandler has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court; and

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5. The continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.

NOW THEREFORE,

A. Andrew W. Chandler shall continue to serve as the Special Administrator of the Estate of Doris Duane Colucci, pursuant to the terms of the Last Will of Doris D. Colucci, the applicable terms of the Consent Order dated July 10, 2017, and the terms of this modified Order;

B. Andrew W. Chandler, as Special Administrator of Decedent's Estate, has retained the services of an accountant and attorneys with the prior express approval of the Court and may continue to retain such services as he determines necessary for the proper administration of the Decedent's Estate;

C. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci (as an heir of the Decedent's Estate, a beneficiary of the Colucci Living Trust, a joint owner with right of survivorship, and a designated beneficiary) pursuant to the Slayer's Act, Andrew W. Chandler, as Special Conservator, shall hold any funds or property to which Ivo Francesco Colucci may otherwise be entitled as a joint owner with right of survivorship or a designated beneficiary, if the Slayer's Act does not apply, in a separate account, unless otherwise ordered by this Court;

D. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, as Special Administrator, shall continue to have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code

Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto.

E. This Order is subject to such further orders of the Dorchester County Probate Court or the First Judicial Circuit Court as may be or shall become necessary for the custody, control, and administration of the Estate of Doris Colucci.

AND IT IS SO ORDERED.

Mary Q. Blunt
The Honorable Mary Q. Blunt
Dorchester County Probate Court

27th day of August, 2018
St. George, South Carolina

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:56

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF DORCHESTER	)	CASE NO: 2017-ES-18-00294
	)	
IN RE: THE ESTATE OF DORIS	)	
DUANE COLUCCI, AKA DORIS D.	)	
COLUCCI,	)	
	)	
MICHAEL C. FOX, NAMED PERSONAL	)	
REPRESENTATIVE IN THE LAST WILL	)	
OF DORIS COLUCCI,	)	
	)	
Petitioner,	)	ORDER
	)	
v.	)	
	)	
ANDREW W. CHANDLER, ESQUIRE,	)	
IN HIS CAPACITY AS SPECIAL	)	
ADMINISTRATOR OF THE ESTATE OF	)	
DORIS DUANE COLUCCI, MICHAEL C.	)	
FOX, SUCCESSOR TRUSTEE OF THE	)	
COLUCCI LIVING TRUST, DATED	)	
FEBRUARY 24, 2005, IVO FRANCESCO	)	
COLUCCI, MICHAEL FREDERICK	)	
ANTONIO COLUCCI, JOHN MARTIN	)	
ANTONIO, HENRY BURKES, AND	)	
RICHARD M. HYMAN, JR.,	)	
	)	
Respondents.	)	

PROBATE JUDGE
DORCHESTER COUNTY
2019 FEB -7 PM 3:00

FILED
JAN 24 2020
DORCHESTER COUNTY

This matter came before the Court on Petitioner Michael Fox's Petition for Removal of Special Administrator pursuant to S.C. Code Ann. § 62-3-611. For the reasons set forth herein, and after considering the evidence presented, law, and arguments of counsel, this Court finds that the Petition should be denied and that certain costs and fees should be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111.

PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Respondent Andrew W. Chandler, Esquire, was appointed Special Administrator of the

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Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will nominates Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Petitioner Fox as a successor trustee. On October 27, 2017, Petitioner Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Petitioner Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. To date, no decision has been rendered by the Circuit Court on Petitioner Fox's Petition for Appointment as personal representative. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Respondent Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

On January 4, 2019, Petitioner Fox filed a Petition for Removal of Special Administrator¹ as well as a Motion for Removal, seeking to remove the Petition for Removal of Special Administrator to the Dorchester Court of Common Pleas. By Order filed on January 8, 2019, this Court denied the Motion for Removal on the basis that a petition seeking removal of a Special Administrator is not removable to the circuit court as a matter of right pursuant to S.C. Code Ann. § 61-1-302.

Also on January 8, 2019, Respondent Chandler filed a Motion for Emergency Hearing, requesting that Petitioner Fox's Petition for Removal of Special Administrator be scheduled for an emergency hearing and that the Estate's costs and fees incurred in responding to, and defending, Petitioner Fox's Petition, be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111. The request for an emergency hearing was granted, and that hearing was held on January 9, 2019. In attendance were: Gordon Garrett, Esquire, and Ryan Love, Esquire, counsel for Petitioner Fox; Respondent Chandler with his attorney, Elizabeth Palmer, Esquire; David Haller, Esquire, counsel for Christa M. Yantis, as Conservator for Ivo Colucci, and Alice Norton, as Guardian for Ivo Colucci; Brandt Shelbourne, Esquire, counsel for Robert Colucci; Eduardo Curry, Esquire, counsel for Stefan Colucci; and Angus Lawton, Esquire, counsel for Michael Antonio and Michael Colucci.

APPLICABLE LAW

A personal representative, which is defined to include a special administrator, is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703; S.C. Code Ann. §

¹ While titled "Petition for Removal of Special Administrator," the Petition attaches a Motion to Restrain Special Administrator, previously filed by Petitioner Fox in the Circuit Court on November 26, 2018, and requests that this Court grant the relief sought therein. As such, before this Court is both Petitioner Fox's request that Respondent Chandler be removed and also that he be restrained.

62-1-201. A special administrator must "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession" and has a duty "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. §§ 62-3-703(a), 62-3-709. A special administrator "shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate." S.C. Code Ann. § 62-3-703(u).

"A person interested in the estate may petition for removal of a [special administrator] for cause at any time." S.C. Code Ann. § 62-3-611(a). "Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a [special administrator] or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the [special administrator] has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office." S.C. Code Ann. § 62-3-611(b). The power to remove a special administrator "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

FINDINGS OF FACT & CONCLUSIONS OF LAW

I. S.C. Code Ann. § 62-3-615 does not require the removal of Respondent Chandler.

Petitioner Fox contends that S.C. Code Ann. § 62-3-615 requires that he, or one of the other individuals named as successor personal representatives in Decedent's Will, be appointed as special administrator and, therefore, Respondent Chandler's appointment must be terminated. That section provides as follows:

§ 62-3-615. Special administrator; who may be appointed.

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

This section is inapplicable to the matter before the Court and provides no basis for the removal of Respondent Chandler.² Contrary to the assertion of Petitioner Fox, Respondent Chandler was not appointed as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 but was instead appointed pursuant to S.C. Code Ann. § 62-3-617. See Consent Order for the Appointment of a Special Administrator at 4, July 10, 2017. The statute cited by Petitioner Fox relates to a temporary appointment process for a special administrator. However, pursuant to this Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator, Respondent Chandler was appointed pursuant to a formal proceeding that grants a special administrator the full duties and responsibilities

² The Court would further note that, contrary to Petitioner Fox's argument, this section, even when applicable, does not provide for the automatic appointment of a nominated personal representative as special administrator. Rather, just as with the appointment of a personal representative, there must first be a determination by a court of competent jurisdiction that the individual is available and qualified.

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as a personal representative. Therefore, Petitioner Fox's request that the Court remove Respondent Chandler as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 is inappropriate and contrary to the current posture of this case.

II. The Special Administrator's fees, and those of his attorney, are not excessive and provide no basis for his removal as Special Administrator.

Petitioner Fox contends that the fees paid from the Estate to Respondent Chandler and his counsel for matters related to the administration of the Estate, as well as the contingency fee of 40% related to the wrongful death lawsuit that is pending, are excessive but he has failed to present evidence to substantiate this claim. Rather, Petitioner Fox makes the assumption that the fees paid to Respondent Chandler and his counsel, totaling approximately \$165,000.00 as shown on the last Accounting filed by Respondent Chandler, are improper.³ The Court disagrees and would further note that Respondent Chandler and his counsel are compensated for their work in this matter at an hourly rate of \$200.00, which is substantially less than their standard hourly rates. Further, this Court has reviewed the detailed invoices submitted by Respondent Chandler, and on each occasion, has found them to be appropriate.

The fees collected by Respondent Chandler and his counsel in the amount of \$165,849.91 that are challenged by Petitioner Fox are approximately 5.7% of the value of the Estate at the time of Decedent's death (\$2,865,316.20). The statutorily allowed commission for personal representatives is 5% of the appraised value of the personal

³ That Petitioner Fox made this claim of excessive fees without support is evidenced by the following statement in his Petition: "The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting the records." The Court finds it concerning that Petitioner Fox would accuse two members of the Bar of excessive billing without having any knowledge as to the nature and extent of work performed by Respondent Chandler and his counsel.

property of the probate estate (plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or court order). S.C. Code Ann. § 62-3-719. Fees incurred by a personal representative's attorney are generally paid out of an estate in addition to those paid to the personal representative. As such, just on its face, the amount paid here to Respondent Chandler and his counsel is reasonable given that, jointly, it is just slightly above that which is customarily allowed solely for the personal representative. Moreover, the Court has reviewed the reasonableness of these fees taking into consideration the novel and complex nature of the legal issues that have been addressed by Respondent Chandler and his counsel, the nature and quality of the work that has been performed, and the benefit that the Estate has derived from that work and confirms and concludes that the fees are reasonable and appropriate.

Likewise, Petitioner Fox's assertion that the contingency fee agreement between the Estate and Rosen, Rosen & Hagood, LLC ("RRH"), for the prosecution of the pending wrongful death lawsuit is excessive is without merit. Petitioner Fox contends that the contingency fee agreement, which provides for legal fees of 40% of the recovery from the wrongful death lawsuit, and which was previously approved by this Court, is "lavish" and "extraordinary." Petitioner Fox failed to present any argument or evidence substantiating his claim that the contingency fee agreement is unreasonable, and the Court takes notice that the contingency fee agreement is typical of those in other personal injury actions. The Court finds no basis on which to revisit its prior determinations that this agreement and the hiring of RRH to prosecute the wrongful death lawsuit are appropriate.

In questioning the fees RRH are receiving to serve as attorney for Respondent Chandler in matters related to the administration of the Estate as well as the contingency

fee arrangement related to the pending wrongful death lawsuit, Petitioner Fox tried to establish that the law firm was double billing. Counsel for Respondent Chandler explained on the record RRH's billing practices with this case and how they actually benefit the Estate:

Related to the fees issue, there are these allegations, I think, of double dipping. This arises out of the fact that my law firm is handling both the wrongful death action, obviously on contingency basis because it's a wrongful death, and also representing Mr. Chandler as his attorney as he administers the estate. Now, part of the administration of the estate includes the Slayer action which is currently pending. It would not be unusual for Mr. Chandler or for this Court to appoint two separate law firms to represent [him], one to do the wrongful death and one to represent Mr. Chandler in the administration. If that was the case here, the [estate] would be charged for the discovery that's being done in these cases. So the Slayer case and the wrongful death, we have effectively combined or consolidated them for the purposes of discovery, because the discovery is very similar in the two of them. We have not charged one penny to the estate for any of the discovery. None of the expert witness fees, none of the court reporter fees. . . . [T]he fact that my firm is representing both has benefited the estate.

Hearing Transcript, pp. 49-50.

Therefore, by allowing RRH to serve the dual role as attorney for Respondent Chandler in his administration of the Estate and pursuing the Slayer case as well as representing him in the pending wrongful death case, the Estate is receiving a substantial benefit. The Estate is not having to pay for any attorney's fees or costs associated with the discovery RRH has done in pursuit of the Slayer case. RRH will only be compensated for their time and the costs they have incurred from the settlement proceeds of the wrongful death action. If the Court had allowed Respondent Chandler to engage separate attorneys to handle the slayer cases and the wrongful death, the Estate would have been liable to pay the attorney handling the Slayer case for their time and costs incurred in completing the

discovery for that case in addition to what RRH will already receive as compensation from the wrongful death action.

Based on the foregoing, the Court finds that the fees paid to Respondent Chandler and his counsel are reasonable, the rate at which they are being compensated is reasonable, and that the work performed by Respondent Chandler and his counsel, which has involved novel and complex legal issues, has directly benefited the Estate.

III. The Special Administrator has appropriately collected and distributed the Estate's assets.

As a Special Administrator with all the powers of a general personal representative, Respondent Chandler is required to settle and distribute the Estate as expeditiously and efficiently as is consistent with the best interests of the estate. S.C. Code Ann. § 62-3-703. Petitioner Fox contends that Respondent Chandler has "unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci." Petitioner Fox also takes issue with the manner in which Respondent Chandler has effectuated distributions to the Trust, stating: "On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt."

These claims are without merit and provide no basis for the removal of Respondent Chandler. Petitioner Fox has failed to present evidence that there has been any unreasonable delay in distributing the Estate's assets to the Trust. The Trust, of which Petitioner Fox is the trustee, did not become the devisee of the Estate until the Will was probated on August 27, 2018. Given the circumstances surrounding the administration of this Estate, including, but not limited to, ongoing litigation and outstanding tax issues and

potential tax liability, the Court finds that Respondent Chandler's actions with regard to the distribution of assets to the Trust have been proper and appropriate.

The Court further takes notice that Petitioner Fox and his counsel have taken measures to frustrate Respondent Chandler's distribution of Estate assets to the Trust. On November 19, 2018, counsel for Petitioner Fox refused to accept certain assets that the Estate distributed to the Trust, assets which were listed on the Proposal for Distribution filed by Respondent Chandler on or about September 24, 2018, and served on counsel for Petitioner Fox. Petitioner Fox and his counsel also attempted to hinder the sale of a ring by the Special Administrator. The Special Administrator had obtained an Order from this Court approving the sale of the ring to create liquid assets in the Estate. Petitioner Fox filed a Application to Restrain the Special Administrator from selling the ring, and then withdrew the Application. Additionally, while Petitioner Fox takes issue with the lack of cash distributed to the Trust from the Estate, Petitioner Fox was on notice that Respondent Chandler filed a second Proposal for Distribution on November 20, 2018, proposing the distribution of \$10,000.00 to the Trust. A hearing on that Proposal for Distribution was initially scheduled for January 9, 2019. However, Petitioner Fox filed his Petition for Removal of Special Administrator with the stated intention of postponing the hearing on the Proposal for Distribution, which would result in the distribution of cash to the Trust being postponed.

Petitioner Fox also states that "complaints have been raised to [his] counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance." Petitioner Fox failed to present any evidence supporting this claim and the Court finds that this is not a basis for Respondent Chandler's removal.

IV. The Special Administrator has not breached any duties owed to the Colucci Living Trust concerning the provision of information or the reimbursement of the Trustee's costs.

Petitioner Fox claims that Respondent Chandler has failed to provide him with information, stating that "[o]utside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisement and the estate account." The documents to which Petitioner Fox refers are attached to his Petition, namely, the Inventory and Appraisement which was filed in April 2018 and the Accounting which was filed in July 2018. The Trust did not become the devisee of the Estate until August 27, 2018. Prior to that time, Respondent Chandler had no duty to provide Petitioner Fox with any information given that Petitioner Fox neglected to file a Demand for Notice. Furthermore, the Estate file is a public record and was available to Petitioner Fox to review anytime. Petitioner Fox has failed to substantiate his claim that Respondent Chandler failed to provide him with information that Respondent Chandler had a duty to provide to him.

Petitioner Fox also appears to argue that Respondent Chandler acted improperly by not reimbursing him, as Trustee of the Colucci Living Trust, for "his costs to probate the [Decedent's] Last Will." The Court finds no impropriety on the part of Respondent Chandler and Petitioner Fox failed to present any authority to support his contention that Respondent Chandler is required to reimburse such costs. The Court further takes notice that Petitioner Fox has not submitted any request for payment to Respondent Chandler. The Court makes no determination as to whether those costs are properly reimbursed by the Estate, but only notes that Petitioner Fox had the opportunity to submit a claim for payment pursuant to the procedure set forth in S.C. Code Ann. § 62-3-804.

V. The Special Administrator's use of Estate funds to object to the appointment of Petitioner Fox as personal representative of the Estate is not grounds for his removal.

After being served with Petitioner Fox's Petition for Formal Testacy and Appointment, which was removed to Circuit Court, Respondent Chandler submitted an Answer and Objection and, at a hearing, argued that the appointment of Petitioner Fox would not be in the best interests of the Estate. Petitioner Fox argues in his Petition that Respondent Chandler "has acted unreasonably and against the interest[s] of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci." The Court disagrees.

As Special Administrator, Respondent Chandler is required to use the authority conferred upon him by the Probate Code for the best interests of the successors to the Estate, which, in this case, is the Trust. S.C. Code Ann. § 62-3-703. He is also required to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." S.C. Code Ann. § 62-3-709.

Respondent Chandler testified at length as to the basis for his objection to Petitioner Fox's appointment as personal representative of the Estate.

Q: What was your basis for Mr. Fox to be disqualified?

A: Let me back up and say, when you filed formal probate, it was removed at your request. I was served. I answered, as is required. I'd have to review my answer. And I'm happy, if you want to hand me my answers. But as I recall, by that point, because it had been several months, but at that point we were fully engaged in the administration of this estate. Which is not a simple estate. And so there's -- there has been or there is a vast array of litigation. But I'd have to review my answer. But as I recall, I believe Mr. Fox, or anyone else, frankly, nothing necessarily to do with Mr. Fox, it would be very inefficient for the court to appoint someone at that point as the personal representative because we'd already begun the process and were involved in a variety of pieces of litigation. It's, again, a complex estate. It had lots of moving parts. And the time it takes to be up to speed

on all of those issues is not insignificant. And so at some point, it is not in the best interest of the beneficiaries.

... It would be very difficult and would be costly for anyone else at that point to have been appointed, in my view. At the end of the day it's for the court to determine who the fiduciary is. It's not me who decides that. It's for the court to determine who is qualified, who is appropriate. In simple cases, perhaps it's easiest just to follow the will. This is not a simple case, Mr. Garrett. This is a very complex case.

On top of that, Mr. Fox, it just so happens, who had been a longtime friend of the Coluccis, had done their bookkeeping and tax returns for years, decades perhaps, would likely have been a witness. It turns out he is a witness. And he has been deposed and will be deposed. So as I predict, he potentially had a conflict. That may not be true of the next person in line. Although, Henry Burkes is also a witness to this killing. And that may not have been true of the next person in line. But again, it is a complex estate, it is costly to transfer it to someone else.

However, as special administrator, and being involved with a very complex case, which thankfully a lot of it has been resolved, but we still have ongoing litigation, it was just extremely inefficient and foolish, in my opinion, to transfer it to anyone else.

Hearing Transcript, pp. 16-19.

The estate is so complex that Petitioner Fox's attorney, Gordon Garrett, offered to hire Mr. Chandler as an expert if Mr. Chandler would agree to allow Petitioner Fox to serve as the Personal Representative.

Q. Did I offer to retain you as an expert to work for the Estate of Doris Colucci prior to the hearing in Court of Common Pleas in the summer of 2017⁴?

A. Did you ask me to?

Q. Serve as an expert if Mr. Fox was appointed as the personal representative?

A. Let me tell you what I recall from that conversation which occurred outside of Judge Dickson's courtroom. What I recall is, you said, well, if Mr. Fox is appointed – or if you agreed to have Mr. Fox appointed – which again I'm telling you I couldn't have agreed to that because that's not my role – but if Mr. Fox were to be appointed, you know, we could hire you, Andrew, and Ms. Palmer, to continue to do what you do. But in the meantime, we'll also be in there, and then whatever you would do.

And from my perspective, that is in no way beneficial to the beneficiaries

⁴ The hearing was in the summer of 2018 not 2017.

of this estate, which now it turns out that the designee, Mr. Fox, has accepted trusteeship. That is in no way beneficial to those beneficiaries, whoever they may have been, to go from the fees that we are charging, which by the way are a fraction of my regular billing rate, to add two more people and add their rate. I mean, how is that beneficial or helpful to the estate? No way do I think that's appropriate. And I think I told you such. But I don't know that I realized that it was a job offer.

Hearing Transcript, pp. 21-22.

The Court has a voluminous Estate file on this matter with over one thousand documents, and a sister guardianship and conservatorship file which is equally voluminous. The Estate file is rife with litigation and complex issues. On file with the Court are a large web of business interests involved in litigation and negotiation including I&M Colucci, HID LLC, and Terrivo Enterprises LLC. All of these businesses held real property that have complicating factors. The Estate also has multiple parcels of real property in multiple jurisdictions and multiple states with various ownership interests. There is litigation that was in place before Mrs. Colucci's death and after her death. For example, there is litigation involving the Slayer case, wrongful death, I&M Colucci, and Terrivo Enterprises LLC. Numerous attorneys are involved in the case representing various parties and interests which further complicates the Estate.

Additionally, there are ongoing and significant tax issues that the Special Administrator is attempting to resolve. For example, Mr. Chandler testified that Petitioner Fox, who had been the Colucci's long-time bookkeeper and tax preparer, had filed a tax return that is "patently wrong on its face ... that works a tremendous hardship on the estate and the beneficiaries of the estate." Hearing Transcript p. 40. Mr. Chandler testified at length about the complicating tax issues facing the Estate.

Q. Are you aware that Ms. Palmer requested Michael Fox to prepare a Schedule K for an LLC called HID?

Q. [Chandler] What do you mean by "Schedule K"?

A. [Garrett] A partnership return.

Q. Okay. So that's a different number. But yes, I am aware of that.

Q. So you believe that Mr. Fox was competent to prepare that document?

A. What I know is that HID is managed and controlled by Henry Burkes, whose name we've heard before. And he is the manager of that company. He hired Mr. Fox to prepare tax returns for that company. Ms. Doris Colucci owned 30 percent in that company. That's it. She doesn't control anything in that company. Mr. Burkes controls -- he prepares tax returns, not me. In fact, Mr. Fox prepared a tax return which is patently wrong on its face, and we simply asked him to correct the K1's, which by the way, if they're not corrected -- and I'll also note, Mr. Garrett, that Mr. Fox replied to your email saying he'll be glad to amend them. And then you in December decided, nevermind, we're not going to do that. But that works at tremendous hardship on the estate and the beneficiaries of the estate. Because if Mr. Fox does not amend that return, or Mr. Burkes does not amend that return properly and make a sub 4 election on the return and produce a K1 that is accurate, the estate of Doris Colucci would potentially lose a basic step up in its assets which negatively impacts the beneficiaries of that estate. So yes, I'm aware of that.

Q. But you're also a member of HID?

A. I am. Well, I'm not, but the estate is.

Q. The estate is. And you're capable of preparing the proper tax [return]?

A. I'm not qualified. I don't have the books and the things that are required to prepare returns, Mr. Garrett. Mr. Burkes has those items. He hires who he wants to prepare the returns. If he hired Mr. Fox, that's fine. If he thinks that's the proper person, great. But the return is not properly prepared. And it was filed improperly. For example, he listed [I&D], which is an accommodation party. It does not have an EIN. It is not a taxpayer. He filed that return on the IRS. That is absolutely an improperly filed return. It will be pulled. Mr. Colucci and Doris Colucci's estate are going to have issues because of that, because you can't file a return without an EIN. And I would think Mr. Fox would know that.⁵

Hearing Transcript pp. 39-41.

⁵ Mr. Chandler is a Certified Specialist in Estate Planning and has an L.L.M. in Taxation.

MR
2/1/19

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled. Therefore, the Court finds no impropriety in Respondent Chandler's actions in objecting to the appointment of Petitioner Fox as personal representative of the Estate. Respondent Chandler is required to take all steps to protect the Estate and preserve its assets, and the Court is satisfied that his objection was based on a valid concern that the interruption of his administration of the Estate would not be in the best interests of the Estate or the Trust, its sole devisee, as it would result in unnecessary delay and expense.

Petitioner Fox also argues that, "[h]ad the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns." The Court is aware of no legal duty on the part of Respondent Chandler to take this action, nor did Petitioner Fox present any authority to support his contention that such a duty exists.

VI. The award of costs and expenses against Petitioner Fox is appropriate.

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111. Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.⁶

⁶ Rule 11 of the South Carolina Rules of Civil Procedures states that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion or other paper;

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2/7/19

The Court finds that justice and equity require that Petitioner Fox pay the Estate's costs and expenses, including reasonable attorney's fees, incurred in responding to his Petition to Remove Special Administrator. Respondent Chandler and his counsel have submitted Affidavits of Fees and Costs which this Court has considered and finds to be appropriate.

IT IS HEREBY ORDERED that Petitioner Fox's Petition for Removal of Special Administrator is **DENIED**; and

IT IS FURTHER ORDERED that Petitioner Fox, pursuant to S.C. Code Ann. § 62-1-111, shall pay costs and expenses, including reasonable attorney's fees, incurred by the Estate in responding to the Petition to Remove Special Administrator in the amount of \$10,882.96.

AND IT IS SO ORDERED!

Mary Blunt
The Honorable Mary Q. Blunt
Dorchester County Probate Court

February 7, 2019
St. George, South Carolina

that to the best of his knowledge, information and belief there is good grounds to support it; and that it is not interposed for delay." Based on Attorney Garrett's presentation of the case, it is clear that his intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate. Further, he failed to present any evidence to show that he had good grounds to support his Petition.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

IN THE PROBATE COURT
PROBATE JUDGE
DORCHESTER COUNTY

STATEMENT OF CREDITOR'S CLAIM

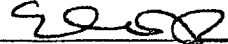
CASE NUMBER: 2017 ES 18 00294

2020 JAN 24 PM 12: 56

Decedent's Date of Death (if known): April 14, 2017

Decedent's Last Mailing Address: c/o Andrew W. Chandler, 115 Church Street, Charleston, SC 29401

Creditor:	Rosen Hagood, LLC
Address:	P.O. Box 893
	Charleston, SC 29402
Telephone:	(843) 577-6726
Email:	epalmer@rrhlawfirm.com
Original Creditor:	n/a
Address (if different from above)	n/a
Claim Amount Due:	\$6,301.72
Account Number:	9719-00M
Other Reference Number:	n/a
Basis of claim (Ex: Contract, Services Rendered for decedent, etc):	Legal Services Rendered
Date claim will become due (if not already due)	Due Now
Nature of uncertainty as to the claim, if any (i.e. contingent claim, amount of claim, due date):	n/a
Description of security as to the claim, if any (Ex: Collateral for the debt)	n/a

Signature: 
Name: Elizabeth J. Palmer, Esq.
Title: Creditor Representative
Date: 2/13/19

INSTRUCTIONS: Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim (FORM 325) **MUST** be filed once claim is resolved.

FORM #371ES (1/2016)
62-3-104, 62-3-803, 62-3-804, 62-3-806



PROBATE JUDGE
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
2020 JAN 24 PM 12:56

COUNTY OF DORCHESTER) CASE NO: 2017-ES-18-00294

IN RE: THE ESTATE OF DORIS)
DUANE COLUCCI, AKA DORIS D.)
COLUCCI,)

ELIZABETH J. PALMER, ESQUIRE, ON)
BEHALF OF ROSEN HAGOOD, LLC,)

Applicant,)

v.)

MICHAEL C. FOX, IN HIS CAPACITY AS)
PERSONAL REPRESENTATIVE OF THE)
ESTATE OF DORIS DUANE COLUCCI,)
MICHAEL C. FOX, IN HIS CAPACITY)
AS SUCCESSOR TRUSTEE OF THE)
COLUCCI LIVING TRUST, DATED)
FEBRUARY 24, 2005, IVO FRANCESCO)
COLUCCI, MICHAEL FREDERICK)
ANTONIO COLUCCI, JOHN MARTIN)
ANTONIO, HENRY BURKES, AND)
RICHARD M. HYMAN, JR.,)

Respondents.)

**EMERGENCY APPLICATION
FOR APPOINTMENT OF
TEMPORARY SPECIAL
ADMINISTRATOR**

PROBATE JUDGE
DORCHESTER COUNTY
2019 DEC 13 PM 12:12

TO: ATTORNEY FOR RESPONDENT MICHAEL C. FOX

PLEASE TAKE NOTICE that Applicant Elizabeth J. Palmer, Esquire, on behalf of Rosen Hagood, LLC, will move before the Presiding Judge of the Probate Court for the First Judicial Circuit at the Dorchester County Probate Court at 5200 E. Jim Bilton Blvd., St. George, SC 29477, as soon as possible should a hearing be required, for an Order appointing Andrew W. Chandler, Esquire, as Temporary Special Administrator of the Estate of Doris Duane Colucci ("Estate"). The grounds for this Application are as follows:

1. The Decedent was killed by her husband on April 14, 2017.
2. Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.
3. By Order filed July 24, 2017, this Court approved Mr. Chandler's hiring of Rosen Hagood, LLC ("RH"), to "represent him in his capacity as Special Administrator of the Estate in connection with the investigation and pursuit of all litigation matters and claims related to the Estate."
4. RH has represented Mr. Chandler in the administration of the Estate since that time, including filing two lawsuits in October 2017: (1) a wrongful death action pending in Charleston County Court of Common Pleas; and (2) a Petition to Determine Heirs, which was brought pursuant to the "Slayer's Act" and is pending in Dorchester County Court of Common Pleas.
5. In August 2017, Decedent's purported Last Will and Testament, dated June 18, 2013, was filed with this Court.
6. It was not until October 30, 2017, that Michael C. Fox, who is named as a successor personal representative in the Will, filed a Petition for Formal Testacy and Appointment, seeking to have the Will admitted to probate and to have himself admitted as personal representative of the Estate.
7. A hearing on the Petition was held on August 13, 2018, and, by Order filed August 27, 2018, the Dorchester County Court of Common Pleas ordered that the Will be admitted to probate. A decision concerning the appointment of Mr. Fox as personal representative was taken under advisement.

8. Following the admission of the Will to probate, and with full knowledge of the fact that Mr. Fox was named as a successor personal representative of the Estate, this Court entered a Modified Order for the Appointment of a Special Administrator, dated August 27, 2018, which found that “[t]he continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent’s Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.” Modified Order attached as Exhibit 1.

9. On February 13, 2019, the Dorchester County Court of Common Pleas issued its Order concerning the appointment of Mr. Fox, ordering that Mr. Fox be appointed as personal representative.

10. The appointment of Mr. Fox terminated Mr. Chandler’s appointment as Special Administrator pursuant to S.C. Code Ann. § 62-3-618.

11. As a result of the termination of Mr. Chandler’s appointment, RH became a creditor of the Estate and, as such, pursuant to S.C. Code Ann. § 62-1-201(23), an “interested person.” RH Creditor’s Claim is attached as Exhibit 2.

12. RH is making this Application in order to protect the Estate, prevent waste, and ensure that it continues to be administered efficiently and effectively.

13. Mr. Fox has demonstrated on numerous occasions that his intentions do not align with, and run afoul of, the best interests of the Estate and the timely and efficient administration of the Estate. For example, on more than one occasion Mr. Fox has taken measures to frustrate the administration of the Estate and Mr. Chandler’s attempts to distribute Estate assets to its sole devisee, the Colucci Living Trust. A description of these measures, as well as this Court’s determination that “[Mr.] Fox and

his counsel have taken measures to frustrate [Mr.] Chandler's distribution of Estate assets to the Trust" is contained in this Court's Order, filed on February 7, 2019, which denied Mr. Fox's petition seeking the removal of Mr. Chandler as special administrator. See Order, attached as Exhibit 3, p. 10.

14. In fact, this Court ordered that Mr. Fox pay the Estate the attorneys' fees and costs incurred in defending Mr. Fox's Petition for Removal of Special Administrator, presumably because of the Court's determination that he "failed to present to this Court any evidence or law in support of his arguments that cause exists to remove [Mr.] Chandler as Special Administrator." Order, p. 16. Additionally, the Court noted that, based on the presentation of the case, it was clear that the "intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate." Order (Ex. 3), pp. 16-17, fn. 6.

15. At this juncture in the administration of the Estate, nearly two years following Decedent's death, changing the fiduciary, regardless of who that replacement may be, would inevitably result in delay and waste, all to the detriment of the Estate. This Court has already determined the following:

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled.

Order (Ex. 3), p. 16.

16. The ongoing litigation matters, business matters, and tax matters in this Estate require a fiduciary familiar with the issues, who lacks any actual or potential conflicts of interest. Mr. Chandler has extensive experience in probate matters, is

recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court. The appointment and service of Mr. Chandler as the Temporary Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets. The best interests of the Estate of Doris D. Colucci are protected by the appointment of Andrew W. Chandler as Temporary Special Administrator.

17. Mr. Chandler has demonstrated beyond question that he is capable of administering this complex Estate and that he has done so in a competent and efficient manner.

18. Pursuant to S.C. Code Ann. § 62-3-614(1), Applicant requests that Mr. Chandler be appointed as the temporary special administrator of the Estate and be ordered to take appropriate actions involving estate assets with all of the powers of a general personal representative.

WHEREFORE, Applicant Elizabeth J. Palmer, on behalf of Rosen Hagood, LLC, moves the Court to appoint Andrew W. Chandler, Esquire, as the temporary special administrator of the Estate of Doris Duane Colucci on an emergency basis and for such other and further relief as this Court may deem just and proper.

