

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Mar 09 2022

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

SC Court of Appeals

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2018-002272
Unpublished Opinion No. 2022-UP-023 (S.C. Ct. App. filed January 12, 2022)

Desa Ballard, as successor trustee of the Trust of Chris Combis, ...Petitioner,

v.

Diane Combis, Chris a. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones, ... Defendants,

Of whom Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones are, ... Respondents.

APPENDIX

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The South Carolina Court of Appeals

Desa Ballard, as successor trustee of The Trust of Chris
Combis, Appellant,

v.

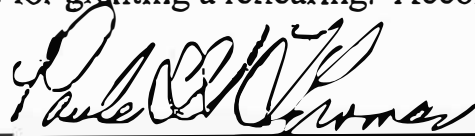
Diane Combis, Chris A. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones, Defendants,

Of Which Redding Jones PLLC, Simon John O'Brien,
and Kent D. Jones are Respondents.

Appellate Case No. 2018-002272

ORDER

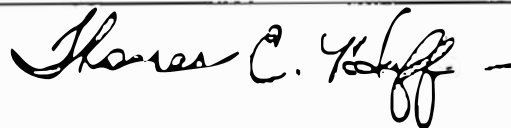
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Douglas Neal Truslow, Esquire
Edward Bilbro Davis, Esquire
The Honorable Brian M. Gibbons

FILED
Feb 07 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Desa Ballard, as successor trustee of The Trust of Chris
Combis, Appellant,

v.

Diane Combis, Chris A. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones, Defendants,

Of Which Redding Jones PLLC, Simon John O'Brien,
and Kent D. Jones are Respondents.

Appellate Case No. 2018-002272

Appeal From Lancaster County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2022-UP-023
Heard December 7, 2021 – Filed January 12, 2022

AFFIRMED

Douglas Neal Truslow, of Truslow & Truslow of
Columbia, for Appellant.

Edward Bilbro Davis, of Bell Davis & Pitt, PA of
Charlotte, N.C., for Respondents.

PER CURIAM: This case comes before us as part of a fight over the estate of Chris "Pop" Combis (Pop). The current matter deals with an issue between Desa Ballard, who took over as personal representative for Pop's estate and as trustee of his trust in 2013, and attorneys for Pop's son, George Combis (George), and George's wife, Diane Combis (Diane). We affirm.

Ballard filed the seed for this matter in Lancaster County in November 2013. Ballard alleged a breach of fiduciary duties on the part of Diane, the trust's previous trustee. At some point, the case was removed to federal court, where it ended with a judgment against George and Diane in September 2016. The Fourth Circuit Court of Appeals later "vacate[d] the portion[] of the district court's order . . . holding George jointly and severally liable with Diane for Diane's breach of fiduciary duty."¹

In 2017, Ballard returned to circuit court in Lancaster County. According to Ballard's November 2017 complaint, the law firm Redding Jones "facilitated fraudulent transfers of real property by George C. Combis . . . with full knowledge that their acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the trust." The complaint included, *inter alia*, a claim of civil conspiracy against Diane, Chris, Redding Jones, and two lawyers who each prepared one of the deeds in their work for the firm: Simon O'Brien and Kent Jones.

On January 3, 2018, Redding Jones, O'Brien, and Jones filed their motion to dismiss. After the hearing on the motion, the circuit court granted it, holding:

[Ballard] has failed to state a claim for civil conspiracy against defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones on the basis that an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party. *See Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995).

¹ Another part of the district court's order not relevant here was also vacated. The Fourth Circuit, however, affirmed the ruling "[i]n all other respects."

On November 16, Ballard filed a motion to reconsider. The court denied the motion on November 20. This appeal followed.

1. As to Respondents O'Brien and Jones (collectively, Attorney Respondents), we find that the circuit court could not assert personal jurisdiction over them.

"Personal jurisdiction is exercised as 'general jurisdiction' or 'specific jurisdiction.'" *Coggeshall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

First, the circuit court did not have general personal jurisdiction over the Attorney Respondents. *See Coggeshall*, 376 S.C. at 17, 655 S.E.2d at 479 ("[G]eneral jurisdiction is based upon 'an enduring relationship' with the State. An enduring relationship is indicated by contacts that are substantial, continuous, and systematic." (quoting S.C. Code Ann. § 36-2-802 (2003) for the phrase "an enduring relationship"))).

According to his responses to interrogatories and an affidavit, Jones vacations in South Carolina roughly twice a year; "has a client . . . that employs a land development employee out of Charleston, South Carolina"; lives in North Carolina; and has no real estate located in the state. Similarly, O'Brien has vacationed here an average of once a year; has, at his new law firm, worked on matters regarding "a client . . . located in Lexington County, South Carolina"; lives in North Carolina; and has no real estate here. These contacts are not "substantial, continuous, and systematic," and cannot form a basis for general personal jurisdiction.

Nor did the circuit court have specific jurisdiction over O'Brien or Jones. *See State v. NV Sumatra Trading Co.*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008) ("Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process."); *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 432, 665 S.E. 2d 660, 665 (Ct. App. 2008) ("The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the 'power' to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair."); *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260–61, 423 S.E.2d 128, 131 (1992) ("A minimum contacts analysis requires a court to find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities. A single act that causes harm in this State may create sufficient minimum contacts where the harm arises out of or relates to that act." (citation

omitted)); *id.* at 261, 423 S.E.2d at 131 ("The defendant must purposefully avail itself of the privileges of conducting activities in this State, thus invoking the benefits and protections of our laws."); *id.* at 262, 423 S.E.2d at 132 ("This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts."); *Cribb v. Spatholt [(Cribb I)]*, 382 S.C. 475, 484, 676 S.E.2d 706, 711 (Ct. App. 2009) ("[U]nder the fairness prong, the court must consider the following factors: (1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience of the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." (citing *NV Sumatra Tobacco Trading*, 379 S.C. at 91, 666 S.E.2d at 223)).

As to the power prong, neither of the Attorney Respondents "purposefully avail[ed themselves] of the privileges of conducting activities in this State," largely because there is no evidence that they conducted activities in this state that serve as the basis for this litigation. As Respondents note in their brief, the acts for which Ballard seeks to hale them into court took place in North Carolina.

As to the fairness prong, the factors weigh particularly heavily against finding that the exercise of personal jurisdiction in this case would be fair in this case. First, nothing that either of the Attorney Respondents did that forms the basis for the allegations of conspiracy took place in South Carolina, nor were the Attorney Respondents in South Carolina when they took those actions. Second, there is no inconvenience to the parties by refusing to confer jurisdiction here; both parties have robustly litigated matters related to Pop's estate in both North Carolina and South Carolina. The factor related to our state's interest in the case is also of no help to Ballard. *See Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 508, 402 S.E.2d 177, 180 (1991) ("Finally, while South Carolina has an interest in providing redress for its citizens, that interest is diminished *when no business was transacted in this State* and any contract formed was not to be performed in this State. In fact, *nothing which is the subject of this litigation has taken place in South Carolina.*" (emphases added)).

2. As to all Respondents, we find that Lancaster County was not the correct venue for this litigation because the properties at issue are not in Lancaster County. *See* S.C. Code Ann. § 15-7-10 (Supp. 2020) ("An action for the following causes must be tried in the county in which the subject of the action or some part of the

property is situated . . .² : (1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property; . . . (4) for the recovery of personal property distrained for any cause; . . ."); *TruckSouth, Inc. v. Patel*, 339 S.C. 40, 45, 528 S.E.2d 424, 427 (2000) ("Section 15-7-10(1) applies to *any action* that requires a determination in *any form* of such 'right or interest' in real property. An action for specific performance of a real estate contract affects rights and interests in real property because it ultimately determines who holds title to the property." (emphases added)); *id.* at 48, 528 S.E.2d at 428 ("[W]e find it is more reasonable, and more in line with this [c]ourt's precedent in *Barrow*³, to have a rule where actions involving real estate are local actions that are litigated in the county where the land is situated.").⁴

However Ballard frames it, her central contention against Respondents is that they helped to fraudulently transfer real estate. Any verdict for Ballard would require a determination of whether the property was properly transferred. This is the entire basis for Respondents' alleged liability. We believe that our supreme court has made it clear that questions relating to title should be "litigated in the county where the land is situated." *TruckSouth, Inc.*, 339 S.C. at 48, 528 S.E.2d at 428. The land in this case is situated not in Lancaster County, but in North Carolina. Venue in Lancaster County was improper.

3. As to the other grounds raised in the appeal, we find it unnecessary to address them. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that the "appellate court need not address remaining issues when disposition of prior issue is dispositive" (citing *Whiteside v. Cherokee Cnty. Sch. Dist. No. One*, 311 S.C. 335, 428 S.E.2d 886 (1993))).

AFFIRMED.

THOMAS and GEATHERS, JJ., and HUFF, A.J., concur.

² The statute refers to an exception that is not relevant to this case.

³ *Barrow v. Gowdy*, 114 S.C. 122, 103 S.E.2d 477 (1920).

⁴ *Truck South, Inc.*, was decided under a previous version of the statute, but the provisions at issue are substantially identical, with slight variations in wording.

The South Carolina Court of Appeals

Desa Ballard, as successor trustee of The Trust of Chris
Combis, Appellant,

v.

Diane Combis, Chris A. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones, Defendants,

Of Which Redding Jones PLLC, Simon John O'Brien,
and Kent D. Jones are Respondents.

Appellate Case No. 2018-002272

The Honorable Brian M. Gibbons
Lancaster County
Trial Court Case No. 2017CP2901248

ORDER

After careful consideration, the panel votes to grant Appellant's motion to argue
against precedent.

FOR THE COURT
BY  CLERK

Columbia, South Carolina

cc:

Douglas Neal Truslow, Esquire
Edward Bilbro Davis, Esquire

FILED
Oct 25 2021

The South Carolina Court of Appeals

In the Matter of the Estate of Chris Combis,

Desa Ballard, as Personal Representative of the Estate of
Chris Combis, Respondent,

v.

George Combis, Diane Combis, and Chris Combis,
Defendants,

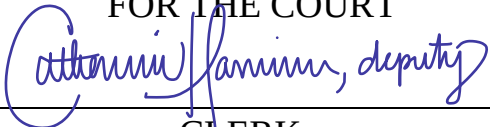
Of Whom, George Combis and Chris Combis are the
Appellants.

Appellate Case No. 2020-000021

The Honorable Brian M. Gibbons
Lancaster County
Trial Court Case No. 2014CP2900306

ORDER

Respondent Desa Ballard moves the Court for an order to consolidate appellate case numbers 2020-000021 and 2018-002272 (as appellant) for oral argument. After careful consideration, the motion is Denied.

FOR THE COURT
BY  CLERK

Columbia, South Carolina

cc:

Brian Scott McCoy, Esquire

Ty Kimmell McTier, Esquire

Douglas Neal Truslow, Esquire

Neal Douglas Truslow, Esquire

FILED
Oct 18 2021

The South Carolina Court of Appeals

Desa Ballard, as successor trustee of The Trust of Chris
Combis, Appellant,

v.

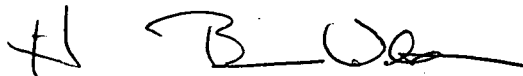
Diane Combis, Chris A. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones, Defendants,

Of Which Redding Jones PLLC, Simon John O'Brien,
and Kent D. Jones are Respondents.

Appellate Case No. 2018-002272

ORDER

We decline to consider Appellant's motion to argue against precedent at this time.
Appellant's motion will be considered once this appeal is assigned to a panel.



FOR THE COURT

Columbia, South Carolina

cc:

Douglas Neal Truslow, Esquire
Edward Bilbro Davis, Esquire

FILED

September 5, 2019

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Jan 27 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

Desa Ballard, as successor
trustee of the Trust of Chris
Combis,

Appellant,

v.

Diane Combis, Chris A.
Combis, Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones,

Defendants,

Of whom Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones are

Respondents.

PETITION FOR REHEARING

Appellant, Desa Ballard, as successor trustee of the Trust of Chris Combis, moves this Court to rehear and reconsider its decision issued in this case on the following issues:

1. The Court erred in determining that South Carolina Courts could not address the tortious actions of lawyers in assisting fraudulent conveyances of North Carolina property by their clients, because, while title to the property could only be adjudicated in North Carolina, the tortious activities of the clients and the lawyers affected South

Carolina property rights. The judgments which the clients and lawyers were attempting to hide from asset collection were South Carolina judgments.

2. The Court erred in determining that the fraudulent conveyance action required a determination of title, which could only be litigated in North Carolina courts, because title to the property was not at issue. There was no dispute as to title. The dispute was as to tort actions of hiding the (North Carolina) real property to prevent a South Carolina trust and estate from collecting a judgment rendered in South Carolina Courts.
3. The effect of the Court of Appeals' ruling was to dismiss the action for fraudulent conveyances against Redding Jones LLC, which conceded personal jurisdiction in South Carolina and did not move to dismiss on the basis of lack of personal jurisdiction.
4. The court erred in finding that Lancaster County was not the correct venue for this action, because the estate which eventually recovered judgment was a Lancaster County estate, and the South Carolina District Court judgment which Respondents attempted to avoid affected a South Carolina judgment. Decedent was a resident of Lancaster County at the time of his death, and the trust, while governed by North Carolina, was administered by a South Carolina resident trustee.
5. While the original complaint asked for transfer of title back to the original grantors, Appellant abandoned that request for relief and sought only tort damages in this action. No equitable action regarding title to property was before the Court in this action. No "right to recover property" was being litigated in this action. This was a tort action seeking tort damages only. The Court's reliance on *TruckSouth Inc. v. Patel*, 339 S.C. 40, 528 S.E.2d 424 (2000) was misplaced because this was an action for tort damages only and not to determine title or transfer it.

6. The Court of Appeals erred in failing to consider the issue of whether intentional involvement by a law firm with members admitted in South Carolina both generally and *pro hac vice* in transferring assets to avoid a South Carolina judgment (while at the same time defending the South Carolina proceedings that eventually resulted in the judgment) is not cognizable in South Carolina. By dismissing the action based on the *situs* of the property which was fraudulently transferred instead of the tortious actions which had their direct and immediate impact in South Carolina, the Court did not reach the relevant and ultimate issue presented.
7. The Court of Appeals erred in failing to consider the merits of Appellant's claim against the lawyers who facilitated the fraudulent transfer of property for purposes of avoiding a South Carolina judgment. The errors of the Court in misunderstanding the nature of the relief sought by Appellant, and upon which the Court relied in affirming, allowed the Court to not address an issue properly and fully before the Court.

Respectfully submitted,

/s Douglas N. Truslow
Douglas N. Truslow
Truslow & Truslow
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January 27, 2022

ATTORNEY FOR APPELLANT

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Jan 27 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

Desa Ballard, as successor
trustee of the Trust of Chris
Combis,

Appellant,

v.

Diane Combis, Chris A.
Combis, Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones,

Defendants,

Of whom Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones are

Respondents.

PROOF OF SERVICE

I, Mara Ballard, an employee of Ballard & Watson, Attorneys at Law, certify that a true and correct copy of the **Petition for Rehearing** was served upon the parties of record listed below by e-mail listed on the Attorney Information System pursuant to the South Carolina Court of Appeals Order No. 2020-000447(e)

Edward B. Davis
Bell, Davis & Pitt, PA
227 West Trade Street, Suite 1800
Charlotte, North Carolina 28202
Email: ward.davis@belldavispitt.com

I, Mara Ballard, an employee of Ballard & Watson, Attorneys at Law, certify that a true and correct copy of the **Petition for Rehearing** was served upon the parties of record listed below by depositing a copy of same in the United States Mail, postage prepaid to each party's last known address:

Diane Combis
5814 Bentway Drive
Charlotte, North Carolina 28226

Chris A. Combis
2310 North Brevard Street
Charlotte, North Carolina 28206


Mara T. Ballard, CFE, CMA
Forensic Accountant

January 27, 2022
West Columbia, SC

From: [Mara Ballard](#)
To: [Edward "Ward" B. Davis, Esquire](#)
Cc: [Desa Ballard](#); [Douglas N. Truslow, Esquire \(douglastruslow@truslowlaw.com\)](#); [nealtruslow@truslowlaw.com](#); [Mara Ballard](#)
Subject: Combis, Chris (Fraudulent Conveyances)
Date: January 27, 2022 4:50:57 PM
Attachments: [Petition for Rehearing.pdf](#)
[2022 01 27 Lts to COC w POS and P for Rehearing.pdf](#)

Dear Mr. Davis,

Please find attached a Petition for Rehearing, Proof of Service and assorted letters which I am emailing and mailing to the Court of Appeals today.

If you have any questions or concerns, please contact us.

With kindest regards,

Mara T. Ballard, CMA, CFE
Forensic Accountant (not a lawyer)
Ballard & Watson, Attorneys at Law
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Please note updated address. We are in the process of closing our old PO Box and are receiving all mail now at our street address.



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

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January 27, 2022

Via Email (ctappfilings@sccourts.org)
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

Jan 27 2022

SC Court of Appeals

Re: *Ballard vs Diane Combis, Chris Combis, Redding Jones et. Al. (Fraudulent Conveyances)*
Appellate Case No: 2018-002272

Dear Ms. Kitchings:

Enclosed for filing please find the Appellant's Petition for Rehearing and Proof of Service for the above referenced matter.

By copy of this letter and as evidenced by the Proof of Service, this filing has been served upon Counsel for the Respondents and on the Defendants. Thank you and attention to this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

Mara T. Ballard, CFE, CMA
mara@desaballard.com

cc: Edward B. Davis, Esquire (via Email)
Diane Combis (via US Mail)
Chris A. Combis (via US Mail)

RECEIVED
Sep 29 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

Desa Ballard, as successor
trustee of the Trust of Chris
Combis,

Appellant,

v.

Diane Combis, Chris A.
Combis, Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones,

Defendants,

Of whom Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones are

Respondents.

And

APPEAL FROM LANCASTER COUNTY
Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2020-000021

In the Matter of the Estate of Chris Combis,

Desa Ballard, as Personal Representative of the Estate of Chris Combis

Respondent,

v.

George Combis, Diane Combis and Chris Combis,

Defendants,

Of whom George Combis and Chris Combis are

Appellants.

**MOTION TO CONSOLIDATE
FOR ORAL ARGUMENT**

Desa Ballard, who is the successor trustee of the Trust of Chris Combis (and a party to. Appellate Case No.: 2018-002272 as Appellant), and who is also the Personal Representative of the Estate of Chris Combis (a party to Appellate Case No. 2018-000021, as Respondent) moves this Honorable Court for an order consolidating the two appeals for oral argument only. In support of her motion, Ballard will show:

1. In her capacities as Successor Trustee of the Trust of Chris Combis and as personal representative of the Estate of Chris Combis, Ballard has been attempting to collect funds due to the estate and the trust from George Combis, Diane Combis, Chris Combis, and multiple corporate entities that they have created for the purposes of hiding assets from collection.
2. In Appellate Case No. 2018-002272, Ballard appeals from an order of the trial court which dismissed as parties to a fraudulent conveyances action attorneys who represented the Combises and, on information and belief, assisted them in hiding assets while also defending them against the claims of the Estate and Trust. This appeal presents a novel question of whether attorneys who

participate in the wrongdoing of their clients in effecting fraudulent transfers can claim common law immunity.

3. In Appellate Case No. 2020-000021, George Combis and Chris Combis appeal from an order holding them in contempt for failing to produce items of personal property that belonged to the decedent to Ballard, as personal representative, which they were ordered to produce and did not. Instead of producing the items ordered produced, George and Chris Combis attempted to pass off substitute and fake items as the subpoenaed items, while represented by the same attorneys who are Respondents in Appellate Case No. 2018-002272. The record in Appellate Case No. 2020-000021 will reflect that Joe Pellington, one of the attorneys representing the Combises and a member of the same law firm that is the Respondent in Appellate Case No. 2018-002272, had in his personal possession one of the subpoenaed items, a gold Rolex watch, while arguing against the contempt sanction being sought against his clients. Pellington produced the gold Rolex during the hearing on Ballard's motion for contempt. After production of the gold Rolex, a witness for Ballard identified the gold Rolex that was pulled from Pellington's jacket pocket as the missing gold Rolex that Pelleington's clients had attempted to secret, while producing instead a cheap, fake Rolex that was described as an expert witness as "very obvious[ly]" a fake Rolex. (ROA Tr. p. 0439, lines 2 – p. 0440 line 6).
4. While the appeals raise different issues, one common element runs through both appeals, *i.e.*, the liability of attorneys who affirmatively assist their

clients in secreting assets while also defending those clients from the judgments that will eventually encumber the assets (both real property and personal property) that the attorneys assisted in secreting.

5. Ballard is informed and believes that consolidation of the appeals for oral argument only, while each appeal maintains its independent existence for purposes of decision by this Court, will assist the Court in understanding the pattern and practice of the lawyers who assisted the Combises in hiding their assets while also defending the Combises in the actions which eventually resulted in the judgments that would have encumbered the assets that were secreted with the assistance of the lawyers¹.
6. Ballard recognizes that the deceitful actions of lawyers in assisting their clients in hiding and secreting assets is not a pleasant topic, it is the subject of inquiry in both appeals currently pending before this Court.
7. The Clerk of Court has notified counsel that Appellate Case No. 2018-002272 is on the roster for oral argument likely to occur in December 2020. The other pending case, Appellate Case No. 2020-0000021 is “ready for consideration” and the clerk’s office has just last week asked counsel for additional copies of the Record on Appeal and Final Briefs. (Letter of Clerk of Court dated September 20, 2021 to counsel in Appellate Case No. 2020-000021).

¹ In her capacity as Successor Trustee, Ballard holds a judgment against Diane Combis in excess of one million dollars. In her capacity as personal representative of the estate of Chris Combis, Ballard holds a judgment against Superior Tile Marble and Terrazzo Company in the principal amount of \$700,000.00. Collection proceedings are in process in North Carolina with a receiver appointed to assist in collecting assets that Chris Combis (the son of George and Diane Combis) received and is attempting to secrete for his parents. See State of North Carolina, County of Mecklenburg Superior Court Division Case Number 21-CVS-6366..

8. On information and belief, it would not delay this Court's consideration of both appeals for oral argument at the same time, and therefore would not prejudice any party if this Court grants the motion to allow consolidation of oral argument in these companion appeals.
9. Undersigned counsel has consulted with opposing counsel in an effort to seek consent to the relief requested herein, and consent has been refused.

WHEREFORE, Ballard moves this Court for an order consolidating the captioned cases for oral argument before this Court.

s/Douglas N. Truslow
Douglas N. Truslow
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Truslow & Truslow Law Firm
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Attorneys for Desa Ballard
Appellant / Respondent

RECEIVED

Sep 29 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

Desa Ballard, as successor
trustee of the Trust of
Chris Combis,

Appellant,

v.

Diane Combis, Chris A. Combis,
Redding Jones PLLC,
Simon John O'Brien, and
Kent D. Jones

Defendants.

Of whom

Redding Jones PLLC, Simon John
O'Brien and Kent D. Jones are

Respondents.

PROOF OF SERVICE

I, Mackenzie Woodward, Paralegal, certify that a true and correct copy of the forgoing document(s) was served upon the parties of record listed below by e-mail listed on the Attorney Information System pursuant to South Carolina Court of Appeals Order No. 2020-000447(e):

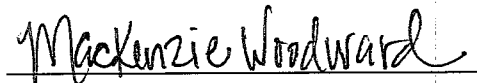
Edward B. Davis, Esquire
Bell, Davis, and Pitt, P.A.
227 West Trade Street, Suite 1800
Charlotte, North Carolina 28202
ward.davis@belldavispitt.com

I, Mackenzie Woodward, Paralegal, certify that a true and correct copy of the forgoing document(s) was served upon the parties of record listed below by depositing a copy of same in the United States Mail, postage prepaid to each party's last known address:

Diane Combis
8707 Lake Challis Lane
Charlotte, North Carolina 28226

Chris A. Combis
2310 North Brevard Street
Charlotte, North Carolina 28206

DOCUMENT(S): 1. MOTION TO CONSOLIDATE FOR ORAL ARGUMENT

A handwritten signature in black ink that reads "Mackenzie Woodward". The signature is written in a cursive style and is positioned above a horizontal line.

Mackenzie Woodward
Paralegal
Truslow & Truslow Law Firm

September 29, 2021
Columbia, South Carolina

Truslow & Truslow

Attorneys At Law

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Telephone: 803-256-6276 Fax: 803-256-7659

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Sep 29 2021

SC Court of Appeals

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September 29, 2021

Re: Estate of Chris Combis
Appellate Case #2020-000021

Successor Trustee of the Estate of Chris Combis
Appellate Case No.: 2018-002272

VIA E-MAIL ctappfilings@sccourts.org

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Dear Ms. Kitchings:

Please find attached for filing a Motion to Consolidate for Oral Argument and Proofs of Service for each of the above referenced matters.

If you should have any questions, please do not hesitate to contact us directly.

Respectfully,

Mackenzie Woodward

Mackenzie Woodward
Paralegal to Truslow and Truslow

cc: Ty K. McTier, Esquire
Brian S. McCoy, Esquire
Edward B. Davis, Esquire

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Combis, Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones,

Defendants,

Of whom Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones are

Respondents.

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JUL 22 2019
SC Court of Appeals

MOTION TO ARGUE AGAINST PRECEDENT

Pursuant to Rule 217, SCACR, Appellant Desa Ballard, as successor trustee of the Trust of Chris Combis (hereafter "Ballard"), moves this Honorable Court for permission to argue against precedent, to the extent existing precedent is inconsistent with the position advanced by Ballard on appeal in this matter. In support of this motion, Ballard would show:

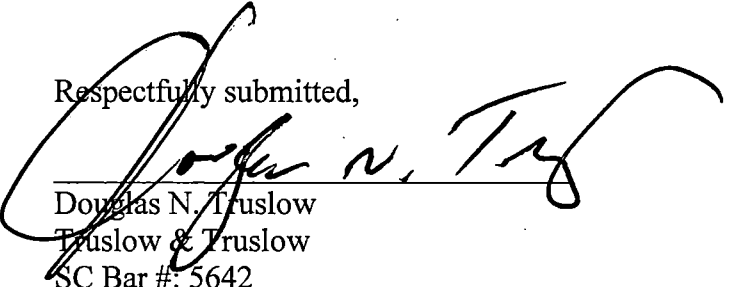
1. This is an appeal from an order of the circuit court which dismissed Ballard's claims against Respondent lawyers, who are attorneys who represent defendants Diane Combis (hereafter "Diane")

and Chris A. Combis (hereafter “Chris”) in an action for fraudulent conveyances. The case at the trial court level against Diane and Chris continues.

2. In her complaint, Ballard asserted that Respondent lawyers knowingly assisted Diane and Chris (and a third party, George Combis, who is the husband of Diane and the father of Chris) in transferring assets in an effort to avoid collection of a judgment that was then pending against George and Diane in the United State District Court for the District of South Carolina. (ROA 172).
3. The claim against Respondent lawyers was dismissed by Circuit Court Brian Gibbons on the basis of existing precedent, including Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) and related cases. As argued in Ballard’s brief, Stiles and related cases do not, in her opinion, support the conclusion of the trial judge.
4. However, to the extent that Stiles and related cases are, in fact, construed so as to prohibit a lawsuit against a lawyer for opposing party, when that lawyer knowingly and intentionally assists a client in hiding assets from a pending judgment, when the same law firm is defending against the pending judgment, Ballard seeks permission of this Court to argue against such precedent and to argue in support of a modification of existing law on that issue.
5. This issue has already been briefed in Ballard’s initial and reply briefs as permitted by Rule 217. However, for purposes of oral argument, Ballard seeks permission to address this issue during oral argument.
6. Ballard is informed and believes it is in the interests of justice and for the benefit of the bench and bar to allow this issue to be fully explored and addressed by this Honorable Court at the time of oral argument and for purposes of decision in this appeal.

Wherefore, to the extent necessary to fully address the issues on appeal, Ballard seeks an order of this Court allowing her counsel, the undersigned, to argue against what may be considered precedent on the issues in this appeal.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Douglas N. Truslow", is written over a horizontal line.

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July 20, 2019

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

Desa Ballard, as successor
trustee of the Trust of
Chris Combis,

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Appellant,

v.

Diane Combis, Chris A. Combis,
Redding Jones PLLC,
Simon John O'Brien, and
Kent D. Jones

Defendants.

Of whom

Redding Jones PLLC, Simon John
O'Brien and Kent D. Jones are

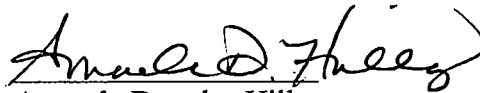
Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's **Motion to Argue Against Precedent** on Respondents Redding Jones PLLC, Simon John O'Brien and Kent D. Jones by depositing a copy of same in the United States Mail, postage prepaid on July 22, 2019 addressed to their attorney of record, Edward B. Davis, Esquire at 227 West Trade Street, Suite 1800, Charlotte, North Carolina 28202, on Defendant Diane

Combis at 8707 Lake Challis Lane, Charlotte, North Carolina 28226 and on Defendant Chris A. Combis at 2310 North Brevard Street, Charlotte, North Carolina 28206.

July 22, 2019

A handwritten signature in black ink, appearing to read "Amanda Douglas Hilley". The signature is fluid and cursive, with the first name "Amanda" being more prominent.

Amanda Douglas Hilley
Paralegal for Truslow & Truslow

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July 22, 2019

RE: Desa Ballard v. Diane Combis
Appellate Case Number: 2018-002272

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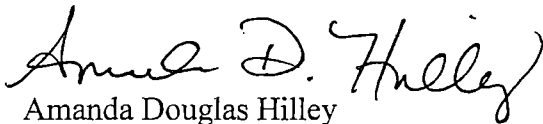
Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Dear Ms. Kitchings:

Please see the enclosed Appellant's Motion to Argue Against Precedent as well as the Proof of Service of same upon Respondents and Defendants Chris Combis and Diane Combis which is being hand delivered for filing.

Please clock same and return the clocked copies to the runner.

Sincerely,



Amanda Douglas Hilley
Paralegal for Truslow & Truslow

cc: Desa Ballard, Esquire
 Edward B. Davis, Esquire
 Chris Combis
 Diane Combis

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
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O'Brien, and Kent D. Jones,

Defendants,

Of whom

Redding Jones PLLC, Simon John
O'Brien, and Kent D. Jones are

Respondents.

FINAL REPLY BRIEF OF APPELLANT

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Attorney for Appellant

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<u>Power Prods. & Services Co., v. Kozma</u> , 379 S.C. 423, 341, 665 S.E.2d 660, 664 (Ct.App. 2008)	5

REPLY TO RESPONDENT'S ISSUE II

No reply necessary. As set forth in the Initial Brief of Appellants, the allegations of the complaint are deemed true for purposes of this proceeding. The factual allegations of the complaint as assumed to be true for purposes of the motion. Bessinger v. Bi-Lo, Inc., 366 S.C. 426, 622 S.E.2d 564 (2005); Justice v. The Pantry, 330 S.C. 608, 493 S.E.2d 871 (Ct.App. 1999), *affirmed as modified* 335 S.C. 37, 496 S.E.2d 871 (1999).

REPLY TO RESPONDENT'S ISSUES III AND IV (Purported Additional Sustaining Grounds)

Respondents argue that the Court should affirm the judgment of the trial court based on other grounds, even if the Court agrees that the trial court's ruling on the substantive issue was error.

Lack of Personal Jurisdiction

In her Memorandum in Opposition to Motion to Dismiss, Ballard set forth in detail the minimum contacts of each of the Respondents, including answers to discovery which verified regular and systematic contacts with the State of Carolina. (R. p. 79).

A. Redding Jones LLC

As to defendant Redding Jones, LLC, the records reflect that Redding, Jones LLC was admitted *pro hac vice* to represent the relevant clients, George and Diane Combis, in the United States District Court for the District of South Carolina, and actively continued that representation throughout the five-day trial before District Judge Anderson and on appeal¹ (R. p. 92). Also involved in the appeal was a member of Redding, Jones who is a

¹ At the time, the Memorandum in Opposition to Motion to Dismiss was prepared, the Fourth Circuit Court of Appeals had not yet affirmed the judgment which was on appeal. The judgment was affirmed in part and reversed in part by order of the Fourth Circuit dated January 8, 2019 (ECF 62-1).

member of the South Carolina Bar (Joseph Pellington), who has been a member of the South Carolina Bar since 2012. (R. p. 100).²

Additionally, Pellington and another Redding Jones LLC lawyer who is a member of the South Carolina Bar, Ty McTier, continued to represent George and Diane Combis (as well as their son Chris), in connection with proceedings in the Estate of Chris Combis, which is a Lancaster County estate opened in 2012. Case No. 2012-ES-29-00415. The matter was removed to circuit court and assigned Case No. 2014-CP-29-000306.

Even while claiming Redding Jones lacks sufficient contacts for South Carolina to exercise personal jurisdiction over it, Redding Jones lawyers continue to appear in South Carolina Courts in this case and others. Notably, Pellington and McTier defended a Rule to Show Cause proceeding involving the Combises, which was initiated in circuit court on September 5, 2017 relative to items of personal property that belong to the Estate, which have not been released to the personal representative. The hearing on that Rule to Show Cause adjourned abruptly on November 17, 2017, when Circuit Court Judge Brian Gibbons stayed the proceedings while a report to law enforcement was requested relative to items held in both North and South Carolina. (R. p. 213, lines 9-25). The stay has been lifted, over the objection of Redding Jones attorneys Pellington (R. p. 220).

Lastly, as was demonstrated to the Circuit Court, Redding Jones markets itself as providing legal services in both North Carolina and South Carolina. (R. p. 122).

B. Kent D. Jones

Kent Jones is the Redding Jones lawyer who assisted in the first fraudulent transfer of real estate (September 2, 2015) in avoidance of the pending judgment. (R. pp. 176-177,

² The representation continued despite the obvious conflict. See footnote 3 to the Fourth Circuit Court of Appeals' Decision dated January 8, 2019.

¶¶ 20-25). As set forth in the discovery responses submitted to the trial Court, Jones vacations in South Carolina at least twice per year. (R. p. 155; R. p. 64). He actively represents at least one South Carolina resident. *Id.* As noted in his discovery responses, Jones refuses to disclose any purchases of goods from any vendor in South Carolina, much less whether he has conducted any business in South Carolina during the five years prior to the filing of this action, and he refuses to disclose whether he has relatives in South Carolina. (R. p. 155). As previously noted, this refusal to disclose information provides an inference that his responses, if provided, would not support his position. Baker v. Port City Steel Erectors Inc. 261 S.C. 469, 200 S.E.2d 681 (1973).

C. Simon John O'Brien

Mr. O'Brien is the Redding Jones lawyer who facilitated the second fraudulent transfer of real estate, on May 16, 2016, of two parcels of commercial real estate in downtown Charlotte. (R. p. 177-179, ¶¶ 26 – 36). As with Mr. Jones, Mr. O'Brien vacations in South Carolina annually. (R. p. 155). He previously practiced with Redding Jones, which practices in both North and South Carolina. (R. p. 121). At the time his motion was heard, O'Brien worked for two (2) licensed South Carolina lawyers, Charles Bridgmon and Jeff Long (who are, coincidentally, prior counsel for George, Diane and Chris Combis). (R. pp. 163-164, ¶¶ 16 and 20) and assisted in the representation of a corporate client based in Lexington, South Carolina.

Like his co-respondent, O'Brien refuses to reveal whether he has done business with any South Carolina entity during the past five years, although presumably he does not vacation annually in Charleston for free. (R. p. 162).

“A court may assert general jurisdiction if the defendant has an ‘enduring relationship’ with the forum state. [citations omitted]. If an individual has an ‘enduring relationship’ with the state, he may be sued here even if the cause of action did not arise in South Carolina. (General jurisdiction attaches even when the nonresident defendant’s contacts with the forum state are not directly related to the cause of action. . . “). To satisfy the ‘enduring relationship’ requirement of general jurisdiction, the defendant’s contacts must be ‘continuous and systematic’ as well as ‘so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities”, Cribb v. Spatholt, 382 S.C. 490, 676 S.E.2d 714 (Ct.App. 2009), citing International Shoe Co. v. Washington, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.E.2d 95 (1945) (emphasis added).

“Due process requires that a defendant possess minimum contacts with the forum state such that the maintenance of suit does not offend traditional notations of fair play and substantial justice.” Cribb v. Spatholt, supra. “Further the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state that he could reasonably anticipate being hauled into court there.”, *Id.*, citing Power Prods. & Services Co., v. Kozma, 379 S.C. 423, 341, 665 S.E.2d 660, 664 (Ct.App. 2008).

None of the Respondents disputed the minimum contacts with South Carolina that were demonstrated in filings before Judge Gibbons. Ballard’s proof of minimum contacts, therefore, is unchallenged.

Respondent’s Additional Sustaining Ground on personal jurisdiction fails.

RESPONSE TO ISSUES V AND VI

Respondents are correct that Ballard cannot seek to obtain equitable relief as to transfer of title of property located in North Carolina. That is the effect of S.C. Code Section 15-7-10. Ballard abandoned that request for relief in this proceeding. However, she wishes to proceed on the action for damages for the other causes of action set forth in her pleading. Section 15-7-10 does not require dismissal of the entire action as to these defendants; it merely removes from the trial court the subject matter jurisdiction to order a reconveyance of the property that was fraudulently conveyed. The damages action survives Respondent's argument under Section 15-7-10.

Issues V and VI do not provide an additional sustaining ground to affirm the decision of the trial court.

RESPONSE TO ISSUE VII

Respondents assert that, because the Fourth Circuit Court of Appeals vacated the joint and several judgment as to George Combis, Ballard is in a better position than she would have been had they not assisted in the fraudulent conveyance of the downtown Charlotte property solely to Diane. While Ballard is, indeed, attempting to collect her judgment against Diane in North Carolina³, the Fourth Circuit's ruling does nothing to address the fraudulent conveyance of the Carmel Park property, which was fraudulently conveyed out of both George and Diane's name to the name of their son Chris while the judgment was pending.⁴

³ The Mecklenburg County Superior Court lifted the stay of proceedings to collect the judgment by order filed April 9, 2019. (R. p. 1).

⁴ Chris is also subject to the contempt matter relative to withholding personal property from the estate.

While the Fourth Circuit relieved George of the joint and several judgment with Diane, it left in place additional judgments which are against George. *See* footnote 5.

Moreover, after the judgment of the Fourth Circuit Court of Appeals reversed the joint and several nature as to George of the verdict for breach of fiduciary duty, leaving Diane as the only judgment debtor on that cause of action⁵, Diane again fraudulently conveyed the same property back into the name of herself and George. (R. p. 224⁶). This time she used a separate and presumably uninformed lawyer to do so, rather than her cooperating Redding Jones lawyers who fraudulently assisted her before. So even if the Fourth Circuit's opinion did, in some respects, make it easier to collect the largest of the judgments against Diane, the Trust will continue to sustain damages as Ballard continues to chase the assets that George and Diane continue to attempt to conceal⁷.

CONCLUSION

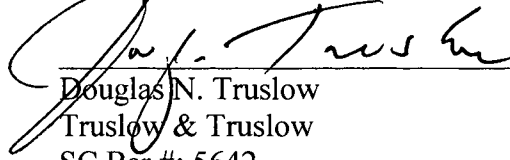
For the reasons stated in the Initial Brief of Appellants, and as further discussed herein, this Court should reverse the judgment of the circuit court and allow the claim for damages against Respondents Redding Jones, LLC, Jones and O'Brien proceed to trial.

⁵ There are other judgments against George that were not affected by the appeal. (R. p. 48, ¶¶ 5(a), (b) and (c)).

⁶ This conveyance by Diane violated the August 25, 2017 order from the Mecklenburg County Superior Court which gave full faith and credit to the South Carolina judgment, but stayed collections during pendency of the appeal to the Fourth Circuit. One of the conditions of the stay was that "neither defendant herein transfer, convey, or otherwise encumber any real property, owned jointly, or individually by either of them, to any other party". (R. p. 14, ¶ 2(a)).

⁷ The March 27, 2019 conveyance by Diane was not only a fraudulent conveyance under applicable law, it was also in direct violation of a stay that was issued by the Superior Court in Mecklenburg County which prohibited her and George from conveying assets away while the stay was in effect. The stay was not lifted until April 10, 2019, so Diane's conveyance of the downtown Charlotte commercial property from herself solely, to herself and George, was not only another fraudulent conveyance, it was in direct violation of the Stay put in place by the North Carolina Court.

Respectfully submitted,



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June 25, 2019

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
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Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
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JUN 27 2019

SC Court of Appeals

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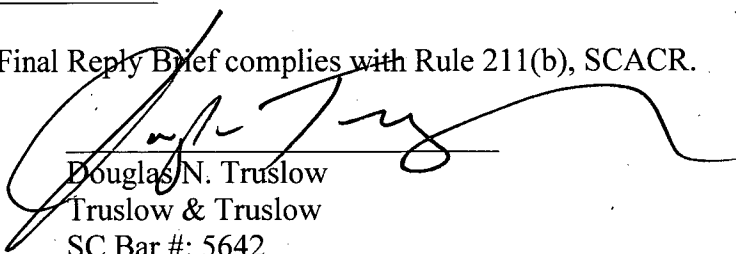
Defendants,

Of whom Redding Jones PLLC, Simon
John O'Brien, and Kent D. Jones are

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.


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June 27, 2019

Attorney for Appellant

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Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
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Of whom Redding Jones
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FINAL BRIEF OF APPELLANT

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Attorney for Appellant

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STATEMENT OF ISSUE ON APPEAL

The Trial Court Erred In Dismissing The Claim Against Respondent Lawyers Because Existing Precedent Does Not Address A Situation In Which The Lawyers Knowingly Assisted The Client In Hiding Assets While Also Defending The Client Against The Civil Matter Which Resulted In The Judgment They Were Attempting To Insulate The Client Against.

STATEMENT OF THE CASE

On November 17, 2017 Appellant Desa Ballard (hereafter “Ballard”) filed her complaint against, *inter alia*, Respondents, Redding Jones PLLC, Simon John O’Brien, and Kent D. Jones (hereafter “the Respondent lawyers”), who are lawyers in a law firm who represented Defendants Diane Combis and Chris Combis in civil matters brought by Ballard¹. While representing the Defendants, Respondent lawyers knowingly assisted Defendants in transferring and receiving assets for the purpose of secreting their assets against collection of the judgment that was eventually entered against Defendant Diane Combis.

On October 29, 2018 a hearing was held before the Honorable Judge Brian Gibbons on the Respondent lawyers’ motion to dismiss. On November 06, 2018 Judge Gibbons granted the motion to dismiss filed by the Respondent lawyers, concluding the lawyers were immune from suit.

A motion for reconsideration was timely filed and an Order denying Ballard’s motion was filed on December 3, 2018. This appeal followed.

¹ The trial court denied the motions to dismiss made by Defendants Diane Combis and Chris A. Combis.

STANDARD OF REVIEW

This appeal is from an order granting a motion to dismiss pursuant to Rule 12. The factual allegations of the complaint as assumed to be true for purposes of the motion. Bessinger v. Bi-Lo, Inc., 366 S.C. 426, 622 S.E.2d 564 (2005); Justice v. The Pantry, 330 S.C. 608, 493 S.E.2d 871 (Ct.App. 1999), *affirmed as modified* 335 S.C. 37, 496 S.E.2d 871 (1999). Therefore, the issues on appeal present only questions of law. The appellate court reviews questions of law *de novo*. Matter of Chapman, 419 S.C. 172, 786 S.E.2d 843 (2017).

FACTS

Appellant Desa Ballard (hereafter “the Trustee”) is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter “the Trust”), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013. (R.p.173, ¶ 1). She also serves as Personal Representative of the Estate of Chris Combis, which is pending in Lancaster County probate court. In re: Estate of Combis, Case No. 2012-ES-29-00415. The estate remains open.

Ballard, as trustee, brought an action against the decedent’s adult son, George Combis, and the son’s wife, Diane, to recover \$412,000.00, George and Diane had stolen from the trust prior to the death of George’s father. Ballard v. Diane Combis, Case No.

2013-CP-29-001458; *Ex Parte*: Ballard *In re*: Regions Bank v. George Combis *et al.*, Case No. 2013-CP-29-01008². Ballard's claims were consolidated in the circuit court by order of Judge Brian Gibbons in 2014. Diane removed the action to federal court, where it was tried non-jury by District Court Judge Joseph F. Anderson Jr. Ballard v. Combis, C/A: 14-1839-JFA.

By order dated September 1, 2016, Judge Anderson awarded the trust a judgment against George and Diane for a judgment in excess of \$800,000.00; the damages were largely based upon the money stolen from the trust. (R. p. 16). George and Diane appealed to the Fourth Circuit Court of Appeals, which reversed the judgment as to George (who was not the prior trustee) but affirmed the judgment as to Diane. The decision was not published but is included in the record here for context. Ballard v. Combis, Fourth Circuit Court of Appeals Case No. 16-2057, Judgment filed January 8, 2019 (R. p. 3).³

After going through a multitude of prior attorneys, on July 22, 2015, ultimately George and Diane hired Redding Jones, LLC, a law firm in Charlotte. (R. p. 175, ¶15). By order entered October 28, 2015, the senior partner of that law firm, David Redding, was admitted to practice in the United States District Court for the District of South Carolina. (Case No. 0:14-cv-01839, ECF 142). Despite an obvious ethical conflict,⁴ Redding and

² This was a foreclosure action that was pending when Ballard became successor trustee of the trust. The real property is a home in Lancaster County where two (2) of the three (3) trust beneficiaries were then living, in accordance with the terms of the trust. Ballard sold a separate parcel of real estate owned by the trust in order to reinstate the mortgage.

