

EXHIBIT 3
TO NOTICE OF APPEAL

PROCEDURAL HISTORY OF CASE

Wm. Bert Brannon, as Trustee of the Donaldeen J. Perrich Trust, (“Trustee”) filed a Petition for Declaratory Judgment seeking a determination of Respondents’ rights under the Donaldeen J. Perrich Trust (the “Trust”) in the Lexington County Probate Court on April 18, 2019. Petitioner filed an Amended Petition in the Lexington County Probate Court on May 16, 2019, (“Amended Petition”) seeking declaratory judgment on two separate and distinct issues regarding the Trust.¹ In the Amended Petition, the Petitioner requests a declaration as to the validity of three letters dated September 4, 2016, signed by Donaldeen J. Perrich (collectively the “September 4, 2016 Letters”) that made certain amendments to the Trust. The Amended Petition also seeks a declaratory judgment determining the assets of the Trust after a forensic review of Respondent Kathryn Joan Perrich’s actions while previously serving as trustee of the Trust.

On or about, May 31, 2019, Respondent Kathryn Joan Perrich (“Kathryn”) filed an Answer to the Amended Petition. On June 13, 2019, Respondents David Wayne Perrich and Jerry Robert Perrich (collectively the “Perrichs”) filed an Answer to the Amended Petition and asserted cross-claims against Kathryn for breach of her fiduciary duties as former trustee of the Trust. On July 17, 2019, Kathryn filed an Answer to the cross-claims asserted by the Perrichs denying the allegations of the cross-claims.

Kathryn Joan Perrich’s Default

On November 13, 2019, counsel for the Perrichs served upon counsel for Kathryn their First Set of Interrogatories and First Set of Requests for Production (“Discovery Requests”). After not receiving timely responses to the Discovery Requests, the Perrichs filed their Motion to

¹ On July 1, 2019, the Lexington County Probate Court issued an Order removing this case from the Lexington County Probate Court to the Lexington County Court of Common Pleas.

Compel on January 13, 2020. On February 21, 2020, the Court entered a Consent Order Granting the Perrichs' Motion to Compel (the "First Order"). The First Order required Kathryn to provide full and complete responses without objections to the Discovery Requests no later than February 28, 2020. The First Order also required Kathryn to pay the Perrichs \$878.74 in sanctions for the Perrichs' attorneys' fees and costs related to Kathryn's failure to timely respond to the Discovery Requests (the "First Sanction Award").

After receiving no response from Kathryn on or before the February 28, 2020, deadline in the Consent Order, the Perrichs' counsel filed a subsequent Motion to Compel on or about March 9, 2020 (the "Second Motion to Compel"). On or about July 24, 2020, the Court issued an Order Granting the Second Motion to Compel (the "Second Order"). The Second Order required Kathryn to again provide full and complete responses without objections to the Discovery Requests no later than Friday, August 7, 2020. The Second Order also required Kathryn to pay the Perrichs \$1,591.74 in sanctions for the Perrichs' attorneys' fees and costs related to her failure abide by the terms of the First Order (the "Second Sanction Award").

On or about September 20, 2020, counsel for the Perrichs filed a Motion to Strike Kathryn Joan Perrich's Pleadings and/or For Other Sanctions for Failure to Comply with the Discovery Order (the "Third Motion"). On or about December 1, 2020, the Court issued an Order finding that Kathryn failed to provide full and complete responses to certain Discovery Requests, provided incomplete responses to other Discovery Requests, and ruled that the objections raised by Kathryn to certain Discovery Requests were improper as the information sought in those certain Discovery Requests were relevant and within the allowable scope of discovery (the "Third Order"). The Third Order required Kathryn to remove all objections in her Discovery Responses and provide full and complete responses to the Discovery Requests no later than December 15, 2020.

September 4, 2016 Letters are valid amendments of the Trust (the “Summary Judgment Order”). On or about December 29, 2021, the Court issued an Order denying Kathryn’s timely filed Motion to Alter or Amend the Summary Judgment Order.

FINDINGS OF FACT

1. On September 26, 1991, Robert J. Perrich and Donaldeen J. Perrich created The Perrich Family Revocable Living Trust (the “Joint Trust”). Robert J. Perrich and Donaldeen J. Perrich amended the Joint Trust on three occasions. The Third Amendment and Restatement dated May 13, 1997, amended the Joint Trust in its entirety. [Trust - Court Exhibit 1].

