THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Circuit Court

Lawton McIntosh, Circuit Court Judge

Case No. 2019-000905

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

FINAL REPLY OF APPELLANT TO RESPONDENTS ELIZABETH KEARSE GOODING AND JULIA KEARSE SHARP

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ARGUMENT IN REPLY

Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse (respectively, "Appellant" and "Estate"), filed his Initial Brief in this appeal on October 7, 2019. Respondent Elizabeth Kearse Gooding ("Ms. Gooding") filed her Brief of Respondent on February 4, 2020,[1] and Respondent Julia Kearse Sharp ("Ms. Sharp") filed her Brief of Respondent on March 4, 2020.[2] Because the arguments of the Respondents are substantially similar, Appellant files this consolidated Reply as to both. Ms. Gooding categorized her arguments into six sections or categories, while Ms. Sharp adopted those same arguments in the same sequence and added six more sections, for a total of twelve. Appellant takes up each section in turn below.

I. Whether the Circuit Court correctly dismissed the appeal because Appellant is not the personal representative of the Estate and lacks standing to appeal as personal representative?

The crux of Respondents' argument that Appellant lacks standing as PR is well-framed, albeit with an incorrect conclusion, through Ms. Sharp's "Two Trains" analogy (Br. of Resp. Sharp pp. 34-36). That is, Respondents would have the Court believe that the Probate Court's removal of Appellant as PR and appointment is not based on the Final Term Sheet specifically providing for Appellant's resignation as PR, which the Probate Court adopted in full as a settlement and Appellant has validly appealed ever since. I.e., the first train. Rather, Respondents (for the first time on appeal) attempt to convince the Court that a second train (Appellant's filed Statement of Resignation) delivered Appellant to his termination as PR, and that Appellant should have appealed the same in order to preserve his right to challenge the approval of the Final Term Sheet.

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[1] The Court granted Appellant an extension to file his Reply to Ms. Gooding until after Ms. Sharp filed her Brief of Respondent.

[2] Appellant refers herein to Ms. Gooding and Ms. Sharp as "Respondents," the Kearse Family Education Trust U/A/D Nov. 05, 1992 as the "Trust," and personal representative as "PR."

However, just as one human (PR or otherwise) can physically be on just one train, so too can a court terminate a PR only once when the PR has not been reappointed. Thus, either the Probate Court terminated Appellant as PR under terms of the Final Term Sheet, or it did so through the Statement of Resignation, but termination by two distinct legal processes is not possible. Ultimately, the record shows the first train (the Final Term Sheet) removed Appellant as PR, and Appellant has remained on board ever since to dispute the same. Meanwhile, the second train (the Statement of Resignation) never left the station. The following indisputable facts make this evident, most of which Respondents do not even attempt to contradict:

- Every statement of resignation automatically becomes "ineffective" if "no one applies or petitions for appointment of a successor representative" within 20 days. S.C. Code Ann. § 62-3-610(b). In this case, Appellant submitted a Statement of Resignation on February 2, 2017 (R. p. 145), but it subsequently became automatically ineffective when no one applied or petitioned for a successor representative by February 22, 2017.

- Appellant's counsel noted this Code Section at the February 2, 2017 hearing: "Now, as the Code indicates and as Your Honor is aware, a Personal Representative cannot automatically resign ...." (R. p. 594, l. 12-14).

- The Probate Court acknowledged the same, stating "Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of [Appellant] to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons, and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary." (R. p. 609, l. 7-13).

- Even Respondents, in their joint brief to the Circuit Court, acknowledged "Fairness requires acknowledging a personal representative may not 'immediately' resign his position." (R. p. 230).

- Only after the Statement of Resignation automatically became ineffective, on February 22, 2017, did the Probate Court adopt the Final Term Sheet, in total, in its order dated February 27, 2017. (R. pp. 12).

- Both the Final Term Sheet and the February 22, 2017 Order refer to Appellant's resignation as PR and the appointment of a special administrator, including first

contacting Algernon Solomons, Jr., Esq. for such role, whereas the Statement of Resignation refers to a successor PR. (R. pp. 9 and 11-12).

- Respondents themselves advocate that the Final Term Sheet is a binding settlement, and Ms. Sharp's counsel drafted the February 27, 2017 Order approving the same in full. (R. pp. 596-97, 603-04, and 794-800).

- Respondents' premise for enforcing the Term Sheet is that the parties allegedly agreed to it on February 1, 2017, before the Statement of Resignation was ever signed or submitted. (R. pp. 226-28).

- When the Probate Court completed the Statement of Resignation on March 20, 2017, it provided a cover letter stating it was appointing a special administrator, which matched the Final Term Sheet and its recent February 27, 2017 Order, but contradicted the Statement of Resignation itself. (R. pp. 11-12, 14-16, 619-20).[3]

- In addition, the Probate Court's cover letter referred to the Statement of Resignation merely as a "record of this appointment" (i.e., pursuant to the standing order dated February 27, 2017) and not as a separate order. (R. pp. 15-16).

- Based upon the Record on Appeal, the Probate Court's additions to the Statement of Resignation were not refiled with the Probate Court as a separate order. (R. p. 14).

- Aside from the Statement of Resignation that became ineffective on February 22, 2017, no other action for appointment of a successor PR or special administrator was ever initiated. See S.C. Code Ann. §§ 62-3-301, -308, -310, -402, -403, -414, & -614 (stating the mandatory procedures for formal or informal appointment of successor PR and special administrator).

- Well after the Probate Court filled in the Statement of resignation on March 20, 2017, the Probate Court subsequently upheld the Final Term Sheet and its February 27, 2017 Order, via its September 18, 2017 Order denying Appellant's Motion to Alter or Amend. (R. pp. 18-24).

- Ms. Gooding's memo in opposition to Appellant's Motion to Alter or Amend stated the Probate Court could appoint a "special administrator" pursuant to February 27, 2017

[3] Appellant did not put this letter in the initial Record on Appeal because, as explained elsewhere herein and in his Initial Brief, he was not on reasonable notice that the March 20, 2017 alleged order would divest his standing as PR apart from the Term Sheet as approved by the Probate Court. Thus, if the effect of the March 20, 2017 alleged order should be considered at all, then so too should this letter, although Appellant's position remains well founded even without it.

Order. (R. p. 175). However, her memo made no mention of a successor PR or the March 20, 2017 alleged order. (R. pp. 174-82).

- In his Proof of Delivery for the Notice of Hearing as required by the Probate Court, Appellant refers to Harley Ruff as the "proposed special administrator," without any objection or contradiction by any party or the Probate Court. (R. p. 168).

- At the hearing, Appellant continued to refer to the "proposed special administrator" without any objection or contradiction by any party or the Probate Court. (R. p. 643).

