

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

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

**Edgar W. Dickson, Circuit Court Judge**

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

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**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.**

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**SUPPLEMENT TO RECORD ON APPEAL  
(955-959)**

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(Dated 1/4/2019)..... Removed (Find at p. 279)

Exhibit 1-B: Motion to Restrain Special Administrator  
(Dated 11/26/2018)..... Removed (Find at p. 250)

Exhibit 2: Order (Dated 2/7/2019)..... Removed (Find at p. 42)

Exhibit 3: Order Denying Removal (Dated 1/8/2019)..... Removed (Find at p. 38)

**Other Materials**

Email from the Dorchester County Court of Common Pleas to all Parties  
(Dated 5/21/2019).....959

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,	)	
	)	
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.	)	
	)	

**SUPPLEMENT TO MOTION TO DISMISS**  
**PETITIONER FOX'S "MOTION TO RESTRAIN SPECIAL ADMINISTRATOR"**

TO: PETITIONER ABOVE-NAMED AND HIS LEGAL COUNSEL:

PLEASE TAKE NOTICE that the undersigned attorneys for Respondent Andrew W. Chandler, Esquire, Special Administrator of the Estate of Doris D. Colucci, hereby supplement their Motion to Dismiss Petitioner Fox's Motion to Restrain Special Administrator and submit that, in addition to the bases set forth in the Motion to Dismiss, denial and dismissal is

appropriate pursuant to South Carolina Rule of Civil Procedure 12(b)(8) and because the Motion to Restrain constitutes an impermissible collateral attack on the judgment of the Probate Court.

1. Petitioner Fox filed a "Petition for Removal of Special Administrator" in the Dorchester County Probate Court on January 4, 2019. That Petition, although styled a "Petition for Removal" was made on the same grounds and requested the same relief as the "Motion to Restrain Special Administrator" that was filed in this Court and that has been set for a hearing on February 11, 2019. In fact, the Petition filed in the Probate Court attached and incorporated by reference the Motion filed in this Court, and the Petition further asked that the Probate Court grant the relief requested in the Motion to Restrain pending before this Court, which includes a request that Respondent Chandler be removed and replaced.<sup>1</sup> A copy of the Petition for Removal of Special Administrator is attached as Exhibit 1.

2. The Probate Court heard the "Petition for Removal of Special Administrator" on January 9, 2019, and, by Order filed February 7, 2019, denied the Petition and all relief requested therein (including the relief requested in the Motion to Restrain pending before this Court). Additionally, pursuant to S.C. Code Ann. § 62-1-111, the Probate Court assessed the fees and costs incurred by the Estate in defending the Petition against Petitioner Fox, finding that such assessment was just and equitable as a result of Petitioner Fox's failure to "present to [the Probate Court] any evidence or law in support of his arguments that cause exists to remove Respondent Chandler as Special Administrator." The Probate Court further found that the

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<sup>1</sup> In its Order denying Fox's Petition for Removal of Special Administrator, discussed infra and attached as Exhibit 2, the Probate Court notes the following:

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.

Petition for Removal of Special Administrator was filed without good grounds and with the intent “to interpose delay in administering the Decedent’s Estate.” A copy of the Order, which makes detailed findings of fact and conclusions of law in addressing the very arguments Petitioner Fox seeks to make before this Court, is attached as Exhibit 2.

3. Dismissal under Rule 12(b)(8), SCRCF, is proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009). Because the action in the Probate Court involves the same claims and the same parties, Rule 12(b)(8) requires that this matter be denied and/or dismissed.

4. Likewise, because the Motion to Restrain Special Administrator is an impermissible attempt to collaterally attack the judgment of the Probate Court, it must be denied and dismissed. Dillon Tire Serv., Inc. v. Pope, 243 S.C. 293, 297–98, 133 S.E.2d 813, 815 (1963) (a “judgment regular upon its face is immune from attack in any action other than that in which it was rendered except upon proof of fraud or want of jurisdiction”); Wold v. Funderburg, 250 S.C. 205, 210–11, 157 S.E.2d 180, 183 (1967).

