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SC Court of Appeals

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

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Common Pleas Court Case No. 2019-CP-07-01246
Appellate Case No. 2021-000375

Greg Marcus Simmons and Jermaine Robinson, individually and derivatively
on behalf of Simmons Family Holdings, LLC.....Respondents

vs.

Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons Jr. and Rosa G.
Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken all of whom are
defendants and Simmons Family Holdings LLC, as a nominal defendant,

of whom,

Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons Jr. and Rosa G.
Simmons Revocable Trust dated May 5, 2016,
and Charlesetta S. Aiken are Appellants

Motion to Dismiss

TAKE NOTICE that pursuant to Rule 240, SCACR, and upon the laws, rules, arguments,
appendices, and exhibits so stated, the Respondents herein move this Honorable Court for an order
dismissing the above captioned appeal.

INTRODUCTION

Greg “Marcus” Simmons and Jermaine Robinson—the Respondents in this appeal and the Plaintiffs below—brought this declaratory judgment action seeking, *inter alia*, confirmation they each hold a 1/3 membership interest in Simmons Family Holdings, LLC (the “Company”). This appeal arises from two orders issued by the Circuit Court: (I) an “Order Denying [Appellants’] Motion for Summary Judgment and Granting in Part, Plaintiffs’ [Respondents’] Motion for Summary Judgment” (attached hereto as **Appendix I**); and (II) an “Order Granting [Respondents’] Motion to Compel [discovery]” dated March 18, 2021. (Attached hereto as **Appendix II**).¹

As set forth below, this appeal should be dismissed because the subject orders are not yet appealable, and further because Appellants lack appellate standing.

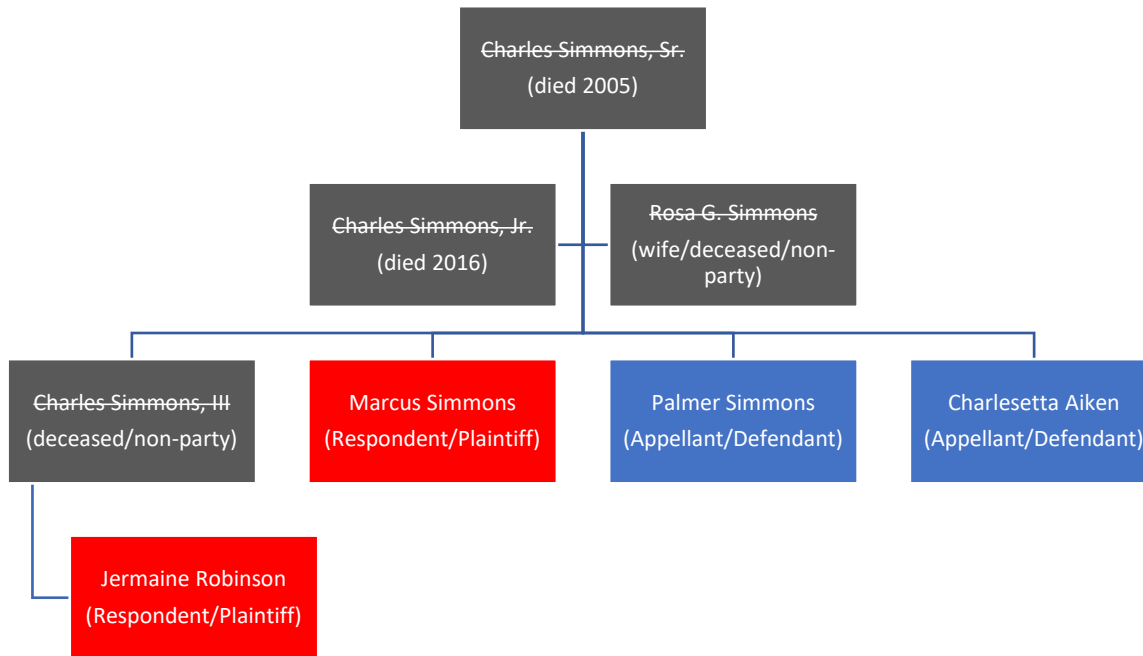
BACKGROUND

The Company was created by Charles Simmons Sr. (“Senior”) in 2001 as a manager-managed entity, and it is not disputed that after Senior’s death in 2005, his son Charles Simmons Jr., (“Junior”) became the sole member and manager of the Company. Respondents assert that Junior, prior to his death in 2016, conveyed them each a 1/3 membership interest in the Company (*i.e.*, 2/3 collectively).

The Parties

The parties to this action are three of Junior’s children and one grandchild as shown below:

¹ This Order is not identified in the Notice of Appeal but was attached as an exhibit thereto.



Events Prior to Junior's Death

On November 3, 2015, Junior added Respondents as members to the Company by filing Amended Articles of Organization with the Secretary of State to:

Add the following People in their individual capacities: Palmer E. Simmons- Co-Manager, [] Charlesetta S. Aiken - Co-Manager, [] Greg M. Simmons [Plaintiff/Respondent] Member, Jermain Robinson [Plaintiff/Respondent] Member.

See **Exhibit 1**.

Events Following Junior's Death

In May of 2016, while in hospice care with terminal cancer, Junior created the Charles E. Simmons Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 (the "Trust"). Shortly thereafter on May 26, 2016, Junior died. During the probating of Junior's estate, on September 26, 2016, an Inventory and Appraisement was filed with the Probate Court reflecting that Junior held a 1/3 membership interest in the Company. See **Exhibit 2**. Since then, Appellant Palmer Simmons

assumed the roles of Personal Representative of the Estate; however, he never amended the Inventory and Appraisal. On June 30, 2016, the Respondents were presented with an Assignment and Transfer of Membership Interest in order to effectuate the transfer of Junior's 1/3 membership interest to the Trust. This document states in relevant part:

WHEREAS Charles E. Simmons, Jr. is a Member of Simmons Family Holdings, LLC and holds a one-third (1/3) membership interest in the company; and

WHEREAS, Greg M. Simmons and Jermaine Robinson are the remaining members of the Company; and

WHEREAS, Palmer E. Simmons and Charlesetta S. Aiken are the Co-Managers of the Company.

...

WHEREAS, the Members of Simmons Family Holdings, LLC Have adopted a resolution authorizing the assignment and transfer of [the] one-third (1/3) interest of Charles E Simmons, Junior to the [Trust].

See **Exhibit 3**. This Assignment was executed by all parties.

Further documentation regarding Respondents' membership interests included the Company's 2017 Federal Tax Returns—prepared by Defendant Palmer Simmons in his capacity as co-manager of the Company—which identified Respondents as members of the Company. See **Exhibit 4**. Additionally, a proposed Resolution that Palmer had prepared by Antonia Lucia, Esq. of Vaux Marscher Berglind, in April 2018 identified Respondents as members. See **Exhibit 5**. This proposed Resolution sought to redistribute and reduce Respondents' membership interest to 1/6 each with the intent of making Appellants each 1/3 members. However, this proposed Resolution was never executed.²

² Neither the tax returns nor the proposed Resolution identifies the Trust as a member of the LLC. Rather the tax returns, which were prepared at the direction of Appellant Palmer Simmons in March 2018, list Respondents as 1/6th members, while the proposed Resolution states Respondents are 1/4th members and purports to reduce their membership to 1/6. See **Exhibits 4 & 5**.

PROCEDURAL HISTORY & POSTURE

I. Cross-Motions for Summary Judgment

The parties filed cross-motions for Summary Judgment. Appellants sought a declaration that Respondents were not members of the Company, while Respondents sought a ruling that they each held a 1/3 membership interest in the Company. Respondents additionally sought offensive summary judgment on various other causes of actions—including their claim for “money had and received.” The Company, which is in receivership and represented by Thomas Pendarvis, Esq., did not contest Respondents’ Motion for Summary Judgment.

The Circuit Court determined that there was no evidence to support Appellants’ claim that Respondents were not members of the Company. Rather, the Court found the opposite and ruled Respondents were in fact members. However, the Court declined to determine what percentage interest Respondents held, leaving this for trial. *See* (**Appendix I**). Although the Order was labeled as a partial grant of summary judgment, the practical effect of the Circuit Court’s ruling was to deny both motions—*i.e.*, Appellants’ motion as well as Respondents’ Motion for Summary Judgment on their claim of a 1/3 interest each. This ultimate issue regarding the identity of the remaining members as well as what percentage interest Respondents have in the Company remains to be decided at trial.

In addition, the Circuit Court granted partial summary judgment on Respondents’ derivative claim for money had and received, finding there was no question of fact that Appellants made unauthorized expenditures of the Company’s money, although leaving the amount of those unauthorized expenditures to be determined at trial.³

³ The arguments herein, apply equally to the Circuit Court’s ruling regarding the derivative action as to its ruling regarding Respondents’ membership.

II. Motion to Compel

The Circuit Court granted Respondents' Motion to Compel regarding (1) business records pursuant to S.C. Code Ann. § 33-44-40, including correspondence between the managers of the Company and counsel concerning the transfer of membership interest; (2) attorney billing statements for work performed for the Company or its managers; and (3) the trust agreement for the Trust. *See* **Appendix II**.

To address Appellants' concern that the items covered by the Order to Compel *might* include material subject to the Company's attorney client privilege, the Circuit Court additionally provided:

If defendants contend any particular document(s) should not be provided, counsel shall submit said document(s) to the court for an *in camera* review within thirty (30) days from the date of this Order.

Appendix II

On February 26, 2021, Appellants served a privilege log that asserts privilege over certain categories of items identified in the abstract but fails to identify any particular document subject to privilege or provide the ability to assess a potential claim of privilege. Appellants (nor any other party) also failed to submit any documents for *in camera* review. **Exhibit 6**. The Circuit Court has made no ruling as to whether any specific document is covered by attorney client privilege.

LAW & ARGUMENT

The present appeal is a veiled attempt to delay the resolution of this matter by attempting to appeal unappealable interlocutory orders—*i.e.*, the denial of summary judgment and a discovery order. Further, and notwithstanding the interlocutory nature of these orders, Appellant's lack standing to pursue this appeal.

I

APPEAL FROM THE CIRCUIT COURT'S SUMMARY JUDGMENT ORDER SHOULD BE DISMISSED

A. The Circuit Court's Summary Judgment Order is not yet appealable.

The Supreme Court has “repeatedly held that the denial of summary judgment is not immediately appealable.” *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 167, 580 S.E.2d 440, 443 (2003) (citing *Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 379 (1994) (granting a motion to dismiss an appeal from the denial of summary judgment)).⁴ Yet this is precisely what Appellants are seeking by requesting “this Court should hold as a matter of law that [Respondents] are not members of SFC.” (App. Br. p. 19) (underline original). Appellants similarly assert in their conclusion that “this Court should reverse the lower court, hold as a matter of law that [Respondents] are not members of SFH, and remand the case for trial.” (App. Br. p. 36) (underline original). Plainly, Appellants are seeking the reversal of the lower court’s denial of their Motion for Summary Judgment—relief this Court cannot grant. *Olson*, 54 S.C. at 167, 580 S.E.2d at 443 (*supra*).

⁴ In support of this proposition, the Supreme Court has offered the following string cite:

Willis v. Bishop, 276 S.C. 156, 276 S.E.2d 310 (1981); *Mitchell v. Mitchell*, 276 S.C. 44, 275 S.E.2d 1 (1981); *Neal v. Carolina Power and Light*, 274 S.C. 552, 265 S.E.2d 681 (1980); *United States Fidelity & Guaranty Co. v. City of Spartanburg*, 267 S.C. 210, 227 S.E.2d 188 (1976); *Medlin v. W.T. Grant, Inc.*, 262 S.C. 185, 203 S.E.2d 426 (1974); *Greenwich Savings Bank v. Jones*, 261 S.C. 515, 201 S.E.2d 244 (1973); *Geiger v. Carolina Pool Equipment Distributors, Inc.*, 257 S.C. 112, 184 S.E.2d 446 (1971); *see also Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct.App.1986); *Associates Financial Services Co. of South Carolina, Inc. v. Gordon Auto Sales*, 283 S.C. 53, 320 S.E.2d 501 (Ct.App.1984) . . . 4 C.J.S. *Appeal and Error*, § 98 (1993); 4 Am.Jur.2d *Appeal and Error*, § 104 (1962 & Supp.1993); 15 A.L.R.3d 899 (1967 & Supp.1993). **Further, this Court has held that the denial of summary judgment is not reviewable even in an appeal from final judgment.** *Raino v. Goodyear Tire*, 309 S.C. 255, 422 S.E.2d 98 (1992); *Holloman v. McAllister*, 289 S.C. 183, 345 S.E.2d 728 (1986).” (Emphasis added).

“An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (“Piecemeal appeals should be avoided.”) (citing *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)). In this case, the Circuit Court’s partial order does neither, and regardless of how this Court may rule on the appeal, the case must still proceed to trial.⁵

The Circuit Court’s partial order is conspicuously incomplete in another important way, it makes no finding that Appellants are members. This is important, because although there is an exception to the general prohibition on interlocutory appeals, that exception applies where the order “affects a substantial right.” See e.g., *Tillman*, 420 S.C. 246, 250-51, 801 S.E.2d 757, 760 (recognizing the “substantial right” exception of Section 14-3-330). However, because there remains a question of fact as to whether Appellants have any rights as members, there is no way for this Court to evaluate that exception. This dovetails into the next point, regardless of whether this appeal is interlocutory, Appellants lack appellant standing to appeal.

B. Appellants lack standing to appeal the Circuit Court’s Summary Judgment Order.

First, the fact that Appellants have no standing is perhaps most conclusively demonstrated by the fact Palmer filed a petition in the Circuit Court asserting that if Appellants were correct in their assertion that Respondents are not members, then the Estate of Junior would hold a 100% interest in the LLC. See **Exhibit 7**. This is nothing short of an admission that Appellants are asserting rights that do not belong to them—the quintessential lack of standing. See e.g. *State v.*

⁵ On the one hand, if this Court were to reverse the partial ruling this would have the effect of holding there is a question of fact on the issue of whether Respondents are members—thus necessitating a trial. On the other hand, if this Court were to affirm the partial ruling, this would still necessitate a trial—from which Appellants can later appeal.

Brannon, 347 S.C. 85, 89, 552 S.E.2d 773, 775 (Ct. App. 2001) (“appellant may not bootstrap an issue for appeal by way of [another party]”). If in fact it is the Estate that is the beneficiary of their argument, then it stands that only the Estate—not Appellants—could have standing. However, the Estate—like the LLC—is not a party to this appeal.

Even if this does not resolve the issue, Appellants lack standing to appeal because there remains a question of fact as to whether Appellants are members of the Company.⁶

It is settled that “only a party aggrieved by an order, judgment, or sentence may appeal.” Rule 201(b), SCACR. Our Courts have “reiterated that “[a] party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest.” *Shaw v. City of Charleston*, 351 S.C. 32, 36-37, 567 S.E.2d 530, 532 (Ct. App. 2002) (quoting *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001)). “The word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” *Id.* “A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests.” *Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589-590; *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998).

