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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-CP-40-00726

Appellate Case No. 2020-001257

Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan, Petitioner,
is..... Appellant,

v.

Marian J. Kirk and Lucy J. Fuller are..... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B.
Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00726

**ORDER GRANTING PETITIONER'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

The Petitioner's Motion for Partial Summary Judgment, filed on July 24, 2018, came for hearing before me on October 9, 2018, attended by S.R. Anderson, attorney for the Petitioner, and his client, Leonard R. Jordan, Jr., and Steven M. Cox, attorney for the Respondents. The Petitioner is the brother of the Respondents.

1. The Petitioner's Motion is limited to two (2) assets (debts), as follows:
 - a. Monies (\$21,857.80 more or less) belonging solely to Lil B. Jordan, which were managed by Respondent Kirk, in a joint bank account maintained in the names of Lil B. Jordan and Marian J. Kirk due to Mrs. Jordan being mentally impaired. These monies were transferred by Respondent Kirk to a bank account standing solely in the name of Marian J. Kirk, on August 10, 2010, almost two years prior to Mrs. Jordan's death (on June 5, 2012); and
 - b. Long-term Care Insurance proceeds (\$2,480.00) belonging to Lil B. Jordan, which was paid to Lil B. Jordan by Bankers Life Company by check

issued after Mrs. Jordan's death. This check was received by Respondent Kirk and deposited by her into another (a different) joint bank account in the names of Lil B. Jordan and Marian J. Kirk on December 8, 2012.

2. The Respondents' separate Answers raise the defense that, in general, the claims of the Petitioner fail, under S.C. Code Ann. §62-6-104(a) (§62-6-202(a) after January 1, 2014), as all funds in the said joint accounts passed to Respondent Kirk upon Mrs. Jordan's death; but as to the present Motion, which is expressly limited to the aforesaid assets (debts), this defense was not raised. Further, the monies in these accounts were the sole property of Mrs. Jordan, according to S.C. Code Ann. §62-6-103 (§62-6-201 after January 1, 2014).

3. The Respondents' response to the Petitioner's Motion raised three (3) issues: (a) statute of limitations; (b) the monies were not shared by the Respondents with their brother (erroneously identified as "Petitioner") because of: (i) investment losses by him when he served as Mrs. Jordan's attorney-in-fact; and (ii) compensation due to Respondents for substantial services allegedly provided to Mrs. Jordan by them years prior to Mrs. Jordan's death; and (c) that the issue of whether the Respondents converted their mother's assets presents a genuine issue of material fact.

4. The defense raised in 3(b) above is easily dismissed as unpersuasive as the Respondents could have, in 2012-2013, filed claims in the Estate proceedings, but they failed to do so. They also failed to produce any documents by which Mrs. Jordan agreed to compensate them for services rendered or to be rendered to her.

5. The defense raised in 3(c) above is also unpersuasive. Respondent Kirk admits that the identified monies belonged, or were owed, to Mrs. Jordan at the time of her death. Respondent Kirk was, at all times, holding these monies for Mrs. Jordan and,

after her death, for Mrs. Jordan's Estate, which monies she subsequently converted to her own use and benefit and then shared with Respondent Fuller. There is no genuine issue of material fact regarding conversion.

6. The defense raised in 3(a) above required the most discussion. The three-year statute of limitations applies, but the "discovery rule" also applies. The limitation period only runs from the date the Petitioner knew or should have known, by the exercise of reasonable diligence that a cause of action exists.

7. Respondent Kirk asserts that the Petitioner, in his capacity as attorney-in-fact for his mother and then as personal representative, had access to all information concerning the bank accounts. The Petitioner responded that he was unaware of the joint bank accounts until after he (personally) sued Respondent Kirk (Case No. 2016-CP-40-05589) and, through discovery, including issuing subpoenas directed to Wells Fargo Bank and Bankers Life Company, found out (in 2017) the information regarding the converted assets, which are the subjects of the Petitioner's Motion.

8. Respondent Kirk also admitted that she did not make the Petitioner aware of the said transfer (\$21,481.02 more or less) out of Mrs. Jordan's account prior to July 27, 2017, and Respondent Fuller admitted (in 2018) that she never mentioned the said monies to the Petitioner.

9. The Petitioner inquired of Respondent Kirk, by written discovery (in 2016 and 2017, in the said prior case), specifically about these assets (debts), and Respondent Kirk's typical response was that she does not have any documents in her possession which would enable her to answer.

10. It is clear that the Respondent Kirk assumed the responsibility of handling certain financial matters on behalf of their mother and that the Petitioner trusted her to

handle these matters appropriately and in a fiduciary manner. It is further clear that he had no independent knowledge of Respondent Kirk's actions before 2017, although making diligent effort to learn about these matters after concluding that his trust has been misplaced.

11. It is also clear that Respondent Kirk was not forthcoming with the Petitioner, at least not until 2017, and that, if he had not sued her, he would likely have found out nothing whatsoever about either of the subject assets (debts).

12. I therefore conclude that, the statute of limitations had not run and does not bar the Petitioner's claims as to the limited matters set forth in the Petitioner's Motion.

13. There being no genuine issue of material fact in dispute, the Petitioner's Motion is **GRANTED**.

14. As presented by the Petitioner, the two assets (debts), which are the subjects of the Petitioner's Motion, together with pre-judgment interest, total \$37,739.59, as of October 9, 2018, which is calculated as follows:

Principal	\$21,857.80
Interest from 6/6/12 to 10/9/18 (2317 days) at 8.75% per annum	\$12,140.81
Subtotal (as of 10/9/18)	<u>\$33,998.61</u>
Principal	\$2,480.00
Interest from from 12/19/12 to 10/9/18 (2121 days) at 8.75% per annum	\$1,260.98
Subtotal (as of 10/9/18)	<u>\$3,740.98</u>
TOTAL (as of 10/9/18)	\$37,739.59

15. This aggregate of the subject assets (debts) accrues interest at the per diem rate of \$5.83, at the statutory pre-judgment rate after October 9, 2018.

WHEREFORE, it is

ORDERED:

1. That the Respondents (jointly) shall turn-over to the Petitioner the amount of \$37,739.59 (together with interest after October 9, 2018, until paid).

2. That if the said amount is not paid to the Petitioner, in full, within ten (10) days after the date of filing of this Order, a judgment against the Respondents, jointly and severally, will be entered in said amount (plus additional pre-judgment interest) upon application of the Petitioner.

3. This Order does not end this case, which shall remain on track for a bench trial on the remaining causes of action.

AND IT IS SO ORDERED.

L. Casey Manning
Fifth Judicial Circuit
Circuit Court Judge

_____, 2018
Columbia, South Carolina



Richland Common Pleas

Case Caption: Lil B Johnson vs Marian J Kirk , defendant, et al
Case Number: 2018CP4000726
Type: Order/Summary Judgment

So Ordered

s/L. Casey Manning, 2061

Electronically signed on 2018-11-01 13:32:17 page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Leonard R. Jordan Jr.,
Petitioner,

CASE NO: 2018-CP-40-00726

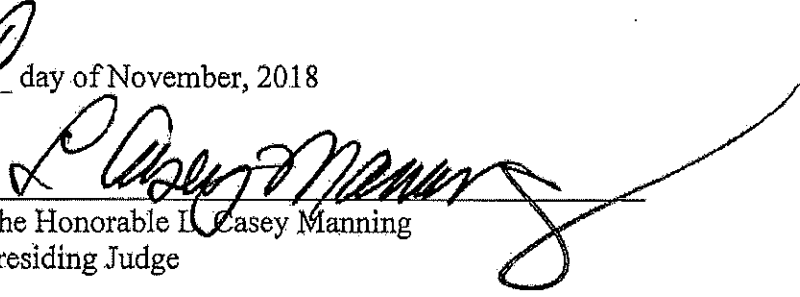
v.
Marian J. Kirk and Lucy J. Fuller,
Respondents.

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER, ALTER, AND
AMEND**

THIS MATTER came before the Court on October 9, 2018 on the Motion for Partial Summary Judgment filed by Petitioner Leonard R. Jordan Jr. Following the hearing and review of arguments and pleadings submitted by the parties, this Court granted Partial Summary Judgment by an Order dated November 2, 2018. Defendants filed a Motion to Reconsider on November 11, 2018, which was timely under Rule 59(e). After a review of the pleadings, the motion and arguments therein, and all the testimony including this Court's previous ruling, this Court denies Defendants' Motion to Reconsider without oral arguments presented.

Therefore, after reviewing Defendants' Motion and the arguments within being duly noted, Defendants' Motion to Reconsider this Court's ruling on Petitioner's Motion for Partial Summary Judgement is hereby **DENIED**.

IT IS SO ORDERED this 20 day of November, 2018


The Honorable L. Casey Manning
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A NO.: 2018-CP-40-0726

ORDER FOR JUDGMENT

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

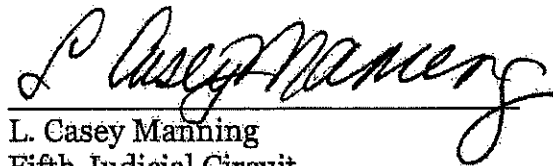
Respondents.

This matter came before the Court on October 9, 2018 upon the Plaintiffs' motion for partial summary judgment. Judgment in favor of the Plaintiff was entered on November 2, 2018. The Defendants' motion for reconsideration was timely filed and denied on November 20, 2018.

The Order as filed on November 2, 2018 permits Plaintiff to apply to the Court for an order entering judgment against the Defendants, jointly and individually 10 days after the filing date of the order.

Upon application Plaintiff's judgment shall be entered against the Defendants, jointly and individually in the amount of \$37,739.59 plus interest at \$5.83 per day from November 2, 2018 until the entry of this judgment.

AND IT IS SO ORDERED.



L. Casey Manning
Fifth Judicial Circuit
Circuit Court Judge

12-10, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2018CP4000726

Lil B Johnson

Marian J Kirk et. al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Motion to quash granted. Motion to Compel Withdrawn.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature] Judge Code 2061 Date 5-29-19

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 day of May, 2019 to attorneys of record or to parties (when appearing pro se) as follows:

SR Anderson

ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephen Cox

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

ELECTRONICALLY FILED - 2019 May 31 2:54 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000726

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2018CP4000726

VERDICT AND JUDGMENT

This matter came before the Court on August 20 and 21, 2019 for non-jury trial pursuant to Rule 39(a), SCRPC. Petitioner appeared along with his counsel, Steven R. Anderson, Esquire; and Respondents were present with their counsel, Stephen M. Cox, Esquire. Only two witnesses testified at trial – Petitioner and Respondent Kirk. The parties also introduced certain evidence and made legal arguments. Having fully considered the testimony, evidence and arguments, the Court now makes the following findings of fact and conclusions of law pursuant to Rule 52(a) of the South Carolina Rules of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner commenced this action in the Richland County Probate Court on November 22, 2017 by filing a Summons and Complaint.¹ Respondents timely answered the Complaint and removed the action to this Court. In his Complaint, Petitioner has asserted claims on behalf of the Estate of Lil B. Jordan with respect to three separate sums: (1) the sum of \$23,980.82 in Wells Fargo Bank accounts (the “Wells Fargo Claim”); (2) the sum of \$2,480 in a check from Bankers Life Company (the “Bankers Life Claim”) and (3) the sum of \$21,857.80 in a Bank of America account (the “Bank of America Claim”). Petitioner contends that all of these sums were

¹ See case number 2012-ES-40-01470

assets of the Estate of Lil B. Jordan and that Respondents converted these sums to their own use. In their respective Answers, Respondents denied Petitioner's allegations.

By Order filed on November 2, 2018, partial summary judgment was granted on behalf of Petitioner, finding that Respondents had wrongfully converted the sum of \$21,857.80 that was the subject of Petitioner's Bank of America Claim and the sum of \$2,480 that was the subject of Petitioner's Bankers Life Claim. Petitioner was awarded \$21,857.80 in actual damages on the Bank of America Claim, plus \$12,140.81 in prejudgment interest. He was also awarded \$2,480 on the Bankers Life Claim, plus \$1,260.98 in prejudgment interest.

Petitioner's Wells Fargo Claim, as well as his claim for punitive damages associated with his Bankers Life Claim and Bank of America Claim, were not the subject of Petitioner's Motion for Partial Summary Judgment and thus were not addressed by the Court at that time. Those matters are addressed herein.

FINDINGS OF FACT

1. Petitioner and Respondents are the three adult children of Lil B. Jordan ("Decedent"), a Columbia resident who died on June 5, 2012.
2. Petitioner, a member of the South Carolina Bar since 1975, was appointed by the Richland County Probate Court as the Personal Representative of Decedent's estate. Prior to such appointment, and since the 1970s, Petitioner had the authority to act as attorney-in-fact for Decedent pursuant to a durable power of attorney.
3. Near the end of 2005, Petitioner and Respondents concluded that Decedent was no longer capable of independently managing her financial affairs. A couple of her checks had "bounced," and she had gotten into the habit of subscribing to large numbers of magazines that she did not need. For a time, however, Decedent was otherwise competent to live independently

– doing her own shopping, living independently, cooking her own meals, and driving herself to the beach occasionally.