³ The Fourth Circuit reversed the dismissal of Personal Representative Ballard's claim against George's company Superior Tile relative to a \$230,000 note (plus interest) it owed the estate. There is currently pending Ballard's motion for Summary Judgment against George's company to recover those sums due. The amount now due is approximately \$450,000.

⁴ The inherent conflict associated with simultaneously representing Diane and their corporation was prominently noted by the Fourth Circuit in its decision at Footnote 3 therein.

his law firm served as lead counsel for both George and Diane Combis, their son and their interrelated companies in all pretrial proceedings and at the trial before Judge Anderson in District Court.

During the pendency of the proceedings before Judge Anderson being led by Redding, two lawyers in his firm, assisted George and Diane in transferring property out of their names at the same time Redding was defending George and Diane in the District court case which led to the judgment against them and in favor of the trust.

Respondent Kent D. Jones (hereafter “Jones”) prepared documents in September 22, 2015 to transfer unencumbered, valuable real property in North Carolina from George and Diane’s name to their adult son, Defendant Chris A. Combis. (R. p. 176, ¶ 19). This transaction was a “fraudulent conveyance for insufficient consideration made in an attempt to assist George and Diane in avoiding payment of a pending judgment in an action brought by the Trust against George and Diane, when [Jones] knew or should have known that his acts operated to assist George and Diane in evading appealing judgment against them in South Carolina and defraud the Trust.” (R. p. 175, ¶ 10).

In June 2016, shortly before the trial was commenced before Judge Anderson, Respondent O’Brien prepared a North Carolina Quit Claim deed with respect to unencumbered, valuable commercial property in downtown Charlotte which was owned jointly by George and Diane, into Diane’s name only. (R. p. 174, ¶ 9). Respondent O’Brien had “full knowledge that [his] acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the trust.” *Id.*

After obtaining the judgment in favor of the trust against George and Diane, Ballard discovered the fraudulent conveyances, which had been facilitated by Respondent lawyers

Redding and Jones, LLC, O'Brien and Jones. She brought this action for damages and other relief in November 2017. The Defendants included Diane, who received sole title to the North Carolina commercial property in downtown Charleston, and George and Diane's son, who received title residential property in Charlotte, as a result of the fraudulent transfers⁵.

Respondents moved to dismiss, asserting they were immune from liability for knowingly assisting their clients, George, Diane and Chris⁶, in defrauding the trust by assisting in hiding assets previously held in the individual names of their clients. Following a hearing, Judge Brian Gibbons dismissed the Respondent lawyers as parties to the action. (R. p. 9). This appeal followed.

⁵ The same law firm, Respondent Redding, Jones LLC, continues to represent Diane in proceedings in state court in North Carolina in which Ballard is seeking to collect the trust's judgments. Ballard v. Combis, Case No. 17CVS2179 (Mecklenburg County Superior Court). Since the judgment of the Fourth Circuit reversed the judgment against George, collection efforts will proceed against Diane, with the existing stay on collection being lifted. Since the Fourth Circuit reversed the lower court relative to a \$230,000 note owed by George's company Superior Tile, proceedings against him and it are being pursued in South Carolina. Redding's firm continues to represent George and his company(s) in that matter. George may have transferred ownership to Diane or his son Chris.

⁶ Redding Jones, LLC and its lawyers also represented Chris A. Combis in numerous matters, including a Rule to Show Cause in Lancaster County in which Ballard is seeking to recover personal property of the estate of Chris Combis (Chris A. Combis' deceased grandfather). Case No. 2014-CP-29-00306. That matter remains pending. Three (3) lawyers from Respondent Redding, Jones, LLC are defending George, Diane and Chris A. in the Rule to Show Cause. That matter is currently stayed by order of Circuit court Judge Brian Gibbons pending a criminal investigation he initiated against members of the Combis family for "criminal conspiracy" and perjury. (R. p. 213, lines 14 – 25).

ISSUE

THE TRIAL COURT ERRED IN DISMISSING THE CLAIM AGAINST RESPONDENTS BECAUSE EXISTING PRECEDENT DOES NOT ADDRESS A SITUATION IN WHICH THE LAWYERS KNOWINGLY ASSISTED THE CLIENT IN HIDING ASSETS WHILE ALSO DEFENDING THE CLIENT AGAINST THE CIVIL MATTER WHICH RESULTED IN THE JUDGMENT, THEY WERE ATTEMPTING TO INSULATE THE CLIENT AGAINST.

To the extent Ballard is asking the appellate court to argue against precedent, a motion seeking that relief will accompany the filing of the final appellant's brief. However, Ballard believes the issue presented here does not require the appellate court to reverse or modify existing precedent.

Other cogent ways to state the issue presented are:

- Is a lawyer allowed to knowingly and intentionally assist a client in divesting himself of assets during pending litigation, when the actions of the client in doing so are fraudulent and the lawyer knows it?
- Can a lawyer be held liable for assisting a client in committing a fraud by divesting of assets while expecting the entry of a judgment against the client when the lawyer knows the client's actions are unlawful and the lawyer's own actions facilitate the unlawful act?

In dismissing Ballard's claims against the Respondent lawyers, the trial judge correctly summarized the prior holdings of the appellate courts in Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). The trial judge relied on Stiles in ruling:

... [A]n attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party.

(R. pp. 9-10).

Aside from the inherent conflict in representing both George and Diane and their son, as well as their companies all at the same time, the motion, as argued by counsel for Respondent lawyers, overlooked the unlawful nature of the conduct by the members of the Combis family committed with the knowledge of the lawyers that they were actively assisting their clients in unlawful activity. “[W]hat they are alleging is that the lawyers conspired with their own client to convey property out of his name. Essentially it is a fraudulent transfer claim. That’s not uncommon, we see those in bankruptcy context, we see those in contexts.” (R. p. 193, lines 20-25).

Ballard’s counsel pointed out the obvious difference in this case and prior precedent. “In essence what they’ve done is they didn’t get another law firm to handle these transfers but they’ve got this amount of money that they owed.” (R. p. 203, lines 12 – 15).

In other words, the Combis lawyers knew their clients were committing an unlawful act by completing the fraudulent conveyances, and they directly facilitated and assisted their clients in the fraud so as to avoid accountability for the monies that were clearly stolen from the trust. The statement by Ballard’s counsel referenced a typical scenario, in which an unwary lawyer is called upon to assist in a property transfer, having no knowledge that the client is divesting himself of assets while anticipating a judgment being entered against him. Here, instead of referring the matter out to a lawyer(s) without obvious conflicts who might legitimately claim ignorance of the unlawful nature of the transfers, the Respondent lawyers, knew full well that the transfers of real property were unlawful and in essence part of a scam, assisted their clients in divesting the assets.

The conduct of the clients themselves could arguably be governed by North Carolina law, but it really doesn't matter whether North Carolina or South Carolina law applies to their conduct. Under the law of both states, the transfers of real property out of [George and] Diane's name into the name of Chris A. was a fraudulent transfer, especially in context. Because Respondent lawyers were defending the civil action in which the judgment was being sought (and was obtained) and despite the inherent conflict in doing so, the Respondent lawyers knew, undoubtedly better than their own clients did, that a judgment against one or more of them was likely to occur. Nonetheless, under the veil of "immunity" Respondent lawyers seek to insulate themselves from assisting their clients in violating the law. To do so is neither just nor legal.

North Carolina law "prohibits debtors from fraudulently conveying their assets to avoid creditors." N.C.Gen.Stat. § 39-15 (1984), cited in Kirkhart v. Saieed, 107 N.C.App. 293, 419 S.E.2d 580 (1992). "If the conveyance is voluntary and made with the actual intent to defraud creditors, it is void⁷." *Id.*

South Carolina law is similar. S.C. Code Ann. § 27-23-10 *et seq.*; Coleman v. Daniel, 253 S.C. 363, 170 S.E.2d 665 (1969); *See also* Tuller v. Nantahala Park Company, 276 S.C. 667, 281 S.E.2d 474 (1981), "The Statute of Elizabeth renders void any transfer of property made with an actual intent to defraud." Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (1999).

⁷ Counsel for Respondent lawyers correctly pointed out that the South Carolina courts cannot grant part of the relief Ballard sought in her complaint, that being a restoration of the real property to the name of the debtor who divested himself of the assets to avoid creditors. However, the action against the Respondent lawyers is one for damages; not equitable relief. Ballard will have to litigate in North Carolina as part of her collection proceeding to restore the real property that was transferred out of the debtor's name fraudulently (to her son), if the debtor (Diane) does not have sufficient assets in her name to satisfy the judgment.

Prior South Carolina precedent on this issue involves cases in which the lawyer was not engaged in ethically fraught misconduct in association with the client. The seminal case on this issue is Gaar v. North Myrtle Beach, 287 S.C. 525, 339 S.E.2d 887 (1986). In determining the attorney against whom liability was asserted was immune from suit, the Supreme Court concluded that the attorney was protected from immunity because he acted “in good faith.” *Id.* 339 S.E.2d 889. The Court found that “[t]o hold that an attorney who files pleadings in support of his client’s position . . . is liable to the other party in damages “would create a conflict of interest with the attorney’s obligation to properly represent and support his client.” *Id.*

In its subsequent decision on the same point, the Supreme court noted “an attorney may be held liable where he acts in bad faith or for his own personal motivations.” Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). Specifically, the Court cited to cases in other-jurisdictions which held that “an attorney may be held liable arising out a conspiracy with his client.” *Id.* at 602. Among the cases the Court examined were cases from California, Maryland, Minnesota Florida and Mississippi that held attorneys liable for “tortious acts with their clients”. *Id.*

In Stiles, the Supreme Court specifically held that “an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” The Court affirmed the trial court because “the complaint here fails to set forth sufficient facts” to establish an independent duty.

Here, the complaint does specifically state specific facts to allow the claim against the Respondent lawyers to proceed. The respondent attorneys are alleged to have known

they were assisting their clients in transferring assets for the purpose of defrauding creditors. Not only did they know, they were actively defending the proceedings that led to the judgment, all the while representing parties and taking positions filled with ethical conflicts. See by way of example Fraidin v. Weitzman, 93 Md. App. 168, 611 A.2d 1046 (1992), cited in Stiles.

Respondent lawyers were defending George while at the same time ostensibly defending Diane and others in attempting to avoid entry of the judgment in favor of the Trust. At the same time, they were seemingly throwing Diane under the litigation bus to protect George. Whether that relationship, in and of itself, rises to the level of an independent duty is moot, it certainly creates a circumstance in which a lawyer is acting with full knowledge of the wrongful nature of his client's conduct and actively assisting the client(s) in breaking the law. The Respondent lawyers participated in the wrongful activity, by facilitating the fraudulent transfers of real property. The Respondent lawyers facilitated the wrongful conduct of their clients by providing legal services which perpetrated a fraud on the trust (by divesting the pending debtors of assets from which the creditor could collect). Under these circumstances, the conduct of the Respondent lawyers may indeed be more offensive than the conduct of the debtor clients, because the Respondent lawyers knew they were providing their conflicting clients with a means to commit fraud. Arguably the clients, as laypeople, may not have known the conveyances were fraudulent or appreciated the conflicts, but their lawyers certainly did.

Moreover, under South Carolina law, a violation of the Rules of Professional Conduct "are relevant and admissible" in assessing a lawyer's duties to his clients. Smith v. Haynsworth, 322 S.C. 433, 472 S.E.2d 612, 614 (1996). Ballard would assert that the

term “relevant”, which is used in establishing a lawyer’s duties “to the legal system and a public citizen having special responsibility for the quality of justice” is the dispositive language. Rule 407, SCACR, Preamble, Section 1.

The Rules make clear that a lawyer’s obligations are not just to his clients. *Id.* There is a specific duty to opposing parties. Rule 3.4 sets forth a number of prohibitions on the conduct of lawyers as to opposing parties, which include not “willfully obstruct[ing] another party’s access to evidence or unlawfully alter[ing], destroy[ing] or conceal[ing] a document or other material having potential evidentiary value.” Rule 3.4(a).

Additionally, Rule 4.4(a) sets forth specific obligations incumbent on a lawyer as to “third parties” which would include the trust. “A lawyer should not use means that have no substantial purpose other than to . . . burden a third party. . .” By assisting their clients in divesting themselves of assets which are available for collection of a pending judgment, a lawyer intentionally burdens a third party assisting in creating difficulty in collecting a judgment.

Ballard does not suggest that the law imposes a duty upon every lawyer to insure the reasons a client is seeking to transfer assets is to avoid a pending judgment. Under normal circumstances, a conveyance is just a conveyance.

But where the lawyer is actively defending the client(s) in trying to prevent the entry of judgment against one or both of the clients, Ballard asserts that a lawyer’s knowing facilitation in assisting a client in perpetrating a fraudulent conveyance for the purpose of avoiding creditors in the event the defense is unsuccessful presents evidence of bad faith and may support a claim for conspiracy against the lawyer who assists in facilitating the fraudulent conveyance. In short, the lawyer is assisting the client in unlawful activity

because he knows why the conveyance is being made. In that circumstance, a conveyance is not just a conveyance, but an unlawful act. No one would seriously argue that a lawyer is immune for liability for knowingly assisting a client in violating the law.

Law School 101 teaches every lawyer that “it is professional misconduct to . . . engage in activity involving dishonesty, fraud, deceit or misrepresentation.” Rule 8.4(d). It is not a far stretch to impose civil liability on a lawyer for assisting a client in engaging in dishonesty, fraud, or deceit.

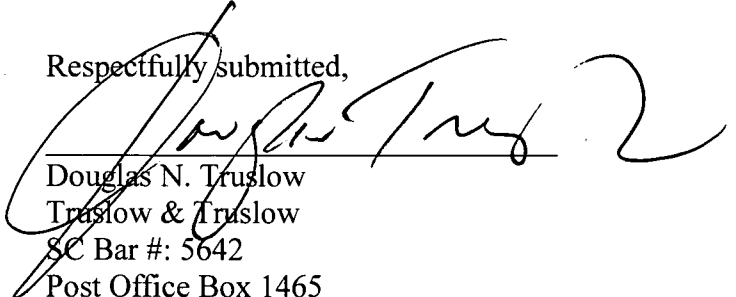
Ballard asserts that the existing precedent in South Carolina supports the assertion that, under the facts alleged here, which for purposes of the motion to dismiss are deemed to be true, existing precedent permits her claim against Respondent lawyers to continue. To the extent Ballard’s appeal seeks to argue against precedent, which she does not believe is the case, she will seek appropriate permission under the rules with her filing of her final brief.

If, however, it is determined that the issue presented here involves a novel question of law, the appellate courts clearly disfavor deciding novel questions of law on a motion to dismiss. *See Farmer v. CAGC Insurance Company*, 424 S.C. 579, 819 S.E.2d 142 (2018).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,



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June 25, 2019

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

RECEIVED

JUN 27 2019

SC Court of Appeals

Desa Ballard, as successor trustee of the
Trust of Chris Combis,

Appellant,

v.

Diane Combis, Chris A. Combis,
Redding Jones PLLC, Simon John
O'Brien, and Kent D. Jones,

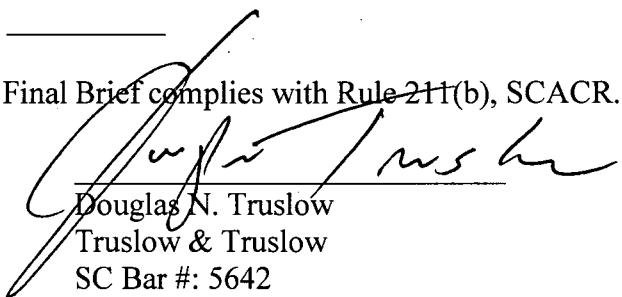
Defendants,

Of whom Redding Jones PLLC, Simon
John O'Brien, and Kent D. Jones are

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.


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June 25, 2019

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Honorable Brian M. Gibbons, Circuit Judge

Case No: 2017-CP-29-01248
Appellate Case No.: 2018-002272

Desa Ballard, as successor trustee of the Trust of Chris Combis Appellant,

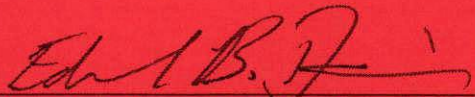
v.

Diane Combis, Chris A. Combis, Redding Jones PLLC,
Simon John O'Brien, and Kent D. Jones Defendants.

Of whom Redding Jones PLLC, Simon John O'Brien,
and Kent D. Jones are.....Respondents.

FINAL BRIEF OF RESPONDENTS

June 24, 2019



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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court correctly ruled that Appellants' civil conspiracy claim against Respondents fails because an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to a third party in the absence of an independent duty owed to such third party.
- II. As an alternative additional sustaining ground for affirming dismissal of the Appellant's claim against Respondents, whether the trial court lacked personal jurisdiction over respondents Jones and O'Brien.
- III. As an alternative additional sustaining ground for affirming dismissal of the Appellant's claim against Respondents, whether Lancaster County was an improper venue.
- IV. As an alternative additional sustaining ground for affirming dismissal of the Appellant's claim against Respondents, whether the trial court lacked subject matter jurisdiction over the action.
- V. As an alternative ground for affirming the trial court's decision to dismiss Appellant's claim against Respondents, whether Appellant's civil conspiracy claim is rendered moot by the Fourth Circuit Court of Appeals' decision in Ballard v. Combis, Case No. 16-2057, decided on January 8, 2019, in which the Fourth Circuit vacated the portion of the District Court judgment that held George Combis jointly and severally liable for breach of fiduciary duty.

STATEMENT OF THE FACTS

Appellant Desa Ballard (“Appellant”) is the successor trustee of the Trust of Chris Combis (the “Trust”) dated October 15, 2013 (the “Trust”). (R. p. 173, Complaint ¶ 1). On December 16, 2013, Appellant filed a lawsuit in Lancaster County against Diane Combis (“Diane”) and George Combis (“George”) alleging that Diane, the former trustee of the Trust, breached her fiduciary duty as trustee in transferring \$412,000 from the Trust’s assets to her joint account with George in 2007 (the “Fiduciary Duty Lawsuit”) (R. p. 57, Ballard v. Combis, Case No. 16-2057, at *5). The Fiduciary Duty Lawsuit was removed to the United States District Court for the District of South Carolina. (R. p. 175, Complaint ¶ 13). On or about July 22, 2015, George and Diane retained Joseph Pellington and David Redding, two litigators employed by Redding Jones, PLLC, to represent them in the Fiduciary Duty Lawsuit. (R. p. 193, Tr. p. 8 lines 1-2).

During the pendency of the Fiduciary Duty Lawsuit, Respondents Simon John O’Brien (“O’Brien”) and Kent D. Jones (“Jones”), who were both employed by Redding Jones at the time, each prepared a deed to transfer real property in North Carolina in which George had an interest (the “North Carolina Properties”). (R. pp. 174-75, Complaint ¶¶ 9, 10). Appellant alleges that on or about September 22, 2015, Jones prepared and recorded a deed transferring real property in Mecklenburg County, North Carolina—referred to as the Carmel Park Property—from George to Chris Combis (“Chris”) and Chris’s then wife. (R. pp. 176-77, Complaint ¶¶ 20-21). Appellant alleges that on or about May 19, 2016, O’Brien—an associate attorney at Redding Jones at the time—prepared and recorded a deed transferring George’s one-half interest in the “Brevard Street Property” in Mecklenburg County, North Carolina, to Diane, vesting sole interest in the Brevard Street property in Diane’s name. (R. pp. 177-78, Complaint ¶¶ 26-28).

Following a bench trial of Appellant's Fiduciary Duty Lawsuit against George and Diane, the District Court held that Diane had breached her fiduciary duty to the Trust and that she and George were jointly and severally liable to the Trust in the amount of \$412,000, plus prejudgment interest. (R. p. 58, Ballard v. Combis, Case No. 16-2057, at *6). Redding Jones appealed that judgment on behalf of Diane and George. On January 8, 2019, the Fourth Circuit Court of Appeals vacated the portion of District Court Judge Joseph F. Anderson's judgment that held George jointly and severally liable with Diane, thereby vacating the judgment against George. (R. p. 66, Ballard v. Combis, Case No. 16-2057, at *14).

On November 17, 2017, Appellant filed the underlying lawsuit in this matter, in which she alleged that the transfers of the two North Carolina Properties are void as fraudulent transfers. (R. p. 176, Complaint ¶ 19). Appellant's underlying Complaint in this matter alleges just one cause of action against Respondents: that they engaged in a civil conspiracy "with George to assist him in transferring real property out of his name, with the intent to deprive the Trust and other creditors of sufficient assets from which to satisfy the pending judgment against George." (R. pp. 180-81, Complaint ¶ 45). Appellant's entire Complaint is premised on the allegation that Respondents "were aware . . . of the significant likelihood that the Trust would be awarded a significant monetary judgment against George." (R. p. 176, Complaint ¶ 16). The Complaint does not allege that Respondents conspired with Diane. (See R. pp. 173-85, Complaint).

Respondents moved to dismiss Appellant's claim against them on the basis that (1) attorneys are immune from liability for civil conspiracy when the conduct complained of is within the course and scope of their legal representation of their clients; (2) the trial court lacked personal jurisdiction over Respondents; (3) the venue was improper; and (4) the trial court lacked subject matter jurisdiction over the action. (R. p. 171). The trial court granted Respondents' motion to

dismiss, citing Supreme Court precedent in holding that “an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party.” (R. pp. 9-10, Order Granting Motion to Dismiss pp. 1-2). As set forth in detail below, the Court should affirm the trial court’s ruling.

ARGUMENT

I. STANDARD OF REVIEW

A. Rule 12(b)(6) Standard

“A complaint may be dismissed when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action.” Disaboto v. South Carolina Ass’n of School Adm’rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); Rule 12(b)(6), SCRCP. A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court “must presume all well-pled facts to be true.” Gressette v. South Carolina Elec. & Gas Co., 370 S.C. 377, 379-80, 635 S.E.2d 538, 538 (2006). “On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court.” Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). A trial court’s grant of a motion to dismiss will be sustained when “the facts alleged in the complaint do not support relief under any theory of law.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (2009).

II. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT’S CIVIL CONSPIRACY CLAIM AGAINST RESPONDENTS FAILS BECAUSE AN ATTORNEY CANNOT ENTER INTO A CIVIL CONSPIRACY WITH ITS CLIENT WHEN ACTING IN THE COURSE AND SCOPE OF ITS LEGAL REPRESENTATION, AND IS OTHERWISE IMMUNE FROM LIABILITY TO A THIRD PARTY WHEN

ACTING IN THE COURSE AND SCOPE OF ITS LEGAL REPRESENTATION IN THE
ABSENCE OF AN INDEPENDENT DUTY OWED TO SUCH THIRD PARTY.

In granting Respondents' motion to dismiss, the trial court correctly concluded:

Plaintiff has failed to state a claim for civil conspiracy against defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones on the basis that an attorney cannot enter into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party.

(R. pp. 9-10, Order Granting Motion to Dismiss pp. 1-2). Appellant does not attempt to identify any conduct by Respondents that exceeds the course and scope of their legal representation of their clients and instead attempts to characterize Respondents' conduct as violating an independent duty Respondents owed to Appellant. (*See* Appellant's Br. p. 11). Additionally, Respondent seemingly argues against the South Carolina Supreme Court's precedent by insisting that attorneys can incur liability to a third party for civil conspiracy based on conduct that is entirely within the course and scope of their legal representation of their clients. (*See* Appellant's Br. p. 7). The Court should affirm the Trial Court's ruling because (1) Appellant has failed to identify any legitimate source of an independent duty owed to Appellant by Respondents; (2) Appellant's argument for a modification of South Carolina law is misplaced and unconvincing; and (3) a civil conspiracy cannot exist when the conduct challenged is an act by a single corporation acting exclusively through its employees, who are each acting within the scope of their employment.

In South Carolina, a civil conspiracy is "(1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages." Pye v. Estate of Fox, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2010). However, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C.

525, 528, 339 S.E.2d 887, 889 (1986). An attorney may be held liable for civil conspiracy only “where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). Furthermore, a civil conspiracy cannot exist when the conduct challenged is an act by “a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.” McMillan v. Oconee Memorial Hosp. Inc., 367 S.C. 559, 565, 626 S.E.2d 884, 887, (2006).

In Stiles, the Supreme Court dismissed the plaintiff’s claim for civil conspiracy against an attorney for failure to state a claim because:

Nowhere in the complaint does [plaintiff] allege in what manner [the attorney] acted outside his role as [defendant’s] attorney nor does he allege that [the attorney] breached some independent duty owed to [plaintiff]. Therefore, on the face of his complaint, the only reasonable inference is that [the attorney] was acting at all times in his capacity as [defendant’s] attorney. Under *Gaar*, [the attorney] is immune for any activities taken in his professional capacity.

Id. at 300, 457 S.E.2d at 603.

Stiles is directly analogous to the case at bar. Nowhere in Appellant’s Complaint does Appellant allege in what manner Respondents acted outside their role as attorneys for George and/or Diane or how they acted in their own self-interests. Nowhere in Appellant’s Complaint does she allege that Respondents breached some independent duty owed to Appellant or how an independent duty even exists. Preparing and recording deeds are acts squarely within the “role as attorney” that the Supreme Court stated cannot give rise to a claim for civil conspiracy against an attorney. Therefore, as the Supreme Court concluded in Stiles, the only inference that can be drawn from Appellant’s Complaint is that Respondents were acting at all times in their capacity

as attorneys. Under Gaar and Stiles, Respondents are immune from liability for any activities undertaken in their professional capacity.

On appeal, Appellant attempts to remedy the fatal flaws in her claim against Respondents by using the South Carolina Rules of Professional Conduct (the “Rules”) to try to establish that Respondents owed an independent duty. (*See* Appellant’s Br. pp. 10-11). Specifically, Appellant cites Rules 3.4(a), 4.4(a), and 8.4(d). (*See* Appellant’s Br. pp. 11-12). Appellant also cites the Preamble to the South Carolina Rules of Professional Conduct for the proposition that the Rules are relevant in establishing the duties owed by an attorney. (*See* Appellant’s Br. p. 11).

Appellant is raising this issue for the first time on appeal. This theory was never briefed, argued, or otherwise raised in any way to the trial court. Appellant is now barred from raising these new arguments due to her failure to raise them to the trial court in any form.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004).

Setting aside the fact that this was not alleged in Appellant’s Complaint or argued to the trial court - and Respondents did not violate any of the Rules cited by Appellant - this argument is also directly undermined by a closer examination of the Rules: “Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.” Rule 407, SCACR, Scope, Section 7. The Rules themselves make clear that they do not create an independent legal duty upon which Appellant could base her civil conspiracy claim against Respondents.

In the absence of a breach of an independent duty owed to Appellant by Respondents, Appellant has failed to meet the clear standards set by the Supreme Court for when an attorney can be liable for civil conspiracy in South Carolina. The trial court correctly ruled that Appellant failed to state a claim against Respondents for civil conspiracy. Accordingly, the trial court's ruling should be affirmed.

III. ALTERNATIVE GROUNDS FOR AFFIRMING THE TRIAL COURT'S DISMISSAL OF APPELLANT'S CLAIM AGAINST RESPONDENTS

If this Court is inclined to affirm the trial court's dismissal of Appellant's civil conspiracy claim based on the immunity principles set forth Stiles and Gaar, the following alternative additional grounds are moot at this point as far as Respondents are concerned. However, if this Court is inclined to reverse the trial court's ruling based on the immunity, Respondents would ask that the Court consider the alternative grounds set forth below for affirming dismissal of Appellant's civil conspiracy claim against Respondents.

South Carolina Appellate Court Rule 208(b)(2) provides: "Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)." Rule 208(b)(2), SCACR. Rule 220(c) provides that "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. As discussed by the Supreme Court in I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000):

Under the present rules, a respondent—the "winner" in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review. It also could violate the principle that a court usually should refrain from deciding unnecessary questions...

The basis for respondent's additional sustaining grounds must appear in the record on appeal, but other requirements contained in former rules and pre-1990 precedent no longer apply. Of course, a respondent may abandon an additional sustaining ground under the present rules—just as a respondent could under the former rules—by failing to raise it in the appellate brief...

The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.

Id., 338 S.C. at 419-420, 526 S.E.2d at 723 (citations omitted).

Respondents' motion to dismiss, its brief in support of that motion, and the hearing transcript all properly appear in the Record on Appeal. Each of the above-mentioned documents in the Record on Appeal contain the following alternative grounds upon which this Court may affirm the trial court's ruling: (1) lack of personal jurisdiction over respondents Jones and O'Brien; (2) improper venue; and (3) lack of subject matter jurisdiction. (R. p. 171, Motion to Dismiss p. 1; R. pp. 144-151, Brief in Support of Motion to Dismiss pp. 3-10; R. pp. 194-95, Tr. pp. 9-10). Accordingly, this Court may affirm the trial court's ruling on the additional grounds of (1) lack of personal jurisdiction, (2) improper venue, or (3) lack of subject matter jurisdiction.

IV. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT'S RULING, APPELLANT FAILED TO ESTABLISH THAT THE TRIAL COURT PROPERLY EXERCISED PERSONAL JURISDICTION OVER RESPONDENTS JONES AND O'BRIEN.

"The party seeking to invoke personal jurisdiction against a foreign [defendant] by utilization of our long-arm statute has the burden of establishing jurisdiction." Aviation Associates and Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 505, 402 S.E.2d 177, 178 (1991). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." Coggeshall v. Reprod. Endocrine Assocs., 376 S.C. 12, 16, 655 S.E.2d

476, 478 (2007). “The decision of the trial court will be affirmed unless unsupported by the evidence or influenced by an error of law.” Id.

O’Brien and Jones are citizens and residents of North Carolina. (R. pp. 174-75, Complaint, ¶¶ 9-10). O’Brien and Jones have never lived in or owned real property in South Carolina; have never held a South Carolina law license or any other South Carolina license; have never sued or been sued in South Carolina before this lawsuit; do not solicit or transact business or render services in South Carolina; do not maintain offices or employees in South Carolina; do not own, rent, lease, or otherwise use or possess any interest in real property in South Carolina; do not have a South Carolina telephone number, facsimile number, address or bank accounts; and are not registered agents for any South Carolina corporations or entities. (R. pp. 165-66, Jones Affidavit, ¶¶ 3-5, 9-16; R. pp. 168-69, O’Brien Affidavit, ¶¶ 3-5, 12-19).

A court will conduct a two-step analysis when determining whether it can exercise personal jurisdiction over a nonresident: “First, the trial judge must determine that the South Carolina long-arm statute applies. Second, the trial judge must determine that the nonresident’s contacts in South Carolina are sufficient to satisfy due process requirements.” Aviation Associates and Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 505, 402 S.E.2d 177, 179 (1991). Without the requisite minimum contacts, the South Carolina court is without the power to adjudicate the matter. Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

The court must also “find that the exercise of jurisdiction is reasonable or fair. If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.” *Id.* A defendant must “purposefully avail itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.”

Aviation Assocs., 303 S.C. at 508, 402 S.E.2d at 180. South Carolina courts look at four factors when determining if the requirements of due process are satisfied: (1) the duration of the defendant's activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State's interest in exercising jurisdiction." *Id.* To establish jurisdiction under a conspiracy theory, "it is not enough that other members of the alleged conspiracy have numerous contacts with South Carolina. Due process requires [a court] to examine each [defendant's] own contacts with South Carolina." Allen v. Columbia Financial Management, Ltd., 297 S.C. 481, 490, 377 S.E.2d 352, 356 (1988).

In Aviation Associates, the Supreme Court found that the plaintiff could not satisfy the requirement of due process. *Id.* First, the duration of the defendant's activities in South Carolina were minimal – the only conduct directed toward the state was a letter that it signed and returned at the plaintiff's request. *Id.* The Court noted that "although a single act may support jurisdiction, it must create a 'substantial connection' with the forum." *Id.* Returning one letter to South Carolina did not create such a connection. *Id.*

As an initial matter, Appellant failed to allege a basis for personal jurisdiction over Respondents Jones and O'Brien. The only statements to support purported jurisdiction over the individual Respondents (which is explicitly denied) are that O'Brien had "full knowledge that those acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust," and that Jones "knew or should have known that his acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust." (R. pp. 174-75, Complaint, ¶¶9-10). These statements are not a proper invocation of South Carolina's long-arm statute. As best as Respondents can tell, Appellant may have intended to invoke the fourth prong of the long-arm statute, "causing tortious injury or death in this State by an act or

omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State.” S.C. Code Ann. §36-2-803.

Assuming, *arguendo*, that Appellant intended to raise this as the basis for personal jurisdiction, Appellant has still not satisfied the requirement that O’Brien and Jones have sufficient minimum contacts with the State of South Carolina to comply with due process. The contact with South Carolina that Appellant alleges as the basis for personal jurisdiction over Jones and O’Brien is the preparation and recordation of two deeds in Charlotte, North Carolina, for North Carolina residents, concerning North Carolina properties. Therefore, the duration of Respondents’ activities in South Carolina is non-existent, and the character and circumstances of Respondents’ acts reveal a complete lack of any purposeful availment of the privilege of conducting activities within South Carolina. Furthermore, the inconvenience to the parties is considerable given that Respondents, potential witnesses, and relevant records are all in North Carolina. Finally, South Carolina’s interest in exercising jurisdiction over a case that alleges North Carolina attorneys participated in an unethical, fraudulent conveyance of real property situated in North Carolina for North Carolina residents is slight in comparison to North Carolina’s interest in exercising jurisdiction. Therefore, the trial court’s decision to dismiss Appellant’s claim against respondents Jones and O’Brien may be affirmed on the ground that the trial court lacked personal jurisdiction over Jones and O’Brien.

V. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT’S RULING, APPELLANT FAILED TO ESTABLISH THAT LANCASTER COUNTY IS A PROPER VENUE FOR THIS ACTION

There is no proper venue in the State of South Carolina for this action. The Code of Laws of South Carolina §15-7-10 provides in relevant part:

an action...must be tried in the county in which the subject of the action or some part of the property is situated...(1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property.

S.C. Code Ann. § 15-7-10 (emphasis added). This section applies to “any action that requires a determination in any form of such right or interest in real property.” Truck South, Inc. v. Patel, 339 S.C. 40, 45, 528 S.E.2d 424, 427 (2000). “[T]he character of an action is primarily determined by the allegations of the complaint.” Id. at 46, 528 S.E.2d at 427.

In Truck South, plaintiff Truck South argued that venue was proper in the county where the property was situated pursuant to §15-7-10. Id. at 45, 528 S.E.2d at 427. Truck South requested specific performance of a contract whereby the defendant was to make payment in installments to Truck South and, upon satisfaction, receive title to the subject land. Id. at 43, 528 S.E.2d at 426. The Court of Appeals found that Truck South was “not asking the court to determine its right in the real estate, but is simply seeking the money due under the contract,” and determined that §15-7-10 did not apply. Id., 528 S.E.2d at 428.

The Supreme Court, however, disagreed. Id. In reviewing the Amended Complaint, the Supreme Court noted that Truck South’s allegations sought to require

[defendant] Patel to specifically perform under the contract, money damages were only requested in the alternative. While transfer of money would occur if specific performance was ordered, Truck South’s request is not solely for a money judgment, it is an action to compel Patel to perform so that title, an interest in the real estate, can transfer.

Id. The Supreme Court noted:

[S]trong public policy supports a rule that requires an action for the specific performance of a land sales contract to be litigated in the county where the land is located. That is where the records are located, where the title is recorded, where *lis pendens* are filed, and where the actual property is situated.

Id. Accordingly, the Court found that §15-7-10 applied, and that it was “more reasonable...to have a rule where actions involving real estate are local actions that are litigated in the county where the land is situated.” Truck South, 339 S.C. at 47-48, 528 S.E.2d at 428.

Here, in the Prayer for Relief, Appellant requested an entry of judgment as follows:

B. Declaring the purported transfer [of] George’s interest in the Brevard Street property was void *ab initio*, and title of a one-half undivided interest in the property remains in George’s name.

C. Declaring the purported transfer of George and Diane’s interest to Chris of the Carmel Park property was void *ab initio*, and title remains in George and Diane’s name.

(R. p. 184, Complaint, p. 12). Secondly, Appellant prayed that to the extent a transfer of property cannot be set aside, that Diane and/or Chris Combis pay to the Court “the fair market value of the property so conveyed....” Id. This is analogous to Truck South – Appellant’s prayer for relief “is not solely for a money judgement, it is an action to compel...so that title, an interest in the real estate, can transfer.” Truck South, 339 S.C. at 46, 528 S.E.2d at 427-428. Appellant asked the trial court to declare that any transfer of title to the property is void, so that title will remain in the original interest owner’s name. In the event that the trial court could not set aside the transfer, the payment of fair market value for the property to Appellant is merely an “accompaniment” and “does not alter the true nature of the lawsuit.” Id. Venue is not proper in Lancaster County, nor anywhere in the State of South Carolina, and accordingly, the Court may affirm the trial court’s decision on the ground that venue was improper.

VI. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT’S RULING, APPELLANT FAILED TO ESTABLISH THAT THE COURT OF COMMON PLEAS IN LANCASTER COUNTY PROPERLY EXERCISED SUBJECT MATTER JURISDICTION OVER THE ACTION

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” Gantt v. Selph, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018). Lack of subject matter jurisdiction may be raised at any time, “and may be raised for the first time on appeal.” Id. at 338, 814 S.E.2d at 525-26. The question of subject matter jurisdiction “is a question of law.” Id. “An appellate court may decide questions of law with no particular deference to the trial court.” Id.

A South Carolina court “has no jurisdiction to try the cause on its merits in the wrong county.” Ex parte Jones, 160 S.C. 63, 158 S.E. 134, 137 (1931). As discussed above in Section IV, an action that requires a determination in any form of a right or interest in real property “must be tried in the county in which the subject of the action or some part of the property is situated.” S.C. Code Ann. § 15-7-10 (emphasis added); Truck South, 339 S.C. at 45, 528 S.E.2d at 427 (2000).

The trial court did not have subject matter jurisdiction over Appellant’s claim against Respondents because Lancaster County is the “wrong county” in which to bring this lawsuit. There is no county within South Carolina that has subject matter jurisdiction over Appellant’s claim against Respondents because the real property that is the subject of the action is located in North Carolina. Because South Carolina law states that Appellant’s claim must be tried in the county where the real property is situated, there is no court within South Carolina that has the authority to exercise subject matter jurisdiction over Appellant’s claim. Appellant has therefore failed to establish subject matter jurisdiction and this Court may affirm the trial court’s decision on the ground that the trial court lacked subject matter jurisdiction.

VII. AS AN ALTERNATIVE GROUND FOR AFFIRMING THE TRIAL COURT’S RULING, APPELLANT’S CIVIL CONSPIRACY CLAIM AGAINST RESPONDENTS IS RENDERED MOOT BY THE FOURTH CIRCUIT COURT OF APPEALS’ DECISION IN BALLARD V. COMBIS, CASE NO. 16-2057, DECIDED ON JANUARY 8, 2019, IN WHICH THE COURT VACATED THE PORTION OF

THE DISTRICT COURT JUDGMENT THAT HELD GEORGE COMBIS JOINTLY
AND SEVERALLY LIABLE FOR BREACH OF FIDUCIARY DUTY.

In the Fourth Circuit Court of Appeals case included in the Record on Appeal by Appellant that was decided after the Honorable Judge Gibbons entered his November 6, 2018 Order dismissing Appellant's claim against Respondents, the Fourth Circuit reversed the District Court's ruling that George was jointly and severally liable for the judgment entered against Diane for breach of fiduciary duty: "Ballard's argument attempts to stretch the court's inherent powers too far, and we find it unpersuasive. Accordingly, we vacate the portion of the district court's order holding George jointly and severally liable with Diane for Diane's breach of fiduciary duty." (R. p. 66, Ballard v. Combis, Case No. 16-2057, at *14). The Fourth Circuit issued its decision on January 8, 2019. With the judgment against George having been vacated, Appellant is actually in a better position as a judgment creditor than it would have been had George's one-half interest in the Brevard Street Property in Mecklenburg County, North Carolina, not been transferred to Diane.

South Carolina courts "only consider cases presenting a justiciable controversy." Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25 630 S.E.2d 474, 477 (2006). A justiciable controversy "exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." Id. A moot case "exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." Id. at 26, 630 S.E.2d at 477. If there is no actual controversy, a South Carolina court will not decide moot or academic questions. Id.

The basis for Appellant's claim against Respondents is that they engaged in a civil conspiracy "with George to assist him in transferring real property out of his name, with the intent to deprive the Trust and other creditors of sufficient assets from which to satisfy the pending

judgment against George.” (R. pp. 180-81, Complaint ¶ 45). Appellant’s entire Complaint is premised on the allegation that Respondents “were aware . . . of the significant likelihood that the Trust would be awarded a significant monetary judgment against George.” (R. p. 176, Complaint ¶ 16). The Complaint does not allege that Respondents conspired with Diane. (See R. pp. 173-85, Complaint). Now, on appeal, Appellant argues that “Respondent lawyers knowingly assisted Defendants in transferring and receiving assets for the purpose of secreting their assets against collection of the judgment that was eventually entered against Defendant Diane Combis.” (See Appellant’s Br. p. 1). Appellant did not argue that Respondents engaged in a civil conspiracy with Diane in her Complaint, her brief in opposition to Respondents’ Motion to Dismiss, or at the October 29, 2018, hearing before the Honorable Brian M. Gibbons. (See generally R. pp. 173-85, Complaint; R. pp. 79-88, Memorandum in Opposition to Motion to Dismiss; R. pp. 186-208, Tr.).

Appellant is now barred from arguing that Respondents conspired with Diane due to her failure to raise this argument to the trial court in any form.

[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004). Because Appellant may only properly argue that Respondents conspired with George, her claim is moot.

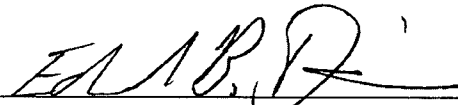
Because George is not liable for the payment of any judgment to Appellant, Appellant’s argument that Respondents conspired with him “in transferring and receiving assets for the purpose of secreting their assets against collection of the judgment” is moot. There would be no practical legal effect of a ruling that Respondents conspired with George to help him avoid payment of a judgment that he has no obligation to pay. Therefore, there is no real, substantial controversy for

this Court to resolve. Accordingly, this Court should affirm the trial court's decision on the grounds that Appellant's appeal is moot.

CONCLUSION

For the reasons stated above, the trial court's dismissal of Appellant's civil conspiracy claim against Respondents should be AFFIRMED.

Respectfully submitted, this 24th day of June, 2019.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248
Appellate Case No.: 2018-002272

RECEIVED

JUN 26 2019

SC Court of Appeals

Desa Ballard, as successor
Trustee of the Trust of
Chris Combis,

Appellant,

v.

Diane Combis, Chris A. Combis,
Redding Jones PLLC, Simon John O'Brien,
And Kent D. Jones,

Defendants.

Of whom

Redding Jones PLLC, Simon John O'Brien,
And Kent D. Jones are

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the *Final Brief of Respondents* complies with Rule 211(b) of the South Carolina Appellate Court Rules.

This the 26th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Edward B. Davis', written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2017-CP-29-01248

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JUN 12 2019

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Desa Ballard, as successor
trustee of the Trust of Chris
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Appellant,

v.

Diane Combis, Chris A.
Combis, Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones,

Defendants,

Of whom Redding Jones
PLLC, Simon John O'Brien,
and Kent D. Jones are

Respondents.

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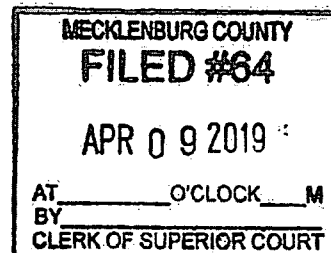
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State of North Carolina County of Mecklenburg Desa Ballard, as Successor Trustee of the Trust of Chris Combis, u/a/d 10-15-2013, Plaintiff, VS Diane Combis, Defendant
Desa Ballard, as Successor Trustee of the Trust of Chris Combis, Cross-claim /Third Party Plaintiff, VS George Combis; and Diane Combis, as former Trustee of the Trust of Chris Combis; Cross-claim/Third Party Defendants.
In the Matter of the Estate of Chris Combis: Desa Ballard, as Personal Representative of the Estate of Chris Combis, Petitioner, VS George Combis; Chris A. Combis; Diane Combis; and Superior Tile, Marble, and Terrazzo Corporation, and Superior Stone Respondents.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION
CASE # 17CVS2179

ORDER LIFTING STAY



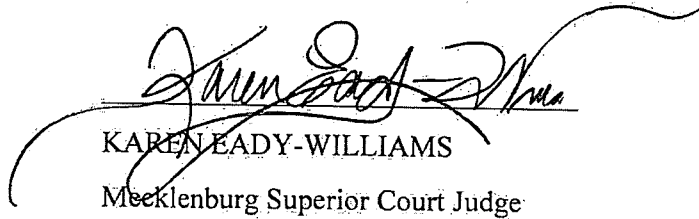
Plaintiff Desa Ballard, in her capacity as Successor Trustee of the Trust of Chris Combis (hereafter "Ballard"), moves this Court for an order lifting the stay of execution issued in this matter on August 25, 2017. The motion is granted.

