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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

-----x  
LEONARD R. JORDAN, JR., )  
as Personal )  
Representative of the )  
Estate of Lil B. Jordan, )  
Plaintiff, )  
vs. )  
MARIAN J. KIRK and LUCY )  
J. FULLER, )  
Defendants. )  
-----x

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**SC Court of Appeals**

Transcript of Record  
2018-CP-40-00726

August 21, 2019

TRIAL - VOLUME 2

B E F O R E:

The Honorable Jocelyn Newman, Presiding Judge

A P P E A R A N C E S:

Mr. Anderson, Esq.  
Attorney for the Plaintiff

Stephen M. Cox, Esq.  
Attorney for the Defendants

Court Reporter: Bonnie Kelly (Retired)  
Transcriber: Bobbi Fisher, RPR, CET

1 Q And there was testimony yesterday about a house -- your  
2 mother's house that was cleaned out when she moved to a  
3 nursing home facility; is that right?

4 A That's correct.

5 Q Was that your childhood home?

6 A We moved there when I was six.

7 Q Are you married, Ms. Kirk?

8 A No, I'm not. I'm divorced.

9 Q And do you have children?

10 A I have two.

11 Q Where are they?

12 A I have a daughter that -- my son is here in Columbia.  
13 He's 37 years old. And my daughter is in Murrells Inlet, and  
14 she is 34.

15 Q And what do you do for a living?

16 A I work at the South Carolina Bar. I'm in the law-related  
17 education division. And our primary focus is on mock trial  
18 competitions for Midland high schools.

19 Q Are you involved in any other volunteer work or  
20 occupational work other than the law-related education  
21 division and mock trials?

22 A And mock trials?

23 Q Any volunteer work?

24 A I'm a guardian ad litem here in Richland County.

25 Q Okay. Now, I want to go back to your mother, Ms. Jordan,

1 for a moment, if that's all right. I believe we established  
2 that she passed in June of 2012. And let's just take the  
3 period -- the ten years or so leading up to her death. Okay?  
4 So June of 2002 or so, take me through where your mother lived  
5 during the ten years prior to her death.

6 A She lived on Grand Drive. She lived there for 48 years,  
7 I guess. And that's where we grew up from. We moved there in  
8 '59.

9 Q How old were you? I won't ask that question. Keep  
10 going. I'm sorry.

11 A I was six when we moved there.

12 Q Sorry. Keep going.

13 A And she lived there until she was -- until we moved here  
14 in 2006, I believe, to Laurel Crest.

15 Q And what kind of facility was she in at Laurel Crest?  
16 Was it independent living? Alzheimer's unit? What was it?

17 A It was independent living at first. That was the only  
18 way you could go into Laurel Crest. You had to be  
19 independent. And then we moved her after probably a year and  
20 a half into assisted living.

21 Q Still at Laurel Crest?

22 A Still at Laurel Crest.

23 Q And did she stay at Laurel Crest until she passed away?

24 A No. After probably 18 months there, we moved into Agape  
25 Kathwood on Trenham Road.

1 to in her apartment.

2 Q Oh, did she do that from time to time?

3 A I think she only went down to the dining hall twice a  
4 day, so she would do lunch in her room.

5 Q Gotcha. Now, so you described here the sort of general  
6 level of independence. Notwithstanding that, did there come a  
7 time when you believe that your mother was not able to handle  
8 her financial affairs entirely on her own?

9 A She needed some assistance.

10 Q So is that a yes?

11 A Yes, yes. I think it was when -- she was always talking  
12 about how many magazines she had coming into her house and how  
13 she was giving them away to her neighbors, and I realized that  
14 they had been taking advantage of her. If she had gotten one  
15 subscription, they would have a way of, you know, sending a  
16 card out to sign up for more, and they just used her same  
17 account number and they just charged. She had magazines  
18 coming from all different --

19 Q How did you notice this?

20 A Because there was a lot of magazines. And she was very  
21 proud of the fact that she had these magazines, you know,  
22 because she would give them away.

23 Q But, I mean, were you going to her house fairly regularly  
24 at this point?

25 A I was -- what I did, I saw that she -- she didn't think

1 she was paying for them, but I went several weeks to cancel  
2 all of those subscriptions. It took a long time to go through  
3 the process of getting somebody on the line to get them to  
4 cancel her subscriptions. It took a long time to get all of  
5 those cancelled.

6 Q Other than the magazine issue, were there other  
7 indications at some point that you thought your mother was not  
8 able to handle her financial affairs by herself?

9 A I noticed there were two personal checks that she had  
10 written to friends that had bounced, and so I felt like she  
11 was not quite -- you know, she needed some assistance getting  
12 money from one -- her Social Security was going into her  
13 checking account.

14 Q Automatically?

15 A Automatically. And she had funds that were at Morgan  
16 Stanley, and she wasn't getting those transferred into her  
17 checking account to cover the checks that she had written.

18 Q So let me put a punctuation mark on that for just a  
19 moment. Your mother had a checking account at Wells Fargo?

20 A Correct.

21 Q I believe your brother referred to that as the 1206  
22 account?

23 A Correct.

24 Q How long had she had that checking account?

25 A It was a historical account. It was -- they said they

1 didn't have many people that still had the Crown Classic  
2 account.

3 Q Years before she went into Laurel Crest she had that  
4 account?

5 A Yes.

6 Q And then you mentioned a Morgan Stanley account. Is that  
7 some kind of investment account?

8 A That was an investment broker was there, yes.

9 Q And what was his name?

10 A Ben Rast.

11 Q So I think you said the Social Security funds would come  
12 into the checking account?

13 A Correct.

14 Q But it periodically had to be supplemented with transfers  
15 from Morgan Stanley?

16 A Correct.

17 Q Okay. And so when -- about what time frame did you  
18 notice that your mother was having these experiences that  
19 caused you to think maybe she couldn't handle her financial  
20 affairs all by herself?

21 A I think when the Morgan Stanley statements would come in,  
22 she didn't understand them. And so they were hard for her to  
23 figure out where -- you know, what monies were available to  
24 her and what were invested in stocks or bonds.

25 Q What time frame are we talking about?

1 A Oh, I mean, she had been getting them --

2 Q Let me ask the question this way. You heard your brother  
3 say yesterday about December of '05, that's when you decided  
4 she couldn't handle her affairs all by herself. Is that  
5 roughly a time frame that you recall?

6 A Yes.

7 Q And did you have a conversation with your mother about  
8 these financial issues and what to do about these issues she  
9 was experiencing?

10 A Yes. We -- she couldn't quite figure out why she had  
11 bounced checks and so we were --

12 MR. ANDERSON: Your Honor, I'm going to object to the  
13 hearsay.

14 THE COURT: Overruled.

15 A So she felt like -- between the two of us, we felt like  
16 she needed some help in her financial affairs.

17 Q And what was the upshot of those conversations? What did  
18 you do with her to help that?

19 A We went to Wells Fargo and -- it was probably Wachovia at  
20 the time, but Wells --

21 Q (Indiscernible) so I can hear you.

22 A Wells Fargo, and they -- we filled out paperwork for me  
23 to be on the account with her as a joint.

24 Q You whispered that.

25 A We signed to get me on the account as a joint --

1 Q Account holder?

2 A -- account holder.

3 Q Was that 1206 checking account?

4 A The 1206.

5 Q That was at Wells Fargo?

6 A Wells Fargo.

7 Q Was that the only Wells Fargo account and was this  
8 December of '05?

9 A Correct.

10 Q Was that the only Wells Fargo account your mother had, to  
11 your recollection, in December of '05?

12 A Yes.

13 Q What about the Morgan Stanley account? Did you take any  
14 action with respect to that?

15 A Yes. Because she had to get money from Morgan Stanley to  
16 get to the Wells Fargo checking account, we went to talk to  
17 Ben Rast, and they signed us up as -- they put me on the  
18 account with her so that I could make those transfers for her.

19 Q And what time frame was that? Same time frame?

20 A Same time frame.

21 Q And so when you became joint account holder on the Wells  
22 Fargo account and the Morgan Stanley account in December of  
23 '05, what actions did you begin taking with respect to your  
24 mother's financial affairs to help her out, as you said was  
25 necessary?

1 a lot of bills to pay, so...

2 Q So even after you became a joint account holder in  
3 December of '05, was she continuing to write some checks on  
4 her own?

5 A Yes, yes.

6 Q Okay. Was she buying groceries?

7 A Yes.

8 Q Cash?

9 A I'm not sure if she had a credit card at that time, but  
10 she got gas and she was still driving her car.

11 Q How often would you go by your mother's house? Let's  
12 just focus on this December of '05 time frame. How often  
13 would you go by to see your mother and check on her and look  
14 at her finances and stuff like that?

15 A It was probably two or three times a month. I was  
16 working at the time and I would go there after work and see  
17 what -- just visit with her and see how her finances were.

18 Q Do you recall testimony yesterday that your brother was a  
19 Power of Attorney for your mother?

20 A Correct.

21 Q Were you aware of that in 2005?

22 A Yes.

23 Q I think we saw that that was on the statements; correct?

24 A Correct.

25 Q And what activities, if any, was your brother undertaking

- 1 A As long as they required it. Probably until she went to  
2 the assisted living.
- 3 Q Give me a month. Four months? Five months? Six months?  
4 What are we talking about?
- 5 A Gosh, I can't remember.
- 6 Q Why wouldn't people at Laurel Creek give her medicine?
- 7 A Laurel Crest.
- 8 Q I'm sorry.
- 9 A She was in independent living.
- 10 Q Oh, okay.
- 11 A So we either had to get a nurse to do it or we would do  
12 it.
- 13 Q Were you paid for that?
- 14 A I did. I asked for \$5 a trip for gas. Gas was, I guess,  
15 expensive back then. I would get paid for that.
- 16 Q When your mother moved into these facilities, first the  
17 independent living section and then assisted living, did you  
18 sell her house?
- 19 A We did.
- 20 Q Tell me about the initial conversations among you,  
21 Ms. Fuller, and your brother about the sale of the house and  
22 what the plans were, anticipated sales price and that kind of  
23 thing. Just the preliminary discussions.
- 24 A It was -- she had not kept it up as well as she probably  
25 could have and should have but we decided that we needed to --

1 it would be better if we sold it empty, so we -- the home was,  
2 like I said -- she had lived there 48 years, so it had a lot  
3 of stuff in it. And we packed stuff. My recollection is that  
4 Leonard came over to clean out -- help put stuff from the  
5 attic onto the street and things from the outside storage unit  
6 onto the street and may have packed some boxes of books from  
7 her den. It was for about a two- or three-hour period one  
8 day, and Lucy and I did pretty much the rest of getting the  
9 house ready for the market.