4. Also near the end of 2005, Respondent Kirk had discussions with Decedent about Decedent's need for assistance in managing her financial affairs. Decedent responded by making Respondent Kirk a joint account holder on her checking account at Wells Fargo Bank (the "1206 Account") and on an investment account that Decedent maintained at Morgan Stanley.

5. Petitioner had both actual and constructive knowledge that Respondent Kirk had been added to Decedent's 1206 Account and to the Morgan Stanley account. In fact, for several months after Respondent Kirk had become a joint account holder, Petitioner received bank statements for the 1206 Account at his home (by virtue of his being an attorney-in-fact for Ms. Jordan) which bore the names of both Decedent and Respondent Kirk as joint account holders.

6. Petitioner lodged no challenge or objection to Respondent Kirk being added to Decedent's accounts. He testified at trial that he trusted his sister to act in Decedent's best interest.

7. Later in 2006, Decedent left her home and moved into an independent living facility. Several years later, she moved to another facility that provided assisted living care. Ultimately, she became eligible for long-term care proceeds pursuant to a policy she had maintained with the Bankers Life Company.

8. Respondent Kirk ensured that all necessary paperwork was submitted to Bankers Life Company so that Decedent could receive payments under her long-term policy. Respondent Kirk also deposited the long-term care proceeds checks from Banker's Life Company into one of Decedent's joint accounts (generally, Account 1783) when they were received each month.

9. After Decedent had vacated her home, Respondents did the majority of the work required to ready the house for sale, including cleaning and moving Decedent's furniture and other possessions out of the house. In addition, Respondent Fuller showed the house to prospective buyers on several occasions and ultimately negotiated a successful sale of the property for approximately \$440,000.

10. Petitioner and Respondents disagreed strongly over how the proceeds from the sale of Decedent's house should be invested. Respondents believed that the money should be conservatively invested in Certificates of Deposit while Petitioner believed that the funds should be more aggressively invested. Ultimately, Respondents invested the portion for which they were responsible (by virtue of Respondent Kirk's status as a joint account holder on the Morgan Stanley account) in CDs, and Petitioner invested the portion for which he was responsible (as Decedent's attorney-in-fact) in an investment account at Merrill Lynch. The Merrill Lynch funds were initially invested by Petitioner in June 2007.

11. After the stock market crashed in 2008, Respondents repeatedly attempted to learn from Petitioner how much of Decedent's funds that he had invested at Merrill Lynch had been lost. These efforts were unavailing. In fact, in his testimony, Petitioner did not deny that he had hung up on his sisters when they phoned him asked such questions. At one point, Petitioner delivered a box of Merrill Lynch records to Respondent Kirk for review, but these records did not include statements from 2008. Respondents subsequently procured the missing statements directly from Merrill Lynch, which indicated that the account had lost over \$35,000 by the end of 2008. Petitioner submitted at the hearing a 2010 account summary from Merrill Lynch suggesting that the account had lost a total of \$15,000 at the time the funds were withdrawn in 2010.

12. In approximately 2009, Respondent Kirk opened a joint savings account at Wells Fargo Bank in the name of Decedent and herself (the "1783 Account"). According to the testimony, this account was opened at the suggestion of a Wells Fargo employee, because it offered a better interest rate than Decedent's checking account.

13. In 2010, Respondent Kirk transferred \$21,857.80 from a joint account that she held with Decedent at Wells Fargo Bank to an account at Bank of America that she maintained in her own name. Respondent Kirk testified at trial that she made this transfer to take advantage of a special interest rate offered by Bank of America.

14. Decedent passed away on June 5, 2012. Petitioner submitted Decedent's Will to Richland County Probate Court and, in accordance with the terms of that Will, had himself appointed as Personal Representative of Decedent's Estate.

15. In the summer of 2012, in order to prepare the Inventory and Appraisement that he was required to submit to the Probate Court, Petitioner asked Respondent Kirk how much money was in Decedent's joint accounts with Morgan Stanley and Wells Fargo. Respondent Kirk responded with the figures of \$60,460.84 for Morgan Stanley and \$23,980.82 for Wells Fargo. The Wells Fargo amount represented the sum of the amounts in Account 1206 and Account 1783 (referred to above) at the time that Petitioner made his inquiry.

16. Respondent Kirk acknowledged at trial that she did not tell Petitioner about the existence of the \$21,857.80 that she had transferred to Bank of America two years earlier. She further testified that she had forgotten about that account at the time of Decedent's death.

17. Although Petitioner conceded at trial that he could have consulted Wells Fargo directly or reviewed the Wells Fargo bank statements himself to determine the balances in Account 1206 and Account 1783 at the time of Decedent's death, he did not do so. Petitioner

also failed to open an estate account or take any other action to claim possession or control of the accounts at Wells Fargo Bank on which Decedent had been a joint account holder.

18. On January 11, 2013, Petitioner filed an Inventory and Appraisement in Probate Court that included \$23,980.92 in the Wells Fargo accounts (the sum that Respondent Kirk had provided him several months earlier). In December 2012, just a short time prior to that filing, Respondent Kirk had deposited an old Banker's Life Company check for long-term care insurance proceedings into Account 1783. Petitioner did not take steps to learn of this deposit or to update the Inventory and Appraisement to reflect it.

19. On October 7, 2013, after being notified by Probate Court that he was delinquent in closing Decedent's estate, Petitioner filed an Application for Settlement. In that Application, he represented to Probate Court that he had collected the assets of the estate and either had already distributed or proposed to distribute those assets to the heirs of the estate. In a Receipt and Release filed the same day, Petitioner represented that he had received one-third of such assets as one of Decedent's heirs.

20. At trial, Petitioner acknowledged that the representations that he made to Probate Court were false with respect to the Wells Fargo accounts. Though Petitioner included such amounts on the Inventory and Appraisement, he never collected, distributed, or received those funds.

21. Based on Petitioner's representations, Richland County Probate Court issued its Order closing Decedent's estate on October 9, 2013.

22. In May 2014, Respondents divided between themselves the \$21,857.80 that Respondent Kirk had transferred to Bank of America from Decedent's joint account in 2010 (and that had been sitting in the same Bank of America account since that date). Respondents did not

tell Petitioner about the existence of the funds in that account or about their distribution of those funds.

23. Respondent Kirk testified at trial that she and Respondent Fuller felt justified in splitting the \$21,857.80 representing the Bank of America Claim between themselves because (i) their brother had lost so much money in the market, over their objection and without disclosing the extent of such losses, and (ii) she and her sister had performed so much uncompensated work for Decedent to move her into her living facilities and to ready and sell Decedent's home, while Petitioner and his wife had compensated themselves for sitting with Decedent for a time at her living facility. Respondent Kirk acknowledged, however, that neither she nor Respondent Fuller ever filed a claim against Decedent's estate to be compensated for their efforts or to challenge Petitioner's conduct as attorney-in-fact.

24. Petitioner filed this action against Respondents on November 22, 2017 – over four years after the January 2013 Inventory and Appraisal characterizing the Wells Fargo bank accounts as estate assets and well after the Probate Court had issued its October 2013 Order closing Decedent's estate.

CONCLUSIONS OF LAW

I. The Wells Fargo Claim

Petitioner's Wells Fargo Claim, made with respect to the \$23,980.82 in Wells Fargo accounts identified on the Inventory and Appraisal that Petitioner filed on January 11, 2013, must be dismissed for three, independent reasons:

A. Joint Account Status

The sums that are the subject of the Wells Fargo Claim were contained in joint accounts on which Respondent Kirk and Decedent were joint account holders. The status of these

accounts as joint accounts was not contested by Petitioner at the hearing and was conclusively demonstrated by Respondent Kirk's testimony, the admission of account-opening documents and bank statements showing Respondent Kirk as a joint account holder.

Under former S.C. CODE ANN. §62-6-104, the statute in effect at the relevant time, "[s]ums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is a writing filed with the financial institution at the time the account is created (or subsequently as provided under § 62-6-105) which indicates a different intention." Petitioner offered no evidence of any "writing . . . which indicates a different intention." Accordingly, the \$23,980.82 in Wells Fargo account numbers 1206 and 1783 (identified on the Inventory and Appraisement that Petitioner filed with the Probate Court in January 2013) were not assets of the estate and passed automatically to Respondent Kirk upon Decedent's death.

B. Judicial Estoppel

Even if the Wells Fargo accounts had been estate assets, Petitioner is estopped from claiming them for the Estate. Petitioner knowingly misrepresented to the Probate Court that he had collected and distributed (or proposed to distribute) those accounts as Personal Representative of the Estate. Furthermore, in his personal capacity as one of Decedent's heirs, he knowingly filed with the Probate Court a Receipt and Release representing that he had received one-third of those accounts as of October 7, 2013. As he conceded at trial, however, Petitioner had done none of these things. Instead, he left the sums in question in the Wells Fargo Bank accounts. By the time he filed the Inventory and Appraisement with the Probate Court, however, the sums in those accounts had passed by operation of law to Respondent Kirk.

Under these circumstances, Petitioner's Wells Fargo Claim is barred by the doctrine of judicial estoppel, which "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 252 (1997). Petitioner falsely represented to the Probate Court that he had collected the Wells Fargo accounts and had received his share of those accounts as an heir of the estate. He did so in the face of a reminder from Probate Court that he had been delinquent in closing the estate – an apparent effort to discharge his responsibilities as Personal Representative. Relying on Petitioner's misrepresentations, the Probate Court closed Decedent's estate.

Had Petitioner been truthful to the Probate Court about the facts surrounding the collection, distribution and receipt of the sums in the Wells Fargo accounts that he had listed on the Inventory and Appraisement, any dispute concerning the status of those accounts as a potential estate asset could have been resolved at that time. Petitioner cannot take one position before the Probate Court in order to obtain a benefit as a Personal Representative (i.e., closure of Decedent's estate) and later take the opposite position for pecuniary gain.

C. Statute of Limitations

Petitioner's claims are governed by the three-year statute of limitations found in S.C. CODE ANN. §15-3-530. This statute was tolled for eight months upon Decedent's death on June 5, 2012 pursuant to S.C. CODE ANN. §62-3-109. Petitioner knew that Respondent Kirk held the Wells Fargo accounts at least as early as January 11, 2013, when he filed an Inventory and Appraisement characterizing those accounts as an estate asset. At the latest, then, Petitioner had to file this action no later than September 11, 2016 (three years and eight months after he knew that his sister was in possession of assets that he believed belonged to the estate). He did not file

this action, however, until over a year later, on November 22, 2017. Thus, this claim is barred by the statute of limitations.

II. The Bankers Life Claim

Respondents have urged this Court to revisit the November 2, 2018 Order granting partial summary judgment, which awarded Petitioner \$2,480.00 in actual damages on his Banker's Life Claim, as well as associated prejudgment interest. Respondents argue that, because that court declined to certify the ruling as a "final" judgment, it is "subject to revision" at any time prior to final judgment pursuant to Rule 54(b) of the South Carolina Rules of Civil Procedure. Nevertheless, this Court declines Respondents' request to revise that ruling² and instead chooses to incorporate it by reference into the instant Order. Therefore, Petitioner, in his capacity as Personal Representative of Decedent's Estate, is entitled to recover for the estate the sum of \$2,480 in actual damages on his Banker's Life Claim, as well as \$1,459.55 in prejudgment interest (from December 19, 2012 to September 10, 2019).

However, Petitioner's claim for punitive damages is denied. "In order to recover punitive damages, [Petitioner] must present clear and convincing evidence that the [Respondents'] conduct was willful, wanton or in reckless disregard of the [Petitioner's] rights." *Cody P. v. Bank of America, N.A.*, 395 S.C. 611, 624 (Ct. App. 2011). The particular factors relevant to a punitive damages award are: "(1) [Respondents'] degree of culpability; (2) duration of the conduct; (3) Respondents' awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the [Respondents] or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) [Respondents'] ability to pay; and finally . . . 'other factors' deemed appropriate." *Gamble v. Stevenson*, 305 S.C. 104, 112 (1991) (internal citations and quotations omitted).

² The November 2, 2018 decision was made by another Circuit Court Judge, not the undersigned.