In summary, though Respondents have done their best to confuse the procedural history of this case, the record could not be any clearer that the Probate Court removed Appellant as PR and appointed a special administrator pursuant to its approval of the Final Term Sheet, at Respondents' own insistence, and which Appellant has validly appealed ever since. It is for this reason, that Respondents have created the "second train" fiction. Further, in case that was not enough, Respondents heap fiction on top of fiction by asserting Appellant has not preserved his many arguments in favor of his continued standing as PR, when Respondents themselves did not raise the standing issue until the appeal.

To quote the same authority offered by Respondents "[t]o preserve an issue for appellant review, the issue must have been raised to and ruled upon by the trial court." Holy Lock Distibs. v. Hitchcock, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000) (emphasis added). In addition, "an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). See also James v. Anne's Inc., 390 S.C. 188, 193, 701 S.E.2d 730, 732–33 (2010) (applying issue preservation principals to standing); Wilson v. Dallas, 403 S.C. 411, 422-23, 743 S.E.2d 746, 752-53 (2013) (rejecting argument that disposed PRs and trustees lacked standing to challenge order where standing had not been raised below). However, in this case, Appellant's standing as PR with

respect to the March 20, 2017 alleged order was neither effectively raised by anyone, nor ruled upon by the Probate Court.

The first Probate Court hearing and order from the same each occurred before March 20, 2017, so of course they contain no reference to the subsequent alleged order. However, they remain relevant to this inquiry because, as explained previously, they establish that the Probate Court was removing Appellant as PR and appointing a special administrator pursuant to the terms of the Final Term Sheet. Thus, Appellant had an eminently reasonable basis to rely on his understanding of the Final Term Sheet and February 27, 2017 Order and, to that end, any theory in opposition to Appellant's reasonable understanding should put him on clear notice that his reasonable understanding was being challenged.

However, at the subsequent August 17, 2017 hearing on Appellant's Motion to Alter or Amend, neither Respondents nor the Probate Court made a single reference to the March 20, 2017 alleged order or to Harley Ruff, Esq. as an alleged successor PR. (R. pp. 643-661). To the contrary, as stated previously, Appellant continued referring to Mr. Ruff as the special administrator in his statements at the hearing and Proof of Delivery for his Notice of Hearing, as did the Final Term Sheet and Probate Court order approving the same. (R. pp. 11-12, 168, 619-20, 643). Thus, when Respondents at the hearing asserted that Appellant was no longer PR (R. pp. 646, 649), Appellant reasonably understood them to be referring to the Final Term Sheet and order approving the same which were the very things being then reconsidered.

Similarly, even when Respondents stated that Appellant was no longer PR (again, as did the very order under reconsideration), they did not do so within the context of questioning Appellant's standing to challenge the order. Id. In fact, Ms. Sharp's counsel specifically stated "**Now I'm not sure what effect that has legally**. I'll let my probate lawyer Mr. Slotchiver

address that if it comes up," though he never did either. (R. p. 646, emphasis added; p. 649). Needless to say, Appellant cannot defend himself from a legal issue that Respondents failed to understand themselves, much less articulate, and which the Probate Court did not otherwise raise itself.

The only item possibly worth discussing is Ms. Gooding's memo of law in opposition to Appellant's additional motion,[4] which contained the only reference to the March 20, 2017 alleged order: "the Court issued an Order dated March 20, 2017, accepting [Appellant's] resignation and appointing the special administrator, Mr. Harley Ruff. No party appealed this Order and it is the law of the case and unappealable." (R. p. 171). However, this did not sufficiently raise the issue for the following reasons:

- This memo was in response to a motion that the Probate Court declined to hear, pursuant to Ms. Gooding's own objection. (R. p. 19, 645). Thus, neither Appellant's Motion nor Ms. Gooding's memo in response were ultimately before the Probate Court and, in any event, the Probate Court did not allow Appellant to discuss the same.

- Even if the memo could be considered, it still fails to argue that Appellant lacks standing due to the March 20, 2017 alleged order. (R. pp. 170-71). Rather, it appears to be in the spirit of a res judicata argument, though the memo does not even say that. It bears repeating, "an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733.

- The memo is self-contradictory, as the sentences immediately following the reference to the March 29, 2017 alleged order state "[t]he Court's Order of Feb. 27, 2017, is also the law of this case. Unless and until that Order is altered, amended, or vacated, the Court's ruling is final." (R. p. 171). Thus, because the February 27, 2017 Order affirms the Final Term Sheet, Ms. Gooding does not articulate that Appellant was removed by the Statement of Resignation as opposed to the Final Term Sheet.

- Similarly, Ms. Gooding references Harley Ruff being appointed as special administrator (R. p. 171), which the Final Term Sheet provides (R. pp. 619-20), and not as successor PR, as in the Statement of Resignation (R. p. 145). This suggests removal and

[4] So that the remaining Estate matters could be resolved if the Probate Court invalidated the Final Term Sheet, Appellant filed a Motion to Dismiss Petition for Instruction, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Cost.

appointment pursuant to the Final Term Sheet, which matched Appellant's reasonable and documented understanding of the case.

- Ultimately, neither Respondent mentioned the March 20, 2017 alleged order or otherwise argued standing at the subsequent hearing, even after Appellant continued referring to Mr. Ruff as the "proposed special administrator" (R. p. 643) and Ms. Sharp's counsel admitted with regard to Appellant's removal as PR, "[n]ow I'm not sure what effect that has legally. I'll let my probate lawyer [Ms. Gooding's counsel] address that if it comes up." (R. p. 646). However, he never addressed standing or the March 20, 2017 alleged order either. (R. p. 649).

In summary, Respondents failed to adequately raise the issue of Appellant's standing as PR apart from his alleged resignation under the Final Term Sheet for which Appellant had sought reconsideration. In addition, the Probate Court never ruled on that issue. Quite to the contrary, by denying Appellant's Motion to Alter or Amend, which the Probate Court allowed Appellant to argue in his capacity as PR, the Probate Court reaffirmed its February 27, 2017 Order that approved the Final Term Sheet as a binding settlement, including the provision therein providing for Appellant's resignation and the appointment of a special administrator. (R. pp. 18-24).

The only item from the September 18, 2017 Order that possibly merits discussion is the Order's statement that "no party (including Petitioner), has objected to this Court's Order dated March 20, 2017 appointing Harley Ruff as Successor Personal Representative." (R. p. 20). However, this aspect of the Order, all of which was drafted by one of the Respondents (R. pp. 801-08), contradicted the Probate Court's actual ruling and is therefore in error or is dicta.[5] In addition, the Order does not give any legal import to the stray March 20, 2017 reference, whether as to Appellant's standing or otherwise. Further, any unarticulated legal import the stray

[5] The Order simply denied Appellant's Motion to Alter or Amend the Probate Court's February 27, 2017 Order upholding the Final Term Sheet. (R. p. 24). The Order succinctly explained the context as follows: "Following the hearing, the Court executed and filed the Order which Petitioner now challenges. The Order enforces an agreement ("Term Sheet", or "Settlement Agreement") entered into by all of the parties the day before the February 2, 2017 hearing." (R. p. 19).

reference could have is nevertheless a component of the September 18, 2017 Order now on appeal, and Appellant should at the very least have an opportunity on appeal to address the same.