Ballard obtained a judgment against George Combis and Diane Combis (hereafter "judgment debtors") from the United States District Court for the District of South Carolina, which was registered in the United States District Court for the Western District of North Carolina. She thereafter filed a motion to domesticate the judgment in this court. The judgment was registered in this Court by order dated August 14, 2017. In the same order, the Court conditionally granted a motion by the judgment debtors to stay enforcement of the judgment pending their appeal to the Fourth Circuit Court of Appeals. Defendant Diane Combis posted \$10,000.00 with the Mecklenburg County Clerk of Court on September 7, 2017.

The Fourth Circuit Court of Appeals issued its judgment in an unpublished opinion on January 9, 2019. The judgment against Diane Combis which was given full faith and credit by this Court's order of August 14, 2017 remains in place and the stay issued on August 14, 2017 is lifted. The Court retains jurisdiction to address any issues arising out of non-compliance with the conditions of the stay and to appoint a receiver on further petition by Ballard.

The motion to lift stay is GRANTED.

IS IT SO ORDERED.


KAREN EADY-WILLIAMS
Mecklenburg Superior Court Judge

April , 2019

FILED: January 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 16-2057 (L), Desa Ballard v. Diane Combis
0:14-cv-01839-JFA

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
TOTAL BILL OF COSTS:						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ **Date:** _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ **Date:** _____

FILED: January 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-2057 (L)
(0:14-cv-01839-JFA)

DESA ALLEN BALLARD, as Personal Representative of the Estate of Chris
Combis

Plaintiff - Appellant

and

LINDA COMBIS; MARY COMBIS

Intervenors/Plaintiffs

v.

DIANE COMBIS, as former Trustee of the Trust of Chris Combis

Defendant - Appellee

GEORGE COMBIS; CHRIS A. COMBIS; SUPERIOR TILE MARBLE AND
TERRAZZO CORPORATION; SUPERIOR STONE OF THE SOUTHEAST,
INC.

Respondents – Appellees

No. 16-2136
(0:14-cv-01839-JFA)

DESA ALLEN BALLARD, as Personal Representative of the Estate of Chris
Combis

Plaintiff - Appellee

and

LINDA COMBIS; MARY COMBIS

Intervenors/Plaintiffs

v.

GEORGE COMBIS; CHRIS A. COMBIS; SUPERIOR TILE MARBLE AND
TERRAZZO CORPORATION; SUPERIOR STONE OF THE SOUTHEAST,
INC.; DIANE COMBIS

Respondents - Appellants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district
court is affirmed in part and vacated in part. This case is remanded to the district
court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

Desa Ballard, as successor trustee
Of The Trust of Chris Combis,)
Plaintiff,)

Plaintiff,)

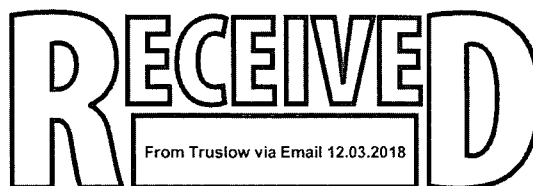
vs.)

Diane Combis, Chris A. Combis,)
Redding Jones PLLC, Simon John)
O'Brien and Kent D. Jones,)

Defendants.)

IN THE CIRCUIT COURT FOR
THE SIXTH JUDICIAL CIRCUIT

C.A. #: 2017-CP-29-01248



**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

After having considered Plaintiff's motion for reconsideration in this case and after reviewing all of the submissions and the Court's notes, applicable statutory law, case law and evidence presented, I respectfully deny Plaintiff's motion.

Oral argument is not necessary.

AND IT IS SO ORDERED.

Chester, SC

November 20, 2018

Brian M. Gibbons
Circuit Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CASE NO. 2017-CP-29-01248

Desa Ballard, as successor trustee of The)
Trust of Chris Combis,)

Plaintiff,)

vs.)

Diane Combis, Chris A. Combis, Redding)
Jones PLLC, Simon John O'Brien, and)
Kent D. Jones,)

Defendants.)

PROPOSED ORDER

THIS MATTER came before the Court for hearing on October 29, 2018, upon defendants' respective motions to dismiss. Edward B. Davis appeared as counsel for defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones. Zach Snyder made a limited appearance as counsel for defendants Diane Combis and Chris A. Combis. Douglas N. Truslow appeared as counsel for Plaintiff.

Upon consideration of the court record, arguments of counsel, and governing law, the Court finds, in its discretion, that the motion to dismiss filed by defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones should be granted for the reasons set forth below, and the motions to dismiss filed by Diane Combis and Chris A. Combis, respectively, should be denied.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- (1) The motion to dismiss filed by defendant Diane Combis is denied.
- (2) The motion to dismiss filed by defendant Chris Combis is denied.
- (3) Plaintiff has failed to state a claim for civil conspiracy against defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones on the basis that an attorney cannot enter

into a civil conspiracy with its client when acting in the course and scope of its legal representation, and is otherwise immune from liability to third parties when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party. *See Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). The civil conspiracy claim is hereby dismissed with prejudice as to defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones.

(4) As to Plaintiff's motion to amend its complaint, filed on October 26, 2018, the Court's dismissal of the civil conspiracy claim against defendants Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones renders moot Plaintiff's motion to amend, and said motion is hereby denied.

This the ____ day of _____, 2018.

The Honorable Brian M. Gibbons



Lancaster Common Pleas

Case Caption: Desa Ballard, as sucessor trustee of The Trust of Chris Comb VS
Diane Combis , defendant, et al
Case Number: 2017CP2901248
Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2018-11-05 16:06:02 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

IN THE MATTER OF ESTATE)
OF CHRIS COMBIS,)

Desa Ballard, as Personal Representative)
of the Estate of Chris Combis,)

Petitioner,)

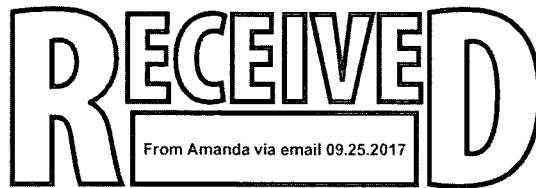
vs.)

George Combis, Chris A. Combis,)
Diane Combis,)

Respondents.)

IN THE COURT OF COMMON PLEAS
Case No. 2014-CP-29-00306

ORDER AND RULE TO SHOW
CAUSE TO GEORGE
COMBIS, DIANE COMBIS
AND CHRIS A. COMBIS

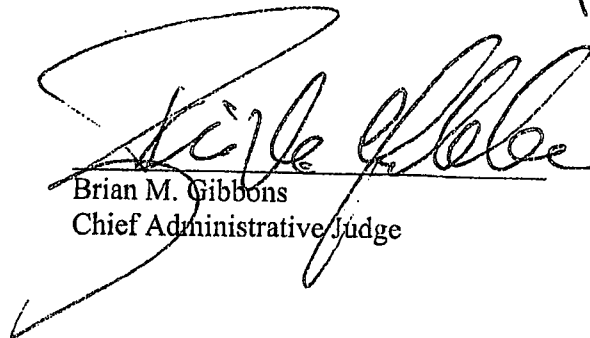


Having read the Verified Petition for Rule to Show Cause filed on August 22, 2017, it is ordered that George Combis, Diane Combis and Chris A. Combis appear before this Court on November 13, 2017 at 4:30 o'clock at the Lancaster County Courthouse, Courtroom A, to show cause, if any they can, why they should not be held in ~~criminal contempt~~ ^{agreed} contempt of court, or why other appropriate sanctions should not be ~~assessed~~ ^{assessed} against them, for ^{agreed} violating the Order to Compel issued by this Court on 8/9/17.

Because the Petition seeks entry of an order of criminal contempt, among other relief, Respondents George Combis, Diane Combis, and Chris A. Combis are each hereby advised of their right to counsel at the hearing, and of their right not to testify at the hearing.

IT IS SO ORDERED.

August 30, 2017


Brian M. Gibbons
Chief Administrative Judge

2017 SEP -5 PM 3:58
CLERK OF COURT
LANCASTER, SC

FILED

State of North Carolina

County of Mecklenburg

Desa Ballard, as Successor Trustee of the
Trust of Chris Combis, u/a/d 10-15-2013
Plaintiff

VS

Diane Combis,
Defendant

Desa Ballard, as Successor Trustee of the
Trust of Chris Combis
Cross-Claim/Third Party Plaintiff

VS

George Combis, and Diane Combis, as
former Trustee of the Trust of Chris
Combis
Cross-claim/Third Party
Defendants.

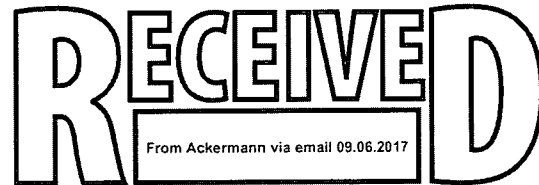
In the Matter of the Estate of Chris
Combis:

Desa Ballard, as Personal Representative
of the Estate of Chris Combis
Petitioner

VS

George Combis; Chris Combis; Diane
Combis; and Superior Tile, Marble, and
Tarrazzo Corporation, and Superior Stone
Respondents.

2017 AUG 25 11:11 AM IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE # 17CVS2179



ORDER

THIS CAUSE coming on to be heard and being heard on May 23, 2016 on plaintiff's Motion to Enforce Judgment and defendants' Motion for Relief from Enforcement of Foreign Judgment, before the undersigned Judge, and C.O. (Ladd) Ackerman, Jr., Esq., appearing on behalf of the plaintiff and David G. Redding, Esq. appearing on behalf of the defendants, and the Court hearing the evidence presented by both parties makes the following:

FINDING OF FACT

1. That this action is based on a judgment entered by the United States District Court for the District of South Carolina.

2. That the South Carolina judgment is currently under appeal, but an Order was entered in the United States District Court for the District of South Carolina on January 12, 2017 allowing for the registration of the South Carolina Judgment to the United States District Court, Western District of North Carolina.

3. That plaintiff filed a Notice of Filing in this Court on February 8, 2017 to domesticate the South Carolina judgment to North Carolina. The amount of the Judgment as of September 1, 2016 is \$516,176.59, plus interest of \$334,599.97, for a total judgment of \$850,776.56. Defendants were served with the Notice of Filing.

4. Thereafter, on or about March 3, 2017, defendants filed a Motion for Relief From Enforcement of Foreign Judgment.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the persons and subject matter of this action.
2. The Plaintiff is given full faith and credit of their South Carolina judgment and the defendants, George Combis, and Diane Combis, owe the plaintiff a total of \$850,776.56 as of September 1, 2016.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the South Carolina judgment be recorded and enforced in this State in the same manner as any judgment of this State and that said judgment shall constitute a lien upon any property owned by the defendants in any North Carolina County;
2. That execution of the judgment be stayed pending the outcome of the appeal in the United States District Court for the District, on the following conditions:
 - (a) That neither defendant herein transfer, convey, or otherwise encumber, any real property, owned jointly, or individually by either of them, to any other party;
 - (b) That neither defendant herein transfer, assign, convey, dispose of, secrete or destroy, or otherwise encumber, any stock ownership and/or interest in any business;
 - (c) That neither defendant herein transfer, assign, convey, dispose of, secrete or destroy, or otherwise encumber, any personal property, owned jointly, or individually by either of them, other than in the ordinary course of business or in the ordinary course of their every day affairs,

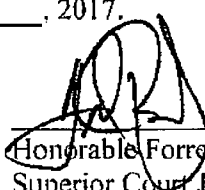
and in no event in an amount greater than \$5,000.00;

(d) That defendants shall post a bond, in the form of cash or surety, in the amount of \$10,000.00, in a manner that is acceptable to the Clerk of Court of Mecklenburg County.

(e) That this matter be brought before this court at a later date at the conclusion of the appeal of the South Carolina judgment to reevaluate and reconsider this stay of execution.

IT IS SO ORDERED.

This the 14 day of August, 2017.



Honorable Forrest D. Bridges
Superior Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Desa Ballard, as Successor Trustee of the
Trust of Chris Combis, u/a/d 10-15-2013,

Plaintiff,

v.

Diane Combis,

Defendant.

C/A: 0:14-1839-JFA

Desa Ballard, as Successor Trustee of the
Trust of Chris Combis,

Cross-claim Plaintiff,

v.

George Combis; and Diane Combis, as
former Trustee of the Trust of Chris Combis,

Cross-claim Defendants.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND ORDER**

In the Matter of the Estate of Chris Combis:

Desa Ballard, as Personal Representative of
the Estate of Chris Combis,

Petitioner,

v.

George Combis; Chris A. Combis; Diane
Combis; and Superior Tile, Marble, and
Terrazzo Corporation,

Respondents.

Linda Combis and Mary Combis,	)
	)
Plaintiffs,	)
	)
v.	)
	)
George Combis and Diane Combis	)
(Individually and as former Trustee of the	)
Revocable Trust Agreement for Chris	)
Combis),	)
	)
Defendants.	)
	)

I. INTRODUCTION AND PROCEDURAL BACKGROUND

These four consolidated cases all pertain to a dispute between siblings regarding financial transactions involving their father. At the Court's suggestion, the parties consented to a bench trial due to the complexity of the factual and legal issues presented.

The Court received testimony in a five-day trial, heard extensive closing argument, and took the matter under advisement. The Court then determined that it needed additional evidence on one issue and reopened the hearing for additional testimony. The Court also directed the attorneys to exchange and submit proposed findings and conclusions, some of which have been adopted in this Order.¹

Before delving into the myriad of factual and legal issues presented in this case, the Court is compelled to make a few general observations. The four lawsuits resolved in this Order are but a portion of twelve lawsuits filed by the three adult children of Chris Combis

¹ Although the Court has adopted some of the submissions from each party, the final product represented by this Order constitutes the Court's own independent determination of the issues.

and his wife, Jessie Combis. As will be seen, the Combis family enjoyed considerable financial success in the decorative tile and stone business in Charlotte, North Carolina. Unfortunately, as is often the case with closely-held family corporations, the partners were better at their craft than they were with their corporate record-keeping. This lack of documentation, coupled with testimony regarding faded memories of financial transactions that occurred nearly a decade ago, is what prompted this Court to suggest the bench trial that commenced on July 12, 2016.

Having thus invited the family to drop this difficult and emotion-laden controversy into its lap,² the Court now proceeds to do its best to untangle and resolve the issues presented, with the observation that the failure to follow even rudimentary corporate formalities and reliance upon “home drawn” financial documents often sow the seeds of controversies that tax the ability of the legal system to achieve justice years later.

Chris Combis, referred to during the trial as “Pop” (to distinguish him from his grandson of the same name and who was a party at one time to one of these actions) was the patriarch of the family who formed and operated Superior Tile, Marble, and Terrazzo, Inc. (“Superior Tile”) headquartered in Mecklenburg County, North Carolina. Eventually, Pop’s son, George,³ assumed a position with Superior Tile and, before Pop’s death, took over ownership of the company.

² The case was mediated three times before three different mediators. All of these efforts were unsuccessful.

³ For ease of reference, all parties agreed to refer to Chris Combis as “Pop” and the other family members by their first names. The Court will continue these references herein.

Among the projects for which Superior Tile provided stone and tile work were the Charlotte Panthers Stadium and the headquarters for Bank of America, both in Charlotte. At one point, George even bragged that it would be easier to produce a list of buildings in Charlotte that Superior Tile had *not* worked on than to provide a list of those for which the company *had* performed work. Suffice it to say that Superior Tile was a successful business enterprise.

George is married to Diane, with whom Pop had a close relationship. Pop also had two daughters, Linda and Mary, both of whom counted on Pop for much of their financial support.

Importantly, Pop and George did not maintain complete business records and constantly moved money around from the company to the various family members. Further, Pop eventually transferred ownership of Superior Tile to George. Additionally, George and Diane began a new company in Diane's name to take advantage of her status as a member of a minority. Thus, two corporate entities are involved in these actions.

Pop died on February 3, 2009, and, shortly thereafter, the harmony that had existed was gone and the litigation began.

As noted previously, the Court's fact-finding process has been made more difficult due to the lack of adequate documentation⁴ for the disputed financial transactions as well as

⁴ Except for corporate stock certificates which were ordered to be produced by the Court in mid-trial, not one corporate record was introduced as a trial exhibit. While the record is replete with documents such as hand-written letters and emails to Linda seeking to remove her from her house, or at least force her to make her mortgage payments, the Court was not provided with a single page of corporate board minutes, (continued...)

several witnesses' professed lack of memory regarding key events. "I don't recall" was a frequent response to many pertinent questions.

Regarding the documentation of transactions in the Trust Account, George and Diane produced a ledger sheet containing cryptic entries that are of little help. As to backup documentation, Diane, when pressed, frequently said, "I gave that to my lawyer." Such documentation was never produced at trial. The "lawyer" being referred to was one or more of the previous attorneys who have represented George and Diane during the course of their litigation. At one point during the trial, this Court interrupted the proceedings to inform Diane that merely incanting the phrase "I gave it to my [previous] lawyer" was not a substitute for producing relevant documents during discovery. Indeed, one of her previous attorneys, Charles Bridgmon ("Bridgmon"), testified for George and Diane at trial. For these reasons, the Court announced that, following the close of the trial testimony, the Court would keep the record open for an additional two days to allow the documents allegedly given to previous counsel to be retrieved from the attorneys and produced to this Court. No such documents were ever produced.

Additionally, George was occasionally less than forthcoming. For example, one issue in the case was the extent to which George contributed monies that went into a joint account with Pop. When pressed for documentation at his deposition (which deposition was

⁴(...continued)

corporate resolutions, or other documents that would help explain the various actions taken by Superior Tile, some of which are at the center of this litigation. Additionally, the Chris Combis Revocable Trust never filed any tax returns while Diane was Trustee.

published at trial), George responded, “Well, not being smart, I don’t have to show anybody where it came from.”

Finally, at times, George’s trial testimony was internally inconsistent. When asked about what happened to the hotly disputed \$412,000.00 that was allegedly loaned to him from the Trust managed by his wife, George testified (on the fourth day of trial) that approximately \$150,000.00 of it was used for the benefit of his sister Linda, to wit: a \$60,000.00 horse barn; a \$20,000.00 fence; a \$63,000.00 Suburban; a \$20,000.00 tractor; a \$12,000.00 “Gator” all-terrain vehicle; and \$15,000.00 worth of stone and tile. By the next morning of trial, however, George had retreated from this position and acknowledged on cross-examination that none of these items were purchased with the Trust monies, if they had been purchased at all.

One other threshold issue bears mention. Mindful of its obligation to police its own jurisdiction, this Court inquired of the parties whether any or all of the claims asserted in this action (which was removed to this Court on the basis of the diverse citizenship of the parties) should be dismissed because of the so-called “probate” exception to federal jurisdiction.

Counsel for Desa Ballard, the Personal Representative and Successor Trustee, argued, as she had since removal to this Court, that these cases belonged in state court. The two remaining groups of litigants, George and Diane, as well as Linda and Mary, suggested jurisdiction was proper in this federal Court.

For the reasons stated in open court, this Court determined that the ownership question for certain items of personal property (such as rare coins, antiques, firearms, and

watches) were probate court matters and, therefore, this Court declined to hear testimony regarding such personal property.⁵

All remaining claims, which distilled to their essence are contract-based claims between diverse parties, were held to be properly before this Court. At the risk of oversimplification, these claims are:

- (1) The \$230,000.00 Note;
- (2) The \$412,000.00 “Loan” and related Breach of Fiduciary Duty Claim;
- (3) The \$49,564.09 Missing Certificate of Deposit; and
- (4) The Allocation of Desa Ballard’s Fees as Trustee of the Trust.

After receiving the testimony, carefully considering all the evidence, weighing the credibility of the witnesses, reviewing the exhibits and briefs, and studying the applicable law, this Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52. The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

II. FINDINGS OF FACT

1. On March 11, 2003, Pop executed his last will and testament (the “Will”) and established the Chris Combis Revocable Trust (the “Trust”) under North Carolina law.

⁵ In so holding, the Court relied upon and applied *Lee Graham Shopping Center v. Estate of Kirsch*, 777 F.3d 678 (4th Cir. 2015). *See also Stern v. Marshall*, 564 U.S. 462 (2011).

2. Pursuant to the Will, the property in his estate (the “Estate”) at the time of his death would “pour-over” into his Trust.

3. Pop designated himself as the original Trustee of the Trust.

4. The Trust beneficiaries were his three adult children George, Mary, and Linda. All three children were officers of Superior Tile and, at various times, received money as salary or director’s fees, although the record is not clear regarding these payments.

5. At the time Pop established the Trust, he owned one house (the “Lochridge House”) located at 718 Lochridge Road in Charlotte, North Carolina. The Lochridge House was unencumbered by a mortgage.

6. In 2003, Pop purchased a house and real property (the “Horseshoe House”) located at 9313 Horseshoe Circle in Fort Mill, South Carolina. Although Pop and George signed the mortgage for the Horseshoe House, George did not sign the note that required \$1,289.56 per month payments.⁶

7. Mary resided in the Lochridge House from prior to the creation of the Trust until the house was sold in 2013. Title was never placed in her name.

8. Linda has resided in the Horseshoe House from the time Pop purchased it until the present day. Title was never placed in her name.

9. With the exception of one \$1,289.56 mortgage payment made by Linda on the

⁶ George Dep. p. 34.

Horseshoe House, neither sister has paid any consideration for their occupation of either house.

10. George has never resided in either the Horseshoe House or the Lochridge House.

11. On July 14, 2005, Pop and Superior Tile entered into a loan agreement (the “\$230,000.00 Note”), under which Pop agreed to provide Superior Tile with the use of \$230,000.00. In return, Pop received a note, obviously drafted by a non-lawyer, which reads as follows:

July 14, 2005

RE: Loan Agreement

This agreement is between CHRIS COMBIS and SUPERIOR TILE AND MARBLE CORPORATION.

CHRIS COMBIS agrees to loan SUPERIOR TILE AND MARBLE \$230,000.00.

The terms and conditions are as follows:

- 1) In exchange for the use of \$230,000.00, SUPERIOR TILE AND MARBLE agrees to the following:
 - a) Pay interest quarterly at the rate of 7%.
 - b) For the life of the loan, SUPERIOR TILE AND MARBLE agrees to continue to pay MARY COMBIS and LINDA COMBIS a salary of \$150.00 per week.
 - c) SUPERIOR TILE AND MARBLE agrees to pay the personal insurance for MARY COMBIS and LINDA COMBIS.
 - d) SUPERIOR TILE AND MARBLE agrees to pay the automobile insurance (one vehicle each) for MARY COMBIS and LINDA COMBIS.

This loan will be terminated 30 days after the death of CHRIS COMBIS and the monies will be put back in his estate.

Accepted: s/ CHRIS COMBIS

SUPERIOR TILE & MARBLE CORPORATION

Accepted: s/ GEORGE C. COMBIS, President

12. On April 21, 2006, Pop executed a First Amendment and Restatement of his Trust, replacing himself with Diane as Trustee. Both Linda and Mary consented to Diane's appointment.

13. On or about the time of the naming of Diane as Trustee, Diane and Linda met with Paul Hattenhauer ("Hattenhauer"), the lawyer who drafted Pop's Will and the Trust, regarding Diane's duties as the new Trustee. Hattenhauer also provided Diane with a book describing the duties and responsibilities of a trustee.

14. George and Pop were co-owners with right of survivorship of a Wachovia Securities investment account (the "Joint Account").⁷ On April 30, 2006, the value of the funds held in the Joint Account was \$387,590.14.

15. During the month of April 2006, Pop withdrew the entirety of the funds held in the Joint Account without George's consent and exercised sole control over the funds.

16. On September 11, 2006, Pop conveyed the Lochridge House into the Trust.

17. On October 13, 2006, Pop conveyed the Horseshoe House into the Trust.

18. On April 18, 2007, Pop filed a lawsuit against George, Diane, and Superior Tile claiming that Superior Tile was in breach of the \$230,000.00 Note and prayed for the recovery of \$230,000.00, together with interest.

19. On July 27, 2007, Pop caused a check in the sum of \$417,359.01 to be drafted from an account of which he was the sole owner.

⁷ The account number is not given in accordance with existing court policy regarding bank records and the like.

20. On August 1, 2007, Pop and Diane deposited the \$417,359.01 check in a Park Sterling Bank account owned by the Trust.

21. On August 2, 2007, Pop filed a voluntary dismissal without prejudice of the North Carolina lawsuit regarding the \$230,000.00 Note.

22. Pop never re-filed the North Carolina lawsuit.

23. On August 2, 2007, George told Diane to withdraw \$412,000.00 from the Park Sterling Bank account and provide the funds to him.

24. Diane did as George directed and the \$412,000.00 was deposited into a joint account belonging to both George and Diane. The account was tied to a line of credit secured by their home.

25. There was no contemporaneous documentation about the \$412,000.00 other than noting it as a "withdraw" in the account's hand-written ledger.

26. On April 24, 2008, Pop executed a Second Amendment modifying his Trust, but leaving Diane as the sole Trustee.

27. Pop died on February 3, 2009. No steps were taken by any family member to open or probate the Estate.

28. After Pop's death, George, personally or through Superior Tile, began paying the mortgage on the Horseshoe House. He made a total of 43 payments of \$1,289.56 between Pop's death and September of 2012. This totals \$55,451.08 paid for benefit of the Trust.

29. On August 31, 2009, George sent Linda a letter advising her that he expected her to begin paying the Horseshoe House mortgage by September of 2010.

30. On May 4, 2012, Mary wrote Diane a letter requesting an inventory of assets in Pop's Estate and Trust.

31. On August 22, 2012, over three years after Pop's death, Mary and Linda filed a petition in Lancaster County, South Carolina Probate Court seeking their appointment as personal representatives of Pop's Estate.⁸

32. On May 2, 2013, with the consent of Mary, Linda, and George, the Probate Court appointed Plaintiff Desa Ballard ("Ballard") as the Personal Representative of the Estate and ordered her to file an inventory of the Estate by July 31, 2013.

33. On July 23, 2013, Regions Bank commenced a foreclosure action on the Horseshoe House. Bridgmon, an attorney Diane hired for the Trust, consented to the foreclosure. Bridgmon acted to accelerate the foreclosure proceedings.

34. On August 20, 2013, Peter J. Nosal ("Nosal"), counsel of record for Mary and Linda, sent an email to Ballard suggesting that the dispute between the siblings would settle only if Ballard included a claim on the inventory that Pop still had an interest in Superior Tile, signifying that George was not the sole owner.

35. On September 9, 2013, Mary, Linda, George, and Diane agreed to the substitution of Ballard for Diane as Trustee.

36. On October 18, 2013, Ballard issued the inventory for the Estate, which included, as assets of the Estate, stock in Superior Tile and the \$230,000.00 Note.

⁸ The original will could not be located, but the Probate Judge accepted a photocopy.

37. On November 5, 2013, George and Diane filed an action in Mecklenburg County, North Carolina seeking the removal of Ballard as Trustee.

38. On November 5, 2013, George and Diane filed an action in Mecklenburg County, North Carolina seeking a declaratory judgment that George owned the entirety of Superior Tile.

39. On November 11, 2013, Ballard filed an action against Diane in Lancaster County, South Carolina alleging that Diane had breached her fiduciary duties as Trustee.

40. The Horseshoe House was scheduled to be sold at a foreclosure sale on or about December 2, 2013. Ballard promptly acted to set aside the foreclosure. She was successful in this effort, thereby preserving one of the Trust's assets.

41. On December 31, 2014, the Mecklenburg County Superior Court issued a declaratory judgment that George is the sole shareholder of Superior Tile.

42. Diane admitted that, on November 8, 2007, there was a Certificate of Deposit ("CD") on deposit at First Citizens Bank that was part of the Trust. The parties referred to it as "the \$50,000 CD," but Ballard's testimony was that the amount of the CD was actually \$49,564.09. Acknowledging her signature on the check used to purchase the CD, Diane professed not to know what happened to this money. When pressed further, she responded, "The paper trail would know where it is." When asked about the existence of the paper trail, Diane once again said, "I've given them to my lawyer." Yet it is undisputed that no such paper trail was furnished during discovery or in response to this Court's keeping the record open after trial to allow such records to be produced.

43. As noted previously, George, Diane, Linda, and Mary eventually agreed to allow Ballard, a widely respected South Carolina attorney with a forensic accountant on her staff, to serve as both Personal Representative of the Estate and as Successor Trustee to the Trust.

Regarding payment to Ballard, the Appointment Agreement provides:

The Beneficiaries shall compensate Ballard and her staff for her service as Successor Trustee under the terms of the Trust documents at their regular hourly rate. To the extent either the Estate of Chris Combis or the Revocable Trust of Chris Combis do not contain sufficient funds to fully compensate Ballard and her staff for Ballard's services as Successor Trustee, each Beneficiary shall be responsible for one-third of the compensation due Ballard and her staff earned as Successor Trustee.

44. Testimony at trial indicated that the agreement to pay Ballard at her standard hourly rate (instead of the statutory amount for fiduciaries in South Carolina which is generally five percent of the liquid assets) was based upon the assumption that an hourly fee payment would have been less than the statutory percentage. Quite obviously, no party to the Appointment Agreement foresaw the controversies and disagreement that lay ahead.

45. Now, after years of litigation, various parties ask this Court to re-allocate the fees due Ballard and to take into account what are said to be inappropriate or frivolous positions taken by various other parties, which served to drive up Ballard's fees unnecessarily. Additionally, George and Diane take the position that the overall fee request itself is excessive and should be reduced by the Court, irrespective of any re-allocation of the parties' agreement.

46. It should be noted at the outset that the plain language of the Appointment

Agreement provides that each of the three Combis children (George, Linda, and Mary) would bear one-third of Ballard's fees. The document does not contain a provision allowing for a re-allocation of the fees based upon later vexatious litigation. Nor does the agreement provide for later judicial review of the fees for excessiveness.

47. Thus, the Court's initial inclination was to strictly interpret the agreement and leave the parties in the position they contractually agreed to: One-third of Ballard's fees to be paid by each child, with no judicial review for excessiveness.⁹

48. Upon due reflection, however, the Court is now persuaded that some modification of the fees is appropriate. This is based primarily upon the covenant—implied by law in both South Carolina and North Carolina—of good faith and fair dealing in the execution of contracts. (See Conclusion of Law No. 4). Therefore, for the reasons which follow, the Court will adjust the amount due to Ballard by the parties to these cases.¹⁰

A. Objections

49. The Court has reviewed and examined the entries of Ballard's time sheets. In addition, the Court has reviewed the specific and general objections made by George and Diane and evaluated their claim that Ballard's fees are excessive and unreasonable.

50. Based upon the evidentiary hearing, Ballard's time sheets, and the objections

⁹ The Appointment Agreement states the beneficiaries—George, Linda, and Mary—will contribute one-third each to compensate Ballard and her staff for services rendered as Successor Trustee to the extent either the Estate or Trust do not contain sufficient funds to do so.

¹⁰ The remaining outstanding fees are to be compensated in accordance with the Appointment Agreement.

made by George and Diane, the Court agrees that a portion of Ballard's fees are overstated with regard to the unsuccessful effort to assert an estate ownership in Superior Tile. Therefore, this portion of her fees shall be reduced by twenty-five hours at Ballard's hourly rate of \$400.00, resulting in a \$10,000.00 reduction of fees due. The Court finds that all other aspects of Ballard's fees (although some fees may have been categorized differently) were reasonable.¹¹

51. The Court will discuss the reduction of fees due to Ballard's attempt to re-litigate the question of personal jurisdiction in the stock ownership litigation *infra*.

B. The Initial Transfer of the Estate Checking Account

52. Ballard was appointed Successor Trustee of the Trust in September 2013. Immediately upon her appointment, she sought to gain possession of the \$3,174.27 in the Estate checking account from her predecessor, Diane, or Diane's attorney, Bridgmon. In a clear testament to the acrimony between the family members, it took Ballard the better part of two years to accomplish this task.¹²

53. Ballard's records and testimony reflect that she incurred fees totaling \$4,717.50 on this aspect of the litigation,¹³ and the Court finds these fees to be reasonable.

¹¹ The Court recognizes that the attorney's fees for Ballard's counsel in North Carolina are not before it, but the Court takes this opportunity to state that it is troubled by the North Carolina counsel's fees and, based upon its knowledge of the case, believes the North Carolina counsel's fees to be excessive.

¹² It should be emphasized that the misbehavior by George and Diane occurred while one or more of their previous attorneys represented them. None of it occurred under the watch of present counsel, David G. Redding.

¹³ On this and all subsequent fee calculations, the Court has carefully examined the time sheets and
(continued...)

Accordingly, George and Diane must jointly and severally bear this portion of Ballard's fees.

C. The Horseshoe House Foreclosure Set Aside¹⁴

54. As noted previously, one of the Trust assets was a residence located on Horseshoe Road in Lancaster County, South Carolina in which Linda, Mary, and (for a short time before his death) Pop resided.

55. On July 23, 2013, before Ballard was appointed and while Diane was still Trustee, Regions Mortgage had commenced a foreclosure action upon the Horseshoe House. Diane, in her capacity as Trustee, retained Bridgmon to represent the Trust and defend the foreclosure. Bridgmon also represented George who had signed the mortgage.

56. Ballard and Nosal (counsel for Linda and Mary) asked Bridgmon about the foreclosure, but he never forwarded the pleadings or otherwise provided information regarding the foreclosure.

57. Bridgmon did not file an answer on behalf of either defendant, and a default judgment was entered on the foreclosure claim by Regions Mortgage. Bridgmon attended the mortgage foreclosure hearing on October 14, 2013, before Lancaster County Special

¹³(...continued)
approved the time submitted by Ballard, marked as "Plaintiff's Exhibit 268." The Court also finds the hourly rate for the attorneys and support personnel to be reasonable.

¹⁴ The foreclosure set aside claim was initially asserted by Linda and Mary in a state court action. George did not timely respond and, thus, was in default on that claim while it was pending in state court. Linda and Mary then intervened in the actions before this Court to once again assert their foreclosure set aside claim. Present counsel for George (who was not the attorney who represented George in the state court action) conceded that George is in default on this particular component of the Ballard fee dispute issue; but insisted that George had a right to participate in the hearing on damages as to this claim. Even if George were not in default on this claim, the Court would have found against him on the liability question.

Referee Philip Wright. Bridgmon consented to foreclosure at the hearing and a foreclosure sale date was set for December 2, 2013. Because the defendants were in default, no appearance by Bridgmon was necessary. However, by appearing and consenting to the foreclosure, Bridgmon assisted Diane and George in furthering George's plan to purchase the Horseshoe House.¹⁵

58. After consenting to the foreclosure and the issuance of a foreclosure order for the Horseshoe House, Bridgmon delivered to Ballard the fully executed Successor Trustee Agreement signed by George, Diane, Linda, and Mary, and their respective counsel, consenting to Diane's resignation as Trustee and appointing Ballard as Successor Trustee. Bridgmon did not tell Ballard that the foreclosure hearing had occurred.

59. Upon her receipt of the fully executed Successor Trustee Agreement, Ballard signed it on October 15, 2013, and assumed the duties of Successor Trustee. Bridgmon provided her with a copy of the foreclosure complaint on October 8, 2013,¹⁶ but failed to respond to her inquiry as to the status of the foreclosure.

60. Upon becoming Successor Trustee, Ballard learned that the Horseshoe House was scheduled to be sold at a foreclosure sale on December 2, 2013. Ballard filed appropriate pleadings and was successful in setting aside the foreclosure and negotiating a reinstatement

¹⁵ George apparently wanted to purchase the Horseshoe House at the foreclosure sale to give him more leverage with Linda and Mary who were residing there at the time.

¹⁶ The Successor Trustee Agreement recites that Ballard would assume her duties as of September 9, 2013. However, Ballard testified that she did not have any authority to act as Successor Trustee until a written agreement was executed to that effect. The Trust Agreement expressly prohibits a successor trustee from acting until delivery of a written instrument executed by those with power of appointment to that effect. Article XI, Section 4.

of the mortgage. The Special Referee found that Ballard had a meritorious defense to the foreclosure.

61. With no funds in the Trust available, Ballard elected to sell another property owned by the Trust, i.e., Mary's house on Lochridge Road in Charlotte, North Carolina, in an attempt to reinstate the mortgage on the Horseshoe House. It took Ballard several months, but she sold the Lochridge House and was able to reinstate the mortgage on the Horseshoe House. At the time, both Linda and Mary lived in the Horseshoe House.

62. Had Diane not breached her fiduciary duty (See Conclusion of Law No. 2), she would have had the funds available to pay the Horseshoe House mortgage. Alternatively, Diane should have answered the foreclosure action and asserted a meritorious defense. Instead, she (through her husband and her then-attorney, Bridgmon) actively assisted in allowing the Horseshoe House to go into foreclosure, apparently because George planned to purchase the property at the foreclosure sale to give him more direct control of Linda and Mary. In doing so, Diane would have abandoned the considerable equity that existed in the Horseshoe House, at a significant disadvantage to the Trust.

63. Ballard incurred additional fees as Successor Trustee that were a direct and proximate result of her efforts to set aside the Horseshoe House foreclosure, market and sell the Lochridge House, and reinstate the mortgage on the Horseshoe House. These efforts were made necessary by Diane's breach of her fiduciary duty and George's breach of the covenant of good faith and fair dealing implied in the Appointment Agreement.

64. Ballard and her support personnel incurred fees totaling \$40,500.00 on this aspect

of the litigation and the Court finds this sum to be reasonable. This fee is allocated to George and Diane, jointly and severally.

D. The North Carolina Litigation

65. Two actions were initiated by George and Diane in North Carolina: a lawsuit to have Ballard removed as Successor Trustee and a declaratory judgment action regarding ownership of the stock in Superior Tile. These suits will be addressed separately.

(I) The Effort to Remove Ballard as Successor Trustee

66. Shortly after Ballard was appointed, the acrimony between the family members began. This led to a lawsuit filed by George and Diane in North Carolina state court to have Ballard removed as Successor Trustee. Although the Appointment Agreement had required that all litigation occur in South Carolina, George and Diane took the position that because the Trust was a North Carolina trust, litigation regarding the status of the Trustee had to occur in that jurisdiction. George and Diane were unsuccessful in this effort.

67. The North Carolina court obviously found that there was no basis for removing Ballard as Successor Trustee. On the record before it, this Court finds that Ballard's actions had, in all material respects, been part of the duties incumbent upon her as Personal Representative and Successor Trustee. Accordingly, Ballard and her support personnel incurred fees totaling \$9,395.00, and the Court finds this sum to be reasonable. This fee shall be allocated against George and Diane, jointly and severally.

(II) The Declaratory Judgment Regarding Ownership of Superior Tile

68. As indicated previously, after investigating precisely who owned the stock in

Superior Tile, Ballard formed a good faith belief that a credible claim could be made that Pop owned up to 20 shares of the company at his death. For this reason, Ballard included an entry on the Inventory and Appraisal of the Estate reflecting this stock ownership interest. George and Diane then filed a declaratory judgment action in North Carolina seeking a determination from the North Carolina state court that George was the exclusive owner of Superior Tile. He was successful in this effort.

69. Although Ballard lost on this issue in the North Carolina litigation, this Court has determined that her position taken there was reasonable under the circumstances. Accordingly, Ballard and her support personnel's reasonably incurred fees (totaling \$29,611)¹⁷ should be borne pursuant to the Appointment Agreement.

70. A different result occurs, however, regarding Ballard's position in the litigation before this federal court. After she lost in the stock ownership litigation in North Carolina, Ballard attempted to raise that issue once again before this Court. On several occasions, this Court observed that the principle of res judicata would apply and that this Court would not revisit the stock ownership issue, which had already been resolved in North Carolina state court. Ballard, through her counsel, responded that the North Carolina court lacked jurisdiction over her, and the jurisdiction issue could be litigated here. Upon learning that Ballard had raised and lost the personal jurisdiction issue in North Carolina, this Court opined on several occasions that the proper remedy would have been to file an appeal in the

¹⁷ The Court has used Ballard's time sheets to compute the total, but has reduced the total to account for a double entry (\$160.00) on June 3, 2014, and the amount of fees found to be excessive (\$10,000.00) and unreasonably re-litigated (\$4,000.00) with regard to this issue.

North Carolina action, rather than to seek to re-litigate jurisdiction in this Court. Nevertheless, Ballard persisted in attempting to re-litigate the issue in this action. The Court on several occasions expressed its tentative conclusion that the personal jurisdiction issue was ended and ultimately invited the parties to brief the issue. Upon receipt of the briefing, the Court announced orally at a pretrial conference, held shortly before trial, that the doctrine of res judicata prevented re-litigation of that issue here. Although Ballard's counsel later indicated that Ballard was prepared to concede that the stock ownership issue was indeed ended in North Carolina, the concession comes too late. For this reason, the Court will disallow fees to Ballard for the time reasonably expended on briefing and arguing the res judicata issue in this Court. Ballard's time reasonably spent on this issue was ten hours¹⁸ and, applied to her hourly rate of \$400.00, yields a total of \$4,000.00. Ballard shall not be allowed to charge the Estate or the Trust for this legal work.

III. CONCLUSIONS OF LAW

This Court has jurisdiction over the subject matter of these consolidated actions and over the parties to this litigation.

1. The \$230,000.00 Note

Because Pop initiated litigation in North Carolina to collect on this \$230,000.00 Note, took a voluntary non-suit, and did not reinstate the action within one year or within the three-year statute of limitations for breach of contract, this claim is barred under North Carolina

¹⁸ The ten hours disallowed is not specifically separated in Ballard's time sheets, but is based upon this Court's reasonable approximation given the materials submitted to the Court.

law. *See Robinson v. Gen. Mills Restaurants, Inc.*, 430 S.E.2d 696, 698 (N.C. App. 1993); *Guyton v. FM Lending Servs., Inc.*, 681 S.E.2d 465, 470 (N.C. App. 2009) (holding that Rule 41(a)(1) shall not be used to limit time to one year if general statute of limitations has not expired).

Accordingly, this claim lacks merit and the \$230,000.00 Note is unenforceable by operation of North Carolina law.

2. The \$412,000.00 “Loan” and Related Breach of Fiduciary Duty Claim

The heart of this case lies in Diane’s transfer of \$412,000.00 on August 2, 2007, from the Trust’s Park Sterling Bank account to an account belonging to her and George. On the one hand, Ballard claims this was a breach of fiduciary duty by Diane and as such, was the “worst breach of fiduciary duty she had ever seen” in her long career. On the other hand, George and Diane contend that this transfer was in fact a “loan” to George from the Trust, which was proper under the Trust Agreement and North Carolina law. For the following reasons, the Court finds Diane’s transfer of \$412,000.00 from the Trust into an account owned by her and George to have been a breach of her fiduciary duty and constructive fraud.

A. “Loan”

The transfer of \$412,000.00 from the Trust Account was not a “loan” to George. This is demonstrated in two ways. First, there is no contemporaneous evidence to suggest the transfer was a loan. Secondly, the money was not given to George, but rather placed into a joint account belonging to both George and Diane, in her personal capacity.

As an initial matter, there is no evidence to indicate the existence of a loan at the time the transfer was made. There was no oral contract, no promissory note, no interest rate, nor any writing whatsoever. Rather, Diane's own testimony reveals that she first considered the transfer a "draw" by George. (Diane Dep. p. 55). The transfer was not characterized as a loan until much later. Hattenhaur, an attorney, appears to be the first person to refer to the transfer as a loan. *Id.* He did so, not in the form of some later memorialization, but rather as a single entry on a ledger in the Trust's accounting. This single notation, coupled with George and Diane's later testimony, is insufficient to prove the transfer was a loan.

Next, the Court finds it instructive to consider where the \$412,000.00 went. The transfer was not to George alone. Rather, it was to a joint account belonging to both George and Diane. (Diane Dep. pp. 49–51). Diane, as Trustee, transferred the money into an account belonging to both her and her husband. *Id.* The account was for a line of credit secured by their personal home owned by them jointly. *Id.* The joint ownership of the account weighs heavily against the transfer being a loan to George.

Accordingly, the Court finds that the transfer of \$412,000.00 was not a loan.

B. Breach of Fiduciary Duty and Constructive Fraud

Diane's transfer of the \$412,000.00 was a breach of her fiduciary duty¹⁹ and constitutes constructive fraud.

¹⁹ "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928).

In North Carolina, for a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties. *Dalton v. Camp*, 548 S.E.2d 704, 707–08 (N.C. 2001); *Curl v. Key*, 316 S.E.2d 272, 275 (N.C. 1984); *Link v. Link*, 179 S.E.2d 697, 704 (N.C. 1971). Such relationships are broadly defined by courts as those in which,

there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence . . . , [and] “it extends to any possible case in which a fiduciary relationship exists in fact, and in which there is confidence reposed on one side, and *resulting domination and influence on the other*.”

Dalton, 548 S.E.2d at 707–08 (quoting *Abbitt v. Gregory*, 160 S.E. 896, 906 (N.C. 1931)).