5. Additionally, that this Court lacks subject matter jurisdiction over Petitioner Fox’s Motion to Restrain Special Administrator, as argued in Respondent Chandler’s Motion to Dismiss, is evidenced by the fact that Petitioner Fox attempted to remove his Petition for Removal of Special Administrator to this Court and the Probate Court denied the motion for removal, holding:

In review of the Petition, the primary issue that the Petitioner is seeking to be resolved is the removal of the Special Administrator. The removal of a Special Administrator would not be considered a matter involving “Probate of Will” or “Appointment of a Personal Representative.” Further, the Court finds that only subject matters concerning representatives of estates that are removable to circuit court as a matter of right are formal proceedings for the “appointment of general

personal representatives.” S.C. Code Ann. § 62-1-302(d)(1). The term “general personal representative” is defined to specifically exclude special administrators. S.C. Code Ann. § 62-1-201(33) (“General personal representative’ excludes special administrators.”).

Given that the Probate Court, pursuant to S.C. Code Ann. § 62-1-302(a)(1), has “exclusive original jurisdiction over all subject matter related to... the estates of decedents,” and further that Petitioner Fox’s Motion seeking to restrain and remove Respondent Chandler as special administrator falls within the Probate Court’s exclusive jurisdiction and is not removable to this Court as a matter of right, it follows that this Court lacks subject matter jurisdiction. A copy of the Probate Court’s Order Denying Removal is attached as Exhibit 3.

WHEREFORE, for the reasons set forth above and in Respondent Chandler’s Motion to Dismiss Petitioner Fox’s Motion to Restrain Special Administrator, Respondent Chandler respectfully requests that the Court dismiss and deny Petitioner Fox’s Motion to Restrain Special Administrator.

ROSEN, ROSEN & HAGOOD, LLC

s/ Elizabeth J. Palmer  
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151 Meeting Street, Suite 400  
Charleston, South Carolina 29401  
(843) 577-6726  
epalmer@rrhlawfirm.com

ATTORNEYS FOR RESPONDENT ANDREW W.  
CHANDLER, ESQUIRE, SPECIAL ADMINISTRATOR  
OF THE ESTATE OF DORIS DUANE COLUCCI

Charleston, South Carolina

February 8, 2019

## Ryan Love

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**From:** Dickson, Edgar W. Law Clerk (Nicholas McKinney) <edicksonlc@sccourts.org>  
**Sent:** Tuesday, May 21, 2019 3:05 PM  
**To:** Ryan Love; Elizabeth Palmer  
**Cc:** David Haller; currylawfirm; Glenn Churchill; lester.schwartz@sctaxlawyer.com; Andrew W. Chandler; Brew Hagood; Andrew D. Gowdown; scarborough@eckb.com; jlee@eckb.com; angus@lawtonlawfirm.net; andrewtcashlaw@gmail.com; carlpierce@piercesloan.com; bensmoot@piercesloan.com; Shelbourne, Brandt; (general) Garrett Law Offices; Dickson, Edgar W. Secretary (Catherine C. Wilson); Becky Stevens; Melissa R. Bates  
**Subject:** RE: In re: Estate of Colucci, 2017-CP-18-1816  
**Importance:** High

Counsels,

Good afternoon. In order to assist Judge Dickson with the Motion to reconsider, he would like the following:

An outline of the qualifications of Mr. Fox (in an effort to help Judge Dickson decide why he should remain as the Personal Representative)

An outline of the qualifications of Mr. Chandler (in an effort to help Judge Dickson decide why he should be appointed as the Personal Representative)

When submitting their qualifications please provide the following information about both Mr. Fox and Mr. Chandler –

- 1.) Knowledge
- 2.) Skill
- 3.) Experience
- 4.) Training and/or
- 5.) Education

This is all as it relates to the handling of estate matters and the matters involved in this case specifically.

Please submit this by close of business Thursday, May 23, 2019. Thank you and have a wonderful week.