ROSEN HAGOOD, LLC



H. Brewton Hagood
Andrew D. Gowdown
Elizabeth J. Palmer
151 Meeting Street, Suite 400
Charleston, South Carolina 29401

(843) 577-6726

Charleston, South Carolina
February 13, 2019

PROBATE
DORCHESTER COUNTY

PROBATE JUDGE
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE MATTER OF THE ESTATE)
OF DORIS DUANE COLUCCI,)
ALSO KNOWN AS DORIS D.)
COLUCCI)

IN THE PROBATE COURT, 2020 JAN 24 PM 12: 57

CASE NO. 2017-ES-18-00294

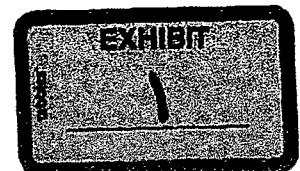
MODIFIED ORDER FOR THE
APPOINTMENT OF A SPECIAL
ADMINISTRATOR

PROBATE JUDGE
DORCHESTER COUNTY
21 AUG 27 PM 12: 16

This modification of the Probate Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator is in response to the Order dated August 27, 2018, of the Honorable Edgar Dickson of the First Judicial Circuit granting Summary Judgement for the Probate of the Last Will of Doris D. Colucci. Based on the Order probating the Last Will of Doris D. Colucci, the Probate Court makes the following modifications to its July 10, 2017 Consent Order for the Appointment of a Special Administrator:

1. The administration of the probate Estate of Doris D. Colucci (the "Decedent") shall proceed pursuant to the terms of the Last Will of Doris D. Colucci;
2. The sole devisee under the Last Will of Doris D. Colucci is the "Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto" and, therefore, all assets that will be distributable out of the Decedent's Estate shall be transferred to the then-serving Trustee of the Colucci Living Trust, unless otherwise ordered by this Court;
3. The Court has appointed Andrew W. Chandler, Esquire, as the Special Administrator for the Decedent's Estate;
4. Andrew W. Chandler has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court; and

ms
8/27/18



5. The continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets.

NOW THEREFORE,

A. Andrew W. Chandler shall continue to serve as the Special Administrator of the Estate of Doris Duane Colucci, pursuant to the terms of the Last Will of Doris D. Colucci, the applicable terms of the Consent Order dated July 10, 2017, and the terms of this modified Order;

B. Andrew W. Chandler, as Special Administrator of Decedent's Estate, has retained the services of an accountant and attorneys with the prior express approval of the Court and may continue to retain such services as he determines necessary for the proper administration of the Decedent's Estate;

C. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci (as an heir of the Decedent's Estate, a beneficiary of the Colucci Living Trust, a joint owner with right of survivorship, and a designated beneficiary) pursuant to the Slayer's Act, Andrew W. Chandler, as Special Conservator, shall hold any funds or property to which Ivo Francesco Colucci may otherwise be entitled as a joint owner with right of survivorship or a designated beneficiary, if the Slayer's Act does not apply, in a separate account, unless otherwise ordered by this Court;

D. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, as Special Administrator, shall continue to have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code

Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto.

E. This Order is subject to such further orders of the Dorchester County Probate Court or the First Judicial Circuit Court as may be or shall become necessary for the custody, control, and administration of the Estate of Doris Colucci.

AND IT IS SO ORDERED.

Mary Q. Blunt
The Honorable Mary Q. Blunt
Dorchester County Probate Court

27th day of August, 2018
St. George, South Carolina

2020 JAN 24 PM 12: 57

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF DORCHESTER) CASE NO: 2017-ES-18-00294
IN RE: THE ESTATE OF DORIS)
DUANE COLUCCI, AKA DORIS D.)
COLUCCI,)
MICHAEL C. FOX, NAMED PERSONAL)
REPRESENTATIVE IN THE LAST WILL)
OF DORIS COLUCCI,)
Petitioner,)
v.)
ANDREW W. CHANDLER, ESQUIRE,)
IN HIS CAPACITY AS SPECIAL)
ADMINISTRATOR OF THE ESTATE OF)
DORIS DUANE COLUCCI, MICHAEL C.)
FOX, SUCCESSOR TRUSTEE OF THE)
COLUCCI LIVING TRUST, DATED)
FEBRUARY 24, 2005, IVO FRANCESCO)
COLUCCI, MICHAEL FREDERICK)
ANTONIO COLUCCI, JOHN MARTIN)
ANTONIO, HENRY BURKES, AND)
RICHARD M. HYMAN, JR.,)
Respondents.)

PROBATE JUDGE
DORCHESTER COUNTY
2019 FEB -7 PM 3: 00

ORDER

This matter came before the Court on Petitioner Michael Fox's Petition for Removal of Special Administrator pursuant to S.C. Code Ann. § 62-3-611. For the reasons set forth herein, and after considering the evidence presented, law, and arguments of counsel, this Court finds that the Petition should be denied and that certain costs and fees should be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111.

PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Respondent Andrew W. Chandler, Esquire, was appointed Special Administrator of the



Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will nominates Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Petitioner Fox as a successor trustee. On October 27, 2017, Petitioner Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Petitioner Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. To date, no decision has been rendered by the Circuit Court on Petitioner Fox's Petition for Appointment as personal representative. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Respondent Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

On January 4, 2019, Petitioner Fox filed a Petition for Removal of Special Administrator¹ as well as a Motion for Removal, seeking to remove the Petition for Removal of Special Administrator to the Dorchester Court of Common Pleas. By Order filed on January 8, 2019, this Court denied the Motion for Removal on the basis that a petition seeking removal of a Special Administrator is not removable to the circuit court as a matter of right pursuant to S.C. Code Ann. § 61-1-302.

Also on January 8, 2019, Respondent Chandler filed a Motion for Emergency Hearing, requesting that Petitioner Fox's Petition for Removal of Special Administrator be scheduled for an emergency hearing and that the Estate's costs and fees incurred in responding to, and defending, Petitioner Fox's Petition, be assessed against Petitioner Fox pursuant to S.C. Code Ann. § 62-1-111. The request for an emergency hearing was granted, and that hearing was held on January 9, 2019. In attendance were: Gordon Garrett, Esquire, and Ryan Love, Esquire, counsel for Petitioner Fox; Respondent Chandler with his attorney, Elizabeth Palmer, Esquire; David Haller, Esquire, counsel for Christa M. Yantis, as Conservator for Ivo Colucci, and Alice Norton, as Guardian for Ivo Colucci; Brandt Shelbourne, Esquire, counsel for Robert Colucci; Eduardo Curry, Esquire, counsel for Stefan Colucci; and Angus Lawton, Esquire, counsel for Michael Antonio and Michael Colucci.

APPLICABLE LAW

A personal representative, which is defined to include a special administrator, is a fiduciary under this state's probate code. S.C. Code Ann. § 62-3-703; S.C. Code Ann. §

¹ While titled "Petition for Removal of Special Administrator," the Petition attaches a Motion to Restrain Special Administrator, previously filed by Petitioner Fox in the Circuit Court on November 26, 2018, and requests that this Court grant the relief sought therein. As such, before this Court is both Petitioner Fox's request that Respondent Chandler be removed and also that he be restrained.

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62-1-201. A special administrator must "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession" and has a duty "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. §§ 62-3-703(a), 62-3-709. A special administrator "shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate." S.C. Code Ann. § 62-3-703(a).

"A person interested in the estate may petition for removal of a [special administrator] for cause at any time." S.C. Code Ann. § 62-3-611(a). "Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a [special administrator] or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the [special administrator] has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office." S.C. Code Ann. § 62-3-611(b). The power to remove a special administrator "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Blackmon v. Weaver, 366 S.C. 245, 251, 621 S.E.2d 42, 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920)).

FINDINGS OF FACT & CONCLUSIONS OF LAW

I. S.C. Code Ann. § 62-3-615 does not require the removal of Respondent Chandler.

Petitioner Fox contends that S.C. Code Ann. § 62-3-615 requires that he, or one of the other individuals named as successor personal representatives in Decedent's Will, be appointed as special administrator and, therefore, Respondent Chandler's appointment must be terminated. That section provides as follows:

§ 62-3-615. Special administrator; who may be appointed.

(a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available and qualified.

(b) In other cases, any proper person may be appointed special administrator.

This section is inapplicable to the matter before the Court and provides no basis for the removal of Respondent Chandler.² Contrary to the assertion of Petitioner Fox, Respondent Chandler was not appointed as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 but was instead appointed pursuant to S.C. Code Ann. § 62-3-617. See Consent Order for the Appointment of a Special Administrator at 4, July 10, 2017. The statute cited by Petitioner Fox relates to a temporary appointment process for a special administrator. However, pursuant to this Court's July 10, 2017 Consent Order for the Appointment of a Special Administrator, Respondent Chandler was appointed pursuant to a formal proceeding that grants a special administrator the full duties and responsibilities

² The Court would further note that, contrary to Petitioner Fox's argument, this section, even when applicable, does not provide for the automatic appointment of a nominated personal representative as special administrator. Rather, just as with the appointment of a personal representative, there must first be a determination by a court of competent jurisdiction that the individual is available and qualified.

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as a personal representative. Therefore, Petitioner Fox's request that the Court remove Respondent Chandler as Special Administrator pursuant to S.C. Code Ann. § 62-3-615 is inappropriate and contrary to the current posture of this case.

II. The Special Administrator's fees, and those of his attorney, are not excessive and provide no basis for his removal as Special Administrator.

Petitioner Fox contends that the fees paid from the Estate to Respondent Chandler and his counsel for matters related to the administration of the Estate, as well as the contingency fee of 40% related to the wrongful death lawsuit that is pending, are excessive but he has failed to present evidence to substantiate this claim. Rather, Petitioner Fox makes the assumption that the fees paid to Respondent Chandler and his counsel, totaling approximately \$165,000.00 as shown on the last Accounting filed by Respondent Chandler, are improper.³ The Court disagrees and would further note that Respondent Chandler and his counsel are compensated for their work in this matter at an hourly rate of \$200.00, which is substantially less than their standard hourly rates. Further, this Court has reviewed the detailed invoices submitted by Respondent Chandler, and on each occasion, has found them to be appropriate.

The fees collected by Respondent Chandler and his counsel in the amount of \$165,849.91 that are challenged by Petitioner Fox are approximately 5.7% of the value of the Estate at the time of Decedent's death (\$2,865,316.20). The statutorily allowed commission for personal representatives is 5% of the appraised value of the personal

³ That Petitioner Fox made this claim of excessive fees without support is evidenced by the following statement in his Petition: "The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting the records." The Court finds it concerning that Petitioner Fox would accuse two members of the Bar of excessive billing without having any knowledge as to the nature and extent of work performed by Respondent Chandler and his counsel.

property of the probate estate (plus the sales proceeds of real property of the probate estate received on sales directed or authorized by will or court order). S.C. Code Ann. § 62-3-719. Fees incurred by a personal representative's attorney are generally paid out of an estate in addition to those paid to the personal representative. As such, just on its face, the amount paid here to Respondent Chandler and his counsel is reasonable given that, jointly, it is just slightly above that which is customarily allowed solely for the personal representative. Moreover, the Court has reviewed the reasonableness of these fees taking into consideration the novel and complex nature of the legal issues that have been addressed by Respondent Chandler and his counsel, the nature and quality of the work that has been performed, and the benefit that the Estate has derived from that work and confirms and concludes that the fees are reasonable and appropriate.

Likewise, Petitioner Fox's assertion that the contingency fee agreement between the Estate and Rosen, Rosen & Hagood, LLC ("RRH"), for the prosecution of the pending wrongful death lawsuit is excessive is without merit. Petitioner Fox contends that the contingency fee agreement, which provides for legal fees of 40% of the recovery from the wrongful death lawsuit, and which was previously approved by this Court, is "lavish" and "extraordinary." Petitioner Fox failed to present any argument or evidence substantiating his claim that the contingency fee agreement is unreasonable, and the Court takes notice that the contingency fee agreement is typical of those in other personal injury actions. The Court finds no basis on which to revisit its prior determinations that this agreement and the hiring of RRH to prosecute the wrongful death lawsuit are appropriate.

In questioning the fees RRH are receiving to serve as attorney for Respondent Chandler in matters related to the administration of the Estate as well as the contingency

fee arrangement related to the pending wrongful death lawsuit, Petitioner Fox tried to establish that the law firm was double billing. Counsel for Respondent Chandler explained on the record RRH's billing practices with this case and how they actually benefit the Estate:

Related to the fees issue, there are these allegations, I think, of double dipping. This arises out of the fact that my law firm is handling both the wrongful death action, obviously on contingency basis because it's a wrongful death, and also representing Mr. Chandler as his attorney as he administers the estate. Now, part of the administration of the estate includes the Slayer action which is currently pending. It would not be unusual for Mr. Chandler or for this Court to appoint two separate law firms to represent [him], one to do the wrongful death and one to represent Mr. Chandler in the administration. If that was the case here, the [estate] would be charged for the discovery that's being done in these cases. So the Slayer case and the wrongful death, we have effectively combined or consolidated them for the purposes of discovery, because the discovery is very similar in the two of them. We have not charged one penny to the estate for any of the discovery. None of the expert witness fees, none of the court reporter fees. . . . [T]he fact that my firm is representing both has benefited the estate.

Hearing Transcript, pp. 49-50.

Therefore, by allowing RRH to serve the dual role as attorney for Respondent Chandler in his administration of the Estate and pursuing the Slayer case as well as representing him in the pending wrongful death case, the Estate is receiving a substantial benefit. The Estate is not having to pay for any attorney's fees or costs associated with the discovery RRH has done in pursuit of the Slayer case. RRH will only be compensated for their time and the costs they have incurred from the settlement proceeds of the wrongful death action. If the Court had allowed Respondent Chandler to engage separate attorneys to handle the slayer cases and the wrongful death, the Estate would have been liable to pay the attorney handling the Slayer case for their time and costs incurred in completing the

discovery for that case in addition to what RRH will already receive as compensation from the wrongful death action.

Based on the foregoing, the Court finds that the fees paid to Respondent Chandler and his counsel are reasonable, the rate at which they are being compensated is reasonable, and that the work performed by Respondent Chandler and his counsel, which has involved novel and complex legal issues, has directly benefited the Estate.

III. The Special Administrator has appropriately collected and distributed the Estate's assets.

As a Special Administrator with all the powers of a general personal representative, Respondent Chandler is required to settle and distribute the Estate as expeditiously and efficiently as is consistent with the best interests of the estate. S.C. Code Ann. § 62-3-703. Petitioner Fox contends that Respondent Chandler has "unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci." Petitioner Fox also takes issue with the manner in which Respondent Chandler has effectuated distributions to the Trust, stating: "On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt."

These claims are without merit and provide no basis for the removal of Respondent Chandler. Petitioner Fox has failed to present evidence that there has been any unreasonable delay in distributing the Estate's assets to the Trust. The Trust, of which Petitioner Fox is the trustee, did not become the devisee of the Estate until the Will was probated on August 27, 2018. Given the circumstances surrounding the administration of this Estate, including, but not limited to, ongoing litigation and outstanding tax issues and

potential tax liability, the Court finds that Respondent Chandler's actions with regard to the distribution of assets to the Trust have been proper and appropriate.

The Court further takes notice that Petitioner Fox and his counsel have taken measures to frustrate Respondent Chandler's distribution of Estate assets to the Trust. On November 19, 2018, counsel for Petitioner Fox refused to accept certain assets that the Estate distributed to the Trust, assets which were listed on the Proposal for Distribution filed by Respondent Chandler on or about September 24, 2018, and served on counsel for Petitioner Fox. Petitioner Fox and his counsel also attempted to hinder the sale of a ring by the Special Administrator. The Special Administrator had obtained an Order from this Court approving the sale of the ring to create liquid assets in the Estate. Petitioner Fox filed a Application to Restrain the Special Administrator from selling the ring, and then withdrew the Application. Additionally, while Petitioner Fox takes issue with the lack of cash distributed to the Trust from the Estate, Petitioner Fox was on notice that Respondent Chandler filed a second Proposal for Distribution on November 20, 2018, proposing the distribution of \$10,000.00 to the Trust. A hearing on that Proposal for Distribution was initially scheduled for January 9, 2019. However, Petitioner Fox filed his Petition for Removal of Special Administrator with the stated intention of postponing the hearing on the Proposal for Distribution, which would result in the distribution of cash to the Trust being postponed.

Petitioner Fox also states that "complaints have been raised to [his] counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance." Petitioner Fox failed to present any evidence supporting this claim and the Court finds that this is not a basis for Respondent Chandler's removal.

IV. The Special Administrator has not breached any duties owed to the Colucci Living Trust concerning the provision of information or the reimbursement of the Trustee's costs.

Petitioner Fox claims that Respondent Chandler has failed to provide him with information, stating that "[o]utside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisement and the estate account." The documents to which Petitioner Fox refers are attached to his Petition, namely, the Inventory and Appraisement which was filed in April 2018 and the Accounting which was filed in July 2018. The Trust did not become the devisee of the Estate until August 27, 2018. Prior to that time, Respondent Chandler had no duty to provide Petitioner Fox with any information given that Petitioner Fox neglected to file a Demand for Notice. Furthermore, the Estate file is a public record and was available to Petitioner Fox to review anytime. Petitioner Fox has failed to substantiate his claim that Respondent Chandler failed to provide him with information that Respondent Chandler had a duty to provide to him.

Petitioner Fox also appears to argue that Respondent Chandler acted improperly by not reimbursing him, as Trustee of the Colucci Living Trust, for "his costs to probate the [Decedent's] Last Will." The Court finds no impropriety on the part of Respondent Chandler and Petitioner Fox failed to present any authority to support his contention that Respondent Chandler is required to reimburse such costs. The Court further takes notice that Petitioner Fox has not submitted any request for payment to Respondent Chandler. The Court makes no determination as to whether those costs are properly reimbursed by the Estate, but only notes that Petitioner Fox had the opportunity to submit a claim for payment pursuant to the procedure set forth in S.C. Code Ann. § 62-3-804.

V. The Special Administrator's use of Estate funds to object to the appointment of Petitioner Fox as personal representative of the Estate is not grounds for his removal.

After being served with Petitioner Fox's Petition for Formal Testacy and Appointment, which was removed to Circuit Court, Respondent Chandler submitted an Answer and Objection and, at a hearing, argued that the appointment of Petitioner Fox would not be in the best interests of the Estate. Petitioner Fox argues in his Petition that Respondent Chandler "has acted unreasonably and against the interest[s] of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci." The Court disagrees.

As Special Administrator, Respondent Chandler is required to use the authority conferred upon him by the Probate Code for the best interests of the successors to the Estate, which, in this case, is the Trust. S.C. Code Ann. § 62-3-703. He is also required to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." S.C. Code Ann. § 62-3-709.

Respondent Chandler testified at length as to the basis for his objection to Petitioner Fox's appointment as personal representative of the Estate.

Q: What was your basis for Mr. Fox to be disqualified?

A: Let me back up and say, when you filed formal probate, it was removed at your request. I was served. I answered, as is required. I'd have to review my answer. And I'm happy, if you want to hand me my answers. But as I recall, by that point, because it had been several months, but at that point we were fully engaged in the administration of this estate. Which is not a simple estate. And so there's -- there has been or there is a vast array of litigation. But I'd have to review my answer. But as I recall, I believe Mr. Fox, or anyone else, frankly, nothing necessarily to do with Mr. Fox, it would be very inefficient for the court to appoint someone at that point as the personal representative because we'd already begun the process and were involved in a variety of pieces of litigation. It's, again, a complex estate. It had lots of moving parts. And the time it takes to be up to speed

on all of those issues is not insignificant. And so at some point, it is not in the best interest of the beneficiaries.

...

It would be very difficult and would be costly for anyone else at that point to have been appointed, in my view. At the end of the day it's for the court to determine who the fiduciary is. It's not me who decides that. It's for the court to determine who is qualified, who is appropriate. In simple cases, perhaps it's easiest just to follow the will. This is not a simple case, Mr. Garrett. This is a very complex case.

On top of that, Mr. Fox, it just so happens, who had been a longtime friend of the Coluccis, had done their bookkeeping and tax returns for years, decades perhaps, would likely have been a witness. It turns out he is a witness. And he has been deposed and will be deposed. So as I predict, he potentially had a conflict. That may not be true of the next person in line. Although, Henry Burkes is also a witness to this killing. And that may not have been true of the next person in line. But again, it is a complex estate, it is costly to transfer it to someone else.

However, as special administrator, and being involved with a very complex case, which thankfully a lot of it has been resolved, but we still have ongoing litigation, it was just extremely inefficient and foolish, in my opinion, to transfer it to anyone else.

Hearing Transcript, pp. 16-19.

The estate is so complex that Petitioner Fox's attorney, Gordon Garrett, offered to hire Mr. Chandler as an expert if Mr. Chandler would agree to allow Petitioner Fox to serve as the Personal Representative.

Q. Did I offer to retain you as an expert to work for the Estate of Doris Colucci prior to the hearing in Court of Common Pleas in the summer of 2017⁴?

A. Did you ask me to?

Q. Serve as an expert if Mr. Fox was appointed as the personal representative?

A. Let me tell you what I recall from that conversation which occurred outside of Judge Dickson's courtroom. What I recall is, you said, well, if Mr. Fox is appointed – or if you agreed to have Mr. Fox appointed – which again I'm telling you I couldn't have agree to that because that's not my role – but if Mr. Fox were to be appointed, you know, we could hire you, Andrew, and Ms. Palmer, to continue to do what you do. But in the meantime, we'll also be in there, and then whatever you would do.

And from my perspective, that is in no way beneficial to the beneficiaries

⁴ The hearing was in the summer of 2018 not 2017.

of this estate, which now it turns out that the designee, Mr. Fox, has accepted trusteeship. That is in no way beneficial to those beneficiaries, whoever they may have been, to go from the fees that we are charging, which by the way are a fraction of my regular billing rate, to add two more people and add their rate. I mean, how is that beneficial or helpful to the estate? No way do I think that's appropriate. And I think I told you such. But I don't know that I realized that it was a job offer.

Hearing Transcript, pp. 21-22.

The Court has a voluminous Estate file on this matter with over one thousand documents, and a sister guardianship and conservatorship file which is equally voluminous. The Estate file is rife with litigation and complex issues. On file with the Court are a large web of business interests involved in litigation and negotiation including I&M Colucci, HID LLC, and Terrivo Enterprises LLC. All of these businesses held real property that have complicating factors. The Estate also has multiple parcels of real property in multiple jurisdictions and multiple states with various ownership interests. There is litigation that was in place before Mrs. Colucci's death and after her death. For example, there is litigation involving the Slayer case, wrongful death, I&M Colucci, and Terrivo Enterprises LLC. Numerous attorneys are involved in the case representing various parties and interests which further complicates the Estate.

Additionally, there are ongoing and significant tax issues that the Special Administrator is attempting to resolve. For example, Mr. Chandler testified that Petitioner Fox, who had been the Colucci's long-time bookkeeper and tax preparer, had filed a tax return that is "patently wrong on its face ... that works a tremendous hardship on the estate and the beneficiaries of the estate." Hearing Transcript p. 40. Mr. Chandler testified at length about the complicating tax issues facing the Estate.

Q. Are you aware that Ms. Palmer requested Michael Fox to prepare a Schedule K for an LLC called HID?

Q. [Chandler] What do you mean by "Schedule K"?

A. [Garrett] A partnership return.

Q. Okay. So that's a different number. But yes, I am aware of that.

Q. So you believe that Mr. Fox was competent to prepare that document?

A. What I know is that HID is managed and controlled by Henry Burkes, whose name we've heard before. And he is the manager of that company. He hired Mr. Fox to prepare tax returns for that company. Ms. Doris Colucci owned 30 percent in that company. That's it. She doesn't control anything in that company. Mr. Burkes controls -- he prepares tax returns, not me. In fact, Mr. Fox prepared a tax return which is patently wrong on its face, and we simply asked him to correct the K1's, which by the way, if they're not corrected -- and I'll also note, Mr. Garrett, that Mr. Fox replied to your email saying he'll be glad to amend them. And then you in December decided, nevermind, we're not going to do that. But that works at tremendous hardship on the estate and the beneficiaries of the estate. Because if Mr. Fox does not amend that return, or Mr. Burkes does not amend that return properly and make a sub 4 election on the return and produce a K1 that is accurate, the estate of Doris Colucci would potentially lose a basic step up in its assets which negatively impacts the beneficiaries of that estate. So yes, I'm aware of that.

Q. But you're also a member of HID?

A. I am. Well, I'm not, but the estate is.

Q. The estate is. And you're capable of preparing the proper tax [return]?

A. I'm not qualified. I don't have the books and the things that are required to prepare returns, Mr. Garrett. Mr. Burkes has those items. He hires who he wants to prepare the returns. If he hired Mr. Fox, that's fine. If he thinks that's the proper person, great. But the return is not properly prepared. And it was filed improperly. For example, he listed [I&D], which is an accommodation party. It does not have an EIN. It is not a taxpayer. He filed that return on the IRS. That is absolutely an improperly filed return. It will be pulled. Mr. Colucci and Doris Colucci's estate are going to have issues because of that, because you can't file a return without an EIN. And I would think Mr. Fox would know that.⁵

Hearing Transcript pp. 39-41.

⁵ Mr. Chandler is a Certified Specialist in Estate Planning and has an L.L.M. in Taxation.

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2/7/19

Based on the extremely litigious and multifaceted complications plaguing this Estate, removing the Special Administrator at this point would be illogical. It would cause an extreme hardship to the Estate for a new fiduciary to have to learn and understand all the management, negotiations, and issues that have been handled and will continue to need to be handled. Therefore, the Court finds no impropriety in Respondent Chandler's actions in objecting to the appointment of Petitioner Fox as personal representative of the Estate. Respondent Chandler is required to take all steps to protect the Estate and preserve its assets, and the Court is satisfied that his objection was based on a valid concern that the interruption of his administration of the Estate would not be in the best interests of the Estate or the Trust, its sole devisee, as it would result in unnecessary delay and expense.

Petitioner Fox also argues that, "[h]ad the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns." The Court is aware of no legal duty on the part of Respondent Chandler to take this action, nor did Petitioner Fox present any authority to support his contention that such a duty exists.

VI. The award of costs and expenses against Petitioner Fox is appropriate.

In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. S.C. Code Ann. § 62-1-111. Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.⁶

⁶ Rule 11 of the South Carolina Rules of Civil Procedures states that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleadings, motion or other paper;

The Court finds that justice and equity require that Petitioner Fox pay the Estate's costs and expenses, including reasonable attorney's fees, incurred in responding to his Petition to Remove Special Administrator. Respondent Chandler and his counsel have submitted Affidavits of Fees and Costs which this Court has considered and finds to be appropriate.

IT IS HEREBY ORDERED that Petitioner Fox's Petition for Removal of Special Administrator is **DENIED**; and

IT IS FURTHER ORDERED that Petitioner Fox, pursuant to S.C. Code Ann. § 62-1-111, shall pay costs and expenses, including reasonable attorney's fees, incurred by the Estate in responding to the Petition to Remove Special Administrator in the amount of \$10,882.96.

AND IT IS SO ORDERED!

Mary Blunt
The Honorable Mary Q. Blunt
Dorchester County Probate Court

February 7, 2019
St. George, South Carolina

that to the best of his knowledge, information and belief there is good grounds to support it; and that it is not interposed for delay." Based on Attorney Garrett's presentation of the case, it is clear that his intention in filing the Petition for Removal of Special Administrator was to interpose delay in administering the Decedent's Estate. Further, he failed to present any evidence to show that he had good grounds to support his Petition.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

PROBATE JUDGE
IN THE PROBATE COURT OF DORCHESTER COUNTY

2019 JAN 13 PM 12:57
STATEMENT OF CREDITOR'S CLAIM
CASE NUMBER: 2017 ES 18 00294

Decedent's Date of Death (if known): April 14, 2017

Decedent's Last Mailing Address: c/o Andrew W. Chandler, 115 Church Street, Charleston, SC 29401

Creditor:	Rosen Hagood, LLC
Address:	P.O. Box 893
	Charleston, SC 29402
Telephone:	(843) 577-6726
Email:	epalmer@rrhlawfirm.com
Original Creditor:	n/a
Address (if different from above)	n/a
Claim Amount Due:	\$6,301.72
Account Number:	9719-00M
Other Reference Number:	n/a
Basis of claim (Ex: Contract, Services Rendered for decedent, etc):	Legal Services Rendered
Date claim will become due (if not already due)	Due Now
Nature of uncertainty as to the claim, if any (i.e. contingent claim, amount of claim, due date):	n/a
Description of security as to the claim, if any (Ex: Collateral for the debt)	n/a

Signature:

Elizabeth J. Palmer

Name: Elizabeth J. Palmer, Esq.

Title: Creditor Representative

Date: 2/13/19

INSTRUCTIONS: Claims **MUST** be filed with the Probate Court of the county in which the Decedent's Estate is under administration and may be delivered or mailed to the fiduciary appointed to administer the Estate (see SCPC 62-3-803, 62-3-804, and 62-3-806).

No claim against a Decedent's estate may be presented or legal action commenced against a Decedent's Estate prior to the appointment of a Personal Representative to administer the Decedent's Estate (except see SCPC 62-3-804(1)(b)).

Satisfaction or withdrawal of claim (FORM 325) **MUST** be filed once claim is resolved.

FORM #371ES (1/2016)
62-3-104, 62-3-803, 62-3-804, 62-3-806



STATE OF SOUTH CAROLINA)
DORCHESTER)
COUNTY OF DORCHESTER)
IN THE MATTER OF THE ESTATE)
OF DORIS DUANE COLUCCI,)
ALSO KNOWN AS DORIS D.)
COLUCCI)

IN THE PROBATE COURT 2020 JAN 24 PM 12: 57
CASE NO. 2017-ES-18-00294
ORDER FOR APPOINTMENT OF
TEMPORARY SPECIAL ADMINISTRATOR

This matter came before the Court on the Emergency Application to Appoint Temporary Special Administrator filed on February 13, 2019 by Elizabeth J. Palmer, Esquire, on behalf of Rosen Hagood, LLC, as a creditor of the Estate Doris D. Colucci. For the reasons set forth herein, and after considering the emergency nature of this matter and the complexity of this Estate, this Court finds that the Emergency Application to Appoint a Temporary Special Administrator should be granted.

PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Applicant Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will names Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes, and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Mr. Fox as a successor trustee. On October 27, 2017, Mr. Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Mr. Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Mr. Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Mr. Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

By Circuit Court Order filed February 13, 2019, Mr. Fox was appointed as General Personal Representative.

APPLICABLE LAW

An interested person is defined to include "heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." S.C. Code Ann. § 62-1-201(23).

A special administrator may be appointed:

(1) informally by the court on the application of an interested person when necessary:

- (a) to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in Section 62-3-609;
- (b) for a creditor of the decedent's estate to institute any proceeding under Section 62-3-803; or
- (c) to take appropriate actions involving estate assets;

S.C. Code Ann. § 62-3-614.

The appointment of a special administrator may be temporary. Estate of Boyce v. Work 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991) (the appointment of a Special Administrator is temporary and therefore not immediately appealable).

FINDINGS OF FACT & CONCLUSIONS OF LAW

- I. Rosen Hagood, LLC is an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23).**

Rosen Hagood, LLC filed a creditor's claim on February 13, 2019, along with an Emergency Application to Appoint Temporary Special Administrator. A creditor is clearly delineated as an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23) and may bring an emergency application for purposes of S.C. Code Ann. § 62-3-614.

- II. The best interests of the Estate of Doris D. Colucci are protected by the appointment of a Temporary Special Administrator.**

The ongoing litigation matters, business matters and tax matters in this Estate require a fiduciary familiar with the issues, who lacks any actual or potential conflicts of interest. Andrew W. Chandler has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has ably served as a fiduciary to this Court. The appointment and

service of Andrew W. Chandler as the Temporary Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid actual and potential conflicts of interest, and to protect its assets. The best interests of the Estate of Doris D. Colucci are protected by the appointment of Andrew W. Chandler as Temporary Special Administrator. The Court further adopts the findings of fact and conclusions of law from its Order dated February 7, 2019, which are incorporated herein by reference and shall become a part of this Order.

IT IS HEREBY ORDERED that the Emergency Application to Appoint Temporary Special Administrator is **GRANTED**; and

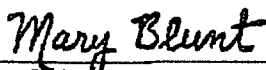
IT IS FURTHER ORDERED that

1. The administration of the probate Estate of Doris D. Colucci shall proceed pursuant to the terms of the Last Will of Doris D. Colucci;
2. The Court has appointed Andrew W. Chandler, Esquire, as the Temporary Special Administrator for the Decedent's Estate;
3. Andrew W. Chandler shall serve as the Temporary Special Administrator of the Estate of Doris Duane Colucci, pursuant to the terms of the Last Will of Doris D. Colucci and the terms of this Order, though the Court incorporates by reference the relevant provisions of the Consent Order dated July 10, 2017 and the August 27, 2018 Modified Order for the Appointment of a Special Administrator;
4. Andrew W. Chandler, in his prior role as the Special Administrator of Decedent's Estate, had retained the services of an accountant and attorneys and other agents with the prior express approval of the Court and may continue to retain such services as Temporary Special Administrator as he determines necessary for the proper administration of the Decedent's Estate;

5. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci (as an heir of the Decedent's Estate, a beneficiary of the Colucci Living Trust, a joint owner with right of survivorship, and a designated beneficiary) pursuant to the Slayer's Act, Andrew W. Chandler, as Temporary Special Administrator, shall hold any funds or property to which Ivo Francesco Colucci may otherwise be entitled as a joint owner with right of survivorship or a designated beneficiary, if the Slayer's Act does not apply, in a separate account, unless otherwise ordered by this Court;

6. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, as Temporary Special Administrator, shall continue to have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto.

AND IT IS SO ORDERED!