Appellants’ argument on appeal, as it was below, is that Respondents are not members because of a failure to comply with the purported requirements of the operating agreement. *See* (App. Br. pp. 11-23). However, it is only those parties in privity to that agreement which have standing to pursue this appeal. *See Fabian v. Lindsay*, 410 S.C. 475, 482, 765 S.E.2d 132, 136

⁶ In addition to the Circuit Court not finding who the other members of the Company are, Appellants have denied holding any membership interest in their answer. declaring: “**Defendants deny that the Defendants are members** of [the Company] as stated throughout the Complaint and demand strict proof thereof.” (**Exhibit 8** at pg. 1) (emphasis added).

(2014) (“South Carolina courts have equated privity with standing.”); *Powell v. Bank of Am.*, 379 S.C. 437, 447, 665 S.E.2d 237, 242 (Ct. App. 2008) (“There is no material distinction in general standing principles juxtaposed to the ability of an ‘aggrieved party’ to appeal pursuant to Rule 201(b) of the South Carolina Appellate Court Rules.”); *see also Maners v. Lexington Cnty. Sav. & Loan Ass’n*, 275 S.C. 31, 33-34, 267 S.E.2d 422, 423 (1980) (affirming that “appellant had no standing . . . because she was not in privity with respondent”).

Privity, and thus standing, is therefore limited to the Company and its members. However, the Company,⁷ is not a party to this appeal, nor did it oppose Respondents’ Motion for Summary Judgment. More to the point however, Appellants cannot pursue the rights of the Company. *See generally, Brannon*, 347 S.C. at 89, 552 S.E.2d at 775 (appellant does not gain the standing to bootstrap an issue for appeal which properly belongs to a co-defendant). Thus, for Appellants to have standing to appeal requires that they have a membership interest in the Company, or in the case of Palmer Simmons (who also appears in his capacity as trustee of the Trust), that the Trust is a member of the Company. However, Appellants have denied the Trust is a member in their answer. *See Exhibit 8* at p. 1. (“**Defendants deny that the Defendants are members** of [the Company].”) (emphasis added). Moreover, because the Circuit Court’s partial ruling made no finding as to the identity of the remaining members, even if Appellants had not denied this, there remains an unanswered question of fact as to whether Appellants (either individually or through the Trust) are members, and thus a question of fact as to whether Appellants have standing to appeal.

⁷ The Company, if it were a party to the appeal, would have standing. *See generally Pres. Soc’y of Charleston v. S.C. Dep’t of Health & Env’tl. Control*, 430 S.C. 200, 212, 845 S.E.2d 481, 487 (2020) (defining associational standing).

Even if this Court were to assume that Appellants, (both the individuals and the Trust) were members, it does not follow that Appellants are aggrieved by the Circuit Court’s partial order because a determination that Respondents are members does not deprive Appellants of that assumed membership interest, nor does it prevent them from asserting it at trial. *Contra e.g., Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589-590 (“A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be.”).⁸

Therefore, even if the Circuit Court was wrong in finding Respondents are members (which it was not), this ruling has no adverse effect on Appellants—either in their individual capacity or capacity as trustee of the Trust. Until the trial court finally determines the other members and their respective interests, Appellants have no ability to assert they have been aggrieved by the Circuit Court’s ruling.

For these reasons, Appellants lack appellate standing to appeal the Circuit Court’s Summary Judgment Order, and therefore, this appeal should be dismissed.

⁸ This point is borne out by the evidence submitted to the Circuit Court. As to the Trust, the only evidence reflecting the Trust to hold a membership interest in the LLC is the June 30, 2016, Assignment and Transfer of Membership Interest. *See Exhibit 3*. This document reflects there are three members to the Trust, and the two Respondents. As a result, if the Trust has standing under this document, there can be no claim that it is aggrieved since Respondents are likewise identified as members. The same holds true with regards to the Appellants individually. The only evidence which reflects the Appellants, individually hold a membership interest are the 2017 Tax Returns (*Exhibit 4*), and the unexecuted Assignment Agreement (*Exhibit 5*). However, each of these records likewise identify Respondents as members.

II

APPEAL FROM THE CIRCUIT COURT'S DISCOVERY ORDER SHOULD BE DISMISSED

A. Appellants lack standing to appeal the Circuit Court's Discovery Order and the Company has waived attorney client privilege.

The Circuit Court's Discovery Order concerns business records; correspondence between the managers of the Company and counsel concerning the transfer of membership interest(s); and attorney billing statements.⁹ Appellants' argument on appeal is two-fold: first that Respondents are not members of the Company and therefore not entitled to business records under S.C. Code Ann. § 33-44-408; and second the Order requires their attorney to produce information protected by attorney client privilege.

Turning first to Appellants' first argument, the obligation to provide business records under § 33-44-408 is an obligation imposed on the Company. As articulated above, the Company is not a party to this appeal, and Appellants may not pursue an appeal on behalf of the Company. *See generally State v. Carriker*, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977) (Appellant does not gain the standing to bootstrap an issue for appeal which properly belongs to a co-defendant).

Similarly, as to their claim of privilege, Appellants are not asserting their own privilege, but instead *the Company's* privilege. This is plain from their brief in which Appellants ask this Court to “reverse and deny [Respondents] access to confidential attorney-client materials **belonging to a company** of which [Respondents] are not a part.” (Appr. Br. p. 35) (emphasis added); *see also* (App. Br. p. 33) (asserting that the privilege **belongs to the organization**, “**not its individual constituents.**”); (App. Br. pp.34-35) (emphasis added) (citing various foreign authority for the premise that the privilege—if any—belongs to the corporation or entity). In this way, Appellants

⁹ The Order also directs the production of the Trust agreement, but Appellants do not appear to take exception to this portion of the Order.

are hoisted by their own petard because not only do Appellants lack standing to assert the rights of the Company (*supra*), but the relevant privilege was waived by the Company's attorney Mr. Pendarvis, in the deposition of Antonia Lucia—"So in addition to just communication, information related to the representation is **hereby waived.**" Exhibit 9. Thus, even if Appellants could assert the Company's privilege (which they cannot) it has been waived.

B. The Circuit Court's Discovery Order is not yet appealable.

Even assuming for the sake of argument that Appellants privilege had not been waived, and they have standing to appeal, the Circuit Court's discovery order is simply not appealable. South Carolina's Supreme Court has made clear that "[a]n order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330." *Ex parte Whetstone*, 289 S.C. 580, 580-81, 347 S.E.2d 881, 881-82 (1986) (citing *Patterson v. Specter Broadcasting*, 287 S.C. 249, 335 S.E. (2d) 803 (1985) and *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E. (2d) 184 (1974)). The Supreme Court has expressly set forth the means of appealing a discovery order by instructing:

Instead of appealing immediately, [the purported appellant] has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal or refuse to comply with the order and appeal after he is held in contempt for his failure to comply. This is the same rule applied by the federal courts.

Id. (citations omitted).

Appellants have not followed this clear process and instead, are attempting to take an improper appeal from a plainly interlocutory order. This is even more apparent considering that the Circuit Court specifically found—and Appellants agreed—that Appellants would submit any disputed items to the Court for *in camera* review before the same would be provided to Respondents. *See* (Appendix II at pp. 3-4) ("The Defendants have prepared, and the parties have

agreed to” the confidentiality provisions of the Order); *see also* (**Appendix II** at p. 5) (ordering that “if [Appellants] contend any particular document(s) should not be provided, counsel shall submit said document(s) to the Court for an *in camera* review”).

This Court confirmed in *Tillman v. Tillman* that dismissal of the appeal is proper where the Circuit Court’s Order provides the appealing party the ability to take further action to potentially avoid an appeal, but the appealing party fails to take that action. *See Tillman v. Tillman*, 420 S.C. 246, 250-51, 801 S.E.2d 757, 760 (Ct. App. 2017). In *Tillman*, the Circuit Court dismissed a defendant’s counterclaims, but in doing so, specifically invited the defendant to “make a formal motion to amend their counterclaims.” *Id.* at 248, 801 S.E.2d at 759. However, rather than moving to amend, the defendant immediately appealed. This Court dismissed the appeal because the issue was not finally resolved. *Id.* (Additionally rationalizing dismissal based on avoiding needless appeals that could be potentially avoided by allowing the matter to proceed to conclusion in the Circuit Court.).

Here, nothing has been resolved, and as a practical matter there is nothing to appeal because the Circuit Court has not made any ruling on whether any particular item is privileged or not. Appellants’ argument, like their purported privilege log, is purely abstract, asserting only the mere *potential* for disclosure of privileged information. *See Exhibit 6*. Consequently there was no basis for the Circuit Court to rule on privilege, and thus nothing for this Court to review on appeal. *See In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 164, 829 S.E.2d 707, 710 (2019) (“the burden of establishing the privilege rests upon the party asserting it.”); *see also Rivers v. Rivers*, 292 S.C. 21, 26-27, 354 S.E.2d 784, 787 (Ct. App. 1987) (“[t]he question of whether a communication is privileged is a question for the trial judge to decide, after making a preliminary inquiry into the surrounding facts and circumstances leading up to the making of the communication.”); *accord*,

Dick v. Harby, 48 S.C. 516, 532, 26 S.E. 900, 905 (1897) (“We have, time and time again, announced that we will not consider abstract questions of law.”); *State v. Passmore*, 363 S.C. 568, 581, 611 S.E.2d 273, 280 (Ct. App. 2005) (“A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.”) (Internal quotations omitted).

This serves to further underscore why the Supreme Court demands that a party cannot appeal a discovery order until it takes the further action of refusing to comply and being held in contempt. *See Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (*supra*).

CONCLUSION

For the reasons above this instant appeal should be dismissed.

Respectfully submitted,

s/ TJ Rode
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and Charlesetta S. Aiken *et. at.*

Appellate Case No. 2021 – 000375

Index of Appendixes & Exhibits to Respondents’ Motion to Dismiss Appeal

APPENDIX	<i>Description</i>	
I	Order denying Defendants’ motion for summary judgment and granting, in part, Plaintiffs’ motion for summary judgement	March 19, 2021.
II	Order Compelling Discovery	March 18, 2021
EXHIBIT	<i>Description</i>	<i>Submitted to the Circuit Court via</i>
1	Nov. 3, 2015, Amended Articles of Organization	Exhibit B to Defendants’ Motion for Summary Judgment
2	Inventory & Appraisement of Estate of Charles Simmons Jr.	Exhibit D to 2d. Amended Complaint
3	June 30, 2016, Assignment and Transfer of Membership Interest	Exhibit E to 2d. Amended Complaint.
4	2017 Tax Returns (redacted)	Exhibit F to 2d Amended Complaint
5	Unexecuted Proposed Assignment and Transfer of Membership	Exhibit G to 2d Amended Complaint

6	Defendants' Privilege Log February 26, 2021.	Served on Parties <i>via</i> US Mail
7	Petition for Subsequent Administration of Estate of Charles Simmons Jr., - filed with Probate Court on Jul. 15, 2019.	Exhibit C to Defendants' Supplemental Memo in Support of Defendants' Motion for Summary Judgment
8	Defendants Answer to Second Amended Complaint	Filed Nov. 16. 2020
9	The Company's Waiver of Attorney Client Privilege <i>via</i> Mr. Pendarvis	Exhibit 3 to Plaintiffs' Memorandum in Support of Motion for Summary Judgment

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
)
 Plaintiffs,)
)
 v.)
)
 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
)
 Defendants.)
)
 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER DENYING DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT AND GRANTING
 IN PART, PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT

THIS MATTER came before the Court on cross motions for summary judgment pursuant to Rule 56, S.C.R.C.P. The record reflects that all discovery, with the exception of Plaintiffs' Motion to Compel¹, has been completed. The Verified Second Amended Complaint, the Answer thereto, the various affidavits and memoranda filed with this Court, and the deposition excerpts filed of record therewith, constitute the factual record of this case and that the Court may dispose of this case as a matter of law. Both motions were heard via WebEx by the Court on March 1, 2021.

¹ Plaintiffs' Motion to Compel was heard after the motions for summary judgment and is addressed by a separate Order.

Ehrick K. Haight, Jr., Esq. and Stacey S. Collins, Esq. appeared on behalf of Jermaine Robinson and Greg Marcus Simmons ("Plaintiffs") and Mark S. Berglind, Esq., Steven Meyer, Esq. and Antonia T. Lucia, Esq., appeared on behalf of Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 (the "Trust"), and Charlesetta Aiken ("Defendants"). Michael Hawanczek, the receiver appointed in this case did not appear, nor did Thomas A. Pendarvis, Esq. counsel for Simmons Family Holdings, LLC ("SFH"), the nominal Defendant in this action. Plaintiffs are seeking summary judgment as to all ten (10) enumerated causes of action set forth in their Second Amended Complaint. Defendants are seeking summary judgment on the claim that Plaintiffs are not members in SFH.

Upon reviewing the verified pleadings, the record, the affidavits and memoranda submitted, including the deposition excerpts, the evidence and the applicable law, and hearing statements and representations of counsel, the Court finds that Plaintiffs are entitled to partial summary judgment on their first cause of action in so far as it seeks a declaratory judgment establishing that they are members of SFH. Their percentage of interest is a fact to be determined at trial.

The Court further finds that Defendant Palmer E. Simmons made an unauthorized distribution to himself or to his company and that the Plaintiffs are entitled to partial summary judgment on their ninth cause of action for money had and received. The amount of unauthorized contributions is a fact to be determined at trial.

Plaintiffs' Motion for Summary Judgment as to their claims for breach of contract, breach of fiduciary duty, conversion, breach of contract accompanied by fraud, interference with a contractual relationship and disassociation, are denied. Defendants' motion for summary judgment is denied in its entirety.

FACTS

Simmons Family Holdings, LLC ("SFH") is a real estate holding company. It was owned wholly by the late Charles E. Simmons, Jr. up until November 3, 2015, when he executed Amended Articles of Organization for SFH, adding Plaintiffs, as Members and Defendants, Palmer E. Simmons and Charlesetta S. Aiken, as co-managers.

The record reflects that Defendants consistently acknowledged that their nephews², the Plaintiffs, were members of SFH throughout the four years preceding this litigation. Plaintiffs membership in SFH, is further supported by the following documents and testimony in the record:

- a. the Amended Articles of Incorporation, prepared by Palmer E. Simmons, signed by Charles E. Simmons, Jr. (as the sole member and manager of SFH) and subsequently filed with the Secretary of State, adding Plaintiffs as members and appointing Defendants as Co-Managers, which document was duly authenticated by Palmer E. Simmons;
- b. additional documents signed by Jermaine Robinson as owner of SFH during Charles E. Simmons, Jr.'s lifetime;
- c. the Inventory and Appraisal, filed by Ms. Lucia in the Estate of Charles E. Simmons, Jr., indicated decedent died possessed of a one-third interest;
- d. the Assignment prepared by Ms. Lucia, indicating Plaintiffs were the only remaining members of SFH;
- e. the Resolution prepared by Ms. Lucia indicating Charles E. Simmons, Jr. owned a one-third interest in SFH and Plaintiffs were the "remaining members";
- f. deposition testimony of Palmer E. Simmons indicating that he did not own any interest in SFH prior to his father's death;

² Plaintiff G. Marcus Simmons is also the brother, by adoption, of Defendants.