The statute of limitations for breach of fiduciary duty in North Carolina is three years. *Toomer v. Branch Banking and Trust Co.*, 614 S.E.2d 328, 335 (N.C. App. 2005) (“Allegations of breach of fiduciary duty that do not rise to the level of constructive fraud are governed by the three-year statute of limitations applicable to contract actions contained in N.C. Gen. Stat. § 1-52(1) (2003).”).

A plaintiff’s claim for constructive fraud must allege: (1) a relationship of trust and confidence; (2) that the defendant took advantage of that position of trust in order to benefit himself; and (3) that plaintiff was, as a result, injured. *Sterner v. Penn*, 583 S.E.2d 670, 674 (N.C. App. 2003). Intent to deceive is not an element of constructive fraud. *Link*, 179 S.E.2d at 704. The primary difference between pleading a claim for constructive fraud and one for breach of fiduciary duty is the constructive fraud requirement that the defendant benefit himself. *White v. Consol. Planning, Inc.*, 603 S.E.2d 147, 156 (N.C. App. 2004). Further, the statute of limitations for constructive fraud is ten years. *NationsBank of N. Carolina, N.A.*

v. Parker, 532 S.E.2d 597, 602 (N.C. App. 2000) (“A claim of constructive fraud based upon a breach of a fiduciary duty falls under the ten-year statute of limitations contained in N.C. Gen. Stat. § 1-56 (1999).”); *Baars v. Campbell University, Inc.*, 558 S.E.2d 871, 875 (N.C. App. 2002) (“When determining the applicable statute of limitations, we are guided by the principle that the statute of limitations is not determined by the remedy sought, but by the substantive right asserted by plaintiffs.”)

Here, as Trustee, Diane was in a position of trust and confidence with regard to the Trust and its beneficiaries. She took advantage of that position to withdraw \$412,000.00 from the Trust’s account and deposit it into an account that she and her husband owned jointly. She personally benefitted from that action. Her actions greatly depleted the Trust’s resources, and its beneficiaries were injured therefrom.

Accordingly, the Court finds Diane to have been in breach of her fiduciary duty and liable for constructive fraud.²⁰

C. Actual Damages

In calculating actual damages, the Court first considers the initial amount taken—\$412,000.00. In addition, the Court finds that the Trust is entitled to the time value of that money measured from the date of Diane’s transfer, at the North Carolina statutory interest rate of 8% per annum. Finally, because Diane transferred that money into a joint account with George and later claimed it was a loan to him and even transferred the money

²⁰ The Successor Trustee’s claim was clearly brought within the ten-year statute of limitations for constructive fraud. As for the shorter, three-year statute of limitations for breach of fiduciary duty, the Court concludes that the statute was tolled while Diane served as Trustee, because the claim was one by herself as Trustee against herself and her husband individually.

at his direction, the Court finds that George and Diane are jointly and severally liable to the Trust for its return.

Accordingly, the Court awards the Trust \$412,000.00, plus interest at the North Carolina statutory interest rate (8% per annum) of \$299,619.94, resulting in a total of \$711,619.94.

However, George or Superior Tile, made payments on the Horseshoe House mortgage totaling \$55,451.08, without interest, during the time period between February 2009 and September 2012. These payments inured to the benefit of both Mary and Linda. No explanation was given as to why the payments were made. The Court observes, however, that this was consistent with Pop's actions while he was alive. Pop's generosity, however, did not bind George to continue these payments following his death.²¹

Accordingly, George²² shall be allowed a setoff for the monies paid on behalf of Linda and Mary, plus statutory interest, computed as follows:

Amount Paid:	\$55,451.08
Statutory Interest:	\$31,696.74 (8% per annum for 91 months) ²³
Total Credit Due:	\$87,147.82

²¹ It is not clear whether a claim has been asserted for a setoff, but this Court has the inherent authority to reach a just result. *See Ex parte Dibble*, 310 S.E.2d 440, 442 (S.C. App. 1983) ("Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible.").

²² At the time of the payments, George was the sole owner of Superior Tile. Therefore, he should be allowed the credit.

²³ This interest rate was calculated using the effective monthly interest rate of 8% per annum, which required the following formula to be derived: $(1 + .08)^{(1/12)} - 1 = .00643403$. In addition, the amount with interest for each payment was calculated based upon the monthly mortgage payment multiplied by one plus the effective monthly interest rate raised to a power composed of the total number of months since interest began accruing minus the number of months the payment was not earning interest. For example, the following formula was applicable to the first payment made: $\$1,289.56 \times (1 + .00643403)^{(91 - 0)}$.

D. Punitive Damages

Ballard also seeks punitive damages against Diane. However, the Court, in its discretion, declines to make such an award because, in context, there is no evidence that Diane acted with the requisite aggravating factors such as actual fraud, malice, or willful or wanton conduct to justify the award.

In North Carolina, punitive damages are recoverable in tort actions only where there are aggravating factors surrounding the commission of the tort such as fraud, malice, or willful or wanton conduct. N.C. Gen. Stat. Ann. § 1D-15(a). Further, the claimant must prove the existence of an aggravating factor by clear and convincing evidence. N.C. Gen. Stat. Ann. § 1D-15(b).

While Diane's actions here were wrong, in the context of this case and this family, they do not rise to the level of the aggravating factors sufficient to justify punitive damages.

First, the Court finds that Diane did not commit actual fraud. Specifically, the Court finds that she did not act with any intent to deceive any of the beneficiaries or the settlor. Notably, Pop was still living when this transfer was made. In fact, he lived for another year and a half, at least part of that time with Linda. Further, the transfer was made within forty-eight hours of his deposit of \$417,359.01 into the Trust account. Importantly, the evidence showed that Diane accompanied Pop in making that deposit. Further still, twenty-four hours before the transfer, Pop voluntarily dismissed a lawsuit against George and Diane. Because there is no evidence Diane did anything to hide the transfer from Pop and because he lived

for another eighteen months after it, the Court draws the inference that Pop likely knew of the transfer. This knowledge dispels the notion that Diane had any intent to deceive anyone.

Secondly, the Court finds that Diane did not act with malice. This family and Superior Tile both have a long history of irregular financial transactions. All family members used Superior Tile's money for personal expenses from time to time. George and Superior Tile often paid the mortgage for the Horseshoe House on behalf of the Trust. Superior Tile supplied cars for all family members. Pop used a Superior Tile credit card for his personal expenses. Money often changed hands between the family members without any accurate records being kept. Thus, the Court finds it hard to find any malice on the part of Diane whose behavior was "par for the course" for their family. Diane's conduct was not inconsistent with the way in which Pop had moved money back and forth while he was alive.

Finally, the Court finds that Diane did not act willfully or wantonly in transferring the money. Diane had no training as a trustee or fiduciary. In fact, her only instruction as to the duties of a trustee consisted of one meeting with an estate lawyer, Hattenhaur. If Diane had some formal training or experience that might suggest a better comprehension of the issues involved, her conduct may have been more culpable.²⁴

Accordingly, the Court declines to make an award of punitive damages.

3. The \$49,564.09 Missing Certificate of Deposit

The Trustee at the time (Diane) had a fiduciary duty to preserve and account for all assets in the Trust. Because she admits that there was, at one time, a CD for \$49,564.09 that

²⁴ As noted earlier, Diane was given a book outlining the duties of a trustee.

she cannot account for, she must be required to return this amount, plus interest at the North Carolina statutory interest rate (8% per annum) of \$34,980.03, resulting in a total of \$84,544.12 that she must return to the Trust.

4. The Allocation of Desa Ballard's Fees as Trustee of the Trust

Mary and Linda assert a claim—styled as one for fraud—against George and Diane for “facilitating and accelerating” the Horseshoe House foreclosure proceeding. They also take the position that they should not be required to pay their one-third share of Ballard’s fees incurred in various proceedings when George and Diane took unreasonable positions. Additionally, George and Diane challenge the amount of overall fees sought by Ballard and seek to have the Court review her time sheets for excessiveness.

As noted in the Findings of Fact portion of this Order, the Court has, albeit reluctantly, determined that it should delve into the questions of Ballard’s fees.²⁵ In this Court’s view, however, the fee issue is not properly asserted as one for common law fraud. Rather, the fee dispute is more properly viewed as a claim arising out of the agreement appointing Ballard as Successor Trustee.

Both North Carolina and South Carolina imply a covenant of good faith and fair dealing in every contract. *Governors Club, Inc. v. Governors Club Ltd. P’ship*, 567 S.E.2d 781, 789 (N.C. App. 2002), *Williams v. Riedman*, 529 S.E.2d 28 (S.C. App. 2000).

²⁵ The Court was initially inclined to leave the fee determination for the Probate Court. However, Ballard’s fees for her work as Trustee are outside the Probate Court’s jurisdiction. Moreover, a proper allocation of her fees involves a comprehensive examination of all of the many disputes between the parties—disputes with which this Court is now intimately familiar.

Consequently, this Court has the authority to re-allocate the fee distribution for Ballard's fees as Successor Trustee of the Trust and also review her fees for overall excessiveness. For this reason, her fees are reduced and allocated among the parties as set out in Findings of Fact Nos. 48 through 70.

Any claims, counterclaims, and cross-claims not addressed in this Order fail on their merits because of the failure of the party asserting the claim to meet his or her burden of proof.

IV. CONCLUSION

In accordance with the foregoing, judgment shall be entered by the Clerk as follows:

1. On the breach of fiduciary duty claim: George Combis and Diane Combis are jointly and severally indebted to the Chris Combis Revocable Trust in the amount of \$412,000.00, plus interest at the North Carolina statutory interest rate (8% per annum)²⁶ of \$299,619.94, resulting in a total of \$711,619.94.
2. On the missing Certificate of Deposit claim: Diane Combis as Trustee is individually liable to the Chris Combis Revocable Trust in the sum of \$49,564.09, plus interest at the North Carolina statutory interest rate (8% per annum) of \$34,980.03, resulting in a total of \$84,544.12.
3. On the setoff for monies paid for the benefit of Mary Combis and Linda Combis: Mary Combis and Linda Combis are jointly and severally indebted

²⁶ All interest awards are calculated to the date of entry of this Order (September 1, 2016). Past judgment interest shall run at the federal statutory rate.

to George Combis and Superior Tile, Marble, and Terrazzo, Inc., in the sum of \$55,451.08, plus interest at the North Carolina statutory interest rate (8% per annum) of \$31,696.74, resulting in a total of \$87,147.82. Accordingly, George Combis may deduct or setoff for this sum from the total amount he is obligated to pay by nature of this Court's Order.

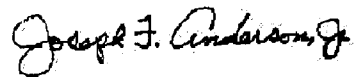
4. Desa Ballard shall reduce her fee, and not charge any party, in the amount of \$10,000.00 regarding excessive fees incurred in the stock ownership litigation and \$4,000.00 regarding fees incurred in attempting to re-litigate the personal jurisdiction question (presented in the North Carolina stock ownership litigation) in this Court for a total reduction of \$14,000.00.
5. Of the total Probate and Trustee fees charged to the Estate and the Trust, respectively, by Desa Ballard, George Combis and Diane Combis shall be jointly and severally responsible for payment of the following sums:
 - a. \$4,717.50 for the effort to transfer funds in the Trust Account into Ballard's name;
 - b. \$40,500.00 on the work performed on the foreclosure set aside issue; and
 - c. \$9,395.00 on the defense of the effort to have Ballard removed as Personal Representative and Trustee.

6. In all other respects, the parties are bound by their agreement regarding Desa Ballard's fees, i.e. one-third each for Trustee fees and one-half to George Combis and one-half to Linda Combis and Mary Combis for Personal Representative fees.
7. As to all other claims and issues presented in this case, judgment shall be entered for the defendant or defendants.

Judgment shall be entered in accordance with this Order.

IT IS SO ORDERED.

September 1, 2016
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

State of North Carolina

County of Mecklenburg

Desa Ballard, as Successor Trustee of the
Trust of Chris Combis, u/a/d 10-15-2013
Plaintiff

VS

Diane Combis,
Defendant

Desa Ballard, as Successor Trustee of the
Trust of Chris Combis
Cross-Claim/Third Party Plaintiff

VS

George Combis, and Diane Combis, as
former Trustee of the Trust of Chris
Combis
Cross-claim/Third Party
Defendants.

In the Matter of the Estate of Chris
Combis:

Desa Ballard, as Personal Representative
of the Estate of Chris Combis,
Petitioner

VS

George Combis; Chris Combis; Diane
Combis; and Superior Tile, Marble, and
Tarrazzo Corporation, and Superior Stone
Respondents.

FILED
IN THE GENERAL COURT OF JUSTICE

2019 FEB 12 SUPERIOR COURT DIVISION
CASE # 17CVS2179

MOTION TO LIFT STAY

Now Comes Plaintiff Desa Ballard, (hereinafter "Ballard"), who hereby moves the Court for an Order lifting the stay entered by the Honorable Forrest D. Bridges on August 14, 2017 and respectfully shows the Court as follows:

In February, 2017, Ballard sought to enforce a judgment entered against the Defendants in this matter. Defendants filed a motion for relief from the judgment in March, 2017. Following a hearing in May, this Court issued an Order dated August 14, 2017 granting Ballard's judgment full force and credit within this State and imposing a lien upon any property owned by the defendants in any North Carolina County.

In that Order, this Court granted a stay of enforcement of the judgment pending the outcome of an appeal pending in the United States Court of Appeals for the Fourth Circuit, which remains pending. See Ballard v. Combis, Case No. 16-2057 (Ct.App. 4th). Defendants were ordered to post a bond, cash or surety, in the amount of \$10,000.00, in a manner that is acceptable to the Clerk of Court of Mecklenburg County. Thereafter, Defendant Diane Combis posted \$10,000.00 with the Mecklenburg County Clerk of Court on September 7, 2017.

By order dated January 8, 2018, the Fourth Circuit Court of Appeals issued an opinion affirming the judgment as to Diane Combis, and remanding to the United States District Court for the District of South Carolina for further proceedings, including to address the liability of George for fiduciary duty, and to award additional damages to Ballard for a unpaid promissory note owned by Superior Tile and Marble Company to the estate of Chris Combis. (Order dated January 8, 2019, attached as Exhibit A).

Therefore, the Plaintiff moves for an Order lifting the stay as to Diane Combis.

February 7, 2019



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UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 16-2057

DESA ALLEN BALLARD, as Personal Representative of the Estate of Chris
Combis,

Plaintiff - Appellant,

and

LINDA COMBIS; MARY COMBIS,

Intervenors/Plaintiffs,

v.

DIANE COMBIS, as former Trustee of the Trust of Chris Combis,

Defendant - Appellee,

GEORGE COMBIS; CHRIS A. COMBIS; SUPERIOR TILE MARBLE AND
TERRAZZO CORPORATION; SUPERIOR STONE OF THE SOUTHEAST,
INC.,

Respondents - Appellees.

No. 16-2136

DESA ALLEN BALLARD, as Personal Representative of the Estate of Chris
Combis,

Plaintiff - Appellee,

and



LINDA COMBIS; MARY COMBIS,

Intervenors/Plaintiffs,

v.

GEORGE COMBIS; CHRIS A. COMBIS; SUPERIOR TILE MARBLE AND
TERRAZZO CORPORATION; SUPERIOR STONE OF THE SOUTHEAST,
INC.; DIANE COMBIS,

Respondents - Appellants.

Appeals from the United States District Court for the District of South Carolina, at Rock Hill. Joseph F. Anderson, Jr., Senior District Judge. (0:14-cv-01839-JFA)

Argued: September 25, 2018

Decided: January 8, 2019

Before NIEMEYER, DIAZ, and FLOYD, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished per curiam opinion.

Douglas Neal Truslow, TRUSLOW & TRUSLOW LAW FIRM, Columbia, South Carolina, for Appellant/Cross-Appellee. David Glennon Redding, Joseph Raymond Pellington, REDDING TISON & JONES, PLLC, Charlotte, North Carolina, for Appellees/Cross-Appellants.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

This consolidated appeal involves debts and obligations relating to the estate of Chris “Pop” Combis, the patriarch of the Combis family, who passed away in 2009.¹ For the reasons that follow, we affirm in part, vacate in part, and remand.

I.

In Charlotte, North Carolina, Pop Combis founded a company called Superior Tile, Marble, and Terrazzo, Inc. (hereinafter “Superior Tile”). Superior Tile was very successful. It brought in a great deal of money. Pop regularly shifted large sums of that money from the company to his family and back to the company again. This was, at least in part, how Pop supported his two daughters, Linda and Mary, well into their adulthood. Pop’s son, George, treated the company’s money in much the same way as he became increasingly involved in running—and eventually took ownership of—Superior Tile.

Regrettably, neither Pop, George, nor other members of the family kept clear records of their transactions. As a result, the financial ties between Pop’s estate, Superior Tile, and Pop’s adult children have devolved into near-inscrutability. The parties, after years of acrimony and at least a dozen individual lawsuits disputing who owes how much to whom, now ask the federal courts to sort it all out.² The district court has done much of the work

¹ Because so many of the parties to this appeal share the surname “Combis,” we refer to them by their given names. Additionally, because the parties refer to the late Christopher Combis as “Pop,” we do the same.

² Having considered various motions and voluminous evidence on removal of this case from state to federal court, the district court determined that it had jurisdiction over the

already; the only substantial issues remaining on appeal involve two transactions that occurred during Pop's life.

In 2003, Pop executed his last will and testament. Under the terms of his will, the property in his estate was to pour over into a revocable trust (the "Trust") at the time of his death. The Trust was established under North Carolina law. Its beneficiaries were Pop's three children: George, Mary, and Linda. At first, Pop named himself as trustee; later (in 2006), he appointed George's wife, Diane, to that position.

In 2005, Pop loaned \$230,000 of his own money to Superior Tile. He and Superior Tile executed a home-made written agreement (the "Note") setting out the terms of the loan. Under the Note, Superior Tile had to: (1) make regular interest payments on the \$230,000 principal; (2) pay Linda and Mary a monthly stipend; (3) pay some of Linda's and Mary's expenses, such as their car insurance; and (4) return the full principal to Pop's estate 30 days after his death.

In 2007, Pop sued Superior Tile in North Carolina state court. In relevant part, Pop alleged that Superior Tile "ha[d] breached" the Note. He did not make factual allegations specifying how Superior Tile had breached its obligations; he merely pointed out that the Note required Superior Tile to make interest payments on the principal of the loan, along with regular payments to Linda and Mary. He sought recovery of \$230,000, plus interest. Later that year, Pop voluntarily dismissed the suit. He never re-filed it.

issues now before us because the parties are diverse, the amount in controversy exceeds \$75,000, and the "probate exception" to diversity jurisdiction does not apply to any of the relevant issues. Neither party challenges that determination, and as the record stands, we are satisfied that the district court was correct.

Also in 2007, after Diane had become trustee of the Trust, George instructed Diane to withdraw \$412,000 from the Trust's assets. Diane did as George said, and the money was deposited into a joint account that they controlled together.

Pop died in 2009. At the time, no one in the Combis family took any steps to either open or probate his estate. Years later, on July 31, 2013, a probate court designated Desa Ballard, a South Carolina attorney, as the estate's personal representative. A few months after that, the relevant parties agreed that Ballard would replace Diane as trustee of the Trust.

Ballard initiated multiple actions to recover assets she believed were due to either Pop's estate or to the Trust. Of the claims Ballard levied, two sets remain relevant: First, on behalf of Pop's estate, Ballard claimed that Superior Tile had breached the Note by failing to return the \$230,000 that Pop had loaned to the company. She did not allege that Superior Tile had failed to satisfy any of its other obligations under the Note. Second, on behalf of the Trust, Ballard brought claims against Diane and George relating to the \$412,000 that Diane had transferred from the Trust's assets to her joint account with George in 2007. Characterizing the transfer as a loan to George, Ballard alleged that Diane had breached her fiduciary duty to the Trust by "loaning the assets of the [T]rust without proper security[,] and in failing to require repayment of the loan to the [T]rust on commercially-reasonable terms." J.A. 64. Additionally, Ballard alleged that as a debtor of the trust, George was liable to the Trust for the full principal of the \$412,000 "loan," plus interest at the North Carolina statutory rate of 8%.

Following a bench trial, the district court dismissed Ballard's breach-of-contract claim

against Superior Tile as precluded by North Carolina Rule of Civil Procedure 41(a). The district court also found that Diane's transfer of \$412,000 from the Trust to her joint account with George was not a loan, but a misappropriation of Trust assets. Accordingly, the district court held that Diane had breached her fiduciary duty to the Trust and that she and George were jointly and severally liable to the Trust in the amount of \$412,000, plus pre-judgment interest. Both sides separately appealed, and the appeals were consolidated herein.³

II.

Since this is an appeal from a bench trial, we review the district court's factual findings for clear error and its legal conclusions *de novo*. *Sky Angel U.S., LLC v. Discovery Commc'ns, LLC*, 885 F.3d 271, 276 (4th Cir. 2018). Beginning with Ballard's appeal, we hold that the district court made a legal error when it concluded that Ballard's claim against Superior Tile was barred by North Carolina Rule of Civil Procedure 41(a). Proceeding to Diane and George's appeal, we hold that the district court erred in making George jointly and severally liable with Diane for damages resulting from Diane's transfer of funds from the Trust. Otherwise, we affirm the district court's factual findings and legal conclusions.

³ Superior Tile, Diane, and George are jointly represented—an arrangement that appears, at best, ethically fraught. In their briefing, they sometimes refer to themselves as a single unit. At other times, they make arguments that would seem to benefit George at the expense of Diane. For the sake of clarity, we generally refer to the parties based on the primary interest at stake.

A.

Ballard's appeal raises one issue: whether North Carolina Rule of Civil Procedure 41(a) prevents Pop's estate from recovering \$230,000 from Superior Tile pursuant to the Note. We hold that it does not.

Rule 41(a) has two relevant components. First, when a plaintiff voluntarily dismisses an action, the dismissal is without prejudice. If the plaintiff re-files an action based on the same claim and then, once again, voluntarily dismisses the action, the second dismissal is treated as an "adjudication upon the merits," and the plaintiff is precluded from filing another suit based on the same claim. Second, when a plaintiff voluntarily dismisses an action, the plaintiff may file "a new action based on the same claim" if either (a) the statute of limitations governing the claim has not run, or (b) the statute of limitations has run, but it has been less than a year since the voluntary dismissal of the first action.

Rule 41(a) has no bearing on Ballard's attempt to recover under the Note. Rule 41(a) applies only to successive lawsuits based on the "same claim." Therefore, for Rule 41(a) to apply in this case, Ballard would need to have made the same claim against Superior Tile that Pop made in 2007. But Ballard did not make the same claim that Pop made in 2007. Although we do not know the exact factual predicate of Pop's claim (since he did not make factual allegations in his complaint), we may reasonably infer that it had something to do with events that occurred during Pop's life. In contrast, Ballard's claim is based on Superior Tile's failure to repay the principal of the loan to Pop's estate when it

came due after Pop's death.⁴ Therefore, Rule 41(a) does not bar Ballard's attempt to enforce the Note against Superior Tile, and the portion of the district court's order holding as much is vacated.⁵

B.

We now turn to Diane and George's appeal. Diane argues that (1) the district court erred in finding that her transfer of \$412,000 from the Trust to her joint account with George was a breach of fiduciary duty; and (2) even if she breached her fiduciary duty, the

⁴ North Carolina's intermediate appellate court has interpreted Rule 41(a) in substantially the same way. That court has held that for purposes of Rule 41(a), when a contract calls for multiple payments, a claim based on the failure to make one payment is not the "same" as a claim based on the failure to make another, later payment. *Centura Bank v. Winters*, 583 S.E.2d 723, 725 (N.C. Ct. App. 2003). We believe the Note at issue here is best viewed as a contract calling for multiple payments, with some payments being due during Pop's life and a single large one being due thirty days after Pop's death. The latter payment forms the basis of the estate's claim today. It follows that the factual predicate of the estate's claim is distinct from the factual predicate of any claim Pop could have brought while he was alive. Therefore, the estate is not seeking to bring the "same claim" as Pop for purposes of Rule 41(a). See *Brannock v. Brannock*, 523 S.E.2d 110, 113 (N.C. Ct. App. 1999) ("Our courts have required the strictest factual identity between the original claim and the new action" for the claims to be considered the same under Rule 41(a) (internal citations and quotation marks omitted)).

⁵ In the alternative, Superior Tile asserts that even if Pop's estate accrued a valid claim under the Note thirty days after Pop's death, Ballard's suit to enforce the Note would be barred by North Carolina's three-year statute of limitations. To the contrary, Ballard argues that South Carolina law controls the applicable statute of limitations, and that under South Carolina law, the statute of limitations governing the estate's claim against Superior Tile did not begin to run until Ballard was appointed the estate's personal representative; if that were true, then Ballard's claim would not be time-barred. The district court did not address the choice-of-law question below, and we decline to resolve it now. On remand, it will fall to the district court to apply South Carolina's choice-of-law rules and determine which state's law—North Carolina's or South Carolina's—controls the statute-of-limitations question.

district court erred in how it calculated pre-judgment interest on the Trust's damages. For his part, George argues that (1) the district court erred in holding him jointly and severally liable with Diane for Diane's breach of fiduciary duty; and (2) the district court should have offset the Trust's damages by one-third, to reflect that George is himself a Trust beneficiary. Addressing Diane and George's arguments in turn, we affirm the district court in most respects, but we conclude that the court erred by holding George jointly and severally liable with Diane for Diane's breach of fiduciary duty.

1.

Diane argues that her transfer of \$412,000 from the Trust to her joint account with George was nothing more than a loan to one of the Trust's beneficiaries. According to Diane, since North Carolina law generally authorizes such loans, the transfer cannot have been a breach of her fiduciary duty.

Diane's argument that the transfer was a loan and therefore not a breach of fiduciary duty relies exclusively on North Carolina General Statute § 36C-8-816(18). In particular, Diane points out that § 36C-8-816(18) permits a trustee to "[m]ake loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances" The comments to the statute clarify that "[t]he determination of what is fair and reasonable must be made in light of the fiduciary duties of the trustee and purposes of the trust." *Id.* (comment to paragraphs 18 and 19). In addition, the comments recognize that "[f]requently, a trustee will make loans to a beneficiary which might be considered less than prudent in an ordinary commercial

sense although of great benefit to the beneficiary” *Id.* Leaning on this permissive language, Diane contends that because the transfer at issue here *could* be construed as the type of “less than prudent” loan authorized by the statute, the district court erred in finding that it was not.

We disagree. Nothing in the plain language or comments of § 36C-8-816(18)—the only authority Diane cites—requires a district court to find that a transfer of property from trust to beneficiary is a loan simply because the trustee says so.⁶ On the contrary, the statute provides that loaning trust property to a beneficiary under commercially unreasonable conditions is not *necessarily* a breach of the trustee’s fiduciary duty. The existence of a statute permitting a trustee to extend commercially unreasonable loans under some circumstances does not make it clearly erroneous to find that *this* transfer was *not* a loan.

Diane offers no other basis for reversal. Since her statutory argument is unavailing, we affirm the district court’s conclusion that Diane breached her fiduciary duty to the Trust.

2.

We now turn to the district court’s calculation of pre-judgment interest. As part of its award of actual damages for Diane’s breach of fiduciary duty, the district court multiplied the \$412,000 transferred from the Trust by North Carolina’s statutory interest rate of 8%

⁶ Nor does § 36C-8-816(8) prevent a court from concluding that a transfer of property from a trust to a beneficiary *is* a loan, but one that breaches the trustee’s fiduciary duty. Since Diane fails to show that the district court clearly erred when it found that the transfer was not a loan, we need not address that point.

per year, beginning on the date that Diane made the transfer. This resulted in a judgment of \$711,619.94 for the Trust, with \$299,619.94 of the judgment consisting of pre-judgment interest.

According to Diane, North Carolina General Statute § 24-5 required the district court to calculate pre-judgment interest beginning with the date Ballard filed the present action—not the date on which Diane made the transfer. Section 24-5 has two relevant provisions. Section 24-5(a) states that “[i]n an action for breach of contract . . . the amount awarded on the contract bears interest from the date of breach.” Section 24-5(b) states that “[i]n an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced” Diane contends that because the judgment at issue was for a breach of fiduciary duty and not a breach of contract, the district court should have followed § 24-5(b) and not § 24(a) when calculating interest. We disagree.

The district court correctly reasoned that in North Carolina, when a party consents to act as the trustee of an express trust, the fiduciary duties arising from his or her trusteeship are “essentially contractual in nature,” such that “any failure to perform in compliance with the duties as a fiduciary is tantamount to a breach of contract.” *Tyson v. N.C. Nat’l Bank*, 286 S.E.2d 561, 565 (N.C. 1982); accord *Bruce v. N.C. Nat’l Bank*, 303 S.E.2d 561, 563 (N.C. Ct. App. 1983). Although *Tyson* addressed a statute-of-limitations question, we conclude that if an express trustee’s fiduciary duties are “essentially contractual in nature” for statute-of-limitations purposes, they are also “essentially contractual in nature” for the

purpose of calculating pre-judgment interest.⁷ Thus, the district court did not err in using the date on which Diane breached her fiduciary duty as the date on which pre-judgment interest began to accrue.

3.

We now consider whether North Carolina law permits George to be held jointly and severally liable with Diane for Diane's breach of fiduciary duty. We hold that it does not.

Generally speaking, North Carolina law does not permit a plaintiff to maintain an action for breach of fiduciary duty against a defendant who did not owe the plaintiff a fiduciary duty in the first place.⁸ *Dalton v. Camp*, 548 S.E.2d 704, 707 (N.C. 2001) ("For

⁷ Diane offers no counterpoint. She does, however, assert that if the district court had really intended to compensate the Trust for its inability to collect interest on the \$412,000 she transferred from it, then the court would have made a factual finding as to the "prevailing market interest rate" during the period following the transfer, and would have used that finding, rather than the statutory rate of 8%, to calculate the appropriate award. Notably, Diane does not argue that this is what the district court should have done—the only issue she raises on appeal is whether, as a matter of law, the district court used the wrong accrual date when applying the statutory interest rate of 8%. Since that is the only question properly before us, it is the only question we answer here.

⁸ Some states recognize a cause of action against a non-fiduciary who knowingly participates in a breach of fiduciary duty. See, e.g., *Glidden Co. v. Jandernoa*, 5 F. Supp. 2d 541, 555 (W.D. Mich. 1998) (applying Delaware law). Whether a party may be liable under North Carolina law for "aiding and abetting" a breach of fiduciary duty appears to be an open question. See *Ehrenhaus v. Baker*, 717 S.E.2d 9, 29 (N.C. Ct. App. 2011) (collecting cases). We need not answer the question here, because (1) Ballard did not state a claim against George for aiding and abetting a breach of fiduciary duty, and (2) Ballard has not argued that we should affirm based on a theory of aiding and abetting Diane's breach of fiduciary duty. Thus, whichever way the North Carolina Supreme Court ultimately rules on the question, aiding and abetting a breach of fiduciary duty is not, in these circumstances, an appropriate theory for extending liability to George.

a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties.”). In this case, the district court did not conclude that George owed or breached a fiduciary duty to the Trust. Therefore, it erred in holding George jointly and severally liable with Diane for Diane’s breach of fiduciary duty.

Ballard offers two arguments to the contrary, but both are unpersuasive. First, Ballard argues that during the events in question, George was acting as Diane’s agent, and that North Carolina permits the agent of a fiduciary to be held jointly and severally liable for the fiduciary’s breach of his or her duty when “the agent has . . . by his conduct added his own liability to that of his principal” *Rounsaville v. N.C. Home Fire Ins. Co.*, 50 S.E. 619, 621 (N.C. 1905). The only case Ballard cites for support, *Rounsaville*, is inapposite. *Rounsaville* concerns the causes of action available to someone who contracts with the agent of an undisclosed principal. *Id.* The case before us does not involve any such contract. Moreover, Ballard has maintained throughout this litigation that Diane removed the disputed sum from the Trust at George’s direction.⁹ George cannot reasonably be viewed as both the mastermind of Diane’s wrongdoing and her agent. Accordingly, Ballard’s agency theory is without merit.

Second, Ballard asks us to affirm the district court because that court “has inherent authority to reach a just result.” Appellants’ Second Br. at 12. We are unpersuaded. As an initial matter, the district court never referred to its own “inherent authority” in

⁹ For example, Ballard asserts that “George was clearly the architect of [Diane’s] wrongful conduct.” Appellant’s Second Br. at 10.

concluding that George and Diane were jointly and severally liable for Diane's breach of fiduciary duty. More significantly, although it is well-established that courts have certain inherent powers, it is also well-established that "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). To that end, the inherent powers of the courts have generally been exercised to safeguard the fairness and integrity of the judicial process—e.g., to prevent parties from abusing the rules of evidence, discovery, and procedure, or to ensure that one party is not placed at a severe and unjust disadvantage as a litigant. *See id.* at 43–45. Ballard's argument attempts to stretch the court's inherent powers too far, and we find it unpersuasive. Accordingly, we vacate the portion of the district court's order holding George jointly and severally liable with Diane for Diane's breach of fiduciary duty.

4.

Finally, George asserts that because he is one of the Trust's three beneficiaries, one-third of the \$412,000 Diane took from the Trust was rightfully his. Therefore, according to George, any damages resulting from Diane's misappropriation of those funds should be reduced proportionally. For support, George argues that under North Carolina General Statute § 36C-8-816(18), when a trustee loans trust assets to a beneficiary, the trust may "acquire a lien on future distributions for repayment" of the loan. His argument fails at the outset. As discussed above, the district court found that the transfer of funds at issue here was not a loan. That finding was not clearly erroneous. Accordingly, § 36C-8-816(18) is inapplicable. Since George fails to identify a reversible error of law, we conduct no further

analysis of the merits of this argument and leave the district court's treatment of the issue intact.¹⁰

III.

For the foregoing reasons, we vacate the portions of the district court's order dismissing Ballard's action against Superior Tile and holding George jointly and severally liable with Diane for Diane's breach of fiduciary duty. On those points, we remand for further proceedings consistent with this opinion. In all other respects, we affirm the district court.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED

¹⁰ We note one last, vestigial issue. The district court found that George and Pop were co-owners, with a right of survivorship, of a bank account containing \$387,590.14. The district court also found that in 2006, Pop withdrew all the funds in the joint account without George's permission. On the basis of those findings, George asks us to remand and instruct the district court to "grant [him] a credit" equal to half the funds that were in the joint account. Appellees' First Br. at 18. George does not identify the proper source of this "credit." Nor does he identify a theory of law or equity under which the district court erred. Therefore, we decline to grant George his requested relief.

FILED: January 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-2057 (L)
(0:14-cv-01839-JFA)

DESA ALLEN BALLARD, as Personal Representative of the Estate of Chris
Combis

Plaintiff - Appellant

and

LINDA COMBIS; MARY COMBIS

Intervenors/Plaintiffs

v.

DIANE COMBIS, as former Trustee of the Trust of Chris Combis

Defendant - Appellee

GEORGE COMBIS; CHRIS A. COMBIS; SUPERIOR TILE MARBLE AND
TERRAZZO CORPORATION; SUPERIOR STONE OF THE SOUTHEAST,
INC.

Respondents – Appellees

No. 16-2136
(0:14-cv-01839-JFA)

DESA ALLEN BALLARD, as Personal Representative of the Estate of Chris
Combis

Plaintiff - Appellee

and

LINDA COMBIS; MARY COMBIS

Intervenors/Plaintiffs

v.

GEORGE COMBIS; CHRIS A. COMBIS; SUPERIOR TILE MARBLE AND
TERRAZZO CORPORATION; SUPERIOR STONE OF THE SOUTHEAST,
INC.; DIANE COMBIS

Respondents - Appellants

J U D G M E N T

In accordance with the decision of this court, the judgment of the district
court is affirmed in part and vacated in part. This case is remanded to the district
court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: January 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 16-2057 (L), Desa Ballard v. Diane Combis
0:14-cv-01839-JFA

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. (www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.

• Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
TOTAL BILL OF COSTS:						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ Date: _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ Date: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	CASE NO. 2017-CP-29-01248
	)	
Desa Ballard, as successor trustee of	)	
The Trust of Chris Combis,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO RECONSIDER
	)	
Diane Combis, Chris A. Combis,	)	
Redding Jones PLLC , Simon John	)	
O'Brien, and Kent D. Jones,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
Ty McTier,	)	
	)	
Proposed defendant.	)	
	)	

Pursuant to Rule 59(e), SCRCPP, Plaintiff Desa Ballard¹ (hereafter “the Trustee”) moves to reconsider its order issued in this matter dated November 6, 2018, which (1) granted the motion to dismiss by Defendants Redding Jones PLLC, O’Brien and Jones (hereafter “the dismissed Defendants”), and (2) denied the Plaintiff’s motion to amend. In support of the within motion, Trustee would show:

The Court erred in determining that the dismissed Defendants are immune from liability to the Trustee because they “cannot enter into a civil conspiracy with [a] client when acting in the course and scope of legal representation. . . and otherwise immune from liability to third parties

¹ Trustee is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter “the Trust”), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013.

when acting in the course and scope of its legal representation without having breached some independent duty owed to such third party.” The line of authorities on which the court relied did not address the situation at present, *i.e.*, where the actions of the attorneys facilitated and assisted their client in carrying out a legally wrongful act for the purpose of harming a third party, *i.e.*, the Trust of Chris Combis.

Specifically, the complaint alleged in paragraph 9 that O’Brien “facilitated a fraudulent conveyance. . . for insufficient consideration, with full knowledge those acts operated to assist . . . in evading a pending judgment . . . and defraud the trust.” In other words, the lawyers knew what they were doing would result in an actionable claim against their own client and that they personally were assisting in a fraud.

Similarly, paragraph 10 of the complaint alleged that Jones “facilitated a fraudulent conveyance . . . for insufficient consideration. . . in an attempt to . . . avoid . . . a pending judgment. . . when he knew or should have known that his acts operated to assist . . . in evading a pending judgment . . . and defraud the trust.” That says the lawyers knew they were assisting in defrauding the trust.

Lastly, paragraph 19 alleges that the dismissed Defendants conspired with their client “with the specific intent to defraud creditors, including the Trust, and specifically to hamper or impair the trust’s ability to collect a judgment. . .” That says the lawyers had an intent to defraud creditors of their client.

For purposes of considering a motion to dismiss, the allegations of the complaint must be deemed to be true. Justice v. The Pantry, 330 S.C. 608, 493 S.E.2d 871 (Ct.App. 1999), *affirmed as modified* 335 S.C. 37, 496 S.E.2d 871 (1999). *See also* Gressette v. South Carolina Electric

and Gas Co., 370 S.C. 523, 629 S.E.2d 538 (2006). Therefore, it must be assumed to be true that the dismissed Defendants had actual knowledge that the assistance they provided to their client would assist their client in committing a legally wrongful act that deprived a legitimate creditor from collecting a judgment.

The case upon which the Court relied, Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)² provides immunity to an attorney in connection with the presentation of his client if the attorney is “acting in good faith.” Similarly, Gaar v. Myrtle Beach³ provides that the lawyer retains immunity if he acts “primarily for the purpose of aiding his client in obtaining a proper adjudication of the client’s claim.” *Id.* 287 S.C. 529-29, 339 S.E.2d 889.

Neither is the case under the facts asserted here. The Trustee asserts that the dismissed Defendants specifically intended to defraud the Trust and to assist their client in doing so. The dismissed Defendants were defending their client in attempting to prevent a judgment from being entered, but at the same time helping him divest himself of property that would leave him unable to pay any judgment that would eventually be (and was) entered against him. The complaint alleges that that the dismissed defendants were assisting their own client in committing a wrongful act and were aware of the consequences that would result.

It is clear that under North Carolina law, the client of the dismissed Defendants engaged in illegal acts when conveying away property for the purpose of making it unavailable to satisfy a pending judgment. Kirkhart v. Saieed, 419 S.E.2d 580, 107 N.C.App. 293 (N.C.App. 1992). Depending on the circumstances of the particular conveyances, under North Carolina law, the

² The other case argued by the dismissed defendants, but not cited in the Court’s order, was Gaar v. North Myrtle Beach, 287 S.C. 525, 339 S.E.2d 887 (Ct.App. 1986).

³ See Footnote 1.

conveyances in which the dismissed Defendants assisted may actually be “void” and of no effect. *Id.* It is also clear, from the facts alleged in the complaint, that the dismissed Defendants knew the conveyances were for the purpose of defrauding the trust.

Under no circumstances could the allegations be construed to even suggest the dismissed Defendants were “acting in good faith” or assisting in a proper adjudication of their clients’ case. Trustee agrees that a lawyer acting in good faith, carrying out the duties of representation would have the immunity provided by Stiles v. Onorato and Gaar. But that is not what is alleged here.

The allegations here clearly state that the dismissed Defendants knew their actions would result in a fraud against the Trust. The dismissed Defendants, who hold themselves out as “debt protection” specialists, www.reddingjones.com, were actively assisting their client in defrauding the Trust. If the client’s actions had been non-actionable, perhaps it would be a closer question. However, the client’s actions were legally wrongful and the dismissed Defendants assisted in committing the fraud, knowing they were doing so.

Evidence could be produced in discovery that reflects that O’Brien and/or Jones knew nothing about the litigation in which their firm was defending their client, but those are factual issues which would be addressed at summary judgment. At the motion to dismiss stage, the allegations of the complaint must be deemed to be true, and all inferences from the allegations have to be construed in favor of the Trust. Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014). The allegations are that the lawyers actively and knowingly assisted their client in undertaking illegal acts. No authority in South Carolina has ever granted a lawyer immunity for knowingly assisting a client in committing a wrongful and legally actionable wrong.

If, in fact, the dismissed Defendants were innocent of the knowledge that they were assisting in a fraud, perhaps the Trustee's claims against the dismissed Defendants will not succeed. But the allegations of the complaint must be deemed to be true, and those allegations assert that the dismissed Defendants knew they were assisting in committing a fraud. As pleaded, the complaint asserts that, at the same time the dismissed Defendants were defending the claim, they were actively assisting their client in transferring assets so those assets could not be reached when and if a judgment was entered against their client.

Similarly, with reference to the motion to amend and supplement, the allegations are that after the judgment was entered, proposed defendant McTier also assisted the firm's client in divesting himself of assets that were subject to the judgment. There is nothing innocent about an active effort on the part of any lawyer to assist his client in defrauding a third party.

Lastly, while the Court did not address the minimum contacts assertions of the dismissed Defendants, Trustee is informed and believes that the record before the Court demonstrates that due process would not be violated by requiring the dismissed Defendants from answering for their wrongful conduct in the state where the effects of the fraud were felt.

For the reasons set forth above, Trustee moves to reconsider the Court's order and to deny the motion to dismiss, grant the motion to supplement and amend, and allow this proceeding to go forward.

(Signature on following page.)

RESPECTFULLY SUBMITTED,

Truslow & Truslow Law Firm

S/ Douglas N. Truslow

DOUGLAS N. TRUSLOW

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November 16, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	CASE NO. 2017-CP-29-01248_____
	)	
Desa Ballard, as successor trustee of	)	
The Trust of Chris Combis,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Diane Combis, Chris A. Combis,	)	
Redding Jones PLLC, Simon John	)	
O'Brien, and Kent D. Jones,	)	
	)	
Defendants,	)	
	)	
_____	)	

**MEMORANDUM IN
OPPOSITION TO MOTION TO
DISMISS BY REDDING JONES
PLLC, SIMON JOHN O'BRIEN
AND KENT D. JONES**

Plaintiff Desa Ballard (hereafter "the Trustee") is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter "the Trust"), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013. She is also the personal representative of the Estate of Chris Combis, having been appointed to that position by order of Lancaster County Probate Court Judge

Ballard, in her capacities as Trustee and as PR filed suits against George Combis (son of decedent Chris), Diane Combis (husband and wife, hereafter "George" and "Diane") and Chris Combis (George and Diane's adult son, hereafter "Chris") to recover assets due to both the Estate and the Trust. The estate matter is still pending.

Ballard filed multiple lawsuits to recover trust assets were filed in the fall of 2013. The cases were consolidated by the state court, after which prior counsel for George and Diane removed the cases to United States District Court in South Carolina.

South Carolina Contacts with Defendant Redding Jones PLLC

Prior counsel for George and Diane moved to be relieved as counsel in May, 2015, but the motion was initially denied. Prior counsel were relieved and the motion was granted on June 19, 2015, giving them sixty (60) days to obtain new counsel. By notice of appearance dated July 22, 2015, attorney Ashley Tison with Tison Redding, PLLC (incorporated under North Carolina law¹) appeared as counsel for George, Diane, Chris and the various company defendants. **(Exhibit A)**. Public records reflect that Tison was admitted to practice law in South Carolina in 2001.

Tison's partner in Tison Redding LLC, David Redding, who is licensed only in North Carolina and certain of its District Courts, moved before the United States District Court for admission *pro hac vice* on October 14, 2015 with Tison as his sponsor. Redding's *pro hac vice* application reflected that he had been admitted to practice *pro hac vice* in South Carolina Courts in two prior matters: One in a 2008 District Court case, and one in a 2015 District Court case. **(Exhibit B)**. According to Pacer, Redding's appearance in the 2010 matter and the 2015 matter were handled in his capacity as a member of Tison Redding, PLLC. The motion was granted on October 28, 2015.