Presiding Judge
Dorchester County Probate Court

This ____ day of February, 2019
St. George, South Carolina

PROBATE JUDGE
DORCHESTER COUNTY

2020 JAN 24 PM 12: 57

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE MATTER OF THE ESTATE)
OF DORIS DUANE COLUCCI,)
ALSO KNOWN AS DORIS D.)
COLUCCI)

2019 FEB 13 PM 2: 13

IN THE PROBATE COURT
CASE NO. 2017-ES-18-00294
TEMPORARY ORDER RESTRAINING
GENERAL PERSONAL REPRESENTATIVE

This matter came before the Court on the Emergency Application to Restrain General Personal Representative filed on February 13, 2019 by Elizabeth J. Palmer, on behalf of Rosen Hagood, LLC, as a creditor of the Estate Doris D. Colucci. For the reasons set forth herein, and after considering the emergency nature of this matter and the complexity of this Estate, this Court finds that the Emergency Application to Restrain General Personal Representative should be granted.

PROCEDURAL HISTORY

Doris Duane Colucci was killed by her husband, Ivo F. Colucci, on April 14, 2017. Applicant Andrew W. Chandler, Esquire, was appointed Special Administrator of the Estate of Doris Duane Colucci (the "Estate") by this Court on June 9, 2017, on a temporary basis and then, by Consent Order dated July 10, 2017, on a permanent basis.

On August 24, 2017, Decedent's purported Last Will and Testament, dated June 18, 2013 (the "Will"), was filed with this Court, although no petition seeking to have the Will admitted to probate was filed at that time. The Will names Ivo F. Colucci as the personal representative and Michael Fox, Henry Burkes. and Richard Hyman (in that order) as successor personal representatives. The primary devisee of the Will is the Colucci Living Trust (the "Trust"), dated February 24, 2005, which names Mr. Fox as a successor trustee. On October 27, 2017, Mr. Fox accepted the trusteeship of the Trust and, to date, continues to serve in that capacity.

On October 30, 2017, Mr. Fox filed a Petition for Formal Testacy and Appointment, seeking to have the Decedent's Will admitted to probate and also seeking to have himself appointed as the personal representative of the Estate. Upon motion by Mr. Fox, the Petition for Formal Testacy and Appointment was removed to the Dorchester County Court of Common Pleas by Order of this Court filed November 20, 2017. By Circuit Court Order filed August 27, 2018, Decedent's Will was admitted to probate, making the Colucci Living Trust the sole devisee of the Estate. Following the probate of the Will, this Court entered a Modified Order for the Appointment of a Special Administrator, confirming Mr. Chandler's appointment as Special Administrator in this matter and directing that he administer the Estate pursuant to the terms of the Will.

By Circuit Court Order filed February 13, 2019, Mr. Fox was appointed as General Personal Representative.

APPLICABLE LAW

A personal representative may be restrained from exercising any and all powers by temporary order, upon application of an interested person. The matter shall be set for hearing within 10 days or at such other times as the parties may agree. S.C. Code Ann. § 62-3-607.

An interested person is defined to include "heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." S.C. Code Ann. § 62-1-201(23).

FINDINGS OF FACT & CONCLUSIONS OF LAW

- I. Rosen Hagood, LLC is an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23).**

Rosen Hagood, LLC filed a creditor's claim on February 13, 2019, along with an Emergency Application to Restrain General Personal Representative. A creditor is clearly delineated as an Interested Person within the meaning of S.C. Code Ann. § 62-1-201(23) and may bring an emergency application for purposes of S.C. Code Ann. § 62-3-607.

- II. The best interests of the Estate of Doris D. Colucci are protected by restraining the general Personal Representative.**

The Estate of Doris D. Colucci is complex. There are several pending litigation matters, business matters and tax matters that require a fiduciary familiar with the issues and who lacks any actual or potential conflicts of interest. The Court finds that Mr. Fox is not an appropriate fiduciary to serve as the general Personal Representative of the Estate of Doris D. Colucci given his actual or potential conflicts of interest and further adopts the findings of fact and conclusions of law from its Order dated February 7, 2019, which are incorporated herein by reference and shall become a part of this Order. The Court finds it is in the best interests of the Estate of Doris D. Colucci to restrain Mr. Fox, on a temporary basis until a hearing can be held, as general Personal Representative, from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607.

IT IS HEREBY ORDERED that the Emergency Application to Restrain General Personal Representative is **GRANTED**; and

IT IS FURTHER ORDERED that Mr. Fox shall be restrained, on a temporary basis until a hearing can be held, as general Personal Representative, from exercising any powers or discharging any duties of his office, pursuant to S.C. Code Ann. § 62-3-607.

AND IT IS SO ORDERED!

Mary Blunt

Presiding Judge
Dorchester County Probate Court

This ____ day of February, 2019
St. George, South Carolina

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:58

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE PROBATE COURT

DORCHESTER COUNTY

In Re:

No 2017-ES-18-0294

The Estate of Doris Duane Colucci,

Michael C. Fox, Named Personal
Representative in the Last Will of Doris
Duane Colucci,

Plaintiff.

Michael C. Fox's Interrogatories to Andrew
Chandler

vs.

Andrew Chandler, in his capacity as
Special Administrator of the Estate of
Doris Duane Colucci, Michael C. Fox, in
his capacity as Trustee of the Colucci
Living Trust, Ivo Francesco Colucci,
Michael Frederick Antonio Colucci, John
Martin Antonio, Henry Burkes, and
Richard M. Hyman, Jr,

Defendants.

Michael C. Fox requires you to answer the following Interrogatories, under oath, in accordance with Rule 33, SCRPC:

Special Instructions

In responding to these Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the South Carolina Rules of Civil Procedure:

- i. Unless otherwise requested, please produce for inspection and not copying, all requested documents and things at the offices of your lead counsel in South Carolina, at the time indicated in the Discovery Requests. You may produce copies for Plaintiff without expense to Plaintiff in lieu of production of documents at your counsel's office.
- ii. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
- iii. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys. (d) corporate departments or divisions; (e) your parent or

-1 of 7-

subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

- iv. Where documents and things exist which fall within the descriptive terms of one of these Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.
- v. In addition to the original of any such requested documents, any request for a document also includes:
 - a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
 - b. any and all attachments to the original;
 - c. any and all documents referred to in the original;
 - d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.
- vi. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

Definitions and Abbreviations

Michael C. Fox provides the following definitions of words, phrases, and abbreviations used by him in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Communication(s)" and *"communicate"* means and includes all interchanges of messages or ideas by speech or writing.

"Court rule" or *"court rules"* means and refers to the South Carolina Rules Governing the Practice of Law; the South Carolina Rules Governing the Judiciary, Employees of the Judicial Department, and Others Assisting the Judiciary; the South Carolina Probate Court Rules; The South Carolina Rules of Evidence; and the South Carolina Rules of Civil Procedure.

"Court" means and includes the Dorchester County Probate Court, its staff, clerks, and judges.

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Medium" means and refers to the manner in which a communication occurred, including, but not limited to, electronic messages, facsimiles, in person conversations, letters, telephone calls, and telephone call logs.

"Other party" and *"other parties"* means and includes all parties except you.

"Party" and *"parties"* means and includes any person and their counsel who have appeared in this case.

"Person" means and includes any individual, public or private corporation partnership, government agency, estate, trust, incorporated association, or unincorporated association.

"Statute" means and refers to the South Carolina Code of Laws.

"This case" or *"the case"* means and includes the above captioned case, Case Number(s): 2017-CP-18-1816, 2019-CP-18-0677; 2017-CP-10-5393, and S.C. Court of Appeals Case Number: 2019-001065.

"You" and *"your"* means and refers to Andrew Chandler, any member of his law firm, and any agent thereof.

Interrogatories

1. State whether you have had any communications with the Court regarding any issue, including, but not limited to scheduling, administrative matters, or emergencies, regarding this case, outside the presence of the other parties from April 17, 2017, to present.
2. If your answer to the proceeding interrogatory is in the affirmative, please state for each communication:

- a. The date of the communication;

- b. The medium of the communication;
- c. The name of the person sending and/or initiating the communication;
- d. The name of the person who received the communication;
- e. The nature, purpose, subject, and substance of the communication;
- f. Whether the communication was disclosed to any of the other parties;
- g. The names of the other parties to whom the communication was disclosed;
- h. When the communication was disclosed to the other parties.

3. State whether you have had any communications with the Court regarding the substantive matters or issues of this case, outside the presence of the other parties and their respective counsels, from April 17, 2017, to present.

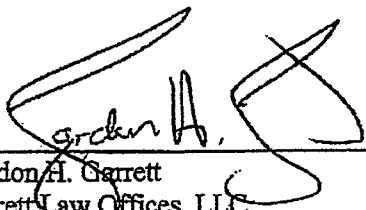
4. If your answer to the proceeding interrogatory is in the affirmative, please state for each communication:

- a. The date of the communication;
- b. The medium of the communication;
- c. The name of the person sending and/or initiating the communication;
- d. The name of the person who received the communication;
- e. The nature, purpose, subject, and substance of the communication;
- f. Whether the communication was disclosed to any of the other parties;
- g. The names of the other parties to whom the communication was disclosed; and
- h. When the communication was disclosed to the other parties.

5. Is it your contention that you, as special administrator, are permitted to communicate with the Court, outside the presence of the other parties and their respective counsels, regarding the substantive matters or issues of the case?¹

6. Please cite the statute or court rule that permits you, as special administrator, to communicate with the Court, outside the presence of the other parties and their respective counsels, regarding the substantive matters or issues of the case.

Dated: 10/4/2019



Gordon H. Garrett
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
office@garrettlawsc.com
Attorney for Michael C. Fox

¹ For reference please see Emergency Hr'g. Tr. 27:22-28:2, Jan. 8, 2019.

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF DORCHESTER)

DORCHESTER COUNTY

In Re:)

No 2017-ES-18-0294

The Estate of Doris Duane Colucci,)

Michael C. Fox, Named Personal
Representative in the Last Will of Doris
Duane Colucci,)

Plaintiff's First Set of Requests to Produce

Plaintiff,)

vs.)

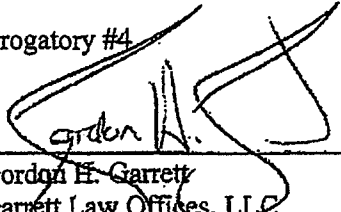
Andrew Chandler, in his capacity as
Special Administrator of the Estate of
Doris Duane Colucci, Michael C. Fox,
Successor Trustee of the Colucci Living
Trust, dated February 24, 2005, Ivo
Francesco Colucci, Michael Frederick
Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman,
Jr,)

Defendants.)

Michael C. Fox requires you to answer the following Requests for Production in accordance with Rule 34, SCRPC:

1. Any and all communications identified in Interrogatory #2.
2. Any and all communications identified in Interrogatory #4.

Dated: 10/4/2019


Gordon H. Garrett
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
office@garrettlawsc.com
Attorney for Michael C. Fox

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE PROBATE COURT
DORCHESTER COUNTY

In Re:)

No 2017-ES-18-0294

The Estate of Doris Duane Colucci,)

Michael C. Fox, Named Personal)
Representative in the Last Will of Doris)
Duane Colucci,)

Certificate of Service

Plaintiff,)

vs.)

Andrew Chandler, in his capacity as)
Special Administrator of the Estate of)
Doris Duane Colucci, Michael C. Fox,)
Successor Trustee of the Colucci Living)
Trust, dated February 24, 2005, Ivo)
Francesco Colucci, Michael Frederick)
Antonio Colucci, John Martin Antonio,)
Henry Burkes, and Richard M. Hyman,)
Jr,)

Defendants.)

The undersigned certifies that Andrew Chandler was served with Michael C. Fox's First Set of Interrogatories and Requests to Produce by placing them in the U.S. Mail, first class, postage-prepaid on the date below to the following address(es):

Elizabeth Palmer
Rosen & Hagood
151 Meeting Street
Suite 400
Charleston, SC 29410


Ryan A. Love
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554-5515 (phone)
843.747-3198 (telefax)
office@garrettlawsc.com

Dated: October 4, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF: DORCHESTER)
)
IN THE MATTER OF: PROBATE JUDGE)
DORIS DUANE COLUCCI)
(Decedent))
2019 OCT 15 PM 4:44)

IN THE PROBATE COURT JUDGE
DORCHESTER COUNTY
DEMAND FOR NOTICE IN AN ESTATE
2020 JAN 24 PM 12:58

CASE NUMBER: 2017-ES-18-00294

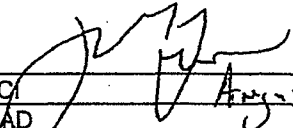
Decedent's Date of Death (if known): APRIL 14, 2017

Decedent's Last Mailing Address: 400 MURRAY BOULEVARD, SUMMERVILLE, SC 29483

I demand receipt of a copy of the following item(s) pertaining to the above estate. By filing this *Demand for Notice, I understand that it is the responsibility of the Personal Representative to provide me with a copy of all documents he/she files in this estate. I understand this Demand shall expire one year from date of filing.

- ☒ Application for informal probate and/or informal appointment
- ☒ Petition for formal probate and/or formal appointment
- ☒ Information to Heirs and Devisees
- ☒ Proof of Publication of Notice to Creditors
- ☒ Inventory and Appraisalment (including Supplementary, Amended or Corrected)
- ☒ Application for Settlement
- ☒ Accounting (Interim or Final)
- ☒ Proposal for Distribution
- ☒ Notice of Right to Demand Hearing
- ☒ Any petition and corresponding order
- ☒ Any hearings, Right to Appear, or Notice of Appearance
- ☒ Other (specify): ANY AND ALL DETAILS OF THE ESTATE

Executed this 10 day of OCTOBER, 2019.

Signature: 

Print Name: MICHAEL COLUCCI

Address: 7674 LEGARE ROAD
EDISTO ISLAND, SC 29438

Telephone (Work):

(Home):

(Cell): (843)603-0645

Email: COLUCCI2376@GMAIL.COM

Relationship to Decedent/Estate: SON OF DORIS DUANE COLUCCI

Attorney: ANGUS M. LAWTON

Address: 496 BRAMSON COURT, SUITE 100
MT. PLEASANT, SC 29464

Telephone: (843)881-9901

Email: angus@lawtonlawfirm.net

*A Demand for Notice requires a \$5.00 filing fee.



DORCHESTER COUNTY PROBATE COURT

5200 EAST JIM BILTON BLVD.
ST. GEORGE, SC 29477

www.dorchestercountysc.gov/probate

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:58

MARY BLUNT
Probate Judge

MOLLY D. EDWARDS
Associate Judge

November 4, 2019

Professor John Freeman
200 W. Highland Dr., Unit 107
Seattle, WA 98119-3507

Re: Estate of Doris Duane Colucci
Re: 2007-ES-18-00294

Dear Professor Freeman:

I am writing to confirm our discussion regarding issues about disbursement of assets to John Martin Antonio (John Antonio). In accordance with SCACR 407, Rule 501, Canon 3B(7)(b), no action will be taken concerning any advice you have provided until the parties have been notified of the substance of your advice and afforded a reasonable opportunity to respond.

Procedural History

On April 14, 2017, Doris Colucci was shot and killed by her husband, Ivo Colucci. John Antonio and Michael Frederick Antonio Colucci¹ (Michael Colucci) are the two biological children of the decedent, Doris Colucci. During the commencement of the administration of this estate, concerns were brought to the court and to court-appointed fiduciaries about the capacity of John Antonio to manage and receive assets either through the estate or through settlement proceeds which may result from the decedent's cause of death.

On May 3, 2017, Lester S. Schwartz, Esquire filed a Summons and Petition to be appointed as Special Administrator for the estate of Doris Colucci. In the Verification section, Mr. Schwartz listed in the signature block that his priority was because he was the "Nominee of children of Decedent." On May 3, 2017, Mr. Schwartz also filed Waivers of the Petition for Probate, Waivers of the Hearing, and a Renunciations and Nominations of appointment as Special Administrator from John Antonio and Michael Colucci. On May 5, 2017, Mr. Schwartz filed a letter with the court that he sent to Christa Yantis, the Conservator for Ivo Colucci, which further confirms that Mr. Schwartz represented John Antonio and Michael Colucci.

¹ Michael Frederick Antonio had a name change to make his last name Colucci. The court has confirmed this with family court records. Michael Colucci was not adopted by Ivo Colucci but simply received an order for a name change.

On May 11, 2017, the court wrote a letter to Mr. Schwartz asking for clarification on John Antonio's capacity issues. On May 12, 2017, Mr. Schwartz, Esquire faxed a letter to the court claiming that John Antonio had autism, but concluded that in his opinion, John Antonio had contractual capacity.²

On May 18, 2017, a Specific Limited Durable Power of Attorney (DPOA)³ for John Antonio was filed with this court by Lester Schwartz, Esquire. The twenty-one page DPOA contains specific references to allowing the Agent to manage matters in the Estate of Doris Colucci (Article 2, §A, (1), pages 3-4). In the DPOA, Dan M. David, Esquire⁴ is named as the primary Agent (1.1, page 1). While the language is not the traditional appointment language, the DPOA appears to appoint Lester S. Schwartz, Esquire as the first alternate Agent, and Michael Colucci⁵ as the second alternate Agent (3, page 2). The DPOA was witnessed and notarized by Lester S. Schwartz, Esquire (pages 19-21).

² A little over two months later, on July 28, 2017, Mr. Schwartz filed a motion to withdraw as attorney of record for John Antonio and Michael Colucci. An Order granting the motion was signed and filed on July 28, 2017.

³ The DPOA appears to have been executed on May 17, 2017, and filed with the Dorchester County Register of Deeds on May 18, 2017.

⁴ In 2010, Opinion No. 26778, Dan M. David received a public reprimand and admitted that, by his misconduct, he had violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.15 (a lawyer shall hold client property in the lawyer's possession in connection with a representation separate from the lawyer's own property; client property shall be identified as such and appropriately safeguarded, with complete records of such account funds and other property kept by the lawyer; a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying service charges on that account, but only in an amount necessary for that purpose; a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive); Rule 5.1 (a lawyer who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct); Rule 5.3 (a lawyer who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that a nonlawyer employee's conduct is compatible with the professional obligations of the lawyer and a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer); and Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct).

Dan M. David further admitted his misconduct constituted grounds for discipline under Rule 7(a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct). Finally, Dan M. David admitted he failed to comply with the recordkeeping requirements of Rule 417, SCACR.

⁵ Michael Colucci is currently awaiting a second trial for the alleged murder of his wife.

On May 18, 2017, Dan M. David filed an Agent's Certification as to the Validity of Power of Attorney and Agent's Authority. The Certification appears to have been executed on May 17, 2017.

Due to the concerns the court had about the capacity of John Antonio and his ability to understand and execute legal documents including the Renunciation and Nomination and a complex twenty-one-page DPOA, the court issued an Order Appointing Designated Examiner and Temporary Guardian *ad litem* (*sua sponte*) on May 23, 2017.⁶

On December 18, 2017, the Designated Examiner, Dr. William Mulbry, filed a detailed report with the court (Mulbry Report). In his report, he finds, in his professional opinion, that John Antonio is an "incapacitated person to such an extent that he lacks sufficient understanding or capacity to make all responsible decisions concerning his property without assistance of legal counsel where one would be appropriate."⁷ (Mulbry Report, page 1) (emphasis original to Mulbry Report) Further, John Antonio requires the appointment of a "Limited Conservator to protect his self-interest in his efforts to manage, protect, sustain and preserve his estate, assets, money and property." (Mulbry Report, page 1) (emphasis original to Mulbry Report)

In support of his findings, Dr. Mulbry reports that, "He [John Antonio] had difficulty subtracting \$.065 from \$1.00, 'I'm not good at math' [stated John Antonio]." (Mulbry Report, page 5) The report reveals that John Antonio does not know what his monthly bills are, but that "Lester [Schwartz] takes care of it [his bills]." (Mulbry Report, page 5) Dr. Mulbry's report also states that John Antonio cashed out his retirement CDs to invest in a health insurance company owned by a friend of his father's. John Antonio could not provide specifics on the investment but stated that the friend comes to the house once a month. (Mulbry Report, page 6) When asked about a Power of Attorney, John Antonio replied that, "I don't know the legal terms [of a Power of Attorney] or what it does." (Mulbry Report, page 7) At a second interview, after Angus Lawton became attorney for John Antonio, John Antonio stated that he had given Power of Attorney to Mr. Lawton. (Mulbry Report, page 9) On at least three occasions, John Antonio states that if he needed help, he would turn to his brothers, Michael Colucci and Stefan Colucci. (Mulbry Report, page 9, 10)

On March 13, 2018, Angus Lawton, Esquire filed a motion to be substituted as counsel for John Antonio⁸ which was granted on the same day.

⁶ Glenn Churchill, Esquire was appointed as Guardian *ad litem* for John Antonio.

⁷ It is unclear what this finding means; however, the finding that John Antonio needs at least a limited conservatorship is clear from an overall reading of the thirteen-page report.

⁸ While Michael Colucci was not included in this motion, Mr. Lawton proceeded to act on behalf of both John Antonio and Michael Colucci including handling receipt of wrongful death proceeds for Michael Colucci and appearing at a court hearing stating he was the attorney for both John Antonio and Michael Colucci.

Currently, Rosen Hagood LLC is holding in its IOLTA account the amount of \$180,889.44⁹ for disbursement to John Antonio via his attorney, Angus Lawton. On August 19, 2019, the amount of \$175,889.44 (after costs and attorney's fees) was paid to Lawton Law Firm for Michael Colucci. All interested parties agreed on the record that no funds would be paid to John Antonio until a court-approved plan is in place to ensure proper protections for John Antonio.

This court has met informally with Glenn Churchill¹⁰ and Angus Lawton as well as exchanged numerous e-mails in order to find a method to protect the funds for John Antonio. The court was informed that the net amount after attorney's fees and costs that would be payable to John Antonio would be in the approximate amount of \$130,000, approximately \$60,000 less than the amount that is currently being held by Rosen Hagood LLC. The proposal of Mr. Churchill and Mr. Lawton is as follows: John Antonio's funds are to be placed with a financial planner. If John Antonio requests over \$2,000, then the financial planner is to report this to Glenn Churchill.¹¹

On October 18, 2019, Angus Lawton filed a Motion to Authorize Disbursement (of funds to John Antonio).

In light of the Mulbry Report, the cognitive problems of John Antonio, including lack of money management skills, and the vulnerability of John Antonio, this court sought guidance from Professor Freeman as to the court's obligation to assure fair treatment of parties and discharge of ethical duties when the funds are turned over to John Antonio. The court also asked for guidance on any related ethical issues that Professor Freeman recommends that the court address.

Professor Freeman's Opinions and Recommendations

It is this court's understanding that Professor Freeman has advised that the following actions be taken by the court:

1. It appears that John Antonio lacks the skills he needs to personally manage the money he will receive. It appears that to date the parties have been unable to provide the court with a suitable system to manage John Antonio's funds outside of the conservatorship process. Professor Freeman accordingly recommends that a formal conservatorship action be initiated in accordance with Dr. Mulbry's report. He recommends that the court issue an order directing the appropriate party to bring the conservatorship proceeding. If the appropriate party declines to do so, the court should initiate such an action sua sponte. Funds payable to John Antonio should continue to be held by Rosen Hagood

⁹ In addition to the wrongful death funds, it is uncertain what additional funds may be due to John Antonio through the estate/trust.

¹⁰ Glenn Churchill has submitted an affidavit and billing statement for his legal work on this matter. In approximately forty-five of the time entries, Ms. Churchill corresponded or met with Angus Lawton without further elaboration of the content of the discussions.

¹¹ Various e-mails from between Glenn Churchill, Angus Lawton, and the court are included in the attachments which span from August 13, 2019 through October 11, 2019.

LLC until a full hearing on the merits can be held and an order issued regarding John Antonio's need for a conservatorship.

2. Angus Lawton is representing both Michael Colucci and John Antonio. John Antonio appears to be a vulnerable adult who will receive a large amount of funds. It appears that Michael Colucci and John Antonio have actual or potentially divergent interests. There is a risk that Michael Colucci may attempt to gain access to John Antonio's funds. If this were to happen, John Antonio would need his interests to be protected by a fiduciary who was looking solely to protect John Antonio's interests, i.e., a qualified fiduciary with no divided loyalty. Professor Freeman is concerned that Mr. Lawton's representation of Michael Colucci could work to the disadvantage of John Antonio, his other client before the court. Pursuant to Rule of Professional Conduct 1.7, both Michael Colucci and John Antonio must provide informed consent, given in writing, that Mr. Lawton may represent them both. However, it is unclear that John Antonio has the ability to give the requisite informed consent, to knowingly waive any conflicts, or that he understands the legal aspects of the consent and waiver. Professor Freeman recommends that John Antonio be served by an independent advisor solely representing John Antonio's interests. He agrees with Dr. Mulbry's recommendation of appointment of a "Limited Conservator to protect [John Antonio's] self-interest in his efforts to manage, protect, sustain and preserve his estate, assets, money and property."
3. Before any funds are disbursed to Lawton Law Firm, the court would be required to review and approve all costs and fees that may be payable to Angus Lawton or Lester Schwartz. It appears from Glenn Churchill's billing statement that he reviewed a fee agreement between John Antonio and Mr. Lawton. This agreement shall be provided to the court for review in connection with issues concerning any conflict of interest waivers and any fees and costs that Mr. Lawton will be seeking. Professor Freeman recommends that all conflict waivers between Mr. Lawton and Michael Colucci and John Antonio should be presented to the court for review. He recommends that the court inquire as to whether, given John Antonio's impaired cognitive ability, any waiver John Antonio gave was properly obtained.
4. Professor Freeman notes that Mr. Schwartz's previous joint representation of Michael Colucci and John Antonio also raises the specter of conflict problems. Because of Professor Freeman's concerns regarding Mr. Schwartz's joint representation of Michael Colucci and John Antonio at the time Mr. Schwartz prepared the DPOA and took other actions affecting John Antonio, Professor Freeman recommends that the court should request, obtain, and review the written conflict waivers obtained by Mr. Schwartz from Michael Colucci and John Antonio pursuant to SCACR 407, Rule 1.7, and inquire as to whether, given John Antonio's impaired cognitive ability, any waiver John Antonio gave was properly obtained.

Sincerely,

Mary Blunt

Mary Blunt
Judge of Probate

Please state whether the foregoing report fairly presents the opinions and recommendations you gave me concerning issues pertaining to assuring fairness toward John Antonio.

Response From Professor Freeman:

*The report accurately states my opinions +
recommendations. Please feel free to circulate
it.*

Dated: 10/30/19

John P. Freeman
John P. Freeman

Attachments: all referenced documents are attached

2020 JAN 24 PM 12: 59

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

In Re:)

The Estate of Doris Duane Colucci,)

Michael C. Fox, Named Personal
Representative of the Last Will of Doris
Duane Colucci,)

Petitioner,)

vs.)

Andrew Chandler, in his capacity as
Special Administrator of the Estate of
Doris Duane Colucci, Michael C. Fox, in
his capacity as Trustee of the Colucci
Living Trust, Ivo Francesco Colucci,
Michael Frederick Antonio Colucci, John
Martin Antonio Colucci, Henry Burkes,
and Richard M. Hyman, Jr.,)

Respondents.)

IN THE PROBATE COURT
CASE NO. 2017-ES-18-0294

**RESPONDENT CHANDLER'S MOTION
FOR PROTECTIVE ORDER**

TO: PETITIONER MICHAEL C. FOX AND HIS COUNSEL

YOU WILL PLEASE TAKE NOTICE THAT pursuant to South Carolina Rule of Civil Procedure 26, Respondent Andrew Chandler, Special Administrator of the Estate of Doris Duane Colucci (hereinafter the "Respondent"), through his undersigned attorneys, hereby moves the Court for a protective order involving the Interrogatories and Requests to Produce served on him by Petitioner Fox on October 4, 2019, copies of which are attached hereto collectively as Exhibit 1. Specifically, Respondent seeks an Order that this discovery not be had on the grounds set forth herein.

PROCEDURAL HISTORY

Doris Colucci was shot and killed by her husband, Ivo Colucci, on April 14, 2017. Respondent Chandler was appointed as Special Administrator of the Estate by this Court on July 10, 2017 (having been temporarily appointed as Special Administrator upon the Court's request on June 9, 2017).

In August 2017, the Decedent's Will was submitted to this Court. The Will appointed Ivo Colucci as the personal representative, and named the following persons, in order of priority, as successor personal representatives: 1) Michael C. Fox; 2) Henry Burkes; and 3) Richard Hyman, Jr., Esquire.

On October 30, 2017, Petitioner Fox filed a Petition for Formal Testacy and Appointment, seeking both to have the Decedent's Will admitted to probate and to be appointed as personal representative of the Estate. The Petition was removed from this Court to the circuit court and was heard on August 13, 2018. By Order filed August 27, 2018, the circuit court admitted the Will to probate, taking the issue of Mr. Fox's appointment under advisement. Upon the Will's admission to probate, the "Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto" (the "Trust") became the sole devisee of the Estate. Mr. Fox, who was named as a successor trustee of the Trust, executed an "Acceptance by Successor Trustee" on October 27, 2017, and has served as the Trustee since that time.

Following its receipt of the circuit court's Order admitting the Will to probate, this Court issued a Modified Order for the Appointment of a Special Administrator, finding in part that "[t]he continued appointment and service of Andrew W. Chandler as the Special Administrator for the Decedent's Estate is necessary to preserve the estate, to secure its proper administration, to avoid

actual and potential conflicts of interest, and to protect its assets.” See Modified Order, ¶ 5, attached as Exhibit 2.

On January 4, 2019, Mr. Fox filed a Petition for Removal of Special Administrator (“PRSA”) in this Court.¹ An emergency hearing, upon motion of Respondent Chandler, was scheduled and heard on January 9, 2019. By Order filed February 7, 2019, the Court denied Mr. Fox’s PRSA, holding that “Petitioner Fox made a number of accusations against Respondent Chandler and his counsel but failed to present to this Court any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator.” See 2/7/19 Order, p. 16, attached as Exhibit 3. This Court also ordered, pursuant to S.C. Code Ann. § 62-1-111, that Mr. Fox pay the Estate’s costs and fees in opposing the PRSA, which sum amounted to slightly over \$10,000.00. As of the filing of this Motion, Mr. Fox has not complied with the Court’s Order.

On February 13, 2019, the circuit court issued an Order finding Mr. Fox qualified to serve as the General Personal Representative of the Estate of Doris Duane Colucci and thereby appointed him to serve in that position in accordance with her Will. Pursuant to S.C. Code Ann. § 62-3-618, Mr. Chandler’s appointment as special administrator terminated upon the appointment of Mr. Fox.

By Temporary Order Restraining General Personal Representative and Order for Appointment of Temporary Special Administrator, both entered on February 13, 2019, this Court temporarily restrained Mr. Fox “from exercising any powers or discharging any duties of his office” and appointed Mr. Chandler as the temporary special administrator of the Estate with “all the powers of a general Personal Representative.”

¹ Previously, on November 26, 2018, Mr. Fox filed a Motion to Restrain Special Administrator in the circuit court. His Motion made the same accusations and allegations, verbatim, as the PRSA filed in this Court months later.

On February 25, 2019, Respondent Chandler filed a Motion to Reconsider, Alter, or Amend, asking the circuit court to reconsider its order appointing Mr. Fox as personal representative. After extensive supplemental briefing at the court's request, the circuit court reconsidered its prior order, and by order filed May 28, 2019, denied Mr. Fox's Petition for Appointment, finding that Mr. Fox was not qualified to serve as personal representative. Mr. Fox has appealed this Order to the S.C. Court of Appeals.

On April 18, 2019, Mr. Fox, purportedly in his capacity as personal representative of the Estate, appealed nine separate orders of the probate court by filing a Notice of Appeal in the circuit court. One of the orders appealed was this Court's February 7, 2019, Order denying Mr. Fox's PRSA.² Respondent Chandler filed a Motion to Dismiss Appeal on the basis that the appeals were either untimely, moot, and/or not final orders as required by S.C. Code Ann. § 62-1-308. Respondent Chandler also filed a Motion to Lift Stay in this Court, which was granted.

After this Court granted Respondent Chandler's Motion to Lift Stay, Mr. Fox filed an "Emergency Petition for Writ of Supersedeas" in the circuit court, seeking to "suspend proceedings in the [probate] court." On May 28, 2019, the circuit court denied Mr. Fox's Emergency Petition on the basis that it was procedurally deficient. As discussed in more detail below, the circuit court's Order denying Mr. Fox's Emergency Petition appears to have also dismissed Mr. Fox's appeals (of those nine probate court orders). Mr. Fox has also appealed this Order to the S.C. Court of Appeals, where it is currently pending.

² The other orders Mr. Fox appealed consisted of the following: 10/24/17 Order Denying Informal Probate; 10/26/17 Order to Sell Personal Property; 7/30/18 Order Authorizing the Sale of Real Estate; 8/27/18 Modified Order for Appointment of Special Administrator; 1/15/19 Order Authorizing Distribution from Estate; 2/13/19 Order for Appointment of Temporary Special Administrator; 2/13/19 Temporary Order Restraining General Personal Representative; and 4/17/19 Order for Temporary Restraint of General Personal Representative

It warrants mention that, but for the actions of Mr. Fox, this Estate would be closed by now. Instead, it continues to incur expenses and fees, reducing the amount that will eventually be distributed to the Trust, the Estate's sole devisee, of which Mr. Fox is the Trustee.

LEGAL STANDARD

When the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. See Palmetto Alliance v. South Carolina Pub. Serv. Comm'n, 282 S.C. 430, 434, 319 S.E.2d 695, 698 (1984) (scope and conduct within sound discretion of trial judge). Rule 26, SCRCP, provides "[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court...may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: (1) that the discovery not be had...." The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion. Evening Post Pub. Co. v. Berkeley Cty. Sch. Dist., 392 S.C. 76, 85, 708 S.E.2d 745, 750 (2011).