- g. tax returns filed by SFH showing Plaintiffs as Members of SFH, signed by Palmer E. Simmons under penalties of perjury;
- h. Palmer E. Simmons sworn testimony, given before the filing of this action, in which he stated that they were members; and
- i. Plaintiffs' receipt of regular distributions from SFH.

The Defendants argued in the hearing and in their memoranda that the addition of new members requires strict adherence with the provisions of SFH's Operating Agreement. Specifically, the Defendants argued the individual Plaintiffs have no membership interest in SFH because the Amended Articles of Organization relied on by the Plaintiffs as their basis for membership do not comply with Section 3.1 of SFH's Operating Agreement. That section states in relevant part the following: "Additional Persons may be admitted to the Company as a Member and Memberships may be created and issued to those Persons and to the Member at the direction of the Member, on such terms and conditions as the Member may determine and the time of admission. The terms of admission or issuance must specify the percentage of Net Profit, Net Loss, allocable to such Person and the Capital Contribution applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Member shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Company, as appropriate, a document including the new Member's notice address, its agreement to be bound by the terms of an Operating Agreement which reflects the existence of at least two Members, and its representation and warranty that the representation and warranties required of the new Members are true and correct with respect to the Member."

The Defendants argued the 2015 Amended Articles of Organization state only that Greg M. Simmons and Jermaine Robinson are added as Members of SFH. There is no other direction given in the Amended Articles of Organization or percentage of interest in SFH. There is no statement of net profit and net loss allocable to Greg Simmons and Jermaine Robinson. In addition, there is no capital contribution set forth pertaining to their addition as members, nor is there any evidence that either Plaintiff contributed financially. There is no documentation indicating that Plaintiffs Simmons or Robinson ever provided written indication of a notice address or an agreement to be bound by the terms of the operating agreement.

Further, the Defendants argued absent strict compliance with the Operating Agreement, any subsequent conduct allegedly consistent with a membership interest has no relevance.

Finally, the Defendants argued there is at least a scintilla of evidence to support a denial of Plaintiffs' motion for summary judgment. The Defendants presented at the hearing and in their memoranda the 2016 deposition testimony of Charles E. Simmons, Jr. in an unrelated case. In the course of the deposition, Charles E. Simmons, Jr. testified that the members of SFH are himself, his wife, Rosa Simmons, his daughter, Charlesetta Simmons, and Palmer Simmons.

The Plaintiffs objected to the admissibility of this deposition testimony based on South Carolina Code of Laws Section 19-11-20, which is commonly known as the "Dead man's Statute."

The Court finds that strict compliance with the Operating Agreement is not a prerequisite of membership. Considering all the facts in the light most favorable to the Defendants, the Court further finds that there is no issue of material fact as to Plaintiffs' status as member of SFH, but that there is an issue of material fact as to their percentage of ownership

Having found that Plaintiffs are, and have been since the date of the Articles of Amendment of SFH, members of SFH, Defendant Palmer E. Simmons made unauthorized payments and/or distributions to himself, his business, his family members, and others, for his

personal benefit. The full extent of the amount of those distributions and payments is yet to be determined by a full accounting.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56 (c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). "A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

LAW/ANALYSIS

By applying the summary judgment standard to the instance case, I find that there is no genuine issue of material fact that must be submitted to the fact finder, and that the undisputed evidence establishes as a matter of law, that Plaintiffs are member of SFH, but the extent of their membership is to be determined at the trial of this case. Plaintiffs sought a declaratory judgment as against the Defendants, asking that this Court declare their rights, status and legal relationship vis-à-vis membership in and to SFH.³ The Plaintiffs have presented a real and substantial controversy in regard to their rights as members and have standing to bring their action. Pursuant to the Uniform Declaratory Judgments Act ("Declaratory Judgment Act"), this Court has the power

³ 2nd Am.Compl., P.10.

to declare Plaintiffs are members of SFH, “whether or not further relief is or could be claimed.” S.C. Code Ann. §15-53-20 (2005). Such declaration has the same force and effect as a final judgment or decree. *Id.*

Partial Declaratory Judgment as to Membership

The granting of a declaratory judgment rests in the sound discretion of the Court, to be reasonably exercised in furtherance of the purposes of the Declaratory Judgment Act. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 567, 155 S.E.2d 618, 621 (1967). The Declaratory Judgments Act should be liberally construed to accomplish its purposes, one of which is to remove uncertainty and insecurity from legal relationships. *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 6, 56 S.E.2d 576, 578 (1949). As the Declaratory Judgment Act authorizes this Court to make determinations of questions regarding writings that constitute a contract, this Court may evaluate the terms of the Operating Agreement, the Articles of Amendment, and the related assignments and resolutions, and the other documentation presented in this case to determine the intent of the parties. S.C. Code Ann. §15-53-30, *See: Southern Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 562 S.E.2d 482 (Ct. App. 2002), *aff'd as modified*, 356 S.C. 444, 590 S.E.2d 27 (2003). (*In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties*).

In the instant case, the documentation provided, the testimony of the parties, and undisputed facts, conclusively establish that Plaintiffs are entitled to the declaratory relief they request as to the issue of their membership in SFH. However, giving due regard for all of the circumstances of this case, the Court declines to go further and determine the percentage of Plaintiffs' ownership interest and leaves that determination for the trier of fact. This Court denies Defendants' Motion for Summary Judgment for the same reasons that support the grant of partial declaratory judgment to the Plaintiffs.

Monies Had and Received

As early as 1839, South Carolina recognized a case of monies had and received: See *Marvin v. M'Rae*, 1 Rice 171 (S.C. 1839) ("if a party has money in his or her hand that belongs to another, that other party may sue the first in an action for monies had and received"). More recently, equitable relief based on this premise was granted in *Okatie River v. Southeastern Site Prep*, 577 S.E. (S.C. App. 2003). In *Okatie*, as in this case, the Court sought to determine whether the money held by one person was really a loan, advance, deposit, or sum to be repaid upon specific terms to another person. Having determined that Defendant, Palmer E. Simmons wrongfully expended monies belonging to SFH for the benefit of the Trust, in the form of mortgage payments, insurance payments, and real property taxes on property owned by it, and further determined that it would be inequitable for the Trust to retain such funds, SFH is entitled to summary judgment as to the issue of his liability for such payments under this cause of action. The full extent of the monies to be repaid is to be determined by the trier of fact.

CONCLUSION

The purpose of the Declaratory Judgment Act is to afford a speedy and inexpensive method of deciding legal disputes. *Thompson v. State*, 415 S.C. 560, 565, 785 S.E.2d 189, 191 (2016). By declaring Plaintiffs members, this Court preserves Plaintiffs' rights with respect to SFH, and clarifies their status and legal relationship to Defendants, Palmer E. Simmons and Charlesetta S. Aiken, as co-managers. The result of this declaratory relief is that those monies wrongfully appropriated by Defendant, Palmer E. Simmons, must be repaid to SFH for further redistribution upon a final determination as to Plaintiffs' percentage interests, as described herein. The issue of damages accruing as the result of Defendant, Palmer Simmons' actions is reserved for further determination, as are Plaintiffs' remaining causes of action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that (a) Defendants' Motion for Summary Judgment is denied; (b) Plaintiffs are granted declaratory judgment as to their membership in Simmons Family Holdings, LLC; (c) Plaintiffs percentage of ownership is to

be determined by the trier of fact; (d) judgment is entered for Simmons Family Holdings, LLC for monies had and paid, brought derivatively on its behalf, with the amount of damages flowing therefrom to be determined by the trier of fact. Plaintiffs' remaining causes of action are unaffected by this Order.

AND IT IS SO ORDERED

R. Lawton McIntosh
Circuit Court Judge

Anderson, South Carolina



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
)
 Plaintiffs,)
)
 v.)
)
)
 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
)
 Defendants.)
)
 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER GRANTING
 MOTION TO COMPEL AND
 ORDER OF CONFIDENTIALITY

THIS MATTER came before the Court on March 1, 2021 on Plaintiffs' Motion to Compel Discovery. Appearing before me via Webex were Ehrick K. Haight, Jr., Esquire and Stacey S. Collins, Esquire, attorneys for the Plaintiffs, and Mark S. Berglind, Esquire, Stephen S. Meyer, Esquire, and Antonia Lucia, Esquire, attorneys for the Defendants. Thomas Pendarvis, Esquire, counsel for the Receiver for Simmons Family Holdings, LLC, the nominal Defendant, did not appear.

The Plaintiffs moved for an order compelling the Defendants to fully answer Plaintiffs' First Supplemental Request for Production dated September 25, 2020 ("Discovery Requests"). Defendants have failed to produce the following:

1. Copies of any correspondence between Defendant Palmer E. Simmons and the law firm of Vaux Marscher Berglind, P.A. regarding transfers of membership in Simmons Family Holdings, LLC, as requested in Paragraph 3 of Plaintiffs' Discovery Requests.
2. Copies of all assignments of membership interests, membership agreements, or other indicia of membership in Simmons Family Holdings, LLC, whether signed or unsigned, prepared on behalf of Simmons Family Holdings, LLC or Palmer E Simmons, as Manager, Co-Manager, or otherwise, regardless of whether such instrument was prepared as a draft, as requested in Paragraph 5 of Plaintiffs' Discovery Requests.
3. Copies of any billing statements reflecting work performed by Vaux Marscher Berglind, P.A. on behalf of Simmons Family Holdings, LLC, or Defendant Palmer E. Simmons, as Manager or Co-Manager thereof, as requested in Paragraph 6 of Plaintiffs' Discovery Requests.
4. Copies of all documents purporting to transfer any membership interest in Simmons Family Holdings, LLC into or out of the Trust, as requested in Paragraph 10 of Plaintiffs' Discovery Requests.
5. A copy of the Trust as requested in Paragraph 12 of Plaintiffs' Discovery Requests.

The Defendants objected to the Discovery Requests on the basis of the attorney-client privilege, Defendants' dispute of the Plaintiffs' membership interests in Simmons Family Holdings, LLC and on relevancy. Defendants also claim to have already responded to Paragraph 10 of Plaintiffs' Discovery Requests.

Having reviewed the submissions of the parties and considered the arguments of counsel, the Court finds and concludes as follows:

1. Plaintiffs are entitled to examine and copy the business records of Simmons Family Holdings, LLC pursuant to S.C. Code Ann. §33-44-408 (2006), including any resolutions(s) purporting to transfer membership interests, and any correspondence from the Defendants, as Co-Managers, with counsel concerning such transfer(s). These documents are relevant and likely to lead to admissible evidence regarding the transfer of membership(s) and the Defendants' actions concerning membership interests.
2. Plaintiffs are entitled to examine and copy the attorney billing statements for work performed for Simmons Family Holdings, LLC or Defendant Palmer E. Simmons in his capacity as Manager or Co-Manager, including statements in J&W Corp. of Greenwood, LLC v. Simmons Family Holdings, LLC, C.A. No. 2015-CP-07-02284 and in all matters pertaining to membership interests in Simmons Family Holdings, LLC. These documents are relevant and likely to lead to admissible evidence regarding the Defendants' management of Simmons Family Holdings, LLC and the J&W lawsuit, the transfer of membership(s), and the Defendants' actions concerning membership interests.
3. Plaintiffs are entitled to examine and copy the Trust Agreement for the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust Dated May 5, 2016 as the Trust holds an interest in Simmons Family Holdings, LLC and the Trust Agreement is relevant and likely to lead to admissible evidence regarding the proper transfer of membership(s) and Defendants' actions concerning membership interests.

IT IS THEREFORE ORDERED AS FOLLOWS:

The Plaintiffs' Motion to Compel Discovery is granted and the Defendants shall respond within thirty (30) days from the date of this Order. The Defendants have prepared and the parties

have agreed to the following confidentiality provisions with regard to the documents to be produced pursuant to this Order:

Confidentiality. Documents designated confidential under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including appeal of that litigation). In the event a party seeks to file any material that is subject to this Order with the Court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the parties; (2) where appropriate, submitting the documents solely for *in camera* review; or (3) where the proceeding measures are not adequate, seeking permission to file the documents under seal pursuant to the South Carolina Rules of Civil Procedure or such other rule or procedure as may apply in the relevant jurisdiction. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated confidential under the terms of this Order to any other person or entity except as set forth in subparagraphs (1) – (5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment in writing, that he or she has read and understands the terms of this Confidentiality Order, is bound by it, and will not disclose or permit the disclosure of any documents designated confidential. Subject to these to these requirements, the following categories of persons may be allowed to review documents which have been designated confidential pursuant to this Order:

1. Counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit, including the Receiver and counsel for the Receiver;
2. Court reporters engaged for the depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

3. Consultants, investigators or experts employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit;
4. The mediator hired by the parties for the mandatory mediation of this lawsuit; and
5. Other persons only upon consent of the producing party or upon order of the Court and on such conditions as are agreed and ordered.

Documents designated confidential shall include:

1. Copies of any billing statements reflecting work performed by Vaux Marscher Berglind, P.A. on behalf of Simmons Family Holdings, LLC, or the Defendants, as Manager(s) or Co-Manager(s) of Simmons Family Holdings, LLC.
2. Copies of the Trust Agreement for Charles E. Simmons, Jr. and Rosa G Simmons Trust Dated May 6, 2016.

If Defendants contend that any particular document(s) should not be provided, counsel shall submit said document(s) to the Court for an *in camera* review within thirty (30) days from the date of this Order.

AND IT IS SO ORDERED.

R. LAWTON McINTOSH
CIRCUIT COURT JUDGE

Anderson, South Carolina



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE.

NOV 09 2015

AMENDED ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-44-204(a), the undersigned limited liability company adopts the following Amended Articles of Organization:

- The name of the limited liability company is Simmons Family Holding, LLC
- The date the articles of organization were filed is 09/14/2001
- The articles of organization are amended in the following respects, of which all amended provisions may lawfully be included in the articles of organization. If the space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph on this form.

Add the following people in their respective capacities: Palmer E. Simmons-Co-Manager, P O Box 21026

Hilton Head, SC 29925, Charlesetta S. Aiken-Co-Manager, P O Box 21414 Hilton Head, SC 29925

Greg M. Simmons-Member, Jermaine Robinson-Member

Charles E. Simmons, Jr
Signature (Please see the Filing Checklist below)

Charles E. Simmons, Jr
Print or Type Name

Capacity/Position of Person Signing (You must check one box.)