Respondents' conduct with respect to the \$2,480 that is the subject of the Bankers Life Claim does not justify an award of punitive damages. Those funds were initially held in the form of a check issued by the Bankers Life Company for long-term care insurance proceeds for Decedent. Respondent Kirk deposited those funds in Wells Fargo Account No. 1783 in December 2012, just as she had regularly done with respect to other such checks. There is no evidence that she attempted to conceal this deposit from Petitioner or to prevent him from claiming the funds as an asset of the estate. To the contrary, as Petitioner conceded at trial, he could easily have determined the amounts in the Wells Fargo accounts by consulting the bank directly or by reviewing the account statements. However, he neither did that nor did he attempt to exercise any control over the \$2,480 Banker's Life deposit prior to applying to the Probate Court for the closure of the estate. Any delay in the estate's ability to take possession of the \$2,480, then, has been due to Petitioner's own conduct, not to the conduct of Respondent Kirk. Therefore, punitive damages are not here.

III. The Bank of America Claim

The Court also adopts and incorporates the November 2, 2018 ruling with respect to the \$21,857.80 that is the subject of Petitioner's Bank of America Claim. Petitioner, in his capacity as Personal Representative of Decedent's Estate, is entitled to recover for the estate the sum of \$21,857.80 in actual damages on that claim, together with prejudgment interest in the amount of \$11,978.39 (from June 6, 2012 to September 10, 2019).

Petitioner's claim for punitive damages is, again, denied. It is clear that Respondents failed to tell Petitioner of the existence of the Bank of America account and that they neglected to inform Petitioner that they were dividing those funds between themselves in May 2014. However, the Court has already found those actions to have been a conversion, and Petitioner

will receive his one-third share of those funds when they are returned to the Estate (with prejudgment interest).³

There is no evidence that Respondents were attempting to act in “conscious disregard” of Petitioner’s rights when the Bank of America account was created in 2010. Respondent Kirk testified that she created that account solely to obtain a better interest rate for Decedent’s assets (an outcome urged by Petitioner himself). Her testimony was buttressed by the fact that the funds sat in the Bank of America account for four years before being divided between Respondents. In fact, as far as her purely personal interests were concerned, Respondent Kirk would have been better off leaving the money in Decedent’s joint account rather than moving it to a Bank of America account in her own name, because funds in a joint account would have passed to her alone at Decedent’s death.

Respondents’ principal wrongdoing with respect to the Bank of America funds took place in May 2014, when Respondents divided the Bank of America funds between themselves without telling Petitioner. At that time, Respondents were convinced that they were entitled to claim Petitioner’s share of those funds as their own because of what they believed to be his mismanagement of Decedent’s investment in a Merrill Lynch account, his persistent refusal to account for the substantial loss of that investment, and the disproportionate, uncompensated efforts that they undertook for Decedent in moving her to assisted living facilities and in readying her house for sale.

Respondents were clearly wrong in attempting to exercise “self-help” with respect to the Bank of America funds. If they believed that Petitioner should have been held accountable for loss of the Merrill Lynch funds, or that they should have received compensation for their efforts

³ As Petitioner has acknowledged, any amounts recovered by the estate by virtue of this Order must be equally divided among Petitioner and Respondents, as the sole heirs of the estate.

on Decedent's behalf, they should have made a claim against Decedent's estate. Nevertheless, though their failure to do so may make them liable for conversion, this Court finds it inequitable to penalize them for their actions. This is especially so when one considers Petitioner's own poor conduct in handling Decedent's estate, in making false representations to the Probate Court, and in failing to be transparent to Respondents about the losses in the Merrill Lynch account. Moreover, Respondents' conduct with respect to the Bank of America account was an isolated incident; otherwise, their handling of Decedent's funds and affairs prior to her death was above reproach.

An award of punitive damages here would not have any beneficial deterrent effect particularly because, with this Order, the affairs of the Decedent's estate will be completely resolved; and there are no other estate assets over which Respondents exercise custody or control. Finally, Petitioner offered no evidence at the hearing concerning Respondents' ability to pay an award of punitive damages – an important factor in the Court's consideration of such an award. For the foregoing reasons, Petitioner's request for punitive damages with respect to the Bank of America Claim is denied.

IT IS, THEREFORE, ORDERED that Petitioner Leonard R. Jordan, Jr., on behalf of the Estate of Lil B. Jordan, is awarded (1) the sum of \$2,480 in actual damages plus the sum of \$1,459.55 in prejudgment interest on his Banker's Life Claim; and (2) the sum of \$21,857.80 in actual damages and the sum of \$11,978.39 in prejudgment interest on his Bank of America Claim.

IT IS FURTHER ORDERED that, because it would be both burdensome and inefficient for Respondents to be required to pay into the estate their own one-third shares of this award, Respondents Marian J. Kirk and Lucy J. Fuller may fully satisfy and discharge their obligations

under this Order by paying one-third of this award (or \$12,591.91) to the estate, together with an instrument renouncing any claims that they may have to that amount. In that event, Respondents will remain liable for any reasonable expenses incurred by the estate in collecting this amount, as determined by the Probate Court.

AND IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Lil B Johnson vs Marian J Kirk , defendant, et al

Case Number: 2018CP4000726

Type: Order/Other

So Ordered

Jocelyn Newman

Electronically signed on 2019-11-21 13:49:32 page 15 of 15

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4000726

Lil B Johnson
PLAINTIFF(S)

Lucy J Fuller et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Petitioner's Motion to Tax Respondents with Costs (filed on 12/2/19) is GRANTED without opposition.

ORDER INFORMATION

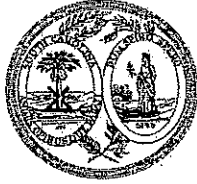
This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/21/2020 .

Lil B Jordan for Leonard R Jordan, Jr
Leonard R Jordan, Jr for Lil B Jordan

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Richland Common Pleas

Case Caption: Lil B Johnson vs Marian J Kirk , defendant, et al
Case Number: 2018CP4000726
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2020-05-21 17:02:10 page 3 of 3



Richland Common Pleas

Case Caption: Lil B Johnson vs Marian J Kirk , defendant, et al
Case Number: 2018CP4000726
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2020-08-20 14:47:46 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00726

**NOTICE OF MOTION AND MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

TO: STEPHEN M. COX, ESQUIRE, ATTORNEY FOR RESPONDENTS:

PLEASE TAKE NOTICE that the Petitioner, Leonard R. Jordan, Jr. as Personal Representative of the Estate of Lil B. Jordan, by and through his undersigned attorney, will move before the Presiding Judge for Richland County, in the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day after the service hereof, at 10:00 A.M., or at such other time and place as is convenient to the Court and counsel, for an Order granting summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting to the Petitioner certain relief requested in his Complaint.

The grounds for this Motion is that there is no genuine issue of material fact in dispute, with regard to the following matters:

A. On or about August 10, 2010, prior to the death of Lil B. Jordan, on June 5, 2012, Respondent Kirk, on her own initiative and without authority, closed a bank account maintained in the joint names of Lil B. Jordan and Respondent Kirk, which contained monies owned exclusively by Mrs. Jordan, and Respondent Kirk moved the account balance, in the amount of

\$21,857.80, to an account at Bank of America solely in the name of Respondent Kirk.¹

These monies were not held in a bank account maintained in the joint names of Lil B. Jordan (decedent) and either or both of the Respondents at the time of the death of the decedent, and the monies therefore did not pass to the survivor(s) pursuant to S.C. Code Ann. §62-6-104(a), which is now known as S.C. Code Ann. §62-6-202(a).

In accordance with S.C. Code Ann. §62-6-103 (now §62-6-201), the said account belonged to the parties to the account "in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent." The Respondent Kirk has confirmed that all of the monies in the joint account(s) belonged exclusively to Lil B. Jordan.²

B. Lil B. Jordan owned a long-term care insurance policy with Bankers Life Company, which paid her insurance proceeds in her later years. Respondent Kirk applied for and received these payments from Bankers Life Company, which were routinely issued by Bankers Life Company monthly in arrears. The last Bankers Life Company check applied for by Respondent Kirk was for the month of May 2012, and a check in the amount of \$2,480.00 was issued by Bankers Life Company to Lil B. Jordan on June 15, 2012 (ten days after Mrs. Jordan's death). This check was not deposited by Respondent Kirk until December 18, 2012.³

These monies were not collected until six (6) months after the decedent's death, and they therefore were not maintained in any account at the time of the death of the decedent and cannot be considered to have passed to a survivor under §62-6-104(a), now §62-6-202(a).

The monies described above were ultimately distributed to the Respondents, who have converted Estate monies to their own use. The Respondents are indebted to the Estate of Lil B.

1 Admitted in Answer of Respondent Marian J. Kirk.

2 See Respondent Marian J. Kirk's Answer to Petitioner's First Set of Interrogatories, Paragraph 8.

3 Admitted in Respondent Marian J. Kirk's Responses to Petitioner's Requests for Admission, Paragraph 9.

Jordan, jointly and severally, for the said amounts converted (\$21,857.80 and \$2,480.00). In addition, the Respondents, jointly and severally, owe pre-judgment interest, at the rate of 8.75% per annum, on said amounts. On the initial amount (A. \$21,857.80), the interest runs from June 6, 2012, and totals \$11,700.48, as of July 18, 2018. On the second amount (B. \$2,480.00), the interest runs from December 19, 2012, and totals \$1,211.63 as of July 18, 2018. (In addition, the Petitioner is entitled to punitive damages under these Causes of Action. This issue is reserved until trial.)

As limited by these undisputed facts, the Petitioner is entitled to a Summary Judgment against the Respondents, jointly and severally, in the amount of \$37,249.91 plus additional pre-judgment interest after July 18, 2018.

The Petitioner reserves all Causes of Action with regard to the Wells Fargo Accounts (Paragraphs 7– 13 of Complaint).

This Motion is made pursuant to the South Carolina Rules of Civil Procedure, relevant case law, discovery responses, affidavits and a memorandum to be filed by the Petitioner.

ATTORNEY FOR THE PLAINTIFF

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Columbia, South Carolina
July 23, 2018

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
 CASE NO: 2018-CP-40-726

Leonard R. Jordan, Jr.,

Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

**DEFENDANTS' RESPONSE TO
 MOTION FOR SUMMARY JUDGMENT**

Petitioner's motion for summary judgment in this case is based on two transactions allegedly made by Respondent Marian J. Kirk (Petitioner's sister). First, Petitioner contends that, on or about **August 10, 2010**, Ms. Kirk transferred \$21,857.80 from a Wells Fargo account that she held jointly with the parties' mother (Lil B. Jordan) to a Bank of America account held in Ms. Kirk's name alone. *See Motion for Summary Judgment*, at p. 2. Second, Plaintiff contends that, **on or about December 18, 2012**, Ms. Kirk deposited a Banker's Life check made payable to Ms Jordan into an unspecified account. *Id.* at 3.

I. The applicable statute of limitations bars these claims.

As a threshold matter, both of these claims are barred by the three-year statute of limitations prescribed by S.C. Code Ann. § 15-3-530. Applying that statute, the first claim would have been time-barred on August 10, 2013. The applicable limitations period was extended, however, following Ms. Jordan's death in June 2012, by the provisions of S.C. Code Ann. § 62-3-109. That statute provides that a cause of action held by a decedent, if not time-barred as of decedent's death, is extended for eight months past the end of applicable limitations period. Thus, Petitioner's first

claim was time-barred as of April 10, 2014. Petitioner did not file this lawsuit until November 22, 2017—over three years after the applicable limitations period had run.¹

Because the second claim did not accrue, if at all, until after Ms. Jordan's death, the limitations period governing that claim was not tolled for eight months pursuant to S.C. Code Ann. § 62-3-109. That claim, therefore, became time-barred on December 18, 2015—well before Plaintiff filed either of his two lawsuits for recovery of money allegedly owed.

Petitioner may be expected to argue that his claims are not time-barred because he did not discover them until more recently—at a time within the applicable three-year limitations period. As our Supreme Court has emphasized, the “discovery rule” provides that “[t]he statute [of limitations] runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.” *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). Thus, if there is any factual question as to whether Petitioner exercised “reasonable diligence” in determining the existence of a cause of action, his motion for summary judgment must be denied.

Here, there are many such factual questions that defeat summary judgment. As Petitioner admitted in his deposition in the Prior Lawsuit, he has been a licensed member of the South Carolina Bar since 1975 and held his mother's durable power of attorney since 1976. *See Jordan Dep.*, pp. 3, 6-7.² Petitioner has conceded that, as his mother's attorney-in-fact, he could have gotten access to her bank statements at any time. *Id.* at 31. Moreover, Petitioner became his

¹ To be sure, Petitioner filed a prior action against Ms. Kirk in this Court on September 16, 2016—bearing Case No. 2016-CP-40-5589 (the “Prior Lawsuit”)—seeking the same relief requested in this action. Even that action was commenced too late, however—over two years after the applicable limitations period had run. And even if the statute had not run at the time the prior action was filed, that action was invalid because it was commenced in a Circuit Court that lacked subject matter jurisdiction, not in the Probate Court and later removed to this Court, as S.C. Code Ann. § 62-1-302 requires.