Ultimately, Respondents did not articulate a challenge to Appellant's standing until after submitting his Initial Brief and Record on Appeal to the Circuit Court. In fact, counsel for Ms. Sharp at the final Probate Court stated if "they want to appeal to Judge Buckner and say you should've done something differently, they can file that appeal anytime after this hearing at the designated time." (R. p. 648). In addition, by the time Respondents questioned Appellant's standing, they had already asked the Circuit Court to force Appellant (who was still acting in his capacity as PR) to engage in mediation, which motion the Circuit Court granted. (R. pp. 25-28; 216-21). Thus, not only was the question of Appellant's standing not raised and ruled on below, but Respondents should also be estopped from arguing standing after specifically stating below that Appellant could appeal and then compelling Appellant to mediate as PR even Appellant filed the appeal.

In overall summary of the standing issue, Respondents asked the Probate Court to uphold the Final Term Sheet as a binding settlement, the terms of which included the resignation of Appellant as PR and appointment of a special administrator. The Probate Court approved that request, Appellant asked the Probate to reconsider the same, the Probate Court denied appellant's request, and Appellant has validly appealed both the original Order approving the Final Term Sheet and the subsequent Order having the effect of upholding the same.

Only on appeal before the Circuit Court did Respondents articulate the issue of Appellant's standing pursuant to an alleged order dated March 20, 2017, which Respondents now claim to have been the result of a completely separate legal procedure (a second train) that began with Appellant's Statement of Resignation. However, in addition to being untimely,

Respondents' post hoc rationalization of the procedural history ignores that the Statement of Resignation automatically became ineffective before the Probate Court approved the Final Term Sheet as a binding settlement, and that Appellant had no reason to conclude anything other than that the Probate Court's self-styled "record of this appointment" of Harley Ruff as "special administrator" was simply a component of its own Order less than a month earlier. (R. pp. 8-13; 15-16). With this, Appellant reasonably understood the Probate Court to have removed him and appointed Mr. Ruff pursuant to the Final Term Sheet, so that is what he logically appealed. Furthermore, neither Respondents nor the Probate Court did anything to dissuade Appellant of his understanding, and in fact seemed to share the same.

Because Respondents seek to deprive Appellant of his fundamental right to judicial review, it bears repeating once more, "an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733. In other words, when counsel for one of the Respondents states "Now I'm not sure what effect that has legally" (R. p. 646), Appellant does not bear the responsibility to help them figure that out in order to preserve his fundamental right to appeal.

II. Whether the Circuit Court correctly held the probate court's order appointing a successor personal representative is the unappealed law of the case?

This question is effectively the same as Respondents' first; that is, whether Appellant's Statement of Resignation culminated in an order that terminated Appellant's status as PR separately from the Probate Court's prior (and subsequent) orders terminating Appellant as PR pursuant to the Final Term Sheet. However, that is not true for the same reasons as stated in

Appellant's response to Respondents' first question, which Appellant hereby incorporates by reference. In addition, Appellant would simply note that if the March 20, 2017 alleged order is the "law of the case" at all, then it necessarily must be the law of some extrinsic case other than the one Appellant has validly appealed. In the pending appeal, Appellant was removed as PR and replaced by a special administrator by the Probate Court's Order approving the Final Term Sheet advocated by Respondents as a binding settlement. Appellant validly appealed that Order and the Probate Court's subsequent Order upholding the same, and the Court of Appeals should therefore now determine if the Probate Court was correct.

III. Whether a source of authority other than that as personal representative confers standing to Appellant to act on behalf of the estate?

Respondents argue that Appellant's standing arguments are unpreserved. Appellant addressed this argument as part of his response to Respondents' first argument, and therefore incorporates the relevant portions thereof herein by reference to avoid redundancy. Respondents also attempt to address Appellant's arguments why he was not validly removed as PR and why he retains standing to appeal even if he was validly removed. Appellant could not discern any rebuttal that Appellant's Initial Brief did not already cover, and therefore simply refers to pages 30 through 40 of the same.

IV. Whether there is a real-party-in-interest issue when all of the real parties in interest are named in the action and whether any such issue is untimely when Appellant raised it only after litigating his status to appeal?

Even if the Court determines Appellant lacks standing to pursue this appeal, the Court should allow the proper party to ratify, join, or substitute into the appeal under Rule 17(a), SCRCP. Respondents argue that there is not a Rule 17(a) issue because all of the interested parties are named in the action, which might be a salient point but for the fact that Respondents

have argued on appeal, and the Circuit Court agreed, that Appellant was divested of his status as PR by an alleged order that falls outside the scope of the present appeal. Thus, there plainly is a question about whether Appellant as PR remains a party in interest, or has been usurped as Estate fiduciary by another. As such, Rule 17(a), SCRCP plainly states that this appeal "shall not be dismissed ... until a reasonable time has been allowed, after objection, for ratification ... joinder or substitution of, the real party in interest."

Respondents go on to blame Appellant for creating the alleged "standing problem" because he should have appealed individually, but this is wholly irrelevant to the question of whether Appellant has standing as PR and, if not, then Rule 17(a), SCRCP applies. Respondents also claim Appellant has not asked for substitution of a particular person, and there is no such proper person, ignoring that Respondents themselves assert Harley Ruff is now fiduciary for the Estate, that Mr. Ruff provided his affidavit asking to ratify Appellant's appeal, and that Appellant asked the Circuit Court to accept Mr. Ruff's ratification or otherwise substitute or join Mr. Ruff as the appellant. (R. pp. 551-584).

Respondents next argue that Appellant did not seek substitution (and presumably also ratification and joinder) within a reasonable time, and cite as support for their position the recent decision of Fisher v. Huckabee, 422 S.C. 234, 811 S.E.2d 739 (2018). However, this decision actually supports the Appellant's position for allowing ratification, joinder, or substitution if the Court would determine on appeal that Appellant lacks standing.

In Fisher v. Huckabee, the niece of a decedent challenged the decedent's will naming three non-relatives as beneficiaries and one of those three as PR. Id. at 236-37, 811 S.E.2d 740. In that same action, she moved to have the PR removed and a special administrator appointed, but the court did not rule on that motion. Id. In a separate legal action, Fisher subsequently filed

a survival action against the three beneficiaries for allegedly failing to care for the decedent and causing her harm. Id. In response to the new action, the defendants moved for summary judgment claiming Fisher did not have standing to bring the survival action because she was not a fiduciary for the estate. Id.

However, when presented with that issue, Fisher specifically declined to seek ratification, joinder, or substitution of a proper party. Id. at 241, 811 S.E.2d 742. "Here, the circuit court engaged Fisher in a discussion over who has the authority to bring the action, and suggested that Fisher turn to the probate court for guidance. Fisher declined." Id. "Fisher insisted that that the validity of her claimed status be litigated, and she never contemplated changing her status to comply with Rule 17(a). Fisher chose the question for the court, and eventually, the court must rule on the question put before it." Id.