Sincerely,  
Nicholas McKinney  
Law Clerk to Judge Edgar W. Dickson  
P.O. Box 1949  
Orangeburg, SC 29116  
P: (803) 535-2187  
E: edicksonlc@sccourts.org

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**From:** Dickson, Edgar W. Law Clerk (Nicholas McKinney)  
**Sent:** Monday, May 20, 2019 3:37 PM  
**To:** 'Ryan Love' <rllove@garrettlawsc.com>; Elizabeth Palmer <epalmer@rrhlawfirm.com>  
**Cc:** David Haller <dhalter@hallerlawfirm.com>; currylawfirm <currylawfirm@bellsouth.net>; Glenn Churchill <gpclawfirm@gmail.com>; lester.schwartz@sctaxlawyer.com; Andrew W. Chandler <chandler@eckb.com>; Brew Hagood <bhagood@rrhlawfirm.com>; Andrew D. Gowdown <agowdown@rrhlawfirm.com>; scarborough@eckb.com; jlee@eckb.com; angus@lawtonlawfirm.net; andrewtcashlaw@gmail.com; carlpierce@piercesloan.com; bensmoot@piercesloan.com; Shelbourne, Brandt <brandt@shelbournelaw.com>; (general) Garrett Law Offices <office@garrettlawsc.com>; Dickson, Edgar W. Secretary (Catherine C. Wilson) <edicksonsc@sccourts.org>; Becky Stevens <BStevens@dorchestercountysc.gov>; 'Melissa R. Bates' <MBates@dorchestercountysc.gov>

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
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Edgar W. Dickson, Circuit Court Judge

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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.

Certificate of Service

The undersigned certifies that the persons set forth below were served with a copy of Appellants Motion to Supplement Record by placing it in the U.S. Mail, First Class, postage-prepaid on the date below to the following addresses:

Angus Lawton  
Lawton Law Firm, LLC  
496 Bramson Court, Suite 100  
Mt. Pleasant, SC 29464  
Attorney for Michael A. Colucci  
and John M. Antonio

Elizabeth J. Palmer  
Rosen, Rosen & Hagood, LLC  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
Attorney for Andrew Chandler

M. Richardson Hyman, Jr. Esquire  
Law Firm of M. Richardson Hyman, Jr.  
P.O. Box 127  
Charleston, SC 29402

Adam Mlynarczyk  
Koontz Mlynarczyk, LLC  
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North Charleston, SC 29405  
Attorney for Henry Burkes

Gordon H. Garrett, Esquire  
Garrett Law Offices, LLC  
1075-A E. Montague Ave.  
North Charleston, SC 29405  
Attorney for the Colucci Living Trust

Dated: March 6, 2020



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Ltd. Co.

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6 March 2020

Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**  
MAR 09 2020  
SC Court of Appeals

Re: Michael C. Fox v. Andrew Chandler et al.  
Appellate Case No. 2019-001065  
Dorchester County Case No. 2019-CP-18-0677 and 2017-CP-18-1816

Dear Ms. Kitchings:

Enclosed, please find one (1) original and six (6) copies of Appellant's Motion to Supplement Record, and the Certificate of Service for the same, in reference to the above case.

Also enclosed, please find check no. 1811 in the amount of \$50.00 for the motion fee.

Please do not hesitate to contact our office should you need any additional information.

With Highest Regards,



Marilyn Hunt

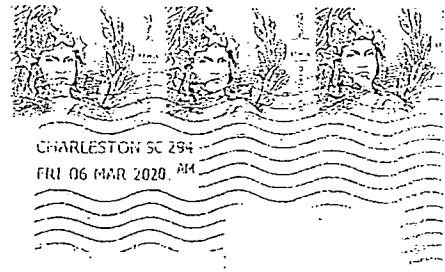
/meh

Enclosures

cc: Elizabeth J. Palmer, Esquire  
Angus Lawton, Esquire  
Adam Mlynarczyk, Esquire  
M. Richard M. Hyman, Esquire  
Gordon H. Garrett, Esquire



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CHARLESTON SC 294  
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