Date 11/03/2015

- Manager Member Organizer
- Fiduciary Attorney-in-Fact

Filing Checklist

- Amended Articles of Organization (filed in duplicate)
- \$110.00 made payable to the Secretary of State's Office
- Self-Addressed, Stamped Return Envelope
- Make sure the proper individual has signed the form (Please see S.C. Code of Laws §33-44-205(a))
 - Limited Liability Company forms filed with the Secretary of State must be signed in the name of the company by a:
 - (1) manager of a manager-managed company
 - (2) member of a member-managed company
 - (3) person organizing the company, if the company has not been formed or
 - (4) fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary
- Return all documents to: South Carolina Secretary of State's Office
Attn: Corporate Filings
1205 Pendleton Street Suite 525
Columbia, SC 29201

151110-0172 FILED: 11/09/2015
SIMMONS FAMILY HOLDINGS, LLC
Filing Fee: \$110.00 ORIG



Mark Hammond South Carolina Secretary of State

LLC - Domestic - Amended Articles of Organization

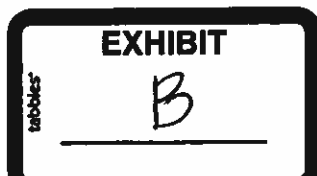


EXHIBIT "D"
INVENTORY AND APPRAISEMENT

STATE OF SOUTH CAROLINA
COUNTY OF: BEAUFORT

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT: PROBATE PROPERTY
 ORIGINAL
 SUPPLEMENTARY, AMENDED OR CORRECTED #
(must restate the unchanged information from the original inventory)

IN THE MATTER OF:
CHARLES E. SIMMONS, JR
(Decedent)

2016 SEP 26 CASE NUMBER 2016ES0700559
ATT. 51

File the original Inventory and Appraisal with the Probate Court within ninety (90) days following the fiduciary appointment. A copy shall be sent to each interested person who has demanded it. A Proof of Delivery must be filed with the Court. The gross fair market value of all probate assets, regardless of location (whether in this state or elsewhere), should be listed as of the date of death. Continue on additional sheets if necessary. A Supplementary, Amended, or Corrected Inventory should be utilized for correcting, adjusting or adding to an original inventory, and must restate the unchanged information from the original Inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset. If an appraiser is employed, his/her name and address must be indicated with the item or items he/she appraised.

RECAPITULATION

Schedule A - Real Estate	.....
Schedule B - Stocks and Bonds	.....	\$867,100.00
Schedule C - Notes Due Decedent and Cash	.....	\$
Schedule D - Insurance on Decedent's Life - Payable to the Estate	.....	\$1,815,350.81
Schedule E - Jointly Owned Property	.....	\$
Schedule F - Other Miscellaneous Assets	.....	NA
Schedule G - Transfers During Decedent's Life Payable to the Estate	.....	\$420,620.00
Schedule H - Powers of Appointment Payable to the Estate	.....	\$
Schedule I - Annuities and Retirement Accounts Payable to the Estate	.....	\$
TOTAL GROSS VALUE OF PROBATE ESTATE	.....	\$3,103,070.81
ENCUMBRANCES	.....	(803,428.73)
TOTAL NET WORTH OF PROBATE ESTATE / PROBATE ESTATE VALUE	.....	\$2,299,642.08

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

SWORN to before me this 22nd day of
September 20 16

Antonia T. Lucia
Notary Public for South Carolina
My Commission Expires: Nov. 27, 2025

Personal Representative
Signature: Rosa G. Simmons
Print Name: Rosa G. Simmons
Address: P.O. Box 22944
Hilton Head Island, SC 29925
Telephone (Work): _____
(Home): (843) 689-3416
(Cell): _____
(Email): _____

Attorney: Antonia T. Lucia
Vaux Marscher Berglind, PA
Address: 16 William Pope Drive, Suite 202
Bluffton, SC 29909
Telephone: (843) 705-2888
Email: Antonia.lucia@vmlawfirm.com

Co-Personal Representative
Signature _____
Name: _____
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
(Email): _____

ELECTRONICALLY FILED - 2020 Oct 27 3:08 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701246

(If none, so state)

		% Owned by Decedent	Fair Market Value of Decedent's Interest
A. REAL ESTATE in Decedent's name alone or tenants in common (not as joint with right of survivorship) Describe each property by listing its full address, tax map number, deed book and page and description consistently (house, lot, buildings, acreage). Also list oil / mineral rights and time shares, if it is real property. If the property is encumbered, list the full fair market value of the property here and the encumbrance on Encumbrance section below			
1.	R800 021 000 0013 0000 Lot 11A Cooper River Plantation 3.95 acres Beaufort County, SC	100%	60,400.00
2.	R510 011 000 0003 0000 8 Chisholm Place, Hilton Head Island, Beaufort County, SC .83 acres	100%	48,100.00
3.	R510 010 000 0231 0000 Simmons Island 2.38 acres, Beaufort County, SC	100%	97,800.00
4.	R510 010 000 0647 0000 Spanish Wells Road, Hilton Head Island, Beaufort County, SC .75 acres		
5.	R510 010 000 0008 0000 584 Spanish Wells Road, Beaufort County, SC 8.2 acres	100%	144,100.00
6.	R510 010 000 028B 0000 32 Diamond Back Road, Hilton Head Island, Beaufort County, SC 1.0 acres	100%	384,300.00
7.	R510 010 000 0018 0000 718 Spanish Wells Road, Hilton Head Island, Beaufort County, SC	100%	51,000.00
B. STOCKS, BONDS in Decedent's name alone or tenants in common (not as joint with right of survivorship). List each type of security and number of shares			
1.			
2.			
C. CASH, BANK ACCOUNTS, NOTES RECEIVABLES in Decedent's name alone or as tenants in common. List each separate account type and institution and the last two digits of each account. List all bank accounts owned by Decedent alone or as tenants in common (checking, savings, CDs, money market, brokerage, employment bonus, cash award, final paycheck etc.), cash on hand, notes payable to Decedent, and survival action proceeds.			
1.	Note from Diane The Runner LLC dated March 1, 2012	100%	1,800,000.00
2.	Wells Fargo Checking Acct #xxx-xx9074	100%	15,350.81
3.			
D. LIFE INSURANCE payable to the Decedent's estate.			
1.			
2.			
E. JOINTLY OWNED PROPERTY - REPORTING IS NOT REQUIRED			
ALL OTHER MISCELLANEOUS PERSONAL PROPERTY in Decedent's name alone or as tenants in common. List below any tangible personal property, including household goods & furnishings, vehicles, boats/motors/trailers, mobile homes that are not de-titled (Include year/make/model/VIN, if applicable), airplanes, equipment, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, including coins, guns, artwork, jewelry, etc., and any other miscellaneous probate items not listed elsewhere, including any digital assets			N/A
1.	Simmons Family Holding, LLC	33.33%	355,500.00
2.	1998 Chevrolet GM4GC1	100%	5,875.00
3.	2010 Hyundai Genesis	100%	16,475.00
4.	2000 Rega Rosetta II	100%	42,770.00
G. TRANSFERS DURING DECEDENT'S LIFE PAYABLE TO ESTATE ONLY Any transfers intended to take effect at death if payable to the Estate shall be reported. A trust created by Decedent in which income for life was retained by the Decedent, power to revoke or other incidents of ownership retained by the Decedent, lifetime transfers of real property in which Decedent retained life estate, etc.			
1.			
2.			
H. POWERS OF APPOINTMENT PAYABLE TO THE ESTATE ONLY List property, both real and personal, over which Decedent possessed a Power of Appointment whether testamentary or otherwise, if such property is payable to the Estate.			
1.			
I. ANNUITIES AND IRA, ETC. PAYABLE TO THE ESTATE ONLY List any annuities or retirement accounts owned by the Decedent and payable to the Estate.			
1.			
2.			
TOTAL PROBATE ESTATE VALUE			\$ 3,103,070.81
ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate). List debts of the Decedent secured by assets on the above schedule and describe the debt and the specific asset encumbered.			
1.	Sch A Item #5 Nationstar Mortgage Loan #xxxxx9913		

246,597.44

EXHIBIT 2

Sch A Item #5 South State Bank Mortgage Loan #xxxx8546
3. Sch F Item #1 Mortgage of Mary Lee Simmons Book 2844 Page 1811 Beaufort County, SC

156,321.79
400,509.50

TOTAL ENCUMBRANCES

\$ 803,428.73

EXHIBIT "E"
ASSIGNMENT OF MEMBERSHIP INTEREST

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**SIMMONS FAMILY HOLDINGS, LLC
ASSIGNMENT AND TRANSFER OF MEMBERSHIP INTEREST**

WHEREAS, Charles E. Simmons, Jr., (the "Decedent"), a Member of Simmons Family Holdings, LLC, a South Carolina limited liability company (the "Company"), died testate on May 26, 2016; and

WHEREAS, the Last Will and Testament of Charles E. Simmons, Jr. dated May 5, 2016 was admitted to Probate before the Beaufort County Probate Court as Case No: 2016ES0700559 (the "Estate"), and Palmer E. Simmons was appointed as Personal Representative on June 24, 2016; and

WHEREAS, Charles E. Simmons, Jr. is a Member of Simmons Family Holdings, LLC and holds a one-third (1/3) membership interest in the Company; and

WHEREAS, Greg M. Simmons and Jermaine Robinson are the remaining Members of the Company; and

WHEREAS, Palmer E. Simmons and Charlesetta S. Aiken are the Co-Managers of the Company; and

WHEREAS, pursuant to Section 3.10 of the Operating Agreement of the Company, a Member's membership, shall in the case of death, pass to the Member's estate and subsequent beneficiary under the terms of the Member's Will; and

WHEREAS, pursuant to the Last Will and Testament of Charles E. Simmons, Jr. dated May 5, 2016, Rosa G. Simmons, as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, is the sole beneficiary of said estate; and

WHEREAS, the Members of Simmons Family Holdings, LLC have adopted a resolution authorizing the assignment and transfer of one-third (1/3) interest of Charles E. Simmons, Jr. to Rosa G. Simmons, Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016.

NOW THEREFORE, the undersigned, being the acting co-managers of Simmons Family Holdings, LLC with the approval of all Members do hereby assign and transfer the one-third (1/3) interest of the Decedent, Charles E. Simmons, Jr. in Simmons Family Holding, LLC to Rosa G. Simmons, Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 with all the rights and obligations attendant thereto, and admit the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 as a Member of Simmons Family Holdings, LLC with all the rights and obligations attendant thereto and subject to any and all restrictions of the Operating Agreement of Simmons Family Holding, LLC and of any further agreement with respect to the Company, which assignment and transfer of interest and admission as a Member shall be reflected in the Operating Agreement.

WITNESSETH the hand and the seals of the Members of the Company this 30th day of June, 2017

WITNESSES:

Myra S. Daniell

Antonia J. Lewis

Robert C. Adams

Antonia J. Lewis

Simmons Family Holdings, LLC

Palmer E. Simmons
By: Palmer E. Simmons, Co-Manager

Charlesetta S. Alken
Charlesetta S. Alken, Co-Manager

APPROVED BY:

Robert C. Adams

Antonia J. Lewis

Robert C. Adams

Antonia J. Lewis

Greg M. Simmons
Greg M. Simmons

Jermaine Robinson
Jermaine Robinson

ASSIGNMENT ACCEPTED BY:

Robert C. Adams

Antonia J. Lewis

Charles E. Simmons, Jr. and Rosa G. Simmons
Revocable Trust dated May 5, 2016

Rosa G. Simmons
By: Rose G. Simmons, Trustee

EXHIBIT "F"
2017 FEDERAL TAX RETURN FOR
SIMMONS FAMILY HOLDINGS, LLC
(Tax Id. No. redacted)

451MFA 03/13/2018 10:04 AJJ

Form **1065**

Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2017, or tax year beginning

ending **2017**
Go to www.irs.gov/Form1065 for instructions and the latest information.

OMB No 1545-0123

2017

A Principal business activity

RENTAL PROPE

B Principal product or service

RENTAL

C Business code number

531120

Type or Print

Name of partnership

SIMMONS FAMILY HOLDINGS

Number, street, and room or suite no. If a P.O. box, see the instructions

PO BOX 21026

City or town, state or province, country, and ZIP or foreign postal code

HILTON HEAD ISLAND SC 29925

D Employer identification number

E Date business started
06/01/2016

F Total assets (see the instructions)
\$ **481,401**

G Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return
(6) Technical termination - also check (1) or (2)

H Check accounting method: (1) Cash (2) Accrual

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year (3) Other (specify)

J Check if Schedules C and M-3 are attached

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income		1a	1b	1c
1a	Gross receipts or sales			
b	Returns and allowances			
c	Balance. Subtract line 1b from line 1a			
2	Cost of goods sold (attach Form 1125-A)			
3	Gross profit. Subtract line 2 from line 1c			
4	Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			
5	Net farm profit (loss) (attach Schedule F (Form 1040))			
6	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			
7	Other income (loss) (attach statement)			
8	Total income (loss). Combine lines 3 through 7			
Deductions (see the instructions for limitations)				
9	Salaries and wages (other than to partners) (less employment credits)			
10	Guaranteed payments to partners			
11	Repairs and maintenance			
12	Bad debts			
13	Rent			
14	Taxes and licenses			
15	Interest			
16a	Depreciation (if required, attach Form 4562)			
b	Less depreciation reported on Form 1125-A and elsewhere on return	16a		
17	Depletion (Do not deduct oil and gas depletion.)	16b		
18	Retirement plans, etc.			16c
19	Employee benefit programs			17
20	Other deductions (attach statement)			18
21	Total deductions. Add the amounts shown in the far right column for lines 9 through 20			19
22	Ordinary business income (loss). Subtract line 21 from line 8			20
				21
				22

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of partner or limited liability company member

Preparer's signature
MARK N JUNE, CPA

Date

Date
03/13/18

May the IRS discuss this return with the preparer shown below (see instructions)? Yes No

Paid Preparer Use Only

Print/Type preparer's name

MARK N JUNE, CPA

Firm's name

JUNECPA

Firm's address

**99 MAIN STREET
HILTON HEAD ISLAND, SC 29926**

Firm's EIN

Phone no.

843-842-6500

Form **1065** (2017)

For Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2017) **SIMMONS FAMILY HOLDINGS**
Schedule B Other Information

Page

1 What type of entity is filing this return? Check the applicable box:

- a Domestic general partnership
- b Domestic limited partnership
- c Domestic limited liability company
- d Domestic limited liability partnership
- e Foreign partnership
- f Other

Yes No

2 At any time during the tax year, was any partner in the partnership a disregarded entity, a partnership (including an entity treated as a partnership), a trust, an S corporation, an estate (other than an estate of a deceased partner), or a nominee or similar person?

X

3 At the end of the tax year:

a Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization, or any foreign government own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

X

b Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

X

4 At the end of the tax year, did the partnership:

a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below

X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below

X

(i) Name of Entry	(ii) Employer Identification Number (if any)	(iii) Type of Entry	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

5 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details

Yes No

6 Does the partnership satisfy all four of the following conditions?

- a The partnership's total receipts for the tax year were less than \$250,000.
- b The partnership's total assets at the end of the tax year were less than \$1 million.
- c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.
- d The partnership is not filing and is not required to file Schedule M-3. If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.

X

X

7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?

X

8 During the tax year, did the partnership have any debt that was cancelled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?

X

9 Has this partnership filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction?

X

10 At any time during calendar year 2017, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). If "Yes," enter the name of the foreign country.