LEGAL ARGUMENT

I. Mr. Fox is not entitled to conduct discovery.

The South Carolina Probate Code does not specifically provide for the use of discovery in probate proceedings. Rather, it states that the South Carolina Rules of Civil Procedure govern formal proceedings, which are "civil actions" as defined in Rule 2, SCRCP. See S.C. Code Ann. § 62-1-304; see also S.C. Code Ann. § 62-1-201(17) ("Formal proceedings' means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and

subject to the rules of civil procedure adopted for circuit courts and other rules of procedure in this title.”). Thus, it follows that, to conduct discovery as permitted under the SCRCP in a probate matter, there must be a pending formal proceeding. See Rule 26(b)(1), SCRCP (permitting parties to obtain discovery relevant to “the subject matter involved in the *pending* action”) (emphasis added).

There is no formal proceeding currently pending in this Estate in this Court. The only formal proceedings initiated by Mr. Fox³ were: 1) the Petition for Testacy and Appointment, which was removed to the Circuit Court by order dated November 20, 2017; and 2) the Petition for Removal of Special Administrator (“PRSA”), filed on January 4, 2019. Following the filing of the PRSA, Respondent filed a Motion for Emergency Hearing on January 8, 2019, which was granted and a hearing set for the following day. Notably, Mr. Fox was already scheduled to be before this Court on January 9, 2019, as a hearing on Respondent’s Proposal for Distribution, which sought approval of a distribution of Estate funds to the Trust, had previously been set for that day. Mr. Fox, through his attorney, received notice of that hearing in early December (the Proof of Delivery was filed December 12, 2018). Additionally, a review of the transcript of the January 9, 2019, hearing reveals that at no time did counsel for Mr. Fox state any objection to the hearing being held on an emergency basis, nor did he request additional time from the Court to conduct discovery. See Transcript of January 9, 2019, hearing, attached as Exhibit 4.⁴

Following the hearing on January 9, 2019, this Court denied the PRSA, thus concluding that “formal proceeding.” See S.C. Code Ann. § 62-3-107 (“Each proceeding before the Court is

³ The caption on the discovery at issue indicates that it is purportedly being served in a proceeding in which Mr. Fox is the “Petitioner”.

⁴ As noted in the Procedural History section above, Mr. Fox had made the exact same allegations against Respondent Chandler in a “Motion to Restrain Special Administrator” filed in November in circuit court. Although the circuit court dismissed that Motion as moot on February 13, 2019, at no time prior to the hearing on the PRSA in probate court did Mr. Fox conduct any form of discovery relating to his Motion.

independent of any other proceeding involving the same estate.”). Although Mr. Fox filed a “Motion to Alter or Amend and Relief From Judgment or Order Pursuant to South Carolina Rules of Civil Procedure 52(b), 59(e), & 60(b)(4) & (5)”, Mr. Fox thereafter appealed the denial of his PRSA to the circuit court, and, in so doing, took the position that his Motion to Alter or Amend before this Court was “constructively denied”. See Return to Motion to Dismiss Appeal, pp. 4-7, attached as Exhibit 5; see also Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (“The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action.”).

As noted above, Mr. Fox has appealed the Order denying his PRSA to the circuit court, further compelling the conclusion that it is not pending in probate court. Admittedly, the circuit court appears to have dismissed Mr. Fox’s appeal based on language in the Order Denying Appellant’s Emergency Petition for Writ of Supersedeas:

IT IS FURTHER ORDERED that this estate is to remain in the complete jurisdiction of the Probate Court until a final order is issued by the Probate Court disposing of all matters before it. At that point, should any appeals be necessary, only then can parties petition the Circuit Court in an appellate fashion. No appeals to the Circuit Court may be had or filed until this case is completed in Probate Court.

See Order Denying Appellant’s Emergency Petition for Writ of Supersedeas, p. 4, attached as Exhibit 6; see also Doe v. Bishop of Charleston, 407 S.C. 128, 135, 754 S.E.2d 494, 498 (2014) (“As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety. If the language employed is plain and unambiguous, there is no room

for construction or interpretation, and the effect thereof must be declared in the light of the literal meaning of the language used.”).

However, Mr. Fox has appealed the Order Denying Appellant’s Emergency Petition for Writ of Supersedeas, thus staying the dismissal of the appeal. See Rule 241(a), SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, or decree on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.”). Therefore, the appeal of the probate court’s Order denying the PRSA is either pending before the circuit court, or, if dismissed by the circuit court, that dismissal has been stayed by the appeal to the S.C. Court of Appeals.

Regardless of whether Mr. Fox’s Motion to Alter or Amend is pending, and regardless of whether his appeal of the Order denying the PRSA is pending (and if so, in which court), there is no rule or authority permitting discovery following this Court’s issuance of that Order. In Flag Fables, Inc. v. Jean Ann’s Country Flags & Crafts, Inc., 753 F. Supp. 1007 (D. Mass. 1990), the defendant prevailed at trial. As part of its post-trial motions, including a motion for a new trial, plaintiff sought an order compelling the defendant to submit to discovery. Id. at 1016. The plaintiff claimed to need certain documents for use on appeal or a new trial. In denying the plaintiff’s motion, the court stated:

Both Rule 26 and the local rules anticipate the use of discovery devices to unearth evidence before or during a trial. The rules make no explicit provision for post-trial discovery, and the Court knows of no case where post-trial discovery was allowed. The trial is over; *a fortiori*, discovery is over.

Id. Likewise, the PRSA has been ruled upon and that distinct proceeding is concluded in this Court, therefore the time and ability to conduct discovery has passed.

The matter in which Mr. Fox seeks discovery is no longer pending in this Court. Therefore, his untimely attempt to conduct discovery should not be permitted.

II. Even if Mr. Fox were entitled to conduct discovery, the discovery requests at issue seek information that is not relevant to the subject matter of any “pending action”.

Even if Mr. Fox were permitted to conduct discovery at this juncture, the discovery sought would nonetheless be improper. Discovery must be relevant to the subject matter involved in the pending claim. Rule 26(c), SCRPC; In re Mt. Hawley Ins. Co., 427 S.C. 159, 167, 829 S.E.2d 707, 712 (2019). The discovery sought by Mr. Fox is not relevant to his PRSA and would not contribute to the resolution of any issues connected to Mr. Fox’s claims.

Mr. Fox brought the PRSA under S.C. Code Ann. § 62-3-611(b), which provides that “[c]ause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.”⁵ The PRSA is replete with allegations of wrongdoing, all of which, after a hearing during which Mr. Fox was given the opportunity to present evidence and elicit testimony from Respondent, were found to be without merit. See Ex. 3, 2/7/19 Order denying PRSA. In fact, the Court ordered that, pursuant to S.C. Code Ann. § 62-1-111, Mr. Fox pay the costs and fees incurred by the Estate in responding to the PRSA. Importantly, none of the PRSA’s allegations of wrongdoing implicate, or relate to, the information that is now being sought through Mr. Fox’s discovery requests and the scope of a formal proceeding is framed by the petition. See Unif. Probate Code § 3-107 cmt. In other words, the discovery being sought is irrelevant to whether or

⁵ While S.C. Code Ann. § 62-3-611 applies to the removal of personal representatives, S.C. Code Ann. § 62-3-618 makes it applicable also to the removal of special administrators, such as Respondent.

not, under the applicable standards of S.C. Code Ann. § 62-3-611(b), cause exists to remove Respondent as Special Administrator (which proceeding, again, has been concluded).

To be fair, in his Motion to Alter or Amend the Order denying the PRSA, Mr. Fox submits that the Order “does not consider or explain the alleged *ex parte* communications between the [Respondent] and the Court”, citing Rule 3(b)(7), CJC, Rule 501, SCACR. Even if this one sentence in his Motion to Alter or Amend (which per Mr. Fox, was constructively denied) acted so as to make it an issue that is currently pending before the Court, Mr. Fox’s “allegation” is not one of misconduct on the part of Respondent. Rather, Mr. Fox cites the Code of Judicial Conduct, and thus is implicitly, if not explicitly, making an accusation aimed at the Court itself. The discovery, even if timely served, is simply not relevant to whether or not cause exists to remove Respondent as Special Administrator. It is difficult to ignore the fact that Mr. Fox’s accusation of “alleged *ex parte* communications” came on the heels of the Court’s denial of his PRSA and its imposition of over \$10,000 in sanctions. It also bears mentioning that these discovery requests were served after the Court ordered Mr. Fox to prepare and submit an accounting of the maintenance and expenditure of funds in the Trust during a hearing on August 7, 2019.⁶ See Exhibit 7, Transcript of 8/7/19 hearing, pp. 17-19. Regardless of what Mr. Fox’s motives were in serving the discovery at issue, one thing is certain: the discovery sought is neither timely nor relevant and should not be allowed.

CONCLUSION

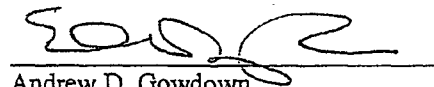
Mr. Fox is not entitled to conduct the discovery at issue, and even if he were, Respondent’s Motion must be granted because the discovery is simply not relevant. Additionally, it is clear from the timing and the wording of the discovery requests that Mr. Fox’s primary intent is to annoy and

⁶ The hearing was on Respondent’s Application to Approve Compromise, which sought the Court’s approval of the settlement of the “Slayer Lawsuit”.

harass. Justice requires that the Estate be protected from this abusive discovery and from incurring even the slightest expense in responding. Pursuant to Rule 26(c), SCRCP, and the arguments and law set forth above, Respondent is entitled to Order granting this Motion and directing that the discovery not be had.

WHEREFORE, Respondent Chandler respectfully moves this Court for a protective order as stated herein and to award such other and further relief as this Court may deem just and proper.

ROSEN HAGOOD, LLC



Andrew D. Gowdown
Elizabeth J. Palmer
151 Meeting Street, Suite 400
Charleston, South Carolina 29401
(843) 577-6726

ATTORNEYS FOR RESPONDENT ANDREW
CHANDLER, AS SPECIAL ADMINISTRATOR
OF THE ESTATE OF DORIS DUANE COLUCCI

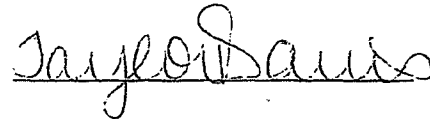
Charleston, South Carolina
November 4, 2019

CERTIFICATE OF SERVICE

I certify that on 11/14, 2019, I caused
to be:

- ☒ mailed
- ☐ hand delivered
- ☐ faxed
- ☐ e-mailed

a true copy of the foregoing pleading(s) to
each counsel of record.



Colucci estate

Angus Lawton

Tue 11/5/2019 3:35 PM

To: Elizabeth Palmer <epalmer@rosenhagood.com>

Beth, I would like some information from you regarding the Colucci matter and John Antonio. Specifically I would like to know the following:

1. Have you, Andrew Chandler, or any member of your firm had any communication with Judge Blunt or any member of the Dorchester County Probate court regarding John Antonio since July 2, 2019?
2. Did you, Andrew Chandler or any member of your firm have any role in drafting the letter signed by Judge Blunt and John Freeman which I received yesterday, dated November 4, 2019 regarding John Antonio?
3. Have you answered the questions and provided the documentation requested in Gordon Garrett's interrogatories and request for production to you dated October 4, 2019? I understand those responses were due yesterday.

I called you yesterday to discuss these issues and left a message. Once I receive your responses to these questions, I imagine there will be some follow up questions.

Thank you.

Angus M. Lawton, Esquire
Lawton Law Firm
496 Bramson Court, Suite 100
Mount Pleasant, SC. 29464
(843) 881-9901

PROBATE JUDGE
DORCHESTER COUNTY
2020 JAN 24 PM 12:59



PROBATE JUDGE
DORCHESTER COUNTY
ANGUS M. LAWTON
SC BOARD CERTIFIED MEDIATOR
SC BOARD CERTIFIED CIVIL ARBITRATOR
NATIONAL BOARD OF TRIAL ADVOCACY
2020 JAN 24 PM 12: 59
GUS@LAWTONLAWFIRM.NET

November 6, 2019

BY EMAIL AND US MAIL

Elizabeth Palmer, Esquire
Rosen Hagood
P.O. Box 893
Charleston, SC 29401

Re: Estate of Doris Duane Colucci
Case # 2017-ES-18-00294

Dear Beth:

This letter will follow up on the phone message which I left for you on Monday, November 4, 2019.

My clients, John Antonio and Michael Colucci have a number of questions regarding the way that their mother's estate has been handled. As you represented Andrew Chandler, the special administrator handling the estate, we would appreciate your providing us with the following information:

1. Have you, Andrew Chandler, or any member of your firm had any communication with Judge Blunt or any member of the Dorchester County Probate court regarding John Antonio since July 2, 2019?
2. Did you, Andrew Chandler or any member of your firm have any role in drafting the letter signed by Judge Blunt and John Freeman which I received the day before yesterday, November 4, 2019, regarding John Antonio?
3. I understand that you have not answered the questions and provided the documentation requested in Gordon Garrett's interrogatories and request for production to you of October 4, 2019. (Yesterday I received your Motion for a Protective Order, asking that you not be required to provide those responses.)

Given your position on those issues, we are asking that you provide to me all information regarding any ex parte communications that you, Andrew Chandler, or any member of your firm have had with Judge Blunt, Judge Edwards, or any representatives of the Dorchester County Probate Court since I made an appearance in the case as the attorney for John Antonio and Michael Colucci. (I am asking that you provide me with copies of any such communications, any billing records from your firm or Mr. Chandler's firm that

496 BRAMSON COURT, SUITE 100
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WWW.LAWTONLAWFIRM.NET

reference such communications, and any notes from those communications. If any such communications took place on the phone or verbally, I would like to ask the attorneys involved to tell me what was discussed.)

Please let me know by noon on Friday, November 8, 2019 if you will voluntarily provide me with this information. (The reason for this deadline is that I have been given a deadline by Judge Blunt to present any positions in response to John Freeman's report.) If you will provide this information, my paralegals can make arrangements for me to come to your office to review these materials next week.

We feel that this request is appropriate, given the fiduciary obligations that your firm and Andrew Chandler owe to my clients.

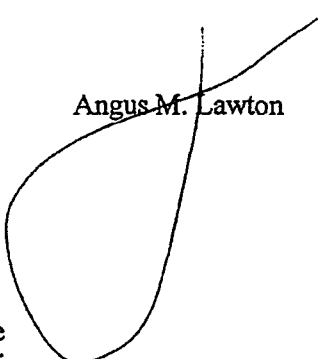
Please also understand that given the value of the estate and the questions that my clients have regarding their mother's estate there may be additional information that they would like for your firm and Mr. Chandler's firm to provide.

Thank you.

With kind personal regards, I remain,

Very Truly Yours,

Angus M. Lawton

A large, stylized handwritten signature in black ink, which appears to be 'Angus M. Lawton', is written over the typed name.

Enclosures as stated

AML/jm

cc: Glenn Churchill, Esquire
Brewton Hagood, Esquire
Andrew Gowdown, Esquire



ANGUS M. LAWTON
S.C. BOARD CERTIFIED MEDIATOR
S.C. BOARD CERTIFIED CIVIL ARBITRATOR
NATIONAL BOARD OF TRIAL ADVOCACY
ANGUS@LAWTONLAWFIRM.NET
2020 JAN 24 PM 12:59

November 14, 2019

VIA EMAIL & U.S. MAIL

Professor John Freeman
200 W. Highland Drive, Unit 107
Seattle, WA 98119-3507

The Honorable Mary Blunt
Dorchester County Probate Court
5200 East Jim Bilton Blvd.
St. George, SC 29477

Re: The Estate of Doris Duane Colucci
2007-ES-18-00294

Dear Professor Freeman (and Judge Blunt):

Thank you for your help in this case. Due to the ethical concerns expressed in your recent letter, we have taken a great deal of time to evaluate the situation and provide appropriate information in response. We also believe item # 6 below should be resolved properly before any other issues are decided. In doing so, everyone involved can make sure that this case is handled properly, impartially and without any appearance of impropriety.

I would like to give you some additional background to make sure that you have all of the necessary information to provide your opinions in this matter. Like many probate disputes, the conflicts in this family go back decades. Since Doris Colucci's death, there have been at least 5 different lawsuits filed involving different family members. There have been disputes about family property, family debts, and related criminal proceedings, and it has been extremely contentious. There is one order sanctioning a party. (My clients were not involved in that order.) There have also been rumors about various family members that do not need to be repeated, and the family's disputes have been covered by the local newspapers and news stations.

Doris Colucci died on April 14, 2017, over two years ago, yet the estate has not been closed. The individual beneficiaries have not received any distributions from the estate. At least part of the probate matter is on appeal, which means that it will probably be at least another year before the family members can get closure.

My clients are the only natural children of Doris Colucci, and they are both beneficiaries in her will. They have multiple questions regarding the way their mother's estate has been handled.

496 BRAMSON COURT, SUITE 100
MOUNT PLEASANT, SC 29464

TELEPHONE: (843) 881-9901
FACSIMILE: (843) 881-8839

WWW.LAWTONLAWFIRM.NET

Both of my clients simply want the matter resolved fairly and properly, so they can move on with their lives.

I have tried to address your concerns below:

1. **Informed consent forms:** I have attached Waiver of Conflict forms signed by John Antonio and Michael Colucci. (Exhibits 1 and 2). John Antonio's form is also signed by Glenn Churchill, who is the independent GAL appointed by the court. Mr. Churchill is an attorney in Charleston, and he has been practicing for 34 years. He was appointed as John Antonio's GAL before I became involved in the case.

Glenn's approval of decisions relating to John Antonio should satisfy any concerns that John needs an independent advisor. Glenn was selected by the court, and not by John Antonio or any member of his family. Glenn has no relationship with Michael Colucci or any other member of the Colucci family. He has acted solely on behalf of John in all proceedings.

As you can see from the attached fee agreement with John Antonio (Exhibit 3), Glenn also signed that fee agreement nearly 2 years ago approving the terms of my representation. The fee agreement also dealt with any potential conflict and how it would be handled. Glenn can also confirm that I have acted properly in protecting John, and that there are currently no conflicts between Michael Colucci and John Antonio. In that respect, please see the affidavit Glenn signed relating to any potential conflict. (Exhibit 4.)

2. **Fee agreement with John Antonio:** As referenced above, my fee agreement with John Antonio dated December 15, 2017, is also attached. (Exhibit 3.) Based on the rate that Glenn Churchill was charging (\$200 an hour), I reduced my usual rate by one third to that same rate.

John Antonio's fee agreement discussed what would happen if a conflict arose between Michael and John. Further, as set forth in the affidavit of John's GAL, there are no conflicts between Michael and John, and any such issues have been resolved to the satisfaction of the GAL.

(As an aside, Dr. Mulbry's letter indicates that John thought he had given me a POA. This letter will confirm that John has not signed any power of attorney giving me the rights to handle any issues for him. I think Dr. Mulbry's letter references the fee agreement that John and Glenn Churchill signed. I would not be comfortable with having John sign a POA, and any POA presented to Mr. Antonio would have to be approved by his GAL.)

The fee agreement also provides that any dispute relating to the fees shall be submitted to the Fee Disputes Board of the South Carolina Bar. It does not appear that there is any dispute about the fees, as John and Glenn have approved of the same.

3. **Bills for the work that I have performed:** Judge Blunt, as we discussed in the emails exchanged on August 29, 2019, I respectfully don't think court approval is necessary on my fees if a conservator is not appointed. I thought you had come to the same conclusion, based on your email to me of August 29, 2019 regarding my fees. Your email, which was included in the package to Professor Freeman, states "I only need Glenn's affidavit and billing statement since he was court appointed, not yours. Sorry for any confusion on that."

Please rest assured that both Glenn and John have approved of my fees all along, and I understand that they are both fine with the fees now. If a conservator is appointed, I will be happy to present all of my bills to the conservator so that they can be reviewed and a decision be made by the appropriate court or board as to whether they are appropriate. So far, I have not received any fees from the work done on John's behalf, and I have been working for him for nearly 2 years.

Given the issues raised in this letter, and the questions about the conservator issue, I would like to wait until those issues have been resolved before presenting my bills to anyone other than my clients.

4. **Lester Schwartz/Dan David:** Until I received your letter, I did not know that there was any concern regarding Lester Schwartz's fees or his representation of John Antonio, and I had no indication that Mr. Schwartz intended to charge John for any work performed. I have now confirmed with Mr. Schwartz that he is not seeking any fees from John, so there should be no issue in that respect.

In terms of Dan David, I have no indication that he is planning to charge John any fees. Mr. David has not been involved in the case for nearly 2 years, and he has never told me that intends to collect any fees from John. During my representation, Mr. David's only involvement has been to provide me with necessary information so that I could continue the representation. Mr. David has provided all such information as requested.

Please let me know if there are any remaining issues regarding Mr. Schwartz or Mr. David. I am not aware of any complaints or concerns that Michael or John have voiced regarding Mr. Schwartz or Mr. David.

5. **Conservatorship/GAL:** I understand the legal issues relating to the appointment of a conservator. As I indicated at the hearing on August 7, 2019, I am happy to work with the appropriate court to make sure that an order is put in place given the issues. I am comfortable that Glenn is willing to do so as well.

There are several statutes in the probate code that should give the court guidance:

- a. The court shall exercise its authority to encourage maximum self reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person's mental and adaptive limitations. (SC Code Ann. Section 62-5-407.) (We feel like John has shown independence and reliability; he has a full time job, pays his bills, and lives alone.)
- b. In determining whether to appoint a conservator, the burden of proof seems to be "clear and convincing evidence". (SC Code Ann. Section 62-5-404 (B)); and
- c. The court may limit the power of a conservator. (SC Code Ann. Section 62-5-404 (C))

Glenn and I recently met with John, and I believe John's biggest concern is that if a conservator is appointed, John may have to get court approval for ordinary living expenses, like clothing, groceries, utility bills, etc. Frankly, given John's living situation, it does not seem productive or necessary for there to be such restrictions on his account. He will also have to pay the conservator to apply for approval of such expenses, which will reduce the amount of money that John receives. A bond and annual accountings may be required, which will cost John additional money.

Based on all the factors, Glenn and I submitted a proposal that allowed Glenn, an independent attorney, to remain involved in John's finances, and which would allow John to withdraw up to \$2,000.00 a month without any supervision. We thought that proposal would give John some independence, as required in the statute above, and protect his principal from waste or interference. Glenn and I have been willing to adjust that number so that John can have access to funds to help him with his day to day expenses.

As it stands now, neither John, Glenn, nor I know what type of restrictions, protections, or limitations the court feels are necessary, other than the apparent feeling that a conservator or limited conservator needs to be appointed. It is not clear whether John will need court approval to withdraw money for his basic living expenses, like clothes, gas, etc. It may be that a limited conservator would be useful and proper, as long as the restrictions on John's access to the money are not too severe. John is opposed to having someone totally control his money so that he cannot access the funds even to buy a pair of shoes.

Once the issues in this letter are addressed, Glenn and I are willing to work to obtain the proper balance between giving John access to some money on a regular basis to allow for his independence, with some restrictions on his use or access of the money. An updated report from Dr. Mulbry could also provide some benefit. Such a report would resolve any questions about his specific conclusions, or how his first report is to be interpreted.

6. **Ex parte communications:** I realize that this is a sensitive topic, but my clients have a number of questions regarding the way that their mother's estate has been handled. It appears that there may have been ex parte communications with the court, and we would like to obtain full and complete disclosure of all information regarding any such communications. (In this respect, please see page 27 of the transcript from the hearing on January 9, 2019, where Mr. Chandler testifies that he had a phone conference with Judge Blunt the day before a hearing. Copies of the pertinent pages of the transcript are attached as Exhibit 5.)

It also appears that there may have been information provided to the court about Michael Colucci and/or John Antonio that is not contained in the record. Specifically in the letter of November 4, 2019 it states:

"Concerns were brought to the court and to court appointed fiduciaries about the capacity of John Antonio to manage and receive assets either through the estate or through settlement proceeds which may result from the decedent's cause of death." (Page 1, paragraph 2);

"In 2010, . . . , Dan M. David received a public reprimand . . ." (Footnote 4, page 2);

"There is a risk that Michael Colucci may attempt to gain access to John Antonio's funds." (Page 5, paragraph 2).

I am not aware of any information in the record to support these statements.

Given those concerns, I requested that Beth Palmer and Andrew Chandler, the court appointed special administrator, provide me with all information regarding any ex parte communications that have taken place with the court. (Please see email to Beth Palmer dated November 5, 2019 and letter to Beth Palmer dated November 6, 2019, attached hereto as Exhibit 6.) For some reason, neither Ms. Palmer nor Mr. Chandler have provided any response to my requests. From my client's perspective, it is concerning that the attorneys handling their mother's estate have not responded to this request for information.

Please also note that Michael Fox, the trustee of Doris' estate, has sought similar information from Ms. Palmer and Mr. Chandler in the form of Interrogatories and Requests for Production (attached hereto as Exhibit 7). Those discovery requests also ask that Ms. Palmer and Mr. Chandler set out any legal authorities that permit such communications. (See Interrogatory 6.)

Ms. Palmer and Mr. Chandler did not answer those discovery responses either; rather they filed a Motion for a Protective Order.

At this point, the trustee of Doris Colucci's estate and two of the beneficiaries have asked for disclosure of any ex parte communications that have taken place. Upon information and belief, Ms. Palmer and Mr. Chandler owe at least some fiduciary obligations to the trustee and beneficiaries, yet they have not provided the requested information. If any such communications have taken place, we would like full disclosure of all information about such communications. For example, we would like to know:

- A: What, if any, ex parte communications have taken place;
- B: Who initiated those communications;
- C: Who participated in those communications;
- D: Exactly what was discussed in those communications;
- E: Why the other parties and attorneys were not given notice of those communications or allowed to participate;
- F: Are there any emails, notes or other documents that were exchanged in those communications? If there are any such materials, we would like to obtain copies;
- G: Are there any South Carolina authorities which allow such communications; and
- H: What are the obligations of the attorneys and others involved if any such communications have taken place?

Again, I understand the delicate nature of these questions. However, given the size of the estate (apparently over \$2,000,000.00), the fact that the case involves the death of my client's mother, and their questions regarding the way the estate has been handled, we think this request is appropriate.

We ask that there be full, factual and complete disclosure of this information so that all parties can be assured that the process is handled properly in a manner that promotes public confidence in the system and all persons involved. We have asked for this information, or at least similar information, from Ms. Palmer and Mr. Chandler, yet no answers have been provided.

As mentioned earlier, my clients mainly want to see that their mother's estate is properly handled, in a process that is free of bias, prejudice or the appearance of impropriety. They also want to make sure that due process is provided to all interested parties. We don't believe information should be considered that is not part of the record, especially if

my clients and I are not aware of the information provided, and we are given no opportunity to respond.

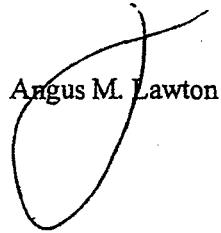
We would like to receive the information set forth in this section before proceeding on any other issues.

We welcome your input on these issues and the various issues raised herein and in your letter of November 4.

Thank you once again.

With kind personal regards, I remain,

Very Truly Yours,


Angus M. Lawton

Enclosures as stated

Cc: Beth Palmer, Esquire
Andrew Chandler, Esquire
Glenn Churchill, Esquire
Lester Schwartz, Esquire

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF DORCHESTER

FILED-RECORDED

APPLICATION/PETITION FOR APPOINTMENT
OF SPECIAL ADMINISTRATOR

IN THE MATTER OF: ESTATE OF DORIS DUANE

COLUCCI

(Decedent)

CHERYL GRAY, CASE NUMBER: 2017-ES18-_____

CLERK OF COURT

DORCHESTER COUNTY

***COMPLETE THIS SECTION ONLY IF FILING
PETITION FOR SPECIAL ADMINISTRATOR**

*LESTER S. SCHWARTZ, ESQUIRE,
Petitioner(s)

vs.

*IVO FRANCESCO COLUCCI, JOHN MARTIN
ANTONIO, AND MICHAEL FREDERICK ANTONIO
COLUCCI,
Respondent(s)

2017-CP-18- 1816

PROBATE JUDGE
DORCHESTER COUNTY
2017 MAY -3 PM 4:31

☐ INFORMAL

☒ *FORMAL

Appointment of a Special Administrator is requested:

INFORMAL PROCEEDING:

- ☐ to protect the Estate of Decedent prior to the appointment of a general Personal Representative.
- ☐ to safeguard Estate assets until a Successor Personal Representative is appointed due to the death or disability of _____, the previously appointed Personal Representative.
- ☐ to enforce a creditor's security interest upon property of the Estate or to institute proceedings to establish the Decedent's liability to the extent of the limits of insurance protection only.
- ☐ to take appropriate actions involving Estate assets, specifically: _____
- ☐ to obtain medical, tax, or other confidential records, specifically: _____
- ☐ to gain access to and take possession of any Wills, deeds to cemetery plots, and insurance policies, or other Estate related documents in Decedent's safe deposit box located at: _____
- ☐ Other: _____

FORMAL PROCEEDING:

☒ Appointment of a Special Administrator is requested to preserve the Estate and to secure the Estate and to secure the Estate's proper administration because: Please see Exhibit A attached hereto and incorporated herein by specific reference thereto.

☐ Other: _____

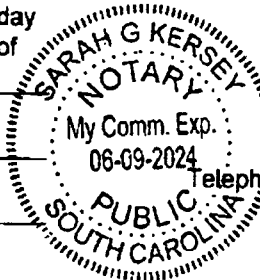
***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO A PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements 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 2nd day of May, 2017

Anne D. King
Notary Public for South Carolina
My Commission Expires: 06/09/2024



Signature: [Signature]
Print Name: Lester S. Schwartz, Esquire
Address: 708 St. Andrews Boulevard, PO Box 30356
Charleston, S.C. 29417-0356
Telephone (Work): (843) 571-7919
(Fax): (843) 571-0881
(Cell): (843) 345-1233
Email: Lester.Schwartz@sctaxlawyer.com
Relationship to Decedent/Estate: Nominee of children of Decedent

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing date.

Executed this _____ day of _____, 2017.

Honorable Mary Blunt, Probate Court Judge

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment of Special Administrator in the above estate be

☐ GRANTED ☐ DENIED as follows:

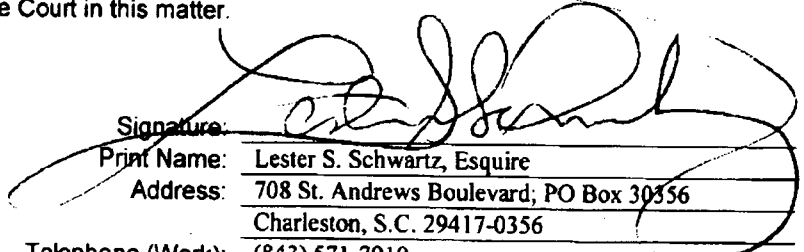
RESTRICTIONS: _____

Executed this _____ day of _____, 2017.

Honorable Mary Blunt, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept appointment and agree to perform the duties and discharge the trust of the office of Special Administrator of the foregoing Estate and submit to the jurisdiction of the Court in this matter.


Signature: _____
Print Name: Lester S. Schwartz, Esquire
Address: 708 St. Andrews Boulevard; PO Box 30356
Charleston, S.C. 29417-0356
Telephone (Work): (843) 571-7919
(Fax): (843) 571-0881
(Cell): (843) 345-1233
Email: Lester.Schwartz@sctaxlawyer.com

Attorney: Lester S. Schwartz, Esquire
Address: 708 St. Andrews Boulevard; PO Box 30356
Charleston, S.C. 29417-0356
Telephone: (843) 571-7919; Fax: (843) 571-0881
Email: Lester.Schwartz@sctaxlawyer.com

EXHIBITS
TO
APPLICATION/PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR
FOR ESTATE OF DORIS DUANE COLUCCI

1. Exhibit A;
2. Original Death Certificate of Doris Duane Colucci;
3. Form 300ES;
4. Renunciation Of Right To Administration And/or Nomination And/Or Waiver Of Bond of John Martin Antonio;
5. Renunciation Of Right To Administration And/or Nomination And/Or Waiver Of Bond of Michael Frederick Antonio Colucci;
6. Waiver Of Petition for Formal Probate and/or Appointment and Hearing on Appointment Of Lester S. Schwartz as Special Administrator, executed by John Martin Antonio;
7. Waiver Of Petition for Formal Probate and/or Appointment and Hearing on Appointment Of Lester S. Schwartz as Special Administrator, executed by Michael Frederick Antonio Colucci;
8. Revocation Of General Durable Power Of Attorney, Prior Existing Wills and/or Trusts, by Ivo F. Colucci, dated April 22, 2017 and recorded in R.M.C. Office of Charleston County, S.C. on April 27, 2016, at Book: **0549**, Page **893**.
9. Title to Real Estate dated May 26, 2016, by Ivo Colucci as the Grantor, of the remainder interest in his undivided Fifty Percent (50%) interest in 400 Murray Boulevard, Summerville, S.C., bearing Dorchester County Tax Map Number: **152-00-00-026.00**, to his children, Stefan Colucci, Alice C. Norton, Kim Colucci Lizzi, William Colucci and Robert Colucci, with retained life Estate, recorded in Dorchester County R.M.C. Office at Book: **10249**, Page **207**. Doris Colucci owns other undivided Fifty Percent (50%) in said property.
10. Title to Real Estate Deed dated March 14, 2011 to Ivo F. Colucci and Doris D. Colucci as the Grantees, from Mark E. Benson and Sandra K. Benson, as the Grantors, of real property located at 7674 Legare Road, Edisto Island, S.C. 29438 and bearing Colleton County Tax Map Number: **361-00-00-003** and recorded in the Colleton County R.M.C. Office at Book: **1919**, Page **1**.

