THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas, 13th Circuit

Letitia H. Verdin, Circuit Court Judge

COMMON PLEAS CASE NO.: 2019-CP-39-01224

Appellate Case No. 2022-001777

Christopher Young and Biotech Restorations, LLC,

Appellants/Respondents,

v.

Joanna Marie Paynter, a/k/a Joey Paynter, Samantha P. Nelson, and Paynter Consulting, LLC,

Respondents/Appellants.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF CASE

Procedural History

Appellants/Respondents filed this action[1] on Sept. 11, 2019, seeking redress for Respondents/Appellants refusal to comply with provisions in the partnership agreements with their mother. By order filed August 17, 2020, the Special Referee appointed to hear discovery disputes required counsel for Defendants' to retain[2] (but not share) the Factor Technology notes received from Dr. Valerie Paynter sometime in 2016.

After discovery and depositions, and motions for summary judgment, the parties tried this case beginning on April 20, 2022, in Pickens County. The case started out as a jury trial. On April 20, 2022, Appellant called two witnesses: (i) Appellant / Plaintiff Chris Young, (ii) Kevin Dillard, a third-party. The Respondents/Appellants did not call any witnesses. The jury was dismissed on April 21, 2020, and the parties consented to a bench trial. During a Status Conference on August 11, 2022, Respondents/Appellants rested their case. They called no witnesses, and presented no evidence as a part of their case. The trial court issued the orders and the judgment, which are the subject of this appeal in November 2022.

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[1] Appellants/Respondents also filed motions in Pickens County Probate Court, seeking to re-open the estate of Dr. Valerie Paynter. No final orders from the Probate Court are included in this appeal, as no decisions were ever rendered by the Probate Court, in response to those filings.

[2] The relevant portion of the Protective Order required:

> Counsel for Defendants Paynter and Nelson is currently in possession of approximately 20-30 lab notebooks, having approximately 50-450 pages in each lab notebook, that were created from approximately 1993 until 2016, that describe Dr. Paynter's bioremediation trade secrets, and counsel for Defendants Paynter and Nelson shall retain all such materials while this matter is pending unless directed otherwise by this Court.

(*Id.* at 1, ¶1).

Appellants Respondents filed their Notice of Appeal on Dec. 14, 2022, seeking review of the following: (i) [Amended] Order Construing the General Partnership Agreement, filed Nov. 17, 2022; (ii) Form 4 Order, filed Dec. 12, 2022, at 9:11 A.M.; and (iii) Judgment entered Dec. 13, 2022 (12:51 P.M.). Respondents/Appellants filed their Notice of Cross-Appeal on Jan. 11, 2023. Defendant Paynter Consulting, LLC is in default, and is not a party to this appeal.

Prior to the filing of this action, on or about Aug. 17, 2015, Paynter Consulting, LLC filed its lawsuit in state court against Appellants/Respondents (Case No. 2015-CP-39-01006, hereafter the "2015-Lawsuit"). The 2015-Lawsuit was removed to District Court based on diversity of citizenship. (C/A No. 8:15-cv-03778-TMC). Among other things, Paynter Consulting, LLC sought a dissolution of the May 30, 2006 General Partnership Agreement[3] under S.C. Code Ann. § 33-41-10 *et seq*. (*Id.* at 6-8, ¶¶'s 29-41). In the federal case, The Honorable Timothy M. Cain sent all of Paynter Consulting, LLC's claims to arbitration by order filed Feb. 16, 2016. Judge Cain issued an order dismissing the action without prejudice on May 9, 2016. Paynter Consulting, LLC never pursued arbitration.

Background Facts

Appellants/Respondents began doing business in the field of in-situ soil remediation with Dr. Valerie Paynter in 2004. Dr. Valerie Paynter is now deceased. She was the sole owner of Paynter Consulting, LLC, and mother of Respondents/Appellants Dr. Joanna Marie Paynter and Samantha P. Nelson ("Daughters"). Appellant Chris Young and Dr. Valerie Paynter initially executed a handwritten agreement on Nov. 19, 2004. (Plf Tr. Ex. 1). On or around January 10,

[3] In Para. 6 of its Complaint, Paynter Consulting, LLC alleged, "On May 30, 2006, Paynter Consulting and Biotech Restorations entered into a partnership agreement (hereinafter "the partnership") to pursue business ventures across the country using The Factor."