10 Q Without going into excruciating detail but some detail,  
11 could you tell Judge Newman sort of what y'all had to do to  
12 get ready to get the house ready for sale?

13 A On the left side of her house, I guess it got more shade,  
14 but when you opened up her curtains, it was completely  
15 mildewed. You know, the windows were mildewed. So I  
16 cleaned -- I sprayed every one of them. I cleaned all the  
17 windows, got all of that. We cleaned her bathrooms.

18 Q What about furniture and that sort of stuff?

19 A Oh, well, we didn't discuss that. This was when it was  
20 empty, that's when I did that. We went through and divided up  
21 what we were going to do per person, and it was not -- it was  
22 just who would get what. We were not really -- you know, it  
23 was just a matter of putting a sticker, I guess, on what we  
24 wanted to take of hers or get rid of.

25 So we knew what was going to which house, and so we would

1 take -- I think we originally took the stuff -- when the  
2 movers came, we met them over one day. Lucy and I met them at  
3 the house, and we put the things that were going to Laurel  
4 Crest first -- I mean, that was last. We would put the things  
5 that went to my house in first, then we put the things that  
6 went to Leonard's house in, and then we put the things that  
7 went into Lucy's house, and then we put the stuff on the end  
8 that was going to be the first delivery to Laurel Crest.

9 Q And was Mr. Jordan involved in any of this process?

10 A No, he was not.

11 Q Okay. What about -- you mentioned your mother moved to  
12 Laurel Crest and moved elsewhere within Laurel Crest and then  
13 moved to Agape and moved elsewhere in Agape. Who was in  
14 charge of getting your mother moved from one room to another  
15 in these nursing homes?

16 A Lucy and I.

17 Q Was Mr. Jordan involved with that at all?

18 A No.

19 Q Was there a pool at your mother's house?

20 A There was.

21 Q Who was in charge of cleaning that out and maintaining  
22 the landscaping while your mother wasn't there?

23 A We did hire a person that would mow her grass. She had  
24 had him for years. So he would come and clean -- do her yard  
25 work. The pool, we would on occasion have someone come out

1 A I'm sorry. I just can't --

2 Q That's fine. That's fine. When that was going on -- was  
3 that before your mother went to Laurel Crest?

4 A Oh, yes, yes.

5 Q When that was going on, were you and your sister and your  
6 brother cooperating or were y'all --

7 A We were.

8 Q -- sort of divided respect to your mother?

9 A We pretty much worked as a team at that point. My  
10 brother -- Leonard would go in the 7:00 shift and talk to the  
11 doctors. I went in at the morning shift, usually 9:00 to  
12 1:00. And then Lucy would do in the afternoon shift. And we  
13 were her managers. She was in there for four months, so if we  
14 didn't do it, it wouldn't have gotten done. It was stacks of  
15 papers.

16 Q Did there come a time, Ms. Kirk, when you and your  
17 sister, Ms. Fuller, became at odds with your brother  
18 Mr. Jordan over the management of your mother's financial  
19 affairs?

20 A When --

21 Q Just say yes or no first.

22 A Yes, yes.

23 Q And when was that?

24 A That was when the distribution of 125 -- I don't know; it  
25 got more than that. 210,000, I believe, was the payout from

1 THE COURT: Well, I'm confused about the relevance of a  
2 lot of this and maybe I won't know until I hear arguments, but  
3 I just don't know. I think a lot of this is sort of  
4 superfluous.

5 MR. COX: It's coming to a closing.

6 THE COURT: Okay. Okay.

7 BY MR. COX:

8 Q Is it a time when Mr. Jordan offered to buy the house for  
9 that amount?

10 A We thought -- we felt like he was interested, and we  
11 found out after the fact that he had had it inspected. So I  
12 think there was an interest there.

13 Q Let me ask you this: You said that was around -- when  
14 was the time he would have invested that money in Morgan  
15 Stanley -- excuse me, in Merrill Lynch; do you recall?

16 A In 2007, I believe.

17 Q And did you become concerned at some point that that  
18 account had lost value?

19 A Yes. When the market took a nose dive, we knew for sure  
20 that his -- those funds would have been impacted. It impacted  
21 a lot of people.

22 Q Did you ask your brother how much, if anything, had been  
23 lost in the market?

24 A Multiple times.

25 Q And what was the response?

1 A He would not let us know how much he had lost in the  
2 market. It was -- the response we would get is it was his  
3 fiduciary duty and that he could invest it as he saw fit.

4 Q What was his attitude in those conversations?

5 MR. ANDERSON: Again, Your Honor, the relevancy of all  
6 this. Where are we going?

7 MR. COX: The relevancy, Your Honor, is the management of  
8 the mother's financial affairs, which we're showing.

9 THE COURT: Which claim is that relevant to?

10 MR. COX: It's relevant to punitive damages, and here's  
11 why. Their argument, as I understand it, is, because this was  
12 an intentional tort conversion, there would happen to be no  
13 damages. As you know, Your Honor, punitive damages are  
14 reversed for a special (indiscernible) that are malicious,  
15 wanton, and willful.

16 We are -- all this testimony is intending to show that  
17 whether the plaintiffs are right or wrong on the legal merits  
18 of the conversion claim, whether they were entitled to that  
19 money or not, they were not malicious, willful, or wanton.  
20 They, in good faith, and based on their own good faith and  
21 understanding, thought they were justified in what they did  
22 with respect to this \$21,000.

23 THE COURT: Well, how does Mr. Jordan's behavior or state  
24 of mind tie into that?

25 MR. COX: Because, Your Honor, our position will be that,

1 with respect to this \$21,000 only, which I'll admit to you is  
2 their strongest claim, \$21,000 after the claim, that  
3 indisputably was divided between Ms. Fuller and Ms. Kirk in  
4 May of 2014. That's the one that they're especially strong  
5 about seeking damages on.

6 This testimony is intended to show that they had a good  
7 faith basis, based on their brother's conduct and his  
8 evasiveness and his belligerence, for believing that he had  
9 lost substantial amounts of money in the marketplace, and for  
10 that reason, thought they were justified -- maybe they weren't  
11 legally, but at least they thought they were, so that they had  
12 a reasonable good faith basis for believing they were entitled  
13 to this money.

14 And if they had, even wrongful from a legal standpoint,  
15 if they were at least being reasonable and were not being  
16 malicious or wanton, that would not be a basis to establish  
17 punitives. That's really where this testimony is going.

18 THE COURT: Okay.

19 MR. COX: Because there's a difference between an evil  
20 person who just said "I don't care, I'm stealing this  
21 money" --

22 THE COURT: Sure.

23 MR. COX: -- and one who says, "My brother has mismanaged  
24 our mother's accounts; this is a fair way of doing vigilante  
25 justice."

1 THE COURT: Okay. I'll hear it. I don't know whether  
2 I'll reach the same conclusion but we'll see.

3 MR. COX: Yes, ma'am.

4 THE COURT: I'll hear it.

5 BY MR. COX:

6 Q So what was his attitude when he was talking to you about  
7 the performance of the market?

8 A He was very condescending to us. He just felt like we  
9 would be putting the -- you know, we needed to be making money  
10 on her money. And we had a completely different attitude. We  
11 felt like we needed to keep her money safe so that it would be  
12 there for her and would be not in a risky investment.

13 Q You mentioned a moment ago that he had some money --  
14 200-and-some-odd thousand dollars that he was in charge of  
15 investing. Did you also have some money that you were in  
16 charge of investing in the sale of the house?

17 A Yes.

18 Q Where did you put your money?

19 A It was at Morgan Stanley.

20 Q In what form of investment?

21 A Lattered CDs. That was what they recommended. Over a  
22 five-year period.

23 Q Now, let's switch gears and get back to the various  
24 accounts at issue in this case. Okay? So you recall a moment  
25 ago we talked about this checking account, 1206, that you said

1 you became a joint account holder on. Do you recall that?

2 A Yes.

3 Q If you look at Exhibit 2, I believe, Defense Exhibit 2,  
4 do you see that, Ms. Kirk?

5 A Yes.

6 Q At the bottom of the page there, it shows two accounts in  
7 the Wells Fargo bank as of -- I think that's July of 2012;  
8 isn't that right?

9 A Correct.

10 Q You see the 1206 account there?

11 A Yes.

12 Q There's another account that says 1783 account?

13 A Yes.

14 Q That's a savings account?

15 A It is.

16 Q When was that account created; do you recall?

17 A I'm not sure on the dates.

18 Q Was it after you became a joint account holder?

19 A Yes.

20 Q Were you a joint account holder on that account?

21 A The way they did -- they would sell you -- I mean, they  
22 wanted you in savings accounts.

23 Q Who is "they"?

24 A At Wells Fargo.

25 Q Okay.

1 A And Leonard also wanted us to be making more money on the  
2 money. So we felt it was good to put it in a savings account  
3 versus it all being in a checking account.

4 Q Okay. I gotcha.

5 A So this savings account was open.

6 Q So was that account created after you became a joint  
7 account holder on the 1206 account?

8 A Yes.

9 Q Was that also a joint account, separate and  
10 (indiscernible)?

11 A Yes.

12 Q There's a reference -- we heard reference to a bunch of  
13 different account numbers yesterday, including something  
14 called the 8040 account. Do you recall that?

15 A Yes, but...

16 Q I know. It all blends together.

17 A Yes.

18 Q Do you recall some discussions from Mr. Kirk [verbatim]  
19 about an 8040 account?

20 A 8040, yes.

21 Q And let me ask the more general question. Do you recall  
22 that, in addition to this 1783 account, there were other  
23 savings accounts that you would periodically open at Wells  
24 Fargo from time to time; do you recall that?

25 A Yes.

1 Q Why were you opening other -- if you already had one  
2 savings account of Wells Fargo, this 1783 one, why were you  
3 opening additional accounts at Wells Fargo?

4 A They would have a -- it was a higher yield savings  
5 account, and they were -- Wells Fargo at the time was really  
6 pushing -- they would offer a good rate to get you to bring  
7 new money. You know, it wasn't something that was coming from  
8 one account to the other, so you would open -- it was for  
9 higher interest.

10 Q Were you going into the bank saying, "I'd like to open a  
11 new savings account" or Wells Fargo was bringing these offers  
12 to you?

13 A They were -- they would see me when I was making the  
14 deposits, and they would -- they would see her balances and  
15 would encourage me to get a higher yield.