FILED-RECORDED
2017 NOV - 1 PM 12:52
CHERYL B. HARRIS
CLERK OF COUNTY
DORCHESTER COUNTY

PROBATE JUDGE
DORCHESTER COUNTY
2017 MAY - 3 PM 4:31

EXHIBIT A
TO
APPLICATION/PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR
FOR ESTATE OF DORIS DUANE COLUCCI

The necessity for the appointment of the Special Administrator for the Estate of Doris Duane Colucci in the Dorchester County Probate Court at this time is as follows:

1. That the Decedent, Doris Duane Colucci, died on Friday, April 14, 2017, at the age of 74 years, and as a resident of Dorchester County, South Carolina.
2. That the Decedent, Doris Duane Colucci, was shot and killed by her husband, Ivo Francesco Colucci, on Friday, April 14, 2017, on the premises of the family's jewelry store business, Colucci's Jewelers, at 7565A Rivers Avenue, North Charleston, S.C.
3. That according to the police reports, the Decedent's husband, Ivo Francesco Colucci, verbally admitted to shooting the Decedent and was arrested and charged with murdering the Decedent.
4. That as of this date, no person has been appointed as the Personal Representative or Special Administrator for the Decedent's Estate, and no person can legally protect and assert the Decedent's rights to and in respect of her assets at this time.
5. That the Decedent was survived by her husband, Ivo Francesco Colucci., but upon information and belief, Decedent's husband, Ivo Francesco Colucci, will be disqualified as a beneficiary, heir at law and Fiduciary of the Decedent's Estate by application of the S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code (hereinafter occasionally referred to herein as the "Slayer Act").
6. That the circumstances of the Decedent's shooting death by the Decedent's husband and the murder charges presently pending against him, and his current incarceration, disqualifies the Decedent's husband, Ivo Francesco Colucci, from appointment as a Fiduciary of the Decedent's Estate and from nominating a Fiduciary of the Decedent's Estate.
7. That the Decedent was survived by her two (2) children, John Martin Antonio, born in the year 1963, and Michael Frederick Antonio Colucci, born in the year 1970, and they are both now living and have attained the age

of twenty-one (21) years or older at the time that this Application is made. The Decedent's two (2) children are not the children of the Decedent's husband, Ivo Francesco Colucci.

8. That the Decedent's two (2) children, John Martin Antonio, and Michael Frederick Antonio Colucci, would be the only heirs at law of the Decedent, if the Slayer's Act (S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code) applies with respect to the Decedent's husband, Ivo Francesco Colucci.

9. That each of the Decedent's two (2) children, John Martin Antonio and Michael Frederick Antonio Colucci, have executed Probate Form 302ES: Renunciation Of Right To Administration And/Or Nomination And/Or Waiver Of Bond, nominating the applicant, Lester S. Schwartz, Esquire, to be appointed and serve as Special Administrator.

10. That at the time that the Decedent was killed, an action was pending in the Dorchester County Therapeutic Court, at **2017-GC18-00004**, commenced by the Decedent for Court appointment as the Guardian and Conservator for her husband, Ivo Francesco Colucci.

11. That the Decedent's Petitions for appointment as Guardian and Conservator for per husband were being contested by four (4) of the Decedent's husband's children, Alice Colucci Norton, Kim Colucci Lizzi, William Colucci, and Robert John Colucci, and the Decedent's husband's said four (4) children were being represented in that proceeding by the Decedent's husband's son-in-law, Christopher Lizzi, Esquire.

12. That after the murder of the Decedent, Christa M. Yantis, CPA, CFE, CEBS, was appointed as the Conservator for the Decedent's husband, Ivo Francesco Colucci, in Dorchester County Therapeutic Court **2017-GC18-0004**.

The Slayer Act (S.C. Code Ann. § 62-2-803)

13. That upon information and belief, and the circumstances of the Decedent's shooting death by her husband, Ivo Francisco Colucci, the rights and benefits that would otherwise pass to the Decedent's husband, Ivo Francesco Colucci, as a result of the Decedent's death, will be subject to the Slayer Act (S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code), and shall not pass to the Decedent's husband, Ivo Francesco Colucci.

14. That the Decedent's husband's Conservator has indicated that until the issue of the Slayer Act (S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code) with respect to the Decedent's husband, Ivo Francesco Colucci, is litigated further, the Conservator is operating under the presumption that the Decedent's assets will pass to the Decedent's husband, Ivo Francesco Colucci, and that the Slayer Act will not be applicable to disinherit the Decedent's husband.

15. That the Conservator's decision to proceed as though the Slayer Act (S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code) does not apply as to the Decedent's husband, Ivo Francesco Colucci, presents great risk to the Estate of the Decedent and her heirs at law, that the Decedent's husband, Ivo Francesco Colucci, may profit by his own wrong-doing in killing the Decedent.

16. That upon information and belief, if the Conservator of the Decedent's husband proceeds as though the Slayer Act does not apply to the Decedent's husband, Ivo Francesco Colucci, then the financial resources and assets of the Decedent's Estate may be taken, used and expended by the Conservator for the Decedent's husband, Ivo Francesco Colucci, contrary to an ultimate determination in the Decedent's husband's criminal proceeding, or by this Court, that the Slayer Act (S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code) applies to the Decedent's husband disqualifying him from benefits arising from the Decedent's death.

17. That the use of the Decedent's assets by the Conservator for the Decedent's husband, Ivo Francesco Colucci, contrary to the application and intent of the Slayer Act would be an unconscionable, unjust enrichment of the Decedent's husband to the detriment of the Decedent's Estate and her heirs and beneficiaries.

18. That the immediate appointment of a Special Administrator of the Decedent's Estate is necessary in this matter for the preservation, conservation and maintenance of the Decedent's Estate and its interests and to protect and preserve the Decedent's interests and property from being used prematurely and contrary to the Slayer Act (S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code) prior to a final judgement.

19. That the Slayer Act at S.C. Code Ann. § 62-2-803(a) of the South Carolina Probate Code provides that an individual who feloniously and intentionally kills the Decedent is not entitled to any benefits under the Decedent's Last Will, a trust of which the Decedent is a grantor, or under this

article¹ with respect to the Decedent's estate, including but not limited to an intestate share, elective share, omitted spouse share, homestead allowance, and exempt property, and the Estate of the Decedent passes as if the Decedent's killer had predeceased the Decedent.

20. That if the Slayer Act at S.C. Code Ann. § 62-2-803(a) of the South Carolina Probate Code, is applicable to the Decedent's husband, Ivo Francesco Colucci, then no part of the Decedent's Estate would pass to him.

21. That the Slayer Act at S.C. Code Ann. § 62-2-803(b) of the South Carolina Probate Code requires that a joint tenant who feloniously and intentionally kills another joint tenant, thereby effects a severance of the interest of the Decedent so that the share of the Decedent passes as the Decedent's property and the killer has no rights by survivorship. S.C. Code Ann. § 62-2-803(b) of the South Carolina Probate Code applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of ownership with survivorship incidents.

22. That if the Slayer Act at S.C. Code Ann. § 62-2-803(b) of the South Carolina Probate Code, is applicable to the Decedent's husband, Ivo Francesco Colucci, then the joint bank accounts of which the Decedent and her husband, Ivo Francesco Colucci, are joint account holders, would have been severed with respect to the interest of the Decedent, and would pass as property of the Decedent's Estate and not to the Decedent's husband, Ivo Francesco Colucci, by right of survivorship.

23. That if the Slayer Act at S.C. Code Ann. § 62-2-803(b) of the South Carolina Probate Code is applicable to the Decedent's husband, Ivo Francesco Colucci, then it would also apply to real property owned by the Decedent and her husband, Ivo Francesco Colucci, with a right of survivorship located on Edisto Island, South Carolina, and to tangible personal property otherwise passing pursuant to S.C. Code Ann. § 62-2-805 of the South Carolina Probate Code.

24. That the Slayer Act at S.C. Code Ann. § 62-2-803(c) of the South Carolina Probate Code, requires that a named beneficiary of a bond, life insurance policy, retirement plan, annuity, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the individual

¹ The reference to "this article refers to Article 2 (S.C. Code Ann. §§ 62-2-101 through 62-2-1090) of the South Carolina Probate Code

upon whose life the policy is issued is not entitled to any benefit under the bond, policy, retirement plan, annuity, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

25. That if the Slayer Act at S.C. Code Ann. § 62-2-803(c) of the South Carolina Probate Code, is applicable to the Decedent's husband, Ivo Francesco Colucci, and he is a named beneficiary of life insurance insuring the life of the Decedent, or is a named beneficiary of the Decedent's retirements accounts, then S.C. Code Ann. § 62-2-803(c) of the South Carolina Probate Code would require that such benefits are to be payable as though the Decedent's husband, Ivo Francesco Colucci, predeceased the Decedent.

26. That the Slayer Act at S.C. Code Ann. § 62-2-803(d) of the South Carolina Probate Code, applies the same principles of S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code to any other acquisition of property or interest by the killer who intentionally and feloniously killed the Decedent.

27. That if the Slayer Act at S.C. Code Ann. § 62-2-803(d) of the South Carolina Probate Code, is applicable to the Decedent's husband, Ivo Francesco Colucci, then his interests would not be permitted to be increased as a result of the death of the Decedent, such as the ownership interests of the Decedent and her husband, Ivo Francesco Colucci, as Members of limited liability companies, and/or as partners in partnerships, to the extent that the ownership interests of the Decedent's husband, Ivo Francesco Colucci, would increase as a result of the Decedent's death.

28. That the Slayer Act at S.C. Code Ann. § 62-2-803(e) of the South Carolina Probate Code provides that the felonious and intentional killing of the Decedent revokes the nomination of the killer in a Last Will, or other document nominating or appointing the killer to serve in any fiduciary capacity or representative capacity, including, but not limited to, as personal representative, trustee, agent or guardian.

29. That if the Slayer Act at S.C. Code Ann. § 62-2-803(e) of the South Carolina Probate Code, is applicable to the Decedent's husband, Ivo Francesco Colucci, then he is disqualified from being personal representative of the Decedent's Estate.

30. That the Slayer Act at S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code provides that a final judgement by conviction, or guilty plea establishing criminal accountability of felonious and intentional killing the Decedent conclusively establishes the convicted individual feloniously and

intentionally killed the Decedent for purposes of S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code.

31. That the Slayer Act at S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code further provides that, in the absence of such final judgment, this Court, upon the petition of the interested person, must determine whether, upon the preponderance of the evidence standard, the individual would be found responsible for the felonious and intentional killing of the Decedent.

32. That if no final judgement by conviction or guilty plea is issued establishing the Defendant's husband's criminal accountability of felonious and intentional killing the Decedent, then this Court, pursuant to the Slayer Act at S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code, upon the petition of an interested person, must determine whether, upon the preponderance of the evidence standard, the Decedent's husband, Ivo Francesco Colucci, would be found responsible for the felonious and intentional killing of the Decedent.

33. That the Slayer Act at S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code further provides that, if this Court determines, under the preponderance of the evidence standard, that the Decedent's husband, Ivo Francesco Colucci, would be responsible for the felonious and intentional killing of the Decedent, then the determination by this Court would conclusively establish the Decedent's husband, Ivo Francesco Colucci, as the Decedent's killer for purposes of Section 62-2-803 of the South Carolina Probate Code.

34. That based upon the possible application of the Slayer Act at S.C. Code Ann. § 62-2-803 of the South Carolina Probate Code by conviction, by guilty plea, and/or by a determination by this Court based on the preponderance of the evidence standard, the immediate appointment of the Special Administrator is necessary and appropriate to assert and protect the rights and property of the Decedent from being used for the benefit of the Decedent's husband, Ivo Francesco Colucci, in violation of the Slayer Act.

Estate Planning Documents

35. That the appointment of a Special Administrator is necessary for seeking and locating the Decedent's originally executed Estate Planning documents.

36. That as of this date, the originally executed Estate Planning documents of the Decedent have not been located.

37. That the Decedent and her husband, Ivo Francesco Colucci, had executed Estate Planning documents with the Law Firm of Kuhn & Kuhn, on February 24, 2005, and thereafter updated their Estate Planning documents by written documents in that office on June 18, 2013.

38. That one of the Estate Planning documents executed by the Decedent and her husband with the Law Firm of Kuhn & Kuhn was a certain joint revocable living trust by the Decedent and her husband, Ivo Francesco Colucci, as the Trustors and as the Trustees, dated February 24, 2005 and referred to as the **"Colucci Living Trust"**.

39. That the Colucci Living Trust was amended by that certain, "First Amendment Of the Colucci Living Trust", executed by the Decedent and her husband, Ivo Francesco Colucci, as the Trustors and the Trustees on June 18, 2013.

40. That neither the originally executed copies nor executed copies of the Decedent's Estate Planning documents, consisting of the Decedent's Last Will and Testament dated June 18, 2013, the Colucci Living Trust dated February 24, 2005, and the First Amendment to the Colucci Living Trust dated June 18, 2013, have been located.

41. That the Kuhns and Kuhns Law Firm that prepared the before-mentioned Estate Planning documents has indicated that they do not have the originally executed documents from February 24, 2005, the originally executed documents from June 18, 2013, or complete copies of the actual documents that were printed and executed on such dates.

42. That on April 27, 2016, a certain Instrument entitled, **"Revocation of General Durable Power of Attorney, Prior Existing Wills And/Or Trusts"** dated April 22, 2016 and executed by the Decedent's husband, Ivo F. Colucci, was recorded in the R.M.C. Office for Charleston County, South Carolina, at Book: **0549**, Page **893**, stating that the Decedent's husband, Ivo Francesco Colucci, revoked all of the Estate Planning documents he executed prior to April 22, 2016, which would include the before-mentioned **"Colucci Living Trust"**, of which the Decedent was also a Trustor and Trustee.

43. That based upon the absence of the originally executed Estate Planning documents of the Decedent, the Estate of the Decedent is presumed to be an intestate Estate.

Assets

44. That at the time of the Decedent's death, the Decedent owned an undivided fifty percent (50%) interest in and to the real property and improvements located at 400 Murray Boulevard, Summerville, S.C. 29483, bearing Dorchester County TMS Number: **152-00-00-026.000**, which was conveyed to the Decedent and her husband as the Grantees, by deed of Lois M. Truesdale, as the Grantor, dated February 6, 1978 and recorded in the Dorchester County RMC Office at Book: **275**, Page **207**; and by Deed of T.C. Limehouse, as the Grantor, dated February 6, 1978, and recorded in Book: **334**, Page **325** in the Dorchester County RMC Office.

45. That at the time of her death, the Decedent owned an undivided Fifty (50%) percent interest in and to the real property located in Colleton County, S.C., at Cowpens Point, Island of Edisto, being Lot 3 and Area 3A, and bearing Colleton County TMS Number: **361-00-00-003**, which was conveyed to the Decedent and her husband as joint tenants with rights of survivorship, as the Grantees, by deed of Mark E. Benson and Sandra K. Benson, dated March 14, 2011 and recorded in the Colleton County RMC Office at Book **1919**, Page **1**.

46. That upon information and belief, at the time of the Decedent's death, she was an owner in business entities with her husband, **Ivo Francesco Colucci**, including, but not limited to: **I & D Enterprises, LLC**, a South Carolina Limited Liability Company, created on November 25, 2002, the Managers of which were the Decedent and her husband, Ivo F. Colucci; **I & M Enterprises, LLC**, a South Carolina Limited Liability Company, created on November 25, 2002; **Terrivo Enterprises, LLC**, a South Carolina Limited Liability Company created on November 25, 2002 by filing "Conversion of Partnership To Limited Liability Company Articles of Organization; **H.I.D., LLC**, a South Carolina Limited Liability Company created on June 19, 2006; **I & M Colucci, a General Partnership**; and **I & M, a South Carolina Limited Partnership**, and these entities own and manage real estate and interests in real estate.

47. That a Partnership Agreement dated March 15, 1984 for "**Terrivo Enterprises**", listing Ivo Colucci and Doris Colucci as owners of a Fifty Percent (50%) Partnership Interest, and Terry Weidberg as the owner of the other Fifty

Percent (50%) Partnership Interest is recorded in the R.M.C. Office for Charleston County, S.C. at Book: **P-180**, Page **881**.

48. That a certain "Memorandum Partnership Agreement" dated June 21, 1996 for I & M Colucci, a General Partnership, listing Ivo Colucci, Doris Colucci and Michael Colucci as the Partners, is recorded in the R.M.C. Office for Charleston County, S.C. at Book: **W-270**, Page **548**.

49. That a certain "Memorandum Partnership Agreement" dated June 21, 1996 for I & M Colucci, A General Partnership, listing Ivo Colucci, Doris Colucci and Michael Colucci as the Partners, is recorded in the R.M.C. Office for Charleston County, S.C. at Book: **W-270**, Page **548**.

50. That a certain "Supplement To General Partnership Agreement I & M, A Limited Partnership" dated November 21, 1996 for I & M, A Limited Partnership, listing Ivo Colucci and Doris Colucci as the owners of a Fifty-one Percent (51%) Partnership interest and Michael Colucci as the owner of a Forty-Nine Percent (49%) Partnership Interest, is recorded in the R.M.C. Office for Charleston County, S.C. at Book: **C-279**, Page **471**.

51. That, based on information and belief, at the time of the Decedent's death, she held a certain Promissory Note secured by a Mortgage as security for payment on the sale of her interests in her parent's home located at 111 Grove Street, Lodi, New Jersey 07644.

52. That upon information and belief, the Decedent owned vehicles individually as well as jointly with her husband, Ivo Francesco Colucci.

53. That the Decedent's interests in assets, property and business entitles is substantial and requires the appointment of a Special Administrator to preserve and protect the Decedent's interests in these assets and property, and in communicating and acquiring tax, accounting and legal information from the tax preparers, registered agents and attorneys who previously provided legal services to the Decedent is creating the various business entities.

54. That the appointment of the Special Administrator is necessary for seeking, determining, preserving and taking possession of the interests and ownership rights of the Decedent's Estate in and to the assets of the Decedent, bank accounts, insurance policies, investment and retirement benefits, as well as to assert the Decedent's rights to information in seeking and obtaining

possession of any and all unrevoked Estate Planning and other legal instruments executed by the Decedent and unrevoked prior to her death.

Legal Action

55. That the appointment of the Special Administrator is also necessary and appropriate in order to investigate all of the facts and circumstances of the Decedent's death and to commence, prosecute and/or defend any and all legal actions and proceedings commenced and/or pending on behalf of, or against the Decedent, and/or the Decedent's Estate and/or the Decedent's beneficiaries, including, but not limited to, the power and authority to engage and/or associate legal counsel and commence, prosecute and/or defend any and all litigation under South Carolina Law or the Laws of any applicable jurisdiction, and, in general, to assert, prosecute, and/or defend any and all claims and causes of action on behalf of the Decedent and the Decedent's Estate against any and all persons as Defendants, as shall be determined by the Special Administrator.

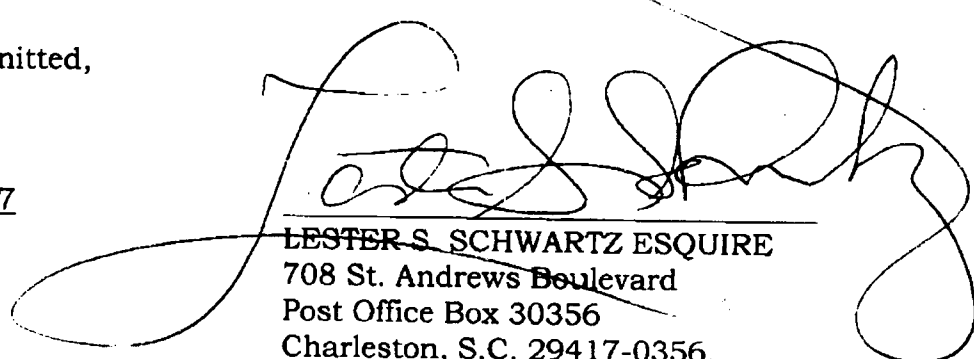
56. That notwithstanding that this application is for appointment as the Special Administrator, a completed form 300ES is attached hereto to provide the Court with all information necessary to make the appointment.

WHEREFORE, the Petitioner prays as follows:

- A. That the applicant be immediately appointed as the temporary Special Administrator of the Estate without a Hearing;
- B. That the applicant be appointed as permanent Special Administrator of the Estate, with all the powers granted to Personal Representatives of Estates under Part 7 (S.C. Code Ann. § 62-3-701 through 62-3-721) of the South Carolina Probate Code; and
- C. Such further relief as the Court deems just and proper.

Respectfully submitted,

Date: May 2, 2017

A large, stylized handwritten signature in black ink, appearing to read 'Lester S. Schwartz', is written over the printed name and address.

LESTER S. SCHWARTZ ESQUIRE
708 St. Andrews Boulevard
Post Office Box 30356
Charleston, S.C. 29417-0356.
Telephone: (843) 571-7919
Fax: (843) 571-0881
E-Mail: Lester.Schwartz@sctaxlawyer.com

Charleston, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
✓ IN THE MATTER OF THE ESTATE)
OF DORIS DUANE COLUCCI,)
ALSO KNOWN AS DORIS D.)
COLUCCI,)
LESTER S. SCHWARTZ, ESQUIRE)
Petitioner,)
vs.)
IVO FRANCESCO COLUCCI, JOHN)
MARTIN ANTONIO, AND MICHAEL)
FREDERICK ANTONIO COLUCCI,)
Respondents.)

IN THE PROBATE COURT

CASE NO. 2017-ES-18-00294

2017-CP-18- 1816

CONSENT ORDER FOR THE
APPOINTMENT OF A SPECIAL
ADMINISTRATOR

FILED-RECORDED

2017 NOV -1 PM 1:01

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

PROBATE JUDGE
DORCHESTER COUNTY
2017 JUL 10 PM 12:17

This matter came before this Court on an Application/Petition for Appointment of Special Administrator filed with this Court on May 3, 2017, requesting that the Court appoint Lester S. Schwartz, Esquire as the Special Administrator for the Estate of Doris Duane Colucci. Based on the various pleadings and documents, the Court makes the following findings:

1. Doris Duane Colucci (Decedent) passed away on April 14, 2017;
2. The Decedent's originally executed Last Will and Testament has not yet been located and presented to this Court;
3. Unless and until the originally executed Last Will of the Decedent is located and admitted to probate in this Court, the administration of the probate Estate shall proceed pursuant to the South Carolina laws of intestate succession;
4. The Decedent was survived by her husband, Ivo Francesco Colucci;
5. The Decedent was also survived by her two (2) children, John Martin Antonio, and Michael Frederick Antonio Colucci, both of whom are over the age of majority;

6. Christa M. Yantis, CPA, is the Court appointed Conservator for the Decedent's husband, Ivo Francesco Colucci;

7. Glenn P. Churchill, Esquire is the Court appointed Guardian ad Litem for the Decedent's son, John Martin Antonio;

8. The Court appoints Andrew W. Chandler, Esquire as the Special Administrator for the Decedent's Estate. On June 9, 2017, the Court appointed Andrew W. Chandler as Temporary Special Administrator in order to commence administration of the Estate;

9. Andrew W. Chandler, Esquire has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and has agreed to serve as a fiduciary to this Court; and

10. The appointments herein are necessary to preserve the estate, to secure its proper administration, and to protect its assets.

NOW THEREFORE, Andrew W. Chandler, Esquire, Glenn P. Churchill, Esquire, as Guardian ad Litem for John Martin Antonio, Lester S. Schwartz, Esquire, and Christa M. Yantis, CPA as Conservator for Ivo Francesco Colucci, enter into this Consent Order and agree as follows:

A. Andrew W. Chandler, Esquire shall be appointed and serve as the Special Administrator of the Estate of Doris Duane Colucci;

B. Andrew W. Chandler, Esquire shall be bonded for one hundred five percent (105%) of the value of the Decedent's Estate once the Inventory and Appraisement is filed with this Court, and the bond shall be paid from the Estate's assets;

C. If additional proceeds come into the estate after the initial Inventory and Appraisement is filed, then Andrew W. Chandler, Esquire shall file a Supplemental Inventory

Page 2 of 9 YWB
7/10/17

and Appraisement and the bonded amount shall be modified by a Bond Modification issued by the Court;

D. Andrew W. Chandler, Esquire as Special Administrator of the Decedent's Estate, shall be compensated by the Estate at the hourly rate of Two Hundred and 00/100 Dollars (\$200.00) and his paralegal shall be billed at the hourly rate of One Hundred and 00/100 Dollars (\$100.00) to be paid by the Estate;

E. If necessary, Andrew W. Chandler, Esquire, as Special Administrator of Decedent's Estate, may retain the services of a third-party agent, including an attorney, only with prior Court approval;

F. Glenn P. Churchill, Esquire shall continue to serve in his role as Guardian ad Litem for the Decedent's son, John Martin Antonio;

G. Any and all medical records and medical reports pertaining to the Decedent's son, John Martin Antonio, shall be sealed and kept private, and shall not be part of the general public probate file;

H. Andrew W. Chandler, Esquire as Special Administrator of Decedent's Estate, has a fiduciary duty to investigate any and all claims and litigation related to the death of the Decedent;

I. As such, Andrew W. Chandler, shall retain a personal injury attorney to represent him in this matter to investigate and consult with regarding any and all claims and litigation that may be appropriate to bring in this estate, including wrongful death and/or survival claims, related to Decedent's death;

J. Prior to retaining a personal injury attorney to represent him in this matter as set out above in paragraph I, Andrew W. Chandler, Esquire shall seek this Court's approval as

provided for in paragraph E above, and provide the court with the following information: the proposed fee agreement, the extent of the proposed attorney's personal injury practice, and the number of years of experience the proposed attorney has in pursuing personal injury claims;

K. If the Court is satisfied with the proposed attorney by the written information provided in the Motion and supporting documents submitted by Andrew W. Chandler, Esquire, the Court may execute a proposed Order approving the hiring of the personal injury attorney without a hearing;

J. Until such time that a determination is made pursuant to S.C. Code Ann. § 62-2-803(f) of the South Carolina Probate Code regarding the status of Ivo Francesco Colucci as an heir of the Decedent's Estate pursuant to the Slayer's Act, Andrew W. Chandler, Esquire shall consider Ivo Francesco Colucci an heir of the Decedent's Estate and any funds or property to which Ivo Francesco Colucci may otherwise be entitled as an heir of the Decedent's Estate shall be retained by Andrew W. Chandler, Esquire in a separate account pending a final Order of this Court;

K. Pursuant to S.C. Code Ann. § 62-3-617, and other relevant statutory provisions of the South Carolina Probate Code, Andrew W. Chandler, Esquire, as Special Administrator, shall have all the powers of a general Personal Representative as applied under PART 7 (S.C. Code Ann. §§ 62-3-701 through 62-3-721) of the South Carolina Probate Code, and such powers are incorporated herein by specific reference thereto;

L. Andrew W. Chandler, Esquire as Special Administrator shall not be personally liable for claims filed against the Decedent;

M. Andrew W. Chandler, Esquire, as Special Administrator, shall proceed with the administration of the Decedent's Estate pursuant to the South Carolina Probate Code; and

Page 4 of 9 *m13*
7/10/17

N. This Consent Order may be executed in multiple counterpart originals, and all of which shall constitute one and the same Consent Order.

AND IT IS SO ORDERED.

Mary Q. Blunt
The Honorable Mary Q. Blunt
Dorchester County Probate Court.

10th day of July, 2017
St. George, South Carolina

Page 5 of 9 MB
7/10/17

AGREED AND CONSENTED TO:

27th day of June, 2017



Andrew W. Chandler, Esquire
Evans, Carter, Kunes & Bennett, P.A.
115 Church Street
P.O. Box 369
Charleston, S.C. 29402-0369
Special Administrator for Estate of Doris
Duane Colucci

PROBATE JUDGE
DORCHESTER COUNTY
2017 JUL -3 PM 2:17

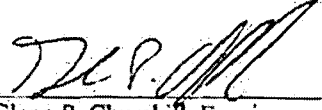
Page 6 of 9 *WMB*
7/10/17

AGREED AND CONSENTED TO:

PROBATE JUDGE
DORCHESTER COUNTY

2017 JUN 29 PM 1:30

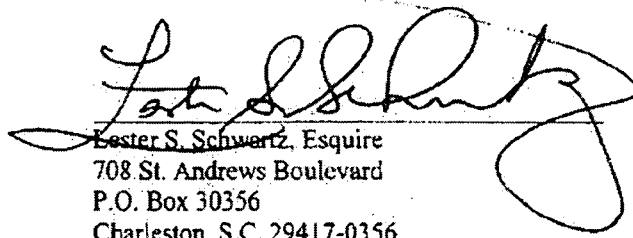
27th day of JUNE, 2017


Glenn P. Churchill, Esquire
115 River Landing Drive
Suite 102
Charleston, S.C. 29492
Guardian ad Litem for Decedent's son, John Martin
Antonio

Page 7 of 9 *hnb*
7/10/17

AGREED AND CONSENTED TO: —

27th day of June, 2017



Lester S. Schwartz, Esquire
708 St. Andrews Boulevard
P.O. Box 30356
Charleston, S.C. 29417-0356
Attorney for the Decedent's children, John
Martin Antonio and Michael Frederick
Antonio Colucci, Petitioners

Page 8 of 9 MB
7/10/17

AGREED AND CONSENTED TO:

June 27th 2017



David K. Haller, Esquire
Haller Law Firm
604 Savannah Highway
Charleston, SC 29407
Attorney for Christa Yantis, CPA, CFE, CEBS, in
her role as Conservator for Decedent's husband, Ivo
Francesco Colucci

PROBATE JUDGE
WORCHESTER COUNTY
2017 JUN 28 PM 2:39

Page 9 of 9 MB
7/10/17

DORCHESTER COUNTY PROBATE COURT

5200 EAST JIM BILTON BLVD.
ST. GEORGE, SC 29477

www.dorchestercountysc.gov/probate

MARY BLUNT
Probate Judge

RUSSELL A. DEMOTT
Associate Judge

MOLLY D. EDWARDS
Associate Judge

September 13, 2017

Stefan John Colucci
102 Devon Court
Summerville, SC 29483

Dan M. David, Esquire
147 Wappoo Creek Drive, Suite 101
Charleston, SC 29412

Christopher D. Lizzi, Esquire
2170 Ashley Phosphate Road, Suite 402
North Charleston, SC 29406

David K. Haller, Esquire
604 Savannah Highway
Charleston, SC 29407

Re: In the Estate of: DORIS DUANE COLUCCI
Case Number: 2017ES1800294

Dear All,

The original Last Will of Doris D. Colucci, dated 6-18-2013, was submitted to the Court on August 24, 2017. It has been added to the file, just as a matter of record, and I've enclosed a copy for your review. The Special Administrator will continue in his role, without restriction, as no action has been filed regarding the probate of the Will.

Sincerely,



Devan Kociuruba
Estate Clerk

Enclosures as states

cc: Andrew W. Chandler, Esquire; Michael Fox CPA; Henry Burkes; Richard M. Hyman, Jr., Esquire

STATE OF SOUTH CAROLINA

COUNTY OF: DORCHESTER

IN THE MATTER OF:

DORIS DUANE COLUCCI
(Decedent)

IN THE PROBATE COURT

INFORMATION TO HEIRS AND DEVISEES

CASE NUMBER: 2017 ES 18 00294

2017-CP-18- 1816

On July 9, 2017, an Order from the Probate Court of Dorchester County at 5200 East Jim Bilton Blvd, St. George, SC 29477, appointed Andrew W. Chandler as court appointed Special Administrator in the above matter.

INFORMAL

- ☐ PROBATE OF WILL
☐ APPOINTMENT

FORMAL

- ☐ TESTACY
☒ APPOINTMENT

The Decedent's Will has not been located.

Bond will be filed upon filing of Inventory & Appraisement with the Probate Court.

This notice is being sent to persons who have or may have some interest in the estate.

Please note: This form is required to be sent to all potential devisees and heirs of the Decedent. Receipt of this form does not mean that you will inherit from the Decedent. You may review the file in the Probate Court or see an attorney if you desire further information.

My appointment was granted within the past thirty (30) days on July 10, 2017.

Special Administrator Name: Andrew W. Chandler, Esq.

Address: Evans, Carter, Kunes & Bennett, P.A.
115 Church Street, Charleston, SC 29401

Telephone (Work): (843) 577-2300

(Home): _____

(Cell): _____

Email: chandler@eckb.com

Co-Applcant/Co-Personal Representative Name: _____

Address: _____

Telephone (Work): _____

(Home): _____

(Cell): _____

Email: _____

Attorney: _____

Address: _____

Telephone: _____

Email: _____

FILED-RECORDED
2017 NOV - 1 PM 1:04
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: DORCHESTER

PROBATE JUDGE
DORCHESTER COUNTY

PROOF OF DELIVERY

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

2017 AUG -4 PM 12:06

CASE NUMBER: 2017 ES 18 00294

2017-CP-18- 1816

On the 2nd day of August, 2017, I mailed the Information to Heirs & Devisees.