Thus, the Supreme Court ultimately held, "After the defendants challenged Fisher's status [to bring the survival action], she did not ask for 'a reasonable time ... for ratification ... or joinder or substitution.' In that circumstance, Rule 17(a) provides for a dismissal ...." Id. at 242, 811 S.E.2d at 743. However, the Supreme Court noted that "If she had asked, the circuit court would have been required to allow time for 'ratification, joinder, or substitution' of the proper party under Rule 17(a)." Id. at 239, 811 S.E.2d at 741. The Supreme Court also compared Fisher's circumstances to its earlier decision, which Appellant has relied on, Patton v. Miller, 420 S.C. 471, 804 S.E.2d 252 (2017), reh'g denied (Sept. 27, 2017):

> In Patton, by contrast the plaintiff responded to the defendants' motion by specifically asking to change her status through ratification, joinder, and substitution so she could address the defendants' claim she was not the real party in interest. When the circuit court in that case refused to permit her to do so, the court committed legal error. Thus, the distinction between Patton and this case is that the plaintiff in Patton placed before the circuit court the Rule 17(a) question of whether she should be permitted to ratify, join, or substitute, while Fisher held

> firmly to her flawed position that she was right in the first place. (citations and quotations omitted).

Fisher v. Huckabee, 422 S.C. at 241-42, 811 S.E.2d at 742-43.

In the present case, Respondents did not clearly assert that the March 20, 2017 alleged order displaced Appellant as PR and, even then, did not assert this as a "standing" argument per se, but rather seem to question Appellant's authority to bring the appeal as PR. Having seen this argument for the first time in Respondents' responsive brief (R. pp. 222-39), Appellant had a mere 10 days from service to file his Reply to this new legal issue as well as other issues raised by Respondents. See S.C. Code Ann. § 62-1-308(e) (stating the reply "shall" be filed in 10 days, without any indication that a continuance or extension might be possible). Despite these time constraints, Appellant's Reply presented many legal arguments why he retained standing as PR to bring the appeal, and expected the Circuit Court to agree. (R. pp. 240-264).

Ultimately, however, the Circuit Court disagreed, and its order became the first order in this entire matter to state that Appellant lacked standing to challenge the Final Term Sheet or appeal the same.[6] (R. pp. 32-36). Before then, Appellant had initiated this litigation as PR and continued it in the same capacity ever since, including well after the alleged March 20, 2017 order of the Probate Court. Accordingly, the Circuit Court's order stating for the first time that Appellant lacked standing as PR became the event that triggered the application of Rule 17(a), SCRCP. Consequently, Appellant again acted with all due haste and filed a Motion to Reconsider the Circuit Court's decision, which also included the alternative ground that, even if Appellant lacked standing, the appeal should continue through ratification, joinder, or substitution. (R. pp. 551-84). This motion included an affidavit supporting Appellant's

[6] Appellant believes Respondents did not specifically raise "standing" until the initial hearing before the Circuit Court, after all briefing had concluded. (R. p. 674).

ratification by the alleged real party in interest (R. pp. 577-78), which would have been virtually impossible to obtain within the 10 days Appellant had to file a Reply, even if Respondents had raised the standing issue in their responsive brief.

Therefore, if Appellant's reference to Rule 17(a), SCRPC was not made in a "reasonable time" then it is hard to imagine a situation in which a litigant could act within a reasonable time. Indeed, litigants would need the power of prophecy to predict whether and when a court might determine them to lack standing. Alternately, protective Rule 17(a) motions would need to be filed as a matter of course. Certainly, however, that is not what our rules require, nor what the holdings of Patton v. Miller or Fisher v. Huckabee elucidate, which is that litigants put on notice as to dismissal for lack of standing will not be saved if they stubbornly refuse to seek ratification, substitution, or joinder, whereas those who do so will have their rights to appellant review preserved. Under the circumstances of the present case, no one may reasonably question that Appellant sought the application of Rule 17(a) within a reasonable time.

As for Appellant's separate argument under Rule 25(c), SCRCP,[7] Respondents simply assert without any authority or logic that the transfer of fiduciary authority for the Estate is not a "transfer of interest." However, common sense dictates that fiduciary authority is an "interest" that may be transferred, just as Rule 25(a), SCRCP provides that a PR may be substituted after a party dies and Rule 25(d), SCRCP provides for automatic substitution when there has been a transfer of a public office. Thus, even if Appellant's interest as PR could have been irreversibly transferred, Appellant has the right to continue this appeal under Rule 25(c), SCRCP, unless and until Respondents file a motion to substitute or join the new fiduciary.

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[7] "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Id.

V. Whether the probate court correctly held the parties reached a binding settlement?

Appellant's Initial Brief covers this matter in depth and therefore Appellant hereby merely seeks to address Respondents' discernable counter-arguments. Notably, Ms. Gooding dedicates just 3.5 pages of text near the end of her 35-page brief arguing the substantive merits of the appeal, while Ms. Sharp dedicates just one page of her 43-page brief to the same. More importantly, neither contest South Carolina precedent cited by Appellant that the proponent of a settlement has the burden of proving the existence thereof. See Kinghorn as Tr. for the Mildred Ann Kinghorn Tr. dated 28 Apr. 2004 v. Sakakini, 426 S.C. 147, 152-53, 825 S.E.2d 748, 750-51 (Ct. App. 2019) (determining whether proponent of settlement met his burden of proving the existence of the same). See also Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("In South Carolina jurisprudence, settlement agreements are viewed as contracts."); W.E. Gilbert & Assocs. v. S.C. Nat. Bank, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) ("To recover in an action for breach of contract, the plaintiff must, of course, prove the existence of a contract, oral or written.").

In attempting to meet their burden of proof, Respondents contend that there was a meeting of the minds as to the Final Term Sheet by all of the alleged parties thereto by virtue of the fact that the undersigned counsel sent a letter to the Probate Court before the hearing indicating his belief and understanding that all of the unrepresented parties agreed to the Final Term Sheet. However, the undersigned counsel has never represented anyone in this matter but Appellant in his capacity as PR, and therefore had no authority to speak for or bind anyone but Appellant as PR. In fact, Respondents acknowledged as much when they expressed concern about how to verify consent of the unrepresented siblings, and Appellant's counsel stated he

anticipated obtaining their signatures. (R. pp. 631-34) Ultimately, however, the signatures never came.

Accordingly, neither Rachael Best, Joseph Kearse, nor Morgan Kearse agreed to be bound by the Final Term Sheet, whether in their individual capacities or as Trustees of the Trust, and Respondents can cite no evidence to the contrary. Similarly, the Trust did not agree to the Final Term Sheet because at least 3 of the 6 Trustees did not agree to it.[8] The Trust's assent was required because the Final Term sheet requires the Trust to buy property it would otherwise not have an obligation to buy, and also indirectly affects the amount that will ultimately be received by the Trust from the Estate.

