

Rules of Civil Procedure, including Rule 59(e) and Rule 60(b), SCRPC. In re: Estate of Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (see also S.C. Code Ann. §§ 14-23-280, 62-1-304). The Court will address each Motion separately and without oral arguments.¹

Motion to Alter, Amend and/or Vacate Order

A party may not use a Rule 59 motion to re-litigate old matters or present issues that could have been raised prior to the judgment, but were not. Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

After a review of the relevant pleadings, memoranda, and hearing notes, the Court finds that the Motion to Alter, Amend and/or Vacate Order filed by Respondent Minnie Lee Newman Mevers raises no new argument and presents no new evidence, therefore, the Court respectfully **DENIES** the Motion.

Motion to Vacate Order

Pursuant to Rule 60(b), SCRPC, “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... the judgment is void or it is no longer equitable that the judgment should have prospective application.” Rule 60, SCRPC. In her Motion, the Respondent argues that this Court’s Order dated June 29, 2020 should be vacated because when the Order was issued there was a pending Motion for Removal to Circuit Court, thus, this Court lacked subject matter jurisdiction to issue the Order Granting Temporary Injunction.

¹ See Order Regarding the Operation of Trial Courts during the Coronavirus Emergency issued by the South Carolina Supreme Court on April 3, 2020 and as amended on April 14, 2020 and April 22, 2020, whereby “[a] trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.”

Pursuant to S.C. Code Ann. § 62-1-302(a)(1), the Probate Court has exclusive original jurisdiction over all subject matter related to the estates of decedents including the determination of property which the estate of a decedent has an interest. S.C. Code Ann. § 62-1-302. Furthermore, “[t]he probate court has concurrent jurisdiction with the circuit courts of this State of actions and proceedings concerning the external affairs of trusts. These include, but are not limited to, the following proceedings [to] determine the existence or nonexistence of trusts created other than by will.” S.C. Code Ann. § 62-7-201. This subject matter jurisdiction is, however, subject to the provisions of section 62-1-302(d). Id.

Pursuant to S.C. Code Ann. § 62-1-302(d):

“Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo: ... (4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a “special needs trust” as described in Article 7;[and] (5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value...”

S.C. Code Ann. § 62-1-302.

In Thomas v. Gathings, the South Carolina Court of Appeals, in interpreting S.C. Code Ann. § 62-1-302, stated “[w]e interpret the statute as requiring removal only where it is raised by motion of any party or by motion of the probate judge on his own.” Thomas v. Gathings, 304 S.C. 308, 312, 403 S.E.2d 682, 684 (Ct. App. 1991). Although removal to circuit court is required if it is warranted under subsection (d) and upon the motion of any party, the matter is not removed until the Court grants the motion for removal. Therefore, although the Motion to Remove Action to

Circuit Court was filed prior to this Court's Order dated June 29, 2020, this Court still had proper subject matter jurisdiction since the Court had not ruled upon the Motion.

Furthermore, at the hearing on March 23, 2020, prior to the Respondent's Motion to Remove Action to Circuit Court, this Court ruled from the bench that the Petitioner's request for a temporary injunction was granted. This Court also ruled at the hearing that Respondent Minnie Lee Newman Mevers was restrained from using or disposing of any assets that were distributed under the residuary clause of the Decedent's Will and that the Respondent shall furnish a full accounting to the Special Administrator. Therefore, even if this Court was divested of subject matter jurisdiction when the Motion to Remove Action to Circuit Court was filed, this Court had proper subject matter jurisdiction when the hearing was held on March 23, 2020 and when the Court issued its ruling from the bench. Based upon the foregoing, this Court respectfully **DENIES** the Respondent's Motion to Vacate Order.

Motion to Remove Action to Circuit Court

Pursuant to S.C. Code Ann. §§ 62-7-201 and 62-1-302, removal of this action to Circuit Court is appropriate; therefore, the Respondent's Motion to Remove Action to Circuit Court is **GRANTED**.


Therefore, based upon the foregoing, it is now hereby:

ORDERED, ADJUDGED, AND DECREED that Respondent Minnie Lee Newman Mevers' Motion to Alter, Amend and/or Vacate Order, filed July 10, 2020, is respectfully **DENIED**; it is further

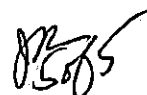
ORDERED, ADJUDGED, AND DECREED that Respondent Minnie Lee Newman Mevers' Motion to Vacate Order, filed August 28, 2020, is respectfully **DENIED**; it is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Ann. §§ 62-7-201 and 62-1-302, the Respondent's Motion to Remove Action to Circuit Court, filed May 12, 2020, is hereby **GRANTED** and the matter shall be removed to Circuit Court.

IT IS SO ORDERED.


IRVIN G. CONDON
Judge of Probate
Charleston County

This 10th day of September, 2020
Charleston, South Carolina.



Administrator, J. James Duggan, Esquire, of Duggan Law Firm. LCC. In addition, various other procedural matters were brought before the Court for consideration.