16 Q And that's why you did that?

17 A Yes.

18 Q Now, at some point, did you transfer -- I think the exact  
19 number is \$21,858.40?

20 A I did.

21 Q Did you transfer that amount from a Wells Fargo account  
22 in which you and your mother were a joint account holder to  
23 your own account at Bank of America?

24 A I opened an account at Bank of America, which was a  
25 higher yield savings account as well.

1 Q And when was that?

2 A That was in 2010.

3 Q Okay. And, again, why did you move -- first of all, did  
4 you open this account at Bank of America expressly to receive  
5 this money or was it already an existing account?

6 A I banked at Bank of America, but we opened a separate  
7 account so that she could earn a higher level of interest. We  
8 were -- Leonard wanted us to be making money on the money that  
9 was in her accounts. He was very -- he would think we were  
10 putting it in her mattress. So whenever I would see something  
11 that was a higher yield interest at the time, I put the money  
12 in there to get a higher interest.

13 Q And that's what you did with this Wells Fargo money in  
14 2010?

15 A Yes.

16 Q To be clear, you moved this money from Wells Fargo --

17 A To Bank of America.

18 Q -- to Bank of America in May of 2010.

19 A Correct.

20 Q What did you do with it?

21 A It sat there for four years.

22 Q Okay. Why?

23 A Because we kind of forgot about it.

24 Q I'm going to ask you an obvious question before  
25 Mr. Anderson does, Ms. Kirk, which is how do you forget about

1 \$21,000?

2 A Well, it was just sitting there with -- making interest.  
3 And I banked online and I did all of my stuff online, so I --  
4 I don't even think I got statements. I think they were  
5 paper -- you know, all my banking was done online, and we just  
6 literally forgot about it.

7 Q Why the particular amount? Why the \$21,000 amount?

8 A I believe they required a \$20,000 deposit to get it  
9 opened, and we had just opened one at Wells Fargo, and so that  
10 was closed and those were the funds that were -- it was just  
11 what was in one account there. Closed and opened over there.

12 Q Did you tell your brother, in 2010 -- in May of 2010,  
13 that you were moving this money from Wells Fargo to Bank of  
14 America?

15 A I did not. He was not really involved with what we were  
16 doing. I mean, it was --

17 Q With your mother's finances?

18 A Yes.

19 Q Do you recall testimony yesterday that your brother said  
20 he called you after your mother had passed and he asked you  
21 some questions about money in your mother's accounts? Do you  
22 recall that testimony from your brother?

23 A Yes.

24 Q Do you recall exactly what he asked you at that time?  
25 This would have been in June of 2012, just to orient you.

- 1 A What was in her accounts at Morgan Stanley and at Wells  
2 Fargo.
- 3 Q And what did you tell him?
- 4 A The figures that are on those sheets.
- 5 Q Was that -- when you say "those sheets," I want to make  
6 sure the record is clear. We have admitted --
- 7 A On the probate...
- 8 Q We have admitted Exhibit 3.
- 9 A Yes.
- 10 Q Right?
- 11 A Yes.
- 12 Q Do you see there's figures there from Morgan Stanley --
- 13 A Correct.
- 14 Q -- and Wells Fargo?
- 15 A Correct.
- 16 Q Are those figures that came from you, to the best of your  
17 recollection?
- 18 A Yes.
- 19 Q Do you see there's no figure on there for Bank of  
20 America.
- 21 A That's correct.
- 22 Q Did you tell your brother about the account in Bank of  
23 America at that time?
- 24 A No. We -- I had forgotten about it.
- 25 Q Okay. At some point, though, you remembered it, didn't

1 you?

2 A We did.

3 Q When was --

4 A Or I did. It wasn't until we had gone through some of  
5 the -- I don't remember when we -- when I realized that it was  
6 there.

7 Q But you heard testimony yesterday from your brother --  
8 and it's true, is it not -- that in May of 2014 -- I think  
9 May. In 2014 --

10 A Right.

11 Q -- those funds from that Bank of America account were  
12 split equally between you and your sister; do you recall that?

13 A That's correct.

14 Q So whether you had forgotten about it earlier, certainly  
15 by May of 2014, you had remembered; right?

16 A Correct, yes.

17 Q Did you tell your brother at that time that there was  
18 money in this account at Bank of America that had come from  
19 your mother?

20 A No.

21 Q Why not?

22 A We felt like it was -- when we were going to be dividing  
23 it up, we kind of looked at what we had done for our mother  
24 over the years, and we looked at the \$7,000 and felt like, you  
25 know, that we were -- we had done more work -- manual work.

1 We had done more on a daily basis practically, especially when  
2 she was getting a long -- when she went to Agape especially.  
3 And we felt like it was something that we should pay ourselves  
4 for.

5 Q Okay. What was your relationship like with your brother  
6 at this time in May of 2014?

7 A Ever since the situation with Merrill Lynch, we did not  
8 have an amicable relationship. It was him hanging up on us on  
9 the phone. His emails would be very condescending and very --  
10 you have a tone in an email, and it was -- we just didn't even  
11 want to respond to him. It was -- we felt like our  
12 relationship was not open at all after the Merrill Lynch  
13 situation.

14 MR. COX: May I have one moment, Your Honor, if you don't  
15 mind?

16 THE COURT: Yes, sir.

17 MR. COX: Thank you, Ms. Kirk. Please answer any  
18 questions Mr. Anderson may have for you.

19 THE WITNESS: Okay.

20 CROSS-EXAMINATION

21 BY MR. ANDERSON:

22 Q Your mother's will provided that her estate was to be  
23 divided in thirds with each of you taking a third?

24 A That's -- yes.

25 Q Okay. And when Mr. Jordan came to you to ask you what

1 money your mother had and you gave him that information;  
2 correct?

3 A Correct.

4 Q Do you believe that your brother, Mr. Jordan, had the  
5 right to rely upon your representations as to what monies your  
6 mother had?

7 A Yes.

8 Q All right. Did you tell him the truth?

9 A From what my recollection at the time, that was what I  
10 remembered.

11 Q You were shown the inventory as an exhibit by your  
12 lawyer.

13 A Mm-hmm.

14 Q And the figures on there, do they properly represent what  
15 was in the stock mortgage account and the Wells Fargo account?

16 A That's my understanding, yes.

17 Q And these were the correct amounts?

18 A Well, what I gave -- what I gave to him was what was on  
19 the statements at the time.

20 Q And the smaller of the two accounts, the smaller Wells  
21 Fargo account, that's the money that you ultimately  
22 transferred from that particular account that it was in to  
23 Bank of America just in your own name?

24 A I'm not sure that's -- when was this?

25 Q This was filed --

1 A The ones that went to Bank of America was in 2010.

2 Q I understand that, but the money from -- what account  
3 went to Bank of America? Was it the same money that you  
4 passed on to Mr. Jordan when he filled out the inventory?

5 A No.

6 Q It was not?

7 A This was 2013. No.

8 Q And the monies that you put into the Bank of America  
9 account, where did that money come from?

10 A It was on a savings account at Wells Fargo.

11 COURT REPORTER: I'm sorry, a savings account at where?

12 THE WITNESS: At Wells Fargo.

13 BY MR. ANDERSON:

14 Q And where did the money in the savings account from Wells  
15 Fargo go? Where did the money in the Wells Fargo savings  
16 account that you transferred to Bank of America, where did  
17 that money come from?

18 A It was in a savings account at Wells Fargo.

19 Q I'm asking, where did it come from?

20 A Oh, just deposits of her checks.

21 Q All right. So the monies, then, that you transferred  
22 from the savings account at Wells Fargo to account just in  
23 your name at Bank of America came from either her Social  
24 Security money or the Bankers Life money?

25 A Correct.

1 in turn became --

2 A That's really small print. I'm not sure I'm going to be  
3 able to see it.

4 Q -- which subsequently became a Wells Fargo account.

5 THE COURT: I may have a magnifying glass.

6 THE WITNESS: I've got some stronger glasses.

7 MR. COX: May I see what he's referring to first?

8 Your Honor, I can save some time, I hope. He's asking my  
9 client to read from the last statement in this box that says  
10 it applies to North Carolina and Tennessee accounts only that  
11 we talked about yesterday. I would object on the grounds of  
12 relevance.

13 MR. ANDERSON: It doesn't say that it applies to North  
14 Carolina and Tennessee only. It says sign here if you want it  
15 to be a joint account with right of survivorship.

16 MR. COX: It says "only" right at the top.

17 THE COURT: Well, the document speaks for itself, and I  
18 will interpret what it says.

19 I have not been able to find a magnifying glass.

20 THE WITNESS: Okay.

21 THE COURT: I don't think you'd be able to read it  
22 anyway, even with the glasses, so...

23 But I'm able to read it, so we're good.

24 BY MR. ANDERSON:

25 Q The monies that ultimately ended up in the Bank of

1 and your sister?

2 MR. COX: Your Honor, I don't even know -- I'm so  
3 confused. I don't know whether to object, but I'm not sure  
4 which account he's referring to or --

5 THE COURT: Me either.

6 MR. COX: And I can tell my witness is confused, so let's  
7 give them clarification.

8 THE COURT: Continue.

9 BY MR. ANDERSON:

10 Q And the money that you're talking about that was  
11 disbursed in May of 2014 from Bank of America?

12 A Correct.

13 Q And that was disbursed how close in conjunction to your  
14 purchase of your new house?

15 A I purchased the house in June of -- I think June 12th.

16 Q June the 12th.

17 A Mm-hmm.

18 Q And this money was split between you and your sister in  
19 May of 2014?

20 A In May, yes.

21 Q This money, then, was money that was coming in for the  
22 care of your mother?

23 A Correct.

24 Q And, in turn, you're utilizing the Morgan Stanley account  
25 to pay for the care of your mother?

1 Q Was your brother quizzing you about this money, asking  
2 you about this money?

3 A No.

4 Q This is nothing that you disclosed to him --

5 A Correct.

6 Q -- until 2015?

7 A Correct. '17.

8 Q 2017. That was the first that you told him about it; is  
9 that correct?

10 A Correct.

11 Q So this is your mother's money. He is the personal  
12 representative of your mother's estate, and you moved this  
13 money in 2010, I think you said?

14 A Correct.

15 Q You disbursed it to you and your sister in 2014, but you  
16 elected not to tell your brother about this?

17 A We did not. We were not communicating at the time.

18 Q You were not communicating? No email exchange that, hey,  
19 we have converted this -- we have changed this money over?

20 A We did not.

21 Q You understood that he was a personal representative of  
22 the estate?

23 A Correct.

24 Q You understood that he had duties to the estate and to  
25 your mother's will with regard to whatever assets she

1 possessed?