Once Redding appeared as counsel for George, Diane and Chris, he remained counsel of record throughout the proceedings at the District Court, filing motions, making appearances and trying the case as primary counsel, with Tison as co-counsel present². The five-day trial was

¹ According to the North Carolina Secretary of State, the name of the law firm at the time Tison appeared in the action was Redding Tison & Jones LLC. (Exhibit C).

² Attorney Tison apparently left Tison Redding sometime after the trial before Judge Anderson. North Carolina filings reflect that Tison's name was deleted from the corporate name on February 10, 2017. (Exhibit D).

held before District Court Judge Joe Anderson in July, 2017 and judgment more than \$800,000.00 was entered in favor of the Trust against George and Diane by order dated September 1, 2016³.

After the appearance of South Carolina attorney Tison, and the *pro hac vice* admission of Redding to the United States District Court for the District of South Carolina in 2017, Tison Redding, LLC, now known as Redding Jones, LLC (**Exhibit C**), has remained counsel of record for George and Diane in the Fourth Circuit. The appeal has been handled by Redding and Joseph Pellington, a member of the South Carolina bar since 2012 (**Exhibit E**) and a member of Redding, Jones LLC.

Joseph Pellington and Ty Kimmell McTier (**Exhibit F**), both South Carolina lawyers who are members of Redding Jones, LLC, have appeared as counsel in South Carolina for George, Diane and Chris in probate court proceedings, most recently in a hearing before Honorable Brian Gibbons held on November 14, 2017⁴. That South Carolina action is stayed at this time, but Pellington and McTier, both still with Redding Jones LLC, remain counsel for George and Diane in that matter.

Redding Jones, LLC currently employs two (2) licensed members of the South Carolina Barⁱ who remain counsel of record in at least one pending civil case (that we know of) currently pending in South Carolina. Named member Redding has been admitted to practice in South Carolina on at least four (4) occasions dating back to 2008 (when Redding Jones LLC

³ George and Diane appealed the judgment to the Fourth Circuit Court of Appeals. South Carolina attorney Joseph Pellington, also a member of what is now Redding, Jones LLC, has served as primary counsel on the appeal, although oral argument was conducted by Redding before the Fourth Circuit on September 25, 2018.

⁴ The probate court matter, which relates to recovery of items of personal property owned by the Estate of Chris Combis, was removed from probate court to circuit court by order of the Lancaster County Probate Court.

operated under a prior corporate name). It remains counsel of record in South Carolina in at least two active, pending South Carolina matters. Additionally, its member David Redding (accompanied by Pellington) argued the appeal from the South Carolina District Court in the Fourth Circuit Court of Appeals approximately one month ago, on September 25, 2018.

Lastly, the current website of Redding Jones LLC reflects that it represents clients in both North Carolina and South Carolina. (**Exhibit P**).

South Carolina Contacts with Defendant Kent D. Jones

Two (2) months after Tison and Tison Redding LLC appeared as counsel for George and Diane in the United States District Court for the District of South Carolina, defending civil claims the Trust had been litigating for almost two (2) years, Tison's colleague at Tison Redding, LLC, attorney Kent D. Jones prepared a deed by which George and Diane conveyed real property in North Carolina to their son Chris. (**Exhibit G**). This real property, which was unencumbered, was an undeveloped lot adjacent to a home owned by Chris and his wife. One month later, by deed recorded October 28, 2015 Chris and his wife conveyed the identical property to an unrelated third party. (**Exhibit H**). At the same time, Chris and his wife conveyed their home, which was adjacent to the lot conveyed to Chris by George and Diane, to the same third party. (**Exhibit I**). While we cannot tell from the deeds how much money was received for the conveyance of the two lots, the third party simultaneously executed a Deed of Trust securing a loan from J. P. Morgan Chase Bank N.A. for \$1.9 million dollars. (**Exhibit J**).

Whether Jones had specific knowledge of his firm's efforts to defend Jones' clients George and Diane against the South Carolina judgment when he prepared the deed need not be determined at this time. It is sufficient to know that any conflict of interest Jones would have by

virtue of clients that his law partners represent or had represented in the past would also disqualify Jones. Rule 1.8 and Rule 1.8, South Carolina Rules of Professional Conduct. The North Carolina rules are similar.

The transfer of real estate by George and Diane facilitated by defendant Kent D. Jones was likely a fraudulent transfer. Kirkhart v. Saieed, 418 S.E.2d 580, 109 N.C.App. 293 (1992). George testified on deposition⁵ on September 13, 2017 that he was considering bankruptcy. (**Exhibit K**). Defendant Jones' firm Tison Redding, LLC n/k/a Redding Jones LLC, through its South Carolina lawyer Joseph Pellington, was defending George in the deposition (and lawsuit) at which George claims to have no assets.

By way of answers to interrogatories, Defendant Kent D. Jones has admitted that he has travelled to Bluffton, South Carolina for vacation "approximately 10 times in the last five years." (Answers filed October 11, 2018, ¶ 8). The majority of that 241-mile one-way trip is driven through South Carolina. (**Exhibit L**). Defendant Kent D. Jones also admits his professional association with South Carolina lawyers Joseph Pellington, Ty McTier, and Ashley Tison, as well as David Redding, who is now and has been several times in the past, admitted to practice law in South Carolina *pro hac vice*. (Answers filed October 11, 2018, ¶ 10). Jones admits that he represents one client, Hopper Communities, Inc., that "employs a land development employee out of Charleston, South Carolina." *Id.* ¶ 16.

Jones refuses to disclose any purchases or goods from any vendor from South Carolina or whether he has conducted any business in South Carolina during the past five years.

⁵ The testimony was given in a South Carolina lawsuit, brought by Ballard against George, in which Joseph Pellington of Redding Jones LLC represented George. That matter is also currently stayed.

Presumably, if he has vacationed in Bluffton, South Carolina “approximately 10 times over the last five years,” he has spent money for recreational purposes in South Carolina, but he will not disclose that information.

Similarly, Jones refuses to identify any relatives who live in South Carolina. (Answers filed October 11, 2018, ¶ 12, 18.)

Jones’ failure to disclose this information may be used as an inference that the answers to these interrogatories would not be favorable to the position he asserts here. See Kershaw County Board of Education v. U.S. Gypsum Company, 302 S.C. 390, 396 S.E.2d 369 (1990) (inference from destruction of documents); See also Baker v. Port City Steel Erectors Inc., 261 S.C. 469, 200 S.E.2d 681 (1973) (inference from failure to produce a witness)

Contacts with Simon John O’Brien

As the United States District Court action in South Carolina was approaching trial, attorney Simon John O’Brien, also employed by Redding Jones, LLC, prepared a quitclaim deed which transferred all of George’s interest in two commercial properties in downtown Charlotte (2300 N. Brevard Road and 2310 N. Brevard Road) to Diane. (**Exhibit M**). These properties house at least a portion of the companies which used to be owned exclusively by George (Superior Tile Marble and Terrazzo Corporation) and Diane (Superior Stone of the Southeast Inc.). Based on a search of public records, the property was not encumbered at the time.

Shortly after the judgment was entered against George and Diane, one of the two lots conveyed by George exclusively to Diane (2310 N. Brevard Road) was placed for sale for \$2.8 million dollars. (**Exhibit N; Exhibit O**).

The quitclaim deed prepared by O'Brien for George shortly before trial was likely a fraudulent conveyance, transferred in anticipation of judgment being entered against George only. Kirk hart v. Saieed, *supra*. As facts developed, judgment was entered against both George and Diane. However, at the time, the transfer was clearly intended to get the property out of George's name in the event he was found liable for a judgment in favor of the trust.

On its face, the quit claim deed references O'Brien's employment (at the time) with Tison Redding, LLC. (**Exhibit M.**). As above, it need not be determined, at this preliminary stage of the litigation, whether O'Brien had actual knowledge that his law partners Redding and Tison were actively defending George (and Diane) against the entry of the potential judgment that was being sought in South Carolina; it is sufficient to know that the Rules of Professional Conduct would have prevented O'Brien from representing could not have represented someone adverse to Redding or Tison.

In his answers to interrogatories regarding his contacts with South Carolina, O'Brien revealed that he had "travelled to Charleston, South Carolina, on vacation approximately five times in the last five years." (Answers filed October 11, 2018, ¶ 8). In his answers, O'Brien also admitted his prior professional association with South Carolina Lawyers Tison, Pellington and McTier. By the time of this action, O'Brien had left the employment of the entity now known as Redding Jones, LLC, and became employed at another law firm in North Carolina, Bray & Long in Charlotte. Both of O'Brien's employers, William Bray and Jeff Long, are South Carolina lawyers (as well as being licensed in North Carolina). (Exhibit Q and Exhibit R). Both Bray and Long are alumni of the University of South Carolina School of Law. *Id.* While at Bray & Long, O'Brien has assisted one of his law partners in representing a corporate client based in

Lexington, South Carolina. (Answers, ¶ 16 and 20). His employer holds itself out as providing legal services in North and South Carolina. (**Exhibit S**)

Similarly, O'Brien will not reveal whether has relatives in South Carolina. (Answers ¶ 18 and 19). As with Jones, O'Brien's refusal to provide this information may support an inference that his answers, if provided, would not support his position in this action.

As does Jones, O'Brien refuses to reveal whether he has done business with any entity in South Carolina at any time during the past five years. (Answers, ¶ 12). Also, like Jones, it can be presumed that O'Brien has spent money recreationally in South Carolina during his five vacations in Charleston, South Carolina, but he won't tell us that.

Minimum Contacts

"A court may assert general jurisdiction if the defendant has an 'enduring relationship' with the form state. [citations omitted]. If an individual has an 'enduring relationship' with the state, he may be sued here even if the cause of action did not arise in South Carolina. (General jurisdiction attaches even when the nonresident' defendant's contacts with the form state are not directly related to the cause of action. . . "). To satisfy the 'enduring relationship' requirement of general jurisdiction, the defendants contacts must be 'continuous and systematic' as well as 'so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities'" Cribb v. Spatholt, 382 S.C. 490, 676 S.E>2d 714 (Ct.App. 2009), citing International Shoe Co. v. Washington, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed2d 95 (1945) (emphasis added).

"Due process requires a defendant possess minimum contacts with the forum state such that the maintenance of suit does not offend traditional notations of fair play and substantial

justice.” Cribb v. Spatholt, supra. “ Further the due process requirement mandates the defendant possess sufficient minimum contacts with the forum state that he could reasonably anticipate being haled into court there.”, *Id.*, citing Power Prods. & Services Co., v. Kozma, 379 S.C. 423, 341, 665 S.E.2d 660, 664 (Ct.App. 2008).

Redding Jones has been defending George and Diane (and Chris) in the courts of South Carolina since 2015, trying to prevent entry of a judgment that is now probably worth \$900,000.00. At the same time, lawyers at Redding Jones (O’Brien and Jones) were assisting both George and Diane in secreting assets by transferring them away in hopes that the assets could be protected from the judgment they knew was looming.

Redding Jones practices in South Carolina regularly, as recently as September 25, 2018 when Redding argued the appeal from the District Court in the Court of Appeals. The effects of O’Brien and Jones’ actions in removing assets from the reach of the judgment that has now been entered continued to impact the Trust even today. All three defendants clearly have minimum contacts sufficient to satisfy the due process requirements for being brought into the South Carolina courts for adjudication of their wrongdoing.

S/ Douglas N. Truslow

Douglas N. Truslow
Truslow & Truslow\
Post Office Box 1465
Columbia, South Carolina 29202
Telephone 803.256.6276
Facsimile 803.256.7659
douglastruslow@truslowlaw.com

ATTORNEY FOR PLAINTIFF

October 29, 2018

Tison, the original South Carolina lawyer with Tison Redding LLC, now Defendant Redding Jones LLC, apparently left the law firm after participating in the trial. However, for purposes of the Court's minimum contacts analysis, Tison's appearance until he left the employ of Defending Redding Jones LLC should certainly be considered.

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Rock Hill Division
Case Number: 0:14-cv-01839-MGL**

DESA BALLARD, as Successor Trustee of the
Trust of Chris Combis, u/a/d 10-15-2013

Plaintiff,

v.

DIANE COMBIS,

Defendant.

DESA BALLARD, as Successor Trustee
of the Trust of Chris Combis,

Cross-claim/Third Party Plaintiff,

v.

GEORGE COMBIS; and DIANE COMBIS, as
former Trustee of the Trust of Chris Combis;
SUPERIOR TILE, MARBLE and
TERRAZZO CORP.; and SUPERIOR STONE
OF THE SOUTHEAST, INC.,

Cross-claim/Third Party Defendants.

In the Matter of the Estate of Chris Combis:

DESA BALLARD, as Personal Representative
of the Estate of Chris Combis,

Petitioner,

v.

George Combis; Chris A. Combis; Diane
Combis; and Superior Tile, Marble, and
Tarrazzo Corporation, and Superior Stone.

Respondents.

APPEARANCE OF COUNSEL

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

To: The Clerk of Court and all parties of record.

I am admitted or otherwise authorized to practice in this Court, and I appear in this case as counsel for Diane Combis, George Combis, Chris Combis, Superior Tile, Marble and Terrazzo Corporation, and Superior Stone of the Southeast, Inc.

Respectfully submitted this the 22nd day of July, 2015.

By: s/Ashley Tison
Ashley Tison
Fed ID: 9376
Attorney for Diane Combis, George
Combis, Chris Combis, Superior Tile
and Superior Stone
TISON REDDING, PLLC
201 South Tryon Street, Suite 915
Charlotte, North Carolina 28202
704-200-2056
704-973-9391 (fax)
atison@tisonreddinglaw.com

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CJP2901248

CERTIFICATE OF SERVICE

I, Ashley Tison, do hereby certify that on July 22, 2015, I served a copy of the foregoing **Appearance of Counsel** on the attorney listed below by electronic filing:

Douglas N. Truslow
Truslow & Truslow
Post Office Box 1465
Columbia, South Carolina 29202
douglastruslow@trustlowlas.com
Attorney for Desa Ballard

By: s/Ashley Tison
Ashley Tison
Fed ID: 9376
Attorney for Diane Combis, George
Combis, Chris Combis, Superior Tile
and Superior Stone
TISON REDDING, PLLC
201 South Tryon Street, Suite 915
Charlotte, North Carolina 28202
704-200-2056
704-973-9391 (fax)
atison@tisonreddinglaw.com

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
(ROCK HILL DIVISION)**

DESA BALLARD, as Successor Trustee of the
Trust of Chris Combis, u/a/d 10-15-2013,

Plaintiff,

v.

DIANE COMBIS,

Defendant.

Case No. 0:14-cv-01839-MGL

**Application/Affidavit for
Pro Hac Vice Admission**

(1) Name: David Glennon Redding
First Middle Last

(2) Residence. I reside in the following state: North Carolina
If a South Carolina resident, indicate months/years of residence: _____

(3) Business Address. I am an attorney and practice law under the name of or as a member of the following firm:

Firm name: Tison Redding, PLLC

Mailing address: 201 South Tryon St., Ste. 915 City/State/Zip Charlotte, NC 28213

Telephone number: (704) 900-2215

Facsimile number: (704) 900 -2215

E-mail address: dredding@tisonreddinglaw.com

(Application will not be considered without an e-mail address to receive electronic notification.)

(4) Jurisdiction of this Court. I, by execution of this Application and Affidavit, consent and agree to comply with the applicable statutes, laws, and rules of the State of South Carolina, with all applicable federal statutes, laws, and rules, including Local Rules of the United States District Court for the District of South Carolina (particularly, Local Civil Rule 83.I.08 and/or Local Criminal Rule 57.I.08). I consent to the jurisdiction of the United States District Court for the District of South Carolina in all matters of attorney conduct.¹

(5) Regular Practice of Law. I am a member in good standing of the bar of the highest court of the District of Columbia or the State of North Carolina where I regularly practice law. **Attached is my certificate of good standing.**

Revised ~~TD 13~~ District 1 maintains a web site (www.scd.uscourts.gov) from which the federal and local rules of procedure and related materials may be obtained.

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- (6) Additional Bar Membership. I have been admitted to practice before the following courts: (List all of the courts Applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.) By signing this Affidavit, I certify that I am a member in good standing of each of the listed bars unless otherwise noted.

Court	Date Admitted	Good Standing
USDCNC-MD	9/97	X ☒ Yes ☐
USDCNC-WD	9/98	X ☒ Yes ☐ No
USDCNC-ED	5/01	X ☒ Yes ☐ No
US 4 th Circuit Court of Appeals	5/00	X YES

- (7) Pending Disciplinary Matters. Are you presently the subject of any formal suspension or disbarment proceedings, and have you been notified by any disciplinary agency of the initiation of formal procedures? ☐ Yes ☒ No
(If "yes," give particulars, such as jurisdiction, court, date, grounds. Information to comply with this paragraph may be provided *in camera* but that fact shall be revealed below.)

- (8) Curtailment of Prior *Pro Hac Vice* Admissions. Have you ever had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked?
☐ Yes ☒ No
(If "yes," give particulars, such as date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation.)

- (9) Sanctions. Have you ever had any certificate or privilege to appear and practice before any judicial or administrative body suspended or revoked, or received a public reprimand or greater sanction?
☐ Yes ☒ No
(If "yes," give particulars, e.g., judicial or administrative body, date of suspension, and reinstatement.)

- (10) Criminal Sanctions. Have you ever been convicted of a felony under the laws of the District of Columbia or of any State or under the laws of the United States?
☐ Yes ☒ No
(If "yes," give particulars, such as date, court, judge, circumstances, and ultimate disposition.)

- (11) Present and Previous *Pro Hac Vice* in this Court. Have you, within the last ten (10) years, filed an application to appear *pro hac vice* in the United States District Court for the District of South Carolina or another court in the state of South Carolina?
X ☐ Yes ☐ No

Revised 10/11/05

(If "yes," give court, case name, docket number, and status of litigation, year of application, local counsel of record in each case, and state whether application is pending or was granted.) Attach additional pages if necessary.

MACTEC/GBI (C.A. No. 2008-CP-46-239), 2008. R. Mills Ariail. granted and MACTEC/Ross (C.A. No. 03:09-cv-487), 2010. R. Mills Ariail. granted
Mykel Hawke v. Discovery Communication, LLC, No. 6:15-CV-03192-TMC, 2015. Ashley Tison.
pending

- (12) Designated Local Counsel. Local counsel of record associated with Applicant in this case is:

Attorney Name:	<u>Ashley D. Tison</u>
Firm Name:	<u>Tison Redding, PLLC</u>
Street Address or Post Office Box:	<u>201 S. Tryon St., Suite 915</u>
City, State, and Zip Code:	<u>Charlotte, NC 28202</u>
Telephone Number:	<u>704-246-3821</u>
E-Mail Address:	<u>atison@tisonreddinglaw.com</u>

I understand that local counsel of record is required to: (1) personally sign each pleading, motion, discovery procedure, or other document served or filed in this Court; (2) accept service of all pleadings and notices as required on behalf of all counsel for the party represented; (3) be present at all pretrial conferences, hearings and trials, unless excused by the Court; (4) be prepared to participate actively as may be necessary; and (5) assure compliance with Local Civil Rules 83.I.04, 83.I.05, and 83.I.06 or Local Criminal Rules 57.I.04, 57.I.05, and 57.I.06 as appropriate. Local counsel of record may attend discovery proceedings.

- (13) Associated Counsel. In addition to local counsel designated above, the following counsel are also associated with the undersigned in this case.

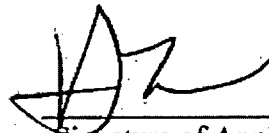
Joseph R. Pellington

- (14) Application Fee. I affirm that the application fee of two hundred and fifty dollars (\$250) has been paid in accordance with Local Civil Rule 83.I.05 or Local Criminal Rule 57.I.05 or paid herewith.

- (15) Electronic Notification. By submitting this application, I consent to electronic notification.

- (16) Represented Party/Parties. I seek to represent the following party/parties: All defendants
Diane Combis

- (17) I certify that I have read Local Civil Rule 30.04 regarding the conduct of depositions.



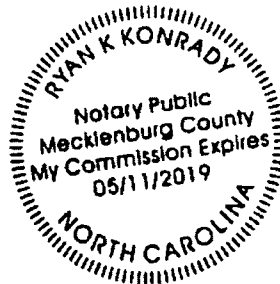
Signature of Applicant

Sworn to and subscribed before me
this 14th day of OCTOBER, 2015.



A Notary Public
of the State of NORTH CAROLINA
COUNTY OF MECKLENBURG

My Commission expires: 06/11/2019



ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

Revised 10/11/05

CERTIFICATE OF SERVICE

I, Ashley Tison, do hereby certify that on October 14, 2015, I served a copy of the foregoing **APPLICATION/AFFIDAVIT FOR PRO HAC VICE ADMISSION** on the attorney listed below by electronic filing:

Douglas N. Truslow
Truslow & Truslow
Fed ID: 4147
Post Office Box 1465
Columbia, South Carolina 29202
Phone: 803-256-6276
Facsimile: 803-256-7659
Email: douglastruslow@truslowlaw.com
Attorney for Plaintiff

s/Ashley D. Tison
Ashley Tison (Fed ID: 9376)
Attorney for Defendant Diane Combis
TISON REDDING, PLLC
201 South Tryon St., Suite 915
Charlotte, North Carolina 28202
Phone: 704-200-2056
Facsimile: 704-973-9391
atison@tisonreddinglaw.com

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017TCP2901248

State of North Carolina
Department of the Secretary of State

SOSID: 1237482
Date Filed: 12/16/2015 10:41:00 AM
Effective: 1/1/2016
Elaine F. Marshall
North Carolina Secretary of State
C2015 328 00767

Limited Liability Company
AMENDMENT OF ARTICLES OF ORGANIZATION

EXHIBIT C

Pursuant to §57D-2-22 of the General Statutes of North Carolina, the undersigned limited liability company hereby submits the following Articles of Amendment for the purpose of amending its Articles of Organization.

1. The name of the limited liability company is: Tison Redding, PLLC
2. The text of each amendment adopted is as follows (attach additional pages if necessary):

Section 1 of the Articles of Organization shall be amended to the following:

 1. The name of the professional limited liability company is: Redding Tison & Jones, PLLC.
3. (Check either a or b, whichever is applicable)

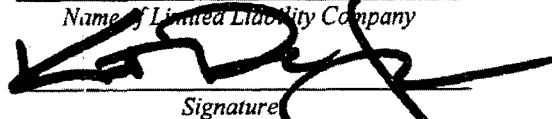
A. The amendment(s) was (were) duly adopted by the majority vote of the organizers of the limited liability company prior to the identification of initial members of the limited liability company.

B. X The amendment(s) was (were) duly adopted by the unanimous vote of the members of the limited liability company or was (were) adopted as otherwise provided in the limited liability company's Articles of Organization or a written operating agreement.
4. These articles will be effective upon filing, unless a date and/or time is specified: January 1, 2016

This the 24 day of November, 2015.

Tison Redding, PLLC

Name of Limited Liability Company



Signature

Kent D. Jones, Member

Type or Print Name and Title

NOTES:

1. Filing fee is \$50. This document must be filed with the Secretary of State.
CORPORATIONS DIVISION
(Revised January 2014)

P. O. BOX 29622

RALEIGH, NC 27626-0622
(Form L-17)

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

State of North Carolina
Department of the Secretary of State

Limited Liability Company
AMENDMENT OF ARTICLES OF ORGANIZATION

Pursuant to §57D-2-22 of the General Statutes of North Carolina, the undersigned limited liability company hereby submits the following Articles of Amendment for the purpose of amending its Articles of Organization.

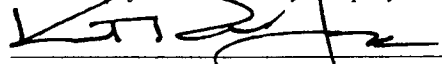
1. The name of the limited liability company is: Redding Tison & Jones, PLLC
2. The text of each amendment adopted is as follows (attach additional pages if necessary):

The name of the PLLC is hereby changed to Redding Jones, PLLC
3. (Check either a or b, whichever is applicable)
A. ☐ The amendment(s) was (were) duly adopted by the majority vote of the organizers of the limited liability company prior to the identification of initial members of the limited liability company.
B. ☒ The amendment(s) was (were) duly adopted by the unanimous vote of the members of the limited liability company or was (were) adopted as otherwise provided in the limited liability company's Articles of Organization or a written operating agreement.
4. These articles will be effective upon filing, unless a date and/or time is specified: _____

This the 1st day of February, 2017.

Redding Tison & Jones, PLLC

Name of Limited Liability Company



Signature

Kent Davis Jones, Partner

Company Official

Type or Print Name and Title

NOTES:

1. Filing fee is \$50. This document must be filed with the Secretary of State.
CORPORATIONS DIVISION
(Revised January 2014)

P. O. BOX 29622

RALEIGH, NC 27626-0622
(Form L-17)

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CPCP2901248



The North Carolina State Bar
Office of the Secretary
L. Thomas Lunsford, II

Adam Maner
Professional Organization Coordinator
PO Box 26088
Raleigh, NC 27611
Tel: 919-828-4620 ext. 256
Fax: 919-821-9168
amaner@ncbar.gov

February 2, 2017

Dear Mr. West:

At this time, the NC State Bar has no objection to Redding Tison & Jones, PLLC filing articles of amendment to change its name to Redding Jones, PLLC.

Sincerely,

Adam Maner

Adam Maner
Professional Organization Coordinator

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

Attorney Information Search

Name:

Mr. Joseph Raymond Pellington

Bar Number:

100490

Organization:

Redding Jones, PLLC

Address:

2907 Providence Road

Suite A303

Charlotte, NC 28211

County:**Email Address:**

jpellington@reddingjones.com

Business Phone:

(704) 200-2054

Fax Number:**Law School:**

University of South Carolina School of Law

Graduation Year:

2011

SC Admission Date:

September 19, 2012

SC Bar Membership Class:

Regular Member

SC Bar Membership Status:

Good Standing

Contact Info

Mr. Joseph Raymond Pellington
Redding Jones, PLLC
2907 Providence Road
Suite A303
Charlotte, NC 28211
jpellington@reddingjones.com
(704) 200-2054

New Search

Attorney Information Search

Name:

Mr. Ty Kimmell McTier

Bar Number:

102900

Organization:**Address:**

2907 Providence Road, Ste. A303

Charlotte, NC 28211

County:**Email Address:**

tmctier@reddingjones.com

Business Phone:

(706) 699-4884

Fax Number:**Law School:**

Charlotte School of Law

Graduation Year:

2015

SC Admission Date:

February 07, 2017

SC Bar Membership Class:

Regular Member

SC Bar Membership Status:

Good Standing

Contact Info

Mr. Ty Kimmell McTier
2907 Providence Road, Ste. A303
Charlotte, NC 28211
tmctier@reddingjones.com
(706) 699-4884

New Search

EXHIBIT G

FOR REGISTRATION
 J. David Granberry
 REGISTER OF DEEDS
 Mecklenburg County, NC
 2015 SEP 25 02:34:54 PM
 BK:30301 PG:511-513
 FEE:\$26.00
 EXCISE TAX: \$1,200.00
 INSTRUMENT # 2015126080
 TAYLORD



ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

Prepared by and when recorded, return to:
 Kent D. Jones, Esquire
 Tison Redding, PLLC
 201 S. Tryon Street, Suite 915
 Charlotte, North Carolina 28202

Tax Parcel Identification Number: 211-672-13

Description for index: 5025 Carmel Club Drive, Charlotte (NO TITLE SEARCH PERFORMED)

Excise Tax: \$1,200.00

STATE OF NORTH CAROLINA

NONWARRANTY DEED

COUNTY OF MECKLENBURG

FOR VALUE RECEIVED, on this the 22 day of September, 2015 the undersigned, **GEORGE C. COMBIS, and wife DIANE M. COMBIS**, each an individual resident of Mecklenburg County, North Carolina, whose address is 8707 Lake Challis Lane, Charlotte, NC 28226 ("Grantor") does hereby convey, transfer, grant and quitclaim to **CHRIS A. COMBIS, AND WIFE LAUREN COMBIS**, each an individual resident of Mecklenburg County, North Carolina, whose address is 4735 Carmel Club Dr., Charlotte, NC 28226 ("Grantee") all of its right, title and interest in all of that real property, together with any improvements thereon, located in Mecklenburg County, North Carolina, being more particularly described on Exhibit A, attached hereto and by this reference made a part hereof.

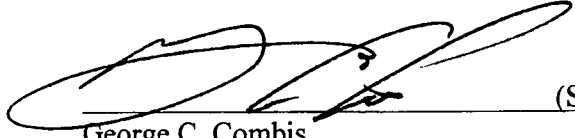
TO HAVE AND TO HOLD, unto Grantee, and its successors and assigns, forever.

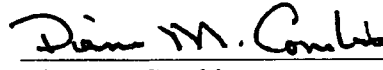
Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

The property described herein was acquired by the Grantor by instrument recorded in Book 24625, Page 652 of the Mecklenburg County Registry.

IN WITNESS WHEREOF, Grantor has executed this instrument as of date set forth above.

GRANTOR:

 (SEAL)
George C. Combis

 (SEAL)
Diane M. Combis

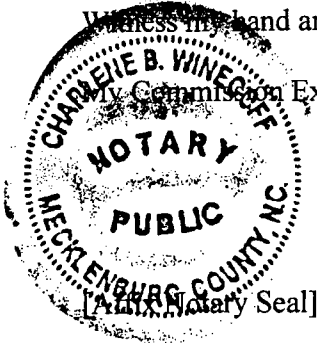
STATE OF NORTH CAROLINA

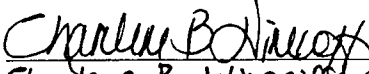
COUNTY OF Mecklenburg

I, certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **George C. Combis and Diane M. Combis**, Grantor(s).

Witness my hand and official stamp or seal, this the 22 day of September, 2015.

My Commission Expires: 12.15.18



Notary Public: 

Printed Name: Charlene B. Winecoff

[Attaching Notary Seal]

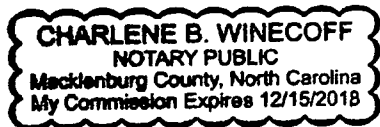


EXHIBIT A

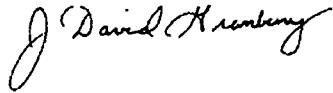
LEGAL DESCRIPTION

Being all of Lot 5, Block 1 of Tuckaway Park, as the same is shown on a map thereof recorded in Map Book 1580, Page 511 in the Mecklenburg County Public Registry.

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

EXHIBIT H

For Registration J. David Granberry
 Register of Deeds
 Mecklenburg County, NC
 Electronically Recorded
 2015 Oct 28 10:50 AM RE Excise Tax: \$ 4800.00
 Book: 30376 Page: 513 Fee: \$ 26.00
 Instrument Number: 2015140815



Excise Tax \$4,800.00 Recording Time, Book and Page

Tax Lot No. 211-672-04 Parcel Identifier No. 211-672-04
 Verified by _____ County on the _____ day of _____
 By _____
 Mail after recording to: Grantee
 This instrument was prepared by: Doyle & Wallace, PLLC, 2701 Coltsgate Road, Suite 210, Charlotte, NC 28211
 Brief Description for the Index: Title Co.: Harbor City Title Insurance Agency, Inc.

NORTH CAROLINA GENERAL WARRANTY DEED

This Deed made this 27th day of October, 2015 by and between:

GRANTOR(S)	GRANTEE(S)
Chris A. Combls and wife, Lauren Combls 4735 Carmel Club Dr Charlotte, NC 28226	Jack I. Krajekian and spouse, Marie Jose Hayek Krajekian Property Address: 4735 Carmel Club Drive Charlotte, NC 28226 Mailing Address: 4735 Carmel Club Drive Charlotte, NC 28226

Enter in appropriate block for each party: name, address and, if applicable, character of entity (e.g., corporation or partnership)

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in the City of Charlotte, _____ Township Mecklenburg County, North Carolina, and more particularly described as follows:

BEING all of Lot 14 in Block 1 of Tuckaway Park as shown on map thereof recorded in Map Book 1580, Page 511 of the Mecklenburg County Public Registry.

All or a portion of the property herein conveyed ☒ Includes or ☐ does not include the primary residence of a Grantor.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 23347 at Page 611.

A map showing the above described property is recorded in Map Book 1580 at Page 511.

Submitted electronically by "Doyle & Wallace, PLLC"
 in compliance with North Carolina statutes governing recordable documents
 and the terms of the submitter agreement with the Mecklenburg County Register of Deeds.

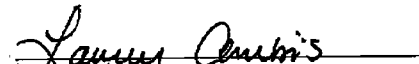
TO HAVE AND TO HOLD the aforesaid lot or parcel or land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

Any and all valid and enforceable restrictions, conditions and covenants of record and the ad valorem taxes for the current year, which the Grantee hereby assumes and agrees to pay.

IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal the day and year first above written.

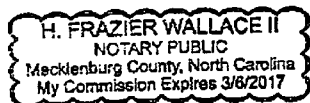

Chris A. Combis

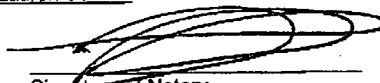

Lauren Combis

STATE OF NORTH CAROLINA - COUNTY OF MECKLENBURG) :

I, the undersigned Notary Public of said County and State certify that the following person(s) personally appeared before me this 27th day of October, 2015, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Name of Principal(s): Chris A. Combis and Lauren Combis

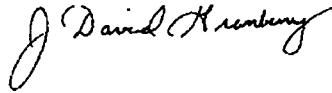



Signature of Notary
My Commission Expires

(Official Seal)

EXHIBIT I

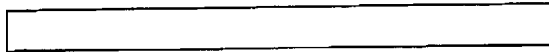
For Registration J. David Granberry
 Register of Deeds
 Mecklenburg County, NC
 Electronically Recorded
 2015 Oct 28 10:50 AM RE Excise Tax: \$ 4800.00
 Book: 30376 Page: 513 Fee: \$ 26.00
 Instrument Number: 2015140815



Excise Tax \$4,800.00

Recording Time, Book and Page

Tax Lot No. 211-672-04 Parcel Identifier No. 211-672-04
 Verified by _____ County on the _____ day of _____
 By _____
 Mail after recording to: Grantee
 This instrument was prepared by: Doyle & Wallace, PLLC, 2701 Coltsgate Road, Suite 210, Charlotte, NC 28211
 Brief Description for the Index: Title Co.: Harbor City Title Insurance Agency, Inc.



NORTH CAROLINA GENERAL WARRANTY DEED

This Deed made this 27th day of October, 2015 by and between:

GRANTOR(S)

Chris A. Combls and wife, Lauren Combls

4735 Carmel Club Dr
Charlotte, NC 28226

GRANTEE(S)

Jack I. Krajekian and spouse, Marie Jose Hayek Krajekian

Property Address:
4735 Carmel Club Drive
Charlotte, NC 28226

Mailing Address:
4735 Carmel Club Drive
Charlotte, NC 28226

Enter in appropriate block for each party: name, address and, if applicable, character of entity (e.g., corporation or partnership)

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in the City of Charlotte, _____ Township Mecklenburg County, North Carolina, and more particularly described as follows:

BEING all of Lot 14 in Block 1 of Tuckaway Park as shown on map thereof recorded in Map Book 1580, Page 511 of the Mecklenburg County Public Registry.

All or a portion of the property herein conveyed ☒ includes or ☐ does not include the primary residence of a Grantor.

The property hereinabove described was acquired by Grantor by Instrument recorded in Book 23347 at Page 611.

A map showing the above described property is recorded in Map Book 1580 at Page 511.

submitted electronically by "Doyle & Wallace, PLLC"
 in compliance with North Carolina statutes governing recordable documents
 and the terms of the submitter agreement with the Mecklenburg County Register of Deeds.

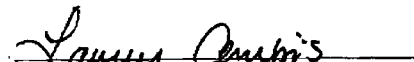
TO HAVE AND TO HOLD the aforesaid lot or parcel or land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

Any and all valid and enforceable restrictions, conditions and covenants of record and the ad valorem taxes for the current year, which the Grantee hereby assumes and agrees to pay.

IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal the day and year first above written.

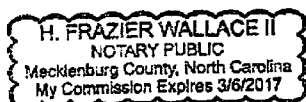

Chris A. Combis

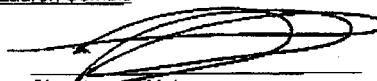

Lauren Combis

STATE OF NORTH CAROLINA - COUNTY OF MECKLENBURG) :

I, the undersigned Notary Public of said County and State certify that the following person(s) personally appeared before me this 27th day of October, 2015, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Name of Principal(s): Chris A. Combis and Lauren Combis




Signature of Notary
My Commission Expires

(Official Seal)

For Registration J. David Granberry
 Register of Deeds
 Mecklenburg County, NC
 Electronically Recorded
 2015 Oct 28 10:50 AM RE Excise Tax: \$ 0.00
 Book: 30376 Page: 515 Fee: \$ 76.00
 Instrument Number: 2015140816

J. David Granberry

Deed of Trust

Return To: Chase Records Center
 Attn: Collateral Trailing Documents
 RE: MC 8000, 700 Kansas Lane - Monroe LA 71203

Prepared By: Rona Stingley
 1111 Polaris Parkway
 Columbus, OH 43240

Definitions. Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "*Security Instrument*" means this document, which is dated October 27, 2015, together with all Riders to this document.

(B) "*Borrower*" is Jack I Krajekian and Marie Jose Hayek Krajekian. Borrower is the trustor under this Security Instrument.

(C) "*Lender*" is JPMorgan Chase Bank, N.A.. Lender is a National Banking Association organized and existing under the laws of the United States. Lender's address is 1111 Polaris Parkway, Columbus, OH 43240. Lender is the beneficiary under this Security Instrument. (C-1) The name of the Mortgage Broker is N/A.

(D) "*Trustee*" is Doyle and Wallace.

(E) "*Note*" means the promissory note signed by Borrower and dated October 27, 2015. The Note states that Borrower owes Lender one million nine hundred twenty thousand and 00/100 Dollars (U.S. \$1,920,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than November 1, 2045.

NORTH CAROLINA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
 VMP®
 Wolters Kluwer Financial Services

2015102715.1.0.3112-J20150324Y

Initials: *ee/m*

1594198678
 Form 3034 1/01
 03/15
 Page 1 of 17



submitted electronically by "Doyle & Wallace, PLLC"
 in compliance with North Carolina statutes governing recordable documents
 and the terms of the submitter agreement with the Mecklenburg County Register of Deeds.

1 MR. PELLINGTON: Objection. I think you're
2 intruding onto attorney/client privilege. Unless you want
3 to parse that out, separate that question out a little more,
4 I'm going to instruct him not to answer.

5 MR. TRUSLOW: Okay. I'll attempt to do that. I
6 understand what you're saying.

7 BY MR. TRUSLOW:

8 Q. Have you considered bankruptcy?

9 A. Yes.

10 Q. Okay. Why? Tell me all the facts that you rely
11 on.

12 MR. PELLINGTON: And I will instruct you not to
13 disclose anything you've discussed with myself, my office,
14 any other attorneys you might have consulted with. All of
15 that is privileged.

16 BY MR. TRUSLOW:

17 Q. And I'm not asking you that.

18 MR. TRUSLOW: And thank you, I appreciate it.

19 MR. PELLINGTON: Okay.

20 BY MR. TRUSLOW:

21 Q. Tell me what facts -- and I used the word facts
22 I think on purpose. In fact, I know I did. What facts.
23 Not what attorneys have told you, but what facts have you
24 relied on?

25 MR. PELLINGTON: Object to the form.

Google Maps

Charlotte, North Carolina to Bluffton, SC

Drive 241 miles, 3 h 51 min

Travel from Charlotte NC to Bluffton SC



Map data ©2018 Google 20 mi



via I-77 S

3 h 51 min

Fastest route now due to traffic conditions

241 miles



via I-95 S

4 h 30 min

245 miles

EXHIBIT L

EXHIBIT M

FOR REGISTRATION
 J. David Granberry
 REGISTER OF DEEDS
 Mecklenburg County, NC
 2016 MAY 19 04:02:43 PM
 BK:30833 PG:717-720
 FEE:\$26.00
 INSTRUMENT # 2016061510

BAKERFR



Excise Tax Due: \$0.00

Recording Time, Book and Page

Tax Lot, No./Parcel Identifier No.: 083-052-01 and 083-052-02

Verified by Mecklenburg County on the ____ day of May, 2016.

by _____

Mail after recording to: Redding Tison & Jones, PLLC, 2907 Providence Road, Suite A303, Charlotte, NC 28211

This instrument was prepared by: Simon John O'Brien, Esq. (No title search performed)

Brief Description for the Index: 2300 & 2310 N. Brevard Rd, Charlotte, Mecklenburg County, North Carolina**NORTH CAROLINA QUITCLAIM DEED**THIS DEED is made as of this 19 day of May, 2016 by and between:

GRANTOR	GRANTEE
George C. Combis and wife, Diane M. Combis	Diane M. Combis
2310 N. Brevard Street Charlotte, NC 28206	2310 N. Brevard Street Charlotte, NC 28206

The designation Grantor and Grantee, as used herein, shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration given by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee, all of Grantor's right, title and interest to that certain lot or parcel of land situated in Mecklenburg County, North Carolina, and more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

The above-described property **does not** include the primary residence of the Grantor.

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

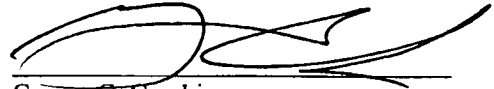
The Real Property hereinabove described was acquired by Grantor by instrument recorded in Book 24551, Page 240 of the Mecklenburg County Public Registry.

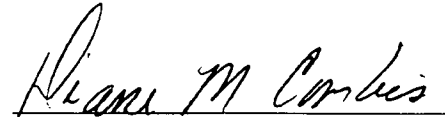
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee.

[Signatures appear on the following page]

ELECTRONICALLY FILED - 2018 Oct 29 9:46 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals, or, if corporate, have caused this Deed to be executed by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.


George C. Combis


Diane M. Combis

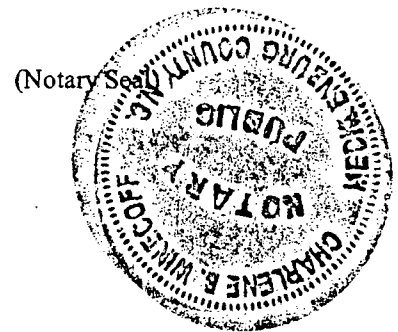
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I do hereby certify that George C. Combis appeared before me this day in person and acknowledged that they signed and delivered the foregoing document as their free and voluntary act for the uses and purposes therein set forth and in the capacity indicated.

Given under my hand and notarial seal this 19 day of May, 2016.

Signature: Charlene B. Winecoff, Notary Public
Print Name: Charlene B. Winecoff



My Commission Expires: 12.15.18

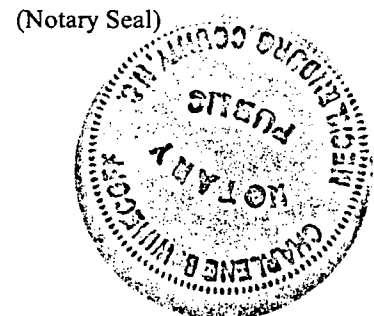
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I do hereby certify that Diane M. Combis appeared before me this day in person and acknowledged that they signed and delivered the foregoing document as their free and voluntary act for the uses and purposes therein set forth and in the capacity indicated.

Given under my hand and notarial seal this 19 day of May, 2016.

Signature: Charlene B. Winecoff, Notary Public
Print Name: Charlene B. Winecoff



My Commission Expires: 12.15.18

EXHIBIT A

Legal Description

TRACT I: Tax Parcel 083-052-01

Beginning at the intersection of the south side of North Brevard Street with the western edge of Sugar Creek; thence in a southwesterly direction along the south side of North Brevard Street to a point, said point being 735 feet west of the southwest corner of the intersection of 28th Street and North Brevard Street; thence at right angles to North Brevard Street along a line in a southeasterly direction to the western edge of Sugar Creek; thence along the western edge of Sugar Creek to the point of beginning; containing approximately 0.78 acre, and being in all respects the same property conveyed to Superior Tile, Marble, Terrazzo Corporation, a North Carolina corporation, Grantor herein, by Southern Railway Company, by deed recorded in the Mecklenburg County, North Carolina Public Registry in Book 2724, at Page 563.

TRACT II: Tax Parcel 083-052-02

Beginning at an iron stake in the Southeasterly margin of North Brevard Street, said stake being located 445 feet distant in a Northeasterly direction from the point marking the intersection of said Margin of North Brevard Street with the Northeasterly margin of Twenty-fifth Street, and runs thence with the said margin of North Brevard Street, North 49-00 East, 110.39 feet to an iron stake; thence, South 41-00 East, 1015.72 feet to an iron stake; thence South 25-35 West, 120.30 feet to an iron stake; thence North 41-00 West, 152.52 feet to the beginning, all as shown by blueprint of survey of T. J. Byrum, Registered Engineer, dated March 3, 1948, and being the same property conveyed to Superior Tile, Marble and Terrazzo Corporation, Grantor herein, by Chris (Cris) Combis and wife, Jessie O. Combis, by deed dated December 26, 1984, recorded in the Mecklenburg County, North Carolina Public Registry in Book 4954, at Page 297.