² Cited excerpts to this deposition are collected as Exhibit A to this Response.

mother's personal representative upon her death in June 2012, and he could have gotten access to her bank statements in that capacity as well. *Id.* at p. 32. Petitioner further concedes that it is a personal representative's duty "to conduct such due diligence as is necessary to discover all assets belonging to the estate." *Id.* at p. 60. Yet despite acknowledging this duty, Petitioner admits that he did not conduct an examination of the Wells Fargo statements to which he had access in order to discover the facts that ultimately led him to bring this lawsuit. *Id.* at p. 61. In light of these serial concessions by the Petitioner, there is at least a factual question as to whether Petitioner acted with "reasonable diligence" in discovering the assets of his mother's estate and bringing the claims that are the subject of his summary judgment motion.

II. There exist genuine issues of material fact as to whether Respondents converted or misappropriated the subject funds.

Petitioner's contention is that the Respondents wrongfully divided between themselves the sum of \$21,857.80 that Ms. Kirk moved from a joint account to a Bank of America account in August 2010. It is important to note, however, that Petitioner and Respondents were the sole beneficiaries (in equal shares) of their mother's estate. At most, then, Petitioner (as beneficiary) would have been entitled only to a third of the amount in question, or a little more than \$7,000.

As the Affidavit of Marian J. Kirk (attached as Exhibit B to this Response) indicates, however, there exist genuine issues of material fact as to whether Respondents were justified in splitting between themselves the sum that is the subject of Petitioner's Motion. Ms. Kirk acknowledges that she transferred, in August 2010, the subject sum from a joint account held by her and her mother to an account held by herself alone. *Kirk Aff.*, at ¶ 2. She did so because she wanted to secure the best possible interest rate on her mother's money, and Bank of America was offering a slightly higher rate than Wells Fargo. *Id.* Ms. Kirk held the subject sum in reserve at Bank of America for four years—until May 2014—when she split the sum evenly with her sister

and co-Respondent. *Kirk Aff.*, at ¶ 3. Respondents did not share the sum with Petitioner for at least two reasons. First, they believed that Petitioner had lost a substantial amount of their mother's assets by playing the market. *Id.* Second, Respondents were entitled to compensation for substantial services they provided to their mother prior to her death (just as Petitioner and his wife had paid themselves for sitting with the parties' mother at her nursing home). *Id.*

As this summary indicates, there exist genuine issues of material fact as to whether Respondents converted their mother's assets at all, or whether facts exist supporting their defense of set-off. Moreover, there exist genuine issues of material fact as to *when* the assets may have been converted. (Petitioner contends that the funds were converted by Ms. Kirk when she made the transfer in August 2010, yet the evidence shows that the sum was merely held in reserve until May 2014.) For these independent reasons, Petitioner's motion for summary judgment must be denied.

This 5th day of October, 2018.

Stephen M. Cox
Stephen M. Cox
S.C. Bar No. 12263
Attorneys for Defendant Marian J. Kirk

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO: 2018-CP-40-726

Leonard R. Jordan, Jr.,
Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller,
Respondents.

**DEFENDANTS' MOTION TO
RECONSIDER, ALTER AND AMEND**

The Respondents above-named, by and through their undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, submit this Motion asking that this Court reconsider, alter and amend its Order Granting Partial Summary Judgment to the Petitioner. Said Order was electronically filed by the Court on November 2, 2012 at 4:49 p.m.

Respondents responded to Petitioner's Motion for Partial Summary Judgment by arguing, in part, that the statute of limitations barred Petitioner's claims. Petitioner responded to that argument by invoking the "discovery rule," which provides that "[t]he statute [of limitations] runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996).

In its Order granting Petitioner's Motion for Partial Summary Judgment, the Court appears to have focused exclusively on when the Petitioner *actually knew* of the alleged misconduct of the Respondents. As our Supreme Court made clear in *Dean, supra*, however, the discovery rule focuses not only on a plaintiff's *actual* knowledge, but on a plaintiff's *constructive* knowledge—that is, when the plaintiff should have, in the exercise of reasonable diligence, first known of his cause of action. *See id.*

Here, Respondents presented testimonial evidence—including sworn testimony of the Petitioner himself, suggesting that the Petitioner could have discovered his claims had he exercised reasonable diligence in his capacity as his mother’s attorney-in-fact and personal representative. To be sure, the Petitioner presented counter-affidavits suggesting that his actions were reasonable. The Supreme Court of South Carolina has held, however, that “[a]pplication of the discovery rule . . . as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence.” *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338 (2000).

Because the parties have presented conflicting evidence and arguments as to when the Petitioner first had *constructive* knowledge of his claims and whether he exercise reasonable diligence to pursue those claims, this Court should not have concluded, as a matter of law, that Petitioner acted reasonably. There is an issue of material fact as to when and whether the discovery rule applied to extend the applicable statute of limitations. Accordingly, Respondents respectfully request that this Court reconsider its ruling and deny Petitioner’s Motion for Partial Summary Judgment.

This 11th day of November, 2018.

/s/ Stephen M. Cox

Stephen M. Cox
S.C. Bar No. 12263
Attorneys for Defendant Marian J. Kirk

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO: 2018-CP-40-726

Leonard R. Jordan, Jr.,
Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller,
Respondents.

**RESPONDENTS' MOTION
TO QUASH WRIT OF EXECUTION**

The Respondents above-named, by and through their undersigned counsel, submit this Motion asking that this Court quash the Writ of Execution issued by the Richland County Clerk of Court in this matter on January 4, 2019. A copy of the Writ is attached as Exhibit A to this Motion.

As grounds for this Motion, Respondents would show:

1. In South Carolina, executions may issue only upon "final" judgments. S.C. Code Ann. § 15-39-30. This statutory command is consistent with the established rule in virtually every American jurisdiction. *See* 30 Am.Jur.2d *Executions*, at § 57 ("A writ of execution is invalid if based upon a judgment that was not final when the writ was issued[.]").

2. "A final judgment," under South Carolina law, "is a term of art referring to the disposition of all of the issues in the case." *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 5 n. 3 (1990). Such a judgment "is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249 (Ct. App. 2017). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Ex parte Wilson*, 367 S.C. 7, 11 (2005).

3. These principles of common law are echoed in S.C. R. Civ. P. 54(b), which provides that:

[A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

4. The Writ of Execution attached as Exhibit A was issued by the Richland County Clerk of Court on January 4, 2019. The basis for the Writ was an “Order for Judgment” issued by the Honorable L. Casey Manning; entered on December 10, 2018; and attached as Exhibit B to this Motion.

5. The Judgment issued by Judge Manning on December 10 was based on a *partial* summary judgment order that Judge Manning had issued on November 2, 2018 (attached to this Motion as Exhibit C). *See* Order, at p. 1. Contrary to the box checked on the Form 4 attached to the Judgment (see Exhibit B), this partial summary judgment order did not end the case. Indeed, the remaining claims in this action are scheduled to be tried during the term of court scheduled for February 18, 2019. *See Order for Continuance* attached as Exhibit D to this Motion.

6. Because Judge Manning’s Judgment of December 10, 2018 did not dispose of all of the claims in this case, it is not a “final judgment,” and a Writ of Execution may not issue upon it. Accordingly, the Writ of Execution issued by the Clerk of Court on January 4, 2019 should be quashed.

7. To be sure, S.C. R. Civ. P. 54(b) does provide a mechanism by which a Court may direct entry of a “final judgment” as to fewer than all claims in an action. Such a certification has two essential requirements, however: (i) the court must make an “express determination” that there is no cause for delay and (ii) the court must make an “express

direction” for entry of judgment. S.C. R. Civ. P. 54(b). *See Link, supra*, 302 S.C. 5 n. 3 (“Rule 54(b) certification purports to alter the definition of ‘final judgment’ by allowing a final judgment to be entered on certain claims before disposition of the entire case.”).

8. The South Carolina Court of Appeals has explained that a trial court choosing to certify a partial judgment as final must do so in a “definite, unimistakeable manner.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 466 (2002). In *Tommy L. Griffin*, the Court of Appeals concluded that the trial court had abused its discretion by attempting to certify a partial summary judgment, noting that “the circuit court did not cite Rule 54(b) and failed to make any findings in support of certification,” including that there was no just cause for delay. *Id.* at 469. Accordingly, the Court of Appeals concluded, the party against whom partial summary judgment had been entered was free to wait until disposition of the entire case in order to appeal. *Id.*

9. Here, it is not clear that Judge Manning even intended to certify his partial summary judgment order as “final” pursuant to Rule 54(b). In any event, like the partial summary judgment order in *Tommy L. Griffin*, Judge Manning’s partial summary judgment order (attached as Exhibit C) and ensuing Order for Judgment (Exhibit B) did not cite Rule 54(b) and did not make any findings in support of Rule 54(b) certification. In particular, the order and judgment did not make an “express determination” of no just cause for delay, as Rule 54(b) requires. Accordingly, the Judgment cannot qualify as a “final” judgment under the Rule, and a Writ of Execution cannot issue upon it.

For the foregoing reasons, Respondents respectfully request that the Writ of Execution issued by the Richland County Clerk of Court on January 4, 2019 and attached as Exhibit A to this Motion be quashed.

Undersigned counsel hereby certifies that he has contacted opposing counsel in an effort to secure his consent to the relief requested in this Motion. That effort was unavailing.

This 17th day of January, 2019.

/s/ Stephen M. Cox

Stephen M. Cox

S.C. Bar No. 12263

Attorneys for Defendant Marian J. Kirk

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00726

**PETITIONER'S MOTION TO
RECONSIDER, ALTER OR AMEND
THE VERDICT AND JUDGMENT**

Petitioner, Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan, by and through his undersigned counsel, respectfully moves, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for the Court to reconsider, alter or amend the Verdict and Judgment ("Newman's Order") filed on November 21, 2019. Petitioner contends that the Honorable Jocelyn Newman, Circuit Court Judge, erred in numerous respects, primarily including altering the Order Granting Petitioner's Motion, for Partial Summary Judgment issued by the Honorable L. Casey Manning, Circuit Court Judge and filed on November 2, 2018 ("Manning's Order"). Although ruling in court, and in Newman's Order, that she "declines Respondents' request to revise the [November 2, 2018 Order] and instead chooses to incorporate it by reference into the instant Order," Judge Newman did, in fact, substantially alter and revise Manning's Order.

Newman's Order erred in the following particulars:

1. Failing to follow the terms of Manning's Order, even after choosing "to incorporate it by reference into the instant Order," and after finding and concluding that, Petitioner, in his capacity as Personal Representative of Decedent's Estate, is entitled to recover for the estate the

sum of \$2,480.00 in actual damages on his Bankers Life Claim . . . (and) the sum of \$21,857.80 in actual damages” on the Bank of America Claim (together with pre-judgment interest). (emphasis added)

2. Altering Manning’s Order, which provides: “That the Respondents (jointly) shall turn-over to the Petitioner the amount of \$37,739.59 (together with interest after October 9, 2018, until paid.)” (emphasis added)

3. By concluding that “any amounts recovered by the estate by virtue of this Order must be equally divided among Petitioner and Respondents, as the sole heirs of the estate,” and then diverting (or forgiving) two-thirds of such “amounts” so they would not be “recovered by the estate,” Newman’s Order fails to comply with its own conclusions. (emphasis added)

4. By ordering that, “it would be both burdensome and inefficient for Respondents to be required to pay into the estate their own one-third shares of this award,” without any specific finding in that regard and without citing any authority for revising Manning’s Order.

5. Altering Manning’s Order by reducing the judgment debt by two-thirds, with no citation of authority, thereby re-writing Manning’s Order to effectively award “negative” punitive damages and, potentially, to reduce the attorney’s fee earned by Petitioner’s counsel, who agreed with Petitioner to handle this case on a one-third contingency-fee basis. Petitioner was required to retain counsel to collect the monies that were the property of the Estate and Petitioner’s attorney’s fees and costs (authorized by Decedent’s Will) should be deducted from the amount recovered before the share to which each heir is entitled is determined.

6. Revising Manning’s Order without any formal, affirmative claim (counterclaim) whereby Respondents requested this relief (e.g. setoff).

7. Concluding that the gross judgment debt was \$37,775.74 when the judgment debt

awarded in Manning's Order (\$37,739.59) would include, in addition, pre-judgment interest from and after October 9, 2018, at the per diem amount of \$5.83 until the entry of the final judgment on December 10, 2018.

8. Failing to include interest at the judgment rate(s) commencing the day following the date of filing of the final judgment, which date would be December 10, 2018 (the filing date of Judge Manning's Order for Judgment). Interest at the judgment rate will accrue thereafter on the judgment debt at the rate of 8.50% (for the period January 1, 2018, through January 14, 2019) and at the rate of 9.50% (for the period January 15, 2019, through January 14, 2020), compounded annually. The judgment rate is subject to change annually on January 15.