2 A I didn't know a lot of what he was responsible for. I  
3 just knew that he didn't do much with her financial affairs.

4 Q You indicate that you and your sister were the ones who  
5 were doing all of this work for your mother or on your  
6 mother's behalf.

7 A Correct.

8 Q Did you or your sister ever file a claim against the  
9 estate for monies that you represent you were entitled to  
10 because of all the work you did?

11 A Well, we didn't -- we didn't know we -- we didn't know  
12 what the laws were or what you do, so we just --

13 Q You didn't file a claim?

14 A We did not.

15 Q Okay. With regard to what you did and with regard to  
16 what your brother did, did you take part of any negotiations  
17 concerning the sale of the house?

18 A That was primarily my sister.

19 Q Okay.

20 A Solely my sister.

21 Q Did you partake with your brother with regard to anything  
22 dealing with the particulars about the sale of the house,  
23 entering into the contract, doing anything like that?

24 A No. Lucy showed the house and Lucy sold the house.

25 Q Did you have a real estate agent?

- 1 Q You opened that?
- 2 A Mm-hmm.
- 3 Q Why?
- 4 A It was a savings account, to get more interest.
- 5 Q And you put 7360 in there?
- 6 A That must have been what was in there.
- 7 Q Okay. Did you get more interest in Morgan Stanley have a
- 8 plan -- a program whereby you could deposit money with them
- 9 and they would invest it into a money market account?
- 10 A A lot of those were not paying much interest at the time.
- 11 Q Okay.
- 12 A But they did have that program. I guess they had that.
- 13 Q Pardon?
- 14 A I guess they had that program. They just -- nobody was
- 15 paying --
- 16 Q And what interest was it paying?
- 17 A I don't remember, but it wasn't much at that time.
- 18 Q How much was 8040 paying?
- 19 A See, I don't have all that information.
- 20 Q It was basically a money market account with Wells Fargo?
- 21 A Yes.
- 22 Q Any reason to believe that what Morgan Stanley was
- 23 offering insofar as interest would be higher or lower than
- 24 Wells Fargo?
- 25 A As I remember, they were not paying -- they did not pay

1 A All of the funds were either disbursed or for her --  
2 that's in two-thousand -- what's the date on that?

3 Q It goes to 2012.

4 A '12. Okay. Some of them may have gone to her burial  
5 expenses.

6 Q Okay. Your mother, you acknowledge, was incompetent to  
7 manage her own affairs in December of '05?

8 A She needed help with her financial affairs.

9 Q And she dies in June of '12.

10 A Correct.

11 Q Did you and your mother have discussions about what you  
12 were doing with this money?

13 A No.

14 Q You just took it upon yourself to do it?

15 A When we started getting the Bankers Life payments, which  
16 are those -- the majority of those are there, she was in the  
17 assisted living area, because she wouldn't have gotten those  
18 unless she was in assisted --

19 Q So you were not discussing this with your mother?

20 A No.

21 Q She would have been incompetent to have rendered any sort  
22 of advice, any sort of directions as to what this money was  
23 being used for or where it was going?

24 A I did not discuss it with her, and --

25 Q These are decisions you made on your own.

- 1 A I made them because Leonard had turned those -- I guess,  
2 you know, he was not doing it, so...
- 3 Q But that was something that you voluntarily undertook to  
4 do?
- 5 A It was -- somebody had to do it.
- 6 Q And you undertook to do it?
- 7 A I did.
- 8 Q Okay. You mentioned or you acknowledge the 8040 account,  
9 the 1206 account, and the 1783 account; right?
- 10 A Yes.
- 11 Q And then you said there were other accounts. What other  
12 accounts did you open?
- 13 A At Wells Fargo?
- 14 Q Or anywhere.
- 15 A Nowhere, other than the Bank of America.
- 16 Q So you only opened these three accounts?
- 17 A And there was one that was for 100, that had a \$100  
18 balance in it, which was mine personally.
- 19 Q Okay. But accounts you were utilizing for your mother's  
20 benefit?
- 21 A There was one that might have been opened. It was closed  
22 within a month. I don't know if that's on there. Is that the  
23 one that went to Bank of America?
- 24 Q Okay. And that was primarily Bankers Life money?
- 25 A I don't know what went into which one, you know.

1 Q But you're paying Merrill Lynch -- excuse me. You're  
2 paying out of Morgan Stanley the nursing home?

3 A Correct.

4 Q And Mr. Jordan has got a one-third interest in that  
5 account; does he not?

6 A In which account?

7 Q In the Morgan Stanley account.

8 A Okay.

9 Q All right? Yes?

10 A As long as -- at her death.

11 Q At her death.

12 A Right.

13 Q But you utilized the Morgan Stanley money in which  
14 Mr. Jordan has got a one-third interest to pay the nursing  
15 home. You're reducing his interest in the Morgan Stanley  
16 account.

17 A But that's also where we got disbursements from that  
18 account.

19 Q But it is reducing his interest in Morgan Stanley every  
20 month that you pay the nursing home out of the Morgan Stanley  
21 account.

22 A I was not thinking anything about that. I didn't -- I  
23 just would write a check when -- if the funds were at one  
24 place, they would get paid.

25 Q But the Bankers Life money is going into these other

1 accounts that you transfer into your own name and subsequently  
2 disbursed to you and your sister; right?

3 A But we also had disbursements out of those accounts too.

4 Q I understand that. But you, in turn, disbursed in excess  
5 of -- the motion for summary judgment indicates and the order  
6 for summary judgment indicates that you transferred \$21,481.02  
7 from your mother's account to an account over which you had  
8 control that you subsequently divided between you and your  
9 sister.

10 A Correct.

11 Q And then the other testimony is that other monies you  
12 transferred from your mother's account to the Bank of America  
13 account that you subsequently gave to you and your sister?

14 MR. COX: Objection, Your Honor. That's the same  
15 account. I think even Mr. Jordan agrees with me on that.

16 Can we just take a break to let you talk about it and  
17 just --

18 THE COURT: Yeah, let's take a moment.

19 (Counsel confers with client off the record.)

20 BY MR. ANDERSON:

21 Q And you also divided --

22 THE COURT: Hold on. Okay. We're good. Go ahead.

23 BY MR. ANDERSON:

24 Q And you also divided between you and your sister the  
25 funds that you have represented to Mr. Jordan on the

1 inventory. You divided that between you and your sister.

2 A The Wells Fargo.

3 Q Yes. That was divided between you and your sister.

4 A Correct.

5 Q All right. Did you discuss any of these matters with  
6 Mr. Jordan as the personal representative before you made  
7 these disbursements?

8 A We met and he had discussed I think during one of  
9 those -- saying that we would divide it as -- he would get --  
10 I would get seven and he would get five and she would get --  
11 my sister would get 3,000.

12 Q My question is, did you discuss with Mr. Jordan the  
13 division of this money about which we're here today paid into  
14 the estate so that it could be divided?

15 A It wasn't my understanding -- I didn't know what he was  
16 asking for.

17 Q Okay. Your mother was passed away at this time?

18 A Correct.

19 Q The estate had been opened.

20 A But he just asked me what was in these accounts, and  
21 that's what I gave him.

22 Q And you gave him this figure of the 20-some-thousand  
23 dollars as is evidenced by the inventory.

24 A Correct.

25 Q And then you said that that was an asset of the estate

1 when he asked you what assets existed.

2 A He didn't ask me what was assets of the estate. He asked  
3 me what was in those accounts.

4 Q What were in the accounts the mother had.

5 A That we had at Wells Fargo and at --

6 Q Merrill Lynch.

7 A -- Merrill Lynch. Oh, no; Morgan Stanley.

8 Q Would that have been an asset of the estate?

9 MR. COX: Objection, Your Honor. That's a legal question  
10 as well.

11 THE COURT: Sustained.

12 BY MR. ANDERSON:

13 Q Was that monies that he was looking for so that he could  
14 advise the probate court what were the monies that belonged to  
15 the estate that had belonged to your mother?

16 MR. COX: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. ANDERSON:

19 Q You gave him the answer to the question.

20 A What was in the two accounts, mm-hmm.

21 Q And he had a right to rely upon your representations.

22 A I didn't -- I didn't know what the forms he was  
23 completing was for.

24 Q Well, he asked you what monies Mother had.

25 A Correct.

1 Q And you read off of the Wells Fargo account what was  
2 balance was.

3 A Correct. But I didn't know what he was doing with them.  
4 That was his job.

5 Q And you read off the Morgan Stanley account how much  
6 money was in there.

7 A Correct.

8 Q You made the comment that Mr. Jordan invested some of the  
9 money from the sale of Mama's house into a Merrill Lynch  
10 account.

11 A Correct.

12 Q And he or that account lost money when the recession  
13 came; correct?

14 A When the market crashed.

15 Q When the market crashed.

16 Now, the Morgan Stanley account is the one that you  
17 managed. Is that not correct?

18 A I did not manage it. Ben Rast managed her account.

19 Q Did Mr. Jordan manage the Merrill Lynch account?

20 A The whole money that was going into that, we were against  
21 completely going to Merrill Lynch.

22 Q But you had no problem with it going into the Morgan  
23 Stanley account.

24 A It was -- she already had that account. And Ben Rast was  
25 her manager.

1 Q Did you not understand that those sums of money, being  
2 your mother's money, belongs to the estate?

3 MR. COX: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. ANDERSON:

6 Q When you gave the monies to you, yourself, and to your  
7 sister on the first occasion and when you did it in 2014, did  
8 you tell your brother, as the personal representative, "Look,  
9 this is what we're going to do with the money"?

10 A No.

11 Q You did not?

12 A No.

13 Q And the receipt of that money benefitted you and your  
14 sister.

15 A Yes.

16 Q And it was an intentional decision on you and your  
17 sister's part?

18 A We felt like we should be paid for what we had done.

19 Q Was Mr. Jordan entitled to be paid for the work that he  
20 had done?

21 A We felt like the work that we did was daily. It was  
22 manual. It was -- it was horrible things that we had to do.

23 Q Talking about the sale of the house.

24 A Yeah, and also taking care of her when she was not doing  
25 well at the nursing home. My sister went daily to her when

1 she was at Agape.

2 Q Prior to your mother becoming incompetent, did you and  
3 your sister enter into a contract with her relative to being  
4 paid from her funds for your care and your sister's care of  
5 her?

6 A No.

7 Q No contract?

8 A No.

9 Q From this estate, then, and the monies that belonged to  
10 the estate, you and your sister ultimately are going to  
11 receive more money than your brother; is that not true?