In sum, Respondents cannot even show a meeting of the minds regarding the Final Term Sheet, and cannot manufacture such assent by pointing to a letter from a lawyer who had no authority to bind any of the Trustees or individual parties. However, Respondents must establish a meeting of the minds before they can argue for enforcement of the Final Term Sheet as a binding settlement with regard to estate litigation. See Wilson v. Dallas, 403 S.C. 411, 426, 743 S.E.2d 746, 754 (2013) ("A compromise agreement is void unless executed in compliance with the governing statute.") (quoting In re Estate of Riley, 266 P.3d 1078, 1080 Ariz. Ct. App. 2011)).

Nevertheless, Respondents next contend that the Final Term Sheet need not satisfy S.C. Code Ann. § 62-3-912 (titled "Private agreements among successors to decedent binding on personal representative.") because the Final Term Sheet does not "alter the interests, shares, or amounts to which [the successors] are entitled under the will of the decedent." Id. Notably, this

[8] Gordon Kearse signed the Final Term Sheet, but did not purport to do so in his capacity as Trustee. (R. pp. 640-41). Nevertheless, even if such capacity could be inferred, he and Respondents would constitute only 3 of the 6 Trustees, and therefore lacked authority to bind the Trust that is both directly and indirectly affected by the Final Term Sheet.

is the first time that Respondents have specifically addressed Appellant's position that the Final Term Sheet fails to satisfy S.C. Code § 62-3-912. In any event, the Final Term Sheet unquestionably does alter the "interests, shares, or amounts" to which the successors are entitled. Taking each in turn (R. pp. 619-20):

- Item 1: requires the appointment of a Special Administrator, which will alter the amount that the Trust, as residuary beneficiary, receives on account of the Special Administrator being entitled to charge an hourly fee for his work.

- Item 2: sets the PR fee at $25,000, which again alters the amount that the Trust as residuary beneficiary will ultimately receive from the Estate.

- Item 3: requires Appellant to pay Ms. Sharp's legal fee in defense of the Petition for Instructions, which may have otherwise been charged against the Estate in the absence of the Final Term Sheet. See S.C. Code Ann. § 62-1-111.

- Item 4: requires Appellant to pay legal fees for Ms. Gooding and himself as PR, but with the possibility that the Estate pays these instead. This term also alters the amount that the Trust as residuary beneficiary will receive by setting a process by which the amount of PR fees that are normally charged against the Estate will or will not be so charged, and by allowing the Estate to pay Ms. Gooding's personal fees.

- Item 5: places additional restrictions not contained in Decedent's will regarding Appellant's use, in his individual capacity, of the Decedent's office contents (which are part of the Estate as personal property separate from the underlying real estate), including maintaining the property, paying property taxes, and carrying full-replacement hazard insurance, thus altering Appellant's interest under Decedent's will.

- Item 6: requires the Trust to purchase non-probate property for $89,000, which is the one provision that arguably does not alter the amount due to the Trust or any other successor under Decedent's will, though it nevertheless directly affects the Trust's rights vis a vis this Estate litigation.

Notably, Section 62-3-912 does not contain a dollar threshold before being implicated; merely altering a successor's amount received by $0.01 is sufficient to require Estate settlement to meet its requirements. Moreover, the effect on a successor need not be monetary. Simply altering the manner in which Appellant may enjoy the use of his father's office contents is sufficient to affect his "interest" therein, and therefore implicate S.C. Code Ann. § 62-3-912. In summary, the Probate Court erred in entering the Final Term Sheet as a valid

settlement because it was not "executed by all who are affected by its provisions" per S.C. Code Ann. § 62-3-912.

Respondents also contend that the Final Term Sheet need not satisfy the requirements of S.C. Code Ann. § 62-3-1102 (titled "Procedure for securing court approval of compromise.") because the Final Term Sheet (1) does not impact someone with a beneficial interest in the Estate and (2) it was not sought to be binding on non-parties. However, as explained above, the provisions of the Final Term Sheet unquestionably impact the Trust's beneficial interest in the Estate as the residuary beneficiary thereof. Further, the Trust is a non-party to the Final Term Sheet because an insufficient number of the Trustees agreed to it,[9] and one cannot be a party to an agreement that one does not enter. Nevertheless, Respondents sought to bind the Trust to the Final Term Sheet.

In summary, for Respondents to impose the Final Term Sheet upon the Trust as a non-party with a beneficial interest in the Estate, Respondents must satisfy the requirements of S.C. Code Ann. § 62-3-1102. I.e., signed by all parties affected by the compromise, an application for approval with 20 days' notice to interested persons, and a finding that there is good faith controversy and the agreement has a just and reasonable effect. See id.; S.C. Code Ann. § 62-1-401. However, Respondents have not satisfied these requirements and have not alleged to have done so.

Finally, Respondents contend that the Final Term Sheet satisfies Rule 43(k), SCRCP (which is relevant if neither Section 62-3-912 or 62-3-1102 apply) because the Final Term Sheet

[9] It is not apparent that any of the siblings executed the Final Term Sheet in their capacities as Trustees, and the Probate Court did not make any such finding. (R. pp. 8-13; 636-41). However, even assuming the three that signed also did so as Trustees, they do not constitute a majority of the Trustees.

was reduced to a written stipulation signed by counsel and entered in the record. However, this argument is particularly confounding in that the Final Term Sheet was never actually signed by anyone's legal counsel, not even Respondents themselves. (R. pp. 636-41). Rather, the Final Term Sheet was merely emailed between the respective counsel for Respondents and Appellant, and counsel for the Appellant wrote the Probate Court in advance of a scheduled hearing to report that he believed a settlement had been reached. (R. pp. 631-34; 739). Furthermore, this letter did not even include a copy of the Final Term Sheet such that counsel could somehow be deemed to "sign" the Final Term Sheet by virtue of the letter. (R. p. 793). In fact, the letter was never entered into the record of the Probate Court hearing.[10] (R. pp. 589-642). Ultimately, the only signatories to the Final Term Sheet were three of the parties themselves; Ms. Gooding, Ms. Sharp, and Gordon Kearse. (R. pp. 636-41). Thus, there was no written stipulation signed by counsel that could be entered on the record in accordance with Rule 43(k), SCRCP.

Even if there had been a stipulation signed by counsel, Appellant's counsel also appeared at the Probate Court hearing to affirmatively disavow the Final Term Sheet before it could be "entered in the record" as required by Rule 43(k), SCRCP. (R. p. 595, l. 11-25). However, our State's precedent makes it clear that an attorney may retract his signed agreement before the same is entered on the record without the signed agreement becoming a binding settlement pursuant to Rule 43(k), SCRCP. Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 627 S.E.2d 724 (2006).