2006, Appellants/Respondents and Dr. Valerie Paynter and Paynter Consulting prepared and executed a first two-page General Partnership Agreement. (Plf Tr. Ex. 2). According to records of the S.C. Secretary of State, Paynter Consulting, LLC was formed on Jan. 26, 2006, and dissolved on Jan. 21, 2020 by Joanna Paynter, as its fiduciary. In May 2006, Appellants/Respondents and Dr. Valerie Paynter and Paynter Consulting, LLC prepared and executed a second two-page General Partnership Agreement. (Plf Tr. Ex. 3).

As set forth in the May 30, 2006 General Partnership Agreement (hereafter the "GPA"), Chris Young brought his existing environmental remediation business and market knowledge skills to the partnership, and Dr. Valerie Paynter / Paynter Consulting, LLC would provide, *inter alia*, "technical and scientific assistance in support of the Partnership." (*Id.* at 1, ¶¶'s 3.b and 3.c). The GPA further provided the partners agreed "to work exclusively in support of the Partnership in matters relating to the development of and commercial use of Factor based products in the environmental remediation marketplace." (*Id.* at 1, ¶ 3.a).

Paragraph 4 of the GPA provided the "Partnership shall commence on and continue until dissolved by mutual agreement of the partners." (*Id.*). The final sentence of Para. 4 of the GPA, added by the parties in the May 2006 version, provided as follows in the event of a death of a partner: "The continuing partner will pay 10% of net profits annually to the heirs / estate of the deceased partner on any contract involving the use of the Factor, and 10% gross from the sale of the Factor Technology." (*Id.*).

Paragraph 7 of the GPA includes the parties' non-standard arbitration provisions. These arbitration provisions were unchanged in the January and May 2006 versions of the parties' agreements. (Pltf Tr Exs 2-3). In the order filed Feb. 16, 2016, Judge Cain noted "[Paynter Consulting, LLC] filed a response in opposition on October 30, 2015, arguing that the parties

intended for the second sentence of paragraph seven to facilitate mediation, not arbitration." (*Id.* at 2-3).

Appellants/Respondents and Paynter Consulting, LLC conducted little-to-no business under the GPA after August 2015.

Dr. Valerie Paynter passed away on Sept. 4, 2017. Her estate was probated in Pickens County as Case No. 2017-ES-39-00607. Her daughter, Respondent Dr. Joanna Paynter sought to be and was appointed Personal Representative. Neither the operation, nor the existence of Paynter Consulting, LLC, or the General Partnership Agreement(s) were disclosed in the probate filings. Appellants filed a claim in the probate matter. In response to that claim, they received a letter dated March 5, 2018, from the Probate Court Judge, advising, *inter alia*, "you should file this in Circuit Court."

Ownership, Value, Sale of the Factor

In the 2015-Lawsuit, the only Plaintiff was Paynter Consulting, LLC, which alleged:

> 5. Paynter Consulting, LLC, owns a proprietary biochemical formula used to remediate soil pollution known as "The Factor." Paynter Consulting is owned by Valerie Paynter, a retired Clemson University professor. The formula Paynter developed has broad implications for soil remediation at seriously polluted sites. The Factor can be customized to address the needs of various remediation projects based on soil conditions, contaminant type and contaminant level, among other criteria.

Id. (underline emphasis added).

Based on the Declaration in the record of Dr. Joanna Paynter, the Factor was given to her and her sister to "have and own." (*Id.* at 2, ¶ 13). This occurred "between February and April 2016." (*Id.*). The trial court order found that Respondents/Appellants became the sole owners of the Factor upon the death of their mother. (*Id.* at 4).

In her Declaration, Dr. Joanna Paynter stated, "[i]n 2015 and 2016, I participated in discussions between my mother and various entities that offered more than $10,000,000 to purchase my mother's bioremediation technology." (*Id.* at 2, ¶ 12). Kevin Dillard testified he worked with Dr. Valerie Paynter, Respondent Dr. Joanna Paynter, and Jason Dibble (CEO of EnvirogenX) in negotiations regarding the Factor in 2016 and 2017. (Trial Transcript, at 207 to 210, 224). Kevin Dillard testified that he knew about the 2015-Lawsuit and Jason Dibble did too, and that Dibble was concerned about it, but they were told it was dismissed. (*Id.* at 210). Kevin Dillard testified he was to receive "around a half a million dollars" for his role in brokering the potential arrangement between Paynter Consulting, LLC and EnvirogenX. (*Id.* at 211).