9. Failing to acknowledge that the judgment amount would also include the suit costs. Petitioner has filed a Motion for Costs supported by an Affidavit, pursuant to Rule 54(d), SCRCP.

10. Failing to conclude that Respondents should not be entitled to any portion of the interest that accrued on the original debts (\$21,857.80 + \$2,480.00). Respondent Kirk did not divulge to Petitioner until 2017 that she had taken the money in 2010 and then split it with Respondent Fuller in 2014. To give Respondents any portion of the accrued pre- or post-judgment interest rewards them for this misconduct.

11. Failing to consider and conclude that: (a) leaving to the Probate Court the issue of Respondent's liability for reasonable expenses incurred by the estate in collecting Respondents' debt to the estate will, or likely will, result in additional litigation, as the Respondents have, for years, demonstrated an unwillingness to pay any debt owed by them to the estate, even when sued and when ordered by the court to do so; and (b) a purpose of collecting the entire judgment debt (awarded in Manning's Order) is for Petitioner to have a sufficient money available to pay estate expenses, thereby negating the need for additional litigation.

12. Failing to distinguish between the two Wells Fargo Accounts: X1206 and X1783, only one of which (X1206) was made known to Petitioner by Respondent Kirk. In December 2005 (by which time, Decedent was considered by all of the parties to be incompetent to handle her financial affairs), Respondent Kirk added her name to Wachovia/Wells Fargo Account X1206, which thereafter designated Decedent and Ms. Kirk as joint owners. In 2009 (over 3 years after Decedent was deemed incompetent), Ms. Kirk opened another bank account: Wells Fargo Account No. X1783, which account also designated Decedent and Ms. Kirk as joint owners. Due to Decedent's incompetency, these actions were improper and resulted in Ms. Kirk being unjustly enriched. No notice of this account was given by Ms. Kirk to Petitioner.

13. Failing to conclude that Respondent Kirk did not inform Petitioner of her claim of right of survivorship until 2016 (over three years after the filing by Petitioner of the Inventory and Appraisal).

14. Failing to conclude that, by quoting to Petitioner (upon his inquiry about estate assets maintained by her) the amount of \$23,980.82 (which equates to the aggregate balances of the Wells Fargo Accounts X1206 and X1783), Respondent Kirk thereby effectively acknowledged to Petitioner that said amount was an asset of Decedent's estate, which Petitioner reported accordingly to the Probate Court in January 2013.

15. Failing to consider the payment by Respondent Kirk of Decedent's long-term care expenses from another source rather than using insurance proceeds, which were ear-marked for that purpose. After January 2012 through Decedent's death in June 2012, no portion of the Bankers Life Long Term Care insurance proceeds was used, even indirectly, for long-term care expenses incurred by Decedent. Decedent's long-term care expenses were paid from another source of money (stock brokerage account with Morgan Stanley), upon which no claim of joint account/right

of survivorship existed. Ms. Kirk exclusively determined into which bank accounts the long-term care insurance checks were deposited and from what source the long-term care expenses were paid, notwithstanding that she had no formal authority to make such determinations. The result of this payment strategy utilized by Ms. Kirk was to allow certain bank accounts to build-up balances, as no bills (debts) whatsoever were paid by these accounts during the stated timeframe, which account balances she intended to claim under right of survivorship.

16. Failing to mention Defendants' Motion to Reconsider, Alter and Amend filed on November 11, 2018, and Judge Manning's Order filed on November 20, 2018, which summarily denied the said Motion. The only issue raised by Respondents to Manning's Order had to do with the defense of statute of limitations with regard to the limited claims addressed by Petitioner's Motion for Summary Judgment. Importantly, even with knowledge of the adverse ruling (Manning's Order), no suggestion of a defense of set-off was raised by Respondents.

17. Concluding, somehow, that a lack of due diligence by Petitioner in collecting the \$2,480.00 (Bankers Life insurance proceeds) is conduct which is more attributable to delaying the estate's ability to take possession of such asset than Respondent Kirk's conversion (theft) of this asset.

18. Concluding that, "Respondents' conduct with respect to the Bank of America account was an isolated incident," which conduct was concluded in 2014, when Respondents had already claimed the same excuse ("self help") to justify their conversion of the Wells Fargo monies in 2013.

19. In addition, as Newman's Order addresses only matters of fact favorable to Respondents, while ignoring altogether matters of fact favorable to Petitioner, it should be modified to address the following important facts:

- a. Respondents admitted that all of the monies in each of the said bank accounts belonged exclusively to Decedent (at least until her death).
- b. On May 23, 2014, the balance in the said Bank of America account was disbursed by Respondent Kirk in equal shares to Respondent Fuller and herself. Ms. Fuller had no possible claim to right of survivorship – just a claim of entitlement for services performed in 2006 – six years before Decedent’s death. This disbursement was made without the knowledge of Petitioner. The timing of this disbursement was two weeks prior to Respondent Kirk’s closing on the purchase of her current residence, which was held on June 10, 2014.
- c. When the parties met in September 2015, to discuss a final disbursement of roughly \$25,000.00 purportedly held by Respondent Kirk, Respondents did not disclose to Petitioner that said monies were no longer held but had been disbursed to Respondents in 2013.
- d. Mr. Jordan (in a prior suit filed by him against Ms. Kirk in 2016) discovered Wells Fargo Account No. X8040, and he inquired of Ms. Kirk for many months about what happened to the account balance when that account was closed. After initially denying any knowledge of this matter, Respondent Kirk, on July 27, 2017, finally confessed to taking the money in 2010 and sharing the money with Respondent Fuller in 2014.
- e. Although including in the findings of fact that Petitioner lost \$15,000.00 (over several years, as a consequence of the 2008 stock market crash) investing Decedent’s money through Merrill Lynch, failing to include any finding that Respondent Kirk admitted to losing over \$33,000.00 (in a single year – before the

stock market crash in 2008) investing Decedent's money through Morgan Stanley, which losses greatly eclipsed Petitioner's investment losses.

- f. Petitioner's efforts in negotiating, and participating in the closings of, the sales of Decedent's house and condominium and in probating Decedent's estate (for which no compensation has been requested or received).
- g. While finding that Petitioner did not take steps to learn of the deposit by Respondent Kirk of the Bankers Life Company check in December 2012, without suggesting how Petitioner could have learned of a check sent directly to Ms. Kirk and held by her for six months before depositing same into some random account (unknown to Petitioner). Petitioner inquired of Ms. Kirk in late-2012, and Ms. Kirk declined to disclose this asset.
- h. While Petitioner acknowledged that the representations made by him to the Probate Court were not accurate, such representations were believed by Petitioner to be true, based upon the information provided by Respondent Kirk upon his specific inquiry. At the time (or even on January 11, 2013, or after), he was only aware of one Wells Fargo Account (X1206). Any discussion in Newman's Order about Wells Fargo "accounts" disclosed by Petitioner to the Probate Court in the Inventory and Appraisement, which implies that Petitioner was aware of multiple Wells Fargo accounts, is contrary to the facts known to Petitioner. Importantly, the amount cited as "Wells Fargo" in the Inventory and Appraisement was based upon Ms. Kirk's quote, which she voluntarily disclosed without raising any claim to a right of survivorship.

Respectfully submitted,

s/S.R. Anderson

S.R. ANDERSON

S.C. Bar No. 391

P.O. Box 12188

Columbia, SC 29211

(803) 252-2828

sraatlaw@bellsouth.net

December 2, 2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00726

**NOTICE OF MOTION AND MOTION
OF PETITIONER TO TAX
RESPONDENTS WITH COURT COSTS**

**TO: HON. JOCELYN NEWMAN, PRESIDING JUDGE, AND STEPHEN M. COX,
ESQUIRE, ATTORNEY FOR RESPONDENTS:**

Petitioner, by and through his undersigned attorney, will move before the Honorable Jocelyn Newman, Presiding Judge, pursuant to Rule 54 of the South Carolina Rules of Civil Procedure, for an Order of the Court taxing Respondents with the court costs incurred in this case by Petitioner, who is the prevailing party.

This Motion is supported by the attached Affidavit of Costs.

Respectfully submitted,

s/S.R. Anderson
S.R. ANDERSON
S.C. Bar No. 391
P.O. Box 12188
Columbia, SC 29211
(803) 252-2828
sraatlaw@bellsouth.net

December 2, 2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-40-00726

AFFIDAVIT OF COSTS

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,


vs.

Marian J. Kirk and Lucy J. Fuller,

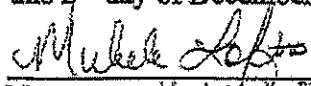
Respondents.

PERSONALLY appeared before me S.R. Anderson, who, first being duly sworn, deposes and says: that he is the attorney for the Petitioner above-named; and that he certifies that the list below contains a correct statement of costs necessarily incurred in this case through the Motion filings on December 2, 2019.

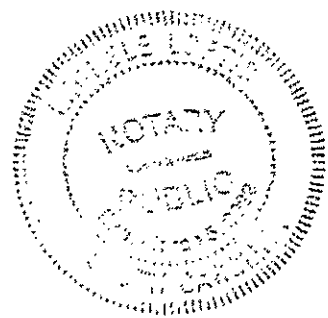
11/22/2017	File Suit - Probate Court	\$150.00
11/29/2017	Process Service Fees	\$ 30.00
7/24/2018	Motion Fee - Motion for Partial Summary Judgment	\$ 31.74
8/15/2018	Motion to Compel Discovery Responses	\$ 31.74
8/15/2018	Motion to Determine Sufficiency of Discovery Responses	\$ 31.74
10/17/2018	Order Granting Petitioners Motion for Partial Summary Judgment	\$ 31.74
1/16/2019	Motion to Compel Defendants' Responses to Plaintiff's Discovery Requests	\$ 31.74
12/2/2019	Motion for Costs	\$ 31.74
12/2/2019	Motion to Reconsider, Alter or Amend	\$ 31.74
TOTAL		\$402.18


S.R. Anderson

SWORN to and subscribed before me
this 2nd day of December, 2019

 (L.S.)

Name: Michael Lott
Notary Public for South Carolina
My Commission Expires: March 5, 2022



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO: 2018-CP-40-726

Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan,

Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

RESPONDENTS' RESPONSE TO PETITIONER'S MOTION TO RECONSIDER

Petitioner's Motion To Reconsider wrongly contends that this Court "altered" Judge Manning's partial summary judgment ruling, makes a number of arguments that Petitioner never made at the trial of this action (and which, moreover, are legally and factually unsound), and asks this Court to rewrite its Order to include a host of disputed facts favorable to Petitioner's position. The Motion should be denied.

A. This Court's Order and Final Judgment is faithful to Judge Manning's partial summary judgment ruling.

Contrary to Petitioner's claims, nothing about this Court's Order and Judgment violates the spirit or substance of Judge Manning's partial summary judgment ruling of November 2, 2018. In that ruling, Judge Manning concluded that Respondents had converted the \$21,857.80 that was the subject of Petitioner's "Bank of America" claim and the \$2,480.00 that was the subject of Petitioner's "Banker's Life" claim. Judge Manning specifically reserved for this Court, however, the issue of punitive damages.

As Judge Manning concluded when he quashed Petitioner's Writ of Execution, his partial summary judgment ruling was not a "final judgment" because it reserved certain of Petitioner's claims (e.g., the "Wells Fargo" claim and punitive damages on all claims) for disposition by this

Court. *See* S.C.R. Civ. P. 54. Accordingly, pursuant to S.C.R. Civ. P. 54(b), the partial summary judgment ruling was “subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of the parties.” This Court exercised its discretion and chose not to revisit the substantive foundation of Judge Manning’s decision. What this Court did determine, however, was that Respondents could fully discharge their obligations to the Estate by (i) turning over to Petitioner the one-third portions of the Bank of America claim and Bankers Life claim that would not ultimately inure to Respondents’ benefit and (ii) renouncing any further claim against the Estate.

Far from representing a substantive alteration of Judge Manning’s ruling, this Court’s Order and Judgment acknowledged a critical concession that Petitioner made under oath: that Petitioner and Respondents are the only three beneficiaries of the Estate and are entitled to have the assets of the Estate split equally three ways. In light of this concession, this Court’s final judgment modified only the logistics by which Judge Manning’s interim order was to be accomplished, not the underlying legal basis for Judge Manning’s decision. Rather than have Respondents pay a larger amount to the Estate, two-thirds of which would have to be redistributed right back to them by Petitioner, this Court adopted a more efficient disposition of Petitioner’s claims by requiring Respondents to give to the Estate only those amounts that did not ultimately belong to them as Estate beneficiaries. At the same time, however, this Court provided that Respondents would be responsible for whatever *reasonable* expenses the Estate had incurred in this action. That is a fair, sensible and efficient outcome that ensures that Petitioner’s and the Estate’s counsel will receive their rightful share of Estate assets.

B. Petitioner's Motion is apparently motivated by improper concerns—not by a concern that all beneficiaries receive their rightful shares of the Estate.