Respondents attempt to distinguish this decision by stating that the letter from Appellant's counsel to the Probate Court rendered the Final Term Sheet "entered in the record"

[10] Respondents' counsel mentioned the letter at the hearing, but they were not testifying in an evidentiary capacity and, if they had been, such statement would be hearsay.

before the Probate Court's hearing had even begun. However, such interpretation would make the "record" itself so indeterminable as to render it meaningless, and cause chaos in the application not only of Rule 43(k), SCRCP, but innumerable appellate issues.

Indeed, the very purpose of Rule 43(k), SCRCP is to provide a bright line for what constitutes a valid settlement, and avoid wasting judicial resources on matters such as this. See Ashfort Corp. v. Palmetto Const. Grp., Inc., 318 S.C. 492, 494–95, 458 S.E.2d 533, 535 (1995). The fact that Respondents have ignored this bright line and nevertheless tried to impose the Final Term Sheet on their siblings and the Trust offers an appropriate segue to the next issue raised by Respondent, the question of bad faith.[11]

VI. Whether the Court should affirm on an additional sustaining ground because Appellant did not bring the action in good faith?

Respondents assert that, even in the absence of a valid settlement determining the allocation of legal fees in this matter, the Court of Appeals should affirm the Probate Court's requirement for Appellant to pay legal fees for himself and Respondents because Appellant acted in bad faith by bringing a Petition for Instruction in Probate Court and subsequently challenging the Probate Court's removal of Appellant as PR. To begin with, however, neither the Probate Court nor any other evidentiary tribunal has heard facts concerning the propriety of legal fees in this matter by the Estate, Appellant, and Respondents. (R. pp. 589-661). That alone negates Respondents' argument that Appellant should be required to pay legal fees even if the Final Term Sheet does not stand.

[11] Ms. Sharp also argues that the Final Term Sheet is binding because Appellant allegedly did not object to the Final Term Sheet (which is false) or otherwise introduce evidence regarding the same (which Appellant did not need to as the Term Sheet speaks for itself). Appellant addresses these contentions more fully in response to Ms. Sharp's issue XI, which covers the same issues.

Nevertheless, for the sake of argument, Appellant has the right to have his legal expenses as PR paid by the Estate to the extent he prosecutes or defends any matter in good faith. See S.C. Code Ann. § 62-3-720. In contrast, Respondents must bear their own legal expenses unless allocated to the Estate or another party as "justice and equity may require." S.C. Code Ann. § 62-1-111. In the present case, numerous factors overwhelmingly establish Appellant's good faith in filing the Petition for Instruction:

1. Appellant had a duty as PR to carry out the terms of Decedent's will.[12]
2. Appellant had the right to seek a declaration of his obligations in carrying out the will.[13]
3. Decedent's will contained a patent ambiguity regarding its effect on the Trust.[14]
4. It is difficult to predict with certainty what a court may determine with regard to an interpretive issue regarding a trust because the South Carolina Probate Code makes the terms of a trust subservient to "the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice."[15]

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[12] See S.C. Code Ann. § 62-3-703(a) ("A personal representative 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.").

[13] See S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."); S.C. Code Ann. § 62-1-301(a)(1) (giving the probate court broad jurisdiction over estate matters); S.C. Code Ann. § 62-3-105 (allowing interested persons to petition the probate court for orders within the court's jurisdiction); S.C. Code Ann. § 62-7-201(a)(1) (giving probate court broad jurisdiction over trusts, including actions for the "declaration of rights" and to "instruct trustees").

[14] Item VI of the will purported to give all of Decedent's "monies" to build a house on property owned by a separate irrevocable Trust, unless otherwise needed to pay ad valorum taxes for the Trust property. Item VI did not name a recipient, but stated "I direct that my six (6) children build the house." However, Item VIII of the will specifically gave "any monies in any banks, bonds, or any cash in my possession" to the Trust. (R. pp. 73-735).

[15] S.C. Code Ann § 62-7-105(b)(11).

5. At least one of Appellant's siblings threatened to sue him whether he pursued construction of the house or not.[16]

6. Appellant's original counsel, a South Carolina Certified Specialist in Estate Planning and Probate Law, advised Appellant to utilize the valid legal procedure for obtaining the Probate Court's direction regarding the contentious and uncertain legal issue.[17]

In an attempt to show bad faith regarding the Petition for Instruction and as justification for reallocation of her fees to Appellant, Respondents offer just three factual allegations, none of which the Probate Court ever took as evidence: (1) that an attorney opined that that Decedent could not order the construction of a home on land that he did not own, (2) that Appellant knew the Trust owned the land in question, and (3) that Appellant did not at that time know the size of the proposed house, the cost of building it, or the amount of carrying costs such as taxes and insurance.

The first is easily negated by the fact that attorneys are not the final arbiters of any particular legal issue (unless the parties properly submit a question to binding arbitration), and it goes without saying that any particular attorney's legal opinion may be contradicted by the opinions of other attorneys (one need look no further than this appeal). Moreover, the attorney cited by Respondents is evidently not a Certified Specialist in Estate Planning and Probate Law, whereas Appellant's original undersigned counsel, who advised Appellant to file the Petition, has been one for many years. In any event, the attorney cited by Respondents did not opine that Appellant would be acting in bad faith to ask the Probate Court to resolve the legal issue rather than simply taking that attorney's word for it, and bad faith must be affirmatively shown in order to deny a PRs ability to have his legal expenses paid by the estate. S.C. Code Ann. § 62-3-720.

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[16] (R. p. 157, ¶¶ 2-4). Even Respondents admit that Appellant "would have been in a strong position if one of his siblings had sued him and claimed the house should be built. There would have been more than just good faith arguments to defend such a suit." (R. p. 236).

[17] Affidavit of Morgan Kearse (R. p. 157, ¶ 4).

Respondents' second and third allegations are also irrelevant to the question of Appellant's good faith. That the Trust owned the land in question is the reason for the legal question in the first place, and so it is nonsensical that the circumstance creating the legal question could render the legal question inappropriate to ask. Finally, that the Appellant may not have, before filing the Petition for Instructions, investigated the specific cost and size details regarding the house Decedent's will asked him to build does negate that there was a legal issue that needed to be resolved. Thus, Appellant acted perfectly reasonably to postpone such investigatory work until he knew whether he must in fact build the house, particularly when dealing with siblings who complain about even justified uses of Estate resources.

In addition, Respondents allege bad faith by Appellant in pursuing this appeal because, after removal as PR, he "shall not act except to account, to correct maladministration, or preserve the estate." S.C. Code Ann. § 62-3-611(a). However, this suggests Appellant has no right to judicial review of his removal as PR by the Probate Court, which amounts to a deprivation of Appellant's due process. Moreover, Appellant nevertheless satisfies Section 62-3-611(a) by seeking to correct maladministration by seeking to nullify an alleged settlement that the Estate never entered and preserve the Estate by thereafter seeking to charge all related legal expenses to the Respondents rather than the Estate as partially allowed by the alleged settlement.