- ☐ A copy of which is attached hereto and incorporated herein, or
☒ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Ivo Francesco Colucci	c/o Christa M. Yantis, Conservator P.O. Box 2515, Mt. Pleasant, SC 29465 7674 Legare Road
Michael Frederick Antonio Colucci	Edisto Island, SC 29483
John Martin Antonio	c/o Glenn P. Churchill, Esq., Guardian ad Litem 115 River Landing Drive, Suite 102, Charleston, SC 29492
David K. Haller, Esq., Attorney for Christa M. Yantis as Conservator	604 Savannah Highway Charleston, SC 29407

SWORN to before me this 2nd day of
August, 2017

Notary Public for South Carolina

Print Name: Brenda F. Nelson

My Commission Expires: 11/05/2025

Signature: *Amy Neilson*

Print Name: Amy Neilson

Address: Evans, Carter, Kunes & Bennett, P.A.

115 Church Street, Charleston, SC 29401

Telephone (Work): (843) 577-2300

(Home): _____

(Cell): _____

E-mail: amy@eckb.com

Relationship to
Decedent/Estate:

Paralegal to Andrew W. Chandler, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN RE:
THE ESTATE OF DORIS DUANE COLUCCI,

✓ Michael C. Fox, Named Personal Representative
in the Last Will of Doris Duane Colucci

v.

Andrew Chandler, in his capacity as Special
Administrator of the Estate of Doris Duane
Colucci, Michael C. Fox, Successor Trustee of the
Colucci Living Trust, dated February 24, 2005,
Ivo Francesco Colucci, Michael Frederick Antonio
Colucci, John Martin Antonio, Henry Burkes, and
Richard M. Hyman, Jr.

COURT OF COMMON PLEAS
CASE NUMBER: 2017-CP-18-1816

**MOTION TO RESTRAIN
SPECIAL ADMINISTRATOR**

FILED-RECORDED
2018 NOV 26 PM 3:07
CLERK OF COURT
DORCHESTER COUNTY

- 1) Michael Fox, Trustee of the Colucci Living Trust, and the named Successor Personal Representative of the Estate of Doris Colucci hereby moves pursuant to S.C. Code §62-3-607, Rule 65, SCRCF, and other applicable law to restrain the Special Administrator of the Estate of Doris Colucci pending the appointment of a Personal Representative.
- 2) This proceeding involves the appointment of the Personal Representative and has been previously removed to the Court of Common Pleas by Order of the Dorchester County Probate Court filed November 20, 2017. (Motion and Order for Removal, Exhibit A)
- 3) The Special Administrator has acted and, unless this Court intervenes, will continue to act against the intent and the interests of the decedent as expressed in the Last Will prepared for Doris Colucci ("Last Will"), as set forth herein. (Last Will, Exhibit B)
- 4) The Special Administrator has acted unreasonably and against the interest of the Estate by using estate assets to prevent the appointment of a Successor Personal Representative as specified in the Last Will of Doris Colucci.

- 5) The Special Administrator has further damaged the Estate by charging fees in excess of \$165,000.00 (as of July, 2018) and contingency fees that could exceed millions of dollars while neglecting basic duties to the beneficiary.
- 6) The Special Administrator has further breached his duty by failing to inform and cooperate with the sole heir (The Colucci Living Trust, dated February 24, 2005), and he has unreasonably failed to disburse the Estate's assets according to the wishes of Doris Colucci.
- 7) The Special Administrator will continue to cause irreparable harm to the Estate unless he is restrained as set forth below.

Relevant Facts

- 8) On June 18, 2013, Doris Colucci executed her Last Will. (Exhibit B)
- 9) Doris Colucci passed away on April 14, 2017. Her death likely occurred as result of conduct giving rise to a claim for wrongful death against her husband, Ivo Colucci.
- 10) The decedent's Last Will was not immediately discovered.
- 11) In the absence of the decedent's Last Will, Lester Schwartz, Esq. initially applied to serve as the Special Administrator of Doris Colucci's estate. Subsequently, Andrew Chandler, Esq., was appointed Special Administrator by the Probate Court (*Temporary Order for the Appointment of a Special Administrator on an Emergency*), (hereinafter, the "Temporary Order") pursuant to S.C. Code § 62-3-614. (Order, Exhibit C dated June 9, 2017) Thereafter, several of the parties entered into a Consent Order further establishing Mr. Chandler as the Special Administrator. (Consent Order, Exhibit D, dated July 10, 2017)
- 12) At all times, the Special Administrator was by bound S.C. Code §62-1-102(a)(2) stating that one of the primary purposes of the South Carolina Probate Code shall be "to discover and make effective the intent of a decedent in the distribution of [their] property."

13) In Paragraph 15 of the Temporary Order, the Special Administrator was given the following duty pursuant to S.C. Code §62-3-616:

A special administrator appointed by the court in informal proceedings pursuant to Section 62-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon his qualification...

14) On, July 24, 2017, the Dorchester County Probate Court signed an additional consent order to permit the Special Administrator to hire Rosen, Rosen, and Hagood and Lester Schwartz, Esquire, to pursue the wrongful death suit for a 40% contingency fee.¹

(Order Approving Employment, Exhibit E)

Discovery of the Last Will

15) On or around August 24, 2017, Doris Colucci's original Last Will was delivered to the Dorchester County Probate Court. (Exhibit B) Not at this time or any other time, did any party, including the Special Administrator, contest the validity of the Last Will.

16) Article Two of the Last Will states in part:

I appoint my Spouse, Ivo F. Colucci, to be my personal representative. In the event my Spouse is unable or unwilling to serve as Personal Representative, I appoint the following to be my Personal Representatives in the order of priority in which their names appear:

Michael Fox, CPA

Henry Burkes

Richard M. Hyman, Jr. Esquire

17) Article Three, with the exception of a personal property memorandum, gave:

...all the rest residue and remainder of my property of whatever nature and kind and wherever located to the then acting Trustee(s) of my revocable living trust.

¹ The fee agreement was set out that Rosen, Rosen, and Hagood would receive 33% of Doris Colucci's settlement from her husband's estate if the matter was settled before filing suit and 40% after the filing of suit. The Estate of Doris Colucci filed suit on October 4, 2017 without any indication that the parties attempted to settle or mediate the case. Mr. Schwartz was the original attorney that filed for the emergency appointment of a Special Administrator.

- 18) On October 27, 2017, Michael Fox elected to serve and is the named and current Trustee of such living trust, known as the "Colucci Living Trust, dated February 24, 2005" (hereinafter "The Trust").² (Acceptance by Successor Trustee of the Trusteeship of the Colucci Living Trust dated February 24, 2005, and Amended June 18, 2013. Exhibit F)
- 19) Article Five of the Last Will contained a no contest clause that would exclude the interest of any devisee or legatee who unsuccessfully challenges the appointment of any person named as a Personal Representative.

Filing of Probate Proceedings

- 20) From August 24, 2017 through October 24, 2017, the Special Administrator did not act to probate the Last Will.
- 21) Michael Fox filed an informal probate application on October 24, 2017. This informal probate application was denied.
- 22) On October 30, 2017, at his own cost, Michael Fox filed for Formal Probate proceedings and removal of this action to the Dorchester County Court of Common Pleas.
- 23) On November 3, 2017, the Special Administrator sent correspondence to Michael Fox, through his attorney, stating:

"Until there is an order admitting the will to probate, the estate will continue to be administered as if it were intestate per the code."

(Email from Special Administrator's Counsel, Exhibit G)

- 24) In the same November 3, 2017 email, in reference to a request regarding personal property (jewelry) that had been potentially assigned during Doris Colucci's lifetime directly to the trust, (Assignment, Exhibit H) counsel for the Special Administrator wrote:

² No objection was made to the qualification of Mr. Fox to serve as the trustee of the Colucci Living Trust.

*"We are doing our best to keep our costs down and, frankly, I would carefully consider filing your petition, especially given the court's ability to personally assess costs/fees against you and Mr. Fox should it determine that it was frivolous."*³
(Exhibit G) (emphasis added)

25) After filing the Formal Application for Probate, Mr. Fox attempted service of the necessary parties to the estate, including the Special Administrator. Of the six parties requiring service, the Special Administrator was the only party that would not voluntarily accept service of the Summons and Petition for Formal Testacy. Mr. Fox was required at his own cost to hire a process server to serve the Special Administrator, despite every other represented party voluntarily accepting service.

(Affidavit and Invoice, Exhibit I)

26) The Special Administrator thereafter filed an Answer and Objection to Movant's Petition for Formal Testacy and Appointment as Personal Representative ("Objection"). The Special Administrator denied that Mr. Fox was qualified and stated that replacing the Special Administrator with Mr. Fox or any other Personal Representative *"would frustrate judicial economy and prejudice the Estate and others with unnecessary cost, delay, and duplication of efforts."* (Objection, Exhibit J, Page 7, Paragraph 35(d))

27) The Special Administrator further stated in the objection: *"The fact that the Will may be admitted to probate, and thus the Estate administered pursuant to the Will, does not create any corresponding requirement that any individual be appointed as the Personal Representative."* (Exhibit J, Page 8, Paragraph 36)

³ According to the Trust instruments, the assignment of the decedent's jewelry was to create the initial corpus of the living trust. This was the only available property that the Trust would have been able to use to carry out the decedent's wishes or to reimburse himself for the costs of setting up the Trust. (See Exhibit H)

28) In Paragraph 35(e), the Special Administrator stated that Michael Fox is unsuitable and therefore not qualified to serve and that *“he will be called on to make an accounting for his acts and doings with reference to the work he performed for the Coluccis and their businesses.”* (Exhibit J, Page 8, Paragraph 35) The Special Administrator has never produced any evidence to corroborate these accusations and has in fact contradicted this position. (August 13, 2018 Hearing Transcript, Page 14, Lines 1-5)⁴

29) There is nothing in the probate record to indicate that the Special Administrator contacted the remaining Successor Personal Representatives to express their concerns about Mr. Fox’s qualification or to arrange for the next Successor Personal Representative to assume the role of Personal Representative as Doris Colucci expressly directed.

Hearing for Formal Testacy

30) Nearly a year after the discovery of the Last Will and with only the Special Administrator objecting to Mr. Fox’s appointment, a hearing for Formal Testacy was held on August 13, 2018 before the Dorchester County Court of Common Pleas. No member of the Colucci family objected to the appointment of Mr. Fox or the other named individuals as Personal Representative. To the contrary, only the Special Administrator objected to the appointment of a Personal Representative. Counsel for the Special Administrator stated:

“The fact of the matter is a Personal Representative never has to be appointed. The Will can be admitted to Probate without a Personal Representative being appointed.” (August 13, 2018 Hearing Transcript, Page 14, Lines 13-16)

⁴ This transcript has been contemporaneously filed with this Court alongside this motion.

31) However, in reference to the Successor Personal Representative's disqualification, counsel stated:

"And I want to make it clear to the Court and to Mr. Fox that our objection has nothing to do with his character, calling into question his character; it is nothing to that extent at all..."

...Our objection is because first of all this estate has been administered by Mr. Chandler and to some extent myself as his attorney for over 14 months at this point." (August 13, 2018 Hearing Transcript, Page 14, Lines 1-5)

32) When the Court inquired as to legal basis for the Special Administrator to remain in place of a Personal Representative, Counsel for the Special Administrator stated:

MS. PALMER: "...But we believe good cause exists to deny that petition as to Mr. Fox being appointed and to allow Mr. Chandler to continue and wrap up this estate.

THE COURT: To your knowledge Ms. Palmer is there any South Carolina cases on this?

MS. PALMER: On the issue of added expense not specifically. But as to the ability of the Court to look at the best interest of the estate yes Your Honor, it is cited in our memo." (August 13, 2018 Hearing Transcript, Page 16-17, Lines 23-25, 1-7)

33) Counsel cites two cases, In re McClam's Estate 245 S.C. 315, 140 S.E.2d 478 (1965) and Ex Parte Tolbert 206 S.C. 300, 34 S.E.2d 49 (1945). (Exhibit J, Footnote 3, Page 8) While these cases may provide authority that a disqualified individual may not to be appointed, Movant believes there is no authority under the common law that a Special Administrator may bypass a qualified Successor Personal Representative.

34) The Special Administrator directly addressed the court in regards to Mr. Fox and stated:

"But the things that remain are complicated and frankly ones that - and I'm not saying that Mr. Fox wouldn't otherwise be capable of doing them but he is also a witness to many of them. And in those cases typically the Probate Court is going to appoint a Special Administrator anyway and then you have two fiduciaries serving, which definitely seems inefficient and unnecessary." (August 13, 2018 Hearing Transcript, Page 19, Lines 7-14)

- 35) The hearing concluded with the Special Administrator consenting to probate the Last Will of Doris Colucci, but continuing to object to the appointment of a Personal Representative. The Court therefore took under advisement the appointment of the Personal Representative and such action is still pending before this Court. (August 13, 2018 Hearing Transcript, Page 28, Lines 10-13)

Events following Probate of the Last Will

- 36) On September 24, 2018, the Special Administrator sent a "Proposal for Distribution" that proposed the distribution of two fractional interests in real property, Doris Colucci's interest in her household goods, furnishings, and animals, and all remaining collection of jewelry pieces. (Exhibit K, Proposal for Distribution) It is presumed to be the same property referenced in the Trust Assignment (Exhibit H), and the Trust's prior claim to this property had been characterized as "frivolous" by the Special Administrator. (Exhibit G)
- 37) On or around October 4, 2018, Mr. Fox, through his attorney, was contacted and concern was expressed by several heirs that no distributions had been made by the Trust or the Estate. In addition, complaints have been raised to Mr. Fox's counsel that the house is in poor condition and the Special Administrator has failed to conduct maintenance.

- 38) The Trust, at Mr. Fox's own expense, sent an agent to the Dorchester Probate Court and discovered over seven hundred pages of various paperwork had been filed by the Special Administrator. Outside of the Proposed Distribution, Mr. Fox had not been forwarded a single document, including basic estate documents such as the Inventory and Appraisement and the estate accounting. (See Exhibit L, Inventory and Appraisement)
- 39) Among the hundreds of pages of documents, there is an accounting from July 20, 2018 showing that the Special Administrator has paid himself \$90,825.40 and paid his attorney an additional \$76,654.51. (Accounting, Exhibit M) These fees do not include the contingency agreement allowing the Special Administrator's attorneys to additionally collect 40% of the pending wrongful death lawsuit.
- 40) Among the documents copied from the Court, there is an inventory indicating the estate is worth over \$2,800,000.00, excluding the wrongful death suit. The Special Administrator has not shared any of these documents with the Trust, has failed to make any distributions, or even reimburse Mr. Fox for his costs to probate the Last Will. Further, instead of preserving these estate assets, the Special Administrator has acted to sell and liquidate certain high value business assets, presumably to pay his fees and expenses but to the detriment of the Estate's heir. (Inventory and Appraisement, Exhibit L)
- 41) The Movant requires the Special Administrator's billing statements to determine which actions and how much time was spent by the Special Administrator and his experts to prevent the appointment of a Personal Representative. To date, the Movant has been prohibited from inspecting these records.

- 42) On November 19, 2018, without any warning, the Special Administrator attempted to have hand delivered an envelope containing the jewelry to Mr. Fox, via his attorney, without any explanation, itemization, or receipt.
- 43) After these events, the Trustee no longer believes that the best interest of the Trust is being served by the Special Administrator.

Argument

- 44) Doris Colucci never intended for a Special Administrator to administer her estate, which was anyways designed to be a simple “pour over” into a Trust for her family. Rather, she named four trusted successive personal representatives to carry out this task.
- 45) The Probate Code is designed to mandate that a decedent’s wishes are fulfilled. The appointment of a personal representative is one of the fundamental concepts of probate law and well recognized to be within the decedent’s discretion. The Special Administrator broke the Court’s limited mandate of securing the assets of the Estate when he began spending estate resources to prevent the appointment of any Personal Representative. The Special Administrator lacks any legal basis to delay the appointment of a Personal Representative under the SC Probate Code, the common law, or the three separate orders issued by the Probate Court that mandated that the Special Administrator preserve the assets of the Estate pending the appointment of a Personal Representative.
- 46) The Special Administrator has used his position as an appointee of the Court to coerce Mr. Fox by threatening to seek sanctions against him if he interfered in the Estate’s administration. (Exhibit H) The ability of the Special Administrator to

aggressively use the Estate's own funds and his position bestowed by the Court stifled Mr. Fox's efforts to pursue further action before the Probate Court.

47) Had the Special Administrator truly believed that Mr. Fox was not qualified for any reason, he should have immediately notified any of the next two Successor Personal Representatives of his concerns, one of whom is an active member of the South Carolina Bar. Rather, at the August 13, 2018 hearing, the Special Administrator argued merely for his own permanent appointment.

48) It is clear that the Special Administrator intends to fight against any appointment of a Personal Representative. It is also clear that the excessive fees and extraordinary contingency agreement he has charged and shall continue to charge are the true motivation for how he has failed to communicate with Mr. Fox and otherwise delayed the intended administration of this estate.

49) The Trustee has a duty to the beneficiaries of the Trust and he is not satisfied with the Special Administrator's ongoing conduct as herein described. After this amount of time, the Special Administrator owes more than submitting partial disbursements of property already assigned to the trust and unannounced deliveries of unsold jewelry, while requiring Mr. Fox to pay to obtain his own copies of the most basic estate documents to determine what the Special Administrator is actually doing.

Request for Relief

50) Mr. Fox, as the trustee of the sole heir, requests this Court:

A) Find that Special Administrator breached his duty when he sought to prevent the appointment of a Personal Representative under §62-1-102 and §62-3-616.

B) Find that the Special Administrator breached his fiduciary duty to the Estate by, over the course of 14 months, paying his own excessive fees, paying exorbitant expert fees, and signing off on lavish contingency agreements while not establishing even the most basic funds to establish the Trust and passing off basic probate expenses onto Mr. Fox whom he claimed, without basis, was disqualified to serve.

C) Find that the 40% contingency fee in addition to the hourly charges are excessive and not in the best interests of the administration of the estate.

D) Stop the Special Administrator from further acting to administer the Estate.

E) Proceed to appoint either Michael Fox or the next named successor Personal Representatives, Henry Burkes or Richard Hyman, Esq., as the Personal Representative, thereby terminating the appointment of the Special Administrator.

F) Upon Mr. Fox's appointment or the appointment of any Personal Representative, direct the Special Administrator to immediately turn over all property of the estate including all billing statements and those of the estate's experts.

G) Set this matter for a damage hearing to determine what assets of the estate were wasted or otherwise used to prevent the appointment of a Personal Representative and order that the Estate be reimbursed for such damages.

H) Terminate the consent order granting Rosen, Rosen, and Hagood and Lester Schwartz, Esq. a 40% contingency fee in the wrongful death settlement against Ivo Colucci.

- I) If the Court is still unprepared to appoint a Personal Representative, Mr. Fox requests that the Special Administrator be replaced with a different individual that will cooperate and facilitate the disbursement of the Estate's assets to the Trust.
- J) For such further relief as the Court may order.

Respectfully Submitted,

S/Gordon H. Garrett
S.C. Bar No. 73998
Attorney for Michael Fox
Garrett Law Offices
1075 East Montague Avenue
North Charleston, SC 29405
office@garrettlawsc.com

This 26th day of November, 2018

FILED-RECORDED

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

2018 NOV 26 } PM 3:08

IN THE PROBATE COURT

MOTION FOR REMOVAL

CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

CASE NUMBER: 2017-ES-18-00294

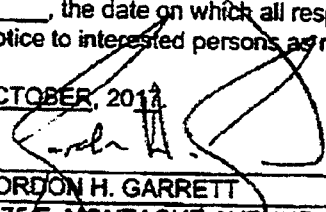
PROBATE JUDGE
DORCHESTER COUNTY
2017 OCT 30 AM 9:34

A formal proceeding concerning the above matter was commenced on OCTOBER 30, 2017. The undersigned hereby moves for removal of this action to the Circuit Court and asserts that this action is removable because it involves the following:

- ☒ Probate of Will
- ☒ Appointment of Personal Representative
- ☐ Construction of Will
- ☐ Title to property in which the Estate of a decedent asserts an interest
- ☐ Internal or external matter involving a trust (excluding "special needs trusts")
- ☐ Action in which there is a right to trial by jury and in which the amount in controversy is at least \$5,000
- ☐ Action concerning gifts under the SC Uniform Gifts to Minors Act

This Motion is made no later than ten (10) days from N/A, 20, the date on which all responsive pleadings were filed. By copy of this Motion, the undersigned is giving notice to interested persons as required by law.

Executed this 27 day of OCTOBER, 2017

Signature: 

Print Name: GORDON H. GARRETT
Address: 1075 E. MONTAGUE AVENUE
NORTH CHARLESTON, SC 29405

Telephone (Work): 843-554-5515

(Home): 843-554-5515

(Cell): _____

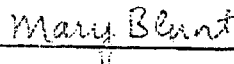
Email: GGARETT@GARRETTLAWSC.COM

Relationship to Decedent/Estate: ATTORNEY FOR MICHAEL C. FOX

ORDER FOR REMOVAL

- ☐ It is hereby ORDERED on the Court's own Motion that this action be removed to the Circuit Court.
 - ☐ Jurisdiction is retained as to all other matters involving this case.
 - ☐ The related matters of _____ are also removed to serve the best interest of the Estate and/or the interest of judicial economy.
- ☒ The Motion for Removal is hereby GRANTED. This action shall be removed to the Circuit Court.
 - ☒ Jurisdiction is retained as to all other matters involving this case. *except for issues previously or subsequently removed*
 - ☐ The related matters of _____ are also removed to serve the best interest of the Estate and/or the interest of judicial economy.
- ☐ It is hereby ORDERED that the Motion for Removal is DENIED because _____.

Executed this 20th day of Nov, 20 17.



Probate Court Judge

PROBATE JUDGE
DORCHESTER COUNTY
2017 NOV 20 PM 3:56

FILED-RECORDED

2018 NOV 26 PM 3:08

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This
LAST WILL
prepared for
DORIS D. COLUCCI

PROBATE JUDGE
DORCHESTER COUNTY
2017 AUG 24 PM 1:46

Kuhn and Kuhn, LLC
39 Broad Street, Suite 301
Charleston, South Carolina 29401
(843) 577-3700
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EXHIBIT B

Last Will
of
DORIS D. COLUCCI

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Last Will
of
DORIS D. COLUCCI

I, DORIS D. COLUCCI, the Testatrix also known as DORIS DUANE COLUCCI, a resident of Dorchester County, South Carolina, declare that this is my last will. I hereby revoke all my previous wills and codicils.

Article One
Introductory Provisions

Section 1. Marital Status

I am currently married to IVO F. COLUCCI, and all references to my Spouse in this will are to IVO F. COLUCCI.

Section 2. Children

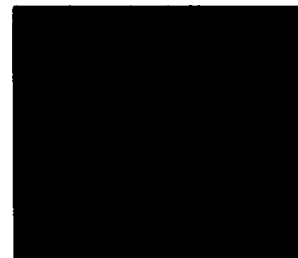
All references to "my children", subject to the exclusion of any child under subsequent provisions of this Section 2, are to all of the children so identified in this Section 2, but only to those children and any children born to or adopted by me subsequent to the execution of this will.

a. The names and birth dates of my children are:

Name

Birth Date

STEFAN JOHN COLUCCI
ALICE COLUCCI NORTON
KIM COLUCCI LIZZI
WILLIAM COLUCCI
ROBERT JOHN COLUCCI
JOHN MARTIN ANTONIO
MICHAEL F. COLUCCI



Section 3. Exclusion of Children or Other Descendants

I hereby acknowledge the existence of ALICE COLUCCI NORTON and intentionally, with full knowledge, have chosen to exclude her and her descendants under the terms of my Last Will.

I hereby acknowledge the existence of KIM COLUCCI LIZZI and intentionally, with full knowledge, have chosen to exclude her (but not her descendants) under the terms of my Last Will.

I hereby acknowledge the existence of WILLIAM COLUCCI and intentionally, with full knowledge, have chosen to exclude him (but not his descendants) under the terms of my Last Will.

Article Two

Appointment of My Personal Representatives

Section 1. Appointment of My Personal Representatives

I appoint my Spouse, IVO F. COLUCCI, to be my Personal Representative. In the event my Spouse is unable or unwilling to serve as Personal Representative, I appoint the following to be my Personal Representative(s) in the order of priority in which their names appear:

- (1) MICHAEL FOX, CPA
- (2) HENRY BURKES
- (3) RICHARD M. HYMAN, JR., Esquire

If, for any reason, the Personal Representative(s) named above are unable or unwilling to serve, the next successor Personal Representative(s) shall serve in the order of priority listed until the list has been exhausted. Unless otherwise specified, if Co-Personal Representatives are serving, the next named successor Personal Representative shall serve only after all of the Co-Personal Representatives cease to act as Personal Representatives.

Section 2. Waiver of Bond

No bond or undertaking shall be required of any Personal Representative nominated in this will.

Section 3. Fiduciary Powers

My Personal Representative shall have the full authority to administer my estate under the laws of the State of South Carolina relating to the powers of fiduciaries, including any laws regarding the independent administration of estates, such powers to be exercisable without the supervision or approval of any court.

Article Three

Disposition of My Property

Section 1. Estate Planning Letter or Memorandum

To the extent permitted by state law and not necessary to fully utilize my Unused Applicable Credit Equivalent, my Personal Representative shall distribute such of my personal or household items to such persons as I may direct by a written instrument signed by me and delivered to my Personal Representative.

Section 2. Distribution to My Revocable Living Trust

I give all the rest, residue and remainder of my property of whatever nature and kind and wherever located to the then acting Trustee(s) of my revocable living trust of which I am a Trustor known as the:

COLUCCI LIVING TRUST, dated February 24, 2005 and any amendments or restatements thereto

I executed said trust prior to the execution of this will.

Section 3. Alternate Disposition

If my revocable living trust is not in effect for any reason, I give all of my property to my Personal Representative under this will as Trustee who shall hold, administer and distribute my property as a testamentary trust the provisions of which are identical to those of my revocable living trust on the date of execution of this will, or as thereafter amended.

Article Four

Death Taxes

Section 1. Definition of Death Taxes

The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in the estate of the decedent or by reason of the decedent's death, including penalties and interest, but excluding the following:

- a. Any additional tax that may be assessed under Internal Revenue Code Section 2032A or 2057; and
- b. Any federal or state tax imposed on a Generation Skipping Transfer, as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the Generation Skipping Transfer Tax is payable directly out of the assets of my gross estate.

Section 2. Waiver of Right of Reimbursement Under Code Section 2207A

I do not waive my estate's right of reimbursement under Code Section 2207A.

Section 3. Payment of Taxes

All death taxes whether or not attributable to property inventoried in my probate estate shall be paid by the Trustee as provided under my revocable living trust. However, if my Trust does not exist at the time of my death or if the assets of my Trust are insufficient to pay the death taxes in full, I direct my Personal Representative to pay any death taxes that cannot be paid by my Trustee from the assets of my probate estate by equitably prorating and apportioning those taxes among the beneficiaries of this will.

Unless specifically provided otherwise in my Trust, all death taxes incurred by reason of assets being transferred outside of my Trust or probate estate shall be assessed against those persons receiving such property.

Article Five

General Provisions

Section 1. Captions

The captions of Articles, Sections and Paragraphs used in this will are for convenience of reference only and shall have no significance in the construction or interpretation of this will.

Section 2. Severability

Should any of the provisions of this will be for any reason declared invalid, such invalidity shall not affect any of the other provisions of this will and all invalid provisions shall be wholly disregarded in interpreting this will.

Section 3. Governing Law

This will shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

Section 4. No Contest Clause

If any devisee or legatee under my will or any codicil to it, no matter how remote or contingent such devisee or legatee's interest appears, or any of my legal heirs, or any person claiming under any of them, directly or indirectly, does any of the following, then in that event I specifically disinherit each such person, and all such legacies, bequests, devises and interests given to such person under my will or any codicil to it shall be forfeited and shall be distributed as provided elsewhere herein as though such person had predeceased me without issue:

- a. unsuccessfully challenges the appointment of any person named as a Personal Representative in my will or any codicil to it, or unsuccessfully seeks the removal of any person acting as a Personal Representative;
- b. objects in any manner to any action taken or proposed to be taken in good faith by my Personal Representative under my will or any codicil to it, whether my Personal Representative is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;
- c. objects to any construction or interpretation of my will or any codicil to it, or the provisions of either, that is adopted or proposed in good faith by my Personal Representative, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

- d. claims entitlement to (or an interest in) any asset alleged by my Personal Representative to belong to my Probate Estate, whether such claim is based upon a community or separate property right, Marvin rights, a contract or other right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;
- e. files a creditor's claim against the assets of my Probate Estate and such claim is later adjudicated by a court of competent jurisdiction to be invalid;
- f. anyone, other than my spouse, if any, attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on my life or any designation of beneficiaries for any pension plan, Keogh, SEP, or IRA account;
- g. in any other manner contests my will or any codicil to it, or in any other manner, attacks or seeks to impair or invalidate any of my will or codicil provisions;
- h. conspires with or voluntarily assists anyone attempting to do any of the above acts.

Expenses to resist any above contest or other attack of any nature upon any provision of my will or any codicil to it shall be paid from my Probate Estate as expenses of administration.

In the event that any provision of this Section is held to be invalid, void, or illegal, the same shall be deemed severable from the remainder of the provisions in this Section and shall in no way affect, impair, or invalidate any other provision in this Section. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this Section shall not apply to any disclaimer by any person of any benefit under my will or any codicil to it.

AFFIDAVIT

I, DORIS D. COLUCCI, the Testatrix, sign my name to this instrument on June 18, 2013, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Doris D. Colucci

DORIS D. COLUCCI, Testatrix

We, *Sarah E. Miller* and *Aimee N. Beck*, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Sarah E. Miller
WITNESS

Aimee N. Beck
WITNESS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

SS

Subscribed, sworn to and acknowledged before me by DORIS D. COLUCCI, the Testatrix, and subscribed and sworn to before me by the other witness whose name appears above, on this June 18, 2013.

Aimee N. Beck
Notary Public for South Carolina
My Commission Expires: 1/11/22



Prepared by:
John R. Kuhn
Kuhn and Kuhn, LLC
39 Broad Street, Suite 301
Charleston, South Carolina 29401
(843) 577-3700

FILED-RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
IN THE MATTER OF THE ESTATE OF DORIS DUANE COLUCCI,)
ALSO KNOWN AS DORIS D.)
COLUCCI)

2018 NOV 26 PM 3:08
CHERYL GRAYSON
CLERK OF COURT
DORCHESTER COUNTY

THE PROBATE COURT
CASE NO. 2017-ES-18-00294
TEMPORARY ORDER FOR
THE APPOINTMENT OF A
SPECIAL ADMINISTRATOR
ON AN EMERGENCY BASIS

PROBATE JUDGE
DORCHESTER COUNTY
2017 JUN -9 PM 4:26

Pending before this Court is an Application/Petition for Appointment of Special Administrator filed on May 3, 2017 requesting that the Court appoint Lester S. Schwartz, Esquire as the Special Administrator for the Estate of Doris Duane Colucci. The parties have been working together to prepare a consent order regarding the appointment of a Special Administrator, but at this time, the Court has not received an Order signed by all parties that is satisfactory to this Court without further hearing. Therefore, based on the various pleadings and documents, the Court makes the following findings:

1. Doris Duane Colucci (Decedent) passed away on April 14, 2017;
2. The Decedent's originally executed Last Will and Testament has not yet been located and presented to this Court;
3. Unless and until the originally executed Last Will of the Decedent is located and admitted to probate in this Court, the administration of the probate estate shall proceed pursuant to the South Carolina laws of intestate succession;
4. The Decedent was survived by her husband, Ivo Francesco Colucci;
5. The Decedent was also survived by her two (2) children, John Martin Antonio and Michael Frederick Antonio Colucci, both of whom are over the age of majority;
6. Christa M. Yantis, CPA (Ms. Yantis) is the Court-appointed Conservator for the Decedent's husband, Ivo Francesco Colucci;

7. Glenn P. Churchill, Esquire, is the Court appointed guardian ad litem for the Decedent's son, John Martin Antonio;

8. Ms. Yantis has requested that the Court authorize her to liquidate the assets belonging to Ivo Francesco Colucci;

9. Most of the assets Ms. Yantis is asking the Court to liquidate are jointly owned, in various capacities, by Decedent;

10. A Temporary Special Administrator is needed to protect and preserve the assets that should be part of the Decedent's Estate;

11. Further, there are several outstanding litigation matters that involve entities in which the Decedent's Estate may have an interest;

12. As the parties have been unable to execute a consent agreement agreeable to all parties and this Court, it is necessary to protect the interests of the Decedent's Estate and appoint an independent third-party attorney to serve as Temporary Special Administrator on an emergency basis pending a hearing;

13. Therefore, the Court appoints Andrew W. Chandler, Esquire as Temporary Special Administrator for Decedent's Estate;

14. Andrew W. Chandler, Esquire has extensive experience in probate matters, is recognized state-wide for his knowledge in this area, and he has agreed to serve as a fiduciary to this Court;

15. The appointment herein is necessary to "collect and manage the assets of the estate, to preserve them, [and] to account therefor" pursuant to South Carolina Code § 62-3-616.