12 MR. COX: Same objection, Your Honor.

13 THE COURT: Sustained.

14 MR. ANDERSON: Bear with me a minute, Judge.

15 THE COURT: Yes, sir.

16 BY MR. ANDERSON:

17 Q The monies that you gave to yourself and your sister in  
18 May of 2014, that was the money that you transferred from your  
19 mother's accounts to the account just in your name with Bank  
20 of America?

21 A Correct. It's a savings account.

22 Q And there was also another disbursement, other than the  
23 one in 2014?

24 A From?

25 Q From your mother's money. There were two disbursements

- 1 that you made. One was in 2014 and there was another one that  
2 was earlier; right?
- 3 A That was from the Wells Fargo.
- 4 Q Right.
- 5 A The joint account?
- 6 Q Yes.
- 7 A Yes.
- 8 Q And that was a conscious decision that you and your  
9 sister made?
- 10 A It is.
- 11 Q Did you consult with a lawyer before you made those  
12 transfers?
- 13 A No.
- 14 Q It wasn't some sort of an accident that you transferred  
15 these two sums of monies to yourself and your sister?
- 16 A Which account are you talking?
- 17 Q Either one.
- 18 A Either one? No.
- 19 Q And it wasn't some negligent thing that ou did by writing  
20 you and your sister a check for monies that you thought  
21 belonged to you or to your sister?
- 22 A The ones that were at the Wells Fargo account, we  
23 discussed it with Leonard, with the loss that was in --  
24 because of what he put at Merrill Lynch. We felt like --
- 25 Q Did he agree you?

1 A Well, he agreed with a certain division of 75 and three,  
2 which was not a third, a third, a third.

3 Q But insofar as that discussion that you had with  
4 Mr. Jordan as to that Wells Fargo account, you and he and your  
5 sister never came to an agreement?

6 A No. He never --

7 Q And you understand that, when he was having that  
8 discussion, he was representing the estate as the personal  
9 representative, not himself individually.

10 A We were just talking as siblings.

11 Q Just talking?

12 A We were.

13 Q You indicated earlier that, in 2006, the tax return shows  
14 that the Merrill -- excuse me, the Morgan Stanley account took  
15 a hit of 30-some-odd thousand dollars; right?

16 A Correct.

17 Q Let me show you this. And this is the tax reporting  
18 statement for 2010 on the Merrill Lynch account. And if you  
19 turn over to page 4 and the balance in that account of 2010 is  
20 how much?

21 A 110.

22 Q 110,000.

23 A Correct.

24 Q And the original amount that was put in there?

25 A Was 125.

1 Q So --

2 A Roughly.

3 Q So from the time the money was part of the Merrill Lynch  
4 through this terrible recession we had and the crash of the  
5 market, the account lost somewhere in the neighborhood of  
6 15,000?

7 A 15,000, yes. And that's where the 75 and three came  
8 from.

9 Q And whereas the account that you had money in lost  
10 33,000.

11 A It may have come back too. I haven't seen the figures.

12 MR. ANDERSON: Your Honor, we'd like to go ahead and put  
13 this in.

14 MR. COX: No objection.

15 COURT REPORTER: So it will be No. 16, Your Honor. What  
16 you want to call it, Mr. Anderson?

17 MR. ANDERSON: Merrill Lynch account.

18 COURT REPORTER: Account for dates or for what? Just  
19 Merrill Lynch account?

20 MR. ANDERSON: Yeah.

21 THE COURT: Plaintiff's 16 is admitted without objection.  
22 (Plaintiff's Exhibit No. 16 was marked for identification  
23 and received into evidence.)

24 BY MR. ANDERSON:

25 Q What do you refer to as the Wells Fargo account, which

1 you normally put in the Bank of America, that amount of money  
2 that was available was \$25,090; correct?

3 A I was thinking that was 21,000.

4 Q But that's what you represented to Mr. Jordan in emails  
5 as to what was in that account, \$20,090.

6 A On which account?

7 Q That was the one that you put into Bank of America.

8 A I never did --

9 MR. COX: Objection, Your Honor.

10 BY MR. ANDERSON:

11 Q Excuse me. That was the money -- that was the money that  
12 you distributed between you and your sister.

13 A It was -- oh, yes.

14 Q \$25,090. All right. And if the Court awards prejudgment  
15 interest from the time that you moved that money until  
16 yesterday, that would be a total due then on that transfer of  
17 \$33,384.30; is that correct?

18 MR. COX: Objection, Your Honor. Without a calculator,  
19 there's no way she can testify to that.

20 THE COURT: She might.

21 MR. ANDERSON: All right. Very well.

22 BY MR. ANDERSON:

23 Q That's what the figure reflects, does it not?

24 A Yes, that's what that shows, yes.

25 Q And you and your sister split the \$25,090.

1 A We did. We were -- that was in the Wells Fargo account,  
2 and it was 8,000 apiece. It would have been 8,000 apiece.

3 Q That was in the Wells Fargo account, but that's \$25,090  
4 divided by two would be 12-five or thereabouts.

5 A But when we -- if you divided it by three, it was 8  
6 apiece, and we felt like he lost it.

7 Q But you didn't do it into threes. You did two people:  
8 You and your sister.

9 A Correct.

10 Q Your brother didn't get a penny of that.

11 A We felt like what he had lost in the market --

12 Q Okay. Your brother did not get a penny of that.

13 MR. COX: Objection, Your Honor. She's trying to explain  
14 the basis for the division.

15 THE COURT: Let her explain her answer.

16 MR. ANDERSON: Your Honor, I think she needs to answer  
17 and then she can explain.

18 THE COURT: Sure, but she was talking, and you were  
19 talking over her. You have to let her finish talking.

20 BY MR. ANDERSON:

21 Q Your brother did not get a penny of that.

22 A He did not.

23 Q Okay. Thank you.

24 MR. ANDERSON: I have nothing further, Your Honor.

25 THE COURT: Any redirect?

1 MR. COX: A little bit.

2 REDIRECT EXAMINATION

3 BY MR. COX:

4 Q Ms. Kirk, I think you testified earlier that, in December  
5 of 2005, when you had this discussion with your mother about  
6 her needing help with her financial affairs, you went down to  
7 Wachovia and got yourself a joint account holder on the  
8 Wachovia checking account; correct?

9 A Correct.

10 Q Did you sign paperwork at Wachovia with your mother to do  
11 that?

12 A Yes.

13 Q And are those signature cards that you signed to become a  
14 joint account holder?

15 A Yes.

16 Q I'm going to show you these documents. Were you sitting  
17 with your mother when y'all signed this card?

18 A Yes.

19 Q Were y'all right next to each other?

20 A Yes.

21 Q And you were able to see what she was signing?

22 A Yes.

23 MR. COX: I'm going to mark these as Exhibits --

24 COURT REPORTER: 7.

25 MR. COX: Is that 7?

1 COURT REPORTER: Mm-hmm. What do you want to call that?

2 MR. COX: 1206 signature card. Thank you.

3 (Defendant's Exhibit No. 7 was marked for  
4 identification.)

5 BY MR. COX:

6 Q I'm going to show you what's been marked as Defense  
7 Exhibit 7 and ask you if you recognize those two documents.

8 A Yes.

9 Q Are those the two signature cards that you and your  
10 mother signed in December of '05 so that you could become the  
11 joint account holder on 1206?

12 A Yes.

13 MR. COX: Your Honor, I move the admission of those  
14 documents.

15 THE COURT: Any objection?

16 MR. ANDERSON: I think the document speaks for itself,  
17 Your Honor.

18 THE COURT: Any objection to it being admitted into  
19 evidence?

20 MR. ANDERSON: No.

21 THE COURT: That's Defendant's 6 and 7?

22 COURT REPORTER: Just 7.

23 MR. COX: Just 7. Just one document.

24 COURT REPORTER: Two pages; right?

25 MR. COX: Yes, ma'am.

1 THE COURT: What number? 7?

2 COURT REPORTER: 7, yes, ma'am.

3 (Defendant's Exhibit No. 7 was received into evidence.)

4 MR. COX: Your Honor, I need to clear up one thing. You  
5 have Plaintiff's 10? Yes. Okay. I'm sorry. I thought that  
6 one had markings on it. We're good.

7 BY MR. COX:

8 Q You went through a lot of testimony with Mr. Jordan about  
9 these issues about where you have deposited Bankers Life  
10 checks and whether you were trying to deposit them in one  
11 account so as not to give your brother a right to it. Do you  
12 remember that line of questions?

13 A Yes.

14 Q Was the Morgan Stanley account also a joint account?

15 A It was.

16 Q Were all the accounts your mother had after December of  
17 2005 joint accounts?

18 A Yes.

19 Q So it didn't matter where you put the Bankers Life check,  
20 it was going to be in a joint account regardless; is that  
21 correct?

22 A Correct.

23 MR. COX: No further questions.

24 THE COURT: Anything further?

25

REXCROSS-EXAMINATION

1 BY MR. ANDERSON:

2 Q What written document do you have that shows that the  
3 Morgan Stanley account was a joint account?

4 A We went and opened a --

5 Q No. What written document do you have in your  
6 presence --

7 A I don't have it.

8 Q You don't have anything?

9 A No.

10 Q And did you -- the document that Mr. Cox showed you  
11 earlier on that's dated 12/16 of '05; correct?

12 A Correct.

13 Q And you indicated earlier that the three of you agree  
14 that your mother was incompetent in December of '05?

15 A We did not agree that she was incompetent. She needed  
16 help with her finances. She was not incompetent. She was  
17 still driving and shopping and...

18 Q Did the Wells Fargo representative discuss with your  
19 mother that, if she opens this account in the fashion that is,  
20 it becomes a joint account with right of survivorship?

21 A Yes.

22 Q He discussed that with her?

23 A Yes.

24 Q Was your mother capable of understanding that?

25 A Yes.

1 Q In the request to admit, you were asked the question:  
2 "State when you concluded that Lil B. Jordan was no longer  
3 capable, competent to handle her financial affairs" --

4 MR. COX: Objection. I don't think it says "competent,"  
5 Mr. Anderson.

6 THE COURT: It did.

7 MR. COX: Judge, I apologize.

8 BY MR. ANDERSON:

9 Q And your response?

10 A But this was the financial affairs.

11 Q Okay. That's what it says. I asked the question --

12 A Not that she was not competent.

13 Q Okay. "State when you concluded that Lil B. Johnson was  
14 no longer capable/competent to handle her financial affairs."