2. Robert J. Perrich died on September 1, 1997. Therefore, the 1997 Amendment and Restatement was the controlling document at the death of Robert J. Perrich. Following Robert J. Perrich’s death, The Perrich Family Revocable Trust divided into two (2) sub-trusts: “The Survivor’s Trust” [a/k/a “The Donaldeen J. Perrich Trust”] and “The Family Trust” [a/k/a “The Perrich Family Trust”]. [Trust – Court Exhibit 1].

3. Kathryn Joan Perrich served as trustee of the Trust from July 2011 through December 7, 2016. [Testimony of Dr. Reed].

4. The September 4, 2016, Letters were valid amendments to the Trust. [Summary Judgment Order].

5. Donaldeen Perrich was concerned about the damages to her trust caused by Kathryn serving as the trustee and instructed her trustee to look into assets that may been stolen, misappropriated, transferred out of the Trust, misused and/or lacked proper documentation that showed the Trust assets were used for her benefit. [September 4, 2016 Letters, Paragraph 2, Perrichs’ Exhibit 2].

6. From 2012-2017, Donaldeen Joan Perrich resided in various assisted living facilities. Donaldeen Joan Perrich died on June 16, 2017. [Testimony of Dr. Reed].

7. Donaldeen Joan Perrich's Last Will and Testament dated May 13, 1997, required that all of her probate assets "pour-over" into the Trust. [Testimony of Dr. Reed].

8. The beneficiaries to the Trust are Kathryn J. Perrich, David Wayne Perrich, Jerry Robert Perrich, William J. Perrich, Robert J. Perrich, Michael J. Perrich, and Sarah Perrich. [Trust - Court Exhibit 1, September 4, 2016 Letters, Perrich Trial Exhibit 2].

9. On or about November 3, 2017, the Honorable Daniel Eckstrom ordered a full forensic accounting into the actions of Kathryn while serving as trustee, with the consent of all parties.

10. Kathryn Joan Perrich is in default in this case. [Default Order].

11. Kathryn Joan Perrich breached her fiduciary duties owed to the Trust in the following respects:

- a. by failing to comply with her fiduciary responsibilities under the specific and mandatory terms of the trust;
- b. failing to provide income distributions to Donaldeen J. Perrich during her lifetime, as Surviving Spouse, pursuant to Article Eight, Section One (1)(a) of the Trust;
- c. failing to provide for the medical necessities of Donaldeen J. Perrich during her lifetime;
- d. failing to act in the beneficiaries' best interest and undertaking actions in the self-interest of Kathryn J. Perrich;

- e. failing to account for missing income and to disclosure the missing income source in the Trust financial accounts;
- f. failing to account for missing RiverSource reimbursements;
- g. misusing of Trust checking accounts for her personal benefit;
- h. misusing Donaldeen J. Perrich or Trust Credit Cards for her personal benefit;
- i. making charitable contributions from the Trust assets in direct violation of Article Four, Section (1)(a) of the Trust;
- j. failing to fully repay a loan from the Trust to Kathryn J. Perrich for the purchase of her real property and failure to obtain security for such loan; and
- k. using Trust Assets for personal purchases in violation of the express terms of the Trust;

[Perrichs' Answer and Cross-Claim and Testimony of Dr. Reed].

12. Margaret Reed, Ph.D., CPA, and CMA ("Dr. Reed") was admitted as an expert without objection by all parties in the fields of general accounting and forensic accounting. Dr. Reed performed an analysis into the Trusts to investigate any damages to the Trust caused by Kathryn's breach of her fiduciary duties while serving as trustee. [Testimony of Dr. Reed].

13. Kathryn refused to participate in discovery in good faith and knowingly, intentionally, and purposefully refused to comply with three separate Court Order's requiring her to produce documents relevant to her time as trustee of the Trust. The documents she refused to produce were critical to the Perrichs' cross-claims and were solely within her access or control.

[Default Order].

14. Kathryn's intentional refusal to produce the records requested in discovery and refusal to comply with three separate Court Orders prevented Dr. Reed from being able to fully perform a forensic audit. [Testimony of Dr. Reed, Reed Report, Perrichs' Exhibit 1]

15. Kathryn is a knowledgeable financial professional as she is a Certified Financial Planner and owned/operated a successful advisory practice. As a knowledgeable and successful financial professional, Kathryn should have understood her fiduciary obligations to her mother and the beneficiaries to the trust. [Testimony of Dr. Reed].

16. Any damages found for Kathryn's breach of her fiduciary duties are required to be brought to Current Value by calculating the monthly percent return of the Ameriprise account for the time each individual damage occurred. [September 4, 2016 Letters, paragraph 6, Perrich Exhibit 2].