(1) Property was subsequently sold by Chris A. Combis (son) on 10/28/2015

(2) Property was transferred from George and Diane to Diane only. The property has been subsequently listed for sale

EXHIBIT N

This is Google's cache of <http://www.newsouthprop.com/properties/?p=219>. It is a snapshot of the page as it appeared on Nov 20, 2016 23:02:49 GMT.

The current page could have changed in the meantime. [Learn more](#)

EXHIBIT O

Full version [Text-only version](#) [View source](#)

Tip: To quickly find your search term on this page, press **Ctrl+F** or **⌘-F** (Mac) and use the find bar.



2310 N. BREVARD

[DOWNLOAD A PDF OF THIS PROPERTY](#)



OVERVIEW

Listing Method	For Sale
Address / Location	2310 N. Brevard Street Charlotte, NC
Available	1.40 acres
Rate	Asking Price \$2,800,000

HIGHLIGHTS

- Located on the Blue Line Extension at 25th Street Station stop
- Prime mixed-use re-development site
- Close proximity to NODA Arts District
- Parcel ID: 080305201, 08305202 & 08305203

BROKER CONTACT(S)

Holly Alexander

- P 704.927.2884
- [Email Holly Alexander](#)

- [Download vCard](#)

Kenneth R. Smith III

- P 704.927.2882
- [Email Kenneth R. Smith III](#)
- [Download vCard](#)

APPENDIX 000211

Charlotte's Business is Our Business

BOOK A FREE 30 MINUTE CONSULT



Redding Jones is a team of dynamic legal professionals focused on building lasting relationships with our clients. We are service minded based in Charlotte and focus on commercial business litigation, construction litigation, commercial real estate and business transactions.

MEET THE TEAM

We get to know our clients and the needs of their business. We focus on achieving the best possible outcome in business and construction litigation. We provide efficient, professional guidance in commercial real estate and business negotiations and transactions.

PRACTICE AREAS

Redding Jones' attorneys have extensive experience in Charlotte, NC, and its surrounding counties. With attorneys licensed in both North Carolina and South Carolina, we can serve the rapidly developing Charlotte market as well as the rest of the Carolinas.

LEARN MORE



We've resolved complex construction and real estate development disputes. We've closed sophisticated commercial real estate transactions, business acquisitions, and asset sales.

Some of our attorneys are born and bred Charlotteans, others got here as fast as they could. We all call Charlotte home and are committed to the Charlotte business community.

Lawyers are notorious for slow response times and big legal bills. Our attorneys are quick to respond and transparent in our communication and billing.

We believe in getting to know our clients as people so we can better understand their needs. We value direct personal interaction with our clients.

QUESTIONS ABOUT YOUR LEGAL MATTER? ASK AN ATTORNEY.

ASK OUR ATTORNEYS



FRIEND



"My real estate investment firm has worked with Redding Jones for many years and I trust that when I am represented by Kent Jones, David Redding, and their team that my business and clients of my business are in good hands."

Bill Grier, Fidelity Property Investments, LLC



Charlotte's Business is Our Business

BOOK A FREE 30 MINUTE CONSULT

Redding Jones, PLLC
2907 Providence Road
Suite A303
Charlotte, NC 28211
704-900-2215
info@reddingjones.com

125

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Attorney Information Search

Name:

Mr. William Parks Bray

Bar Number:

66448

Organization:

Bray & Long, PLLC

Address:

2820 Selwyn Ave., Ste. 400

Charlotte, NC 28209

County:

Email Address:

wbray@braylong.com

Business Phone:

(704) 523-7777

Fax Number:

Law School:

University of South Carolina School of Law

Graduation Year:

1993

SC Admission Date:

November 15, 1993

SC Bar Membership Class:

Regular Member

SC Bar Membership Status:

Good Standing

Contact Info
Mr. William Parks Bray
Bray & Long, PLLC
2820 Selwyn Ave., Ste. 400
Charlotte, NC 28209
wbray@braylong.com
(704) 523-7777

New Search

Attorney Information Search

Name:

Mr. Jeffrey A. Long

Bar Number:

71073

Organization:

Bray & Long, PLLC

Address:

2820 Selwyn Ave., Ste. 400

Charlotte, NC 28209

County:

Email Address:

jlong@braylong.com

Business Phone:

(704) 523-7777 x22

Fax Number:

(704) 523-7780

Law School:

University of South Carolina School of Law

Graduation Year:

2002

SC Admission Date:

128

EXHIBIT R

May 14, 2003

SC Bar Membership Class:

Regular Member

SC Bar Membership Status:

Good Standing

Contact Info
Mr. Jeffrey A. Long
Bray & Long, PLLC
2820 Selwyn Ave., Ste. 400
Charlotte, NC 28209
jlong@braylong.com
(704) 523-7777
x22
(704) 523-7780

New Search

Representing Clients Throughout the Carolinas

Bray & Long, PLLC is a boutique law firm uniquely positioned to serve its clients throughout North Carolina and South Carolina. Our attorneys frequently represent individuals and companies that transact business in the greater-Charlotte metropolitan markets of Cabarrus, Mecklenburg, Gaston, Iredell and Union Counties (in North Carolina) and York, Union, Lancaster, Chester and Fairfield Counties (in South Carolina).

Experienced Attorneys in NC and SC

The breadth of practice areas and industry-specific experience of our attorneys licensed in North and South Carolina have resulted in the successful representation of clients from Kill Devil Hills and Asheville, NC to Greenville and Charleston, SC.

Our attorneys are prepared to assist clients in need of representation in the following areas:

- [Creditor/Debtor Disputes \(/practice-areas/creditor-debtor-disputes/\)](/practice-areas/creditor-debtor-disputes/)
- [Commercial Real Estate \(/practice-areas/commercial-real-estate/\)](/practice-areas/commercial-real-estate/)
- [Construction Disputes \(/practice-areas/construction/\)](/practice-areas/construction/)
- [Commercial Litigation \(/practice-areas/commercial-litigation/\)](/practice-areas/commercial-litigation/)
- [Sports and Entertainment \(/practice-areas/sports-entertainment/\)](/practice-areas/sports-entertainment/)
- [Mergers and Acquisitions \(/practice-areas/mergers-acquisitions/\)](/practice-areas/mergers-acquisitions/)
- [General Corporate \(/practice-areas/general-corporate/\)](/practice-areas/general-corporate/)
- [Personal Injury/Medical Malpractice \(/practice-areas/personal-injury/\)](/practice-areas/personal-injury/)

Competitive Rates

Why hire multiple law firms or pay the rates demanded by large regional firms when you need only one firm to meet all your legal needs? Bray & Long, PLLC is here to serve you competently and at a fair value.

Contact [William Bray \(/attorneys/william-p-bray/\)](/attorneys/william-p-bray/) or [Jeff Long \(/attorneys/jeff-long/\)](/attorneys/jeff-long/) for more information and assistance.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LANCASTER	)	CASE NO. 2017-CP-29-01248
	)	
Desa Ballard, as successor trustee of	)	
The Trust of Chris Combis,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO SUPPLEMENT
	)	AND AMEND COMPLAINT
Diane Combis, Chris A. Combis,	)	
Redding Jones PLLC , Simon John	)	
O'Brien, and Kent D. Jones,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
Ty McTier,	)	
	)	
Proposed defendant.	)	
	)	

Pursuant to Rule 15(a) and 15(d), SCRCP, Plaintiff Desa Ballard¹ (hereafter “the Trustee”) moves to supplement the complaint in this action to add additional claims for relief, based on events which have apparently occurred since the filing of the original complaint, and/or events which may have occurred prior to the filing of the original complaint, but of which Trustee did not confirm knowledge until later. She additionally seeks to add Ty McTier as an individual defendant. In support of her motion, Trustee would show:

The trust holds a judgment against George Combis (hereafter “George”) and defendant Diane Combis (hereafter “Diane”) in excess of nine hundred thousand dollars (\$900,000.00) which

¹ Trustee is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter “the Trust”), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013.

was entered by the United States District Court for the District of South Carolina. Collection proceedings were filed in Mecklenburg County, North Carolina (one of the North Carolina counties in which George and Diane own real and personal property) and the South Carolina judgment was given full faith and credit and entered in Mecklenburg County by order of Superior Court Judge Forrest D. Bridges on August 14, 2017.

The instant action was brought to obtain redress from the named defendants for their civil conspiracy to assist George and Diane in violating a court order. Those property transfers included transfer of property out of George's name into Diane's name, and into the name of their adult son Chris Combis (hereafter "Chris"), all of which property transfers occurred during the litigation which led to the judgment, and during the time Defendant law firm was representing George, Diane and Chris in the pending South Carolina lawsuit.

Collection of the judgment against George and Diane's property in North Carolina was stayed pending disposition of their appeal to the United States Court of Appeals for the Fourth Circuit. Argument was heard by that Court on September 25, 2018 and a decision is pending.

The order of stay also mandated that "neither defendant . . . transfer, assign, convey, dispose of, secrete or destroy or otherwise encumber, any stock ownership and/or interest in any business." (Exhibit D). At the time of entry of the judgment against George and Diane, George was the sole owner of 100 percent of stock in Superior Tile, Marble and Terrazzo Corporation (a North Carolina corporation) and Diane was the sole owner of 100 percent of stock in Superior Stone of the Southeast Inc. (also a North Carolina corporation). The two corporations operated essentially as a single entity, but when the Estate of Chris Combis (father of George, grandfather of Chris) claimed ownership of some stock in Superior Tile, the operations of the company began

to evolve exclusively into Superior Stone, owned by Diane. The company's website has eliminated any reference to the original company, Superior Tile, owned by George.

At a deposition of George in a separate matter on September 13, 2017, George testified that Chris owned none of the stock of "the company" and Diane owned it all. (Depo p. 62, lines 20-25). At a hearing in North Carolina on July 23, 2018 at which George was present, George's attorney David Redding advised the court that "the company" was now owned exclusively by George and Diane's son Chris. (Transcript July 23, 2018, p. 10 lines 12-13; Exhibit A). On numerous occasions after this, Trustee's counsel attempted to obtain verification that the statement made by Redding on July 23, 2018 was true. Emails to Redding and Ty McTier of his law firm on July 25, 2018 and September 27, 2018 were ignored (see Exhibits B and C).

If the July statement of David Redding is true, 100% of the stock transfer in "the company" occurred in violation of the restraining order issued by the North Carolina Court on August 14, 2017. At all times relevant to the North Carolina stay, George and Diane (and Chris) have been represented by various attorneys at the Defendant law firm.

Trustee has reason to believe that Defendant law firm and attorneys at Defendant law firm, including Ty McTier, were aware of and perhaps participated in violating the stay by transferring or assisting in transferring ownership of stock of "the company", which would be further acts in carrying out the conspiracy alleged in the complaint in this matter during the period in which George and Diane were prohibited from transferring any interest in a business, and during the period of time in which they were represented by Defendant law firm and individual attorneys at Defendant law firm.

In order to seek complete relief, Trustee is informed and believes that it is necessary to file supplemental pleadings seeking redress against the lawyers and law firm who assisted George and Diane in violating the stay.

Wherefore, Trustee moves to (1) file a supplemental compliant in this action; and (2) add Ty McTier as an additional defendant.

RESPECTFULLY SUBMITTED,

Truslow & Truslow Law Firm

S/ Douglas N. Truslow

DOUGLAS N. TRUSLOW
Attorney for Desa Ballard
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
Fax (803) 256-7659
douglastruslow@truslowlaw.com

October 26, 2018

1 Truly, it's the only thing he can do to try to
2 raise money to pay off the State tax. I don't want the
3 Court making a decision based on the understanding that this
4 would successfully -- may or may not successfully pay off
5 his State taxes is why I'm belaboring that point.

6 THE COURT: And I believe it was referenced in
7 the -- yes. Paragraph four of the affidavit, because the
8 accounts have been frozen he has no access to funds required
9 to pay for his and his wife's personal upkeep. So is there
10 no -- is he having to rely on accounts in order to finance
11 upkeep or is there any income coming in from the business?

12 MR. REDDING: I think he's paid as an employee
13 by his son who owns the business now.

14 THE COURT: Okay.

15 MR. REDDING: And that money would be paid with
16 a bank account, you know. And so Mr. Combis has obviously
17 had tax problems and because he's had tax problems, the
18 family is now very careful about how they pay, been paying
19 this. So whereas before maybe they did not monitor as
20 closely as necessary to observe income tax rules and
21 accountables such that -- well, before the State and Federal
22 authorities had gotten these liens against him, now they are
23 extremely careful about what they do.

24 So the only income the Combis' is getting money
25 out of the business is when he's paid by his son. And for

From: Douglas Truslow
Sent: Wednesday, July 25, 2018 2:42 PM
To: tmctier@reddingjones.com
Cc: Amanda Hilley <amandahilley@truslowlaw.com>
Subject: Combis

I expect I will need to follow up, based on your response, but have George and/or Diane disposed of any of their interests in any of the businesses or in any assets since the time of the restraining order? If so, please provide the details and who, if anyone assisted them in making the transfers out. Thank you in advance for your prompt response.

Doug

Mara Ballard

From: Douglas Truslow <douglastruslow@truslowlaw.com>
Sent: Thursday, September 27, 2018 9:31 AM
To: Amanda Hilley; Desa Ballard
Subject: FW: Combis/Ballard-OC Question

From: Douglas Truslow
Sent: Thursday, September 27, 2018 9:30 AM
To: Ty McTier <tmctier@reddingjones.com>
Cc: David Redding <dredding@reddingjones.com>; Marisol Rivera <mrivera@reddingjones.com>
Subject: RE: Combis/Ballard-OC Question

TY: I responded by phone voice dictation and ...you probably know it does not always work. What I meant to say was that it was related to me that Chris may now own the business. I was trying to find out if that was accurate information.

From: Douglas Truslow
Sent: Wednesday, September 26, 2018 3:50 PM
To: Ty McTier <tmctier@reddingjones.com>
Cc: David Redding <dredding@reddingjones.com>; Marisol Rivera <mrivera@reddingjones.com>
Subject: Re: Combis/Ballard-OC Question

It was related to me that Chris on the business now. I was not there but I thought I would

Sent from my iPhone

On Sep 26, 2018, at 2:56 PM, Ty McTier <tmctier@reddingjones.com> wrote:

Doug,

I am not aware, but if you have something to support your suspicion I can take that to my clients to figure out.

Ty K. McTier, Associate
2907 Providence Road, Suite 303
Charlotte, North Carolina 28211
Telephone | 704-900-2215 x113
E-mail | tmctier@reddingjones.com

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From: Douglas Truslow <douglastruslow@truslowlaw.com>
Sent: Wednesday, September 26, 2018 12:17:15 PM
To: David Redding
Cc: Ty McTier; Marisol Rivera
Subject: RE: Combis/Ballard-OC Question

Thanks.

From: David Redding <dredding@reddingjones.com>
Sent: Wednesday, September 26, 2018 11:34 AM
To: Douglas Truslow <douglastruslow@truslowlaw.com>
Cc: Ty McTier <tmctier@reddingjones.com>; Marisol Rivera <mrivera@reddingjones.com>
Subject: Combis/Ballard-OC Question

Doug,

Let me pass your question to Ty who is handling that aspect of the litigation.

Ty: will you please respond to Doug directly.

REDDING | JONES, PLLC
David Redding, Partner
2907 Providence Road, Suite A303
Charlotte North Carolina 28211
704-533-5787
Email | dredding@reddingjones.com

On Sep 25, 2018, at 11:58 AM, Douglas Truslow <douglastruslow@truslowlaw.com> wrote:

Did George and Diane sell the lake chalice property? Did they sell or transfer any of the corporation. If so, please give me the details thank you if not, please confirm. Thank you

Doug

Get Outlook for iOS

FILED

State of North Carolina

2017 AUG 25 AM 11:02 IN THE GENERAL COURT OF JUSTICE

County of Mecklenburg

10/26/2017 10:00 AM C.S. SUPERIOR COURT DIVISION
CASE # 17CVS2179Desa Ballard, as Successor Trustee of the
Trust of Chris Combis, u/a/d 10-15-2013
Plaintiff

VS

Diane Combis,
DefendantDesa Ballard, as Successor Trustee of the
Trust of Chris Combis
Cross-Claim/Third Party Plaintiff

ORDER

VS

George Combis, and Diane Combis, as
former Trustee of the Trust of Chris
Combis
Cross-claim/Third Party
Defendants.In the Matter of the Estate of Chris
Combis:Desa Ballard, as Personal Representative
of the Estate of Chris Combis
Petitioner

VS

George Combis; Chris Combis; Diane
Combis; and Superior Tile, Marble, and
Tarrazzo Corporation, and Superior Stone
Respondents.

THIS CAUSE coming on to be heard and being heard on May 23, 2016 on plaintiff's Motion to Enforce Judgment and defendants' Motion for Relief from Enforcement of Foreign Judgment, before the undersigned Judge, and C.O. (Ladd) Ackerman, Jr., Esq., appearing on behalf of the plaintiff and David G. Redding, Esq. appearing on behalf of the defendants, and the Court hearing the evidence presented by both parties makes the following:

FINDING OF FACT

1. That this action is based on a judgment entered by the United States District Court for the District of South Carolina.

2. That the South Carolina judgment is currently under appeal, but an Order was entered in the United States District Court for the District of South Carolina on January 12, 2017 allowing for the registration of the South Carolina Judgment to the United States District Court, Western District of North Carolina.

3. That plaintiff filed a Notice of Filing in this Court on February 8, 2017 to domesticate the South Carolina judgment to North Carolina. The amount of the Judgment as of September 1, 2016 is \$516,176.59, plus interest of \$334,599.97, for a total judgment of \$850,776.56. Defendants were served with the Notice of Filing.

4. Thereafter, on or about March 3, 2017, defendants filed a Motion for Relief From Enforcement of Foreign Judgment.

Based on the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the persons and subject matter of this action.
2. The Plaintiff is given full faith and credit of their South Carolina judgment and the defendants, George Combis, and Diane Combis, owe the plaintiff a total of \$850,776.56 as of September 1, 2016.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the South Carolina judgment be recorded and enforced in this State in the same manner as any judgment of this State and that said judgment shall constitute a lien upon any property owned by the defendants in any North Carolina County;
2. That execution of the judgment be stayed pending the outcome of the appeal in the United States District Court for the District, on the following conditions:
 - (a) That neither defendant herein transfer, convey, or otherwise encumber, any real property, owned jointly, or individually by either of them, to any other party;
 - (b) That neither defendant herein transfer, assign, convey, dispose of, secrete or destroy, or otherwise encumber, any stock ownership and/or interest in any business;
 - (c) That neither defendant herein transfer, assign, convey, dispose of, secrete or destroy, or otherwise encumber, any personal property, owned jointly, or individually by either of them, other than in the ordinary course of business or in the ordinary course of their every day affairs,

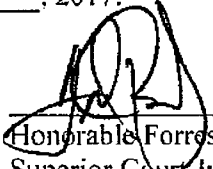
and in no event in an amount greater than \$5,000.00;

(d) That defendants shall post a bond, in the form of cash or surety, in the amount of \$10,000.00, in a manner that is acceptable to the Clerk of Court of Mecklenburg County.

(e) That this matter be brought before this court at a later date at the conclusion of the appeal of the South Carolina judgment to reevaluate and reconsider this stay of execution.

IT IS SO ORDERED.

This the 14 day of August, 2017.



Honorable Forrest D. Bridges
Superior Court Judge

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CASE NO. 2017-CP-29-01248

Desa Ballard, as successor trustee of)
The Trust of Chris Combis,)

Plaintiff,)

vs.)

Diane Combis, Chris A. Combis,)
Redding Jones PLLC, Simon John)
O'Brien, and Kent D. Jones,)

Defendants.)

BRIEF IN SUPPORT OF MOTION
TO DISMISS ON BEHALF OF
DEFENDANTS REDDING JONES
PLLC, SIMON JOHN O'BRIEN,
AND KENT D. JONES

Defendants Redding Jones, PLLC, Simon John O'Brien ("O'Brien"), and Kent D. Jones ("Jones") (collectively, "Defendants"), through undersigned counsel, submit this brief in support of their motion to dismiss the claim against them pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6) of the South Carolina Rules of Civil Procedure. Plaintiff has asserted a sole cause of action against Defendants - civil conspiracy. This claim should be dismissed because, *inter alia*:

- (1) Plaintiff has failed to establish personal jurisdiction over Defendants O'Brien and Jones;
- (2) Venue is improper pursuant to S.C. Code § 15-7-10;
- (3) This Court does not have subject matter jurisdiction over the subject of this action; and
- (4) A civil conspiracy cannot exist in the context of a principal-agent relationship such as that of attorney and client, nor can an attorney be liable to a third party where his conduct was in the scope of his representation of his client.

I. BACKGROUND

Plaintiff Desa Ballard is the successor trustee of a trust that owns a judgment against George Combis and Diane Combis. Complaint, ¶ 38. Defendant Redding Jones is a professional limited liability company organized and existing under the laws of North Carolina whose only office is in Charlotte, North Carolina. Jones Affidavit, ¶ 2. Defendants O'Brien and Jones are citizens and residents of North Carolina. Jones Affidavit, ¶ 3; O'Brien Affidavit, ¶ 3.

O'Brien and Jones have never lived or owned real property in South Carolina; have never held a South Carolina law license or any other South Carolina license; have never sued or been sued in South Carolina before this lawsuit; do not solicit or transact business or render services in South Carolina; do not maintain offices or employees in South Carolina; do not own, rent, lease, or otherwise use or possess any interest in real property in South Carolina; do not have a South Carolina telephone number, facsimile number, address or bank accounts; and are not registered agents for any South Carolina corporations or entities. Jones Affidavit, ¶¶ 3-5, 9-16; O'Brien Affidavit, ¶¶ 3-5, 12-19.

With this lawsuit, Plaintiff has initiated litigation against five North Carolina defendants, arguing that title to two properties located in North Carolina were improperly conveyed to residents of North Carolina. Despite the fact that Defendants and the properties that are the subject of the Complaint are all in North Carolina, Plaintiff filed this suit in South Carolina. Plaintiff alleges that Redding Jones, Jones, and O'Brien conspired with George Combis to facilitate fraudulent conveyances of the

two properties with full knowledge that their acts operated to assist George Combis in evading a pending judgment against him. Complaint, ¶¶ 9-10, 19-20, 26.

However, both O'Brien and Jones simply prepared and recorded deeds transferring the real property that Plaintiff claims was fraudulently conveyed. Jones Affidavit, ¶ 8; O'Brien Affidavit, ¶ 11. Neither Jones nor O'Brien had any involvement in the case that resulted in Plaintiff obtaining a judgment against George and Diane Combis or any involvement in the appeal of that matter. Jones Affidavit, ¶ 6; O'Brien Affidavit, ¶ 6. Furthermore, Jones and O'Brien did not have any discussions regarding the effect of the deed on Plaintiff's suit against George and Diane Combis. Jones Affidavit, ¶ 8; O'Brien Affidavit, ¶ 11. As set forth in detail below, the Court should dismiss Plaintiff's claim against Defendants.

II. ARGUMENT

a. Plaintiff has not established personal jurisdiction over Defendants O'Brien and Jones.

Plaintiff's claim against Defendants should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction. "The party seeking to invoke personal jurisdiction against a foreign [defendant] by utilization of our long-arm statute has the burden of establishing jurisdiction." *Aviation Associates and Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 505, 402 S.E.2d 177, 178 (1991). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Coggeshall v. Reprod. Endocrine Assocs.*, 376 S.C. 12, 16, 655

S.E.2d 476, 478 (2007). A court will conduct a two-step analysis when determining whether it can exercise personal jurisdiction over a nonresident. *Aviation Assoc.*, 303 S.C. at 505, 402 S.E.2d at 179. “First, the trial judge must determine that the South Carolina long-arm statute applies. Second, the trial judge must determine that the nonresident’s contacts in South Carolina are sufficient to satisfy due process requirements.” *Id.*

Without the requisite minimum contacts, the South Carolina court is without the power to adjudicate the matter. *Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). The court must also “find that the exercise of jurisdiction is reasonable or fair. If either prong fails, the exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.” *Id.* A defendant must “purposefully avail itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.” *Aviation Assocs.*, 303 S.C. at 508, 402 S.E.2d at 180. South Carolina courts look at four factors when determining if the requirements of due process are satisfied: (1) the duration of the defendant’s activity in this State; (2) the character and circumstances of its acts; (3) the inconvenience to the parties; and (4) the State’s interest in exercising jurisdiction.” *Id.* To establish jurisdiction under a conspiracy theory, “it is not enough that other members of the alleged conspiracy have numerous contacts with South Carolina. Due process requires [a court] to examine each [defendant’s] own contacts with South Carolina.” *Allen v. Columbia Financial Management, Ltd.*, 297 S.C. 481, 490, 377 S.E.2d 352, 356 (1988).

In *Aviation Associates*, the Supreme Court found that Plaintiff could not satisfy the requirement of due process. *Id.* First, the duration of the defendant's activities in South Carolina were minimal – the only conduct directed toward the state was a letter that it signed and returned at Plaintiff's request. *Id.* The Court noted that "although a single act may support jurisdiction, it must create a 'substantial connection' with the forum." *Id.* Returning one letter to South Carolina did not create such a connection. *Id.*

As an initial matter, Plaintiff has not alleged a basis for personal jurisdiction over Defendants Jones and O'Brien. The only statements to support purported jurisdiction over the individual defendants (which is explicitly denied) is that O'Brien had "full knowledge that those acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust," and that Jones "knew or should have known that his acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust." Complaint, ¶¶9-10. Defendants deny that these statements are a proper invocation of South Carolina's long-arm statute. As best Defendants can tell, Plaintiff may have intended to invoke the fourth prong of the long-arm statute, "causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State." S.C. Code Ann. §36-2-803.

Assuming, *arguendo*, that Plaintiff intended to raise this as the basis for personal jurisdiction, Plaintiff has still not satisfied the requirement that O'Brien and Jones have sufficient minimum contacts with the State of South Carolina to comply with due process. The contact with South Carolina that Plaintiff alleges as the basis for personal jurisdiction over Jones and O'Brien is the preparation and recordation of two deeds in Charlotte, North Carolina, for North Carolina residents, concerning North Carolina properties. Therefore, (1) the duration of Defendants' activities in South Carolina is non-existent, and (2) the character and circumstances of Defendants' acts reveal a complete lack of any purposeful availment of the privilege of conducting activities within South Carolina. Furthermore, (3) the inconvenience to the parties is considerable given that Defendants, potential witnesses, and relevant records are all in North Carolina. Finally, (4) South Carolina's interest in exercising jurisdiction over a case that alleges North Carolina attorneys participated in an unethical, fraudulent conveyance of real property situated in North Carolina for North Carolina residents is slight in comparison to North Carolina's interest in exercising jurisdiction. Therefore, Plaintiff's claim against Defendants should be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction.

b. Venue is improper in this Court

Plaintiff's claim against Defendants should be dismissed pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure for improper venue. There is no proper venue in the State of South Carolina and therefore, Plaintiff's claim against

Defendants must be dismissed. The Code of Laws of South Carolina §15-7-10 provides in relevant part:

an action...must be tried in the county in which the subject of the action or some part of the property is situated...(1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property.

(emphasis added). This section applies to “any action that requires a determination in any form of such right or interest in real property.” *Truck South, Inc. v. Patel*, 339 S.C. 40, 45, 528 S.E.2d 424, 427 (2000). “[T]he character of an action is primarily determined by the allegations of the complaint.” *Id.* at 46, 528 S.E.2d at 427.

In *Truck South*, plaintiff Truck South argued that venue was proper in the county where the property was situated pursuant to §15-7-10. *Id.* at 45, 528 S.E.2d at 427. Plaintiff Truck South requested specific performance of a contract whereby the defendant was to make payment in installments to Truck South and, upon satisfaction, receive title to the subject land. *Id.* at 43, 528 S.E.2d at 426. The Court of Appeals found that Truck South was “not asking the court to determine its right in the real estate, but is simply seeking the money due under the contract,” and determined that §15-7-10 did not apply. *Id.*, 528 S.E.2d at 428.

The Supreme Court, however, disagreed. *Id.* In reviewing the Amended Complaint, the Supreme Court noted that Truck South’s allegations sought to require

[defendant] Patel to specifically perform under the contract, money damages were only requested in the alternative. While transfer of money would occur if specific performance was ordered, Truck South’s request is not solely for a money judgment, it is an action to compel Patel to perform so that title, an interest in the real estate, can transfer.

Id. The Supreme Court noted that

strong public policy supports a rule that requires an action for the specific performance of a land sales contract to be litigated in the county where the land is located. That is where the records are located, where the title is recorded, where *lis pendens* are filed, and where the actual property is situated.

Id. Accordingly, the Court found that §15-7-10 applied, and that it was “more reasonable...to have a rule where actions involving real estate are local actions that are litigated in the county where the land is situated.” *Truck South*, 339 S.C. at 47-48, 528 S.E.2d at 428.

Here, in the Prayer for Relief, Plaintiff has requested an entry of judgment as follows:

B. Declaring the purported transfer [of] George’s interest in the Brevard Street property was void *ab initio*, and title of a one-half undivided interest in the property remains in George’s name.

C. Declaring the purported transfer of George and Diane’s interest to Chris of the Carmel Park property was void *ab initio*, and title remains in George and Diane’s name.

Complaint, p. 12, Prayer for Relief. Secondly, Plaintiff prays that to the extent a transfer of property cannot be set aside, that Defendants Diane and/or Chris Combis pay to the Court “the fair market value of the property so conveyed....” *Id.* This is analogous to *Truck South* – Plaintiff’s prayer for relief “is not solely for a money judgement, it is an action to compel...so that title, an interest in the real estate, can transfer.” *Truck South*, 339 S.C. at 46, 528 S.E.2d at 427-428. Plaintiff has asked this Court to declare that any transfer of title to the property is void, so that title will remain in the original interest owner’s name. If the Court cannot set aside the

transfer, the payment of fair market value for the property to Plaintiff is merely an “accompaniment” and “does not alter the true nature of the lawsuit.” *Id.*

As the Supreme Court found in *Truck South* that sound policy dictates that an action involving “the determination in any form of such right or interest...to real property” must be litigated in the county where the property is situated, so too should this Court find that venue is proper in the county where the property at issue is located. Venue is not proper in Lancaster County, nor anywhere in the State of South Carolina, and accordingly, the Court should dismiss this action pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

c. This Court does not have subject matter jurisdiction over this action.

Plaintiff's claim against Defendants should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure for lack of subject matter jurisdiction. “A Rule 12(b)(1) motion for lack of subject matter jurisdiction raises the fundamental question of whether a court has jurisdiction to adjudicate the matter before it.” *Affirmative Ins. Co. v. Williams*, No. 5:14-CV-04087-JMC, 2015 WL 3968436, at *6 (D.S.C. June 30, 2015). In determining whether jurisdiction exists, the court is to “regard the pleadings’ allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the motion to one for summary judgment.” *Id.* “The burden of proving subject matter jurisdiction on a motion to dismiss is on the plaintiff, the party asserting jurisdiction.” *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982).

A South Carolina court “has no jurisdiction to try the cause on its merits in the wrong county.” *Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931). As discussed above in Section II(b), an action that requires a determination in any form of a right or interest in real property “must be tried in the county in which the subject of the action or some part of the property is situated.” S.C. Code Ann. § 15-7-10 (emphasis added); *Truck South*, 339 S.C. at 45, 528 S.E.2d at 427 (2000).

This Court does not have subject matter jurisdiction over Plaintiff’s claim against Defendants because Lancaster County is the “wrong county” in which to bring this lawsuit. There is no county within South Carolina that has subject matter jurisdiction over Plaintiff’s claim against Defendants because the real property that is the subject of the action is located in North Carolina. Because South Carolina law states that Plaintiff’s claim must be tried in the county where the real property is situated, there is no court within South Carolina that has the authority to exercise subject matter jurisdiction over Plaintiff’s claim. Plaintiff has therefore failed to establish subject matter jurisdiction and the Court must dismiss Plaintiff’s claim against Defendants pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure for lack of subject matter jurisdiction.

d. A civil conspiracy cannot exist in the context of an attorney-client relationship when the attorney acts within the scope of his representation of the client.

Plaintiff’s claim against Defendants should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim. “A trial judge in the civil setting may dismiss a claim when the defendant demonstrates

the plaintiff has failed 'to state facts sufficient to constitute a cause of action' in the pleadings filed with the court... The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (S.C. Ct. App. 2001) (citations omitted).

In South Carolina, a civil conspiracy is "(1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2010). However, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (1986). An attorney may be held liable for civil conspiracy only "where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). Furthermore, a civil conspiracy cannot exist when the conduct challenged is an act by "a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment." *McMillan v. Oconee Memorial Hosp. Inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 887, (2006). In *Stiles*, the Supreme Court dismissed the plaintiff's claim for civil conspiracy against an attorney for failure to state a claim because:

[n]owhere in the complaint does [plaintiff] allege in what manner [the attorney] acted outside his role as [defendant's] attorney nor does he

allege that [the attorney] breached some independent duty owed to [plaintiff]. Therefore, on the face of his complaint, the only reasonable inference is that [the attorney] was acting at all times in his capacity as [defendant's] attorney. Under *Gaar*, [the attorney] is immune for any activities taken in his professional capacity.

Id. at 300, 457 S.E.2d at 603.

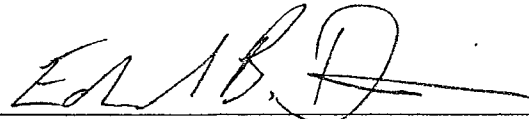
Plaintiff failed to state claim against Defendants for civil conspiracy. Plaintiff alleges that Jones and O'Brien's preparation and recordation of two deeds are the acts that give rise to the claim for civil conspiracy. Complaint, ¶¶ 9-10. Preparing and recording deeds are acts squarely within the "role as attorney" that the Supreme Court stated in *Stiles* cannot give rise to a claim for civil conspiracy against an attorney. Plaintiff did not allege that Redding Jones, Jones, or O'Brien committed any other act that is a breach of some independent duty owed to Plaintiff or somehow acted in their own interests. Furthermore, Redding Jones cannot be liable for civil conspiracy when it acted exclusively through a partner and associate attorney who were each acting within the scope of their employment. Like the attorney in *Stiles*, Jones and O'Brien are immune to a claim for civil conspiracy based on the preparation and recordation of two deeds because those actions were taken in their professional capacity. As the Supreme Court concluded in *Stiles*, the only inference that can be drawn from Plaintiff's complaint is that Jones and O'Brien were acting at all times in their capacity as attorneys.

CONCLUSION

Plaintiff's claim against Defendants should be dismissed because the complaint (1) fails to establish personal jurisdiction over Defendants, (2) was filed in

an improper venue, (3) fails to establish subject matter jurisdiction, and (4) fails to state a claim for civil conspiracy.

Respectfully submitted this 24 day of October, 2018.

A handwritten signature in black ink, appearing to read "Ed B. Davis", written over a horizontal line.

Edward B. Davis, S.C. Bar No. 16713
BELL, DAVIS & PITT, P.A.
227 West Trade Street, Suite 1800
Charlotte, NC 28202
Telephone: 704/227-0129
Facsimile: 704/227-0178
Email: ward.davis@belldavispitt.com

*Counsel for Defendants Redding Jones
PLLC, Simon John O'Brien, and Kent D.
Jones*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CASE NO. 2017-CP-29-01248

Desa Ballard, as successor trustee of The
Trust of Chris Combis,

Plaintiff,

vs.

Diane Combis, Chris A. Combis, Redding
Jones PLLC, Simon John O'Brien, and
Kent D. Jones,

Defendants.

**DEFENDANT KENT JONES'S
ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES**

NOW COMES defendant Kent D. Jones ("Defendant" or "Jones") (collectively "Defendants"), through counsel, pursuant to Rules 26, 33 and 34 of the South Carolina Rules of Civil Procedure, and responds to the Plaintiff's First Set of Interrogatories ("Discovery Requests") as follows:

PRELIMINARY STATEMENT

All responses and objections contained herein are based upon such information as is presently available and specifically known to Defendant. These responses are given without prejudice to Defendant's right to produce evidence of any subsequently-discovered facts, including any and all subsequently discovered information. Accordingly, Defendant specifically reserves the right to change any and all responses contained herein as the results of further investigation, research, and discovery become known. The responses made herein reflect Defendant's good faith efforts to respond as completely as possible based on the information that is currently available, and shall not be used to prejudice Defendant's right to investigate and rely upon such other information as it is ascertained as a result of such further investigation or discovery.

Defendant reserves the right to use at trial and make reference to any evidence, facts, documents, or information not discovered at this time, omitted through good faith error, mistake, or oversight, or the relevance of which has not presently been identified by Defendant. Defendant

also reserves the right to further modify these responses as a result of subsequently discovered information.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- (a) **David Redding – Mr. Redding has knowledge regarding the transactions at issue in the lawsuit. Defendant is not aware of any written or recorded statement.**
- (b) **Simon O'Brien – Upon information and belief, Mr. O'Brien has knowledge regarding the transaction at issue in the lawsuit in which he was involved. Defendant is not aware of any written or recorded statement.**

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

- (a) **Deeds related to the transactions referenced in Plaintiff's Complaint**
- (b) **Payoff statement from Park Sterling Bank for the Carmel lot**
- (c) **Escrow agreement from Carmel closing**

6. [sic] List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case.

ANSWER: Defendant has not yet retained an expert to testify in this matter, but reserves the right to do so in the future.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Defendant's objections and responses to interrogatory number 1, incorporated herein by reference.

8. Identify with as much specificity as possible all occasions during the past five (5) years when you have traveled through the State of South Carolina, whether by air or vehicle or any other method of travel. For each occasion, state the approximate date and the start and

end point of your travel. If you traveled with any other person, identify that/those person(s).

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant states that he has travelled to Bluffton, South Carolina, on vacation approximately 10 times in the last five years.

9. Identify, by name and physical address, all persons in South Carolina with whom you have communicated either verbally, telephonically or via social media at any time during the past five (5) years and as to each, identify the mode(s) of communication which occurred.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

10. Identify by full name all attorneys with whom you have practiced law, either in a law firm or by way of association as co-counsel, who have been or were at the time active members of the South Carolina Bar, or admitted *pro hac vice* in South Carolina during that time period, and as to each, identify the dates upon which you were affiliated or associated with each South Carolina lawyer.

ANSWER: Defendant objects to this interrogatory as overly broad. Subject to and without waiving any objections, Defendant responds that Joe Pellington and Ty McTier of Redding Jones are licensed in South Carolina, and David Redding has been admitted *pro hac vice*. Defendant formerly worked with attorney Ashley Tison, who was licensed in South Carolina.

11. Identify any lawyers with whom you have practiced law, either in a law firm or by way of association as co-counsel, who have or do now reside in the State of South Carolina.

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant responds that he is not aware of any lawyers with whom he has practiced residing in South Carolina.

12. Identify any vendors from which you have purchased any goods or services (including Amazon) during the past five (5) years which maintain an office or commercial location at any place in South Carolina. As to each, identify the approximate date of the purchase for each item or service. You need not disclose the cost or price of any item or service.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

13. Identify all newspapers and magazines to which you have subscribed personally or through a spouse or other significant other at any time during the past five (5) years that were received by you, your spouse or significant other using the United States mail.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

14. Identify your personal email provider and user name for each account you have used at any time during the past five (5) years.

ANSWER: Defendant objects to this interrogatory as overly broad. Subject to and without waiving any objections, Defendant responds that he has used the following email addresses during the past five years: kjones@kdjoneslaw.com; kent@kdjoneslaw.com; kjones@tisonreddinglaw.com; kjones@rtjlawfirm.com

15. Identify all mobile data carriers you have used to provide service for any personal electronic device used by you at any time during the past five (5) years and, as to each, identify the full number for each personal electronic device that was associated with each mobile data carrier.

ANSWER: Defendant objects to this interrogatory as overly broad. Subject to and without waiving any objections, Defendant responds that the only cell phone number he has had for the last five years is 704-907-3550, with AT&T as the carrier.

16. Identify by name any client or person(s) for whom you have performed paid or volunteer work which has or has had a location in or has done business in South Carolina during the past five (5) years.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant responds that he does not have any clients based in South Carolina, but has a client—Hopper Communities, Inc.—that employs a land development employee out of Charleston, South Carolina.

17. Identify the addressee of any item of United States mail or email that you have prepared or assisted in preparing that was addressed to any person or entity at any time during the past five (5) years, and as to each, state the approximate date of the transmittal.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

18. Identify by name and address your spouse, any former spouse, your parents, siblings, aunts, uncles and grandparents together with their home and office street addresses.

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

19. If you have any children under the age of eighteen (18) years (or who were under the age of eighteen (18) years at any time during the past five (5) years), did any of them participate in group sports activities that included visits to any location in South Carolina at any time during the past five (5) years?

ANSWER: Defendant objects to this interrogatory as overly broad, and not reasonably calculated to lead to the discovery of admissible evidence.

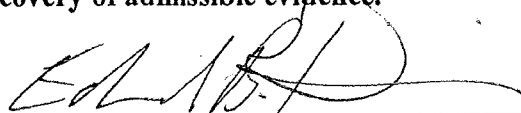
20. Indicate whether, at any time during the past five (5) years you have done any business personally or remotely in the State of South Carolina and or with any person who was or is located in the State of South Carolina, and as to each occurrence, set forth the nature of the business and the approximate date on which the business occurred.

ANSWER: Defendant objects to this interrogatory as overly broad and vague. Subject to and without waiving any objections, Defendant responds that he does not have any clients based in South Carolina, but has a client—Hopper Communities, Inc.—that employs a land development employee out of Charleston, South Carolina.

21. Identify all banking and/or lending institutions with whom you have done business, either personally or in a professional capacity, at any time during the past five (5) years, and as to each, identify the nature of the business transacted and the approximate date.

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

This the 23 day of April, 2018.



Edward B. Davis, S.C. Bar No. 16713
 BELL, DAVIS & PITT, P.A.
 227 West Trade Street, Suite 1800
 Charlotte, NC 28202
 Telephone: 704/227-0129
 Facsimile: 704/227-0178
 Email: ward.davis@belldavispitt.com
 Counsel for Redding Jones PLLC, Simon John
 O'Brien, and Kent D. Jones

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CASE NO. 2017-CP-29-01248

Desa Ballard, as successor trustee of The
Trust of Chris Combis,

Plaintiff,

vs.

Diane Combis, Chris A. Combis, Redding
Jones PLLC, Simon John O'Brien, and
Kent D. Jones,

Defendants.

**DEFENDANT SIMON O'BRIEN'S
ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES**

NOW COMES defendant Simon John O'Brien ("Defendant" or "O'Brien") (collectively "Defendant"), through counsel, pursuant to Rules 26, 33 and 34 of the South Carolina Rules of Civil Procedure, and responds to the Plaintiff's First Set of Interrogatories ("Discovery Requests") as follows:

PRELIMINARY STATEMENT

All responses and objections contained herein are based upon such information as is presently available and specifically known to Defendant. These responses are given without prejudice to Defendant's right to produce evidence of any subsequently-discovered facts, including any and all subsequently discovered information. Accordingly, Defendant specifically reserves the right to change any and all responses contained herein as the results of further investigation, research, and discovery become known. The responses made herein reflect Defendant's good faith efforts to respond as completely as possible based on the information that is currently available, and shall not be used to prejudice Defendant's right to investigate and rely upon such other information as it is ascertained as a result of such further investigation or discovery.

Defendant reserves the right to use at trial and make reference to any evidence, facts, documents, or information not discovered at this time, omitted through good faith error, mistake, or oversight, or the relevance of which has not presently been identified by Defendant. Defendant

also reserves the right to further modify these responses as a result of subsequently discovered information.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

(a) David Redding – Mr. Redding has knowledge regarding the transactions at issue in the lawsuit. Defendant is not aware of any written or recorded statement.

(b) Kent Jones – Upon information and belief, Mr. Jones has knowledge regarding the transaction at issue in the lawsuit in which he was involved. Defendant is not aware of any written or recorded statement.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Defendant is not in possession of any such documents.

6. [sic] List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case.

ANSWER: Defendant has not yet retained an expert to testify in this matter, but reserves the right to do so in the future.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Defendant's objections and responses to interrogatory number 1, incorporated herein by reference.

8. Identify with as much specificity as possible all occasions during the past five (5) years when you have traveled through the State of South Carolina, whether by air or vehicle or any other method of travel. For each occasion, state the approximate date and the start and end point of your travel. If you traveled with any other person, identify that/those person(s).

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant states that he has travelled to Charleston, South Carolina, on vacation approximately five times in the last five years.

9. Identify, by name and physical address, all persons in South Carolina with whom you have communicated either verbally, telephonically or via social media at any time during the past five (5) years and as to each, identify the mode(s) of communication which occurred.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

10. Identify by full name all attorneys with whom you have practiced law, either in a law firm or by way of association as co-counsel, who have been or were at the time active members of the South Carolina Bar, or admitted *pro hac vice* in South Carolina during that time period, and as to each, identify the dates upon which you were affiliated or associated with each South Carolina lawyer.

