

No. 18-107

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In the  
**Supreme Court of the United States**

R.G. & G.R. HARRIS FUNERAL HOMES, INC.,

*Petitioner,*

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND AIMEE STEPHENS,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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**MOTION FOR SUBSTITUTION OF A PARTY**

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*Attorneys for Respondent Aimee Stephens*

## MOTION FOR SUBSTITUTION OF A PARTY

Pursuant to Rule 35 of this Court, Donna Stephens, as trustee of the Aimee A. and Donna Stephens Trust under Agreement dated May 7, 2020 (the “Aimee A. and Donna Stephens Trust”), files this motion to substitute herself, in her capacity as trustee, as a party in the place of Aimee Stephens.

1. Before this Court, Aimee Stephens was one of the Respondents.
2. Aimee Stephens died on May 12, 2020.
3. Before her death, Aimee Stephens created a trust to hold her assets.

That trust is the Aimee A. and Donna Stephens Trust, and her wife, Donna Stephens, is the trustee of the trust. *See* Exhibit A (Certificate of Trust under Michigan law).

4. Aimee Stephens assigned her interest in this litigation to the Trust. *See* Exhibit B (Assignment of Rights and Interests In Causes of Action).

5. Donna Stephens therefore moves to substitute herself, as trustee of the Aimee A. and Donna Stephens Trust, in the place of Aimee Stephens as a party to this case.

6. Petitioner agrees with the relief requested herein and Respondent EEOC does not oppose this motion.

Respectfully submitted,

/s/ John A. Knight  
John A. Knight  
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*Counsel for Respondent Aimee Stephens*

Date: May 15, 2020

# **EXHIBIT A**

## CERTIFICATE OF TRUST

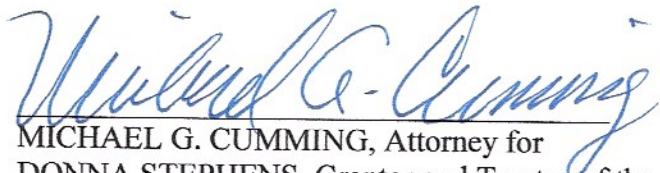
### AIMEE A. AND DONNA STEPHENS TRUST AGREEMENT DATED MAY 7, 2020

The undersigned, being duly sworn, hereby certifies as follows:

1. Trust Title, Date, and Date of Amendments. A trust known as the Aimee A. and Donna Stephens Trust (the "Trust") was formed under that certain Aimee A. and Donna Stephens Trust Agreement dated May 7, 2020 (the "Trust Agreement"). The Trust Agreement remains in full force and effect and has not been revoked, modified or amended in any manner that would cause any of the representations set forth in this Certificate to be incorrect.
2. Names and Address of Grantors. The Grantors are AIMEE A. STEPHENS, deceased, and DONNA STEPHENS, who is the surviving spouse of AIMEE A. STEPHENS, presently of 17730 Lennane, Redford, Michigan 48240.
3. Name and Address of Trustee. The name and address of the current Trustee of the Trust (the "Trustee") is DONNA STEPHENS, presently of 17730 Lennane, Redford, Michigan 48240.
4. Revocability. The Trust is revocable. DONNA STEPHENS may at any time amend or revoke this Agreement through a written instrument that is delivered to the Trustee.
5. Trustee's Powers. The provisions of the Trust Agreement that specify the Trustee's powers relating to the purpose for which this Certificate is being offered are reproduced in Exhibit A attached hereto.
6. The Trust has not been revoked, modified, or amended in any manner that would cause the representations included in this Certificate of Trust to be incorrect.

This document constitutes a Certificate of Trust under section 7913 of the Estates and Protected Individuals Code; Act No. 386 of 1998, Public Acts of the State of Michigan, as amended.

I declare that this certificate has been examined by me and its contents are true and correct.



MICHAEL G. CUMMING, Attorney for  
DONNA STEPHENS, Grantor and Trustee of the  
Aimee A. and Donna Stephens Trust Agreement  
Dated May 7, 2020  
Dykema Gossett PLLC  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304

STATE OF MICHIGAN  
COUNTY OF OAKLAND

)  
)SS.  
)

The foregoing instrument was acknowledged before me on May 13, 2020, by MICHAEL G. CUMMING, Attorney for DONNA STEPHENS, Grantor and Trustee of the Aimee A. and Donna Stephens Trust Agreement Dated May 7, 2020.