Finally, Appellant's good faith in this proceeding may be contrasted by the bad faith of Respondents in seeking to impose a Final Term Sheet upon their siblings and the Trust which was never validly entered under any legal standard, whether it be S.C. Code Ann. § 62-3-912, S.C. Code Ann. § 62-3-1102, Rule 43(k), SCRCP, or simply having a prerequisite meeting of the minds. Respondents should have recognized, and respected, these bright line rules instead of trying to enforce the Final Term Sheet without justification. Moreover, Respondents should not

have subsequently argued, impermissibly for the first time on appeal, that Appellant lacked standing, which has created a case-within-a-case that has wasted far more legal expenses than simply addressing the substantive issues at hand.

In summary, the only evidence in the record shows Appellant's good faith in filing the Petition for Instruction and pursuing this appeal, and Respondents' bad faith in attempting to impose an invalid settlement on their siblings and a Trust for which they should be acting in a fiduciary capacity, as well as attempting to prevent judicial review of the validity of the settlement. Thus, to the extent the Court of Appeals has authority to allocate legal fees of the Estate, Appellant, and Respondents at all, the record dictates that Respondents should pay both their own and Appellant's legal expenses for having needlessly necessitated and complicated this appeal or, at the very least, that Appellant's legal expenses should be paid by the Estate and Respondents should bear their own expenses. See S.C. Code Ann. §§ 62-1-111 & 62-3-720.

VII. Whether the Court should affirm on an additional sustaining ground because the Appellant had no authority to challenge the agreement that Morgan shall individually pay Julie's legal fees and expenses incurred in connection with the Petition for Instructions.

To begin with, each of Ms. Sharp's questions VII through XII should be rejected outright because she does not cite any precedential authority for them. "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." Bryson v. Bryson, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue. State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). To avoid redundancy, Appellant hereby incorporates this argument as to each of Ms. Sharp's remaining questions.

As for question VII specifically, the Final Term Sheet purports to affect Appellant's interest as PR by (1) causing him to resign as PR, (2) setting his PR fee, (3) allocating the payment of legal fees related to his actions as PR and the defense thereof. (R. pp. 619-20, §§ 1-4). It cannot be reasonably disputed that Appellant as PR has authority and standing to challenge the validity of an alleged agreement affecting his interests as PR. That the alleged agreement would also affect his individual interests is irrelevant to the issue of Appellant's authority or standing as PR.

Moreover, Appellant did not individually agree to the Final Term Sheet. He did not sign his name to it, he did not show up in court to assent to it, he did not individually contact the court to assent to it, and he did not have a lawyer do any of these things on his individual behalf. Even Respondents acknowledge that Appellant's undersigned counsel have only represented him as PR. Thus, if Appellant is a party to the Final Term Sheet at all, which he disputes, he could have only done so through his counsel representing him as PR. Again, there is no reasonable question that Appellant has authority and standing as PR to challenge the validity of an alleged agreement that he is only an alleged party to by virtue of the actions of his counsel as PR.

VIII. Whether all of Appellant's references in this appeal to the Affidavit of the Appellant dated March 15, 2017, should be stricken, or in the alternative, the appeal should be remanded to the Probate Court because the Probate Court declined to consider the Affidavit and Appellant did not appeal that ruling.

Appellant filed a valid Motion to Alter or Amend the Probate Court's February 27, 2017 Order pursuant to Rule 59, SCRCP. (R. pp. 147-59). As a motion, Appellant was allowed to submit affidavits in support, and did so. See Rule 6(d), SCRCP. Respondents could have submitted opposing affidavits, but chose not to. See id. The affidavit merely tried to explain why and how the Final Term Sheet did not culminate into a final agreement. (R. pp. 157-58).

The affidavit did not raise a new issue, but merely shed light on the same issue at the February 2, 2017 hearing as to whether or not there was a valid settlement agreement. Id.

In any event, the Probate Court never ruled to exclude the affidavit. Instead, its Order dated September 18, 2017 (drafted by counsel for Ms. Sharp) stated "It is unnecessary to rule on the objection given the Court's decision as set forth below." (R. p. 22). As such, the affidavit submitted by Appellant was never excluded, and Respondents did not appeal the Probate Court's decision not to rule on their objection. Accordingly, the affidavit was and remains a valid submission to the Probate Court and a valid part of the Record on Appeal.

Ultimately, however, this appeal can be decided without reference to any matter discussed in the Appellant's affidavit. First, the affidavit has nothing to do with Respondents' standing or procedural arguments, as it was executed and covers matters before the March 20, 2017 alleged order existed. (R. pp. 157-58). Second, that the Final Term Sheet was not a valid settlement is evident from the Final Term Sheet itself (only 3 of 6 siblings signing it and no PR), the transcript of hearing, and other relevant laws as discussed at length by Appellant elsewhere in his Initial Brief and this Reply. This Court requires no reference to the affidavit to render the proper decision, and nothing would be gained by remanding the matter to the Probate Court which has previously misapplied South Carolina law regarding settlements in this matter twice before.

Finally, Ms. Sharpe also suggests, in footnote 16 of page 41, that Appellant's affidavit indicates Appellant's recognition that he had already been replaced by a Special Administrator. To the contrary, the quoted language is from Appellant's supplemental proposed agreement that would have been effective, along with his resignation under the Final Term Sheet, had the other siblings agreed to it, which they ultimately did not. As it was, however, neither the Final Term Sheet nor the proposed supplemental agreement were validly entered. Furthermore, Ms. Sharp's

contention undercuts her core allegation that Appellant was replaced by a Successor PR via the Statement of Resignation (the second train), on March 20, 2017 after the affidavit at issue, rather than by a Special Administrator via the Final Term Sheet (the first train). Thus, even at this late and well-worn stage of the litigation, Ms. Sharp continues to equivocate as to just how Appellant was supposedly removed as PR.

IX. Whether the Court should remand the action to the Circuit Court or the Probate Court because the Circuit Court specifically held that it had not decided any issue other than standing.

The Court of Appeals can and should determine the validity of the Final Term Sheet without remand. There are no additional facts that will change that fact that it was not a binding settlement under South Carolina law, and it will waste judicial, Estate, and private resources to remand this case to the Probate Court that twice ruled incorrectly on that exact question.

Even as to the Circuit Court, there is a risk that they may make the wrong decision regarding the Final Term Sheet's validity, and there is simply no reason to take that risk when the Court of Appeals is perfectly competent to render the correct decision. This risk is not immaterial, as the Circuit Court twice ruled incorrectly that Appellant lacked standing to challenge the Final Term Sheet, even after ordering that Appellant engage in mediation in his capacity as PR, and ruling incorrectly that the appeal could not be ratified by the alleged real party in interest (Harley Ruff, Esq.), even though that person signed an affidavit stating that it is necessary to determine the validity of the Final Term Sheet in order to administer the Estate. (R. pp. 577-78).