16. As Temporary Special Administrator, Andrew W. Chandler, Esquire shall only perform those duties and responsibilities to secure, preserve, and protect the assets of the Decedent's Estate; and

17. The Court shall schedule a hearing within thirty (30) days, or as soon as all interested parties are available, to appoint a permanent Special Administrator, unless a consent order is entered into by all interested parties and approved by this Court.

NOW THEREFORE, it is ORDERED, ADJUDGED, and DECREED that:

A. Andrew W. Chandler, Esquire shall be appointed and serve as the Temporary Special Administrator of the Estate of Doris Duane Colucci on an emergency basis;

B. Andrew W. Chandler, Esquire shall be bonded for one hundred five percent (105%) of the value of Decedent's Estate once the Inventory and Appraisement is filed with this Court, and the bond shall be paid from the Estate's assets;

C. Andrew W. Chandler Esquire, as Special Administrator of Decedent's Estate, shall be compensated by the Estate at the hourly rate of Two Hundred and 00/100 Dollars (\$200.00) and his paralegal shall be billed at the hourly rate of One Hundred and 00/100 Dollars (\$100.00) to be paid by the Estate;

D. If necessary, Andrew W. Chandler, Esquire, as Temporary Special Administrator of Decedent's Estate, may retain the services of a third-party agent, including an attorney, only with prior Court approval;

E. In the role as Temporary Special Administrator of Decedent's Estate, Andrew W. Chandler, Esquire shall only perform those duties and responsibilities to secure, preserve, and protect the assets of the Decedent's Estate; and

F. The Court shall schedule a hearing within thirty (30) days, or as soon as all interested parties are available, to appoint a permanent Special Administrator, unless a consent order is entered into by all interested parties and approved by this Court.

AND IT IS SO ORDERED!

9th day of June, 2017
St. George, South Carolina

Mary Blunt
The Hon. Mary Q. Blunt
Probate Court Judge
Dorchester County Probate Court

215
6/9/17

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN RE:
THE ESTATE OF DORIS DUANE COLUCCI,

Michael C. Fox, Named Personal Representative
in the Last Will of Doris Duane Colucci

v.

Andrew Chandler, in his capacity as Special
Administrator of the Estate of Doris Duane
Colucci, Michael C. Fox, Successor Trustee of the
Colucci Living Trust, dated February 24, 2005,
Ivo Francesco Colucci, Michael Frederick Antonio
Colucci, John Martin Antonio, Henry Burkes, and
Richard M. Hyman, Jr.

IN THE PROBATE COURT
CASE NO: 2017-ES-1800294

Requesting Removal to the:
COURT OF COMMON PLEAS
CASE NO: _____

**PETITION FOR REMOVAL OF
SPECIAL ADMINISTRATOR**

SC CODE §62-3-611

Michael Fox, a person interested in the Estate of Doris Colucci as Trustee of the sole heir, the Colucci Family Trust, as well as the named Successor Personal Representative of the Estate of Doris Colucci, hereby petitions under South Carolina Code §62-3-611 for removal of the Special Administrator of the Estate of Doris Colucci, Andrew Chandler, Esq. The appointment of a Special Administrator is subject to termination as provided in §62-3-611. (S.C. Code §62-3-618.) Further, this matter is properly removable by Petitioner's Motion of Removal under S.C. Code §62-1-302 as the Petitioner's Petition pertains to the formal proceedings for the probate of wills and for the appointment of a general personal representative.

South Carolina Code §62-3-611 states that after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative "shall not act except to account, or to correct maladministration, or preserve the estate."

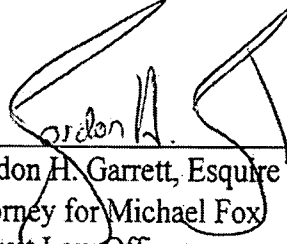
The Petitioner believes removal would be in the best interest of the estate and that the Special Administrator has failed to perform necessary duties pertaining to his office.

These acts are further described in the Petitioner's Motion to Restrain Personal Representative and are hereby incorporated herein by reference into this Petition as Exhibit A.

The Petitioner hereby requests:

That the Special Administrator be removed pursuant to §62-3-611 and that a general Personal Representative be appointed, for such relief requested in Petitioner's Motion to Restrain, and for such further relief as the Court may order.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gordon H. Garrett", is written over a horizontal line.

Gordon H. Garrett, Esquire
Attorney for Michael Fox
Garrett Law Offices
1075 East Montague Avenue
North Charleston, SC 29405

This 4th day of January, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
In Re:	)	No 2017-CP-18-1816
	)	
The Estate of Doris Duane Colucci,	)	
	)	
Michael C. Fox, Personal Representative	)	Return to Respondent Chandler's Motion to
the Estate of Doris Duane Colucci,	)	Reconsider, Alter, or Amend
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Andrew Chandler, in his capacity as	)	
Special Administrator of the Estate of	)	
Doris Duane Colucci, Michael C. Fox,	)	
Successor Trustee of the Colucci Living	)	
Trust, dated February 24, 2005, Ivo	)	
Francesco Colucci, Michael Frederick	)	
Antonio Colucci, John Martin Antonio,	)	
Henry Burkes, and Richard M. Hyman,	)	
Jr,	)	
	)	
Respondents.	)	
	)	
	)	

Petitioner Michael C. Fox respectfully requests that the Court deny Andrew Chandler's Motion to Reconsider, Alter, or Amend without a hearing, pursuant to Rule 59(f), SCRCF. As set forth below, the grounds for denying this Motion are 1) the Court had before it and carefully considered the all relevant arguments and evidence to appoint Michael C. Fox; and 2) Mr. Fox was found and is suitable to serve as the personal representative.

Background

On June 18, 2013, Doris Colucci executed her Last Will. Doris Colucci passed away on April 14, 2017. Her death likely occurred as result of conduct giving rise to a claim for wrongful death against her husband, Ivo Colucci. The decedent's Last Will was not immediately discovered.

As a result of the Will's absence, Andrew Chandler, Esq., was appointed Special Administrator by the Probate Court on a temporary basis by Order dated June 9, 2017. Thereafter, several of the parties entered into a Consent Order further establishing Mr. Chandler as a permanent Special Administrator with the powers of a general personal representative by Order dated July 10, 2017.

On or around August 24, 2017, Doris Colucci's original Last Will was delivered to the Dorchester County Probate Court. On October 27, 2017, Michael Fox elected to serve and is the named and current Trustee of such living trust, known as the "Colucci Living Trust, dated February 24, 2005" (hereinafter "The Trust"). From August 24, 2017 through October 24, 2017, the Special Administrator did not act to probate the Last Will. On October 30, 2017, at his own cost, Michael Fox filed for Formal Probate proceedings and removal of this action to the Dorchester County Court of Common Pleas¹. On November 30, 2017, The Special Administrator thereafter filed an Answer and Objection to Movant's Petition for Formal Testacy and Appointment as Personal Representative ("Objection"). On May 23, 2018, Ivo Colucci filed a Motion for Summary Judgment on the Petition for Formal Testacy and Appointment of a Personal Representative.

On August 8, 2018, Andrew Chandler filed a Memorandum in Partial Opposition to Summary Judgment. Mr. Chandler argued that:

[T]he negative effects the appointment of Petitioner Fox would have on the Estate and those interested in it, specifically, the delay and waste of Estate assets, render Petitioner Fox unsuitable to serve as Personal Representative...Transitioning the administration of the Estate from Respondent Chandler and his attorney to Petitioner Fox and his attorney would be a time-consuming, and costly, process. Replacing Respondent Chandler with Petitioner Fox or any other Personal Representative at this stage, given the time and effort expended by, and the progress made by, Respondent Chandler would frustrate judicial economy and prejudice the Estate and those interested in it with additional unnecessary costs, delay, and duplication of efforts.

¹ On October 24, 2017, Mr. Fox filed for appointment via informal probate. Mr. Fox's application was denied without explanation.

Nearly a year after the discovery of the Last Will and with only the Special Administrator objecting to Mr. Fox's appointment, a hearing for Ivo Colucci's Motion for Summary Judgment was held on August 13, 2018 before the Dorchester County Court of Common Pleas. No member of the Colucci family objected to the appointment of Mr. Fox or the other named individuals as Personal Representative. To the contrary, only the Special Administrator objected to the appointment of a Personal Representative. The hearing concluded with the Special Administrator consenting to probate of the Last Will of Doris Colucci but continuing to object to the appointment of a Personal Representative. The Court therefore took under advisement the appointment of the Personal Representative. On January 4, 2019, Mr. Fox filed a Petition for Removal of Special Administrator in the Probate Court. In response, Mr. Chandler, through an ex parte communication with the Probate Court, requested an emergency hearing regarding the Petition. The emergency hearing was scheduled and heard by the Probate Court on January 9, 2019.² By Order filed February 7, 2019, the Probate Court denied Mr. Fox's Petition.

On February 13, 2019, at 8:45 AM, this Court issued an Order finding Michael Fox qualified to serve as the General Personal Representative of the Estate of Doris Duane Colucci and appointed him to serve in that position in accordance with her Last Will. At 2:08 PM, that same day, counsel for Andrew Chandler filed a Creditors Claim on behalf of Rosen Hagood, LLC. Mr. Chandler, apparently using his attorney as a proxy, subsequently used this claim to file an Emergency Application to Restrain the Personal Representative and Appointment of Temporary Special Administrator in an attempt to circumvent the clear language of this Court's February 13, 2019 Order. In this emergency application, Chandler, through his attorney, sought the restraint of Michael C. Fox and his re-appointment as Temporary Special Administrator. With standing

² Due to questions of jurisdiction, a substantially similar motion was made in Circuit Court in November 20, 2018.

allowed on the basis of this dubious creditor's claim³, the Probate Court granted the application and re-appointed Mr. Chandler as the Temporary Special Administrator and restrained Mr. Fox from carrying out the terms of this Court's Order. In that short span of time, nothing transpired that would constitute new evidence or events that would necessitate Mr. Fox's restraint as Personal Representative.

Argument

Mr. Fox respectfully requests that this Court deny Mr. Chandler's Motion to Reconsider, Alter or Amend the Order appointing Mr. Fox as Personal Representative. This Motion seeks to re-argue the merits of the case and attempts to introduce new evidence and the record clearly supports Mr. Fox's qualifications.

I. Mr. Chandler is using his Rule 59 motion to re-argue the merits of the case.

Mr. Chandler should not be allowed to re-argue the issues of judicial economy, the alleged cost and time required to replace the Personal Representative, the alleged conflict of interest of Mr. Fox, whether or not this Court had considered the February 7, 2019 Probate Court Order, and the issues regarding the "Mary Street" property. Acevedo v. Colvin, No. CIV.A. 0:12-2137-TMC, 2014 WL 3798813 (D.S.C. Aug. 1, 2014) (A "Rule 59(e) motion is not intended to allow for reargument of the very issues that the court has previously decided.") (citing DeLong v. Thompson, 790 F.Supp. 594, 618 (E.D.Va.1991)) (under federal rules). Contra Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E. 2d 772 (2004). As Mr. Fox will show, all of the above referenced issues were brought to this Court's attention on numerous occasions.

On November 30, 2017, Mr. Chandler filed his Answer and Objection ("Answer") with this Court. Specifically, Mr. Chandler argued that:

³ This creditor's claim was never presented to Mr. Fox for payment before Rosen Hagood, LLC filed its application to restrain.

[R]eplacing [Mr. Chandler] with [Mr. Fox] or any other Personal Representative at this stage, given the time and effort expended by, and the progress made by, [Mr. Chandler] would frustrate judicial economy and prejudice the Estate.” Mr. Chandler further argued that, because there are alleged issues with Mr. Fox’s accounting work for the Decent and her husband Mr. Fox has an alleged conflict of interest and should not serve as Personal Representative for the Estate.

On August 8, 2018, Chandler filed his Memorandum in Partial Opposition to Summary Judgement (“Memorandum”) with this Court. Once again, Mr. Chandler argued that:

Transitioning the administration of the Estate from Respondent Chandler and his attorney to Petitioner Fox and his attorney would be a time-consuming, and costly, process. Replacing Respondent Chandler with Petitioner Fox or any other Personal Representative at this stage, given the time and effort expended by, and the progress made by, Respondent Chandler would frustrate judicial economy and prejudice the Estate and those interested in it with additional unnecessary costs, delay, and duplication of efforts.

Exhibit 5 to Mr. Chandler’s Memorandum is Mr. Chandler’s affidavit. In it, Mr. Chandler once again voices his concerns regarding the appointment of Mr. Fox as Personal Representative. Mr. Chandler argues that there may be a possible conflict of interest because Mr. Fox had a long-standing relationship with the Coluccis. (Chandler Affidavit p. 2 ¶ 6). Mr. Chandler also raises his concerns regarding a potential audit by the IRS and S.C. Department of Revenue. (Chandler Affidavit p. 2 ¶ 10). Mr. Fox prepared the Coluccis’ tax returns for many years and Mr. Chandler argues that this too, creates a conflict of interest. (Chandler Affidavit p. 2 ¶ 10).

On February 5, 2019, the undersigned brought to the Court’s attention that it had not yet ruled on the appointment of Mr. Fox. On February 6, 2019, the Court acknowledged that it had not made a ruling, but one would be forthcoming. On February 8, 2019, counsel for Andrew Chandler contacted the Court and requested that this Court:

[C]onsider the Supplement [to Motion to Dismiss] and the attached [February 7, 2019] Order of the Probate Court before issuing its final order on Petitioner Fox's Petition for Appointment.

This email is attached as Exhibit A. The February 7, 2019 Order was attached to counsel's email to the Court and also filed with this Court as Exhibit 1 to Andrew Chandler's Supplement to Motion to Dismiss (filed February 8, 2019).

On February 12, 2019 the undersigned emailed the Court regarding Mr. Chandler's suggested changes to the Proposed Order. Attached to that email were the affidavits of three of the Colucci children requesting that Mr. Chandler be removed, and that Mr. Fox be appointed. The affidavits of the Colucci children are attached as Exhibit B.

On February 12, 2019, counsel for Mr. Chandler emailed the Court regarding their Proposed Order. In pertinent part, Chandler's counsel once again advanced the position that:

"Changing the "leadership" of these cases, which have included significant discovery, expert expense, two days of mediation, and numerous depositions (nine to date, one of which was Mr. Fox, with one scheduled tomorrow), would inevitably result in delaying the conclusion of these matters and waste to the Estate. If the power to pursue these lawsuit[s] were to be bestowed upon Mr. Fox, the attorney(s) he selects to represent him would require a substantial amount of time to get up to speed and into a position to continue moving the cases forward. For example, there are thousands of documents that have been received through discovery and over 50 hours of video received from the solicitor's office that we have reviewed and that would need to be re-reviewed by any attorney coming into this case. We have made significant progress towards settlement. In fact, settlement discussions were taking place late into yesterday afternoon. Moreover, should settlement negotiations ultimately fail, we anticipate trial in both cases being scheduled early to mid-summer. Stopping these cases in their tracks now would not benefit the Estate, the statutory beneficiaries, or the trust."

This email is attached as Exhibit C.

The Defendant's Motion to Reconsider, Alter, or Amend states that:

[T]he Court failed to fully understand the implications of replacing the Estate's fiduciary at this stage in the administration of the Estate...Although this Order was submitted to this Court in connection with a separate motion (which has since been dismissed as moot), it was not submitted as part of Mr. Chandler's opposition to Mr. Fox's Petition for Appointment. We would therefore request that the Court consider it in connection with its determination of this Motion.

However, in this Court's February 13, 2019, order, it specifically states that: "[T]his Court carefully consider[ed] **the arguments of counsel and the record.**" (emphasis added). Mr. Chandler presents no argument, or evidence, that he did not already present to this Court (or could have presented). This fact, in and of itself, is sufficient for this Court to deny Defendant's motion. Mr. Chandler has brought up nothing new except his displeasure this Court's Order.

Mr. Chandler argues the Court should reconsider its findings of fact regarding the alleged cost and time required to replace the Personal Representative, the alleged conflict of interest of Mr. Fox, whether or not this Court had considered the February 7, 2019 Probate Court Order, and the issues regarding the "Mary Street" property. All of these issues were previously raised multiple times before this Court. Mr. Chandler's arguments in support of his motion to reconsider simply rehash the arguments and the record, all of which were carefully considered by this Court. Therefore, Mr. Chandler's argument does not support a motion for reconsideration.

II. Mr. Chandler is attempting to impermissibly introduce new evidence and introduce evidence that should have been presented prior to this Court's February 13, 2019 Order via a Rule 59 motion.

It appears that Defendant argues that Mr. Fox's deposition testimony in Lee v. Colluci, et al. 2017-CP-10-2897 (a collateral matter) is somehow new evidence of a "conflict of interest". This evidence could have been presented, or at least mentioned, in earlier submissions to this Court. "A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not." Poch v. Bayshore Concrete

Prod./S.C., Inc., 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009); Dixon v. Dixon, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) (finding issue raised for first time in Rule 59, SCRC, motion is not preserved for review); Kiawah Prop. Owners Grp. v. Public Serv. Comm'n., 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating an issue raised for first time in petition for rehearing not preserved); Mozingo v. Ford Motor Company, Op. No. 2009-UP-282 (S.C. Ct. App. 2009) (“a party cannot use Rule 59(e) to present new evidence to the court”). If this transcript was as important last month as it is now, Defendant could have requested a “rough copy” from the court reporter for filing and submitted the final version later. Accordingly, any consideration of this evidence by this Court is improper.⁴

III. Mr. Fox is qualified to serve as the personal representative of this Estate.

On August 13, 2018, this Court held a hearing for Ivo Colucci’s Motion for Summary Judgment. At this hearing, counsel for Mr. Chandler stated:

I want to make it clear to the Court and to Mr. Fox that **our objection has nothing to do with his character, calling into question his character; it is nothing to that extent at all. He is a lovely man.** I’ve met him now twice. Our objection is because first of all this estate has been administered by Mr. Chandler and to some extent myself as his attorney for over 14 months at this point...It is a complicated estate. We have made a lot of progress but there are still some things that remain to be done, some of which are outlined or set forth in Mr. Chandler’s affidavit which was attached to our memo... At this point in time if we were to transition the administration of this estate to Mr. Fox and his attorney it would cause a huge delay.”

(Summary Judgment Trans. p. 13 ¶ 23 to p. 14 ¶ 24). (emphasis added). In addition, Mr. Chandler also testified that:

“Mr. Fox has been a longtime friend and confidant of the Colucci’s for a very long period of time. He would clearly be a witness in a

⁴ However, even if this deposition transcript was considered, it has no probative value, as it establishes no new fact bearing on the decision to appoint Fox or remove Chandler.

slayer action... there is the wrongful death claim that is ongoing. Mr. Fox will likely be a witness in that action. There are we have a variety of tax returns that have been recently filed that are based on tax returns filed by Mr. Fox. If they are audited, he will be a witness and they would likely have to be a Special Administrator appointed to deal with those issues... the things that remain are complicated and frankly ones that - and **I'm not saying that Mr. Fox wouldn't otherwise be capable of doing them**, but he is also a witness to many of them."

(Summary Judgment Trans. p. 19 ¶ 8-10). South Carolina Jurisprudence has settled all of the arguments that Mr. Chandler has raised against the appointment of Mr. Fox. "A court may not by judicial construction make a will for the decedent that he has not made for himself." Blackmon v. Weaver, 366 S.C. 245, 250, 621 S.E.2d 42, 44 (Ct. App. 2005). There is a strong deference shown to the personal representative chosen by the testator. "The Courts have ever been reluctant to take the management of an estate from those to whom it has been confided by the testator, for to that extent the intention expressed in his will would be defeated." Id. at 251, 621 S.E.2d at 45 (Ct. App. 2005) (quoting Smith v. Heyward, 115 S.C. 145, 164, 105 S.E. 275, 282 (1920). The power to remove a personal representative "should be executed with great caution, and not at all, unless it is made to appear to be necessary for the protection of the estate, to prevent loss or injury to it from misappropriation, maladministration or fraud." Id. (quoting Smith, at 164-65, 105 S.E. at 282.). "The mere existence of conflict between a personal representative and a beneficiary is an inadequate reason for removal of the personal representative. Without a showing of fault, the court will not remove a personal representative." Id.

If Mr. Chandler's argument was followed to its logical conclusion, any friend of a decedent named as a personal representative has a conflict of interest and must be removed. Such a proposition turns the practice of estate planning on its head. It is extremely common for a testator to name a close friend or family member as personal representative of their estate. Further, Mr.

Chandler's arguments are not supported by case law. South Carolina jurisprudence on this matter shows a strong deference to the wishes of a decedent. Mr. Chandler has offered no evidence other than speculative accusations that Mr. Fox is unqualified. With that alone, the evidence does not support any conflict of interest for Mr. Fox.

Conclusion

For these reasons, this Court should deny Mr. Chandler's Motion to Reconsider, Alter, or Amend without a hearing, pursuant to Rule 59(f), SCRPC. Mr. Chandler has on multiple occasions brought his concerns, arguments, and evidence before this Court. After careful consideration of the arguments of counsel and the record, this Court found Mr. Fox qualified to serve the Personal Representative of the Estate of Doris Colucci. Furthermore, this Court should deny Mr. Chandler's alternative request to limit Mr. Fox's authority to act as the General Personal Representative.⁵

Dated: March 4, 2019

/s/ Ryan A. Love
Ryan A. Love
Gordon H. Garrett
rlove@garrettlawsc.com
Garrett Law Offices, LLC
1075 E. Montague Ave.
North Charleston, SC 29405
843.554.5515 (phone)
843.747.3198 (telefax)
Attorneys for Petitioner

⁵ Attached as Exhibit D is Mr. Chandler's proposed order requesting the limitation of Mr. Fox's powers as Personal Representative. The language in Mr. Chandler's proposed order was submitted to the Court and was not included in the Final Order.

STATE OF SOUTH CAROLINA

COUNTY OF: DORCHESTER

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

☒ ORIGINAL☐ AMENDED #

(must restate the unchanged information from the original inventory)

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

CASE NUMBER: 2017 ES 18 00294

File the original inventory and Appraisal with the Probate Court within ninety (90) days following the fiduciary appointment. A copy shall be sent to each interested person who has demanded it. A Proof of Delivery must be filed with the Court. The gross fair market value of all probate assets, regardless of location (whether in this state or elsewhere), should be listed as of the date of death. Continue on additional sheets if necessary. An Amended Inventory should be utilized for correcting, adjusting or adding to an original inventory, and must restate the unchanged information from the original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset. If an appraiser is employed, his/her name and address must be indicated with the item or items he/she appraised.

RECAPITULATION

	Non-Probate (OPTIONAL)	Probate
Schedule A - Real Estate		\$231,650.50
Schedule B - Stocks and Bonds		\$-0-
Schedule C - Notes Due Decedent and Cash		\$122,220.16
Schedule D - Insurance on Decedent's Life - Part 1 - Payable to Estate		\$TBD
Part 2 - Payable to Beneficiary	\$ TBD	
Schedule E - Jointly Owned Property	\$ 257.88	
Schedule F - Other Miscellaneous Assets Payable to Estate		\$9,810.00
Schedule G - Transfers During Decedent's Life	\$ -0-	\$-0-
Schedule H - Powers of Appointment	\$ -0-	\$-0-
Schedule I - Annuities and Retirement Accounts	\$ 54,772.61	\$TBD
GROSS VALUE OF PROBATE ESTATE		\$363,630.66

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all probate real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 4th day of
October 29 17

[Signature]
Notary Public for South Carolina
My Commission Expires: 07/13/2026

Personal Representative

Signature: [Signature]Print Name: Andrew W. Chandler, Special AdministratorAddress: Evans, Carter, Kunes & Bennett, P.A.
115 Church Street, Charleston, SC 29401Telephone (Work): (843) 577-2300

(Home): _____

(Cell): _____

(Email): chandler@eckb.com

Co-Personal Representative

Signature (if applicable) _____

Name: _____

Address: _____

Telephone (Work): _____

Telephone (Home): _____

(Cell): _____

(Email): _____

Attorney: _____

Address: _____

Telephone: _____

Email: _____

WHEN COMPLETING THE FOLLOWING SCHEDULES LIST ALL PROBATE ASSETS, REGARDLESS OF LOCATION. ALL OUT-OF-STATE PROBATE ASSETS MUST BE DISCLOSED. NON-PROBATE PROPERTY NEED NOT BE DISCLOSED.

SCHEDULE D – LIFE INSURANCE (If none, so state.)

Part 1 – Life Insurance – List the insurance on the life of the Decedent which is payable to the Estate.

Item No.	Description	Value
1.		TBD

TOTAL PART 1

(also enter under recapitulation, page 1)

\$ TBD

Part 2 (OPTIONAL) – You may list here the insurance on the life of the Decedent which is payable to beneficiaries.

Item No.	Description	Beneficiary	Value
1.			TBD

TOTAL PART 2\$ TBD**SCHEDULE E – JOINT WITH RIGHT OF SURVIVORSHIP**– You may list below any non-probate property jointly owned by the Decedent with another with right of survivorship. List each separate account type and institution and the last two digits of each account.

Item No.	Description	Joint Owner(s)	Percentage Includible	Value of Decedent's Interest
1.	Wells Fargo Savings Account #xx81	John M. Antonio	TBD	Non-Probate

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$ -0-**SCHEDULE F – OTHER MISCELLANEOUS ASSETS PAYABLE TO ESTATE.** List below any tangible personal property, including household goods & furnishings, vehicles, boats/motors/trailers, mobile homes that are not de-titled (Include year/make/model/VIN, if applicable), airplanes, equipment, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, including coins, guns, artwork, jewelry, etc., and any other miscellaneous probate items not listed elsewhere, including any digital assets. If none, so state. (For jointly owned tangible personal property with right of survivorship, you may list in Schedule E.)

Item No.	Description	Value
1.	Collection of Jewelry Pieces	9,810.00
2.	Diamond Ring	TBD
3.	Rolex Watch	TBD
4.	25% Interest in H.I.D., LLC	TBD
5.	50% Interest (at least) in Jewelry Factory II, Inc.**	TBD
6.	25% Interest (at least) in Terrivo Enterprises, LLC	TBD
7.	25% Interest (at least) in Terrivo Investments	TBD
8.	25.5% Interest (at least) in I&M Enterprises, LLC	TBD
9.	25.5% Interest (at least) in I&M Enterprises, LP	TBD
10.	50% Interest (at least) in I&D Enterprises, LLC	TBD
11.	50% Interest In Household Goods & Furnishings††	TBD
12.	50% Interest in 2004 Chevrolet Express VIN #xx14***††	TBD
13.	50% Interest in 1979 Chevrolet Corvette VIN #xx91***††	TBD
14.	50% Interest in 2015 Toyota Prius VIN #xx85***††	TBD
15.	50% Interest in 2011 Toyota Prius***††	TBD
16.	50% Interest in 2004 Nissan Frontier**	TBD
17.	50% Interest in 1988 Dodge Raider**	TBD
18.	50% Interest in 2016 Lowe Boat & Mercury Motor**	TBD
19.	50% Interest in Yamaha Jetski**	TBD
20.	50% Interest in Case International 245 Tractor**	TBD
21.	25.5 % Interest in I&M Colucci, A General Partnership	TBD

TOTAL SCHEDULE F\$ 9,810.00

NOTE: FOR SCHEDULES G, H, AND I. LIST VALUES ONLY IF PAYABLE TO ESTATE.

SCHEDULE G – TRANSFERS DURING DECEDENT'S LIFE. List any transfers intended to take effect at death if such property is payable to the Estate. You may list in the "Optional" section below any non-probate transfers intended to take effect at death not payable to the Estate, including United States Government Bonds "Payable on Death," accounts which are "Transfer on Death," a trust created by Decedent in which income for life was retained by the Decedent, power to revoke or other incidents of ownership retained by the Decedent, lifetime transfers of real property in which Decedent retained life estate, etc. If none, so state.

List date and type of transfer and list total amount payable to estate:

1.	None	-0-
2.		

(OPTIONAL) describe and list amounts not payable to estate:

1.	The Colucci Living Trust dated 02/24/2005 (if applicable, as determined by the Probate Court)	Non-Probate
2.		

TOTAL SCHEDULE G

\$ -0-

(also enter under recapitulation, page 1)

SCHEDULE H – POWERS OF APPOINTMENT. List property, both real and personal, over which Decedent possessed a Power of Appointment whether testamentary or otherwise, if such property is payable to the Estate. You may list property subject to such power if it was not payable to the Estate in the "Optional" section below. If none, so state.

Describe and list total amount payable to estate:

1.	None	
----	------	--

(OPTIONAL) describe and list amounts not payable to estate:

1.	None	
----	------	--

TOTAL SCHEDULE H

\$ -0-

(also enter under recapitulation, page 1)

SCHEDULE I – ANNUITIES AND RETIREMENT ACCOUNTS (IRA's, 401(K), etc.). List any annuities or retirement accounts owned by the Decedent and payable to the Estate. You may list in the "Optional" section below any accounts payable to a beneficiary which is not payable to the Estate.

Describe and list total amount payable to estate:

1.		
----	--	--

(OPTIONAL) describe and list amounts not payable to estate:

1.	Genworth Life Traditional IRA Contract #xx76	54,772.61++
----	--	-------------

TOTAL SCHEDULE I

\$ 54,772.61++

(also enter under recapitulation, page 1)

ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate). List debts of the Decedent secured by assets on the above Schedules and describe the debt and the specific asset encumbered.

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount
1.	None	

TOTAL ENCUMBRANCES

\$ -0-

****NOTE:**

Pursuant to Property Agreement dated February 24, 2005 (See Attached)

††NOTE:

As may be impacted by applicability of Slayer Act, SC Code Ann. 62-2-803.

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: DORCHESTER

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

PROOF OF DELIVERY

CASE NUMBER: 2017 ES 18 00294

On the 5th day of October, 2017, I mailed the Inventory & Appraisalment.

- ☐ A copy of which is attached hereto and incorporated herein, or
☒ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
David K. Haller, Esq., Attorney for Christa M. Yantis as Conservator	604 Savannah Highway Charleston, SC 29407
Stefan Colucci	102 Devon Court Summerville, SC 29485

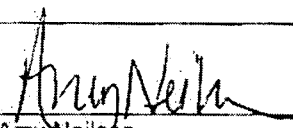
(DEMAND FOR NOTICE)

SWORN to before me this 5th day of
October, 2017

Notary Public for South Carolina

Print Name: Brenda F. Nelson

My Commission Expires: 11/05/2025

Signature: 
Print Name: Amy Neilson
Address: Evans, Carter, Kunes & Bennett, P.A.
115 Church Street, Charleston, SC 29401
Telephone (Work): (843) 577-2300
(Home):
(Cell):
E-mail: amy@eckb.com

Relationship to
Decedent/Estate:

Paralegal to Andrew W. Chandler, Esq.

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF DORCHESTER

**APPLICATION FOR HEARING TO APPROVE DISTRIBUTION
BY SPECIAL ADMINISTRATOR**

IN THE MATTER OF THE ESTATE OF DORIS
DUANE COLUCCI AKA DORIS D. COLUCCI

(Decedent)

CASE NUMBER: 2017-ES-18-00294

The undersigned states as follows:

I am the duly appointed Special Administrator for the Estate of Doris Duane Colucci a/k/a Doris D. Colucci (the "Estate").

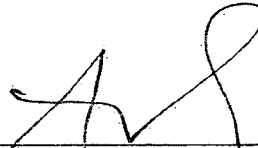
The Estate has settled all outstanding litigation filed on behalf of the Estate and is ready to be closed, but for the remaining outstanding appeals to the South Carolina Court of Appeals filed by Mr. Fox. The Estate's remaining assets include a purse (and its contents) and liquid assets, which are held in Estate accounts at South State Bank.

The Colucci Living Trust, dated February 24, 2005, is the sole devisee under the Will of Doris D. Colucci. The Special Administrator has previously distributed (i) on November 19, 2018, the deed of the Estate's interest in the real property located at 400 Murray Boulevard, Summerville, South Carolina, and other tangible personal property owned by the Decedent, to Michael C. Fox, Trustee of The Colucci Living Trust, and (ii) \$100,000 cash, paid pursuant to the January 15, 2019 Order of the Dorchester County Probate Court authorizing distribution from the Estate (which Order has been appealed by Mr. Fox to the Dorchester County Court of Common Pleas).

I request a Hearing be held to determine what amount may be distributed from the Estate to Michael C. Fox, Trustee of The Colucci Living Trust, dated February 24, 2005, and any amendments or restatements thereto, as determined by the Court (as devisee under the Will of Doris D. Colucci).

Executed this 23rd day of September, 2019.

Special
Administrator
Signature:



Name: Andrew W. Chandler, as Special Administrator

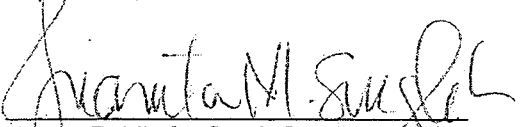
Address: Evans, Carter, Kunes & Bennett, P.A.

115 Church Street
Charleston, SC 29401

Telephone (Work): (843) 577-2300

Email: chandler@eckb.com

SWORN to before me this 23rd day of
September, 2019.



Notary Public for South Carolina

My commission expires: 6-10-2025

ORDER FOR HEARING

IT IS ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Executed this ____ day of _____, 2019.

Mary Q. Blunt, Dorchester County Probate Judge

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: DORCHESTER

IN THE MATTER OF:
DORIS DUANE COLUCCI
(Decedent)

PROOF OF DELIVERY

CASE NUMBER: 2017 ES 18 00294

On the 24th day of September 2019, I mailed the *Application for Hearing to Approve Distribution by Special Administrator* dated September 23, 2019.