This matter was commenced by the filing of a verified Motion by Alan M. Wilson, Esquire, Attorney General for the State of South Carolina (hereafter the "Attorney General"), pursuant to Rule 65, SCRPC seeking a Temporary Restraining Order relating to all assets which were claimed and taken under the residuary clause of the Last Will and Testament and two codicils of Roy E. Mevers, Jr. (hereafter the "Will") by his spouse, Respondent Minnie Lee Newman Mevers. The Attorney General also filed a verified Petition and Application seeking other assorted relief. Following a careful review of the filings, this Court in accordance with Rule 65(b) SCRPC, set this matter for a hearing to determine whether the Temporary Restraining Order should continue as a Temporary Injunction.

Notice of this hearing was served on Respondent Minnie Lee Newman Mevers (hereafter the "Respondent") and her counsel, Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC. The Respondent and her counsel were present at the hearing. Also present at the hearing were Senior Assistant Deputy Attorney General C. Havird Jones, Jr., Esquire, as well as C. Michael Branham, Esquire and Stephen L. Brown, Esquire of YCRLAW, on behalf of the Attorney General of South Carolina. J. James Duggan, Esquire, who was appointed as Special Administrator by Order of this Court dated March 13, 2020, as well as H. Christopher Moss, Jessica M. Wentworth, Esquire, and Ryan Oberly, Esquire, were also present at the hearing.

On March 20, 2020, prior to the hearing, the Respondent filed and served a memorandum in opposition to the Motion along with sworn affidavits from H. Christopher Moss and Jessica M. Wentworth, Esquire. A summary of the Respondent's arguments made in opposition to the motion is as follows:

- a. The Respondent argues the Attorney General's filings fail to satisfy the requirements for an *Ex Parte* TRO under Rule of Civil Procedure 65(b), because her counsel had been engaged in active dialogue and exchange of information with the Attorney General concerning the subject matters raised in its Petition for several months before the action was filed, and no attempt had been made to contact her or her counsel about a hearing before the TRO was sought. The Respondent further asserts it did not clearly appear from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.
- b. The Respondent argues the Attorney General's Motion merely requests a TRO, but does not move for a temporary injunction, preliminary injunction, or any relief beyond a TRO.
- c. The Respondent argues the express terms of the *Ex Parte* TRO provide it will expire in ten days (on March 23, 2020) and that no motion had been filed or served to extend the TRO beyond that date.
- d. The Respondent argues that she was not provided proper notice of any motion to extend the TRO or to convert it into a temporary injunction or preliminary injunction or of any hearing on any other matters beyond a TRO.
- e. The Respondent argues the TRO could only be extended for a maximum of ten days for good cause shown pursuant to the terms of Rule 65(b).
- f. The Respondent argues the Attorney General failed to carry its burden of establishing the traditional elements necessary for the issuance of a temporary injunction or preliminary injunction. The Respondent maintains the Attorney General has not shown by affidavit or verified petition that it will suffer irreparable harm if the injunction is not granted, it is likely to succeed on the merits of the litigation, or that there is no adequate remedy at law. The Respondent argues that the potential for financial loss is not irreparable harm because such harm can be remedied by monetary relief after a trial on the merits; she argues it is not likely the Attorney General will succeed on the merits of the litigation, because she contends the Foundation did not satisfy the conditions in the Decedent's Will necessary for it to have a vested interest as the residuary beneficiary of the Estate, and she contends the Attorney General has an adequate remedy at law in form of a money judgment or attachment. The Respondent submitted affidavits asserting that at the time of the Decedent's death and when the estate assets were distributed the Foundation did not qualify as an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and that the devise or gift to the Foundation was not permitted as a charitable deduction from the Estate of Roy E. Mevers, Jr. for federal estate tax purposes.
- g. Counsel for the Respondent cited to case law, including *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004); *MailSource, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003); *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 553 S.E.2d 110 (2001); and *Schwartz v. Wellin*, 2014 WL 51212 (D.S.C. Jan. 7, 2014), as support for her arguments.

For the reasons set forth below, this Court rejects the Respondent's arguments and GRANTS the Temporary Injunction, amends the appointment of James Duggan, Esquire to Duggan Law Firm, LLC as Special Administrator, and grants other relief as set forth herein.

STANDING

The Attorney General, in his *parens patriae* capacity to protect the public interest under the powers granted to him under the Constitution, statutory and common laws of the State of South Carolina, is a proper party to file this action and to seek the relief requested herein. Concerning charitable trusts, the Attorney General has the statutory and common law duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. The Attorney General is mandated by S.C. Code Ann. § 1-7-130 to "enforce the due application of funds given or appropriated to public charities within the state and prevent breaches of trust in the administration thereof..." *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961) ("It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having 'immediate or peculiar interests'." *Watson v. Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956)). *Furman Univ. v. McLeod* further establishes that the Attorney General can intervene in an action and participate to protect charitable devises even where a trust has not yet been established or there is a question as to the existence of the trust. *McLeod* at 482. As such, this Court previously found in the Temporary Restraining Order and continues to find in this Temporary Injunction hearing that the Attorney General is an interested party as defined by S.C. Code Ann. § 62-1-201(23), has standing to seek this relief, and this matter is properly before the Court.