X

Form 1065 (2017) **SIMMONS FAMILY HOLDINGS**
Schedule B Other Information (continued)

	Yes	No
11 At any time during the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See instructions		X
12a Is the partnership making, or had it previously made (and not revoked), a section 754 election? See instructions for details regarding a section 754 election		X
b Did the partnership make for this tax year an optional basis adjustment under section 743(b) or 734(b)? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions		X
c Is the partnership required to adjust the basis of partnership assets under section 743(b) or 734(b) because of a substantial built-in loss (as defined under section 743(d)) or substantial basis reduction (as defined under section 734(d))? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions		X
13 Check this box if, during the current or prior tax year, the partnership distributed any property received in a like-kind exchange or contributed such property to another entity (other than disregarded entities wholly owned by the partnership throughout the tax year)	<input type="checkbox"/>	X
14 At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in partnership property?	<input type="checkbox"/>	X
15 If the partnership is required to file Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, enter the number of Forms 8858 attached. See instructions ▶		X
16 Does the partnership have any foreign partners? If "Yes," enter the number of Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed for this partnership. ▶		X
17 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return. ▶		X
18a Did you make any payments in 2017 that would require you to file Form(s) 1099? See instructions		X
b If "Yes," did you or will you file required Form(s) 1099?		X
19 Enter the number of Form(s) 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, attached to this return. ▶	0	
20 Enter the number of partners that are foreign governments under section 892. ▶	0	
21 During the partnership's tax year, did the partnership make any payments that would require it to file Form 1042 and 1042-S under chapter 3 (sections 1441 through 1464) or chapter 4 (sections 1471 through 1474)?		X
22 Was the partnership a specified domestic entity required to file Form 8938 for the tax year (See the Instructions for Form 8938)?		X

Designation of Tax Matters Partner (see instructions)

Enter below the general partner or member-manager designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ **PALMER SIMMONS**

Identifying number of TMP ▶ [REDACTED]

If the TMP is an entity name of TMP representative ▶

Phone number of TMP ▶ [REDACTED]

Address of designated TMP ▶ **PO BOX 21026
HILTON HEAD ISLAND SC 29925**

Form 1065 (2017) SIMMONS FAMILY HOLDINGS
Schedule K Partners' Distributive Share Items

		Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1
	2 Net rental real estate income (loss) (attach Form 8825)	2
	3a Other gross rental income (loss)	3a
	b Expenses from other rental activities (attach statement)	3b
	c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4 Guaranteed payments	4
	5 Interest income	5
	6 Dividends: a Ordinary dividends	6a
	b Qualified dividends	6b
	7 Royalties	7
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8
9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
b Collectibles (28%) gain (loss)	9b	
c Unrecaptured section 1250 gain (attach statement)	9c	
10 Net section 1231 gain (loss) (attach Form 4797)	10	
11 Other income (loss) (see instructions) Type ▶	11	
Deductions	12 Section 179 deduction (attach Form 4562)	12
	13a Contributions	13a
	b Investment interest expense	13b
	c Section 59(e)(2) expenditures: (1) Type ▶	(2) Amount ▶
	d Other deductions (see instructions) Type ▶	13c(2)
Self-Employment	14a Net earnings (loss) from self-employment	14a
	b Gross farming or fishing income	14b
	c Gross nonfarm income	14c
Credits	15a Low-income housing credit (section 42(j)(5))	15a
	b Low-income housing credit (other)	15b
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)	15c
	d Other rental real estate credits (see instructions) Type ▶	15d
	e Other rental credits (see instructions) Type ▶	15e
	f Other credits (see instructions) Type ▶	15f
Foreign Transactions	16a Name of country or U.S. possession ▶	16a
	b Gross income from all sources	16b
	c Gross income sourced at partner level	16c
	Foreign gross income sourced at partnership level	16d
	d Passive category ▶	16e
	e General category ▶	16f
	Deductions allocated and apportioned at partner level	16g
	f Other ▶	16h
	g Interest expense ▶	16i
	Deductions allocated and apportioned at partnership level to foreign source income	16j
h Other ▶	16k	
i Passive category ▶	16l	
j General category ▶	16m	
l Total foreign taxes (check one): ▶ Paid <input type="checkbox"/> Accrued <input type="checkbox"/>	16n	
k Other ▶	16o	
m Reduction in taxes available for credit (attach statement)	16p	
n Other foreign tax information (attach statement)	16q	
Alternative Minimum Tax (AMT) Items	17a Post-1986 depreciation adjustment	17a
	b Adjusted gain or loss	17b
	c Depletion (other than oil and gas)	17c
	d Oil, gas, and geothermal properties - gross income	17d
	e Oil, gas, and geothermal properties - deductions	17e
	f Other AMT items (attach statement)	17f
Other Information	18a Tax-exempt interest income	18a
	b Other tax-exempt income	18b
	c Nondeductible expenses	18c
	19a Distributions of cash and marketable securities	19a
	b Distributions of other property	19b
	20a Investment income	20a
	b Investment expenses	20b
	c Other items and amounts (attach statement)	

227,639

11,175

127,061

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Form 1065 (2017) **SIMMONS FAMILY HOLDINGS**

Page

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i						1	216,464
2 Analysis by partner type:							
(i) Corporate		(ii) Individual (active)		(iii) Individual (passive)		(iv) Partnership	
						(v) Exempt Organization	
a General partners						(vi) Nominee/Other	
b Limited partners		144,295		72,169			

Schedule L Balance Sheets per Books

	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash				
2a Trade notes and accounts receivable		948		
b Less allowance for bad debts				63,200
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)	SEE STMT 2			
7a Loans to partners (or persons related to partners)		6,751		
b Mortgage and real estate loans				33,901
8 Other investments (attach statement)				
9a Buildings and other depreciable assets				
b Less accumulated depreciation				
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)		384,300		
b Less accumulated amortization				384,300
13 Other assets (attach statement)				
14 Total assets		391,999		481,401
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)				
18 All nonrecourse loans				
19a Loans from partners (or persons related to partners)				
b Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)		355,500		355,500
21 Partners' capital accounts				
22 Total liabilities and capital		36,499		125,901
		391,999		481,401

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return
 Note. The partnership may be required to file Schedule M-3 (see instructions).

1 Net income (loss) per books	216,463	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a Depreciation \$	
a Depreciation \$		8 Add lines 6 and 7	
b Travel and entertainment \$		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	216,464
SEE STATEMENT 3	1		
5 Add lines 1 through 4	216,464		

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	36,499	6 Distributions: a Cash	127,061
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	216,463	8 Add lines 6 and 7	127,061
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	125,901
5 Add lines 1 through 4	252,962		

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Form **8825**
 (Rev. September 2017)
 Department of the Treasury
 Internal Revenue Service

Rental Real Estate Income and Expenses of a
 Partnership or an S Corporation

1 Attach to Form 1065, Form 1065-B, or Form 1120S.
 1 Go to www.irs.gov/Form8825 for the latest information.

OMB No. 1545-0122

Name **SIMMONS FAMILY HOLDINGS**

Employer identification number

1 Show the type and address of each property. For each rental real estate property listed, report the number of days rented at fair rental value and days with personal use. See instructions. See page 2 to list additional properties.

	Physical address of each property—street, city, state, ZIP code	Type—Enter code 1-8; see page 2 for list	Fair Rental Days	Personal Use Days
A	SIMMONS ROAD 11 SIMMONS ROAD HILTON HEAD ISLAND SC 29928	4 COMMERCIAL	365	
B				
C				
D				

	Properties			
	A	B	C	D
2 Rental Real Estate Income				
2 Gross rents	246,905			
Rental Real Estate Expenses				
3 Advertising	3			
4 Auto and travel	4			
5 Cleaning and maintenance	5			
6 Commissions	6			
7 Insurance	7			
8 Legal and other professional fees	8			
9 Interest	9	13,000		
10 Repairs	10			
11 Taxes	11	8,633		
12 Utilities	12			
13 Wages and salaries	13			
14 Depreciation (see instructions)	14			
15 Other (list) ▶ SEE STATEMENT 4	15	17,810		
16 Total expenses for each property. Add lines 3 through 15	16	19,266		
17 Income or (loss) from each property. Subtract line 16 from line 2	17	227,639		
18a Total gross rents. Add gross rents from line 2, columns A through H	18a	246,905		
b Total expenses. Add total expenses from line 16, columns A through H	18b	19,266		
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19			
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a			
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed. (1) Name (2) Employer identification number				
21 Net rental estate income (loss). Combine lines 18a through 20a. Enter the result here and on: • Form 1065 or 1120S: Schedule K, line 2; or • Form 1065-B: Part I, line 4	21	227,639		

For Paperwork Reduction Act Notice, see instructions.
 DAA

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PARTNER# 1

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2017

For calendar year 2017, or tax year

Final K-1 Amended K-1

651113
OMB No. 1545-0123

Partner's Share of Income, Deductions,
Credits, etc.

See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
[REDACTED]

B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
PO BOX 21026
HILTON HEAD ISLAND SC 29925

C IRS Center where partnership filed return
E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
[REDACTED]

F Partner's name, address, city, state, and ZIP code
PALMER SIMMONS
PO BOX 21026
HILTON HEAD ISLAND SC 29925

G General partner or LLC member-manager Limited partner or other LLC member

H Domestic partner Foreign partner

I1 What type of entity is this partner? **INDIVIDUAL**

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions)

	Beginning	Ending
Profit	33.330000 %	33.330000 %
Loss	33.330000 %	33.330000 %
Capital	33.330000 %	33.330000 %

K Partner's share of liabilities at year end

Nonrecourse \$ _____

Qualified nonrecourse financing \$ _____

Recourse \$ **118,488**

L Partner's capital account analysis:

Beginning capital account	\$ 6,773
Capital contributed during the year	\$ _____
Current year increase (decrease)	\$ 72,147
Withdrawals & distributions	\$ (32,532)
Ending capital account	\$ 46,388

Tax basis GAAP Section 704(b) book

Other (explain)

M Did the partner contribute property with a built-in gain or loss?

Yes No

If "Yes," attach statement (see instructions)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Line	Description	Code	Amount
1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
*			75,872
3	Other net rental income (loss)	1E	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Uncaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
12	Section 179 deduction	A	32,532
13	Other deductions	A	3,725
14	Self-employment earnings (loss)		
19	Distributions		
20	Other information		

For IRS Use Only

*See attached statement for additional information.

Schedule K-1 (Form 1065) 2017

Schedule K-1 (Form 1065)

Department of the Treasury Internal Revenue Service

For calendar year 2017, or tax year

Beginning ending

Partner's Share of Income, Deductions, Credits, etc.

See back of form and separate instructions.

Final K-1 Amended K-1

651113 OMB No. 1545-0123

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 4 columns: Line number, Description, Amount, and Code. Includes rows for Ordinary business income (loss), Net rental real estate income (loss), Other net rental income (loss), Guaranteed payments, Interest income, Ordinary dividends, Qualified dividends, Royalties, Net short-term capital gain (loss), Net long-term capital gain (loss), Collectibles (28%) gain (loss), Unrecaptured section 1250 gain, Net section 1231 gain (loss), Other income (loss), Section 179 deduction, Other deductions, Distributions, Other information, and Self-employment earnings (loss).

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

SIMMONS FAMILY HOLDINGS PO BOX 21026 HILTON HEAD ISLAND SC 29925

C IRS Center where partnership filed return

E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code

CHARLESETTA SIMMONS AIKEN

PO BOX 21414 HILTON HEAD ISLAND SC 29925

G General partner or LLC member-manager Limited partner or other LLC member

H Domestic partner Foreign partner

I1 What type of entity is this partner? INDIVIDUAL

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions):

Table showing Partner's share of profit, loss, and capital at beginning and ending of the year.

K Partner's share of liabilities at year end

Table showing Partner's share of liabilities at year end: Nonrecourse, Qualified nonrecourse financing, Recourse.

L Partner's capital account analysis:

Table showing Partner's capital account analysis: Beginning capital account, Capital contributed during the year, Current year increase (decrease), Withdrawals & distributions, Ending capital account.

M Tax basis GAAP Section 704(b) book Other (explain)

M Did the partner contribute property with a built-in gain or loss?

Yes No If "Yes," attach statement (see instructions)

For IRS Use Only

*See attached statement for additional information.

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PARTNER# 3

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2017

For calendar year 2017, or tax year

Final K-1 Amended K-1

651113
OMB No. 1545-012

Partner's Share of Income, Deductions, Credits, etc.

See back of form and separate instructions

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
2	Net rental/real estate income (loss)		
		37,948	
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
12	Section 179 deduction		Distributions A 40,642
13	Other deductions	A 1,863	20 Other information
14	Self-employment earnings (loss)		

Part I Information About the Partnership

A Partnership's employer identification number
[REDACTED]

B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
PO BOX 21026
HILTON HEAD ISLAND SC 29925

C IRS Center where partnership filed return
E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
[REDACTED]

F Partner's name, address, city, state, and ZIP code
JERMAINE ROBINSON
10 CHISHOLM PLACE
HILTON HEAD ISLAND SC 29926

G General partner or LLC member-manager Limited partner or other LLC member

H Domestic partner Foreign partner

I1 What type of entity is this partner? **INDIVIDUAL**

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions)

	Beginning	Ending
Profit	16.670000 %	16.670000 %
Loss	16.670000 %	16.670000 %
Capital	16.670000 %	16.670000 %

K Partner's share of liabilities at year end:

Nonrecourse \$ _____

Qualified nonrecourse financing \$ _____

Recourse \$ **59,262**

L Partner's capital account analysis:

Beginning capital account \$ **5,063**

Capital contributed during the year \$ _____

Current year increase (decrease) \$ **36,085**

Withdrawals & distributions \$ **40,642**

Ending capital account \$ **506**

Tax basis GAAP Section 704(b) book
 Other (explain)

M Did the partner contribute property with a built-in gain or loss?
 Yes No
If "Yes," attach statement (see instructions)

For IRS Use Only

*See attached statement for additional information.

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PARTNER# 4

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2017

For calendar year 2017, or 12-month year

Final K-1

Amended K-1

651113

OMB No. 1545-0123

Partner's Share of Income, Deductions, Credits, etc.
See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
PO BOX 21026
HILTON HEAD ISLAND SC 29925
C IRS Center where partnership filed return
E-FILE
D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
F Partner's name, address, city, state, and ZIP code
GREG M SIMMONS
584 SPANISH WELLS ROAD
HILTON HEAD ISLAND SC 29928
G General partner or LLC member-manager Limited partner or other LLC member
H Domestic partner Foreign partner
I1 What type of entity is this partner? **INDIVIDUAL**
I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions)

	Beginning	Ending
Profit	16.670000 %	16.670000 %
Loss	16.670000 %	16.670000 %
Capital	16.670000 %	16.670000 %

K Partner's share of liabilities at year end
Nonrecourse \$
Qualified nonrecourse financing \$
Recourse \$ **59,262**

L Partner's capital account analysis
Beginning capital account \$ **5,063**
Capital contributed during the year \$
Current year increase (decrease) \$ **36,084**
Withdrawals & distributions \$ **(41,407)**
Ending capital account \$ **-260**

Tax basis GAAP Section 704(b) book
Other (explain)

M Did the partner contribute property with a built-in gain or loss?
 Yes No
If "Yes," attach statement (see instructions)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
10	Other income (loss)		
11	Section 179 deduction	19	Distributions
12	Other deductions	A	41,407
13	Self-employment earnings (loss)	20	Other information
14			
15			
16			
17			
18			
19			
20			

*See attached statement for additional information.