17. Kathryn's breach of her fiduciary duties in failing to account for all of Donaldeen Perrich's income to the Trust caused \$230,765.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust is \$307,555.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

18. Kathryn's breach of fiduciary duties in refusing to account for the source of the missing income to the Trust caused \$226,505.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust is \$226,505.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

19. Kathryn's breach of her fiduciary duties in failing to account for all RiverSource reimbursements caused \$25,680.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust is \$43,636.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

20. Kathryn's breach of her fiduciary duties in making charitable contributions from the Trust assets in direct violation of Article Four, Section (1)(a) of the Trust caused \$108,349.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust is \$152,129.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

21. Kathryn's breach of her fiduciary duties from the improper use of Trust checks and in failing to retain documents showing any reason for Trust checks being made directly to Kathryn Perrich or to cash caused \$24,930.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust is \$29,297.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

22. Kathryn's breach of her fiduciary duties from using the Trust checking accounts for her own personal benefit and in failing to retain any documents for checks for certain goods and services to ensure the items were used for the benefit of Donaldeen Perrich caused \$11,834.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust are \$13,847.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

23. Kathryn's breach of her fiduciary duties in the improper use of Donaldeen Perrich's credit cards caused \$20,622.00 in damages to the Trust. The current value of these damages pursuant to the terms of the Trust are \$28,565.00 [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

24. The total amount of damages to the trust caused by Kathryn's breach of her fiduciary duties while serving as the trustee of the Trust are \$648,684. The current value of these damages pursuant to the terms of the Trust are \$801,535.00. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

25. The Perrichs are entitled to reimbursement for the legal fees incurred to remove Kathryn as Trustee and all other actions related to Kathryn's breach of her fiduciary duties, including this action. [September 4, 2016 Letters paragraph 10].

26. The total attorneys' fees incurred by the Perrichs related to removing Kathryn as Trustee and in the instant action through December 31, 2021, are \$141,113.00. When these attorneys' fees are reimbursed to the Perrichs, this reimbursement will create additional damages to the Trust. [Reed Report – Perrich Trial Exhibit 1 and Testimony of Dr. Reed].

27. Kathryn obtained a \$52,500 loan from the Trust to purchase certain real estate located at 300 Cranewater Drive, Columbia, South Carolina ["Cranewater Property"] at 5.25% interest. Kathryn was to pay this loan back to the trust with monthly payments of \$323.31. Kathryn sold the Cranewater Property to a third-party in 2017, but did not use the sales proceeds to pay off the note and mortgage to the Trust. Kathryn owes \$27,557.00 to the Trust to pay off this loan. The current value of this outstanding loan amount pursuant to the terms of the Trust is \$29,762.00. [Testimony of Dr. Reed].

28. The Trustee shall offset any distributions owed to Kathryn from the Trust by the \$29,762.00 amount owed for the outstanding Mortgage on the Cranewater Drive Property. [Kathryn Exhibit 1].

29. As of February 28, 2021, the value of assets held by the Perrich Family Trust is \$221,869.96, and the value of the Donaldeen J. Perrich Trust is \$1,502,185.87. The only non-cash assets held by the Trust is 11 pieces of jewelry. [Testimony of Trustee Wm. Bert Branon].

CONCLUSIONS OF LAW

1. "To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately resulting from

the wrongful conduct of the defendant.” *Turpin v. Lowther*, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct App. 2013). A trustee “shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries...” S.C. Code Ann. § 62-7-801 (Supp. 2018). “A trustee shall administer the trust solely in the interest of the beneficiaries.” S.C. Code Ann. § 62-7-802(a) (Supp. 2018). “If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.” S.C. Code Ann. § 62-7-803 (Supp. 2018). “A trustee shall keep adequate records of the administration of the trust” and “[a] trustee shall keep trust property separate from the trustee’s own property.” S.C. Code Ann. § 62-7-810(a) and (b).

During Kathryn’s tenure as trustee of the Trust, she owed fiduciary duties to all beneficiaries of the trust to manage trust property in accordance with the express terms of the Trust and the South Carolina Trust Code. She was required to act impartially when maintaining and managing the trust property and should have avoided any self-dealing. Further, Kathryn owed a duty to maintain appropriate records of any expenditures of Trust Assets and should have ensured all Trust property were kept separate from her personal property.