ANSWER: Defendant objects to this interrogatory as overly broad. Subject to and without waiving any objections, Defendant responds with regard to his former employment at Redding Jones, Joe Pellington and Ty McTier of Redding Jones are licensed in South Carolina, and David Redding has been admitted *pro hac vice*. Defendant formerly worked with attorney Ashley Tison, who was licensed in South Carolina. Regarding Defendant's current employment at Bray & Long in Charlotte, North Carolina, attorneys William Bray and Jeff Long reside in North Carolina, but are also licensed in South Carolina.

11. Identify any lawyers with whom you have practiced law, either in a law firm or by way of association as co-counsel, who have or do now reside in the State of South Carolina.

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant responds that he is not aware of any lawyers with whom he has practiced residing in South Carolina.

12. Identify any vendors from which you have purchased any goods or services (including Amazon) during the past five (5) years which maintain an office or commercial location at any place in South Carolina. As to each, identify the approximate date of the purchase for each item or service. You need not disclose the cost or price of any item or service.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

13. Identify all newspapers and magazines to which you have subscribed personally or through a spouse or other significant other at any time during the past five (5) years that were received by you, your spouse or significant other using the United States mail.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

14. Identify your personal email provider and user name for each account you have used at any time during the past five (5) years.

ANSWER: Defendant objects to this interrogatory as overly broad. Subject to and without waiving any objections, Defendant responds that he has used the following email addresses during the past five years: sobrien@braylong.com; simon@tisonreddinglaw.com; simonjohnobrien@gmail.com.

15. Identify all mobile data carriers you have used to provide service for any personal electronic device used by you at any time during the past five (5) years and, as to each, identify the full number for each personal electronic device that was associated with each mobile data carrier.

ANSWER: Defendant objects to this interrogatory as overly broad. Subject to and without waiving any objections, Defendant responds that the only cell phone number he has had for the last five years is 704-582-9378, with Verizon as the carrier.

16. Identify by name any client or person(s) for whom you have performed paid or volunteer work which has or has had a location in or has done business in South Carolina during the past five (5) years.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant responds that he does not personally have any clients based in South Carolina, but has however assisted a partner at Bray & Long, PLLC, with a client named Sutton's Southern Pet Retreat, LLC, located in Lexington County, South Carolina.

17. Identify the addressee of any item of United States mail or email that you have prepared or assisted in preparing that was addressed to any person or entity at any time during the past five (5) years, and as to each, state the approximate date of the transmittal.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

18. Identify by name and address your spouse, any former spouse, your parents, siblings, aunts, uncles and grandparents together with their home and office street addresses.

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

19. If you have any children under the age of eighteen (18) years (or who were under the age of eighteen (18) years at any time during the past five (5) years), did any of them participate in group sports activities that included visits to any location in South Carolina at any time during the past five (5) years?

ANSWER: Defendant objects to this interrogatory as overly broad, and not reasonably calculated to lead to the discovery of admissible evidence.

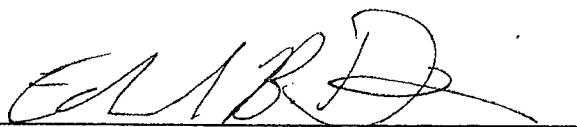
20. Indicate whether, at any time during the past five (5) years you have done any business personally or remotely in the State of South Carolina and or with any person who was or is located in the State of South Carolina, and as to each occurrence, set forth the nature of the business and the approximate date on which the business occurred.

ANSWER: Defendant objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Defendant responds that he does not personally have any clients based in South Carolina, but has however assisted a partner at Bray & Long, PLLC, with a client named Sutton's Southern Pet Retreat, LLC, located in Lexington County, South Carolina.

21. Identify all banking and/or lending institutions with whom you have done business, either personally or in a professional capacity, at any time during the past five (5) years, and as to each, identify the nature of the business transacted and the approximate date.

ANSWER: Defendant objects to this interrogatory as overly broad and not reasonably calculated to lead to the discovery of admissible evidence.

This the 23 day of April, 2018.



Edward B. Davis, S.C. Bar No. 16713
BELL, DAVIS & PITT, P.A.
227 West Trade Street, Suite 1800
Charlotte, NC 28202
Telephone: 704/227-0129
Facsimile: 704/227-0178
Email: ward.davis@belldavispitt.com

*Counsel for Redding Jones PLLC, Simon John
O'Brien, and Kent D. Jones*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CASE NO. 2017-CP-29-01248

Desa Ballard, as successor trustee of
The Trust of Chris Combis,

Plaintiff,

vs.

Diane Combis, Chris A. Combis,
Redding Jones PLLC, Simon John
O'Brien, and Kent D. Jones,

Defendants.

AFFIDAVIT OF KENT D. JONES

FILED
CLERK OF COURT
LANCASTER, SC
2018 APR 13 PM 12:04

KENT D. JONES, being first duly sworn, deposes and states as follows:

1. My name is Kent D. Jones. I am a named defendant in this action. I am above the age of eighteen, not under any disability, and have personal knowledge of the matters set forth in this Affidavit. I make this Affidavit in support of my Motion to Dismiss for lack of personal jurisdiction.

2. I am a partner with the law firm Redding Jones, PLLC, whose only office is located in Charlotte, North Carolina.

3. I am a citizen and resident of Charlotte, North Carolina. I am not a resident of South Carolina, nor have I ever lived or owned real property in South Carolina.

4. I do not have, nor have I ever held, a South Carolina law license.

5. I do not have, nor have I ever held, any other South Carolina licenses, including a driver's license.

6. I had no involvement in the case that was previously pending in the United States District Court for the District of South Carolina, Ballard v. Combis, Case No. 2014-cv-01839. I also have had no involvement in the appeal of that matter pending before the United States Court of Appeals for the Fourth Circuit, Case No. 16-2136.

7. I have never met or spoken to the plaintiff in this action.

8. I was asked by my law partner, David Redding, to prepare and record a deed with the Mecklenburg County Register of Deeds. I prepared the deed in the firm's office in Charlotte, North Carolina. It was recorded in Mecklenburg County, and is located at Book No. 30301, pp. 511-513, Parcel ID No. 21167213 (as described as the "Carmel Park Property" in the Complaint). The Complaint erroneously lists the Parcel ID No. for the Carmel Park Property as 211667213. Subsequently, I had no further involvement with the deed or the Carmel Park Property. Mr. Redding and I did not discuss the effect of the deed on litigation pending in the State of South Carolina.

9. Other than this lawsuit, I have never been sued in South Carolina, nor have I sued anyone in South Carolina.

10. I do not transact business or render services, legal or otherwise, in South Carolina, nor do I engage in any consistent activity in South Carolina.

11. I do not solicit business in South Carolina.

12. I do not maintain offices or employees in South Carolina, nor do I work in South Carolina.

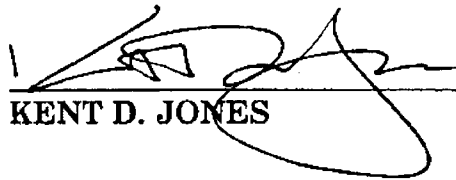
13. I do not own, rent, lease, or otherwise use or possess any interest in any real property in South Carolina.

14. I do not have a South Carolina telephone number, facsimile number, or address.

15. I do not have any bank accounts in South Carolina.

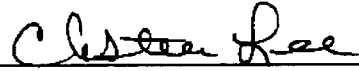
16. I am not a registered agent for any South Carolina corporations or entities.

This the 13th day of April, 2018.


KENT D. JONES

Signed and sworn to (or affirmed) before me this day by Kent D. Jones

Date: April 13, 2018


Official Signature of Notary

(Official Seal)

Christina Lee
_____, Notary Public

My commission expires: May 10, 2022



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CASE NO. 2017-CP-29-01248

Desa Ballard, as successor trustee of)
The Trust of Chris Combis,)

Plaintiff,)

vs.)

Diane Combis, Chris A. Combis,)
Redding Jones PLLC, Simon John)
O'Brien, and Kent D. Jones,)

Defendants.)

AFFIDAVIT OF
SIMON JOHN O'BRIEN

FILED
OFFICE OF CLERK
OF COURT
2018 MAR -7 PM 2:02
CLERK OF COURT
LANCASTER, SC

SIMON JOHN O'BRIEN, being first duly sworn, deposes and states as follows:

1. My name is Simon John O'Brien. I am a named defendant in this action. I am above the age of eighteen, not under any disability, and have personal knowledge of the matters set forth in this Affidavit.

2. I was formerly employed as an associate attorney with the law firm Redding Jones, PLLC ("Redding Jones"), whose only office is located in Charlotte, North Carolina. I am now employed by the law firm of Bray & Long, PLLC, whose only office is located in Charlotte, North Carolina, and for the entire time spanning the facts alleged in the case, has been located in Charlotte, North Carolina.

3. I am a citizen and resident of Charlotte, North Carolina. I am not a resident of South Carolina, nor have I ever lived or owned real property in South Carolina.

4. I do not have, nor have I ever held, a South Carolina law license.

5. I do not have, nor have I ever held, any other South Carolina licenses, including a driver's license.

6. I had no involvement in, and was unaware of, the case that was previously pending in the United States District Court for the District of South Carolina, Ballard v. Combis, Case No. 2014-cv-01839. I also have had no involvement in, and was unaware of, the appeal of that matter pending before the United States Court of Appeals for the Fourth Circuit, Case No. 16-2136.

7. I have never met, spoken, nor communicated to the plaintiff in this action.

8. To the best of my knowledge, I have never met, spoken, nor communicated with George Combis.

9. To the best of my knowledge, I have never met, spoken, nor communicated with Diane Combis.

10. To the best of my knowledge, I have never met, spoken, nor communicated with Chris Combis.

11. In or about April or May of 2016, attorney David Redding, a partner at Redding Jones, instructed me to prepare and record a deed with the Mecklenburg County Register of Deeds. I prepared the deed in the firm's office in Charlotte, North Carolina. It was recorded in Mecklenburg County, and is located at Book No. 30833, pp. 717-720, Parcel ID No. 08305201 and Parcel ID No. 08305202 (described as the "Brevard Street Property" in the Complaint). I had no further involvement with the deed or the Brevard Street Property. Mr. Redding and I did not discuss the underlying purpose of the deed. Mr. Redding and I did not discuss any pending litigation or what affect the deed might have on any pending litigation.

12. Other than this lawsuit, I have never been sued in South Carolina, nor have I sued anyone in South Carolina.

13. I do not transact business or render services, legal or otherwise, in South Carolina.

14. I do not solicit business in South Carolina, nor do I derive substantial revenue from goods used or consumed or services rendered in South Carolina.

15. I do not maintain offices or employees in South Carolina, nor do I work in South Carolina.

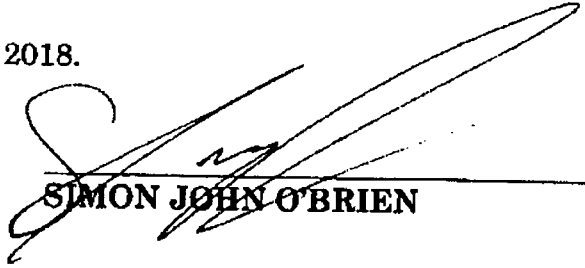
16. I do not own, rent, lease, or otherwise use or possess any interest in any real property in South Carolina.

17. I do not have a South Carolina telephone number, facsimile number, or address.

18. I do not have any bank accounts in South Carolina.

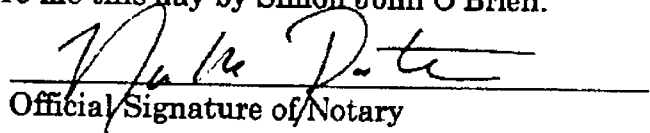
19. I am not a registered agent for any South Carolina corporations or entities.

This the 24th day of January, 2018.


SIMON JOHN O'BRIEN

Signed and sworn to (or affirmed) before me this day by Simon John O'Brien.

Date: January 24th, 2018


Official Signature of Notary

(Official Seal)

NOELLE PATTERSON
Mecklenburg County, Notary Public

My commission expires: July 13, 2020



FILED
CLERK OF COURT
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER 2018 JAN -5 PM 12: 28 CASE NO. 2017-CP-29-01248

CLERK OF COURT
Desa Ballard, as successor trustee of Trust of Chris Combis, LANCASTER, SC

Plaintiff,

vs.

Diane Combis, Chris A. Combis, Redding Jones PLLC, Simon John O'Brien, and Kent D. Jones,

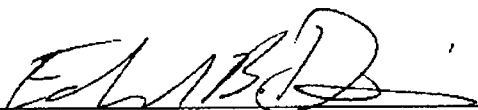
Defendants.

MOTION TO DISMISS
ON BEHALF OF DEFENDANTS
REDDING JONES PLLC, SIMON JOHN
O'BRIEN, AND KENT D. JONES

NOW COME defendants Redding Jones PLLC, Simon John O'Brien ("O'Brien"), and Kent D. Jones ("Jones") (collectively "Defendants"), through counsel, and move the Court for dismissal of the claims asserted against them pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6), SCRPC, on the grounds that (i) the court lacks jurisdiction over the subject matter, (ii) the court lacks personal jurisdiction over defendants O'Brien and Jones, (iii) this is the improper venue pursuant to S.C. Code § 15-7-10, and (iv) a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship.

WHEREFORE, Defendants respectfully request that the Court dismiss all claims asserted against them.

This the 3rd day of January, 2018.


Edward B. Davis, S.C. Bar No. 16713
BELL, DAVIS & PITT, P.A.
227 West Trade Street, Suite 1800
Charlotte, NC 28202
Telephone: 704/227-0129
Facsimile: 704/227-0178
Email: ward.davis@belldavispitt.com

*Counsel for Redding Jones PLLC, Simon John
O'Brien, and Kent D. Jones*

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

Desa Ballard, as successor trustee of
The Trust of Chris Combis,

Plaintiff,

vs.

Diane Combis, Chris A. Combis,
Redding Jones PLLC, Simon John
O'Brien, and Kent D. Jones,

Defendants,

IN THE COURT OF COMMON PLEAS

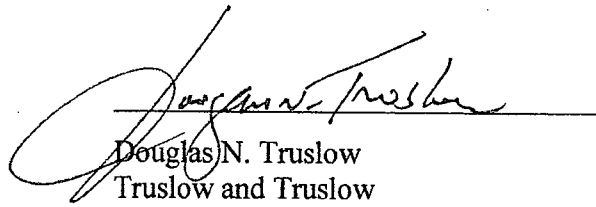
CASE NO. 2017-CP-29- 01248

SUMMONS

(Jury Trial Demanded)

To: Defendants named above, and each of them:

You are hereby summoned to appear before the Court to answer the Complaint herein,
and to file and serve your answer to the Complaint within thirty (30) days from the date of
service upon you. Should you fail to file and serve your answer as required by law, judgment
will entered against you by default.



Douglas N. Truslow
Truslow and Truslow
Post Office Box 1465
Columbia, SC 29202
Telephone 803.256.6276

ATTORNEY FOR PLAINTIFF

November 17, 2017
October 11, 2017

FILED
OFFICE OF CLERK
OF COURT
2017 NOV 17 PM 1:57
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)
)
Desa Ballard, as successor trustee of)
The Trust of Chris Combis,)
)
Plaintiff,)
)
vs.)
)
Diane Combis, Chris A. Combis,)
Redding Jones PLLC, Simon John)
O'Brien, and Kent D. Jones,)
)
Defendants,)
)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2017-CP-29- 01248

COMPLAINT

(Jury Trial Demanded)

FILED
OFFICE OF CLERK
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2017 NOV 17 PM 1:5
CLERK OF COURT
LANCASTER, SC

Plaintiff, complaining of the Defendants named above, would show unto this Honorable Court:

1. Plaintiff Desa Ballard (hereafter "the Trustee") is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter "the Trust"), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013.
2. The trust owns real property in Lancaster County, South Carolina, as well as other assets, including a judgment.
3. On information and belief, Defendant Diane Combis (hereafter "Diane") is a citizen and resident of the state of North Carolina, who has, by agreement, submitted herself to this jurisdiction of the South Carolina courts, and who has minimum contacts in the State of South Carolina sufficient to bring her within the personal jurisdiction of this Court.

4. On information and belief, Defendant Chris A. Combis (hereafter "Chris A.") is a citizen and resident of the State of North Carolina, who has minimum contacts in the State of South Carolina sufficient to bring him within the personal jurisdiction of this Court.
5. On information and belief, Defendant Redding Jones PLLC (hereafter "Redding Jones") is a professional corporation organized and existing under the laws of North Carolina, and which, in 2015 and 2016, facilitated fraudulent transfers of real property by George C. Combis, a beneficiary of the Trust, with full knowledge that their acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust.
6. On information and belief, Redding Jones employs attorneys who are licensed to practice law in South Carolina, and it has sufficient minimum contacts in the State of South Carolina sufficient to bring it within the personal jurisdiction of this Court.
7. On information and belief, Redding Jones is not registered to do business in South Carolina.
8. On information and belief, Redding Jones is the successor in interest to Redding Tison Jones PLLC and Tison Redding, PLLC.
9. On information and belief, Defendant Simon John O'Brien (hereafter "O'Brien") is a citizen and resident of North Carolina, who is or was employed by defendant Redding Jones, and who, in 2016 facilitated a fraudulent conveyance of real estate by George Combis (hereafter "George"), for insufficient consideration, with full knowledge that those acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust.

10. On information and belief, Defendant Kent D. Jones (hereafter "Jones") is a citizen and resident of North Carolina, who is or was a principal of Redding Jones and who, in 2015, facilitated a fraudulent conveyance of real estate by George Combis, grantor, to Chris A. for insufficient consideration, in an attempt to assist George in avoiding payment of a pending judgment in an action brought by the Trust against George, when he knew or should have known that his acts operated to assist George in evading a pending judgment against him in South Carolina and defraud the Trust.
11. On or about December 16, 2013, the Trustee filed suit against George Combis and Diane in Lancaster County seeking to recover damages from them for their theft of money from the Trust (hereafter "the breach of fiduciary duty action"). Case No. 2013-CP-29-1008.
12. The breach of fiduciary duty action was subsequently consolidated with other actions and docketed in Lancaster County as Case No. 2014-CP-29-306.
13. The breach of fiduciary duty action was removed to the United States District Court for the District of South Carolina, assigned Case No.0:14-cv-01839.
14. At all relevant times, George was a defendant in the breach of fiduciary duty action at no time was George released from the action nor was the action stayed or otherwise suspended or lifted for any purpose.
15. On or about July 22, 2015, defendant Redding Jones, f/k/a Tison Redding LLC, through one of its South Carolina lawyers, filed a notice of appearance in the breach of fiduciary duty action reflecting Redding Jones' status as counsel of record for George Combis, Diane Combis and others.

16. Defendant Redding Jones remained counsel of record for George Combis and others throughout the litigation of the breach of fiduciary duty action and were aware throughout of the significant likelihood that the Trust would be awarded a significant monetary judgment against George.
17. On information and belief, George undertook efforts to transfer real property that was owned by him in his name, in whole or in part, which was unencumbered and would be available to be applied toward any judgment the Trust obtained against him.
18. On information and belief, George knew that there was a significant likelihood that judgment would be entered against him.
19. On information and belief, during the pendency of the breach of fiduciary duty action and before trial, with the specific intent to defraud creditors, including the Trust, George conspired with the Defendants herein to assist him in his efforts to defraud creditors, including the Trust, and specifically to hamper or impair the Trust's ability to collect a judgment against him.
20. On or about September 22, 2015, while defending George Combis and Diane Combis in the breach of fiduciary duty action, defendant Redding Jones, through its agent and principal Defendant Kent Jones, conspired with and assisted George Combis in transferring real property in Mecklenburg County, North Carolina bearing TMS No. 211-6672-13 (hereafter "the Carmel Park property") to Defendant Chris and Chris's then-wife.
21. The deed for the Carmel Park property which transferred ownership of the property to Defendant Chris A. was recorded by defendants Redding Jones and./or Jones on or

about September 25, 2015 at Mecklenburg County Register of Deeds Book 30301, Page 511-513.

22. On information and belief, Defendants Redding Jones and Jones knew that they were assisting George in his wrongful acts to defraud creditors.
23. The actions by Defendants Redding and Jones were overt acts of a conspiracy in which they participated for the purpose of assisting George in making fraudulent conveyance of real property in furtherance of a conspiracy to defraud the Trust.
24. On information and belief, Defendant Chris was aware of the pendency of the breach of fiduciary duty action at the time of the fraudulent conveyance of real property identified as TMS No. 211-6672-13, was aware that George was a defendant in that action and that judgment was likely to be entered against George in a significant amount, and was also aware that George was making the conveyance for the purposes of defrauding creditors.
25. On information and belief, Defendant Chris accepted the conveyance of the Carmel Park property and was unjustly enriched with it, with full knowledge that George's intent in making the transfer was to defraud the Trust and/or other creditors and that Chris's acceptance of ownership of the Carmel Park property would operate to assist George in defrauding creditors.
26. On or about May 19, 2016, Defendant Redding Jones and Defendant O'Brien conspired with George Combis to transfer George's interest in real property in Mecklenburg County identified as TMS numbers 083-052-01 and 083-052-02, (hereafter referred to as "the Brevard Street property"), to Diane Combis.

27. At the time of the 2016 conveyance of George's interest in the Brevard Street property, trial was scheduled to occur in the United States District Court for the District of South Carolina in July, 2016.
28. On information and belief, defendants Redding Jones and O'Brien prepared a deed to transfer from George his undivided one-half interest in the real property in the Brevard Street property to vest sole ownership of the Brevard Street property in Diane's name with knowledge that their acts operated to assist George in a conspiracy to defraud the Trust.
29. On information and belief, the transfer of his one-half ownership interest in the Brevard Street property was intended by George and Defendants Redding Jones, O'Brien and Diane to enable George to defraud the Trust.
30. On information and belief, Diane accepted sole ownership of the Brevard Street property with full knowledge of her participation in the conspiracy and with the intent to assist George in defrauding the Trust.
31. On information and belief, the conveyance to Diane of George's one-half interest in the Brevard Street property was an overt act by Defendants Redding Jones, O'Brien and Diane in furtherance of George's efforts to defraud creditors, including the Trust.
32. The deed for the Brevard Street property was recorded by defendants Redding Jones and/or O'Brien on or about May 19, 2016 at the Mecklenburg County Register of Deeds, Book 30833, Page 717.
33. On information and belief, the transfer of the Brevard Street property facilitated by defendants Redding Jones and Jones was an overt act in furtherance of a conspiracy,

made with full knowledge that they were conspiring and assisting George to defraud creditors, including the Trust.

34. On information and belief, Defendant Diane was aware of the pendency of the breach of fiduciary duty action at the time of the fraudulent conveyance of George's interest in the Brevard Street to her, and she was further aware that George was a defendant in that action and that judgment was likely to be entered against George in a significant amount.
35. On information and belief, Defendant Diane accepted the conveyance of George's interest in the Brevard Street property, accepted the conveyance and benefitted from it and thereby assisted in George's efforts to defraud the Trust.
36. At the time the Defendants Redding Jones, O'Brien and Diane assisted George in conveying George's interest in the Brevard Street property for the purpose of defrauding the Trust was done with knowledge that the breach of fiduciary case was scheduled for trial.
37. Trial of the breach of fiduciary action took place before United States District Court Judge Joseph F. Anderson Jr. took place in July, 2016.
38. Judgment was entered in favor of the Trust against George and Diane in the breach of fiduciary duty action on September 1, 2016 in the amount of seven hundred eleven thousand, six hundred and nineteen dollars and ninety-four cents (\$711,544.12).
39. In addition, judgment was entered in favor of the Trust against George and Diane in the amount of fifty-four thousand, six hundred and twelve dollars and fifty cents (\$54,612.50). George was also ordered to be responsible for other fees payable to the Trustee, who was continuing to serve as Successor Trustee.

40. On information and belief, the judgment was recorded in North Carolina and collection actions were initiated. Defendant Redding Jones defended George and Diane in the collection action and continue to do so¹.
41. George represents that he is insolvent and lacks sufficient assets from which to satisfy the judgments held by the Trust and the Trustee. Defendant Redding Jones continues to represent George as he makes these representations.
42. On information and belief, prior to the fraudulent conveyances, George had sufficient assets to satisfy the judgments that were entered against him in the fraudulent conveyances action.
43. On information and belief, the actions of the defendants Redding Jones, O'Brien and Jones in assisting George to transfer property during the pendency of the fraudulent conveyance action for the purpose of avoiding and defrauding creditors was unlawful and constituted conspiracy with George and/or others to defraud the Trust of assets against which it could execute to satisfy its judgment.

First Cause of Action – Civil Conspiracy
(Against All Defendants)

44. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.
45. As set forth above, with full knowledge of George's intent to defraud the Trust, Defendants conspired with George to assist him in transferring real property out of

¹ Inexplicably, on appeal to the United State Court of Appeals for the Fourth Circuit, defendant Redding Jones argues that the joint and several judgment entered in favor of the Trust against George and Diane should not have been entered against George, but only against Diane, who is also their client. Ballard v. Combis, Case No. 16-2136, Principal and Response Brief of Appellees filed March 22, 2017, Issue II, pp. 21-23.

his name, with the intent to deprive the Trust and other creditors of sufficient assets from which to satisfy the pending judgment against George.

46. The conveyances facilitated by defendants Redding Jones, Jones and O'Brien through their agreement with George to assist in defrauding the Trust and other creditors was specifically intended to cause damages to the Trust and enable George to avoid his obligations to the Trust.
47. On information and belief, at the time they accepted the conveyances of real property from George, Defendants Diane and Chris were aware of the pendency of the fraudulent conveyance action and were also aware that a significant judgment would likely be entered against George in favor of the trust.
48. The conveyances directly and proximately resulted in George's inability to pay the judgment entered against him in the breach of fiduciary duty action, which remains unsatisfied².
49. In a pending collection action in South Carolina state court, George has testified that he lacks the ability to pay the judgment entered against him. George is represented in that action by Defendant Redding Jones, through one of its South Carolina lawyers.
50. The acts of the Defendants as set forth above constitute an agreement among George and the Defendants to defraud creditors, specifically the Trust, to harm the Trust and its beneficiaries by rendering George incapable of paying the judgment that was entered against him.

² George has appealed the judgment and the appeal is currently pending before the United States Court of Appeals for the Fourth Circuit. The North Carolina state court has granted a stay of execution pending appeal, so collection efforts against George is being delayed. Defendant Redding Jones represents George in this appeal.

51. The Defendants herein agreed with George to do an unlawful act or to do a lawful act in an unlawful way resulting in injury to the plaintiff inflicted by George and these Defendants, and was part of a common scheme among them.
52. The Trust has sustained special damages because its ability to honor its obligations to the beneficiaries of the Trust has been impaired by its inability to recover funds stolen by George which are necessary to carry out the intent of the settlor of the Trust.
53. The special damages are in an amount to be determined by a trier of fact, and are continuing to accrue.
54. The Trust has sustained actual and consequential damages in that it has had to employ counsel for the purposes of attempting to collect on the judgment obtained against George by the Trust, and has had to take extraordinary actions to continue to fulfill its obligations and carry out its obligations while George continues to evade payment of the judgment.
55. The actual and consequential damages are in an amount to be determined by a trier of fact, and are continuing to accrue.
56. On information and belief, the Trust is entitled to a judgment, jointly and severally, against the Defendants herein for actual, consequential and special damages for their active involvement in the conspiracy with George to defraud creditors.
57. The acts of the Defendants herein were intentional, willful, wanton and reckless, such as to entitle the Trust to an award of punitive damages, jointly and severally, against the Defendants in an amount necessary to deter future misconduct and malfeasance by these Defendants.

58. On information and belief, the Trust is entitled to a judgment, jointly and severally, against the Defendants for punitive damages in an amount to be determined by the trier of fact.

Second Cause of Action – Set Aside of Conveyances

(Against Diane Combis and Chris A. Combis)

59. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.

60. The conveyances of real property by George were voluntarily made and with the actual intent to defraud creditors, specifically including the Trust.

61. The conveyances of real property accepted by Defendants Diane and Chris were made with knowledge of Diane and Chris that they were participating in George's conspiracy to defraud the Trust.

62. The acts of the defendants Diane and Chris proximately resulted in George's inability to pay debts to existing creditors, including the Trust.

63. As a result, the conveyances by George to Diane and by George to Chris were void and of not force an effect.

64. For the reasons set forth above, the Trust is entitled to an order of this Court declaring that the conveyances by George of his interest in the Brevard Street property to Diane and by George of his interest in the Carmel Park property are set aside and are presently assets of George's which may be used to satisfy judgments against him.

65. To the extent that Defendants Diane and/or Chris no longer hold title to the fraudulently-conveyed property, the trust prays for an order requiring Defendants Diane and/or Chris to pay into the Court the fair market value of the real property

transferred to them which they subsequently conveyed to one or more buyers who were not complicit in the conspiracy.

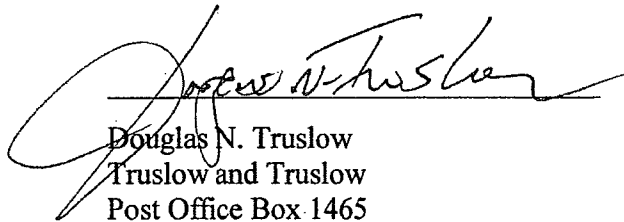
66. The Trust prays for an order establishing a constructive trust over any and all funds paid by Defendants Diane and Chris and/or of the fair market value of the real property conveyed to them. proceeds of their transfer of the real property wrongfully received by them, and/or of fair market value of such property.

67. The Trust prays for an order establishing such constructive trust for the benefit of the Trust to be applied to satisfaction of the Trust's judgment against George, in addition to such other property as George may be found to have which may be used to satisfy the judgment held by the Trust.

WHEREFORE, having fully set forth the grounds for relief herein, Plaintiff prays for entry of judgment as follows:

- A. Against all Defendants jointly and severally, for actual, consequential, special and punitive damages, in an amount to be determined by the trier of fact.
- B. Declaring the purported transfer George's interest in the Brevard Street property was void *ab initio*, and title of a one-half undivided interest in the property remains in George's name.
- C. Declaring the purported transfer of George and Diane's interest to Chris of the Carmel Park property was void *ab initio*, and title remains in George and Diane's name.
- D. To the extent that either Diane or Chris have conveyed title to the respective properties to buyers who were not complicit in the conspiracy to defraud the Trust, ordering and requiring that such transferring Defendant (Diane and/or Chris) pay into Court the fair market value of the property so conveyed to which cannot be set aside.

- E. Imposing a constructive trust on funds required to be paid by Defendants Diane and Chris, for the fair market value of such property that they or one of them transferred to or more buyers who were not complicit in the conspiracy.
- F. Ordering the funds in the constructive trust be held by the Court or a third party for the benefit of the Trust, to be applied as necessary toward of the Trust's judgment against George.
- G. Awarding Plaintiffs the costs of this action; and
- H. For such other and further relief as the Court deems just and proper.



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ATTORNEY FOR PLAINTIFF

November 17, 2017
October 11, 2017

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF LANCASTER

4 2017-CP-29-01248

5 Desa Ballard, as Successor Trustee

6 Vs.

7 Diane and Chris Combis, Redding Jones, PLLC, et al.

8

9 Lancaster, South Carolina

10 October 29, 2018

11 Before the Honorable Brian M. Gibbons

12 APPEARANCES

13 For Ms. Ballard: Doug Truslow

14 For the Combis's: Grant Snyder

15 For Redding Jones: Ward Davis

16

17 Reported By: Michael C. Watkins

18 Court Reporter

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1 THE COURT: All right. I'm trying to do this e-filing
2 thing to follow along but we will go from there. I'm just
3 going to go in the order in which it is filed. It looks
4 like there's a motion to dismiss that was filed by Redding
5 Jones, I guess?

6 MR. DAVIS: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. DAVIS: Ward Davis on behalf of Redding Jones and
9 Kent Jones and Simon O'Brien.

10 THE COURT: Okay. Why don't we hear that first and,
11 yes, sir, who are you?

12 MR. SNYDER: Good morning. Grant Snyder, I represent
13 the defendants, Diane and Chris Combis, I'm making a limited
14 appearance for today's hearing. We are joining in on Mr.
15 Davis' motion to dismiss.

16 THE COURT: All right. Of course, Mr. Truslow.

17 MR. TRUSLOW: Good morning, Your Honor. Doug Truslow,
18 I represent Ms. Ballard who is here to my right.

19 THE COURT: Good to see y'all again. This is y'all's
20 first foray into this?

21 MR. DAVIS: It is, Your Honor.

22 THE COURT: And as I recall -- and I wanted to do this
23 at first because I wanted to hear, I guess, y'all's position
24 on it -- and y'all can be seated, thank you. Before when I
25 got -- when I saw that this is on the docket this morning,

1 you know, I just wanted to be candid with you before we
2 proceed any further. This time last year, I can't believe
3 it has been that long ago, but we convened a contempt
4 hearing, y'all are familiar with it, being familiar with the
5 record of the case, and I recessed that hearing probably
6 about halfway through because I started to get concerned
7 with the testimony I was hearing that there may be some
8 criminal violations here and I didn't want anybody's 5th
9 Amendment rights to be comprised, okay? So in an effort to
10 ensure that things were fair and above board I recessed the
11 hearing and I, as an officer of the court, or being the
12 Court, contacted the South Carolina Law Enforcement Division
13 to investigate all concerned. So I don't know what happened
14 with that, all I do is just make the referral and they issue
15 their findings. I'm sure y'all can address whatever motions
16 you have but the reason I bring this up, okay, nobody has
17 filed a motion for me to recuse myself, okay? But that's
18 out there and I don't want that to be in the room so to
19 speak, sitting out there to compromise anything that may
20 happen since this litigation has gone on such a long time.
21 But I bring that up just because I'm obviously aware about
22 it and that's something that I would have to decide whether
23 or not I'm going to recuse myself or not based upon that,
24 okay? So having said that, Mr. Truslow, that directly
25 affects what we're here for this morning, I believe. Let me

1 hear from y'all first on that.

2 MR. TRUSLOW: Thank you, Your Honor. We have no
3 objection to you continuing, we would urge you to continue.
4 You are uniquely qualified and you understand the background
5 of this case. Your Honor, as far as the criminal
6 investigation, I understand it has tentatively been
7 completed, however I think the SLED agent, or SLED, is
8 waiting for the 4th Circuit to rule and that that has been a
9 long process. I will tell you that I argued the case before
10 the 4th Circuit Court of Appeals --

11 THE COURT: Is that the appeal from Judge Anderson's
12 order?

13 MR. DAVIS: Yes, sir. He found in my client's favor.
14 It's about -- I think it's about a million dollars now, the
15 clock is ticking on that. But we argued the case before the
16 4th Circuit about three weeks ago, I'm encouraged but, you
17 know, you never know. Your Honor, not to make light, but I
18 would call this sort of a James Brown case, everybody in
19 South Carolina remembers James Brown, the family just
20 incredibly can't get along, but in a moment of lucidity
21 agreed to select a very well respected Ms. Ballard, who has
22 a forensic accountant on her staff, to look into this
23 matter, look into the trust and estate and report back.
24 Unfortunately, you know, we thought that maybe they would
25 feel good at that point in time, I feel good, but like I

1 knew that I should and she would report and they would get
2 along, we could be done but it hasn't happened. The case
3 drug out. We tried the case in the federal court and we
4 were successful, my client was successful. We think Judge
5 Anderson with one minor exception did the right thing for
6 all of the right reasons. We feel confident that the 4th
7 Circuit is going to see it the same way, however they
8 haven't rendered a decision yet, so --

9 THE COURT: Well, from -- you know, I don't want to cut
10 you off, but from a procedural standpoint we will hear the
11 motions this morning but -- well, yeah, because
12 jurisdiction, I believe one of them deals with jurisdiction,
13 but where does that leave me hearing that recessing that
14 contempt hearing? Is that still ongoing? Are we going to
15 do it again brand new? What are we going to?

16 MR. TRUSLOW: I think what we're doing, my guess is we
17 are -- while I don't want to speak for the Court, but I
18 think we're sort of waiting for the 4th Circuit so we have a
19 little bit more clarity and that brings us here today. I
20 don't want to step on my colleague's arguments, but Your
21 Honor may simply decide let's wait -- I don't think you have
22 to at all and we would be happy to for you to rule, but you
23 could say today on a very logical basis let's wait to see
24 what the 4th Circuit does.

25 THE COURT: Was the contempt hearing -- refresh my

1 memory, gentlemen -- I promise you I'm going to get to you
2 in a second, thank y'all for being patient -- refresh my
3 recollection, did the contempt hearing have matters dealing
4 with stuff that was ordered by Judge Anderson or was it
5 separate state stuff? In other words, was the contempt
6 hearing contingent on Judge Anderson's order? Because if it
7 is, you're right, everything is kind of premature at this
8 point in time because that's on appeal.

9 MR. TRUSLOW: I would say and my client would say no.
10 I would say -- my response would be no, but it may go to the
11 level or the degree of wrong acts by the Combis's and it may
12 deal with this very case where we're arguing that there was
13 a fraudulent transfer knowing that my client was going to
14 get a verdict, knowing that they had the money and being
15 assisted in disposing of assets so they wouldn't be
16 available to satisfy the judgment. And there were, in
17 addition, things that were not before Judge Anderson, that's
18 why I say yes and no.

19 THE COURT: That was like the Rolex watch and the --

20 MR. TRUSLOW: And some guns and things of that nature.
21 Frankly I think you could rule today and you could -- I'm
22 not going -- I don't want to say because it's not the
23 appropriate analogy, but defer ruling or you could hold in
24 it abeyance or continue it until we get more information,
25 more insight from the 4th Circuit. You could deny their

1 motion, which I think we have a legitimate basis for you to
2 simply deny it, or you could deny it without prejudice and
3 they could bring it up at a later time if they thought they
4 had a better argument than they have now. I don't think
5 they have a good argument.

6 THE COURT: Is the law firm -- You you're not the same
7 lawyer who was in front of me last year, are you?

8 MR. DAVIS: No, Your Honor. That law firm has been
9 sued, that's why we have moved to dismiss.

10 THE COURT: Got you. Well, let me hear from you then.
11 Anything you wish to say on the issue that we brought up at
12 first?

13 MR. DAVIS: We don't have an objection with you hearing
14 this, we would like you to hear this. We would like this to
15 go away sooner rather than later. Your Honor, we submitted
16 a brief, hopefully Your Honor received it on Thursday.

17 THE COURT: Yes, sir.

18 MR. DAVIS: May it please the Court? I'm Ward Davis of
19 Bell, Davis and Pitt and I represent the Redding Jones law
20 firm, which is opposing counsel in the case that you heard.
21 Kent Jones is a non-litigant attorney at Redding Jones,
22 Simon O'Brien is an associate that used to work at Redding
23 Jones, now works as another firm in Charlotte, and so --

24 THE COURT: Who was the lawyer who was here last year
25 during the contempt thing?

1 MR. DAVIS: Joe Pellington and Dave Redding is the
2 counsel of record in that case, Your Honor. Interestingly
3 they aren't named in this lawsuit. But what this case goes
4 to, Your Honor, is when, if ever, is it proper to sue
5 opposing counsel in a case like this is really whatever the
6 courts want to encourage because that's what has happened.
7 Your Honor is well aware more so than I because I haven't
8 even tried to understand however many lawsuits there are out
9 there in this case and what all of the details of those
10 lawsuits are, but what happened as I understand it on the
11 very day that Your Honor convened and adjourned the contempt
12 hearing counsel went down and filed a lawsuit against
13 Redding Jones and two of their lawyers, along with two
14 Combis relatives. There are two claims in that case, only
15 two causes of action in that complaint, and the only cause
16 of action against the law firm and Kent Jones and Simon
17 O'Brien, those are the three defendants I represent, only
18 one cause of action against them is for civil conspiracy.
19 Paragraphs 45 and 46 of the complaint are probably the best
20 summary of what they're alleging, and what they're alleging
21 is that the lawyers conspired with their own client to
22 convey property out of his name. Essentially it is a
23 fraudulent transfer claim. That's not uncommon, we see
24 those in a bankruptcy context, we see those in those
25 contexts. What's uncommon is suing opposing counsel, which

1 again is why this case needs to go away. Paragraph 45 and
2 46, Your Honor, just to give you a flavor, there were two
3 conveyances, both of these properties are in Mecklenburg
4 County, North Carolina, they're not in South Carolina. In
5 paragraph 45 of the complaint defendants conspired with
6 George, that's George Combis who was one of the judgment
7 defendants, judgment debtors in the underlying trial in
8 front of Judge Anderson, defendants conspired with George to
9 assist him in transferring real property out of his name
10 with the intent to deprive the trust and other creditors of
11 sufficient assets from which to satisfy the pending
12 judgment. Hindsight is 20/20, I guess, but the theory in
13 this case is that the parties knew or should have known that
14 they were going to lose at trial, which is an interesting
15 theory. Paragraph 46, the conveyance facilitated by
16 defendant, Redding Jones, Jones and O'Brien, through their
17 agreement with George, so they're claiming they conspired
18 with their own client to assist in defrauding the trust. So
19 Mr. Jones prepared and recorded one of the deeds that
20 transferred one piece of property in Mecklenburg County and
21 Mr. O'Brien prepared and transferred the other deed that
22 transferred property to Mecklenburg County. We have got
23 four grounds for dismissing this case, Your Honor, two of
24 them are directly related. One is the civil conspiracy
25 grounds, and that's a 12B6 motion that there's a failure to

1 state a claim on civil conspiracy, and I will get to that in
2 a second. There's also, as Your Honor noted, a personal
3 jurisdiction grounds as well as an improper venue/subject
4 matter jurisdiction grounds. So turning to the civil
5 conspiracy, Your Honor, this is the part of the motion to
6 dismiss that gets to the heart. In fact, the case is
7 discussed when, if ever, is it appropriate to sue a lawyer
8 whose representing their client. And there are two main
9 cases that we sited, one is the Stiles case, which is a
10 conspiracy case. And what the Stiles case held was that an
11 attorney representing his client is only liable for civil
12 conspiracy where one of two things happens; either that
13 lawyer had an independent duty to the plaintiff or the
14 lawyer acted in his own interest outside of the
15 representation of the client, otherwise we're going to have
16 people suing attorneys for carrying out actions representing
17 their clients. And in the Stiles case it was a Rule 12
18 motion and they dismissed it because on the face of the
19 complaint there weren't any of those allegations that Stiles
20 said is required. And the quote from Stiles is nowhere in
21 the complaint does plaintiff allege in what manner the
22 defendant acted out of his role with the defendant's
23 attorney nor does he allege that the attorney breached some
24 independent duty owed to the plaintiff. Therefore on the
25 face of the complaint the only reasonable inference is that

1 the attorney was acting at all times in his capacity as
2 defendant's attorney. Under Gaar, that is the other case I
3 will talk about, the attorney is immune from any activities
4 taken in his professional capacity, and that's exactly the
5 case here, Your Honor. They haven't even tried to allege an
6 independent duty or an independent interest or that the
7 attorney was acting outside the scope of his representation
8 of the client. In fact, they allege that that is exactly
9 what happened, that the firm and Mr. Jones and Mr. O'Brien
10 were clearly carrying out legal services, preparing a deed,
11 reporting a deed, that's legal services. In the Gaar
12 case -- the Gaar case was actually a malicious prosecution
13 case but some of the language in the Gaar case I think is
14 very appropriate here because it talks about why the courts
15 don't want to encourage litigants to sue opposing counsel.
16 That was a malicious prosecution case in which plaintiff's
17 counsel sued opposing counsel, and here is what the Gaar
18 court said, in our opinion the better rule is that an
19 attorney is immune from liability to third persons arising
20 from the performance of his professional activities as an
21 attorney on behalf of and with the knowledge of his client.
22 Such a suit is properly brought against the party to the
23 original action, not the attorney representing him. The
24 attorney normally conducts the litigation solely in his
25 professional capacity, he has no personal interest in the

1 suit. And a little bit further down the same page in the
2 opinion, attorneys must be free to act and advise their
3 client without constant fear of harassment from lawsuits.
4 And that's exactly what we're talking about here, Your
5 Honor, is yes, this apparently has been some knock down drag
6 out litigation. There was a trial, there was a judgment,
7 counsel at times I don't think has gotten along very well,
8 but we don't want to start encouraging suing opposing
9 counsel under these circumstances for fraudulent conveyance.
10 If we encourage that every fraudulent conveyance case is
11 going to end up including opposing counsel that prepared the
12 deed, and that's not what the courts want to encourage.
13 There are other ways to address issues like that. There's
14 contempt, there could be a motion to show cause and have
15 counsel come explain what happened. There are Rule 11
16 issues that can be raised, we don't want to encourage people
17 to go out and sue opposing counsel. As a matter of fact on
18 Friday, I just got it today because with the electronic
19 filing system I got a notice but it wasn't ready, apparently
20 plaintiff has now filed a motion to amend the complaint to
21 add another associate from Redding Jones as a party to the
22 lawsuit, and here is the basis for it, the associate's name
23 is Ty Mctier, trustee has reason to believe that defendant
24 law firm -- an attorney at defendant law firm, including Ty
25 Mctier, were aware of and perhaps participated in violating

1 the estate by transferring or assisting in transferring of
2 stock in the company, which would be conspiracy alleged in
3 the complaint. On that basis they want to add yet another
4 associate attorney from opposing counsel's law firm for this
5 lawsuit. It needs to go away, Your Honor. The other ground
6 for which the civil conspiracy claim can be dismissed is
7 that there can't be a civil conspiracy between a principal
8 and an agent, and attorney and clients are principal and
9 agents. And as I read to Your Honor they absolutely allege
10 in the conspiracy is the attorneys conspired with their
11 client, George Combis. So under the McMillan case we cited
12 that's yet another grounds for dismissing the conspiracy
13 claim. I will move on to the venue claim, Your Honor, this
14 one is pretty black and white. Under Section 15-7-10 that
15 is the venue statute and as we cited in the brief, Your
16 Honor, 15-7-10 is unequivocal in terms of venue and action.
17 This is quote, "An action must be tried in the county in
18 which the subject of the action or some part of the property
19 is swayed where it's for the recovery of real property or an
20 estate where there's no real property. It has to be tried
21 in the county where the property is located. No dispute
22 that both of these parties are in Mecklenburg County, North
23 Carolina, no property in South Carolina. No dispute that
24 this case is about title and interest to that property. All
25 you have to do is look at the causes of action and the

1 prayer for relief. In this very complaint we sited the
2 Track South case that says that's what you do, look at the
3 complaint. In the prayer for relief they ask that the Court
4 repair the purported transfer of George's interest in the
5 Brevard Street property with void and initiate title to the
6 one-half interest in the property so that it remains in
7 George's name. They have the same prayer for the other
8 parcel. And their second cause of action against the other
9 defendant is to set aside the conveyances. So there's zero
10 question that this case is about title and interest in real
11 property. And under 15-7-10 it's unequivocal that that
12 action needs to be filed in Mecklenburg County, North
13 Carolina. On the same grounds, Your Honor, there's
14 therefore lack of subject matter jurisdiction, because we've
15 sited the ex parte Jones case that says the Court lacks
16 jurisdiction to try a case on its merits in the wrong
17 county, and under 15-7-10 this case has been filed in the
18 wrong county. The final ground, Your Honor, is the personal
19 jurisdiction motion, or the motion to dismiss for lack of
20 personal jurisdiction. I will just run through those steps
21 quickly and then focus on the contracts, or lack thereof,
22 this is only as to Mr. Jones and Mr. O'Brien, we didn't move
23 on personal jurisdiction as to the firm itself. But Mr.
24 Jones and Mr. O'Brien have submitted affidavits that are in
25 the file. Those affidavits make clear that neither

1 Mr. Jones or Mr. O'Brien has ever been sued or sued in South
2 Carolina. They don't transact business in South Carolina,
3 don't man an office in South Carolina, don't own, rent or
4 lease property in South Carolina. Those are the affidavits
5 we submitted. The plaintiff didn't submit any affidavits
6 but simply filed the discovery responses that we answered,
7 so those are now in the record. And I got a brief from
8 opposing counsel this morning, it appears there's general
9 jurisdiction over -- there's a quote in their own brief
10 quoting the --

11 THE COURT: What page?

12 MR. DAVIS: I'm looking at page eight, the minimum
13 contact section, Your Honor.

14 THE COURT: Yeah.

15 MR. DAVIS: The Court made -- general jurisdiction is
16 if the defendant has an enduring relationship with the forum
17 state, and then it explains that an enduring relationship
18 must be continuous and systematic contacts so substantial
19 and of such a nature as to justify suit against the
20 defendant in causes of action arising from dealings entirely
21 different from those activities. And what they've pointed
22 to in the discovery responses are the fact that Mr. Jones
23 and Mr. O'Brien have said, yes, they've vacationed in South
24 Carolina a handful of times in the last five or ten years
25 and that they have been associated with attorneys in their

1 firms who are licensed in South Carolina. Those are
2 essentially the only contacts that Mr. Jones and Mr. O'Brien
3 have with South Carolina. Counsel also is arguing that by
4 objecting to some of the interrogatories that an adverse
5 inference can be made from that. Well, Your Honor, once we
6 answered the interrogatories we didn't get one phone call or
7 email saying other responses were insufficient, so that's
8 just not going to fly. I will run through the law quickly
9 on personal jurisdiction, I think we all know it fairly
10 well. We have got the long armed statute. I do want to
11 focus on the language of the long armed statute because it
12 makes a point about the degree of contacts that a defendant
13 needs to be. It appears -- and we address this in our
14 brief, it appears that plaintiffs would be trying to bring
15 in these defendants under prong four of the long armed
16 statute in South Carolina, that's where the defendant causes
17 tortious injury or death in this state by an act or omission
18 outside the state, which appears to fit here. If he
19 regularly does or visits businesses or engages in any other
20 persistent course of conduct or derives substantial revenue
21 from goods used or consumed or services rendered in this
22 state. And there's no evidence of any persistent course of
23 conduct or substantial revenue or goods or services in this
24 state, Your Honor. The case needs to go away, Your Honor.
25 There's litigation ongoing, we have talked about the course

1 going forward. I understand there are collective actions
2 both in North Carolina and South Carolina that are, I think,
3 sort of stayed waiting on that. There's no reason for
4 opposing counsel to be sued in this lawsuit, and it's not
5 something the courts of South Carolina want to encourage.
6 Thank you, Your Honor.