For IRS Use Only

45167A 03-15-2018 10:06 AM

Form: **1065** **Rent and Royalty Schedule**
 For calendar year 2017, or tax year beginning _____ and ending **2017**

Partnership Name: **SIMMONS FAMILY HOLDINGS** Employer Identification Number: _____

Property Description: **SIMMONS ROAD
 11 SIMMONS ROAD
 HILTON HEAD ISLAND SC 29928**

Type of Activity:
 Rental Real Estate
 Other Rental Property
 Royalty Property

Type of property: **COMMERCIAL**
 Number of days rented at fair rental value: _____
 Number of personal use days: **365**
 Is the net income (loss) from this property included in the computation of self employment income? Yes No
 Is the net income (loss) from this property included in the computation of section 179 business income? Yes No

Income and Expenses

Income		
Gross rents	246,905	
Gross royalties		
Other income		
Income from sale of property reported on Form 4797, Line 17		
Total gross income		246,905
Expense		
Advertising		
Auto and travel		
Cleaning and maintenance		
Commissions		
Insurance		
Legal and professional		
Interest		
Repairs	13,000	
Taxes		
Utilities	8,633	
Wages and salaries		
Depreciation		
Other expenses	17,810	
Total expenses	19,266	
Less % personal use		
Net deductible expenses		19,266
Net income or loss from this property		227,639

4SIMFA Simmons Family Holdings

FYE: 12/31/2017

Federal Statements

3/13/2018 10:04 AM

Statement 1 - Form 1065, Schedule K, Line 13a - Contributions

Description	100%	50%	30%	20%	Total
CHARITABLE DONATION	\$	\$ 11,175	\$	\$	\$ 11,175
TOTAL	\$ 0	\$ 11,175	\$ 0	\$ 0	\$ 11,175

4SIMFA Simmons Family Holdings

Federal Statements

3/13/2018 10:04 AM

FYE: 12/31/2017

Statement 2 - Form 1065, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
RECEIVABLE FROM CAROLINA TRUC	\$ 6,000	\$
RECEIVABLE FROM F.A.	500	
RECEIVABLE	251	
NOTES RECEIVABLE		33,901
TOTAL	\$ 6,751	\$ 33,901

Statement 3 - Form 1065, Schedule M-1, Line 4 - Expenses Recorded on Books, Not on Sch K

Description	Amount
ROUNDING ADJUSTMENT	\$ 1
TOTAL	\$ 1

4SIMFA Simmons Family Holdings

Federal Statements

3/13/2018 10:04 AM

FYE: 12/31/2017

Statement 4 - Simmons Road - Form 8825, Line 15 - Other

<u>Description</u>	<u>Amount</u>
MISCELLANEOUS	
POSTAGE	\$ 50
PROFESSIONAL FEES	187
	<u>17,573</u>
TOTAL	\$ <u>17,810</u>

EXHIBIT "G"
PROPOSED ASSIGNMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**SIMMONS FAMILY HOLDINGS, LLC
RESOLUTION AUTHORIZING
ASSIGNMENT AND TRANSFER OF MEMBERSHIP INTEREST**

WHEREAS, Simmons Family Holdings, LLC is a South Carolina limited liability company (the "Company"); and

WHEREAS, Palmer E. Simmons, Charlesetta S. Aiken, Greg M. Simmons and Jermaine Robinson each hold a one-fourth (1/4) membership interest in the Company with all the rights and obligations attendant thereto; and

WHEREAS, Palmer E. Simmons and Charlesetta S. Aiken are the Co-Managers of the Company, and

WHEREAS, the members desire to redistribute the membership interest in the Company so that Palmer E. Simmons and Charlesetta S. Aiken each hold a one-third (1/3) percent membership interest in the Company and the remaining one-third (1/3) membership interest in the Company is shared by Greg M. Simmons and Jermaine Robinson with all the rights and obligations attendant thereto.

NOW THEREFORE, the undersigned, representing all Members of the Company, do hereby waive notice of time, place, and purpose of a meeting of the Members and take and adopt the following action in writing without meeting and do hereby certify that the following resolution is in full force and effect and has neither been amended or rescinded.

IT IS RESOLVED, that the membership interests in Simmons Family Holdings, LLC shall be redistributed so that Palmer E. Simmons and Charlesetta S. Aiken each hold a one-third (1/3) percent membership interest in the Company and the remaining one-third (1/3) membership interest in the Company is shared equally by Greg M. Simmons and Jermaine Robinson with all the rights and obligations attendant thereto; and that the Operating Agreement and books of the Company shall be amended to reflect this assignment and transfer.

WITNESSETH the hand and the seal of the Members of the Company this _____ day of _____, 2018.

WITNESSES:

Greg M. Simmons

Jermaine Robinson

Palmer E. Simmons

Charlesetta S. Aiken

VAUX MARSCHER BERGLIND

A SOUTH CAROLINA PROFESSIONAL ASSOCIATION

WILLIAM F. MARSCHER, III
MARK S. BERGLIND
ROBERTS "TABOR" VAUX, JR.

ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 769 (MAILING)
1251 MAY RIVER ROAD (PHYSICAL)
BLUFFTON, SOUTH CAROLINA 29910
843.757.2888 (OFFICE)
843.757.2889 (FAX)

ROBERTS VAUX
ANTONIA LUCIA, SC & NY
JAMES P. SCHEIDER, JR. **
STEPHEN MEYER*

*CERTIFIED FAMILY
COURT MEDIATOR (SC)
** OF COUNSEL

leslie.vaughan@cymbelawfirm.com

February 26, 2021

Stacey S. Collins, Esquire
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938

Ehrick K. Haight, Jr., Esquire
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, P.C.
710 Boundary Street, Unit A1
Beaufort, SC 29902

Re: Greg Marcus Simmons et al. v. Palmer E. Simmons et al.
Case No: 2019-CP-07-01246

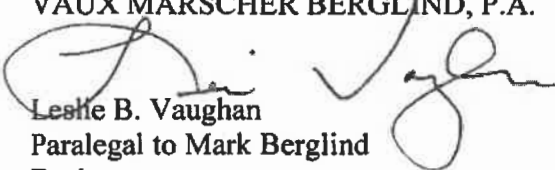
Dear Counsel,

Please find enclosed Defendants' Document Production Privilege Log regarding the above-referenced matter along with a Certificate of Service for same.

Should you have any questions or concerns, please feel free to contact our office.

Sincerely,

VAUX MARSCHER BERGLIND, P.A.


Leslie B. Vaughan
Paralegal to Mark Berglind
Enclosures

OTHER OFFICE:

16 WILLIAM POPE DRIVE, SUITE 202
BLUFFTON, SOUTH CAROLINA 29909
(843) 705-2888 (OFFICE)
(843) 705-2889 (FAX)

DOCUMENT PRODUCTION PRIVILEGE LOG

Defendant's Second Supplemental Responses to Plaintiff's Requests for Production

Greg Marcus Simmons et al. v. Palmer E. Simmons et al. & Simmons Family Holdings, LLC

Docket No.: 2019-CP-07-01246

3 – Correspondence

- Various correspondence between Palmer Simmons and Vaux Marscher Berglind, PA pertaining to this matter.

6 – Billing Statements

- Billing statements from Vaux Marscher Berglind, PA to Palmer Simmons pertaining to this matter from 2019 to Present.
- Billing statements from Vaux Marscher Berglind, PA to Simmons Family Holdings, LLC in the matter of J&W Corporation of Greenwood, LLC v. Simmons Family Holdings, LLC from August 2015 to February 2021.

12 – Trust Documents

- Trust instruments and documentation for the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
Greg Marcus Simmons and Jermaine)
Robinson, both individually and)
derivatively on behalf of Simmons)
Family Holdings, LLC, a South)
Carolina Limited Liability Company,)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-07-01246

CERTIFICATE OF SERVICE

Plaintiffs,)
)

v.)
)

Palmer E. Simmons, Individually)
and as Trustee of the Charles E.)
Simmons, Jr. and Rosa G. Simmons)
Revocable Trust dated May 5, 2016,)
and Charlesetta S. Aiken,)

Defendants,)
)

and)
)

Simmons Family Holdings, LLC,)
)
as a nominal Defendant.)

I HEREBY CERTIFY that on February 26, 2021, I, Leslie B. Vaughan, mailed a true and accurate copy of Defendants' Document Production Privilege Log in the above-referenced matter to counsel of record:

Stacey S. Collins, Esquire
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938

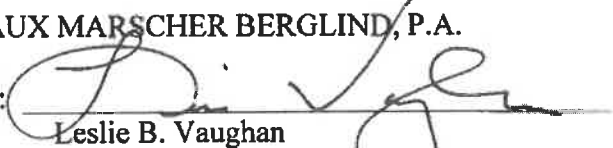
Ehrick K. Haight, Jr., Esquire
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, P.C.
710 Boundary Street, Unit A1
Beaufort, SC 29902

SAID DOCUMENTS were served via electronic mail and U.S. Postal Service, with first class postage prepaid mail.


VAUX MARSCHER BERGLIND, P.A.

By:



Leslie B. Vaughan
Paralegal to Mark Berglund

SWORN TO BEFORE ME
This 26th day of February 2021



Notary Public for South Carolina
My Commission Expires: 02-20-2030

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE PROBATE COURT
FOR BEAUFORT COUNTY
CASE NO: 2016ES0700559

IN THE MATTER OF:)
ESTATE OF CHARLES E. SIMMONS,)
JR.,)
Decedent)

PALMER E. SIMMONS,)
INDIVIDUALLY, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF CHARLES E. SIMMONS, JR., AND)
AS TRUSTEE OF THE CHARLES E.)
SIMMONS, JR. AND ROSA G.)
SIMMONS REVOCABLE TRUST,)
)
Petitioner,)

vs.)

CHARLESETTA S. AIKEN,)
ROSA G. SIMMONS,)
BENJAMIN C. ELLIOTT,)
GREG MARCUS SIMMONS,)
JERMAINE A. ROBINSON, AND)
CURTESIA SIMMONS,)
)
Respondents,)

SUMMONS

FILED
2019 JUL 15 PM 12:18
PROBATE COURT
BEAUFORT COUNTY, SC

TO: RESPONDENTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Petition on the subscriber at her office, 16 William Pope Drive, Suite 202, Bluffton, South Carolina, 29909, within thirty (30) days after service thereof, exclusive of the day of such service, AND IF YOU FAIL TO APPEAR AND DEFEND AGAINST THE SAID ACTION THEN JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE RELIEF



DEMANDED IN THE PETITION.

**VAUX MARSCHER BERGLIND, P.A.
16 William Pope Drive, Suite 202
Bluffton, SC 29909**



Antonia T. Lucia, Attorney for Petitioner

Bluffton, South Carolina
July 10, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF: BEAUFORT)
)
)
)
IN THE MATTER OF:)
CHARLES E. SIMMONS, JR.)
(Decedent))

IN THE PROBATE COURT

APPLICATION/PETITION FOR
SUBSEQUENT ADMINISTRATION

CASE NUMBER: 2016ES0700559

***ONLY COMPLETE THIS SECTION IF FILING
PETITION FOR SUBSEQUENT ADMINISTRATION**

PALMER E. SIMMONS, INDIVIDUALLY,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF CHARLES E. SIMMONS, JR., AND AS
TRUSTEE OF THE CHARLES E. SIMMONS, JR
AND ROSA G. SIMMONS REVOCABLE TRUST,

Petitioner(s)

vs.

CHARLESETTA S. AIKEN, ROSA G. SIMMONS,
BENJAMIN C. ELLIOTT, GREG MARCUS
SIMMONS, JERMAINE A. ROBINSON, AND
CURTESIA SIMMONS,

Respondent(s)

FILED
2019 JUL 15 PM 12:18
PROBATE COURT
BEAUFORT COUNTY, SC

INFORMAL

*FORMAL

The undersigned states as follows:

1. Subsequent administration of the above Estate is needed because:

The following additional property in the above estate has been discovered. A description of the property and its approximate value at the date of Decedent's death is:

Greg Marcus Simmons and Jermaine S. Robinson have commenced litigation regarding their alleged membership interest in Simmons Family Holding, LLC. In opposition, the Petitioner, a Defendant in that action, has asserted that Greg Marcus Simmons and Jermaine A. Robinson have no interest in Simmons Family Holdings, LLC. If the Petitioner is successful, the estate would have a 100% interest in Simmons Family Holdings, LLC requiring an amended inventory and a transfer of these additional assets.

Other reason:

2. I served as Personal Representative under the previous administration and fiduciary bond requirement:

- was waived by Decedent's Will
- was waived pursuant to the filing of Waivers of Bond
- was waived by the Court
- was required and an appropriate bond is attached

I did not serve as Personal Representative under the previous administration; my priority for this appointment is

- named as Primary Personal Representative in Will
- named as Alternate Personal Representative in Will
- nominee of above Primary Personal Representative in Will
- nominee of above Alternate Personal Representative in Will
- surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- other devisee of Decedent (describe): _____ or nominee of said devisee

- surviving spouse of Decedent or nominee of said spouse
- other heir of Decedent (describe): _____ or nominee of said heir
- creditor (Forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- other (describe): _____

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

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 10th day of July, 2019

Antonia J. Steina
Notary Public for South Carolina
My Commission Expires: Nov. 24, 2025

Signature: [Signature]
Print Name: Palmer E. Simmons
Address: P.O. Box 22944
Hilton Head Island, SC 29925
Telephone (Work): _____
(Home): _____
(Cell): (843) 247-2095
Email: pesfsu@hotmail.com
Relationship to Decedent/Estate: Son/PR

ORDER FOR HEARING

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

DATE: _____
TIME: _____
PLACE: _____

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

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

ORDER FOR SUBSEQUENT ADMINISTRATION

IT IS HEREBY ORDERED that _____ be appointed Personal Representative to administer property not previously administered as indicated in the above application/petition.


- Bond previously waived
- Previous bond waivers on file
- Other:

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate and to submit to the Court's jurisdiction in this matter.

Signature: 
 Print Name: Palmer E. Simmons
 Address: P.O. Box 22944
Hilton Head Island, SC 29925
 Telephone (Work): _____
 (Home): _____
 (Cell): (843) 247-2095
 Email: pesfsu@hotmail.com

Attorney: Antonia T. Lucia
 Address: Vaux Marscher Berglind, P.A.
16 William Pope Drive, Suite 202
Bluffton, SC 29909
 Telephone: (843) 705-2888
 Email: antonia.lucia@vmbllawfirm.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Greg Marcus Simmons and Jermaine)
 Robinson, both individually and)
 derivatively on behalf of Simmons)
 Family Holdings, LLC, a South)
 Carolina Limited Liability Company,))
)
 Plaintiffs,)
)
 v.)
)
 Palmer E. Simmons, Individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and Charlesetta S. Aiken,)
)
 Defendants,)
)
 and)
)
 Simmons Family Holdings, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE 14TH JUDICIAL CIRCUIT
 CASE NO.: 2019-CP-07-01246

**ANSWER TO SECOND
 AMENDED COMPLAINT**

The Defendants Paler E. Simmons, Individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken, above named, Answering the Second Amended Complaint of the Plaintiffs would show unto this Honorable Court:

The Defendants, deny each and every allegation contained in the Second Amended Complaint unless specifically admitted herein and demands strict proof thereof. Further, the Defendants deny that the Defendants are “members” of Simmons Family Holding, LLC as stated throughout the Complaint and demand strict proof thereof.