15 And what's your response?

16 A But it just the financial.

17 Q Okay. What's your response?

18 A In or about December of 2005.

19 Q And this is saying financial affairs; is it not?

20 A Correct.

21 Q So you acknowledge, then, that your mother, in December  
22 of 2005, was not capable to handle her financial affairs?

23 A Well, my understanding, when we were talking about that,  
24 was that she did not have -- she needed assistance. She was  
25 not incompetent.

1 they considered to be a fairly aggressive manner. That's  
2 really what the past diverged.

3 And so, Your Honor, the problem here is that, when the  
4 time came to split this money, which these ladies did in 2014,  
5 they're not lawyers, as their brother is. They look at the  
6 situation. Their view is they're in a real fight with their  
7 brother over the amount of money he had lost. You heard they  
8 repeatedly tried to get him to explain how much he had lost.  
9 He would not do that. He hung up on them. Mr. Jordan himself  
10 admitted yesterday, Yeah, I probably hung up on them.

11 He delivered a box of files to his sisters, which he said  
12 he did yesterday, only the files from 2008 when the crash  
13 happened were missing. We heard that from Ms. Kirk today.  
14 And so they look at all of that and they put it in the sausage  
15 grinder and their view is "We told him not to do this.  
16 There's been a huge stock market crash. He's not telling us  
17 how much money he's lost. On top of all this, we have done  
18 all this for our mother when he has done very little." And  
19 they made a decision that it was proper and appropriate to  
20 them to split this money.

21 Your Honor may disagree. I do believe there's a set-off  
22 argument. I do believe they have given some evidence as to  
23 how much time they put in this to be allowed to set-off, but  
24 Your Honor, we disagree. However, there's still the next  
25 issue of appeals, and that, I understand Your Honor was

1 wondering about the relevance, and that is why I introduced  
2 all that evidence today.

3       Mr. Anderson, in his argument, suggested that purely  
4 because conversion is an intentional tort, they're entitled to  
5 punitives. And that's not wrong. You really do have to show  
6 a special class of egregious behavior to qualify yourself to  
7 punitive damages under our law. And I would submit to you,  
8 Judge, you saw the testimony of these two witnesses, you  
9 weighed their credibility, and you heard about what was going  
10 on in their family for years. Ultimately, of course it's your  
11 decision, but I would submit to you this is not a situation of  
12 willful, wanton, egregious, malicious behavior. This is a  
13 situation in which a family was at odds with one other. There  
14 were good reasons for these ladies to be concerned about what  
15 their brother was doing, there were good reasons for them to  
16 be skeptical, and they made a decision which, whether or not  
17 it was legal in terms of what they were entitled to, it did  
18 not rise to the level of egregiousness that would justify  
19 punitives.

20       I would also submit there's some factors he's failed to  
21 satisfy, and I believe it's the gamble test, such as their net  
22 worth and their ability to pay and various and other factors.  
23 We'll deal with that in a proposed order. I think that was  
24 their burden, and I think they failed to show it.

25       So, on the third claim, we do believe there's a

1 reasonable diligence argument, that there is a set-off  
2 argument, but most significantly, there is no basis for  
3 punitive damages here.

4 Let me wrap up with two general points. There was  
5 reference a lot of times to Judge Manning's order granting  
6 partial summary judgment. They did not ask him to certify  
7 that as the final judgment at the time he rendered it. They  
8 then sought a writ of execution. We came in and said, Judge,  
9 it's partial; it can be represented at any time. And he  
10 quashed the writ. Rule 54(b) expressly says that a partial  
11 summary judgment, not certified as final, may be revisited at  
12 any time prior to the entry of final judgment.

13 I respect what Judge Manning did, but he did it in a  
14 45-minute hearing, and the hearing where they came before him  
15 later and said "make it final," he said no. This Court has  
16 the authority to review everything you have heard in two  
17 days -- a lot more evidence than Judge Manning had before  
18 him -- and to render a verdict that takes all of that evidence  
19 into consideration. So it was partial, and therefore, it was  
20 not final.

21 The last point I want to make -- I know I made it  
22 yesterday at the bar, but it really is significant, and this  
23 is the attorney's fees point. And I want to show you  
24 something that I prepared. I'm not offering it as an exhibit;  
25 I'm offering it as an example of what would happen. And I'll

1 offer it to Ms. Snyder as well.

2       This takes all three of the claims -- Wells Fargo,  
3 Bankers Life, and Bank of America -- and it shows what would  
4 happen if the Court granted any or all of these claims under  
5 our theory of the case and their theory of the case. Look at  
6 their theory of the case first. You heard they didn't really  
7 want to talk about the attorney's fees issue at all. I'm glad  
8 I sort of fleshed it out. But you heard Mr. Jordan testify as  
9 to what the arrangement is. Here's their plan. They're going  
10 to have all this money, not only Mr. Jordan's share but the  
11 share that these two ladies have had for seven years. They're  
12 going to have all that money come back into the probate court.  
13 Then they're going to ask the probate court to take a third  
14 off the top of it for attorney's fees, and then they're going  
15 to distribute it back a third, a third and a third. He  
16 doesn't deny they're entitled to their own thirds, even after  
17 this lawsuit. But he's bringing it back in the probate court  
18 first.

19       And look at the effect of that, Judge. I like  
20 Mr. Anderson. We get along well. I think he's done a good  
21 job here. But he ends up getting more than any of the  
22 beneficiaries under those plans. And here's what's most  
23 interesting: Under their calculation, Mr. Jordan actually  
24 fares worse under their theory than he does in ours. And I'll  
25 explain why in a second.

1 But that's what's going on here, Judge. And so I think  
2 one thing which Your Honor can do -- and which we'll be asking  
3 to Court to do -- the estate doesn't have a right to their  
4 shares, which they have had for years.

5 Let's look at this hypothetical. And I know I'm longer  
6 than five minutes, but let me just wrap this point up. Let's  
7 assume that the estate had overpaid them; that the estate had  
8 paid them \$7,000 by accident and they were only entitled to  
9 5,000. The estate would not bring a claim and say, Give me  
10 the whole 7,000 back. The estate would claim, give me the  
11 overpayment back. They would be entitled to have all the  
12 money they were entitled to.

13 The estate doesn't have a right to monies these  
14 beneficiaries are entitled to. And to have them pay back what  
15 they have held for seven years, only to get it back minus  
16 attorney's fees, is ludicrous for two reasons. First of all,  
17 they want pre-judgment interest to be paid on that. Under our  
18 law, pre-judgment interest is paid for loss of use of money  
19 you never had. They have had it for seven years. They're  
20 supposed to pay pre-judgment interest on monies they have had  
21 for seven years?

22 And then, on top of that, they're supposed to pay the  
23 estate's lawyer for recovering that money for them, when it's  
24 just going in and coming right back out again? That doesn't  
25 make any sense, Judge. It certainly makes sense with respect.

1 to Mr. Jordan's share, because he doesn't have it right now  
2 and he's never had it.

3 And so what we have done is we have said what the estate  
4 is really entitled to here is one-third of the principal  
5 amount, the amount they don't have that they should, not the  
6 amounts that these ladies have had for years. They're  
7 entitled to pre-judgment interest on that, because Mr. Jordan  
8 and the estate haven't had use for that money. So that goes  
9 to them too. And there's the attorney's fees they would be  
10 entitled to.

11 I still submit they should have pled and they didn't  
12 plead it, they're out of court, but there was evidence  
13 presented on it, so that's for the Court to decide whether  
14 these ladies should pay in Mr. Jordan's attorney's fees as  
15 well so that he doesn't have to suffer that burden himself as  
16 some form of actual damages or other damages.

17 But that's what's fair. What that does is that gets  
18 Mr. Jordan what he's entitled to, which is more than he would  
19 get under their own theory and which imposes punitive  
20 damage -- pre-judgment interest at attorney's fees on money  
21 they don't need or are entitled to. It gives Mr. Anderson a  
22 fair deal, a fair payment for his services rendered in this  
23 case, and it leaves the money with these ladies that everybody  
24 agrees belongs to them, which is their one-third share each.

25 So I just wanted to preview that with you, Judge. We do

1 believe the Court has the authority to structure things this  
2 way so that the estate doesn't end up getting a windfall, and  
3 more importantly, so that these ladies don't suffer penalties,  
4 which are not appropriate, pre-judgment interest and lawyers  
5 fees on amounts that were never recovered.

6 I went a little bit long, but I hope that's okay. Thank  
7 you.

8 THE COURT: Thank you.

9 I'll tell you, for purposes of drafting your orders, I'll  
10 begin to rule now. I may leave some issues outstanding, but  
11 based on the testimony and the evidence, I do find that, as to  
12 the \$23,980, my verdict on that portion of the claim is in  
13 favor of the defendants. I do find that that claim is barred  
14 by estoppel, by the statute of limitations, and the fact that  
15 it was a joint account. I mean, there's just evidence in the  
16 record and the statute is clear. In fact, so the strongest  
17 reason would be that it's a joint account.

18 Next would be the statute of limitations and finally,  
19 estoppel. Because -- or really statute of limitations and  
20 estoppel go hand in hand because the existence of the money  
21 was known at the time the inventory and appraisal was  
22 filed. Mr. Jordan testified that he didn't know that he had a  
23 cause of action or there would be a dispute over the money  
24 until it wasn't subsequently paid to him, you know, some years  
25 later. The reason it ties into the estoppel is because, had

1 he not represented to the Court that it was, in fact, paid,  
2 then this issue would have come to light, you know, before the  
3 estate was closed or at the time of closing the estate, as  
4 late as October of 2013 but maybe before then.

5       Either he would have been truthful with the Court and  
6 said, "No, I didn't get this" and some additional action would  
7 have been taken or he would have, in fact, gotten it. The  
8 disbursement would have been made. Either way, the existence  
9 of it was known and it was known when the estate was closed in  
10 October of 2013 that he did not, in fact, get any distribution  
11 of it. Like I said, this is sort of secondary because it was  
12 a joint account, and by operation of law, it would have passed  
13 to Ms. Kirk upon the mother's death.

14       As to the partial summary judgment granted by Judge  
15 Manning, I don't intend to disturb that. That will become  
16 final judgment.

17       The claim for punitive damages as to the Bankers Life  
18 money, the \$2,480, is denied.

19       The part that I'm leaving outstanding is punitive damages  
20 as to the Bank of America account money, \$23,858.40. I need  
21 to review my notes, the testimony, the exhibits, and make a  
22 determination about that. But as to the balance awarded by  
23 Judge Manning already, I affirm that, for lack of a better  
24 word, and that will become final judgment in this case. It's  
25 only the issue of punitive damages as to that sum of money,

1 which remains undecided at this point. And I tell you that  
2 for purposes of -- because I'm going to ask for proposed  
3 orders, and, you know, I don't want you to waste time,  
4 particularly Mr. Anderson, you know, spend a bunch of time  
5 drafting a proposed order as to matters I have already  
6 decided. You know, of course that may be appropriate for a  
7 motion for reconsideration, I don't know if you choose to do  
8 that, but I just didn't want you to, you know, be spinning  
9 your wheels for nothing.