SUBSEQUENT ADMINISTRATION

Pursuant to S.C. Code Ann. § 62-3-1008, “[i]f other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate.” S.C. Code Ann. § 62-3-1008. Based upon the briefing, exhibits, and extensive arguments presented, this Court orders that this Estate be re-opened for subsequent administration. Good cause has been shown that significant sums may have been misappropriated or decisions made by those with a clear conflict of interest. While this Court is not and has not made any decision on the merits of the case, good cause has been established to re-open this case and allow further proceedings consistent with the relief sought by the Attorney General in his verified Petition and Application. This Court further finds that, based upon the allegations contained within the Attorney General’s Petition, the Respondent shall not be reappointed as Personal Representative of the Estate. Pursuant to S.C. Code Ann. § 62-3-614, a Special Administrator may be appointed in order to secure its proper administration. Therefore, the Duggan Law Firm, LLC shall be appointed as Special Administrator of the Estate of Roy E. Mevers, Jr.

FACTUAL BACKGROUND AND LEGAL ANALYSIS

This action relates to a bequest made by Roy E. Mevers, Jr. (hereafter the “Decedent”) in his Estate plan. The Decedent’s Last Will and Testament was executed on November 16, 2015. Codicils were executed by the Decedent on April 12, 2017 (hereafter “First Codicil”) and on August 4, 2017 (hereafter “Second Codicil”). On July 23, 2004, the Decedent executed and filed with the Secretary of State, for the State of South Carolina, Articles of Incorporation for a Nonprofit Corporation named The Sonny Mevers Foundation (hereafter the “Foundation”) in

MSH

accordance with S.C. Code Ann. § 33-31-202. The stated purpose of the Foundation is to "receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended."

On July 21, 2005, the Internal Revenue Service (hereafter "IRS") issued a letter approving the tax exempt status of the Foundation under section 501(c)(3) of the Internal Revenue Code with an effective date of June 23, 2004. The Foundation was also "qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055...of the Code." Since its inception, the Foundation has made donations to numerous charities in the Charleston area, which is consistent with the Decedent's reputation of generosity throughout the community. Donations of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or more were made in multiple years along with numerous other donations to a variety of charities. The Decedent made periodic contributions to the Foundation over the years to allow these donations and charitable gifts to take place.

The Will contained a residuary clause found in Article XII. This clause provided:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE 'SONNY MEYERS' FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

By way of the First Codicil, Article XII of the Will was amended to add the following sentence at its conclusion: "Otherwise, I give, devise and bequeath my said entire residuary estate

to my Spouse, MINNIE LEE NEWMAN MEVERS, absolutely and in fee simple, forever, on the condition that she shall survive me." The First Codicil was executed on April 12, 2017. The Decedent married Respondent Minnie Lee Newman Mevers in September of 2016. The Court notes that the Decedent determined after his marriage that he still wanted the non-profit Foundation to receive the "entire residuary estate...", and the Decedent could have left the same outright to his then wife, Respondent Minnie Lee Newman Mevers. However, the Decedent did not do so, but instead he left the Foundation as the primary residuary beneficiary of the Estate.

The Articles of Incorporation of the Foundation vested the Decedent or his nominee to appoint the members of the Foundation's Board of Directors. The Will nominated the Decedent's "friend," Minnie Lee Newman, as his successor with the right to appoint further successors to the Board of the Foundation. The Decedent's "friend" later became his spouse.

The Decedent died on November 3, 2017. The Respondent, who had married the Decedent in September of 2016, thereafter replaced the Decedent as President of the Board of the Foundation. Section 7 of the Foundation's Articles of Dissolution filed with the Secretary of State on January 24, 2018 has a notation listing the Respondent as "President and Chairwomen." The Respondent also petitioned this Court for appointment as Personal Representative of the Estate of Roy E. Mevers, Jr. and on November 13, 2017, she was appointed as Personal Representative of the Estate. While the parties vigorously disagree as the obligations and duties of the Respondent, as Personal Representative of the Estate and apparent President and Chair of the Foundation, this Court finds a significant question is raised as to the actions taken by the Respondent in regards to the Estate and the Foundation. *Levine v. Spartanburg Regional Services District Inc.*, 367 S.C. 458 (Ct. App. 2005)(when seeking a preliminary injunction, the moving party need only present a fair question as to the existence of such a right). Counsel for the Respondent conceded at the close of

the hearing that the Petitioner "has raised questions" about aspects of the administration of the Decedent's Estate, although the Respondent disputes the Attorney General's claims and its allegations of wrongdoing. Specifically, the verified Petition, Application, and Motion filed with this Court sets forth valid issues as to whether the Respondent did not preserve or protect the Estate so she could improperly assert her entitlement to the residuary clause of the Will, enriching herself at the expense of the Foundation.

It is alleged in her capacity as a secondary beneficiary of the residuary of the Estate, the Respondent placed her interest above those of the Foundation. The Respondent never sought the appointment of an independent personal representative or special administrator by this Court to remove herself from any potential conflict. Instead, the Attorney General alleges that the Respondent unilaterally decided without permission or guidance from this Court, or notice to this Court or the Attorney General that she was entitled to approximately Nineteen Million Dollars (\$19,000,000.00) as the secondary beneficiary of the residuary clause. The Respondent disputes these claims.