At first blush, it seems odd that Petitioner is so exercised by this Court's efficient disposition of Respondents' payment obligations. After all, the Court's Judgment ensures that Petitioner, as a beneficiary of the Estate, will receive his rightful one-third share of the Bank of America claim and the Banker's Life claim. Moreover, the Judgment makes it clear that Respondents alone are responsible for the *reasonable* expenses incurred by the Estate in collecting this amount. Why is Petitioner upset by a ruling that gives him everything from the Estate to which he is entitled and directs the Respondents to pay the Estate's expenses?

The answer, it seems, is attorney's fees. At the trial of this action, counsel for the Respondents asked this Court to take up the issue of attorney's fees and to foreclose any attorney's fee award because the Estate had not sought such relief. Petitioner countered that the attorney's fee issue should be left for later proceedings, presumably before the Probate Court. Petitioner did not provide this Court with a copy of the Estate's engagement letter specifying his precise fee arrangement with Estate's counsel.

Now, Petitioner has changed course. Instead of urging this Court to defer the attorney's fee issue for later proceedings, he insists that Respondents should be required to pay their *own portions* of the Bank of America claim and Bankers Life claim (with interest) to the Estate so that Petitioner can use those funds to pay an outsized attorney's fee. The inequity of that arrangement is shown on Exhibit A to this Response. If the Respondents are forced to pay their own shares of the subject claims back to the Estate, each beneficiary will receive \$8,912.63 from the Estate and counsel for the Estate will receive \$13,368.95 (assuming, as Petitioner suggests in his Motion, that he has a 1/3 contingency fee arrangement with counsel). If, on the other hand, Respondents are required to pay only Petitioner's share of the subject claims into the Estate, Petitioner (as

beneficiary) will receive the full \$13,368.95 owed to him while a reasonable attorney's fee for the Estate's counsel remains to be determined by the Probate Court. The latter arrangement—in which Petitioner receives substantially *more* money and the attorney's fee for the Estate is not substantially larger than the shares paid to the beneficiaries themselves—is the more equitable and reasonable outcome.

The scenarios shown on Exhibit A make Petitioner's position all the more baffling. Why is he urging an outcome that would see him recover substantially *less* from the Estate? One troubling portion of his Motion suggests the answer. In Paragraph 10 (p. 3) of his Motion, he contends that this Court erred by “failing to conclude that Respondents should not be entitled to any portion of the interest that accrued on the original [Bank of America Claim and Bankers Life Claim].” This Paragraph strongly suggests that Petitioner was hoping to convince this Court to make Respondents pay their own shares of the Claims (with interest) into the Estate, with a plan to divert the interest on Respondents' own shares either to himself (as beneficiary) or to the Estate's counsel. Not only did Petitioner fail to request any such relief from the Court at the hearing of this matter (making his request now unsuitable for a Motion To Reconsider), such a result would disregard this Court's ruling on punitive damages and saddle the Respondents with such damages of Petitioner's own devising (in the form of denied interest). That result would not only be inequitable; it would be in violation of the spirit and substance of this Court's ruling.

As this Court found in its Order and Judgment, Petitioner knowingly misrepresented to the Probate Court that he had collected certain assets on behalf of the Estate and that he had disbursed one-third of those assets to himself and his sisters, as beneficiaries. Such misrepresentations, as well as the foregoing evidence of Petitioner's apparent plan to thwart this Court's Order and Judgment, make it all the more necessary that the Probate Court oversee the determination of an

appropriate attorney's fee for the Estate's counsel. Petitioner's request that Respondents be required to pay their own shares of the subject claims (with interest) back to him so that he can distribute those shares as he sees fit should be denied.

C. Petitioner's remaining arguments are legally and factually unsound and should be rejected.

Much of Petitioner's Motion represents a scattershot attempt to relitigate the claims that he presented at trial and to decide disputed facts in his favor. One new argument made by Petitioner, however, bears some attention. Repeatedly throughout his Motion, he contends that the Court's Judgment essentially awards the Respondents a "setoff" that they did not request. *See, e.g.*, ¶¶ 6, 16. Far from awarding the Respondents a "setoff," however, the Court's Judgment simply allows the Respondents to retain their 2/3 share of Estate assets, to which Petitioner *concedes* they were entitled and which they would have received anyway. All the while, this Court continues to hold Respondents liable for a reasonable attorney's fee.

D. Petitioner's and Respondents' calculations of interest owed are improper.

As he has done throughout this litigation, Petitioner persists in characterizing Judge Manning's partial summary ruling as a "final judgment." *See, e.g.*, ¶¶ 7, 8. Burdened by this mischaracterization, he contends that he is entitled to *postjudgment* interest on the amounts that are the subject of that ruling. *Id.* As noted above, however, Judge Manning's ruling was not a final judgment, but an interim ruling subject to revision by this Court under S.C.R. Civ. P. 54. Accordingly, Petitioner is entitled to *prejudgment* interest until entry of this Court's Verdict and Judgment on November 21, 2019. The prejudgment rate of 8.75% per annum is prescribed by S.C. Code Ann. § 34-31-20.

This Court's Verdict and Judgment (in the amount of \$12,591.91) includes prejudgment interest only through September 10, 2019 (the date on which Respondents submitted a proposed

Order for the Court's consideration). Respondents acknowledge that the final judgment should include an additional 72 days of prejudgment interest (between September 10 and the November 21, 2019 date of entry of this Court's Verdict and Judgment) in the amount of \$5.83 per diem.

In the course of responding to Petitioner's Motion To Reconsider, undersigned counsel has recognized that he miscalculated the original amount of prejudgment interest in the proposed order submitted to the Court on September 10, 2019. Undersigned counsel apologizes for that error and regrets any inconvenience. The correct amounts (adjusted to correct the error and to add 72 days of prejudgment interest, as noted above) are as follows:

Description	Amount
Bank of America Claim Principal Amount	\$ 21,857.80
Prejudgment Interest (06/06/12 – 11/21/19)	\$ 14,268.22
Banker's Life Claim Principal Amount	\$ 2,480.00
Prejudgment Interest (12/19/12 – 11/21/19)	\$ 1,500.83
TOTAL	\$ 40,106.85
One-Third Amount for Respondents To Discharge Obligations to Estate	\$ 13,368.95

Respondents do not object to entry of an amended Judgment that incorporates the foregoing amounts and permits Respondents to discharge fully their obligation to the Estate by (i) tendering to Petitioner the amount of \$13,368.95 (as indicated above), plus post-judgment interest at the Supreme Court-prescribed rate from November 22, 2019; submitting to Petitioner an instrument renouncing any further interest that Respondents may have to the claims that are the subject of this action; and (iii) remaining liable for the reasonable expenses of the Estate in connection with this action, as determined by the Probate Court.

Petitioner is also entitled to have the Clerk of Court or this Court act on his Motion for Costs, to which Respondents also do not object.

WHEREFORE, Respondents respectfully request that Petitioner's Motion To Reconsider be denied.

This 17th day of December, 2019.

/s/ Stephen M. Cox

Stephen M. Cox

S.C. Bar No. 12263

Attorneys for Respondents

Marian J. Kirk and Lucy J. Fuller

ROBINSON, BRADSHAW & HINSON, P.A.

202 East Main Street, Suite 201

Rock Hill, South Carolina 29730

Telephone: 803.325.2900

Facsimile: 803.325.2929

EXHIBIT A**POTENTIAL AWARDS TO ESTATE OF JORDAN
LEONARD JORDAN AS BENEFICIARY****I. Recovery if Respondents must pay their own shares back into the Estate:**

Bank of America Claim ¹ :	\$	36,126.02
Banker's Life Claim	\$	3,980.83
TOTAL:	\$	40,106.85
One-Third Attorneys' Fee	\$	13,368.95
Balance to Beneficiaries:	\$	26,737.90
One-Third to Each Beneficiary:	\$	8,912.63

II. Recovery if Respondents must pay only Petitioner's share into Estate:

Bank of America Claim (1/3 share):	\$	12,042.01
Banker's Life Claim (1/3 share):	\$	1,326.94
TOTAL:	\$	13,368.95
Total to Beneficiary Leonard Jordan:	\$	13,368.95
Reasonable Attorney's Fee:	\$	TBD

¹ All claims include prejudgment interest through 11/21/19—the date of entry of this Court's Order and Final Judgment.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE PROBATE COURT
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012 ES40 01470

COPY

FILED
2017 NOV 22 AM 11:39
AMY M. MCCURTAIN
PROBATE CLERK, S.C.
RICHLAND COUNTY, S.C.

SUMMONS

TO THE RESPONDENTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at his offices, P.O. Box 12188, Columbia, SC 29211-2188, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Petitioner will apply to the Court for a judgment by default granting the relief demanded in the Complaint.

ATTORNEY FOR THE PETITIONER



S.R. ANDERSON
SC Bar No. 391
P.O. Box 12188
Columbia, SC 29211
(803) 252-2828
sraatlaw@bellsouth.net

November 16, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

IN THE PROBATE COURT
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012 ES40 01470

FILED
2017 NOV 22 AM 11:39
AMY B. HIGGINS, CLERK
PROBATE JUDGE
RICHLAND COUNTY, S.C.

COMPLAINT

Petitioner would show this Honorable Court the following:

1. Petitioner is a citizen and resident of Richland County, South Carolina.
2. Respondents, Marian J. Kirk ("Respondent Kirk") and Lucy J. Fuller ("Respondent Fuller"), are citizens and residents of Richland County, South Carolina.
3. Lil B. Jordan died on June 5, 2012.
4. Petitioner and Respondents were the sole heirs of Lil B. Jordan, each having a one-third share of the Estate, as provided for in the Last Will and Testament of Lil B. Jordan.
5. Petitioner was designated as Personal Representative in the Last Will and Testament of Lil B. Jordan, and has been appointed by this court to serve in said capacity.
6. The purpose of this suit is to collect from the Respondents, for the benefit of the Estate of Lil B. Jordan, certain monies improperly converted by the Respondents both before and after the death of Lil B. Jordan.

FACTUAL CIRCUMSTANCES

A. WELLS FARGO ACCOUNTS

7. Respondent Kirk obtained, held and maintained certain sums of money belonging to Lil B. Jordan, the mother of Petitioner and Respondents, from in or about 2005 through after her death in 2012, in order to pay the routine living expenses as well as funeral expenses, general creditor claims and taxes.
8. These sums of money were, at the time of the death of Lil B. Jordan, maintained by Respondent Kirk in two banks accounts with Wells Fargo Bank.
9. Said sums of money, in the aggregate amount of \$23,980.82, were reported by Petitioner as assets of the Estate in the Inventory and Appraisement filed in this case on January 11, 2013.
10. This figure (\$23,980.82) was provided to Petitioner by Respondent Kirk, who represented to Petitioner that said amount would properly be included as an asset of the Estate. Upon Respondent Kirk's representation, Petitioner, as Personal Representative, including this sum of money on the Estate's Inventory and Appraisement, as an asset of the Estate.
11. These sums of money were constructively distributed by the Estate to the three heirs of Lil B. Jordan although remaining within the possession and control of Respondent Kirk, temporarily subject to payment of expenses of the Estate or common expenses of the heirs.
12. Respondent Kirk delayed making a final disbursement of the said sums of money; and she, in 2015, made it known to Petitioner that she claimed the entirety of said money as survivor of the two bank accounts which were allegedly joint bank accounts in the names of Lil B. Jordan and Respondent Kirk.
13. In or about January 2013, the account balances were moved by Respondent Kirk to her own bank account; and subsequently the subject sums of money were divided equally



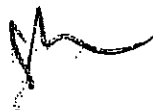
and disbursed by Respondent Kirk to Respondent Fuller and herself.

B. BANKERS LIFE CHECK

14. Lil B. Jordan owned a long-term care insurance policy with Bankers Life Company, which paid her insurance proceeds in her later years.
15. Respondent Kirk applied for and received these payments from Bankers Life Company, which were routinely issued monthly in arrears.
16. The last Bankers Life Company check applied for by Respondent Kirk was for the month of May 2012, and a check in the amount of \$2,480.00 was issued by Bankers Life Company to Lil B. Jordan on June 15, 2012.
17. For some unknown reason, this check was not deposited by Respondent Kirk until December 18, 2012, when it was added to one of the accounts discussed in Section A. above.
18. This check was unknown to Petitioner until July 2017, and the amount was not included by him in the accounting of assets of the Estate.