The Defendants deny any allegations in the opening paragraphs of pages 1-2 of the Second Amended Complaint and demand strict proof thereof. Further, the Defendants move to strike the paragraphs on pages 1-2 in the opening of the Second Amended Complaint as they are not properly pled.

1. The Defendants admit the allegations contained in Paragraph 1 of the Plaintiffs' Second Amended Complaint.
2. The Defendants admits the allegations contained in Paragraph 2 of the Plaintiffs' Second Amended Complaint.
3. The Defendants admit the allegations contained in Paragraph 3 of the Plaintiffs' Second Amended Complaint.
4. The Defendants admit the allegations contained in Paragraph 4 of the Plaintiffs' Second Amended Complaint.
5. The Defendants admit the allegations contained in Paragraph 5 of the Plaintiffs' Second Amended Complaint.
6. The allegations in Paragraph 6 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 6 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
7. The Defendants admit the allegations contained in Paragraph 7 of the Plaintiffs' Second Amended Complaint.
8. The Defendants admit the allegations contained in Paragraph 8 of the Plaintiffs' Second Amended Complaint.
9. The Defendants admit the allegations contained in Paragraph 9 of the Plaintiffs' Second Amended Complaint.
10. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiffs' Second Amended Complaint.
11. The Defendants admit the allegations contained in Paragraph 11 of the Plaintiffs' Second Amended Complaint.
12. Upon information and belief, the Defendants deny the allegations contained in Paragraph 12 of the Plaintiffs' Second Amended Complaint.
13. Upon information and belief, the Defendants deny the allegations contained in Paragraph 13 of the Plaintiffs' Second Amended Complaint.
14. Upon information and belief, the Defendants deny the allegations contained in Paragraph 14 of the Plaintiffs' Complaint.
15. Upon information and belief, the Defendants deny the allegations contained

in Paragraph 15 of the Plaintiffs' Second Amended Complaint.

16. As to Paragraph 16 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 16 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
17. As to Paragraph 17 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 17 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
18. The Defendants deny the allegations contained in Paragraph 18 of the Plaintiffs' Second Amended Complaint.
19. As to Paragraph 19 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 19 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
20. The Defendants admit the allegations contained in Paragraph 20 of the Plaintiffs' Second Amended Complaint.
21. As to Paragraph 21 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 21 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
22. As to Paragraph 22 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 22 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
23. As to Paragraph 23 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 23 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
24. As to Paragraph 24 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 24 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.

25. As to Paragraph 25 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 25 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
26. As to Paragraph 26 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 26 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
27. The Defendants admit the allegations contained in Paragraph 27 of the Plaintiffs' Second Amended Complaint.
28. As to Paragraph 28 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 28 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
29. The Defendants deny the allegations contained in Paragraph 29 of the Plaintiffs' Second Amended Complaint.
30. As to Paragraph 30 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 30 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
31. As to Paragraph 31 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 31 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
32. As to Paragraph 32 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 32 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
33. The Defendants deny the allegations contained in Paragraph 33 of the Plaintiffs' Second Amended Complaint.
34. The Defendants deny the allegations contained in Paragraph 34 of the Plaintiffs' Second Amended Complaint.
35. The Defendants deny the allegations contained in Paragraph 35 of the Plaintiffs' Complaint.

36. As to Paragraph 36 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 36 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
37. As to Paragraph 37 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 37 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
38. As to Paragraph 38 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 38 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
39. As to Paragraph 39 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 39 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
40. The Defendants admit the allegations contained in Paragraph 40 of the Plaintiffs' Second Amended Complaint.
41. The allegations in Paragraph 41 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 41 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
42. The allegations in Paragraph 42 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 42 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
43. The allegations in Paragraph 43 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 43 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
44. The Defendants deny the allegations contained in Paragraph 44 of the Plaintiffs' Complaint.

45. The allegations in Paragraph 45 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 45 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
46. The Defendants deny the allegations contained in Paragraph 46 of the Plaintiffs' Complaint.
47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiffs' Complaint.
48. The Defendants deny the allegations contained in Paragraph 48 of the Plaintiffs' Complaint.
49. The Defendants deny the allegations contained in Paragraph 49 of the Plaintiffs' Complaint.
50. The Defendants deny the allegations contained in Paragraph 50 of the Plaintiffs' Complaint.
51. The Defendants deny the allegations contained in Paragraph 51 of the Plaintiffs' Complaint.
52. The Defendants deny the allegations contained in Paragraph 52 of the Plaintiffs' Complaint.
53. The Defendants deny the allegations contained in Paragraph 53 of the Plaintiffs' Complaint.
54. The Defendants deny the allegations contained in Paragraph 54 of the Plaintiffs' Complaint.
55. The Defendants deny the allegations contained in Paragraph 55 of the Plaintiffs' Complaint.
56. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
57. The Defendants deny the allegations contained in Paragraph 57 of the Plaintiffs' Complaint.
58. The Defendants deny the allegations contained in Paragraph 58 of the Plaintiffs' Complaint.
59. The Defendants deny the allegations contained in Paragraph 59 of the

Plaintiffs' Complaint.

60. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
61. The Defendants deny the allegations contained in Paragraph 61 of the Plaintiffs' Second Amended Complaint.
62. As to Paragraph 62 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 62 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
63. As to Paragraph 63 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 63 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
64. The Defendants deny the allegations contained in Paragraph 64 of the Plaintiffs' Second Amended Complaint.
65. The Defendants deny the allegations contained in Paragraph 65 of the Plaintiffs' Second Amended Complaint.
66. The Defendants deny the allegations contained in Paragraph 66 of the Plaintiffs' Second Amended Complaint.
67. The Defendants deny the allegations contained in Paragraph 67 of the Plaintiffs' Second Amended Complaint.
68. The Defendants deny the allegations contained in Paragraph 68 of the Plaintiffs' Second Amended Complaint.
69. The Defendants deny the allegations contained in Paragraph 69 of the Plaintiffs' Second Amended Complaint.
70. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
71. As to Paragraph 71 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 71 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
72. The Defendants deny the allegations contained in Paragraph 72 of the Plaintiffs' Second Amended Complaint.

73. The Defendants deny the allegations contained in Paragraph 73 of the Plaintiffs' Second Amended Complaint.
74. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
75. The Defendants deny the allegations contained in Paragraph 75 of the Plaintiffs' Second Amended Complaint.
76. The Defendants deny the allegations contained in Paragraph 76 of the Plaintiffs' Second Amended Complaint.
77. The Defendants deny the allegations contained in Paragraph 77 of the Plaintiffs' Second Amended Complaint.
78. The Defendants deny the allegations contained in Paragraph 78 of the Plaintiffs' Second Amended Complaint.
79. The Defendants deny the allegations contained in Paragraph 79 of the Plaintiffs' Second Amended Complaint.
80. The Defendants deny the allegations contained in Paragraph 80 of the Plaintiffs' Second Amended Complaint.
81. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
82. The allegations in Paragraph 82 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 82 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
83. The Defendants deny the allegations contained in Paragraph 83 of the Plaintiffs' Second Amended Complaint.
84. The Defendants deny the allegations contained in Paragraph 84 of the Plaintiffs' Second Amended Complaint.
85. The Defendants deny the allegations contained in Paragraph 85 of the Plaintiffs' Second Amended Complaint.
86. The Defendants deny the allegations contained in Paragraph 86 of the Plaintiffs' Second Amended Complaint.

87. The Defendants deny the allegations contained in Paragraph 87 of the Plaintiffs' Second Amended Complaint.
88. The Defendants deny the allegations contained in Paragraph 88 of the Plaintiffs' Second Amended Complaint.
89. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
90. The allegations in Paragraph 90 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 90 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
91. The Defendants deny the allegations contained in Paragraph 91 of the Plaintiffs' Second Amended Complaint.
92. The Defendants deny the allegations contained in Paragraph 92 of the Plaintiffs' Second Amended Complaint.
93. The Defendants deny the allegations contained in Paragraph 93 of the Plaintiffs' Second Amended Complaint.
94. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
95. As to Paragraph 95 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 95 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
96. As to Paragraph 96 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 96 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
97. The Defendants admit the allegations contained in Paragraph 97 of the Plaintiffs' Second Amended Complaint.
98. As to Paragraph 98 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 98 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
99. The Defendants deny the allegations contained in Paragraph 99 of the

Plaintiffs' Second Amended Complaint.

100. The Defendants deny the allegations contained in Paragraph 100 of the Plaintiffs' Second Amended Complaint.
101. The Defendants deny the allegations contained in Paragraph 101 of the Plaintiffs' Second Amended Complaint.
102. The Defendants deny the allegations contained in Paragraph 102 of the Plaintiffs' Second Amended Complaint.
103. The Defendants deny the allegations contained in Paragraph 103 of the Plaintiffs' Second Amended Complaint.
104. The Defendants deny the allegations contained in Paragraph 104 of the Plaintiffs' Second Amended Complaint.
105. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
106. The Defendants deny the allegations contained in Paragraph 106 of the Plaintiffs' Second Amended Complaint.
107. The Defendants deny the allegations contained in Paragraph 107 of the Plaintiffs' Second Amended Complaint.
108. The Defendants deny the allegations contained in Paragraph 108 of the Plaintiffs' Second Amended Complaint.
109. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
110. The Defendants admit the allegations contained in Paragraph 110 of the Plaintiffs' Second Amended Complaint.
111. The Defendants admit the allegations contained in Paragraph 111 of the Plaintiffs' Second Amended Complaint.
112. The Defendants deny the allegations contained in Paragraph 112 of the Plaintiffs' Second Amended Complaint.
113. The Defendants deny the allegations contained in Paragraph 113 of the Plaintiffs' Second Amended Complaint.
114. The Defendants deny the allegations contained in Paragraph 114 of the Plaintiffs' Second Amended Complaint.

115. The Defendants deny the allegations contained in Paragraph 115 of the Plaintiffs' Second Amended Complaint.
116. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
117. The Defendants deny the allegations contained in Paragraph 117 of the Plaintiffs' Second Amended Complaint.
118. The Defendants deny the allegations contained in Paragraph 118 of the Plaintiffs' Second Amended Complaint.
119. The Defendants deny the allegations contained in Paragraph 119 of the Plaintiffs' Second Amended Complaint.
120. The Defendants deny the allegations contained in Paragraph 120 of the Plaintiffs' Second Amended Complaint.
121. The Defendants deny the allegations contained in Paragraph 121 of the Plaintiffs' Second Amended Complaint.
122. The Defendants deny that the Plaintiffs are entitled to the relief sought in the Second Amended Complaint.

WHEREFORE, having answered the Complaint, the Defendants pray that it be dismissed with costs and attorney's fees for defending this action, and for such further and other relief as this Honorable Court deems just and appropriate.

Affirmative Defenses

1. The Defendants incorporate herein all the paragraphs of this Answer as if more fully set forth at length herein.
2. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief may be granted against this Defendants under Rule 12(B)(6) of the South Carolina Rules of Civil Procedure.

3. Plaintiffs' Second Amended Complaint is barred by the Doctrine of Unclean Hands.
4. The Plaintiffs' Second Amended Complaint should be dismissed due to the sworn testimony of Charles Simmons, Jr., naming the members SFH.
5. The Plaintiffs' Second Amended Complaint is barred due to the terms of the SFH Operating Agreement.
6. Plaintiffs' Second Amended Complaint is barred by the Doctrines of Estoppel, Waiver and Laches.
7. The Plaintiffs' derivative action fails to comply with Rule 23, SCRCP, and therefore, should be dismissed.
8. The Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus raises all affirmative defenses.
9. The Plaintiffs lack standing to bring this action, and therefore, their Second Amended Complaint must be dismissed.
10. The Defendants reserve the right to Amend their Answer to the Second Amended Complaint as additional information is learned throughout the discovery of this case.

VAUX MARSCHER BERGLIND, P.A.

By: S/MARK S. BERGLIND
Attorneys for the Defendants,
Palmer E. Simmons, Individually
and as Trustee of the Charles E.
Simmons, Jr. and Rosa G. Simmons
Revocable Trust dated May 5, 2016,

and Charlesetta S. Aiken
MARK S BERGLIND, SC Bar No. 74839
Stephen Meyer, SC Bar No. 102322; Fed. No 12237
Post Office Box 769
Bluffton, South Carolina 29910
Telephone 843-757-2888
Facsimile 843-757-2889

November 16, 2020

EXHIBIT 3

To Plaintiffs' Memorandum
in Support of Motion for Summary Judgment
Civil Action No. 2019CP0701246

DEPOSITION OF ANTONIA T. LUCIA, ESQ.

JANUARY 19, 2021

PAGES: 9, 14, 18-28, 35-36, and Ex. 8

GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

9

1 Q And I also see that you have a JD, a
2 Juris Doctor from Pace University in White
3 Plains?

4 A That is correct.

5 Q And your focus and your practice is on
6 estate planning and probate?

7 A Presently, yes.

8 Q And for how long has that been your
9 focus?

10 A I can't say exactly. Probably
11 14 years. I am just guesstimating. I was a
12 litigator in New York, so I am -- probably
13 about -- about 14 years.

14 Q And I did have some things I wanted to
15 ask you about. I will hand you them first. It
16 has been marked as Plaintiff's Exhibit 1. I
17 will give you a minute to look at that.

18 A That is fine.

19 Q And is that a Will you prepared for
20 Charles E. Simmons, Jr.?

21 A Yes.

22 Q And that was done in 2016, is that
23 correct?

24 A That is correct.

25 Q And I note looking at it that you did

GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

14

1 MR. SHELTON: Objection,
2 attorney-client privilege.

3 Anything that she would know about
4 the relationship between Rosa Simmons
5 and Charles, Jr. arise from her
6 representation of Charles E. Simmons,
7 Jr.

8 BY MR. HAIGHT:

9 Q Okay. If we flip to page 2 of
10 Exhibit 2 in 4 B, how was Rosa G. Simmons
11 identified?

12 A The document identifies her as the
13 spouse of the decedent.

14 Q Thank you.

15 And in 4 A who is identified as the
16 beneficiary or devisee of the Will?

17 A The document identifies Rosa G. Simmons
18 as the devisee of the Will.

19 Q By relationship to the decedent, what
20 does it also say there?

21 A It says PR/Trustee.

22 Q And 4 B, who are listed as the
23 intestate heirs who are not devisees?

24 A I am sorry, did you say 4 D?

25 Q 4 B as in boy?



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

18

1 familiar?