*Debra Ann Cumming*

DEBRA ANN CUMMING  
Notary Public  
Oakland County, Michigan  
My Commission Expires: February 11, 2025  
Acting in Oakland County

PREPARED BY:

MICHAEL G. CUMMING  
Dykema Gossett PLLC  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304

## CERTIFICATE OF TRUST

### AIMEE A. AND DONNA STEPHENS TRUST AGREEMENT DATED MAY 7, 2020

#### EXHIBIT A

#### TRUSTEE POWERS

“3.1 Powers. During the Grantors’ lifetimes, the Grantors reserve the right to exercise all of the Trustee’s powers or to direct their exercise. The powers described in this section are in addition to the powers and authority that are contained in other sections of this Agreement and that are conferred upon the Trustee by law. The Trustee may exercise the following powers and apply the following rules of administration without the prior leave or subsequent confirmation of any court but may do so only in a fiduciary capacity and in the interests of the beneficiaries in accordance with the general standards of trust administration imposed upon trustees. In general, from the date this Agreement is executed until the final distribution of the assets of each trust created by this Agreement, the Trustee shall have the power to perform every act which a prudent investor would perform to accomplish the purposes of the trust, including, but not limited to, the power to:

(a) [Retain Property] Retain any property transferred to the trust, even though such property includes an asset in which the trustee is personally interested or stock in a bank or trust company that is acting as Trustee or in a corporation that is a parent of or affiliated with such a bank or trust company, unless the Trustee considers the retention of such property clearly inadvisable;

(b) [Invest] Invest and reinvest the principal of the trust in securities and other property, real or personal, tangible or intangible, without regard to the proportion such property or property of a similar character may bear to the entire amount of the trust, and without being limited to the classes of investments in which trustees are or may be authorized by statute or other rule of law to invest trust funds, and to deposit funds in a bank, including a bank operated by or affiliated with the Trustee, or in a savings and loan association, including a temporary deposit not at interest if considered desirable by the Trustee to facilitate distributions or reinvestment;

(c) [Securities] Vote any corporate stock belonging to the trust either in person or by proxy; exercise any option or privilege to convert any security belonging to the trust into other securities, like or unlike; exercise any privilege to subscribe for additional securities and to make payment for the same; participate, unite or join in any plan for consolidation, merger, dissolution, liquidation or reorganization of any kind with respect to any corporate stock which belongs to the trust and to do all things necessary and incidental thereto;

(d) [Borrow; Pledge; Guaranty] Borrow money, renew existing loans, or guaranty the debts of a Grantor, a Trustee, a beneficiary, or third parties, and secure such loans and/or guarantees by pledge or mortgage of trust property;

(e) [Claims] Compromise, abandon, submit to arbitration, sue on or defend all claims in favor of or against the trust;

(f) [Sell] Sell, exchange, convey, partition, lease for terms longer or shorter than the trust, with or without option to purchase or renew, grant options to purchase or to lease, or otherwise dispose of any property at any time held by the Trustee, publicly or privately, upon such terms and conditions, including extension of credit in whole or in part, as the Trustee may deem proper, and the purchaser thereof shall not be required to see to the application of the proceeds;

(g) [Insure] Insure the assets of the trust against damage or loss, and the Trustee against liability with respect to third persons;

(h) [Administration Expenses] Incur and pay from the income or principal of the trust all reasonable expenses in connection with the administration of this trust, including a reasonable compensation for the Trustee and for any advisors and agents;

(i) [Advisors] Employ or appoint attorneys, accountants, investment advisors and other advisors and agents, including persons associated with the Trustee, to advise or assist the Trustee in the performance of the Trustee's administrative duties; act without independent investigation on their recommendations; and, instead of acting personally, employ or appoint one or more agents to perform any act of administration, whether or not discretionary;

(j) [Unproductive Property] If a trust for which a marital deduction has been allowed, in whole or in part, consists substantially of unproductive property, the Trustee shall have the authority to take one or more of the following steps: to make the property productive, or to convert it within a reasonable time, or to provide out of other assets of that trust the amount such property would produce if it were productive; the spouse may require the Trustee to exercise this authority, but the Trustee shall decide which step or combination of steps shall be taken;