10 Yes, sir?

11 MR. COX: Your Honor, unless you tell me not to, I am  
12 going to include some proposed language in there that deals  
13 with the attorney's fees issue because you see it's a huge and  
14 significant issue. This case perhaps could have been settled  
15 if that had resolved. So I would like -- I'll just offer it.  
16 Strike it, delete it, whatever, but I am going to put that in  
17 there, if you don't mind, me sort of summarizing the  
18 attorney's fees issue as I have described it here.

19 THE COURT: And that's fine. And I may delete it in its  
20 entirety, and I'll ask you to submit your proposed orders in  
21 Word format so that I can edit freely.

22 MR. COX: Sure.

23 THE COURT: Yes, sir?

24 MR. ANDERSON: I understand that you have already made  
25 the decision that the attorney's fees issue is not before you.

1 THE COURT: That -- I believe that -- yeah, that was my  
2 decision. I have heard subsequent argument about it. I'm  
3 unlikely to change that decision. And as I said, I may delete  
4 that entire portion of his proposed order. It may not be  
5 necessary at all.

6 MR. COX: At a minimum, we would like it in the order and  
7 it's for you to decide and see what I propose. They have the  
8 intention, sitting here today, that the money they're  
9 collecting in this proceeding will include attorney's fees  
10 that they intend to disburse, and, therefore, it's part of the  
11 relief in all this claim. We think that's important to note  
12 for the Court. You'll see it. If you don't like it, cut it.

13 THE COURT: Right. Okay.

14 MR. COX: Thank you, Judge.

15 THE COURT: And I understand, Mr. Anderson, that it's not  
16 in the complaint and it's not pled. We're on the same page.  
17 I'll see what he puts together and see if it's important.

18 How much time do y'all need, proposed orders? 10 days?  
19 20 days?

20 MR. COX: Ten days would be great.

21 THE COURT: Ten days. Okay. Thank you.

22 MR. ANDERSON: Judge, I'm going out of the country  
23 Monday.

24 MR. COX: Oh, I'm sorry. I forgot about that. Whatever  
25 then.

**RESPONSE:** Defendant objects to this Interrogatory on the grounds that it seeks information concerning legal conclusions, which are the not a proper subject of Interrogatories. Subject to, and notwithstanding this objection, Defendant avers that Lucy Fuller was not legally entitled to any of the funds in the subject Wells Fargo accounts but was given a portion of such funds by Defendant. ]

16. Identify the balance currently held in each of the said joint bank account(s).

**RESPONSE:** \$0.00.

17. Identify any writing showing that Lil B. Jordan intended to benefit the Defendant, by the survivorship feature of the said joint bank account(s), to the exclusion of her other children.

**RESPONSE:** Defendant is not aware of any such writing.

18. Identify any other gift, grant or bequest by Lil B. Jordan of any portion of her assets, after June 1, 2004, other than through her Last Will and Testament, to any of her children (to the exclusion of her other children). ✓

**RESPONSE:** Defendant is not aware of any such gifts, grants or bequests.

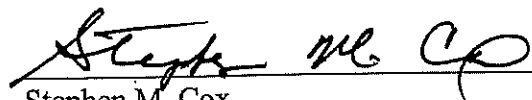
19. Identify any and every act or demonstration by Lil B. Jordan tending to show that she intended that her assets be applied for the benefit of her three children in a manner other than equally.

**RESPONSE:** Unknown.

20. State when you concluded that Lil B. Jordan was no longer capable (competent) to handle her financial affairs. ]

**RESPONSE:** In or about December 2005.

This 23<sup>rd</sup> day of December, 2016

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



ROBINSON, BRADSHAW & HINSON, P.A.  
140 E. Main St., Ste. 420  
Rock Hill, South Carolina 29730  
Telephone: 803.325.2900  
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LEONARD R. JORDAN, JR.  
TELEPHONE: (803) 726-1950  
DIRECT LINE: (803) 255-0650  
EMAIL: LJORDAN@LJORDANLAW.COM

**JORDAN**  
**LAW FIRM**  
LEONARD JORDAN, ATTORNEY, LLC

211 VETERANS ROAD, SUITE D  
COLUMBIA, SOUTH CAROLINA 29209  
TOLL FREE: (866) 222-1044  
FACSIMILE: (803) 726-1951

October 31, 2017

RECEIVED  
NOV 08 2017

BY: .....

Ms. Marian J. Kirk  
c/o Stephen M. Cox, Esquire  
Robinson, Bradshaw & Hinson, P.A.  
Post Office Drawer 12070  
Rock Hill, South Carolina 29731

Ms. Lucy J. Fuller  
259 Alexander Circle  
Columbia, SC 29206

RE: Estate of Lil B. Jordan, deceased  
2012 ES40 01470  
Leonard R. Jordan, Jr., Personal Representative

Dear Marian and Lucy:

I have had the Estate reopened, and I have been reappointed as Personal Representative. See the enclosed Certificate of Appointment as Personal Representative.

I demand that you remit to me the following debts owed to the Estate:

- a. \$23,980.82 (reported as an Estate asset on the Inventory and Appraisal filed on January 11, 2013) plus interest at the pre-judgment rate (8.75% per annum) from September 11, 2015. The interest totals \$4,489.83 as of October 31, 2017, with the per diem of \$5.749 after said date.
- b. \$2,480.00 (deposited by Marian on December 17, 2012) plus pre-judgment interest from December 17, 2012. The interest totals of \$1,057.65 as of October 31, 2017, with a per diem of \$0.595 after said date.
- c. \$21,858.40 (segregated by Marian on August 20, 2010) plus pre-judgment interest from August 20, 2010. The interest totals \$13,776.03 as of October 31, 2017, with a per diem of \$5.240 after said date.

Ms. Marian J. Kirk  
Ms. Lucy J. Fuller  
October 31, 2017  
Page 2

The aggregate of these debts is \$67,647.97 as of October 31, 2017, with a per diem of \$11.584 after said date.

I'm sure I don't have to further explain the foregoing debts other than to say that I consider the debts to be your joint and several obligation, as it is my understanding that these debts were disbursed in equal shares to you both as a part of a conspiracy to reduce the assets of the Estate available for actual distribution to the heirs of Lil B. Jordan.

At this point, there are no other charges that I am seeking to collect from you. If I am caused to institute suit in the Probate Court, please be aware that I will retain an attorney to represent me (as Personal Representative) and that, in accordance with the Last Will and Testament of Lil Boulware Jordan, his fees and costs will be debited against the gross recovery. In addition, this suit will seek an award of punitive damages against you under various legal theories.

I realize that you are entitled to a one-third share of the net assets of the Estate, but you are, nevertheless, required to remit the entirety of these debts. Your respective one-third share will be determined based upon the net monies available after payment of the attorney's fees and costs and other amounts chargeable against the recovery, and I would expect that your share would not include any portion of punitive damages collected.

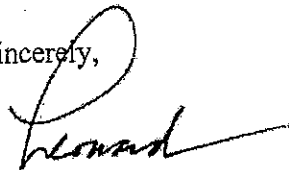
If you have any questions regarding the foregoing, please do not hesitate to contact me.

This letter only demands the debts of which I have actual knowledge. Should a lawsuit to collect these debts be instituted, I will, of course, try to learn about other debts owed to the Estate.

As this demand letter is of no surprise to you, I will assume that you are unwilling to resolve this matter, if you do not respond in a satisfactory manner by November 9, 2017; and I will proceed to retain an attorney and to institute a lawsuit against you.

Thank you for your prompt attention to this matter.

Sincerely,



Leonard R. Jordan, Jr.

LRJjr/km  
Enclosures

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

PROBATE COURT

IN THE MATTER OF: LIL B JORDAN

CASE NUMBER: 2012 ES40 01470

**CERTIFICATE OF APPOINTMENT AS PERSONAL REPRESENTATIVE**

This is to certify that

**LEONARD R. JORDAN JR.**

is the duly qualified **PERSONAL REPRESENTATIVE**

in the above matter and that this appointment, having been executed on the 19th day of October, 2017, is now in full force and effect, including authorization to receive all monies, income, principal, interest and dividends of and belonging to said estate.

**RESTRICTIONS:**

This estate is being re-opened to pursue litigation.

Executed this 19th day of October, 2017.

Amy W. McCulloch by RO  
Amy W. McCulloch  
Richland County Probate Judge

Do not accept a copy of this  
certificate without the raised  
seal of the Probate Court.





## Crown Classic Banking®

### Activity summary

Beginning balance on 7/11	\$21,481.21
Deposits/Additions	0.17
Withdrawals/Subtractions	- 0.00
<b>Ending balance on 8/8</b>	<b>\$21,481.38</b>

Account number: **1070064471206**

**LIL B JORDAN  
MARIAN J KIRK  
LEONARD R JORDAN JR POA**

*South Carolina account terms and conditions apply*

For Direct Deposit and Automatic Payments use  
Routing Number (RTN): 053207766

### Overdraft Protection

Your account is linked to the following for Overdraft Protection:

- Savings - 001010240121783

### Interest summary

Interest paid this statement	\$0.17
Average collected balance	\$21,481.21
Annual percentage yield earned	0.01%
Interest earned this statement period	\$0.17
Interest paid this year	\$1.41

### Transaction history

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
B/B		Interest Payment	0.17		21,481.38
<b>Ending balance on 8/8</b>					<b>21,481.38</b>
<b>Totals</b>			<b>\$0.17</b>	<b>\$0.00</b>	

*The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.*



## IMPORTANT ACCOUNT INFORMATION

Effective November 7, 2012, debit or ATM card cash withdrawals made in person at non-Wells Fargo locations or in person using the cash advance feature at Wells Fargo banking locations will be subject to your daily ATM withdrawal limit.

In addition, in the Terms & Conditions for Wells Fargo Consumer Debit Cards, the section titled "Authorization Holds for Card transactions" and Consumer Account Agreement section titled "Authorization holds for card transactions" are changing to clarify that the Bank is permitted to place authorization holds for up to 30 days on certain debit card transactions.