2 A Yes.

3 Q And of the various signatures shown on
4 there are you a witness of each one of those
5 signatures?

6 A The copy you gave me is somewhat
7 difficult to read, but it does appear that I am
8 the witness on them.

9 Q Let me do this. It might help you. I
10 will hand you Plaintiff's Exhibit 5, which is a
11 better copy of that GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA same document and I will ask
12 you to look at it and can you tell if that is
13 simply a better copy of the same document?

14 A Yes. Just for clarification it appears
15 that might not be filed, as not being a filed
16 copy on Plaintiff's Exhibit 5.

17 Q So the difference being Exhibit 4 has a
18 filing stamp in the right-hand margin?

19 A That is correct.

20 Q Other than that they are the same
21 document except Exhibit 5 is a better copy?

22 A That is correct.

23 Q Did you draft this document?

24 A Yes.

25 Q And if we could going through that



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

1 document there are certain recitals.

2 Do you see the whereas clauses 1, 2, 3,
3 4, 5, 6, 7, 8 of them?

4 A Yes.

5 Q And those were all drafted by you?

6 A Yes.

7 Q And the first one says: "Whereas
8 Charles E. Simmons, Jr. the decedent and member
9 of Simmons Family Holdings, LLC, a South
10 Carolina Limited Liability, the Company, died
11 testate on May 28, 2016."

12 Did I read that correctly?

13 A Yes, you read it correctly.

14 Q And that is something that you
15 prepared?

16 MR. SHELTON: Objection,
17 attorney-client privilege at this
18 point. You asked if she drafted that
19 document, and at this point it is also
20 asked and answered; and I would submit
21 that the document speaks for itself.
22 Authenticated the document, the
23 document is here. I don't understand
24 why we need to ask additional questions
25 about contents.



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

1 MR. HAIGHT: And I am still asking
2 the question.

3 BY MR. HAIGHT:

4 Q In the second paragraph it indicated
5 that Charles, Jr. held a one-third interest in
6 the LLC, is that correct?

7 MR. SHELTON: The same objection.

8 BY MR. HAIGHT:

9 Q You can still answer it.

10 MR. SHELTON: I instruct the
11 witness she can answer as to what the
12 document says, but not authenticating
13 anything of the substance of the
14 document itself, because that would
15 touch on attorney-client privilege; if
16 that makes any sense as to that
17 distinction.

18 BY MR. HAIGHT:

19 Q Let me ask this, the Third Whereas
20 clause, am I reading that correctly: "Whereas
21 Charles E. Simmons, Jr. is a member of Simmons
22 Family Holdings, LLC and holds a one-third
23 membership interest in the company."

24 Did I read that correctly?

25 A You did.

GREG MARCUS SIMMONS vs PALMER E. SIMMONS
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1 Q And the next paragraph am I reading
2 this correctly: "Whereas Greg M.. Simmons and
3 Jermaine Robinson are the remaining members of
4 the company."

5 A That is what the document states.

6 Q And this is a document you prepared?

7 A Yes, I prepared this document.

8 Q Do you recall how the signing of this
9 document was scheduled?

10 A Are you asking me how the time was set
11 for it? I don't understand the question.

12 Q Well, two of this -- let me ask it this
13 way, two of the signers are Greg M. Simmons,
14 usually referred to as Marcus Simmons and
15 Jermaine Robinson. Both of them obviously were
16 present and you witnessed their signatures.

17 How did it come about that they were --
18 and was that here at your office?

19 MR. SHELTON: Object to the form.

20 Can you restate the question?

21 MR. HAIGHT: It became compound.

22 BY MR. HAIGHT:

23 Q The first question, did the signing
24 take place here at your office?

25 A The signing took place in my office in



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
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1 Okatie, which that is my normal -- I don't work
2 out of the office on May River Road at this
3 point in time, and presently my office is near
4 the back gate of Sun City in Okatie.

5 Q And your recollection is that you all
6 met at that office, the Sun City office?

7 MR. SHELTON: Object to the form.
8 Answer the question.

9 THE WITNESS: I have absolutely no
10 recollection of this meeting. But I am
11 going to tell you that I take very few
12 meetings here. I don't remember -- and
13 by "here" I mean at the May River
14 office.

15 Since based on the fact that my
16 paralegal and I were witnesses, and
17 that I am referring to Debra C.
18 Criddle, I am assuming that this
19 meeting took place at my Okatie office.

20 BY MR. HAIGHT:

21 Q Okay.

22 And I note that the top signature of
23 Palmer E. Simmons as co-manager, there is a
24 different additional witness for that one.

25 Does that tell you anything?



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

1 MR. SHELTON: Objection to form.
2 And also as far as any mental
3 impressions or any type of opinion as
4 to the matter, I am going to object
5 insofar as this is a fact witness and
6 not an expert witness.

7 BY MR. HAIGHT:

8 Q You can still answer the question.

9 A I can't tell you today as I sit here
10 why Miss Daniell witnessed Mr. Simmons'
11 signature. She is GREG MARCUS SIMMONS vs PALMER E. SIMMONS another paralegal in my
12 office in Okatie.

13 Q So she is the Okatie office as well?

14 A That is correct.

15 Q Now, have you COASTAL COURT REPORTING & VIDEO SERVICES previously met either
16 Marcus Simmons or Jermaine Robinson?

17 A I am sorry, I am trying to understand
18 the question. Did you mean previous to --

19 Q Previous to the meeting on June 30th of
20 2017 where this document was signed, had you
21 ever met previously with either Jermaine
22 Robinson or Fred Marcus Simmons?

23 A No.

24 Q Do you recall telling Jermaine and
25 Marcus they each had a one-third interest in the



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

24

1 LLC?

2 A I have no recollection of that meeting
3 and that would not be something in my normal
4 procedure. That would not be a representation
5 that I would normally make to a third party that
6 I don't represent.

7 Q Were any other documents signed at that
8 meeting where this document was signed? Let's
9 see, that is Exhibit 5?

10 MR. SHELTON: 4.

11 MR. HAIGHT: COASTAL COURT REPORTING & VIDEO SERVICES Well, 4 and 5.

12 MR. BERGLIND: 4 and 5.

13 MR. SHELTON: 4 and 5, yes.

14 BY MR. HAIGHT:

15 Q With regard to Exhibits 4 and 5 are you
16 aware of any other documents being signed at the
17 same time?

18 A There was a resolution approving this
19 assignment and transfer, and I would assume it
20 was signed at the same time; but again I have no
21 independent recollection of that meeting. It
22 would be my normal procedure to sign both
23 documents at the same time, but I can't as I sit
24 here today -- as I sit here today I don't have
25 any independent recollection of that meeting.



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

1 Q Would you have maintained a file for
2 this meeting in 2017 with copies of whatever was
3 signed at that time?

4 A I mean I retained --

5 MR. BERGLIND: May I? We produced
6 the Resolution.

7 MR. HAIGHT: Okay, I was not sure
8 of that; so that is why I was asking.

9 MR. BERGLIND: Well, I can go grab
10 it now.

11 MR. HAIGHT: GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA Sure, let us take a
12 break.

13 (Whereupon, a short break was
14 taken.)

15 MR. HAIGHT: GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA Let us get this
16 marked as 8.

17 (Whereupon, Plaintiff's Exhibit
18 Number 8 was marked for
19 identification.)

20 BY MR. HAIGHT:

21 Q I have showed you what has been marked
22 as Exhibit 8, Plaintiff's Exhibit 8, kind of out
23 of order; and this is a Resolution that Mr.
24 Berglind has brought to us.

25 And what is the date of this



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
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1 Resolution?

2 A Is that a question you are asking?

3 Q Yes.

4 A On page 2 the document states that it
5 is dated June 30, 2017.

6 Q Since Counsel doesn't want me to lead
7 you at all, so that is why I am asking it that
8 way.

9 Who signed this document?

10 A The document states that it was signed
11 by Palmer E. Simmons, GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA Personal Representative;
12 Greg M. Simmons; and Jermaine Robinson.

13 Q And similarly, who are the witnesses
14 for Greg M. Simmons and Jermaine Robinson?

15 A For them it is myself and my paralegal,
16 Debra A. Criddle.

17 Q And for Mr. Simmons, who are the
18 witnesses?

19 A The document states that the witnesses
20 are myself and another paralegal in my office,
21 Myra S. Daniell.

22 Q Next I am showing you what has been
23 marked as Plaintiff's Exhibit 6.

24 Is this a document you recognize?

25 A Yes.



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

1 Q Is that a document you prepared?

2 MR. SHELTON: Object to the degree
3 it calls for any communications between
4 her and her client; but I believe she
5 can answer the question.

6 THE WITNESS: Yes, I prepared this
7 document.

8 BY MR. HAIGHT:

9 Q And is there any date or year on that
10 document?

11 A The document was not executed. It was
12 not completed. It appears on the face of the
13 document on the witnesseth portion of it to just
14 have the year 2018.

15 MR. BERGLIND: I think we are out
16 of order.

17 MR. SHELTON: We are talking
18 about two different documents.

19 Are you referencing Exhibit 6?
20 For the record, Exhibit 6 is labeled
21 "Simmons Family Holdings, LLC
22 Resolution Authorizing Assignment and
23 Transfer of Membership Interest".

24 When I was objecting to in the
25 reference of -- the document that I was



1 referencing is actually an Amended
2 Articles of Organization that I have
3 labeled Number 6, but I must have mine
4 out of order.

5 BY MR. HAIGHT:

6 Q So the document that you were looking
7 at when I was asking you those questions is the
8 one that has been marked as Plaintiff's
9 Exhibit 6 and that is the Simmons Family
10 Holdings, LLC's Resolution Authorizing
11 Assignment and Transfer of Membership Interest
12 with a 2018 date that is unsigned.

13 A That is what you presented to me as
14 Plaintiff's Exhibit 6, yes.

15 Q And it is Plaintiff's Bates numbers 33
16 and 34, is that correct?

17 A Correct.

18 Q Do you have any in your possession, do
19 you have any signed documentation showing that
20 Jermaine Robinson and Greg Marcus Simmons
21 together did not and do not hold a two-third's
22 interest in the LLC?

23 A Can you repeat that question?

24 Q Do you have any documentation in your
25 possession showing that Jermaine Robinson and



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
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35

1 between its attorneys related to
2 anything related to this dispute, and
3 the cost to prosecute, and preserve the
4 privilege on matters that are subject
5 to disclosure to the shareholders or
6 alleged shareholders, that privilege is
7 waived. As in addition to
8 attorney-client privilege, I hear
9 everybody mixing and matching this, as
10 to confidentiality of information
11 related to the representation of the
12 Rule 1.6 that is also waived.

13 MR. SHELTON: Okay.

14 MR. PENDARVIS: So in addition to
15 just communications, information
16 related to the representation is hereby
17 waived.

18 MR. HAIGHT: Ben, do we need to
19 put anything else on the record?

20 MR. SHELTON: No, I mean we can
21 put on the record that if there is
22 anything responsive to the last
23 question, whether we know it or not, we
24 will seek it out and notify you of the
25 existence of it within ten days; and



GREG MARCUS SIMMONS vs PALMER E. SIMMONS
2019-CP-07-01246 - ANTONIA LUCIA

1 either voluntarily produce it or assert
2 any privileges over it within that time
3 frame, is that fair?

4 MR. HAIGHT: Yes, that seems
5 workable.

6 MR. SHELTON: And the privilege of
7 course would be of a privilege of
8 Palmer Simmons. Not a privilege of the
9 corporation, given that the corporation
10 waives any privilege or
11 confidentiality.

12 BY MR. HAIGHT:

13 Q Next back to the mundane documents at
14 hand. I will show you what is marked as
15 Plaintiff's Exhibit 7. Are you familiar with
16 that document?

17 A I have seen this document.

18 Q Did you prepare that document?

19 A No.

20 Q Do you know who prepared it?

21 A No. I --

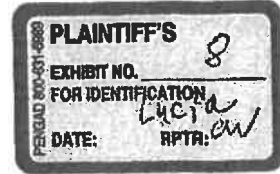
22 Q Do you know if it was prepared -- go
23 ahead.

24 A I can tell you that --

25 MR. HAIGHT: If it is an issue of



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)



**SIMMONS FAMILY HOLDINGS, LLC
RESOLUTION AUTHORIZING
ASSIGNMENT AND TRANSFER OF MEMBERSHIP INTEREST**

WHEREAS, Charles E. Simmons, Jr., (the "Decedent"), a Member of Simmons Family Holdings, LLC, a South Carolina limited liability company (the "Company"), died testate on May 26, 2016; and

WHEREAS, the Last Will and Testament of Charles E. Simmons, Jr. dated May 5, 2016 was admitted to Probate before the Beaufort County Probate Court as Case No: 2016ES0700559 (the "Estate"), and Palmer E. Simmons was appointed as Personal Representative on June 24, 2016; and

WHEREAS, Charles E. Simmons, Jr. is a Member of Simmons Family Holdings, LLC and holds a one-third (1/3) membership interest in the Company; and

WHEREAS, Greg M. Simmons and Jermaine Robinson are the remaining Members of the Company; and

WHEREAS, Palmer E. Simmons and Charlesetta S. Aiken are the co-managers of the Company; and

WHEREAS, pursuant to Section 3.10 of the Operating Agreement of the Company, a Member's membership shall in the case of death, pass to the Member's estate and subsequent beneficiaries under the terms of the Member's Will; and

WHEREAS, pursuant to the Last Will and Testament of Charles E. Simmons, Jr., dated May 5, 2016, Rosa G. Simmons, as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, is the sole beneficiary of said estate.

NOW THEREFORE, the undersigned, representing all Members of the Company, do hereby waive notice of time, place, and purpose of a meeting of the Members and take and adopt the following action in writing without meeting and do hereby certify that the following resolution is in full force and effect and has neither been amended or rescinded.

IT IS RESOLVED, that the one-third (1/3) interest of the Decedent, Charles E. Simmons, Jr., be assigned and transferred to Rosa G. Simmons, Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 and that upon such assignment and transfer the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 shall become a Member of Simmons Family Holdings, LLC with all the rights and obligations attendant thereto and subject to any and all restrictions of the Operating Agreement of Simmons Family Holdings, LLC and of any further agreement with respect to the Company, and that the Operating Agreement shall be amended to reflect this assignment and transfer.

WITNESSETH the hand and the seal of the Members of the Company this 30th day of June, 2017.

WITNESSES:

Myra S. Daniell

Antonia T. Lucia

Debra A. C. Doe

Antonia T. Lucia

Debra A. C. Doe

Antonia T. Lucia

Estate of Charles E. Simmons, Jr.

Palmer E. Simmons

By: Palmer E. Simmons, Personal Representative

Greg M. Simmons

Greg M. Simmons

Jermaine Robinson

Jermaine Robinson

RECEIVED

Sep 07 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh

Common Pleas Court Case No. 2019-CP-07-01246
Appellate Case No. 2021-000375

Greg Marcus Simmons and Jermaine Robinson, both individually and derivatively on behalf of Simmons Family Holdings, LLC, a South Carolina Limited Liability Company, Respondents,

v.

Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken, Appellants,

and

Simmons Family Holdings, LLC, as a nominal Defendant.

PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Motion to Dismiss** to all counsel of record on September 7, 2021, by mailing a copy of same, electronically or with proper postage affixed thereto, as follows:

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