The Decedent's obituary stated in part "[i]n Lieu (*sic*) of flowers, donations may be made to the Sonny Mevers Foundation, Crescom Bank, Attn. Holly Edwards, 288 Meeting Street, Charleston SC 29401." (Emphasis added). It further stated his funeral was held on November 11, 2017. Two days after his funeral, on November 13, 2017, Respondent Minnie Lee Newman Mevers filed this case by way of an Application for Informal Probate of the Estate of Roy E. Mevers, Jr. That same day, the Respondent was appointed as Personal Representative of the Estate. Court records establish in the Application for Informal Probate filed on November 13, 2017, the Respondent specifically listed that she was the Decedent's wife and that she was left a bequest of "\$350,000 and all personal and household effects." She went on to list other bequests made under

the Will, specifically noting the "SONNY MEYERS FOUNDATION...CHARITY-All of the Rest and Residue of the Estate." These statements were verified by Respondent Minnie Lee Newman Meyers under oath.

The Respondent contends that during the administration of the Estate she learned of information showing that the Foundation did not qualify as the residuary beneficiary under the Decedent's Will because of its failure to satisfy the express conditions set forth in Article XII of the Will, namely that the Foundation qualify as an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and that the devise or gift to the Foundation is permitted as a charitable deduction from the Decedent's Estate for federal estate tax purposes. The Respondent notes that the IRS revoked the Foundation's tax exempt status under 501(c)(3), effective on November 15, 2017, for failing to file information returns for the prior three consecutive years. Based on the information that the Foundation did not satisfy the conditions in the Will, the Respondent asserts that she filed a Proposal for Distribution with this Court on November 21, 2018, which states she will receive the residuary estate pursuant to the proposed distribution of the Estate's assets. The Court later issued an Order closing the Estate on December 31, 2018.

The IRS issued an Auto-Revocation for the Foundation with a stated revocation date of November 15, 2017 and a Revocation Posting date of March 12, 2018. The Attorney General alleges that by taking "no action to restore the Foundation's tax exempt status for a period of over two months," Respondent Minnie Lee Newman Meyers established a scenario where she took under the residuary clause of the Will as its secondary beneficiary, allowing her to take possession of approximately Nineteen Million Dollars (\$19,000,000.00) which according to his Will, the Decedent had specifically provided should pass to the Foundation.



A telephone meeting of the Foundation's Board of Directors was held by the Respondent and the purported Board of Directors, in which they voted to dissolve the Foundation. The telephone vote of the purported Board took place on January 23, 2018 and Articles of Dissolution were filed with the Secretary of State on January 24, 2018. Minnie Lee Newman Mevers was noted as President and Chairwoman of the Foundation.

S.C. Code Ann. § 33-31-1403(a) provides in relevant part that a nonprofit organization "shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution." S.C. Code Ann. § 33-31-1403 (emphasis added). No such written notice or any other notice was provided by Respondent Minnie Lee Newman Mevers or the Foundation to the Attorney General. Likewise, with the exception of the Proposal for Distribution which the Respondent filed with the Court on November 21, 2018, this Court was not apprised of the actions being taken by the Respondent against assets which she indicated in her original probate filing under oath belonged to the Foundation. Had the Respondent done so, this Court may have required the Attorney General's involvement in the matter or requested his position on such action.

In the Proposal for Distribution of the Estate dated November 15, 2018 and filed with this Court on November 21, 2018, the Foundation was no longer listed as receiving the residuary distribution as it was in the Application for Informal Probate filed on November 13, 2017. Rather, Respondent Minnie Lee Newman Mevers was listed as receiving the residuary distribution. The Proposal for Distribution contained no reference to the Foundation or its entitlement to assets under the residuary clause. The funds in the residuary were distributed directly to Respondent Minnie Lee Newman Mevers, not the Foundation. The Attorney General did not receive the mandated statutory notice relating to dissolving a non-profit foundation. The Respondent argues the Probate

Code imposes no obligation upon her to serve the Proposal for Distribution upon the Attorney General or to notify the Attorney General of the distribution of the estate assets. Without notice as to the alleged vested charitable interest, the Attorney General asserts it was not able to intervene and appear to protect the interest of the public at large as opposed to the immediate and pecuniary interest of Respondent Minnie Lee Newman Mevers. The Respondent disputes the Attorney General's claim that the Foundation's interest ever vested.

Public records establish that Respondent Minnie Lee Newman Mevers began selling and transferring assets which she received by virtue of the residuary clause of the Will and which the Attorney General alleges legally belong to the Foundation. The Respondent conceded through her counsel that some or all of the assets set forth the Second Amended Inventory and Appraisement of Probate Property dated May 25, 2018 ("Second Amended Inventory") had been transferred to various LLCs including Newman Rentals, LLC and Ms. Grace Family, LLC. Counsel also indicated the Respondent "may" no longer have an interest or sole interest in these LLCs or proceeds from the sale of the Sullivan's Island Property which sold for in excess of \$1.8 Million Dollars. The Respondent's counsel noted he had been retained only a few days before the hearing, which was conducted on an expedited basis, and he had not yet had an opportunity to obtain or review records relating to any transfers of properties and was unable to verify what transfers had occurred. The Second Amended Inventory and Appraisement shows the gross value of the Estate as \$19,962,700.00 with a total probate estate value of \$18,862,700.00. The Second Amended Inventory and Appraisement was completed under oath by Respondent Minnie Lee Newman Mevers.