(k) [Real Property] Deal with, manage and develop all or any part of any real property that may be owned by the trust (improved or unimproved), and any other property associated with it, in every way that an individual who owned the same property might lawfully deal with it, including (in addition to all other powers granted elsewhere in this instrument that are applicable to such real estate), but not limited to, the power to plat or subdivide (including the dedication of parks, easements, streets, or highways, with or without consideration), or to obtain the vacation of a plat, and to adjust boundaries; to submit property to a condominium project and do all acts necessary in connection therewith; to grant options to purchase or to lease; to construct buildings or to alter or remove buildings, and make such improvements to real property as the Trustee determines to be appropriate (including improvements not situated directly on the particular real property); to grant easements or charges of any kind, and to release any interest in the property; to abandon or demolish any property deemed by the Trustee to be worthless or of insufficient value to keep or protect; to abstain from the payment of taxes, assessments, repairs, maintenance or upkeep; to permit any interest in the property to be lost by tax sale or other proceedings or to convey any such interest in the property for a nominal consideration or without consideration;



(l) [Specific Devises] Distribute any property specifically devised in a Grantor’s Last Will and Testament or specifically distributed by any list referred to in that Will, regardless of whether the Will is admitted to probate, if a Grantor’s probate estate is insufficient to satisfy the specific devise or distribution and if the property referenced in the Will or list is a part of the trust property;

(m) [Litigation] Continue, pursue, defend, or otherwise represent the interests of either or both Grantors in any lawsuit, cause of action, or other legal, administrative, or other proceeding in which one or both Grantors have assigned all rights and interests to this Trust, including, but not limited to: (i) *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC and Aimee Stephens*, U.S. Supreme Court No. 18-107; (ii) *EEOC and Aimee Stephens v. R.G. & G.R. Harris Funeral Homes, Inc.*, U.S. Court of Appeals for the Sixth Circuit No. 16-2424; and (iii) *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, United States District Court for the Eastern District of Michigan. No. 2:14-cv-13710; and,

(n) [Divide Trusts] Divide any trust into two or more trusts for any reason the Trustee considers desirable in carrying out the provisions of this Agreement.”

\* \* \* \* \*

“3.4 Securities Transactions; Margin Accounts. The Trustee is authorized to buy, sell and trade in securities of any nature (including commodities, option contracts and “short” sales) for cash or on margin, and to maintain and operate margin accounts with brokers.”

025775.000001 4811-9202-1948.1

# **EXHIBIT B**

**ASSIGNMENT OF RIGHTS AND INTERESTS  
IN CAUSES OF ACTION**


I, AIMEE A. STEPHENS, individually, hereby assign and transfer, effective upon my death, any and all rights and interests I may have in any lawsuits, causes of action, or other legal, administrative or other proceedings to which I am a party, or may become a party in the future, to DONNA STEPHENS, or her successor, as Trustee under the Aimee A. and Donna Stephens Trust Agreement dated May 7, 2020, including, but not limited to, (i) *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC and Aimee Stephens*, U.S. Supreme Court No. 18-107; (ii) *EEOC and Aimee Stephens v. R.G. & G.R. Harris Funeral Homes, Inc.*, U.S. Court of Appeals for the Sixth Circuit No. 16-2424; and (iii) *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, United States District Court for the Eastern District of Michigan. No. 2:14-cv-13710.

I further assign any rights or interests I may have in the proceeds from any judgment or settlement obtained from any currently pending or future lawsuit, cause of action, or other legal, administrative or other proceeding to DONNA STEPHENS, or her successor, as Trustee under the Aimee A. and Donna Stephens Trust Agreement dated May 7, 2020.

This Assignment is effective only upon my death.

Dated: May 7, 2020


  
\_\_\_\_\_  
TYLER J. KEMPER

  
\_\_\_\_\_  
AIMEE A. STEPHENS

  
\_\_\_\_\_  
STEPHANIE ELMS FLORES

STATE OF MICHIGAN                    )  
  ) ss.  
COUNTY OF WASHTENAW            )

This instrument was acknowledged before me on May 7, 2020, by AIMEE A. STEPHENS.

  
\_\_\_\_\_  
STEPHANIE ELMS FLORES, Notary Public,  
State of Michigan, County of Washtenaw  
My Commission Expires: 06-22-2026  
Acting in the County of Washtenaw  
Notarized using electronic/remote technology