- ☐ A copy of which is attached hereto and incorporated herein, or
☒ The original of which is on file with the Court.

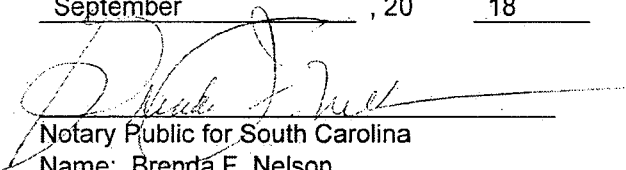
Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

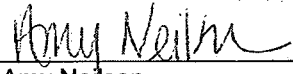
NAME	ADDRESS
Gordon H. Garrett, Esq., Attorney for Michael C. Fox, Trustee of The Colucci Living Trust, dated February 24, 2005 and any amendments or restatements thereto as determined by the Court (as devisee under the Will of Doris D. Colucci)	1075 East Montague Avenue North Charleston, SC 29405

SWORN to before me this 24th day of
September, 2018


Notary Public for South Carolina

Name: Brenda F. Nelson

My Commission Expires: 11/05/2025

Signature: 

Name: Amy Neilson

Address: Evans, Carter, Kunes & Bennett, P.A.
115 Church Street
Charleston, SC 29401

Telephone: (843) 577-2300

E-mail: amy@eckb.com

Relationship to Estate: Paralegal to Andrew W. Chandler, Esq.

SETTLEMENT AGREEMENT AND RELEASE

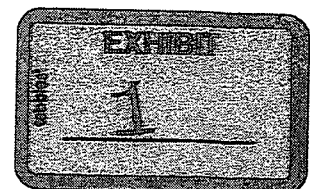
This Settlement Agreement and Release (“Agreement”) is made and entered as of _____, 2019 (the “Effective Date”) by the **Estate of Doris Duane Colucci**, by and through its Special Administrator, Andrew W. Chandler, Esquire (“Estate”); **Ivo Francesco Colucci**, an Incapacitated Adult, by and through his Conservator, Christa M. Yantis, CPA; John Martin Antonio; Michael Frederick Antonio Colucci; and the **Colucci Living Trust**, dated February 24, 2005, and any amendments thereto, by and through its Trustee, Michael C. Fox (“Trust”) (collectively, the “Parties”).

Recitations

A. The Decedent, Doris Duane Colucci, died on April 14, 2017, after being shot in the head by her husband, Ivo Francesco Colucci. The Decedent’s Last Will, dated June 18, 2013 (“Will”), was admitted to probate by order of the Dorchester County Circuit Court, filed August 27, 2018. The sole devisee of the Will is the Trust.

B. Andrew W. Chandler, Esquire, is the Special Administrator of the Estate, having been duly appointed by the Dorchester County Probate Court on July 10, 2017. His appointment, powers, and duties were confirmed following the admission of the Will to probate by the entry of a Modified Order for the Appointment of a Special Administrator, filed August 27, 2018. The afore-mentioned orders confer upon Mr. Chandler “all the powers of a general Personal Representative.”

C. Christa M. Yantis, CPA, is the Conservator for Ivo Francesco Colucci, an incapacitated adult, having been duly appointed on the October 27, 2017, by the Probate Court of Dorchester County, South Carolina.



D. Michael C. Fox is the Trustee of the Trust, having accepted the trusteeship pursuant to S.C. Code Ann. § 62-7-701 on October 27, 2017.

E. Mr. Chandler initiated an action in the Dorchester County Probate Court by filing a “Petition to Determine Heirs” on October 4, 2017, and titled Andrew W. Chandler, Esquire, as Special Administrator v. Ivo Francesco Colucci, AKA Ivo Colucci, AKA Ivo F. Colucci, Christa M. Yantis, as Conservator for Ivo Francesco Colucci, Alice M. Norton, as Guardian for Ivo Francesco Colucci, John Martin Antonio, and Michael Frederick Antonio Colucci; Case No: 2017-ES-18-00294 (the “Lawsuit”). John Martin Antonio, and Michael Frederick Antonio Colucci are the statutory beneficiaries of the Estate and all also both beneficiaries of the Trust. The Lawsuit, which was subsequently removed to the Dorchester County Court of Common Pleas on October 5, 2017, and assigned Case No: 2017-CP-18-1816, was filed pursuant to S.C. Code Ann. § 62-2-803 (the “Slayer Act”) and seeks a determination that the Decedent’s husband, Ivo Francesco Colucci, is not entitled to benefit from the Estate, or from any assets that would otherwise pass to Mr. Colucci outside the Estate upon Decedent’s death, because he “feloniously and intentionally” killed the Decedent. The Lawsuit has since been remanded to the Dorchester County Probate Court.

F. Mrs. Yantis, on behalf of Ivo Francesco Colucci as his Conservator, has denied that Mr. Colucci “feloniously and intentionally” killed the Decedent and contends that, at the time of the shooting, Mr. Colucci was unable to form the requisite intent as a result of his progressively debilitating dementia.

G. The parties to the Lawsuit have conducted extensive discovery, however, the parties anticipate that additional discovery, including depositions of witnesses and experts, will be necessary and that such discovery will be expensive.

H. The Parties to this Agreement now seek to mutually and voluntarily end the pending Lawsuit upon the terms set forth below.

I. The Parties are informed and believe that the remaining assets and interests which are at issue in, and whose ownership would be determined by, the Lawsuit are as follows:

a. Ivo Francesco Colucci's Interest in the Trust:

Mr. Colucci is a beneficiary of the Trust. For example, during his lifetime, the Trust provides that Mr. Colucci is to receive the "entire net income" of the Trust as well as the ability to withdraw from the principal "an amount that shall not exceed the greater of five thousand dollars (\$5,000) or five percent (5%)" of the principal.

Mr. Colucci also has the right to receive payments, in the Trustee's discretion, from the principal for his "health, education, maintenance, or support." Additionally, the Trust provides Mr. Colucci with a Limited Power of Appointment, giving him the ability to appoint "some or all of the principal" of the Trust to the Decedent's descendants upon Mr. Colucci's death.

To date, no funds from the Trust have been distributed to Mr. Colucci or any other beneficiary and the parties are not aware of any prior exercise of the Limited Power of Appointment by Mr. Colucci.

John Martin Antonio and Michael Frederick Antonio Colucci are among the remainder beneficiaries of the Trust.

b. Ownership of 50% of the Proceeds of the Sale of the "Edisto House":

The "Edisto House" is a residential dwelling located at 7674 Legare Road, Edisto Island, SC, 29438, and was titled in the Decedent's name and Ivo Francesco Colucci's name as joint tenants with right of survivorship. It was sold in an arms' length transaction to a third-party on May 24, 2019, for a sales price of \$470,050.00, and net sales proceeds to the Estate of \$211,018.92 are currently held in a separate account pending resolution of the Slayer's Act claim.

At issue in the Lawsuit is whether, by operation of the Slayer Act, the joint tenancy was severed, entitling the Estate of Doris Duane Colucci to retain 50% of the proceeds of the sale of the Edisto House.

c. Ownership of the Decedent's IRA:

Following the Decedent's death, a Genworth Financial Individual Retirement Annuity Contract (Acct. # 424767476) was located that was titled in the name of

“Doris Colucci” and which named Ivo Francesco Colucci as the beneficiary. It was valued at approx. \$ 54,950.43 as of 4/2/19. At issue in the Lawsuit is whether, by operation of the Slayer Act, the Estate of Doris Duane Colucci is entitled to retain ownership of the IRA.

d. Ownership of 25% of the “NY Property”:

The “NY Property” is real property located at 3590 SR 145, Rensselaerville, NY. The Decedent and Mr. Colucci owned a 50% interest in that property. Under New York law, title to that 50% interest in the NY Property passed to Mr. Colucci upon the Decedent’s death. At issue in the Lawsuit is whether, by operation of the Slayer Act, the Estate of Doris Duane Colucci is entitled to retain ownership of a 25% interest in the NY Property. The appraised value of the entire parcel, obtained from two independent appraisers, as of March 2018 and June 2018, respectively, is \$ 50,000.00, making the appraised value of the 25% interest at issue approximately \$ 12,500.00.

e. Ownership of the “Slayer Bank Account”:

At the time of Decedent’s death, there was a small amount of cash in a joint bank account and there were a number of vehicles, which were titled “or” (joint tenants with right of survivorship) and one titled “and” (tenants in common). Upon the sale of these items, 50% of the sales proceeds of the “or” vehicles and 50% of the cash from the joint bank account were placed into a bank account at South State Bank (Acct. # 8010000301072) pending resolution of the Lawsuit. The balance of this account, as of 5/20/19, was \$ 14,310.64. The current balance, including proceeds of the sale of the Edisto House, is \$225,314.56 (as of May 29, 2019).

J. If the Lawsuit were to result in a determination that Mr. Colucci “feloniously and intentionally” killed the Decedent, he would be treated as if he had predeceased the Decedent (S.C. Code Ann. § 62-2-803(a)), thereby losing all interest in the Trust, and the assets described in ¶ I(b)-(e) and any other real or personal property that may be subject to the Slayer’s Act would be deemed to be assets of the Estate of Doris Duane Colucci (to be distributed to the Trust, the Estate of Doris Duane Colucci’s sole devisee). Conversely, if the Lawsuit resulted in a determination that Mr. Colucci did not “feloniously and intentionally” kill the Decedent, he would be entitled to the assets and interests described in ¶ I(a)-(e) and any other real or personal property that may be subject to the Slayer’s Act.

K. The Parties have agreed to resolve the Lawsuit upon terms appearing fair and reasonable in light of all attending circumstances.

NOW THEREFORE, in consideration of the mutual agreements and undertakings set forth herein, the sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

1. In exchange for receiving/retaining ownership of the assets listed in ¶ I(b)-(e) and any other real or personal property that may be subject to the Slayer's Act claim except the Trust, and for Mr. Chandler's agreement to take those actions necessary to effectuate the intent of the settlement, Ivo Francesco Colucci, by and through his Conservator, Mrs. Yantis, agrees to disclaim any interest or right Ivo Francesco Colucci has to the Trust, including any limited power of appointment. Upon the execution of this Agreement, Mr. Colucci shall be treated in all respects as if he predeceased the Decedent for purposes of the Trust and its administration, thereby allowing the remainder Trust beneficiaries, including John Martin Antonio and Michael Frederick Antonio Colucci, to receive the benefits of the Trust according to its terms.

2. As a material term of this Agreement, Mrs. Yantis warrants that she has made a reasonable inquiry and is not aware of any prior exercise of the limited power of appointment by Ivo Francesco Colucci and agrees that, should such an exercise be discovered at a later date, it shall be deemed void.

3. In exchange for Ivo Francesco Colucci's disclaimer of any interest in the Trust, and the agreement by Mrs. Yantis, his Conservator, to take those actions necessary to effectuate the intent of this Agreement, including the execution of a Disclaimer of Trust Interest, the Estate of Doris Duane Colucci, by its Special Administrator, Andrew W. Chandler, Esquire, agrees to disclaim any interest or right the Estate may have to the assets listed in ¶ I(b)-(e) and any other

real or personal property that may be subject to the Slayer's Act claim except the Trust. Mr. Chandler agrees to promptly transfer all such assets to Ms. Yantis for Mr. Colucci's benefit.

4. Michael C. Fox, as Trustee of the Colucci Living Trust, agrees that, upon the full execution of this Agreement, he will administer the Trust as if Ivo Francesco Colucci predeceased the Decedent and will accept and honor any Disclaimer of Trust Interest executed by Christa M. Yantis, CPA, as Conservator for Ivo Francesco Colucci.

5. Except for the express obligations created by this Agreement, the Estate of Doris Duane Colucci by its duly-appointed Special Administrator, Andrew W. Chandler, Esquire, its heirs, statutory beneficiaries, and devisees, and specifically Michael Antonio Colucci and John Antonio, for and in consideration of the terms set forth herein, the receipt and sufficiency of which is hereby acknowledged, does for itself, its employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, hereby remise, release, acquit, and forever discharge Ivo Francesco Colucci, and all of his employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, whether herein named or referred to or not, and who together with Ivo Francesco Colucci may be liable to the Estate of Doris Duane Colucci, from any and all debts, claims, demands, liabilities, obligations, causes of actions and rights, whether known or unknown, which the Estate of Doris Duane Colucci asserted in the Lawsuit or which could have been asserted pursuant to, or arising out of the Slayer Act, S.C. Code Ann. § 62-2-803. This Agreement does not contemplate or include the settlement of any other matter between the Parties.

6. Except for the express obligations created by this Agreement, Ivo Francesco Colucci, by his duly-appointed Conservator, Christa M. Yantis, CPA, for and in consideration of the terms set forth herein, the receipt and sufficiency of which is hereby acknowledged, does for

himself, his employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, hereby remise, release, acquit, and forever discharge the Estate of Doris Duane Colucci, and all of its employees, agents, representatives, fiduciaries, attorneys, successors, purchasers, and assigns, whether herein named or referred to or not, and who together with the Estate of Doris Duane Colucci may be liable to Ivo Francesco Colucci, from any and all debts, claims, demands, liabilities, obligations, causes of actions and rights, whether known or unknown, which Ivo Francesco Colucci asserted in the Lawsuit or which could have been asserted pursuant to, or arising out of, the Slayer Act, S.C. Code Ann. § 62-2-803. This Agreement does not contemplate or include the settlement of any other matter between the Parties.

7. The Parties are unaware of any effect the compromise would have on any minors, on unknown parties, or on unlocated parties.

8. The Parties hereby acknowledge that this settlement is the compromise of a doubtful and disputed claim and is not to be construed as an admission of liability on the part of any party but is entered into to avoid further litigation.

9. For the consideration set forth above, the Estate of Doris Duane Colucci, by its Special Administrator, Andrew W. Chandler, Esquire, has also agreed to execute, or cause its counsel to execute, a stipulation, order, or other documents required to dismiss the Lawsuit with prejudice.

10. The Parties declare and represent that they have read this Agreement and acknowledge that they have had the opportunity to be represented by legal counsel of their choice concerning the rights with respect to the form and content of this Agreement and the advisability of executing this Agreement. The Parties further understand and acknowledge that they may discover facts different from, or in addition to, those facts that they now know or believe to be

true and agree that this Agreement shall be and remain effective in all respects notwithstanding any such subsequent discovery of different and/or additional facts. Each party acknowledges that it has undertaken its own independent investigation of all the facts relating to the matter set forth herein and in entering into this Agreement, the Parties are not relying on any representation, warranty or statement of the other party except as expressly set forth herein.

11. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no warranties, representations, or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Parties to the Agreement. No waiver of any of the provisions of this Agreement shall be deemed nor shall constitute a waiver of any of the other provisions of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver. The Parties to this Agreement may amend or modify this Agreement in any such manner that may be agreed upon by written instrument executed by the Parties to this Agreement. All Parties are executing this Agreement in reliance upon and based on the promises of the other party. Each party hereto is an express beneficiary of the performance and promises of the other party.

12. This Agreement shall be governed and interpreted pursuant to the laws of the State of South Carolina. If any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall not be affected.

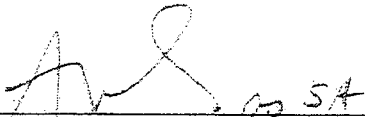
13. The Parties stipulate and agree that this Agreement satisfies all requirements of the South Carolina Rules of Civil Procedure and the laws of the State of South Carolina

necessary to constitute an enforceable settlement agreement. The Parties agree that if there is a breach of this Agreement the aggrieved party may file a motion with the Dorchester County Court of Common Pleas, State of South Carolina, and may immediately obtain an order of specific performance and/or injunction upon the court's determination that a prima facie showing of breach has been made, without the necessity of posting a bond. Such remedies shall be in addition to any other legal or equitable remedies that may apply. The prevailing party in any such proceeding shall be entitled to recover from the other party his attorneys' fees and costs.

14. The Parties believe that the effect of this compromise is just and reasonable and in the best interests each of them and those interested in each of them.

IN WITNESS WHEREOF, the undersigned have executed this document, agree to be bound by the same, and agree to take all actions necessary to effectuate the terms hereof, on the respective dates noted.

ESTATE OF DORIS DUANE COLUCCI



Andrew W. Chandler, Esquire, as
Special Administrator of
the Estate of Doris Duane Colucci

6/20/19
Date

IVO FRANCESCO COLUCCI

Christa M. Yantis, as Conservator for
Ivo Francesco Colucci

Date

IN WITNESS WHEREOF, the undersigned have executed this document, agree to be bound by the same, and agree to take all actions necessary to effectuate the terms hereof, on the respective dates noted.

ESTATE OF DORIS DUANE COLUCCI

Andrew W. Chandler, Esquire, as
Special Administrator of the
Estate of Doris Duane Colucci

Date

IVO FRANCESCO COLUCCI

*Christa M. Yantis as Conservator
for Ivo Francesco Colucci*

Christa M. Yantis, as Conservator for
Ivo Francesco Colucci

6/21/19

Date

COLUCCI LIVING TRUST

Michael C. Fox, as Trustee of the
Colucci Living Trust, dated
February 24, 2005, and any
Amendments thereto

Date

JOHN MARTIN ANTONIO

John Martin Antonio

Date

COLUCCI LIVING TRUST

Michael C. Fox, as Trustee of the
Colucci Living Trust, dated
February 24, 2005, and any
Amendments thereto

Date

JOHN MARTIN ANTONIO

John Antonio
John Martin Antonio

7/11/19
Date

MICHAEL FREDERICK ANTONIO COLUCCI

Michael F. Antonio Colucci
Michael Frederick Antonio Colucci

7-15-19
Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-18-1816

IN RE: THE ESTATE OF DORIS DUANE COLUCCI

Michael C. Fox, Named Personal Representative)
 in the Last Will of Doris Duane Colucci,)

Petitioner,)

Versus)

Andrew Chandler, in his capacity as Special)
 Administrator of the Estate of Doris Duane Colucci,)
 Michael C. Fox, Successor Trustee of the Colucci)
 Living Trust, dated February 24, 2005, Ivo)
 Francesco Colucci, Michael Frederick Antonio)
 Colucci, John Martin Antonio, Henry Burkes, and)
 Richard M. Hyman, Jr.,)

Respondents.)

**RESPONDENT IVO FRANCESCO
 COLUCCI'S MEMORANDUM
 IN SUPPORT MOTION FOR
 RECONSIDERATION**

TO: THE PARTIES HERETO AND THEIR COUNSEL

Respondent Ivo Francesco Colucci, by Christa M. Yantis, his Conservator, submits this memorandum in support of Respondent Andrew Chandler's motion to reconsider and respectfully requests that the Court find a genuine issue of material fact exists as to whether Petitioner Fox is suitable to serve as personal representative.

A year ago, Ms. Yantis, filed on behalf of Ivo Colucci, the surviving spouse of Doris Colucci, a motion for summary judgment seeking probate of Mrs. Colucci's Last Will and Testament and appointment of the named personal representative under the same, Petitioner Michael C. Fox. Ms. Yantis continues to believe that, had appointment been made at an earlier date, Mr. Fox very likely would have served honorably and completed the duties as personal representative in accord with the law. Furthermore, this respondent well-understands that few people have the level of respect that

“Mr. Mike” has with the members of the Colucci Family. He is, by many accounts, a person both Ivo and Doris Colucci were close to and trusted.

In May of 2017, Ms. Yantis was appointed conservator for Mr. Colucci, an 85 year old man with severe and debilitating dementia who requires 24 hour care and supervision. Soon into her work, it was clear that, because Mr. and Mrs. Colucci owned so many properties together, someone was needed to stand in for Mrs. Colucci. Because Mrs. Colucci’s Last Will and Testament had not been located, the Dorchester County Probate Court appointed Andrew Chandler as Special Administrator. The directions from the probate court to both fiduciaries included liquidating the Coluccis’ assets so that there would be cash available to provide for Mr. Colucci’s care and to fund the trust that is the major beneficiary of Mrs. Colucci’s Will. Mr. Chandler was, after much negotiating and discussion between the probate court and the parties, also empowered to bring wrongful death and Slayer’s Act claims against Mr. Colucci.

Mrs. Colucci’s Will was located in August of 2017 and filed by the undersigned with the Dorchester County Probate Court. It named Mr. Fox as personal representative in Mr. Colucci’s stead. However, Mr. Fox did not seek appointment until the end of October of 2017. On May 21, 2018, Ms. Yantis (not Mr. Fox) filed the motion for summary judgment currently before the Court because she believed the situation at the time compelled her to do so.

However, much has occurred in the last year and Conservator Yantis now believes that a genuine issue of material fact exists as to whether appointment of Mr. Fox is suitable. Under S.C. Code Ann. §62-3-203(e)(2), the Court is empowered to reject the named personal representative if that person is, “unsuitable.” S.C. Code Ann. §62-3-203(e)(2), (“No person is qualified to serve as a personal representative who is: (2) a person whom the court finds unsuitable in formal proceedings;”). The Court’s discretion in this regard, after a formal hearing with testimony and evidence, was made clear early on:

[T]he Judge of Probate may deny administration to the person first entitled under the statute if upon the showing made before him he is satisfied that such person is not properly qualified for the position, and among other things the court calls attention to the fact that the granting of letters of administration is not automatic, because the law requires the issuance of a citation, to the end that the kindred or creditors of the intestate may show cause why the administration should not be granted to the person applying for it, notwithstanding such person may have the statutory priority...

In re McClam's Estate, 245 S.C. 315, 319, 140 S.E.2d 478, 479 (1965)(citing the identical language in the former citation of the statute).

In the current case, the Court may find that Mr. Fox is unsuitable to serve at this time because, among other reasons, the work has primarily been done and replacement of the existing fiduciary would serve as a waste of estate assets. As noted above, the charge of Ms. Yantis and Mr. Chandler handed down by the Dorchester County Probate Court was to liquidate the properties and bring legal actions to determine the rights of the beneficiaries to the estate and in tort claims. As of this week, almost all of the property will be liquidated or transferred to the estate's beneficiary (the Trust of which Mr. Fox is trustee) and the lawsuits have been settled.¹ Whether inserting a new fiduciary at this point, at excessive extra cost, might constitute the type of unsuitability that offends "the kindred or creditors" of the estate is an open question. These are the types of questions that can be answered with a full evidentiary hearing.

Mr. Fox's primary argument for appointment is that an accounting must be made of Mr. Chandler's acts. Mr. Fox currently serves without dispute as Trustee of the Colucci Living Trust, which is the primary beneficiary of the estate. As Trustee, Mr. Fox retains the right to demand in a separate proceeding a full accounting of Mr. Chandler's acts. It is important to note that Mr. Chalder has served under the watchful eye of the Dorchester County Probate Court and that most of the remaining acts are all subject to court approval.

¹ The cases were resolved in mediation and post-mediation settlement discussions pending approvals by the applicable courts. Those approvals have been stymied by Mr. Fox's current attempts to unseat Mr. Chandler.

While there may be other reasons to find Mr. Fox unsuitable, for purposes of the summary judgment motion as before the Court, the question of whether replacing fiduciaries will lay waste to the estate raises a genuine issue of material fact. Further, that the Court has requested of Mr. Chandler and Mr. Fox statements of qualification are matters to which the remaining respondents are entitled to inquiry and presentation of evidence, requiring reconsideration of the current order and denial of the motion.

For the reasons, and to the extent allowed, Ms. Yantis withdraws her motion for the appointment of Mr. Fox and requests the Court find a genuine issue of material fact exists as to Mr. Fox's suitability to serve at this time.

WHEREFORE the movants prays for the relief requested herein and such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.

s/ David K. Haller

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ATTORNEYS FOR RESPONDENT IVO COLUCCI

22nd day of May, 2019

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
In Re:	)	No 2017-CP-18-1816
	)	
The Estate of Doris Duane Colucci,	)	
	)	
Michael C. Fox Personal Representative	)	Rule to Show Cause
the Estate of Doris Duane Colucci,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Andrew Chandler, in his capacity as	)	
Special Administrator of the Estate of	)	
Doris Duane Colucci, Michael C. Fox,	)	
Successor Trustee of the Colucci Living	)	
Trust, dated February 24, 2005, Ivo	)	
Francesco Colucci, Michael Frederick	)	
Antonio Colucci, John Martin Antonio,	)	
Henry Burkes, and Richard M. Hyman,	)	
Jr,	)	
	)	
Defendants.	)	
	)	
	)	

Plaintiff Michael C. Fox would respectfully show unto this Court:

1. On February 13, 2019, this Court issued its Order appointing Michael C. Fox as Personal Representative of the Estate. The Order also required Andrew Chandler to "forward Mr. Fox all records of the Estate forthwith for Mr. Fox's review to ensure that there has been no waste, abuse, or fraud within the Estate and to fulfill the duties bestowed upon him by the Decedent." This Court further ordered Mr. Fox and Mr. Chandler to "work together for the benefit of the Estate." This Order is attached as Exhibit A.
2. On February 13, 2019, counsel for Andrew Chandler, the former special administrator of the Estate, filed a claim on behalf of her firm for \$6,301.72 against the Estate. This claim is attached as Exhibit 3 of Exhibit B and Exhibit 3 of Exhibit C. Mr. Fox had not yet even received

the records or funds of the Estate before the claim was filed. Further, this claim was filed within hours of this Court issuing its Order.

3. Mr. Chandler subsequently used this claim as a pretext to file an Emergency Application to Restrain the Personal Representative and Appointment of Temporary Special Administrator through his attorney in an attempt to circumvent the clear language of this Court's February 13, 2019 Order. In this "emergency" application, Chandler, through his attorney, sought the restraint of Michael C. Fox and his re-appointment as Temporary Special Administrator. These Applications are attached as Exhibit B and Exhibit C. These Applications frustrate the clear and unambiguous order of this Court.

4. With standing allowed on the basis of this dubious creditor's claim, the Probate Court granted the application and re-appointed Mr. Chandler as the Temporary Special Administrator and restrained Mr. Fox from carrying out the terms of this Court's Order. The Probate Court's orders are attached as Exhibits D and E.

5. The arguments of the February 13, 2019 Applications were presented to this Court in Andrew Chandler's February 8, 2019, Motion to Dismiss, which was ruled upon by this Court in its February 13, 2019 Order. Accordingly, Mr. Chandler, either individually or through his attorney, is precluded from re-asserting them. See Carman v. South Carolina Alcoholic Beverage Control Com'n, 317 S.C. 1, 451 S.E.2d 383 (S.C. 1994); Laughon v. O'Braitis, 360 S.C. 520, 602 S.E.2d 108 (Ct. App. 2004).

6. The acts of Andrew Chandler, taken through his attorney, constitute a willful violation of this Court's Order.

WHEREFORE, Petitioner prays for an Order of this Court:

- a) Adjudging Andrew Chandler, or any other persons or entities it deems culpable, in willful contempt of this Court's February 13, 2019 Order;
- b) Requiring Respondent to pay Petitioner's attorney's fees and costs associated with this action;
- c) For such other and further relief as this Court deems just and proper.

s/ Ryan A. Love
Ryan A. Love
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Attorneys for the Plaintiff

North Charleston, South Carolina
Dated: February 14, 2019

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

**Michael C. Fox, as Personal
Representative of the Estate of Doris
Duane Colucci,**

Appellant,

vs.

**Andrew Chandler, in his capacity as
Special Administrator of the Estate of
Doris Duane Colucci, Michael C. Fox,
Successor Trustee of the Colucci Living
Trust, dated February 24, 2005, Ivo
Francesco Colucci, Michael Frederick
Antonio Colucci, John Martin Antonio,
Henry Burkes, and Richard M. Hyman,
Jr,**

Respondents.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Circuit Court No.: 2019-CP-18-0677
Probate Court No.: 2017-ES-18-00294

**Order Denying Appellant's
Emergency Petition for
Writ of Supersedeas**

THIS MATTER comes before this Court on an Emergency Petition for Writ of Supersedeas submitted by the Appellant Michael C. Fox pursuant to Rule 241, SCACR. The Appellant filed this writ requesting the Circuit Court to suspend proceedings in the lower court.

On February 13, 2019, the Dorchester County Court of Common Pleas initially found the Appellant qualified on the sole basis of being one of the individuals the Decedent nominated in her Last Will and Testament to be the Personal Representative of her estate. Following the issuance of this order, also on February 13, 2019, the Dorchester County Probate Court issued two *ex parte* orders: one that re-appointed the Respondent on an emergency basis as Special Administrator; and a second that totally restrained the Appellant in all capacities for ten (10) days pending an evidentiary hearing.

On April 17, 2019, the Dorchester County Probate Court issued a third order reincorporating the terms of the two February 13, 2019 orders. This order would last for at least

six (6) months and included language that completely barred Appellant from prosecuting all claims on behalf of the Estate of Doris Duane Colucci, and empowering the Respondent with authority to settle the same, and to execute releases on behalf of the Estate, its devisees, and its statutory beneficiaries, pursuant to orders approving any settlement of those claims.

On April 18, 2019, the Appellant filed his Notice of Appeal from Dorchester County Probate Court, staying the proceedings in Probate Court. Following the service of the Notice of Appeal, on May 1, 2019, Respondent moved the Probate Court to lift the automatic stay. On May 10, 2019, the Dorchester County Probate Court granted the Respondent's Motion to Lift Stay. On May 15, 2019, the Appellant filed the writ of supersedeas which this order addresses.

The Appellant contends that the following issues exist:

- 1.) The wrongful death and "slayer action" will be settled without knowledge or approval by the Personal Representative of [sic]¹ the Trustee of the Colucci Living Trust.
- 2.) The "Edisto House" is a unique piece of real property that cannot be replaced if the stay is reinstituted and the home is sold.
- 3.) The Respondent's Motion to Lift Stay was fatally deficient.
- 4.) The Probate Court improperly granted Respondent's Motion to Lift Stay
- 5.) It is necessary to file this petition in the Circuit Court

This Court will only address the Appellant's fifth point, in detail.²

As to the Appellant's fifth point, that it was necessary to file this petition in the Circuit Court. The Appellant contends that, "except where extraordinary circumstances make it

¹ The use of "Personal Representative of the Trustee of the Colucci Living Trust" is an incorrect term of art. The Court surmises that this is a scrivener's error on the part of Appellant and should have read as "Personal Representative or the Trustee of the Colucci Living Trust"

² The appellant's first, second, third, and fourth points are not ripe for review due to the appellant not giving the Probate Court an opportunity for corrective action as the rule, which they used as a basis for the writ, requires.

impracticable, application for an order....for supersedeas must first be made to the lower court” Rule 241(d)(1), SCACR. Appellant argues that, due to the time sensitive nature of property contained within the estate, it would be impracticable to move the probate court that ordered the lift of the automatic stay for a writ of supersedeas.

This Court disagrees. This Court’s opinion is that there are no extraordinary circumstance that exist. Issues are being brought to the Circuit Court that have not been fully addressed or brought before the Probate Court. Should there be any part of this estate that is under a true time constraint, then this Court would not continually be put in a position of seemingly being used against the Probate Court and that the Probate Court is in turn being used against the Circuit Court. The very fact that this Court is forced to address the issue of the apparent utilization of one court against the other illustrates that, had there been actual concern with time constraints or had there been an actual issue of whether extraordinary circumstances exist, there would not be a continuous barrage of issues being filed when one party presumably is not happy with either the Probate Court’s decision or the Circuit Court’s decision. Especially when both parties agreed that the Circuit Court has limited jurisdiction to overturn the actions of the Probate Court except on appeal. “A Circuit Court’s jurisdiction over matters related to the estates of decedents is limited to those distinct issues removed to it from the Probate Court and most appeals from decisions of the Probate Court”. S.C. Code Ann. § 62-1-302(d), (f); S.C. Code Ann. § 62-1-308 (appeals from probate court).

Further, the Appellant partially quoted Rule 241(d)(1) SCACR. The complete rule states, “Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay *or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision* on appeal. Here, the lower court that instituted the

order which the Appellant is attempting to appeal is the Probate Court. While the Appellant labeled their emergency petition as an appeal from the Probate Court's decision, the Appellant made it abundantly clear in their emergency petition that they did not give the Probate Court a chance for corrective action prior to filing the appeal. Since, this Court is of the opinion that there are no extraordinary circumstances that made it impracticable for supersedeas to be requested from the Probate Court, a required part of the writ of supersedeas step was bypassed unnecessarily. As a result, the writ of supersedeas to Circuit Court fails on procedural grounds. Accordingly,

IT IS THEREFORE ORDERED that, the Appellant's Emergency Petition for Writ of Supersedeas be and is DENIED.

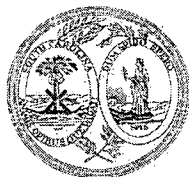
IT IS FURTHER ORDERED that the issue be remanded back to Probate Court to allow the Probate Court the opportunity for corrective action should it be inclined to do so.

IT IS FURTHER ORDERED that this estate is to remain in the complete jurisdiction of the Probate Court until a final order is issued by the Probate Court disposing of all matters before it. At that point, should any appeals be necessary, only then can parties petition the Circuit Court in an appellate fashion. No appeals to the Circuit Court may be had or filed until this case is completed in Probate Court.

IT IS SO ORDERED.

St. George, South Carolina

Edgar Dickson
Circuit Court Judge



Dorchester Common Pleas

Case Caption: Michael C. Fox , plaintiff, et al VS Andrew W. Chandler , defendant,
et al
Case Number: 2019CP1800677
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

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