A preliminary injunction should issue only if necessary to preserve the status quo and only upon a showing by the moving party that without such relief, it will suffer irreparable harm, that

it has a likelihood of success on the merits, and that there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583 (2010).

As the Personal Representative of the Estate and as purported President of the Foundation, Respondent Minnie Lee Newman Mevers had an obligation to protect the non-profit foundation named as the residuary of the Decedent's Last Will and Testament and Codicils. This Court finds sufficient questions which indicate Respondent Minnie Lee Newman Mevers may have taken actions inconsistent with the law, her fiduciary duties, and contrary to an alleged vested interest of the Foundation so as to circumvent the contents of the residuary clause for her own personal use and benefit.

The facts set forth establish the Foundation and the Attorney General will likely succeed on the merits of this litigation. There are verified facts and allegations that Minnie Lee Newman Mevers breached her legal and fiduciary duties in taking possession of assets belonging to the Foundation. It is alleged she did so in a conscious effort to render the residuary clause of the Decedent's Will meaningless, and thereby thwart his testamentary intent, so that she, rather than the Foundation, would receive approximately Nineteen Million and 00/100 (\$19,000,000.00) Dollars.

There is no adequate remedy at law available if the Respondent is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others. Failing to issue a temporary restraining order against the Respondent's use of the assets, to include any proceeds thereof, will irreparably harm the Foundation and the public interest it is meant to serve. Furthermore, each use of the assets by the Respondent unduly diminishes the Foundation's chances of ever fully recovering that which she has purportedly taken from it. This irreparable harm is clearly established by the distribution by the Respondent of the properties in dispute and the

inability of her counsel, due to time constraints, to inform the Court as to the current ownership status of such property. As such, the status quo should be preserved.

The Attorney General has established all elements for the issuance of a temporary injunction as established by the Supreme Court in *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583 (2010). For the reasons set forth in this Order, this Court hereby issues this Temporary Injunction restraining the Respondent, Minnie Lee Newman Mevers a/k/a/ Minnie Lee Newman, directly or indirectly through any company or limited liability company or corporation she has any interest in relating to the properties listed in the Second Amended Inventory in any manner from using, disposing of, transferring, selling, gifting, mortgaging, or taking any other action of any kind that would encumber, sell, or impact the ownership of, the value of, or the ability of the Foundation to recover the full value of any/all assets (or the proceeds thereof) distributed to her under the *residuary clause* of the Will and, to that end, requires that she make a complete and verified accounting to The Duggan Law Firm, LLC, as Special Administrator of the Estate of Roy E. Mevers, Jr., a complete accounting of the assets contained in the Second Verified Accounting, any person, company, LLC or other entities which have received transfers or assignments such assets and/or proceeds from sale or rentals of such properties as well as all other persons or entities now having directly or indirectly any control over all monies, stocks, securities, property and/or anything else of value already received from any sale, transfer, or other disposition of such assets to the Special Administrator within thirty (30) days from receipt of this Order.

The requirements of this Order shall not be construed or deemed to apply to any assets (or proceeds thereof) that the Respondent was entitled to receive as a *specific devisee* under the

provisions of the Will. See Art. IX.1 of Will dated November 16, 2015; Codicil dated August 4, 2017.

This Court has made no determination on the merits of this matter but finds sufficient cause for taking these steps to preserve the status quo and facilitate the Special Administrator in determining the location and amount of assets in dispute. At the hearing, counsel for Respondent Minnie Lee Newman Mevers requested leave until March 30, 2020 to file additional affidavits with this Court addressing tax issues raised at the hearing before the Court made its decision on the motion. The Court initially was inclined to accommodate this request. However, the Court decided to immediately announce its decision at the conclusion of the hearing when the Respondent's counsel was unable to consent to extend the TRO during the additional time interval that would have been granted after the hearing for the submission of additional affidavits. This necessarily would have meant the TRO would have expired by its terms on March 23, 2020 if the Court had not immediately issued its ruling on the motion. Accordingly, because the Motion is being granted, the submission of additional affidavits at this point would serve no purpose.

This Court further notes that an Amended Certificate of Appointment shall be issued to Duggan Law Firm, LLC to act as Special Administrator so that it may take such actions as allowed by law to obtain an a full accounting and inventory of the assets at issue in this matter and see that the same are fully preserved pending further order of this Court. This Order, including the temporary injunction, shall remain in place until amended or lifted by further order of this Court.