7 THE COURT: All right. Thank you. Of course, you are
8 on -- Mr. Davis, you are representing?

9 MR. DAVIS: The Redding Jones firm, Mr. Jones and Mr.
10 O'Brien.

11 THE COURT: Got you. And then there's also two motions
12 to dismiss on the docket, both pro se Chris Combis and Diane
13 Combis, are any one of them here? Mr. Snyder, you're here
14 for them?

15 MR. SNYDER: Yes, Your Honor.

16 THE COURT: Well, before I hear from you on that let me
17 hear the response from Mr. Truslow. And understand,
18 gentleman, I'm going to rule on this today, okay? Because I
19 am tired of this going on and on and on, I agree with you,
20 this all needs to come to an end. But I think I have enough
21 information, I'll have enough after this hearing and look at
22 things and I will come out and announce a ruling. Mr.
23 Truslow, let me hear your response. And I have your
24 memorandum but I want to hear your response now.

25 MR. TRUSLOW: Thank you, Your Honor. First, one of the

1 obvious ironies is that they would argue that it's unseemly
2 to sue an attorney, and I get it. However, the irony is
3 that Ms. Ballard, a valued, well respected attorney in the
4 record is clear time after time after time, they have
5 accused her of call kind of scandalous inappropriate
6 activity time after time after time. They've alleged these
7 things regarding a very nice, capable, competent attorney
8 who was just trying to help people out. They selected her
9 to try to handle this case, and I'm reminded of old adage no
10 good deed goes unpunished. She tried to do the right thing,
11 she gets sued and now they want to complain when my client
12 responds, and she's responded appropriately. In essence
13 what they've done is they didn't get another law firm to
14 handle these transfers but they've got this amount of money
15 that they owed. And if you recall, Your Honor, what
16 happened here was wife Diane Combis, she's trustee, what she
17 does is to take the money from the trust to pay off her
18 husband and her personal obligations and their corporate
19 obligations, that's seems to be a breach of a fiduciary
20 duty. They change attorneys once in awhile, I think Mr.
21 O'Brien has now gone to work for the former attorney, but
22 they have got this amount of money that they owe, they knew
23 they -- she had to know that they hadn't handled it
24 correctly. You can't just take trust money or things from
25 the estate whether they are watches, guns or whatever, you

1 can't be involved in that and take the money that belongs to
2 the trust and apply it to your own personal debts. And then
3 there was another -- I think there was another \$50,000 of
4 cash that the trustee says she doesn't know what he ever did
5 with it. Well, they know this is going on, the law firm
6 knows what's going on, if they're going to help them they
7 hold themselves out as helping clients with asset
8 protection, if they're going to transfer out assets so that
9 there will not be anything in their names to satisfy the
10 judgment. That should go to somebody else. They should
11 never have been involved in dealing with that issue
12 directly. Your Honor, we think we have a strong case. They
13 have been all over the place. When we were here before you
14 they were all over the place as to who did what and who had
15 what knowledge regarding guns, watches, I think you may
16 recall all of the things that happened there. You gave them
17 every opportunity from -- and I'm trying to be objective, I
18 thought you were very fair, but I'm looking at it, and if I
19 am the attorney on the other side I would think I would get
20 it. I would understand I don't need to be involved with the
21 transfer of assets out so that there will be no funds to
22 collect the judgment, they can't do that. They transfer
23 assets away from themselves to others. Counsel was correct,
24 when we tried to pursue the judgment in North Carolina the
25 Court stayed this, however after that Mr. Redding has

1 indicated -- we ordered the transcript and that's why we
2 filed to amend, he said that even though there's a stay
3 George has transferred out of his interest in these -- in
4 the business so that there won't be anything so there isn't
5 anything. And George claims he's now bankrupt, they haven't
6 filed for bankruptcy, he's been making these claims for more
7 than a year. Your Honor, we stand by what we've said, we
8 stand by the record in this case. We think that we are
9 correct, we think this is a righteous case. The estate is a
10 Lancaster County estate, there are assets that are here that
11 the trust -- they've agreed this was going to be litigated
12 in South Carolina, we have not, my colleague that's here.
13 But the other attorney says they don't have any contacts
14 with this state. Your Honor, this is the problem, when they
15 come in from out of state, come in pro hac vice they do work
16 here, and then they go back and they think they don't have
17 the minimum context. They were in probate court, they were
18 before Judge Anderson for protracted litigation, they
19 participated in all of the discovery. They came here. They
20 came here once before on another ground and made scandalous
21 claims against Ms. Ballard that weren't justified. We are
22 in the proper place and we think we ought to go forward.

23 THE COURT: Who made the scandalous claims?

24 MR. TRUSLOW: This would have been -- this would have
25 been the Combis' attorneys and that would have been either

1 both the former attorney -- I would use generally the
2 Redding firm.

3 THE COURT: Okay. But do you agree or do you not agree
4 that the law firm, or the lawyers, were acting on behalf of
5 their clients? Were they independently alleging all of this
6 scandalous activity by Ms. Ballard, were they independently
7 doing that? Because -- you understand where I'm going with
8 that.

9 MR. TRUSLOW: Yes, sir.

10 THE COURT: Because, you know, a lawyer advocates for
11 the lawyer's client and when you cross the line is when
12 there's liability.

13 MR. TRUSLOW: Yes, sir.

14 THE COURT: And that's what the -- of course, you know,
15 Mr. Davis is saying that there has been no crossing of the
16 line. It has been a contentious litigation, no question,
17 but, you know -- go ahead.

18 MR. TRUSLOW: We have submitted that they have crossed
19 the line but we may not know with absolute certainty but the
20 case ought to go forward and we ought to find out more.

21 THE COURT: You believe it's too premature at this
22 point in time to issue a motion to dismiss.

23 MR. TRUSLOW: Yes, sir.

24 THE COURT: Based upon just the law under dismissal on
25 the four corners of the pleadings and -- et cetera.

1 MR. TRUSLOW: Yes, sir. And with that I will sit down,
2 I think you understand our position.

3 THE COURT: I am with you and I will go look through
4 everything. Yes, sir?

5 MR. SNYDER: Thank Your, Honor me. May it please the
6 Court? Diane and Chris Combis' motion to dismiss is based
7 on similar grounds that Mr. Davis has already argued,
8 specifically the venue is improper, lack of subject matter
9 jurisdiction and failure to state a claim, and I will just
10 stand on the arguments that he made.

11 THE COURT: All right. Thank you. Mr. Davis, anything
12 you wish to say based upon --

13 MR. DAVIS: Just the final point, Your Honor. And when
14 you read the Gaar case that is the malicious prosecution
15 case. The natural next step in this case, which I'm not
16 going to do, don't want to do, the next step is for me to
17 file a malicious suit against Mr. Truslow, that's where this
18 circus continues on down the tracks. It's exactly what the
19 attorneys are advocating for their client. It's about the
20 parties, it's not about the attorneys and that's how this
21 should be. Thank you, Your Honor.

22 THE COURT: Y'all gave me a brief moment, I will go
23 review everything and I'll come out with a decision.
24 Everybody else just go get some coffee or something.

25 (Break in proceedings.)

1 THE COURT: Any ruling this morning is going to be
2 dispositive. On the motion to dismiss on behalf of the law
3 firm and lawyers, that motion is granted on the substantive
4 grounds, not on the jurisdiction, on the attorney/client
5 relationship. So Mr. Davis, I want you to prepare a
6 proposed order for me citing the authority you did. As to
7 the motion to dismiss for Chris Combis and Diane Combis,
8 that is denied, because at this point in time all we have is
9 allegations. Based upon the Court's ruling I believe that
10 as I read the motion to amend the complaint, even though it
11 wasn't before me this morning, y'all were seeking to add Mr.
12 Mctier, so just put that in the order, Mr. Davis, that the
13 motion to supplement an amended complaint that was filed in
14 October, based on the Court's ruling that is denied. All
15 right, that concludes this hearing. Thank y'all very much.

16 (End of the hearing.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER) 2014-CP-29-0306

DESA BALLARD PER REP:)
ESTATE OF CHRIS COMBIS)

vs.) EXCERPT OF
) TRANSCRIPT OF RECORD
)

GEORGE COMBIS, DIANE)
COMBIS, BLACK HORSE RUN)
PROPERTY OWNERS ASSOCIA-)
TION, SUPERIOR TILE,)
MARBLE & TERRAZZO CORP.)

NOVEMBER 17, 2017
LANCASTER, SOUTH CAROLINA

BEFORE THE HONORABLE BRIAN GIBBONS

APPEARANCES:

DOUGLAS TRUSLOW, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE PLAINTIFF

JOSEPH PELLINGTON, ESQUIRE
CHARLOTTE, NORTH CAROLINA

T. KIMMELL MCTIER, ESQUIRE
CHARLOTTE, NORTH CAROLINA

ATTORNEYS FOR THE DEFENDANTS

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

1 (WHEREUPON, THE JUDGE MEETS WITH COUNSEL IN
2 CHAMBERS.)

3 THE COURT - All right, Ms. Ballard, I'm going to
4 have you step down, please.

5 MS. BALLARD - Okay. Thank you, Your Honor.

6 THE COURT - All right, madam court reporter, I'm
7 going to -- well, you don't have to mark it separable to
8 what I'm fixing to say, but this is going to be what people
9 are going to need, but -- all right, just let me go ahead
10 and explain what's going to happen. I took your lawyers
11 into the back so as not to blindside them with what I'm
12 fixing to say, and I'm going to say it right now. Okay?
13 You know, one of the -- the most important thing that the
14 Judge has to do is to make sure that people's
15 constitutional rights are protected. Okay? Having said
16 that, having sit -- having sat through almost a full day's
17 worth of testimony in this case, it's this Court's opinion,
18 at least at this point, that this has gone beyond a civil
19 or criminal contempt complaint into possible criminal
20 malfeasance. And let me say why I say that. Okay? As
21 your lawyers' know, the burden of proof in a civil case for
22 contempt, for civil contempt, is clear and convincing
23 evidence per the Miller vs. Miller case. The burden of
24 proof for criminal contempt, of course, is beyond a
25 reasonable doubt, just like in any criminal court. The

1 burden of proof, however, for a criminal charge or a
2 criminal investigation is probable cause, which is a very
3 small burden, and that's probable cause just from one side.
4 I know I've only heard one side of the story. I -- I know
5 -- and like I told Mr. Pellington back in chambers, you
6 know, he hadn't called any witnesses yet; he's cross-
7 examined witnesses. Well, I understand that. You know,
8 the grand jury in South Carolina only hears from one side;
9 that's the prosecution's side. But in an abundance of
10 caution and to protect, Mr. Pellington, your client's
11 constitutional rights, I'm recessing this hearing and
12 staying this proceedings -- and staying these proceedings
13 until further notice. As the officer of this Court, as the
14 representative of justice, I have a duty to report what
15 I've heard as possible criminal violations of both South
16 Carolina law and North Carolina law. What I've heard can
17 possibly arise to breach of trust in South Carolina, which
18 is punishable by up to ten years in prison, a felony. What
19 I've heard could possibly arise to criminal conspiracy,
20 which in South Carolina is up to ten years in prison.
21 Also, what I've possibly -- what I've heard could possibly
22 arise to perjury. Now, I'm not making any findings on
23 that. I'm just saying, again, it's a probable cause
24 standard, and I want to make sure everybody's rights are
25 protected. Mr. George Combis, Mr. Chris Combis and Ms.

1 Diane Combis, I want to make sure that your rights are
2 protected. That's why I'm stopping these proceedings at
3 this point in time. Okay? However, this Court has a duty
4 to report any alleged violations of the law to the proper
5 authorities for investigation. Okay? Mr. Gregory is a
6 retired SLED agent, South Carolina Law Enforcement
7 Division. Mr. Gregory, I'm ordering that you contact the
8 South Carolina Law Enforcement Division and have them
9 contact the North Carolina counterpart, SDI, I believe, is
10 what it's called, and have them open up an investigation on
11 these alleged activities by the Combises to see if any
12 violations arise to the level of criminal prosecution.
13 Okay?

14 MR. GREGORY - Yes, sir.

15 THE COURT - Having said that, this Court is going
16 to stay these proceedings until further notice. That's the
17 order of the Court. Okay? Court's adjourned.

18 MR. TRUSLOW - Your Honor, I have one --

19 THE COURT - Yes, sir.

20 MR. TRUSLOW - -- one request, technical request
21 in this regard, that we have -- I think Mr. Pellington will
22 agree -- we've had this discussion before with Mr. George
23 Combis, Diane Combis, Chris Combis will agree to the
24 continued jurisdiction of the Court and will appear as
25 directed.

1 THE COURT - Well, I mean that goes without
2 saying. I -- I mean I -- the civil matter's still on-
3 going. I mean this doesn't do anything with the probate
4 case in Lancaster County. I'm just -- I'm making this
5 decision -- I -- I don't want to make this -- you know, I
6 don't want to have it to go this way. Okay? But, I mean
7 I'm sitting here, something's chewing at my gut to say this
8 -- I have to do this -- as the officer of this Court is
9 when I hear -- it's just like if somebody were to do
10 something right in front of me that appears to violate the
11 criminal laws, I have the duty to take care of that. I
12 can't ignore it. Okay? And so that's -- it's upon that
13 reason why I've halted these proceedings to protect their
14 constitutional rights, their fifth amendment rights, their
15 rights of confrontation, etcetera, etcetera, and, of
16 course, the lawyers understand that. Okay? So, of course,
17 the civil action will continue; of course, the Combises
18 will continue to be under the jurisdiction of this Court,
19 and, you know, this civil action, this particular hearing
20 at least is -- is -- this criminal contempt action along
21 with the accompanying motions and civil contempt action is
22 stayed until further notice until the criminal
23 investigation concludes. Okay? That's the order of the
24 Court. Mr. Pellington, you advise your clients

1 accordingly, and, of course, Mr. Truslow, I'm sure you'll
2 do the same. Okay?

3 MR. TRUSLOW - I have -- I have one other
4 question.

5 THE COURT - Yes, sir.

6 MR. TRUSLOW - I appreciate your patience. On the
7 items that were delivered to Ms. Ballard, I would hope that
8 they can be with the clerk of court, but if you advise us
9 to take possession of them ---

10 THE COURT - All right, Ms. Ballard has been
11 appointed by this Court, well by the probate court, of
12 course, is now in front of me, to be the personal
13 representative of the estate of Pop Combis. Okay, I'm
14 calling him Pop. Okay? In her capacity and as such, she -
15 - I know what my previous order is in regards to the items
16 in that box. Okay? Now, I'm not going to disturb my
17 previous order as far as the items in that box, so that
18 stuff will go back to Mr. Pellington to hold in trust until
19 further order. The gold watch that we refer to -- okay? -
20 - that's -- there's testimony that that along with the new
21 gun that's in that ziploc bag, there's testimony or
22 presentations that that's part of the Combis estate as
23 well. I'm going to order that Ms. Ballard take possession
24 of those items and have them appraised. Okay? And then,

1 of course, upon -- once that's over with, then Ms. Ballard,
2 you will hold those in trust until further order. Okay?

3 MS. BALLARD - Yes, sir, Your Honor.

4 THE COURT - So, do you have the gold Rolex with
5 you?

6 MR. PELLINGTON - I do.

7 THE COURT - All right, hand that to Ms. Ballard.
8 Let the record reflect that's been handed to Ms. Ballard
9 for her -- the appraisal; she'll hold it in trust until
10 further order. Mr. Bailiff, hand that ziploc gun to Ms.
11 Ballard. She will hold that in trust until appraised as
12 well, and, of course, she'll let everybody know what the --
13 what's going on with that. Okay?

14 MR. TRUSLOW - Your Honor, I had one question
15 about this. It's a Bauer -- B-a -- like Baeur -- that has
16 been presented by Mr. Pellington today. Are they saying
17 that this is part of the estate? We don't -- or -- or ---

18 THE COURT - It's been represented that that was a
19 gun owned by Pop Combis. Correct?

20 MR. PELLINGTON - I think that the fair thing to
21 say would be it's undecided. It was gifted a long time
22 ago. It was presented out of abundance of caution.

23 THE COURT - Right. And, again, out of an
24 abundance of caution, have it appraised. Okay?

25 MS. BALLARD - Thank you.

1 THE COURT - And we'll see what happens, but that
2 way you're holding trust of those items in the box; you're
3 holding in trust those two items. We're staying these
4 proceedings. Y'all, you know, cooperate with the criminal
5 investigation, and then, you know, we'll see you here soon,
6 I guess, whenever that's resolved.

7 MS. BALLARD - Thank you.

8 MR. TRUSLOW - Your Honor, on the -- on the gun
9 that was just delivered to Ms. Ballard, if we can reach an
10 agreement as to the value, I assume we wouldn't have to go
11 get another appraisal? I'm confident it's going to have a
12 value of sixty dollars at maximum.

13 THE COURT - I'll let y'all work all that out.
14 I'm not keeping y'all from talking, at least lawyers from
15 talking and stuff. I'm going to advise the Combises, now,
16 I find it's incumbent that, you know, they need to be aware
17 of their -- Mr. Pellington, you advise them of their fifth
18 amendment rights under the constitution. Okay?

19 MR. PELLINGTON - Yes, sir.

20 THE COURT - All right, thank you.

21 MR. GREGORY - Your Honor, could I ask for a
22 business card from the two ---

23 THE COURT - Yes, please. Y'all cooperate with
24 Mr. Gregory. All right, that concludes this hearing. I
25 wish the very best of luck to all of you.

1 MS. BALLARD - Thank you, Your Honor.
2 THE COURT - All right.
3 (END OF TRANSCRIPT)
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From: [Gibbons, Brian Law Clerk \(Ryan Swancy\)](#)
To: [Douglas Truslow](#); [Joe Pellington](#)
Cc: [Desa Ballard](#); [Ty McTier](#); [Marisol Rivera](#); [Mara Ballard](#); [Amanda Hilley](#)
Subject: RE: Ballard v. Combis; 2014-CP-29-00306
Date: Tuesday, April 23, 2019 10:37:01 AM
Attachments: [image001.png](#)

Dear All,

Judge Gibbons is not doing anything on this case unless it is heard in open court on the record.

Thanks,

Ryan Swancy
Law Clerk to Judge Brian M. Gibbons

From: Douglas Truslow <douglastruslow@truslowlaw.com>
Sent: Monday, April 15, 2019 11:16 AM
To: Joe Pellington <jpellington@reddingjones.com>; Gibbons, Brian Law Clerk (Ryan Swancy) <bgibbonslc@sccourts.org>
Cc: Desa Ballard <desab@desaballard.com>; Ty McTier <tmctier@reddingjones.com>; Marisol Rivera <mrivera@reddingjones.com>; Mara Ballard <Mara@desaballard.com>; Amanda Hilley <amandahilley@truslowlaw.com>
Subject: RE: Ballard v. Combis; 2014-CP-29-00306

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

In response to Mr. Pellington's email, he appears confused about what has transpired. A Rule to Show Cause was issued against his clients. A hearing was initiated.. After the presentation of considerable, compelling testimony, the Court (Judge Gibbons), *ab initio*, put in place a stay. The stay gave Mr. Pellington and his clients an opportunity to be forthcoming, avoid the inherent conflicts associated with the defense and work to resolve issues rather than prolong already protracted and unseemly litigation. There was obviously no attempt at resolution and the matter languished. Now, the 4th Circuit Court of Appeals has ruled in the underlying matter. I previously sent the Court a copy of the decision of the 4th Circuit. The decision speaks volumes regarding the conflict, as reflected in footnote #3. There is no need for even more delay. This matter needs to come to be resolved. To that end, the Clerk of Court in Lancaster set the time for the resumption of the Rule to Show Cause hearing. Ms. Ballard was concerned that, although she has not sought the stay, without the lifting of the Court's *ab initio* Order staying the matter, we would come to a hearing and face the specter of the defense seeking even more delay. While the Court could have lifting its stay of its own accord so as to promote the ends of justice, Ms. Ballard acted as she understood the clerk has indicated would most likely need to be done to avoid further delay.

Finally, I would note that there was no requirement from the Court that SLED issue a report. That said, we expect to ask the SLED agent to come to the resumption of the hearing and give the Court the benefit of what he found.

I believe it would be best to go forward on the date scheduled by the Clerk. However, if your honor wishes to have a telephone status conference with respective counsel before then – we defer to the Court.

Respectively,

Doug Truslow

From: Joe Pellington <jpellington@reddingjones.com>
Sent: Wednesday, April 10, 2019 9:18 AM
To: Gibbons, Brian Law Clerk (Ryan Swancy) <bgibbonslc@sccourts.org>
Cc: Douglas Truslow <douglastruslow@truslowlaw.com>; Desa Ballard <desab@desaballard.com>; Ty McTier <tmctier@reddingjones.com>; Marisol Rivera <mrivera@reddingjones.com>; Mara Ballard <Mara@desaballard.com>; Amanda Hilley <amandahilley@truslowlaw.com>
Subject: Re: Ballard v. Combis; 2014-CP-29-00306

Judge Gibbons:

I have not seen a motion to lift the stay, nor have I seen any correspondence from the Court stating the stay is lifted. Since I do not know what events caused counsel to submit the proposed orders, I am not sure how to respond. It appears either the Court has already lifted the stay, or the Court has not lifted the stay and counsel is submitting the orders for the Court's consideration to lift the stay.

If the Court has not lifted the stay, my clients' position is that the stay should remain in place. First, I think a motion to lift the stay needs to be filed so my clients can respond. Second, I have not heard from SLED or SBI, therefore I do not see how the Court's concerns that led to the issuance of the stay have been resolved. Again, without knowing what events led to counsel submitting the proposed orders, it is difficult to respond in full. I reserve the right to raise additional points once I understand what has occurred.

If the Court has lifted the stay, then I respectfully request a status hearing for the purposes of scheduling and discussing how the show cause hearing will resume/proceed from here.

Sincerely,

Joe Pellington

 REDDING | JONES

Joseph R. Pellington

2907 Providence Road, Suite A303

Charlotte, North Carolina 28211

Direct & Fax | 704-200-2054

Email | jpellington@reddingjones.com

From: Amanda Hilley <amandahilley@truslowlaw.com>

Date: Wednesday, April 10, 2019 at 8:44 AM

To: "Gibbons, Brian Law Clerk (Ryan Swancy)" <bgibbonslc@sccourts.org>

Cc: Douglas Truslow <douglastruslow@truslowlaw.com>, Desa Ballard <desab@desaballard.com>, Ty McTier <tmctier@reddingjones.com>, Joe Pellington <jpellington@reddingjones.com>, Redding Jones <mriviera@reddingjones.com>, Mara Ballard <Mara@desaballard.com>

Subject: Ballard v. Combis; 2014-CP-29-00306

Dear Judge Gibbons:

Please see the two proposed Orders Lifting the stay as it relates to the above referenced matter. They were submitted via the E-filing system. Please note, that the case has multiple issues and is a consolidated matter, hence the two proposed Orders. Opposing counsel is copied on this email.

Sincerely,

Amanda Douglas Hilley
Senior Paralegal

Truslow & Truslow
ph (803) 256-6276
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Mailing Address:
P.O. Box 1465
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Columbia, SC 29201

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For Registration Fredrick Smith  
 Register of Deeds  
 Mecklenburg County, NC  
 Electronically Recorded  
 2019 Mar 27 02:50 PM RE Excise Tax: \$ 0.00  
 Book: 33381 Page: 712 Fee: \$ 26.00  
 Instrument Number: 2019034626

*Fredrick Smith*

**NORTH CAROLINA NON-WARRANTY DEED**

Excise Tax: \$0.00

PARCEL IDENTIFIER NO. 083-052-01 and 083-052-02

VERIFIED BY \_\_\_\_\_ COUNTY ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY: HARRY MARSH LAW *no title*

RETURN TO: HARRY MARSH LAW 10550 INDEPENDENCE POINTE PKWY, #302, MATTHEWS, NC 28105

BRIEF DESCRIPTION FOR THE INDEX: 2300 & 2310 N. Brevard Rd, Charlotte, Mecklenburg County, North Carolina

THIS DEED made this \_\_\_\_\_ day of March 2019 by and between

| GRANTOR          | GRANTEE                                                         |
|------------------|-----------------------------------------------------------------|
| Diane M. Combis  | George C. Combis and wife,<br>Diane M. Combis                   |
| Mailing Address: | Property Address: 2310 N. Brevard Street<br>Charlotte, NC 28206 |

WITNESSETH: That said Grantor has remained and released and by these presents do remise, release, convey and forever convey unto Grantee, their heirs, and/or successors and assigns, all right, title, claim and interest of the Grantor in and to a certain lot(s) or parcel of land situated in the Mecklenburg County, State of North Carolina, and more particularly described as follows:

See Attached Exhibit A

All or a portion of the property herein conveyed (\_\_\_\_\_) includes or ( x ) does not include the primary residence of a Grantor.

Submitted electronically by "Harry Marsh Law"  
 in compliance with North Carolina statutes governing recordable documents  
 and the terms of the submitter agreement with the Mecklenburg County Register of Deeds.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 30833, page 717-720.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

IN WITNESS WHEREOF, the Grantor has hereunto set their hand and seal the day and year first above written.

Diane M. Combis (SEAL)  
Diane M. Combis

STATE OF North Carolina COUNTY OF Mecklenburg

I certify that Diane M. Combis, who are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day; each acknowledging to me that he/she voluntarily signed the foregoing instrument for the purposes therein expressed.

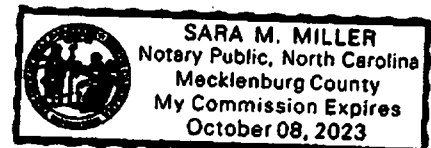
Witness my hand and Notarial stamp or seal this 27<sup>th</sup> day of March, 2019.

Notary Signature: Sara M. Miller

Notary's Printed Name: Sara M. Miller

My Commission Expires: 10/8/2023

[Notarial Seal]



## Exhibit A

**TRACT I: Tax Parcel 083-052-01**

Beginning at the intersection of the south side of North Brevard Street with the western edge of Sugar Creek; thence in a southwesterly direction along the south side of North Brevard Street to a point, said point being 735 feet west of the southwest corner of the intersection of 28th Street and North Brevard Street; thence at right angles to North Brevard Street along a line in a southeasterly direction to the western edge of Sugar Creek; thence along the western edge of Sugar Creek to the point of beginning; containing approximately 0.78 acre, and being in all respects the same property conveyed to Superior Tile, Marble, Terrazzo Corporation, a North Carolina corporation, Grantor herein, by Southern Railway Company, by deed recorded in the Mecklenburg County, North Carolina Public Registry in Book 2724, at Page 563.

**TRACT II: Tax Parcel 083-052-02**

Beginning at an iron stake in the Southeasterly margin of North Brevard Street, said stake being located 445 feet distant in a Northeasterly direction from the point marking the intersection of said Margin of North Brevard Street with the Northeasterly margin of Twenty-fifth Street, and runs thence with the said margin of North Brevard Street, North 49-00 East, 110.39 feet to an iron stake; thence, South 41-00 East, 1015.72 feet to an iron stake; thence South 25-35 West, 120.30 feet to an iron stake; thence North 41-00 West, 152.52 feet to the beginning, all as shown by blueprint of survey of T. J. Byrum, Registered Engineer, dated March 3, 1948, and being the same property conveyed to Superior Tile, Marble and Terrazzo Corporation, Grantor herein, by Chris (Cris) Combis and wife, Jessie O. Combis, by deed dated December 26, 1984, recorded in the Mecklenburg County, North Carolina Public Registry in Book 4954, at Page 297.

## EXHIBIT D

ELECTRONICALLY FILED - 2019 Apr 30 9:47 AM - LANCASTER - COMMON PLEAS - CASE#2017CP2901248

|                                       |   |                              |
|---------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS |
|                                       | ) |                              |
| COUNTY OF LANCASTER                   | ) | CASE NO. 2017-CP-29-01248    |
|                                       | ) |                              |
| Desa Ballard, as successor trustee of | ) |                              |
| The Trust of Chris Combis,            | ) |                              |
|                                       | ) |                              |
| Plaintiff,                            | ) |                              |
|                                       | ) |                              |
| vs.                                   | ) | <b>SUPPLEMENTAL</b>          |
|                                       | ) |                              |
| Diane Combis, Chris A. Combis,        | ) | <b>COMPLAINT</b>             |
| and George Combis <sup>1</sup> ,      | ) |                              |
|                                       | ) |                              |
| Defendants,                           | ) |                              |
|                                       | ) |                              |
|                                       | ) |                              |

Plaintiff, complaining of the Defendants named above, would show unto this Honorable Court:

1. Plaintiff Desa Ballard (hereafter "the Trustee") is the Successor Trustee of the Trust of Chris Combis, u/a/d October 15, 2013 (hereafter "the Trust"), pursuant to the agreement of parties recorded at Lancaster County Register of Deeds at Book 765, Page 326-334 on November 12, 2013 and Mecklenburg County Register of Deeds at Book 28829, Page 21-29, on November 13, 2013.
2. The trust owns real property in Lancaster County, South Carolina, as well as other assets, including a judgment.
3. On information and belief, Defendant Diane Combis (hereafter "Diane") is a citizen and resident of the state of North Carolina, who has, by agreement, submitted herself to this jurisdiction of the South Carolina courts, and who has minimum contacts in the

---

<sup>1</sup> This Court granted a motion to dismiss by Defendants Redding Jones, LLC, Simon O'Brien and Kent D. Jones on November 6, 2018. This proposed supplemental complaint omits allegations relating to those parties. That order of dismissal is on appeal to the South Carolina Court of Appeals, Appellate Case No. 2018-002272

State of South Carolina sufficient to bring her within the personal jurisdiction of this Court.

4. On information and belief, Defendant Chris A. Combis (hereafter "Chris A.") is a citizen and resident of the State of North Carolina, who has minimum contacts in the State of South Carolina sufficient to bring him within the personal jurisdiction of this Court.
5. On information and belief, Defendant George Combis (hereafter "George") is a citizen and resident of the County of Mecklenburg, State of North Carolina, who has, by agreement, submitted himself to this jurisdiction of the South Carolina courts, and who has sufficient minimum contacts to subject him to jurisdiction within the Courts of this State.
6. On or about December 16, 2013, the Trustee filed suit against George Combis and Diane in Lancaster County seeking to recover damages from them for their theft of money from the Trust (hereafter "the breach of fiduciary duty action"). Case No. 2013-CP-29-1008.
7. The breach of fiduciary duty action was subsequently consolidated with other actions and docketed in Lancaster County as Case No. 2014-CP-29-306.
8. The breach of fiduciary duty action was removed to the United States District Court for the District of South Carolina, assigned Case No.0:14-cv-01839.
9. At all relevant times, George was a defendant in the breach of fiduciary duty action at no time was George released from the action nor was the action stayed or otherwise suspended or lifted for any purpose.

10. On information and belief, George undertook efforts to transfer real property that was owned by him in his name, in whole or in part, which was unencumbered and would be available to be applied toward any judgment the Trust obtained against him.
11. On information and belief, George knew that there was a significant likelihood that judgment would be entered against him.
12. On information and belief, during the pendency of the breach of fiduciary duty action and before trial, with the specific intent to defraud creditors, including the Trust, George conspired with Diane and third parties to assist him in his efforts to defraud creditors, including the Trust, and specifically to hamper or impair the Trust's ability to collect a judgment against him.
13. On or about September 22, 2015, while defending George Combis and Diane Combis in the breach of fiduciary duty action, third parties, including Defendant Diane Combis, conspired with and assisted George Combis in transferring real property in Mecklenburg County, North Carolina bearing TMS No. 211-6672-13 (hereafter "the Carmel Park property") to Defendant Chris and Chris's then-wife.
14. The deed for the Carmel Park property which transferred ownership of the property to Defendant Chris A. was recorded on or about September 25, 2015 at Mecklenburg County Register of Deeds Book 30301, Page 511-513.
15. On information and belief, Defendant Chris was aware of the pendency of the breach of fiduciary duty action at the time of the fraudulent conveyance of real property identified as TMS No. 211-6672-13, was aware that George was a defendant in that action and that judgment was likely to be entered against George in a significant

amount, and was also aware that George was making the conveyance for the purposes of defrauding creditors.

16. On information and belief, Defendant Chris accepted the conveyance of the Carmel Park property and was unjustly enriched with it, with full knowledge that George's intent in making the transfer was to defraud the Trust and/or other creditors and that Chris's acceptance of ownership of the Carmel Park property would operate to assist George in defrauding creditors. .
17. On or about May 19, 2016, third parties including Defendant Diane Combis conspired with George Combis to transfer George's interest in real property in Mecklenburg County identified as TMS 083-052-01 and 083-052-03, (hereafter referred to as "the Brevard Street property"), to Diane Combis.
18. At the time of the 2016 conveyance of George's interest in the Brevard Street property, trial was scheduled to occur in the United States District Court for the District of South Carolina in July, 2016.
19. On information and belief, third parties prepared a deed to transfer from George his undivided one-half interest in the real property in the Brevard Street property to vest sole ownership of the Brevard Street property in Diane's name with knowledge that their acts operated to assist George in a conspiracy to defraud the Trust.
20. On information and belief, the transfer of his one-half ownership interest in the Brevard Street property was intended by George and Diane to enable George to defraud the Trust.

21. On information and belief, Diane accepted sole ownership of the Brevard Street property with full knowledge of her participation in the conspiracy and with the intent to assist George in defrauding the Trust.
22. On information and belief, the conveyance to Diane of George's one-half interest in the Brevard Street property was an overt act by Diane Combis and George Combis in furtherance of George's efforts to defraud creditors, including the Trust.
23. The deed for the Brevard Street property was recorded on or about May 19, 2016 at the Mecklenburg County Register of Deeds, Book 30833, Pages 717-720.
24. On information and belief, the transfer of the Brevard Street property was an overt act by Diane and George in furtherance of a conspiracy, made with full knowledge that they, Diane and George, were conspiring and assisting George to defraud creditors, including the Trust.
25. On information and belief, Defendant Diane was aware of the pendency of the breach of fiduciary duty action at the time of the fraudulent conveyance of George's interest in the Brevard Street to her, and she was further aware that George was a defendant in that action and that judgment was likely to be entered against George in a significant amount.
26. On information and belief, Defendant Diane accepted the conveyance of George's interest in the Brevard Street property, accepted the conveyance and benefitted from it and thereby assisted in George's efforts to defraud the Trust.
27. At the time the Defendant Diane assisted George in conveying George's interest in the Brevard Street property for the purpose of defrauding the Trust was done with knowledge that the breach of fiduciary case was scheduled for trial.



28. Trial of the breach of fiduciary action took place before United States District Court Judge Joseph F. Anderson Jr. took place in July, 2016.
29. Judgment was entered in favor of the Trust against George and Diane in the breach of fiduciary duty action on September 1, 2016 in the amount of seven hundred eleven thousand, six hundred and nineteen dollars and ninety-four cents (\$711,619.94).
30. In addition, judgment was entered in favor of the Trustee against George and Diane in the amount of eighty-four thousand, five hundred forty-four dollars and twelve cents (\$84,544.12). George was also ordered to be responsible for other fees payable to the Trustee, who was continuing to serve as Successor Trustee.
31. On information and belief, the judgment was recorded in North Carolina and collection actions were initiated.
32. On information and belief, the actions of the Defendants Diane and George to transfer property during the pendency of the fraudulent conveyance action for the purpose of avoiding and defrauding creditors was unlawful and constituted conspiracy with George and/or others to defraud the Trust of assets against which it could execute to satisfy its judgment.
33. By order dated January 1, 2019, the Fourth Circuit Court of Appeals affirmed the judgment for breach of fiduciary duty against Defendant Diane, but vacated the judgment against Defendant George. Thereafter, the Fourth Circuit granted Ballard's motion for costs on appeal.
34. The North Carolina stay remained in effect. On February 12, 2019, Ballard moved to lift the stay to permit collection proceedings against Diane to commence. The order lifting the stay was granted by order dated April 10, 2019.

35. Prior to the stay being lifted, and while she was still under an order prohibiting the disposition of real property or assets that could be used to satisfy the judgment held by the Trust, Defendant Diane conveyed or attempted to convey a one-half interest in real property owned solely by her to Defendant George Combis by deed dated March 27, 2019.

36. On information and belief, this conveyance was made in a continued effort by both Diane and George to inhibit the ability of the Trust to collect its judgment, and was undertaken with fraudulent intent and has caused damage and injury to the Plaintiff herein, whose costs of collection will be increased and whose obligation to carry out the obligations of the Trust will be delayed and damaged.

**First Cause of Action – Civil Conspiracy**  
**(Against All Defendants)**

37. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.

38. On information and belief, as set forth above, with full knowledge of George's intent to defraud, Diane conspired with George to assist him in transferring real property out of his name, with the intent to deprive the Trust and other creditors of sufficient assets from which to satisfy the pending judgment against George.

39. On information and belief, as set forth above, after realizing that Diane was the primary judgement creditor owing funds to the Trust, George and Diane conspired to re-transfer the real property originally conveyed by George to Diane as sole owner in May, 2016, to both George and Diane, for the purpose of inhibiting and impeding the ability of the trust to collect its judgment against Diane.

40. On information and belief, the conveyances set forth herein were intended by Diane and George to defraud the Trust and other creditors and were specifically intended to cause damages to the Trust and enable George and Diane to avoid their obligations to the Trust.
41. On information and belief, at the time they accepted the conveyances of real property from George, Defendants Diane, Chris and George were aware of the pendency of the fraudulent conveyance action and were also aware that a significant judgment would likely be entered against Diane and/or George in favor of the trust.
42. The conveyances directly and proximately impaired Diane's ability to pay the judgment entered against her in the breach of fiduciary duty action, which remains unsatisfied.
43. The acts of the Defendants as set forth above constitute an agreement among Diane and George to defraud creditors, specifically the Trust, to harm the Trust and its beneficiaries by impeding Diane's ability to pay the judgment that was entered against her.
44. The Defendants herein conspired with one another to do unlawful acts or to do lawful acts in an unlawful way resulting in injury to the Plaintiff inflicted by Diane and George, and was part of a common scheme among them.
45. The Trust has sustained special damages because its inability to honor its obligations to the beneficiaries of the Trust and it has also been impaired by its inability to recover funds stolen by George which are necessary to carry out the intent of the settlor of the Trust.
46. The special damages are in an amount to be determined by a trier of fact, and are continuing to accrue.

47. The Trust has sustained actual and consequential damages in that it has had to employ counsel for the purposes of attempting to collect on the judgment obtained against Diane by the Trust, and has had to take extraordinary actions to continue to fulfill its obligations and carry out its obligations while Diane continues to evade payment of the judgment.
48. The actual and consequential damages are in an amount to be determined by a trier of fact, and are continuing to accrue.
49. On information and belief, the Trust is entitled to a judgment, jointly and severally, against the Defendants herein for actual, consequential and special damages for their active involvement in the conspiracy to defraud creditors.
50. The acts of the Defendants herein were intentional, willful, wanton and reckless, such as to entitle the Trust to an award of punitive damages, jointly and severally, against the Defendants in an amount necessary to deter future misconduct and malfeasance by these Defendants.
51. On information and belief, the Trust is entitled to a judgment, jointly and severally, against the Defendants for punitive damages in an amount to be determined by the trier of fact.

WHEREFORE, having fully set forth the grounds for relief herein, Plaintiff prays for entry of judgment as follows:

- A. Against all Defendants jointly and severally, for actual, consequential, special and punitive damages, in an amount to be determined by the trier of fact.

- B. Ordering and requiring that such transferring Defendant (Diane, Chris, or George) pay into Court the fair market value of the property so conveyed to which cannot be set aside.
- C. Imposing a constructive trust on funds required to be paid by Defendants Diane, Chris and/or George, for the fair market value of such property that they or one of them transferred to or more buyers who were not complicit in the conspiracy.
- D. Ordering the funds in the constructive trust be held by the Court or a third party for the benefit of the Trust, to be applied as necessary toward of the Trust's judgment against Diane.
- E. Awarding Plaintiff the costs of this action; and
- F. For such other and further relief as the Court deems just and proper.

Truslow & Truslow Law Firm

S/ Douglas N. Truslow

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April 30, 2019