C. SEGREGATED FUNDS HELD IN BANK OF AMERICA ACCOUNT

19. On or about August 10, 2010, prior to the death of Lil B. Jordan, Respondent Kirk, on her own initiative and without authority, and without notice to Petitioner, closed a bank account in the names of Lil B. Jordan and Respondent Kirk and moved the account balance, in the amount of \$21,857.80, to an account at Bank of America solely in the name of Respondent Kirk.
20. Petitioner was unaware of these segregated monies until July 2017, and the amount was not included by him in the accounting of assets of the Estate.
21. On or about May 23, 2014, the balance of said account was divided equally and disbursed by Respondent Kirk to Respondent Fuller and herself, each receiving



approximately \$10,967.93.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty – as to Respondent Kirk)

22. Petitioner realleges Paragraphs 1 through 21 above as fully as if repeated herein verbatim.
23. At all relevant times, Respondent Kirk accepted the chore of acting for and on behalf of Lil B. Jordan, then on behalf of her Estate and the three beneficiaries thereof, including Petitioner, receiving, maintaining and investing monies and in paying proper expenses and filing of tax returns directly related to their mother.
24. In such capacity, Respondent Kirk owed to her siblings certain fiduciary duties, including duties of loyalty, full disclosure, fair dealing and honesty.
25. Respondent Kirk owed, at all relevant times, a fiduciary duty to her siblings to protect them from self-dealing, from misappropriation of assets and from other usurpation or deprivation of personal benefit related to said monies.
26. Respondent Kirk, by her refusal to make appropriate disbursement of the entirety of said monies, has breached her fiduciary duties.
27. Petitioner is informed and believes that he is entitled to a judgment against Respondent Kirk in the amount of the monies controlled by Respondent Kirk discussed hereinabove, along with pre-judgment interest and costs of collection.
28. Respondent Kirk's acts were willful, wanton, malicious and oppressive and such acts are continuing.
29. Petitioner is further informed and believes that he is entitled to a judgment against Respondent Kirk for punitive damages.

FOR A SECOND CAUSE OF ACTION
(Conversion – as to both Respondents)

30. Petitioner realleges Paragraphs 1 through 29 above as fully as if repeated herein verbatim.
31. Respondents have failed and refuse to disburse to Petitioner the said monies and assets heretofore belonging to Lil B. Jordan or her Estate, net of proper disbursements, if any.
32. Respondents, by their actions, have converted Estate monies to their own use.
33. Petitioner is informed and believes that he is entitled to a judgment against Respondents, jointly and severally, in the amounts converted, plus pre-judgment interest and costs of collection.
34. Respondents' acts were willful, wanton, malicious and oppressive, and such acts are continuing.
35. Petitioner is further informed and believes that he is entitled to a judgment against Respondents, jointly and severally, for punitive damages.

FOR A THIRD CAUSE OF ACTION
(Money Had and Received – as to both Respondents)

36. Petitioner realleges Paragraphs 1 through 35 above as fully as if repeated herein verbatim.
37. Respondents have failed and refused to disburse to Petitioner the said monies and assets heretofore belonging to Lil B. Jordan individually or to her Estate, net of proper disbursements, if any.
38. Said monies and assets, in equity and good conscience, belong to the Estate and therefore to Petitioner (as Personal Representative).
39. Petitioner is informed and believes that he is entitled to a judgment against Respondents, jointly and severally, in the amount of Petitioner's entitlement, pre-judgment interest and costs of collection.

FOR A FOURTH CAUSE OF ACTION



(Unjust Enrichment; Constructive Trust – as to both Respondents)

40. Petitioner realleges Paragraphs 1 through 39 above as fully as if repeated herein verbatim.
41. Respondents would be unjustly enriched if they were allowed to retain the said monies.
42. A constructive trust should be imposed on all of the said monies wrongfully withheld by Respondents.
43. Petitioner is informed and believes that, during this litigation, he is entitled to this court's protection of all monies withheld by Respondents.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy— as to both Respondents)


44. Petitioner realleges Paragraphs 1 through 43 above as fully as if repeated herein verbatim.
45. Respondents, acting in combination, conspired to injure Petitioner (and to injure the third heir of Lil B. Jordan, deceased).
46. The acts of Respondents were criminal (i.e. grand larceny from Lil B. Jordan or her Estate).
47. The special damages incurred by Petitioner are the failure of Respondents to account for and properly disburse the assets of the Estate, necessitating the expenditure of attorney's fees and costs to remedy the unlawful circumstances.
48. Petitioner is informed and believes that he is entitled to a judgment against Respondents, jointly and severally, in the amount of Petitioner's actual damages; pre-judgment interest and costs of collection.
49. Respondents' acts were willful, wanton, malicious and oppressive, and such acts are continuing.
50. Petitioner is further informed and believes that he is entitled to a judgment against



Respondents, jointly and severally for punitive damages.

WHEREFORE, having fully set forth his Complaint, Petitioner prays for the relief requested in the First, Second, Third, Fourth and Fifth Causes of Action hereinabove and for such other and further relief as the Court may deem just, equitable and proper.

ATTORNEY FOR THE PETITIONER



S.R. ANDERSON
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Columbia, SC 29211
(803) 252-2828
sraatlaw@bellsouth.net

November 16, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT
FIFTH JUDICIAL CIRCUIT

CASE NO: 2012-ES-40-1470

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller;

Respondents.

ANSWER OF RESPONDENT
MARIAN J. KIRK

Respondent Marian J. Kirk, by and through her undersigned counsel, responds to the
Complaint filed by Petitioner as follows:

FOR A FIRST DEFENSE

Respondent objects to each and every allegation of the Complaint not expressly admitted
herein.

1. Respondent admits the allegations of Paragraph 1 of the Complaint.
2. Respondent admits the allegations of Paragraph 2 of the Complaint.
3. Respondent admits the allegations of Paragraph 3 of the Complaint.
4. Respondent is informed and believes that the allegations of Paragraph 4 of the
Complaint constitute a legal conclusion to which no response is required. Furthermore, the terms
of the Will referred to in such Paragraph speak for themselves. Respondent denies all allegations
of Paragraph 4 that are inconsistent with the terms of such Will.
5. Respondent admits the allegations of Paragraph 5.

6. Respondent is informed and believes that the allegations of Paragraph 6 constitute a statement of intention to which no response is required. To the extent a response is required, Respondent denies such allegations.

7. Respondent admits so much of the allegations of Paragraph 7 as allege that Respondent had authority over certain sums belonging to the Lil B. Jordan and maintained in certain bank accounts of Lil B. Jordan, which Respondent used to pay the living expenses of Lil B. Jordan. Respondent otherwise denies the allegations of Paragraph 7.

8. Respondent admits so much of the allegations of Paragraph 8 as allege that the sums referred to in the preceding paragraph were maintained in bank accounts with Wells Fargo Bank formerly known as Wachovia Bank. Respondent otherwise denies the allegations of Paragraph 8.

9. Respondent admits so much of the allegations of Paragraph 9 as allege that Petitioner reported sums formerly held in bank accounts of Lil B. Jordan at Wells Fargo Bank, in the aggregate amount of \$23,980.92, on an Inventory and Appraisal filed in this case on or about January 11, 2013. Respondent otherwise denies the allegations of Paragraph 9. Respondent specifically denies that the sums reported as assets of the Estate by Petitioner were, in fact, assets of the Estate.

10. Respondent denies the allegations of Paragraph 10.

11. Respondent denies the allegations of Paragraph 11.

12. Respondent admits so much of the allegations of Paragraph 12 as allege that Respondent ultimately (and rightfully) claimed the sums referred to in Paragraph 9. Respondent otherwise denies the allegations of Paragraph 12.

13. Respondent admits so much of the allegations of Paragraph 13 as allege that the funds described in Paragraph 9 were ultimately divided equally between Respondents.

14. Respondent admits the allegations of Paragraph 14.
15. Respondent admits the allegations of Paragraph 15.
16. Respondent admits the allegations of Paragraph 16.
17. Respondent admits the allegations of Paragraph 17.
18. Respondent is without evidence either to admit or to deny the allegations of Paragraph 18.
19. Respondent admits so much of the allegations of Paragraph 19 as allege that, in or about August 2010, Respondent transferred approximately \$21,857.80 to an account at Bank of America in Respondent's name. Respondent otherwise denies the allegations of Paragraph 19.
20. Respondent is without evidence either to admit or to deny the allegations of Paragraph 20.
21. Respondent admits the allegations of Paragraph 21.
22. Respondent realleges her responses to Paragraphs 1-22 as if incorporated verbatim herein.
23. Respondent denies the allegations of Paragraph 23.
24. Respondent denies the allegations of Paragraph 24.
25. Respondent denies the allegations of Paragraph 25.
26. Respondent denies the allegations of Paragraph 26.
27. Respondent denies the allegations of Paragraph 27.
28. Respondent denies the allegations of Paragraph 28.
29. Respondent denies the allegations of Paragraph 29.
30. Respondent responds to the allegations of Paragraph 30 by realleging her responses to Paragraphs 1-29 as if incorporated verbatim herein.
31. Respondent denies the allegations of Paragraph 31.

32. Respondent denies the allegations of Paragraph 32.
33. Respondent denies the allegations of Paragraph 33.
34. Respondent denies the allegations of Paragraph 34.
35. Respondent denies the allegations of Paragraph 35.
36. Respondent responds to the allegations of Paragraph 36 by realleging her responses to Paragraphs 1-35 as if incorporated verbatim herein.
37. Respondent denies the allegations of Paragraph 37.
38. Respondent denies the allegations of Paragraph 38.
39. Respondent denies the allegations of Paragraph 39.
40. Respondent responds to the allegations of Paragraph 40 by realleging her responses to Paragraphs 1-39 as if incorporated verbatim herein.
41. Respondent denies the allegations of Paragraph 41.
42. Respondent denies the allegations of Paragraph 42.
43. Respondent denies the allegations of Paragraph 43.
44. Respondent responds to the allegations of Paragraph 44 by realleging her responses to Paragraphs 1-43 as if incorporated verbatim herein.
45. Respondent denies the allegations of Paragraph 45.
46. Respondent denies the allegations of Paragraph 46.
47. Respondent denies the allegations of Paragraph 47.
48. Respondent denies the allegations of Paragraph 48.
49. Respondent denies the allegations of Paragraph 49.
50. Respondent denies the allegations of Paragraph 50.

FOR A SECOND, FURTHER DEFENSE
(Estoppel and Waiver)

51. Petitioner's claims are barred by the doctrines of estoppel and waiver.

FOR A THIRD, FURTHER DEFENSE
(Failure To State a Cause of Action)

52. Petitioner's claims are barred by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, in that Plaintiffs have failed to state a cause of action for which relief can be granted. In particular, and without limitation, all funds belonging in joint accounts to which Defendant and Lil Jordan were joint account holders passed immediately to Defendant upon Mrs. Jordan's death, pursuant to S.C. Code Ann. § 62-6-104(a). Neither Petitioner nor the Estate has ever had any right, title or interest in such funds.

FOR A FOURTH, FURTHER DEFENSE
(Statute of Limitations)

53. Petitioner's claims are barred by the applicable statutes of limitation, including, without limitation, those set forth in S.C. Code Ann. §§ 62-3-1005 and 62-3-1006.

FOR A FIFTH, FURTHER DEFENSE
(Setoff and Recoupment)

54. Respondent is entitled to setoff against Petitioner's claim all sums to which Petitioner is rightfully entitled for services provided by Respondent to Lil B. Jordan and her Estate.

FOR A SIXTH, FURTHER DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Fiduciary Duty)

55. Petitioner was previously appointed as Personal Representative of the Estate of Lil B. Jordan.

A 56. As Personal Representative, Petitioner owed a fiduciary duty to the Estate of Lil B. Jordan and to Respondent (as an heir of the Estate of Lil B. Jordan) to exercise reasonable

diligence to determine the assets of the Estate, to seasonably distribute those assets to the heirs of the Estate, and to otherwise undertake all actions necessary to responsibly administer the affairs of the Estate in accordance with applicable law.

▷ 57. Petitioner has breached his fiduciary duties to the Estate and to Respondent by, among other things:

(a) Falsely reporting to this Court that certain assets of Respondent were actually assets of the Estate;

(b) In the alternative, failing to distribute assets of the Estate to heirs of the Estate, and then falsely reporting to this Court that such assets had been distributed; and

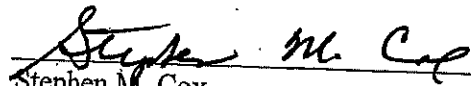
(c) Wrongfully pursuing an action against Respondent to recover assets for the Estate, and purporting to use his authority as Personal Representative for that purpose;

(d) Engaging outside counsel to pursue an unjustified action against Respondent, and (presumably) representing to such outside counsel that his fees would be paid with assets of the Estate.

▷ 58. Petitioner's breach of fiduciary duties has caused damage to the Estate and to Respondent by, among other things, (a) exposing the Estate and Respondent to an unjustified claim for attorneys' fees by the lawyer representing Petitioner in this action and (b) forcing Respondent to engage legal counsel of her own to represent herself in this action.

WHEREFORE, having fully answered Petitioner's Complaint, Respondent prays that this action be dismissed, with prejudice, with all costs assessed against Petitioner; that Respondent be awarded damages on her Counterclaim against Petitioner; and for such other and further relief as may be just and proper.