Therefore, based upon the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Ann. § 62-3-1008, the Estate of Roy E. Mevers, Jr. is hereby reopened for subsequent administration; it is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Ann. § 62-3-614, the Duggan Law Firm, LLC shall be appointed as Special Administrator of the Estate of Roy E. Mevers, Jr. in order to secure it proper administration; it is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, the Petitioner's request for a temporary injunction is **GRANTED**; it is further

ORDERED, ADJUDGED, AND DECREED that Respondent Minnie Lee Newman Mevers, a/k/a/ Minnie Lee Newman, is restrained, directly or indirectly through any company or limited liability company or corporation she has an interest in relating to the properties listed in the Second Amended Inventory, from using, disposing of, transferring, selling, gifting, mortgaging, or taking any other action of any kind that would encumber, sell, or impact the ownership of, the value of, or the ability of The Sonny Mevers Foundation to recover the full value of any and/or all assets (or the proceeds thereof) distributed to her under the *residuary clause* of the Last Will and Testament of Roy E. Mevers, Jr.; it is further

ORDERED, ADJUDGED, AND DECREED that the Respondent shall provide a complete accounting of the assets contained in the Second Verified Accounting to The Duggan Law Firm, LLC, as Special Administrator of the Estate of Roy E. Mevers, Jr., within thirty (30) days of receipt of this Order; it is further

ORDERED, ADJUDGED, AND DECREED that the Respondent shall provide to the Special Administrator, within thirty (30) days from receipt of this Order, any information regarding any person, company, LLC, or other entities which may have received transfers or assignments of assets and/or proceeds from sale or rentals of such properties contained within the Second Verified Accounting, as well as all other persons or entities now having directly or indirectly any control

over all monies, stocks, securities, property and/or anything else of value already received from any sale, transfer, or other disposition of such assets; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to such further Orders of this Court as may become necessary.

IT IS SO ORDERED.



IRVIN G. CONDON
Judge of Probate
Charleston County

This 29th day of June, 2020
Charleston, South Carolina.



~~Attest: A True Copy~~
Clerk Probate Court

Charleston County South Carolina



RECEIVED

OCT 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
 COUNTY OF CHARLESTON) CASE NO. 2017-ES-10-1946
)
 IN THE MATTER OF:) TEMPORARY RESTRAINING ORDER
)
THE ESTATE OF ROY E. MEVERS)

This matter comes before this Court on the motion of Alan Wilson, Attorney General for the State of South Carolina, pursuant to Rule 65, SCRCPP, seeking this Court to enter a temporary restraining order against Minnie Lee Newman Mevers, surviving spouse of Roy E. "Sonny" Mevers Jr. ("Mr. Mevers"), deceased November 3, 2017, in respect of certain disputed distributions to Minnie Lee Newman Mevers from the Estate of Roy E. Mevers Jr. (the "Estate").¹

For the reasons set forth below, the Court **GRANTS** the requests and issues this temporary restraining order.

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STANDING

The Attorney General, in his *parens patriae* capacity to protect the public interest under the powers granted to him under the constitution, statutory and common laws of the State of South Carolina, is a proper party to file this action and to seek the relief requested herein. Concerning charitable trusts, the Attorney General has the statutory and common law duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. The Attorney General is mandated by S.C. Code Ann. § 1-7-130 to "enforce the due application of funds given or appropriated to public charities within the state and prevent breaches of trust in the administration thereof...."; *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961) ("It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at

¹ The requirements of section 62-1-304 have been met.

large, as distinct from those having ‘immediate or peculiar interests.’ *Watson v. Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956), establishes that the Attorney General can intervene in an action and participate to protect charitable devises even where a trust has not yet been established or there is a question as to the existence of the trust. As such, this Court finds that the Attorney General is an interested party as defined by S.C. Code Ann. § 62-1-201(23), has standing to seek this relief and this matter is properly before the Court.

FACTUAL BACKGROUND AND LEGAL AUTHORITIES

This action relates to a bequest made by Mr. Mevers in his Last Will and Testament and two codicils amending his Last Will and Testament (collectively “the Will”). The Will was executed on November 16, 2015. Codicils were executed on April 12, 2017 (“First Codicil”) and on August 4, 2017 (“Second Codicil”). On July 23, 2004, Mr. Mevers executed and filed with the Secretary of State, for the State of South Carolina, Articles of Incorporation for a Nonprofit Corporation named The Sonny Mevers Foundation (“Foundation”) in accordance with S.C. Code Ann. § 33-31-202. The stated purpose of the Foundation is to “receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.”

On July 21, 2005 the Internal Revenue Service (“IRS”) issued a letter approving the tax exempt status of the Foundation under section 501(c) (3) of the Internal Revenue Code with an effective date of June 23, 2004. The Foundation was also “qualified to receive tax deductible

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bequests, devises, transfers or gifts under section 2055...of the Code.” Since its inception, the Foundation has made donations to numerous charities in the Charleston area, which is consistent with Mr. Mevers’s reputation of generosity throughout the community. Donations of twenty five thousand dollars (\$25,000.00) or more were made in multiple years along with numerous other donations to a variety of charities. Mr. Mevers made periodic contributions to the Foundation over the years to allow these donations and charitable gifts to take place.

The Will contained a residuary clause found in Article XII. This clause provided:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE ‘SONNY MEVERS’ FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

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By way of the First Codicil, Article XII of the Will was amended to add the following sentence at its conclusion: “Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, MINNIE LEE NEWMAN MEVERS, absolutely and in fee simple, forever, on the condition that she shall survive me.”

The Articles of Incorporation of the Foundation vested Mr. Mevers or his nominee to appoint the members of the Foundation’s Board of Directors. Mr. Mevers’s Will nominated his “friend” Minnie Lee Newman as his successor with the right to appoint further successors to the Board of the Foundation.