Moreover, Respondents only have themselves to blame for the Circuit Court not reaching the question of the validity of the Final Term Sheet when they raised the standing issue for the first time on appeal, again after moving to require the Appellant as PR engage in mediation at the

Circuit Court level, and largely abandoning their arguments regarding the validity of the Final Term Sheet. Finally, it is hypocritical for Respondents to seek a remand of this matter, and likely additional appeals, while they simultaneously lambast Appellant for reasonably expecting reimbursement from the Estate for his efforts to have the Final Term Sheet invalidated.

X. Whether the Court should confirm on an additional sustaining ground because the Appellant lacks standing to appeal because the Personal Representative was not a party to the agreement.

Other than questioning Appellant's standing as PR rather than his authority as PR, Appellant is unable to distinguish this question from Ms. Sharp's question VII, and therefore incorporates herein his response to the same by reference thereto.

XI. Whether the Court should confirm on an additional sustaining ground because assuming *arguendo* that Morgan was still the Personal Representative at the motions hearing on February 2, 2017, as he now claims, then the settlement agreement should be enforced because, although his counsel was present throughout the hearing and chose not to argue, or present any evidence, or seek a postponement.

Appellant made it very clear to the Probate Court that Appellant did not consent to the Final Term Sheet, stating "his position will be that he does not consent to the settlement." (R. p. 595, lns. 14-16). "His position, however, is what I have said....he does not consent." (R. p. 595, lns. 23-25). Similarly, Appellant made it equally clear that other parties were not in agreement. "As we stand here this morning, I'm afraid to announce to the Court that two things have changed. Number one, I have not been provided copies of any document from the pro se litigants consenting to the settlement, so whereas I was told that I would be able to present that to you, I do not have that and cannot present it to you." (R. p. 593, l. 14-20).

For its part, the Probate Court acknowledged the lack of consent to the Final Term Sheet, stating "this is not an agreed upon by all parties exclusively agreement any longer." (R. p. 608, lns. 19-20). Even Ms. Gooding, whose arguments Ms. Sharp incorporated by reference, acknowledges

"At the February 2, 2017 hearing in probate court, [Appellant] resigned and argued he did not consent to the settlement and Rachael [Best] and Joseph [Kearse] did not sign it." (Gooding Brief of Resp. p. 16). In sum, there is no question that Appellant disputed the Final Term Sheet as a settlement and it is disingenuous for Ms. Sharp to assert otherwise.

As for Appellant not introducing evidence or requesting continuance, Respondents ignore that they have the burden of showing that the Final Term Sheet satisfied the legal requirements for a binding settlement agreement,[18] which they failed to do. Appellant had no obligation to present additional evidence to reiterate what should have been self-evident from the Final Term Sheet itself, nor did Appellant have any obligation to seek a continuance, which would have merely wasted time had the Probate Court made the correct ruling. For that matter, Respondents themselves could have asked for a continuance in order to initiate the proper procedure for seeking approval of an estate compromise, see S.C. Code Ann. § 62-3-1102, but chose not to.

In addressing her question XI, Ms. Sharp alleges that Appellant's affidavit acknowledges he was acting as an "Unrepresented Claimant" when attempting to work out an additional agreement with his siblings that would have also allowed for assent to the Final Term Sheet. Although Appellant is unsure what point Ms. Sharp is making with this allegation, Appellant would simply note that his affidavit says nothing about acting as an "Unrepresented Claimant" and, to the contrary, references directions regarding the Final Term Sheet Appellant gave to his undersigned counsel, who has only represented Appellant in his capacity as PR throughout this matter. (R. pp. 157-58).

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[18] See Kinghorn as Tr. for the Mildred Ann Kinghorn Tr. dated 28 Apr. 2004 v. Sakakini, 426 S.C. 147, 152-53, 825 S.E.2d 748, 750-51 (Ct. App. 2019) (determining whether proponent of settlement met his burden of proving the existence of the same). Appellant cited this authority in his Initial Brief, which Respondents have not contested.

XII. Whether the Court should dismiss the appeal because no Individual Respondent who was a party to the agreement opposed the enforcement of the agreement.

Either Appellant may bring this appeal to challenge the alleged settlement or he may not. It is simply irrelevant whether any other alleged party to the alleged settlement does so.

In addition, there should be no false inference that other siblings do not support Appellant's appeal. Neither Rachael Best, Joseph Kearse, nor Appellant in his individual capacity ever signed the Final Term Sheet or otherwise expressed their approval through legal counsel. Their lack of assent to the Final Term Sheet speaks for itself. Furthermore, Rachael Best attempted to voice her disagreement with the Final Term Sheet at the Probate Court hearing on August 17, 2017, but was not allowed due to the objection of Ms. Sharp,[19] Joseph Kearse submitted an answer expressing general approval of Appellant's original Petition for Instructions, and therefore one certainly should not presume he stands opposed to Appellant,[20] and Appellant's individual disagreement with the Final Term Sheet may be inferred through his actions as Appellant.

Finally, it is very expensive to appeal, and there is no reason the individual siblings should have to do so when the law, fairness, and common sense all provide that the PR of an estate affected by an alleged settlement should be able to contest the alleged settlement. To hire more lawyers would not get the individual siblings who are in agreement with the Appellant any closer to the truth and would simply waste money and additional time of the courts. That may not be a problem for Respondents, who have vigorously sought to avoid the simple question of whether there was a settlement or not, but it is for most people.

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[19] (R. pp. 650-51)

[20] (R. p. 335)

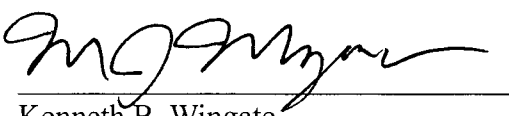
MISCELLANEOUS

Respondents' respective Statements of the Case contain numerous mischaracterizations of both law and fact. However, Appellant believes it best to focus this Reply on Respondents' twelve stated issues on appeal and their arguments thereunder, as these along with Appellant's statement of issues on appeal should allow the Court of Appeals to decide the appeal correctly. Moreover, Appellant had difficulty discerning the relevancy of those mischaracterizations not included in Respondents' twelve arguments, other than generally attempting to cast aspersions upon Appellant. Thus, unless asked by the Court to provide a listing of the mischaracterizations, Appellant simply stands by his Statement of the Case as the only objective presentation thereof.

CONCLUSION

The Court of Appeals should determine (1) that the Final Term Sheet is not a binding settlement and has no legal effect, (2) that Appellant remains the PR of the Estate until otherwise terminated in accordance with proper legal procedure, (3) reverse the Probate Court's orders dated February 27, 2017 and September 18, 2017 holding otherwise, and (4) reverse the Circuit Court's orders dated December 13, 2018 and May 14, 2019 holding that Appellant lacked standing or authority to bring this appeal.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Initial Brief and Final Reply Brief comply with Rule 211(b), SCACR.

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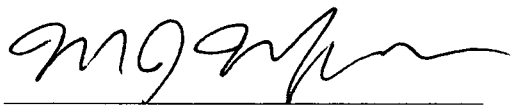

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