2. “[An] entry of an order of default is an admission by the defaulting party of the well-pleaded allegations of the complaint.” *State ex rel., Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 488, 334 S.E.2d 528, (Ct. App. 1985). “The defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the plaintiff’s declaration or complaint...Hence the default authorizes the entry of any judgment warranted by the facts alleged.” *Id.* (quoting *Gadsden v. Home Fertilizer & Chemical Co.*, 89 S.C 487-488, 72 S.E.15,17 (1911); see also *Limehouse v. Hulsey*, 404 S.C. 93, 116 (2013) (quoting *Roche v. Young Bros., Inc. of Florence*, 332 S.C. 75, 81 (1998)) (“It is well-settled that by suffering a default, the

defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability").

By refusing to participate in good faith in the discovery process and knowingly, intentionally and purposefully refusing to comply with three separate Court Orders, all of Kathryn's pleadings in this matter were stricken from the record and she was deemed to be in default in this case. Therefore, the well-plead allegations in the Perrich's cross-claims against Kathryn are deemed admitted including, but not limited to, the allegations of Kathryn's breaches of her fiduciary duties while serving as trustee of the Trust.

3. The spoliation of evidence is "[t]he intentional destruction, mutilation, alteration or concealment of evidence, usually a document. If proved, spoliation may be used to establish that the evidence was unfavorable to the party responsible." Black's Law Dictionary (7th Ed. 1999). "When evidence is lost or destroyed by a party an inference may be drawn by the [finder of fact] that the evidence which was lost or destroyed by that party would have been adverse to that party." *Garrison v. Target Corp.*, 2022 S.C. LEXIS 22 (Jan. 26, 2022) (quoting *Kershaw Cty. Bd. Of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990)).

After hearing the testimony of Dr. Reed, it is abundantly clear to the Court that Kathryn's willful, intentional and purposeful disregard for three separate Court Orders compelling her to produce documents directly related to the causes of action in the Perrichs' Cross-Claims negatively affected Dr. Reed's ability to do a full forensic audit of Kathryn's actions while trustee of the Trust. Kathryn never made an argument to the Court as to why she refused to produce the documents requested in discovery, nor did she provide any explanation as to why she refused to comply with the three separate Court Orders. While Kathryn's counsel argued at the hearing that Dr. Reed was forced to use certain assumptions to support her damages opinions, the Court found that the exact

information needed to overcome those assumptions would have been contained in the very documents that Kathryn refused to produce. Therefore, when considering the evidence before the Court, the Court finds it appropriate to use an inference that the missing documents would have been adverse to Kathryn and support Dr. Reed's opinions.

4. A trustee who commits a breach of trust is liable to the beneficiaries affected "the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred." S.C. Code Ann. § 62-7-1002 (a).

Dr. Reed's testimony as to the damages caused to the Trust all relate directly to Kathryn's breaches of her fiduciary duties owed to the beneficiaries. The damages awarded in this matter are all necessary to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, including bringing the past damages to present value.

5. "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy." S.C. Code Ann. § 62-7-1004.

Give the repeated willful, purposeful and intentional actions taken by Kathryn in refusing to participate in the discovery process in good faith and the outright refusal to comply with three separate Court Orders, the breaches of her fiduciary duties owed to the Trust, and the express language found in the September 4, 2016 Letters, the Court finds it appropriate to award the Perrichs their attorneys' fees in costs in this matter.

Therefore, and for good cause shown, it is hereby

ORDERED, ADJUDGED AND DECREED that Kathryn Joan Perrich owes the Trust \$942,648.00 for the breaches of her fiduciary duties while serving as the trustee of the Trust. The

Trustee may reduce this judgment amount by any distributions owed to Kathryn Perrich under the terms of the Trust. The Court further instructs the Trustee to take any and all actions necessary to collect any excess judgment directly from Kathryn Joan Perrich for distribution to the other Trust beneficiaries.

IT IS FURTHER ORDERED, Kathryn Joan Perrich's distributions owed from the Trust shall be offset by the \$29,762.00 still owed for the unpaid mortgage.

IT IS FURTHER ORDERED that David Wayne Perrich and Jerry Robert Perrich are entitled to immediate reimbursement for legal fees paid in the amount \$141,113.00. David Wayne Perrich and Jerry Perrich may submit any further invoices for legal fees and costs in this matter to the Trustee for immediate reimbursement.

AND IT IS SO ORDERED.

Lexington, SC
March ____, 2022

Michael S. Holt, Presiding Judge
Lexington County Court of Common Pleas



Lexington Common Pleas

Case Caption: Kathryn Joan Perrich VS Donaldeen J Perrich , defendant, et al
Case Number: 2019CP3202695
Type: Order/Other

So Ordered

s/ Michael S. Holt, 2772

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