Mr. Mevers passed away on November 03, 2017. Minnie Lee Newman Mevers, who had married Mr. Mevers in September 2016, thereafter replaced Mr. Mevers as President of the Board

of the Foundation. She also petitioned the Court for appointment as Personal Representative and was named the Personal Representative of the Estate. The Attorney General asserts at the time of Mr. Mevers's death, the residuary clause of the Will leaving the remainder of the Estate to the Foundation devolved to the Foundation. S.C. Code Ann. § 62-3-101("Upon the death of a person, his real property devolves to the persons to whom it is left by his last will..."); S.C. Code Ann. § 62-2-602 ("a will is construed to pass all property which the testator owns at the testator's death..."). Specifically the Attorney General asserts that on the date of Mr. Mevers' death, the Foundation was in existence. It was recognized as a charitable organization within the meaning of Section 2055 of the Internal Revenue Code, as amended. Finally, the gift to the Foundation by way of the residuary clause of the Will was permitted as a charitable deduction from Mr. Mevers's estate for federal estate tax purposes. As such, the Attorney General takes the position the Foundation was entitled to the residuary of the Estate and the funds and assets were impressed with a charitable trust.

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The Attorney General further states S.C. Code Ann. § 62-3-709 mandated that Minnie Lee Newman Mevers, as Personal Representative, "take all steps reasonably necessary for the management, protection and preservation of the estate in [her] possession" and that she failed to do so. Specifically, the verified Petition, Application and Motion filed with this Court set forth Minnie Lee Newman Mevers did not preserve or protect the Estate so she could improperly assert her entitlement to the residuary clause of the Will, enriching herself at the expense of the non-profit charitable foundation.

Minnie Lee Newman Mevers owed the Estate and the Foundation the same fiduciary and legal duties a trustee would owe a trust. It is alleged in her capacity as a secondary beneficiary of the residuary of the Estate, she placed her interest above those of the Foundation. She never sought

the appointment of an independent personal representative or special administrator by this Court to remove herself from any potential conflict. Instead, she unilaterally decided with no permission or guidance from this Court or notice to this Court or the Attorney General that she was entitled to over Nineteen Million dollars (\$19,000,000.00) as the secondary beneficiary of the residuary clause.

Mr. Mevers' obituary stated "[i]n Lieu (*sic*) of flowers, donations may be made to the **Sonny Mevers Foundation**, Crescom Bank, Attn. Holly Edwards, 288 Meeting Street, Charleston SC 29401." (emphasis added). It further stated his funeral was held on November 11, 2017. Two days after his funeral, on November 13, 2017, Minnie Lee Newman Mevers filed this case by way of an Application for Informal Probate of Mr. Mevers' estate. She was appointed as Personal Representative of the Estate. Court records establish in the Application for Informal Probate, Minnie Lee Newman Mevers specifically listed that she was Mr. Mevers' wife and that she was left a bequest of "\$350,000 and all personal and household effects." She went on to list other bequests made under the Will, specifically noting the "**SONNY MEVERS FOUNDATION...CHARITY-All of the Rest and Residue of the Estate.**" These statements were verified by Minnie Lee Newman Mevers under oath.

The IRS issued an Auto-Revocation for the Foundation's non-profit status with a stated revocation date of November 15, 2017 and a Revocation Posting date of March 12, 2018. This action was taken by the IRS based on the Foundation's failure to file Forms 990-PF with the IRS for a three year period. The Attorney General alleges this was an administrative suspension and the Foundation's tax-exempt status was eligible to be restored retroactively at all times relevant. By taking no action, Minnie Lee Newman Mevers established a scenario where she took under the residuary clause of the Will as its secondary beneficiary, allowing her to take possession of over

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nineteen million dollars (\$19,000,000.00) which according to his Will, Mr. Mevers had specifically provided should pass to the Foundation.

A telephone meeting of the Foundation's Board of Directors was held and Minnie Lee Newman Mevers and the Board of Directors voted to dissolve the Foundation. The telephone vote of the Board took place on January 23, 2018 and Articles of Dissolution for a Nonprofit Corporation were filed with the Secretary of State were filed January 24, 2018. S.C. Code Ann. § 33-31-1403(a) provides in relevant part that a nonprofit organization "shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution." No such written or other notice was provided by Minnie Lee Newman Mevers or the Foundation to the Attorney General as mandated by the statute. Likewise, this Court was not apprised of the actions being taken by Minnie Lee Newman Mevers against assets which she indicated in her original probate filing under oath belonged to the Foundation. Had she done so, this Court would have required the Attorney General's involvement in the matter and at a minimum requested his position on such action as well as her failure to provide his office the required statutory notice.

In the Proposal for Distribution of the Estate dated November 15, 2018 and filed with this Court on November 18, 2018, the Foundation was no longer listed as receiving the residuary distribution as it was in the Application for Informal Probate. Rather, Minnie Lee Newman Mevers was listed as receiving the residuary distribution. The Proposal for Distribution contained no reference to the Foundation or its entitlement to assets under the residuary clause. The funds in the residuary were distributed to Minnie Lee Newman Mevers, not the Foundation. The Attorney General did not receive the mandated statutory notice relating to dissolving a non-profit

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foundation. Without notice as to the vested charitable interest, the Attorney General was not able to intervene and appear to protect the interest of the public at large as opposed to the immediate and pecuniary interest of Minnie Lee Newman Mevers.