This 20 day of December, 2017.



Stephen M. Cox

S.C. Bar No. 12263

Attorneys for Defendant Marian J. Kirk

ROBINSON, BRADSHAW & HINSON, P.A.

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Telephone: 803.325.2900

Facsimile: 803.325.2929

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE PROBATE COURT
FIFTH JUDICIAL CIRCUIT

CASE NO: 2012-ES-40-1470

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

v.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

ANSWER OF RESPONDENT
LUCY J. FULLER

Respondent Lucy J. Fuller, by and through her undersigned counsel, responds to the Complaint filed by Petitioner as follows:

FOR A FIRST DEFENSE

Respondent objects to each and every allegation of the Complaint not expressly admitted herein.

1. Respondent admits the allegations of Paragraph 1 of the Complaint.
2. Respondent admits the allegations of Paragraph 2 of the Complaint.
3. Respondent admits the allegations of Paragraph 3 of the Complaint.
4. Respondent is informed and believes that the allegations of Paragraph 4 of the Complaint constitute a legal conclusion to which no response is required. Furthermore, the terms of the Will referred to in such Paragraph speak for themselves. Respondent denies all allegations of Paragraph 4 that are inconsistent with the terms of such Will.
5. Respondent admits the allegations of Paragraph 5.

6. Respondent is informed and believes that the allegations of Paragraph 6 constitute a statement of intention to which no response is required. To the extent a response is required, Respondent denies such allegations.

7. Respondent admits, upon information and belief, so much of the allegations of Paragraph 7 as allege that Respondent had authority over certain sums belonging to the Lil B. Jordan and maintained in certain bank accounts of Lil B. Jordan, which Respondent used to pay the living expenses of Lil B. Jordan. Respondent otherwise denies the allegations of Paragraph 7.

8. Respondent admits, upon information and belief, so much of the allegations of Paragraph 8 as allege that the sums referred to in the preceding paragraph were maintained in bank accounts with Wells Fargo Bank formerly known as Wachovia Bank. Respondent otherwise denies the allegations of Paragraph 8.

9. Respondent admits so much of the allegations of Paragraph 9 as allege that Petitioner reported sums formerly held in bank accounts of Lil B. Jordan at Wells Fargo Bank, in the aggregate amount of \$23,980.92, on an Inventory and Appraisement filed in this case on or about January 11, 2013. Respondent otherwise denies the allegations of Paragraph 9. Respondent specifically denies that the sums reported as assets of the Estate by Petitioner were, in fact, assets of the Estate.

10. Respondent is without information either to admit or deny the allegations of Paragraph 10.

11. Respondent denies the allegations of Paragraph 11.

12. Respondent admits, upon information and belief, so much of the allegations of Paragraph 12 as allege that Respondent ultimately (and rightfully) claimed the sums referred to in Paragraph 9. Respondent otherwise denies the allegations of Paragraph 12.

13. Respondent admits so much of the allegations of Paragraph 13 as allege that the funds described in Paragraph 9 were ultimately divided equally between Respondents.

14. Respondent admits the allegations of Paragraph 14.

15. Respondent admits, upon information and belief, the allegations of Paragraph 15.

16. Respondent is without information to admit or deny the allegations of Paragraph 16.

17. Respondent is without information to admit or deny the allegations of Paragraph 17.

18. Respondent is without evidence either to admit or to deny the allegations of Paragraph 18.

19. Respondent admits, upon information and belief, so much of the allegations of Paragraph 19 as allege that, in or about August 2010, Respondent Marian Kirk transferred approximately \$21,857.80 to an account at Bank of America in Respondent's name. Respondent otherwise denies the allegations of Paragraph 19.

20. Respondent is without evidence either to admit or to deny the allegations of Paragraph 20.

21. Respondent admits the allegations of Paragraph 21.

22. Respondent realleges her responses to Paragraphs 1-22 as if incorporated verbatim herein.

23. Respondent denies the allegations of Paragraph 23.

24. Respondent denies the allegations of Paragraph 24.

25. Respondent denies the allegations of Paragraph 25.

26. Respondent denies the allegations of Paragraph 26.

27. Respondent denies the allegations of Paragraph 27.

28. Respondent denies the allegations of Paragraph 28.

29. Respondent denies the allegations of Paragraph 29.

30. Respondent responds to the allegations of Paragraph 30 by realleging her responses to Paragraphs 1-29 as if incorporated verbatim herein.

31. Respondent denies the allegations of Paragraph 31.

32. Respondent denies the allegations of Paragraph 32.

33. Respondent denies the allegations of Paragraph 33.

34. Respondent denies the allegations of Paragraph 34.

35. Respondent denies the allegations of Paragraph 35.

36. Respondent responds to the allegations of Paragraph 36 by realleging her responses to Paragraphs 1-35 as if incorporated verbatim herein.

37. Respondent denies the allegations of Paragraph 37.

38. Respondent denies the allegations of Paragraph 38.

39. Respondent denies the allegations of Paragraph 39.

40. Respondent responds to the allegations of Paragraph 40 by realleging her responses to Paragraphs 1-39 as if incorporated verbatim herein.

41. Respondent denies the allegations of Paragraph 41.

42. Respondent denies the allegations of Paragraph 42.

43. Respondent denies the allegations of Paragraph 43.

44. Respondent responds to the allegations of Paragraph 44 by realleging her responses to Paragraphs 1-43 as if incorporated verbatim herein.

45. Respondent denies the allegations of Paragraph 45.

46. Respondent denies the allegations of Paragraph 46.

47. Respondent denies the allegations of Paragraph 47.

48. Respondent denies the allegations of Paragraph 48.
49. Respondent denies the allegations of Paragraph 49.
50. Respondent denies the allegations of Paragraph 50.

FOR A SECOND, FURTHER DEFENSE
(Estoppel and Waiver)

51. Petitioner's claims are barred by the doctrines of estoppel and waiver.

FOR A THIRD, FURTHER DEFENSE
(Failure To State a Cause of Action)

52. Petitioner's claims are barred by Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, in that Plaintiffs have failed to state a cause of action for which relief can be granted. In particular, and without limitation, all funds belonging in joint accounts to which Defendant and Lil Jordan were joint account holders passed immediately to Defendant upon Mrs. Jordan's death, pursuant to S.C. Code Ann. § 62-6-104(a). Neither Petitioner nor the Estate has ever had any right, title or interest in such funds.

FOR A FOURTH, FURTHER DEFENSE
(Statute of Limitations)

53. Petitioner's claims are barred by the applicable statutes of limitation, including, without limitation, those set forth in S.C. Code Ann. §§ 62-3-1005 and 62-3-1006.

FOR A FIFTH, FURTHER DEFENSE
(Setoff and Recoupment)

54. Respondent is entitled to setoff against Petitioner's claim all sums to which Petitioner is rightfully entitled for services provided by Respondent to Lil B. Jordan and her Estate.

FOR A SIXTH, FURTHER DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Fiduciary Duty)

55. Petitioner was previously appointed as Personal Representative of the Estate of Lil B. Jordan.

56. As Personal Representative, Petitioner owed a fiduciary duty to the Estate of Lil B. Jordan and to Respondent (as an heir of the Estate of Lil B. Jordan) to exercise reasonable diligence to determine the assets of the Estate, to seasonably distribute those assets to the heirs of the Estate, and to otherwise undertake all actions necessary to responsibly administer the affairs of the Estate in accordance with applicable law.

57. Petitioner has breached his fiduciary duties to the Estate and to Respondent by, among other things:

(a) Falsely reporting to this Court that certain assets of Respondent were actually assets of the Estate;

(b) In the alternative, failing to distribute assets of the Estate to heirs of the Estate, and then falsely reporting to this Court that such assets had been distributed; and

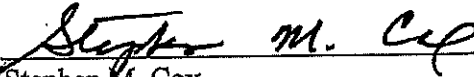
(c) Wrongfully pursuing an action against Respondent to recover assets for the Estate, and purporting to use his authority as Personal Representative for that purpose;

(d) Engaging outside counsel to pursue an unjustified action against Respondent, and (presumably) representing to such outside counsel that his fees would be paid with assets of the Estate.

58. Petitioner's breach of fiduciary duties has caused damage to the Estate and to Respondent by, among other things, (a) exposing the Estate and Respondent to an unjustified claim for attorneys' fees by the lawyer representing Petitioner in this action and (b) forcing Respondent to engage legal counsel of her own to represent herself in this action.

WHEREFORE, having fully answered Petitioner's Complaint, Respondent prays that this action be dismissed, with prejudice, with all costs assessed against Petitioner; that Respondent be awarded damages on her Counterclaim against Petitioner; and for such other and further relief as may be just and proper.

This 27th day of December, 2017.



Stephen M. Cox
S.C. Bar No. 12263
Attorneys for Defendant Marian J. Kirk

ROBINSON, BRADSHAW & HINSON, P.A.
202 East Main Street, Suite 201
Rock Hill, South Carolina 29731
Telephone: 803.325.2900
Facsimile: 803.325.2929

STATE OF SOUTH CAROLINA

FILED

IN THE PROBATE COURT
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

2018 JAN -4 AM 10:29

COPY

CASE NO.: 2012-ES-40-01470

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

PROBATE COURT
RICHLAND COUNTY, S.C.

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

**REPLY TO COUNTERCLAIMS OF
RESPONDENT MARIAN J. KIRK**

Marian J. Kirk and Lucy J. Fuller,

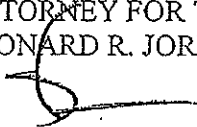
Respondents.

The Petitioner, Leonard R. Jordan, Jr., replying to the Counterclaim of the Respondent Marian J. Kirk, would show:

1. That this Petitioner denies each and every allegation contained in the Counterclaims of the Respondent Kirk not specifically admitted hereto.
2. That this Petitioner admits those allegations as contained in Paragraph 56 of the Counterclaims of Respondent Kirk.
3. That this Petitioner denies those allegations as contained in Paragraphs 57 and 58 of the Counterclaim of Respondent Kirk.

WHEREFORE, having fully replied to the Counterclaim of the Respondent Kirk; the Petitioner prays that same be dismissed and he be granted the relief as prayed for in his Complaint.

ATTORNEY FOR THE PETITIONER
LEONARD R. JORDAN, JR.



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 Columbia, SC 29211
 Telephone: (803) 252-2828
 Facsimile: (803) 254-1935
sraatlaw@bellsouth.net

Columbia, South Carolina
January 2, 2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE ESTATE OF:
LIL B. JORDAN, DECEASED

Leonard R. Jordan, Jr., as Personal
Representative of the Estate of Lil B. Jordan,

Petitioner,

vs.

Marian J. Kirk and Lucy J. Fuller,

Respondents.

FILED

2018 JAN -4

AMID: 29

PROBATE JUDGE
RICHLAND COUNTY, S.C.

IN THE PROBATE COURT
FIFTH JUDICIAL CIRCUIT

COPY

CASE NO.: 2012-ES-40-01470


**REPLY TO COUNTERCLAIMS OF
RESPONDENT LUCY J. FULLER**

The Petitioner, Leonard R. Jordan, Jr., replying to the Counterclaims of the Respondent Lucy J. Fuller, would show:

1. That this Petitioner denies each and every allegation contained in the Counterclaims of the Respondent Fuller not specifically admitted hereto.
2. That this Petitioner admits those allegations as contained in Paragraph 56 of the Counterclaims of Respondent Fuller.
3. That this Petitioner denies those allegations as contained in Paragraphs 57 and 58 of the Counterclaims of Respondent Fuller.

WHEREFORE, having fully replied to the Counterclaims of the Respondent Fuller, the Petitioner prays that same be dismissed and he be granted the relief as prayed for in his Complaint.

ATTORNEY FOR THE PETITIONER
LEONARD R. JORDAN, JR.


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Columbia, South Carolina
January 2, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No. 2018-CP-40-00726

RECEIVED

Sep 17 2020

SC Court of Appeals

Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan, is..... Appellant,

v.

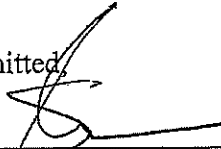
Marian J. Kirk and Lucy J. Fuller are..... Respondents.

NOTICE OF APPEAL

Leonard R. Jordan, Jr., as Personal Representative of the Estate of Lil B. Jordan appeals the Form 4 Order filed on August 21, 2020, which denied Petitioner's Motion to Reconsider, Alter or Amend the Verdict and Judgment, filed on December 2, 2019, and the Verdict and Judgment issued by the Honorable Jocelyn Newman, Circuit Court Judge for Richland County, filed on November 21, 2019. Copies of the appealed Orders, along with said Motion, are attached hereto.

September 17, 2020

Respectfully submitted,



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Other Counsel of Record:
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Attorney at Law
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