Remember, an "authorization hold" is a "pending" transaction that will reduce the current available balance that you can withdraw or use to pay transactions from your account. If you do not have sufficient available funds in your account, transactions may be paid with an overdraft protection advance, paid into overdraft or returned unpaid as applicable.



The Bank is permitted to place an authorization hold on your account for purchases for up to three (3) business days on most transactions (or for up to thirty (30) business days for certain types of debit or ATM card transactions, including but not limited to, car rental transactions, cash transactions, and international transactions), from the time of the authorization or until the transaction is paid from your primary-linked checking account. Please note that if the transaction is not submitted for payment by the merchant within the three (3) business days (or thirty (30) business days, as applicable), the Bank will release the authorization hold, which will increase the available balance in your primary-linked checking account until the transaction is submitted for payment by the merchant and finally posted to your primary-linked checking account.



The merchant may submit the transaction for payment after the Bank has released the authorization hold. If this happens, the Bank must honor the prior authorization and will pay the transaction from your primary-linked checking account.

## Wells Fargo® Preferred Rate Savings

### Activity summary

Beginning balance on 7/11	\$2,499.02
Deposits/Additions	0.10
Withdrawals/Subtractions	- 0.00
<b>Ending balance on 8/8</b>	<b>\$2,499.12</b>

Account number: 1010240121783

MARIAN J KIRK  
LIL B JORDAN

South Carolina account terms and conditions apply

For Direct Deposit and Automatic Payments use  
Routing Number (RTN): 053207766

### Interest summary

Interest paid this statement	\$0.10
Average collected balance	\$2,499.02
Annual percentage yield earned	0.05%
Interest earned this statement period	\$0.10
Interest paid this year	\$19.70

### Transaction history

Date	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
8/8	Interest Payment	0.10		2,499.12
<b>Ending balance on 8/8</b>				<b>2,499.12</b>
<b>Totals</b>		<b>\$0.10</b>	<b>\$0.00</b>	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

DDCMZLUTEN 001290 NNNNNNNNNNN NNN NNN 002 002 367 005797 10384480.2



STATE OF SOUTH CAROLINA  
COUNTY OF: RICHLAND  
IN THE MATTER OF: LIL B. JORDAN

IN THE PROBATE COURT  
INVENTORY AND APPRAISEMENT  
CASE NUMBER: 2012-ES40-01470

2013 JAN 11 AM 11:05  
FILED  
AND PRICED BY JUDGE  
RICHLAND COUNTY, S.C.

ORIGINAL  
 SUPPLEMENTAL #

Personal Representative (s): Leonard R. Jordan, Jr.  
Last Four Digits of Decedent's Social Security Number: XXX-XX-7454 Was there a will?  YES  NO  
Decedent's Date of Death: 6/5/12 Domicile at death: Richland SC  
(county) (state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 10<sup>th</sup> day of January 20 13  
[Signature]  
Notary Public for South Carolina  
My Commission Expires: 08/01/2014

Signature: [Signature]  
Name: Leonard R. Jordan, Jr.  
Address: P.O. Box 394  
Columbia, SC 29202-0394  
E-Mail: \_\_\_\_\_  
Telephone (O): 803-255-0650  
(H): 803-730-6259  
Signature \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

Attorney: Leonard R. Jordan, Jr.  
Address: P.O. Box 394  
Columbia, SC 29202-0394  
E-Mail: \_\_\_\_\_  
Telephone: 803-255-0650

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$ _____	\$ _____
Schedule B - Stocks and Bonds	_____	60,460.84
Schedule C - Notes Due Decedent and Cash	_____	23,980.82
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate	_____	_____
Part 2 - Payable to Beneficiary	_____	_____
Schedule E - Jointly Owned Property	_____	_____
Schedule F - Other Miscellaneous	_____	_____
Other Assets Payable to Estate	_____	_____
Schedule G - Transfers during Decedent's life	_____	_____
Schedule H - Powers of Appointment	_____	_____
Schedule I - Annuities and Retirement Accounts	_____	_____
TOTAL GROSS VALUE	\$ _____	\$ 84,441.66
ENCUMBRANCES	( _____ )	( _____ )
TOTAL NET WORTH	\$ _____	\$ 84,441.66













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.

**ORDER AND  
FINAL JUDGMENT**

This matter came before the Court for a non-jury hearing on August 20 and 21, 2019. The Petitioner was present for the hearing and was represented by his legal counsel, Steven R. Anderson. The Respondents were present for the hearing and were represented by their legal counsel, Stephen M. Cox.

After considering the testimony of Petitioner and Respondent Marian J. Kirk (the two witnesses who testified at the hearing), the documentary evidence submitted by the parties, and the arguments of counsel, the Court enters this Order and Final Judgment disposing of all claims at issue in this lawsuit.

**I. PROCEDURAL HISTORY AND SUMMARY OF CLAIMS**

Petitioner commenced this action in the Probate Court of Richland County, South Carolina by filing and serving a Summons and Complaint. 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

included such amounts on the Inventory and Appraisalment, he never collected, distributed, or received those funds.

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

22. In May 2014, Respondents divided between themselves the \$21,857.80 that Ms. Kirk had transferred to Bank of America from her mother's joint account in 2010 (and that had been sitting in the same Bank of America account since that date). Respondents did not tell their brother about the existence of the funds in that account or about their distribution of those funds.

23. Ms. Kirk testified at trial that she and her sister 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 their mother to move her into her living facilities and to ready and sell their mother's home, while Petitioner and his wife had compensated themselves for sitting with their mother for a time at her living facility. Ms. Kirk acknowledged, however, that neither she nor her sister ever filed a claim against their mother's estate to be compensated for their efforts or to challenge their brother's conduct as attorney-in-fact.

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

### 3. 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 Ms. Jordan's death on June 5, 2012 pursuant to S.C. Code Ann. § 62-3-109. Petitioner knew that his sister held the Wells Fargo accounts at least as early as January 11, 2013, when he filed an Inventory and Appraisal 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—in November 2017. The Wells Fargo Claim is thus barred by the statute of limitations.

#### B. *The Bankers Life Claim*

Respondents have urged this Court to revisit Judge Manning's partial summary judgment ruling, which awarded Petitioner \$2,480.00 in actual damages on his Banker's Life Claim, as well as associated prejudgment interest. Respondents correctly note that, because Judge Manning declined to certify his ruling as a "final" judgment, the ruling is "subject to revision" at any time prior to final judgment, pursuant to S.C.R. Civ. P. 54(b). Nevertheless, this Court declines Respondents' request to revise Judge Manning's ruling and instead chooses to incorporate it into this final Order and Judgment. Petitioner is awarded, on behalf of his mother's 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).

This Court denies Petitioner's request for punitive damages on the Banker's Life Claim. "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).

I find that Respondents’ conduct with respect to the \$2,480 that is the subject of the Banker’s Life Claim does not justify an award of punitive damages. Those funds were initially held in the form of a check issued by the Banker’s Life Company for long-term care insurance proceeds for Mrs. Jordan. Ms. 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 her brother or to prevent her brother 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 Wells Fargo directly or by reviewing the account statements. He did not do that, however, 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 Ms. Kirk. Punitive damages are not justified under these circumstances.

**C. The Bank of America Claim**

I also adopt and incorporate Judge Manning’s ruling with respect to the \$21,857.80 that is the subject of Petitioner’s Bank of America Claim. Petitioner is entitled to recover, on behalf of

his mother's 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).

I decline to award Petitioner punitive damages on his Bank of America Claim. To be sure, Respondents did not tell the Petitioner of the existence of the Bank of America account in which the sum that is the subject of that Claim was held. Nor did they tell their brother that they were dividing those funds between themselves in May 2014. Judge Manning rightly concluded that that division constituted a conversion, and Petitioner will receive his one-third share of those funds when they are returned to the Estate (with prejudgment interest).<sup>1</sup>

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 her mother's assets (an outcome urged by Petitioner himself)—testimony buttressed by the fact that the funds sat in the Bank of America account for four years before being divided between Respondents. Indeed, as far as her purely personal interests were concerned, Respondent Kirk would have been better off leaving the money in her mother'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 her mother'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 their brother. At that time, Respondents were convinced that they were entitled to claim their brother's share of those funds as their own because of what they believed to be his

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<sup>1</sup> As Petitioner acknowledged at the hearing of this matter, any amounts recovered by the Estate by virtue of this Order and Judgment (net of reasonable expenses) must be equally divided among Petitioner and Respondents, as the sole heirs of the Estate.

mismanagement of their mother'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 their mother in moving her to assisted living facilities and in readying her house for sale.

As Judge Manning concluded, Respondents were wrong in attempting to exercise "self-help" with respect to the Bank of America funds. If they believed that their brother should have been held to account for loss of the Merrill Lynch funds, or that they should have received compensation for their efforts on their mother's behalf, they should have made a claim against their mother's Estate. Nevertheless, though their failure to do so may make them liable for conversion, I do not believe that they should be penalized by the imposition of punitive damages. This is especially so when one considers Petitioner's own poor conduct in handling his mother's Estate, in making false representations to the Probate Court, and in failing to be transparent to his sisters about the losses in the Merrill Lynch account (as his status as an attorney-in-fact required). I further note that Respondents' conduct with respect to the Bank of America account was an isolated incident, and that, otherwise, Respondents' handling of their mother's funds and affairs prior to her death was above reproach. Moreover, it does not appear that imposing punitive damages here would have any salutary deterrent effect, since, with this Order, the affairs of the Estate will be completely resolved and there are no other estate assets over which Respondents exercise custody or control. Finally, I note that Petitioner offered no evidence at the hearing concerning Respondents' ability to pay an award of punitive damages—an important factor when considering such an award. For all of these reasons, I deny Petitioner's request for punitive damages with respect to the Bank of America Claim.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that:

1. Petitioner, on behalf of his mother's Estate, is awarded the sum of \$2,480 in actual damages and the sum of \$1,459.55 in prejudgment interest on his Banker's Life Claim.

2. Petitioner, on behalf of his mother's Estate, is awarded 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.

3. The sums awarded above amount to Thirty-Seven Thousand Seven Hundred Seventy-Five and 74/100 (\$37,775.74) Dollars. As Respondents observed at the hearing, it would be burdensome, inefficient and inequitable for them to have to pay the Estate their own one-third shares of this award, together with prejudgment interest on those shares, since they will be receiving those shares and interest right back again as heirs of the Estate. Therefore, I hold that Respondents may fully discharge their obligations under this Order and Judgment 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** this \_\_\_\_ day of September, 2018 at Columbia, South Carolina.

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The Honorable Jocelyn Newman  
Judge of the South Carolina Circuit Court