Upon receiving the funds, public records establish Minnie Lee Newman Mevers began selling and transferring assets which she received by virtue of the residuary clause of the Will and which the Attorney General alleges legally belong to the Foundation. It is further stated, upon information and belief, she is further utilizing these assets for her own personal use and benefit.

As the personal representative of the Estate and as President of the Foundation, Minnie Lee Newman Mevers had an obligation to protect the non-profit foundation named as the residuary of Mr. Mevers' Will. This Court finds sufficient verified allegations in this Motion for a Temporary Restraining Order and the Verified Application and Petition which indicate Minnie Lee Newman Mevers may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the vested interest of the non-profit foundation so as to circumvent the contents of the residuary clause for her own personal use and benefit.

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The facts set forth in the Verified Petition and Application show that the Foundation and the Attorney General will likely succeed on the merits of this litigation. There are verified facts and allegations that Minnie Lee Newman Mevers breached her legal and fiduciary duties in taking possession of assets belonging to the Foundation. It is alleged she did so in a conscious effort to render the residuary clause of Mr. Mevers' Will meaningless, and thereby thwart his testamentary intent, so that she, rather than the non-profit charitable foundation, would receive in excess of Nineteen Million and 00/100 (\$19,000,000.00) Dollars.

There is no adequate remedy at law available if Minnie Lee Newman Mevers is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others. Failing

to issue a temporary restraining order against Minnie Lee Newman Mevers's use of the assets, to include any proceeds thereof, will irreparably harm the Foundation and the public interest it is meant to serve, each use of the assets by Minnie Lee Newman Mevers unduly diminishing the Foundation's chances of ever fully recovering that which she has purportedly taken from it.

A Special Administrator may be appointed informally by the Court to protect the Estate of the Decedent and to take appropriate actions involving Estate assets. S.C. Code Ann. § 62-3-614. A Special Administrator appointed by the Court in an informal proceeding has the duty to collect and manage, preserve, and account for the assets of the Estate. S.C. Code Ann. § 62-3-616. The Special Administrator has the power of a Personal Representative necessary to perform his duties. Id. Pursuant to S.C. Code Ann. § 62-3-614, J. James Duggan, Esq. shall be appointed as Special Administrator of the Estate of Roy E. Mevers, Jr.

Therefore, based upon the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65 of the South Carolina Rules for Civil Procedure, Minnie Lee Newman Mevers is hereby restrained from using, disposing of, transferring, selling, gifting, mortgaging, or taking any other action of any kind that would encumber, sell, or impact the ownership of, the value of, or the ability of the Foundation to recover the full value of any/all assets (or the proceeds thereof) distributed to her under the residuary clause of Mr. Mevers's will and, to that end, requiring that she retain complete control over all monies, stocks, securities, and/or anything else of value already received from any sale, transfer, or other disposition of such assets for the duration of this temporary restraining order, or as may otherwise be ordered by this Court; it is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Ann. § 62-3-614, J. James Duggan, Esq. is hereby appointed as Special Administrator of the Estate of Roy E.

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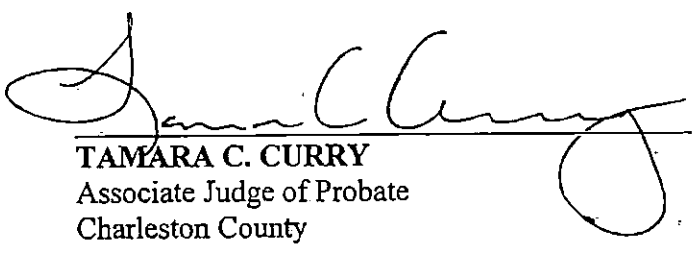
Mevers, Jr. in order to take any appropriate actions involving assets of the Estate of Roy E. Mevers, Jr.; it is further

ORDERED, ADJUDGED, AND DECREED that a hearing on the matter shall be held on March 23, 2020 at 11:00 AM at 84 Broad Street, Second Floor, Charleston, South Carolina 29401; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to further Orders of this Court as may become necessary.

IT IS SO ORDERED THIS 13th DAY OF MARCH, 2020 AT 4:30 PM IN CHAMBERS IN CHARLESTON, SOUTH CAROLINA.

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TAMARA C. CURRY
Associate Judge of Probate
Charleston County

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1004036

Minnie Lee Newman Mevers et al
PLAINTIFF(S)

Attorney General South Carolina et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Appellant's Notice of Intent to Appeal the Order of the Probate Court was filed on September 11, 2020 and the appeal set on a docket for this Court the week of April 12, 2021, to be considered on the briefs. Upon review of the Probate Court Return, along with the briefs from both parties, this court AFFIRMS the rulings of the Probate Court.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/10/2021 .

W. Jeffrey Young for Attorney General South Carolina
 Roy E Mevers, Jr
 Robert D. Cook for Attorney General South Carolina
 Roy E Mevers Jr Estate
 Clyde H. Jones, Jr. for Attorney General South Carolina

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 SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Minnie Lee Newman Mevers , plaintiff, et al VS Attorney General
South Carolina , defendant, et al
Case Number: 2020CP1004036
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-09-10 13:04:43 page 3 of 3