Kevin Dillard testified Chris Young was not made a party to any of the discussions with EnvirogenX. (*Id.* at 214-15). Kevin Dillard further testified "there was going to be an initial payment of several million dollars." (*Id.* at 216). Kevin Dillard testified he (and EnvirogenX) were told the partnership "Biotech had with Paynter Consulting had been extinguished." (*Id.* at 217-18). Kevin Dillard testified, "We were told directly that -- that it was no longer an issue and that Dr. Paynter said that she had the total freedom to work with us, or with whomever." (*Id.* at 218).

Technology Development

Chris Young met Dr. Ellis Kline and Dr. Valerie Paynter at Clemson, and starting getting to know them. (*Id.* at 65-69). Chris Young testified the first project he brought to Clemson for assistance was known as the "Hercules" project in Brunswick, Georgia, which involved soil contaminated with "toxaphene." (*Id.* at 69-70). The impetus for the project was to be able to remediate the property without having to "dig up all [the contaminated soil] and haul it away to a primitive landfill." (*Id.*). Dr. Ellis Kline had never been involved in the remediation business. (*Id.*

at 72). Chris Young testified he paid Dr. Kline "to develop a compound for us," and that "Dr. [Valerie] Paynter worked for [Dr. Kline] at the time." (*Id.* at 73). Chris Young testified the effort was based on their collective "hope" Dr. Kline could help solve the problem. (*Id.* at 73-74). Ultimately, in that initial effort with Dr. Kline, they remediated a 50-acre site, and it was considered a success. (*Id.* at 74-75). Chris Young testified, "prior to the work we did [with Ellis Kline] at Hercules, no one else had been able to biologically degrade toxaphene." (*Id.* at 80).

The Partnership with Dr. Paynter

Chris Young testified he met Dr. Valerie Paynter in the late 1990's, (*Id.* at 75), and they entered into their first written agreement in November 2004. (*Id.* at 84). The first project he worked on with Dr. Paynter was a 15-acre pecan orchard contaminated with toxaphene in California. (*Id.*). This was known as the "Borello" project and it led to them doing more work in California from 2004 to 2007. They were paid approximately $500,000.00 for the Borello project. (*Id.* at 84-85). Chris Young testified that Dr. Paynter's "sole responsibility in the partnership was to take the soil and test the Factor on it." (*Id.* at 86). Chris Young testified he and Dr. Paynter "continued to do Borello-type projects in California and wherever else we could identify the projects for the next 10 years." (*Id.* at 88).

Chris Young further testified the partnership worked as follows:

> My job was to develop the business, find the opportunities, do all of the -- you know, do all the leg work involved, meeting with the regulatory folks. Then I would -- I would collect the soil, send it back to Dr. Paynter. She would identify the appropriate Factor to use. And then I would have that formulated into the finished product that would then be delivered to the site where I would perform the clean up in conjunction with the engineering firm.

(*Id.* at 87).

Based on their success in California and with the Borello type projects, Chris and Dr. Paynter entered into a second written agreement in Jan. 2006 (Pltf. Tr. Ex. 2, *Id.* at 91). Then, shortly thereafter, they entered into a "modified" agreement in May 2006. (Pltf. Tr. Ex. 3, *Id.* at 92). Chris and Dr. Paynter were friends. He attended their weddings. They did 12-15 projects together after executing the May 30, 2006 GPA. (*Id.* at 94-95). Over the course of the relationship, he testified Dr. Paynter was paid "just under a million dollars." (*Id.* at 95).

Dr. Paynter was diagnosed with cancer in or around 2013, and she just "dropped off the radar." (*Id.* at 96). Around this time, Chris was approached by a group wanting to bring capital into the business to scale it up. (*Id.* at 98-100). Dr. Paynter was made aware of all these discussions. They were also working on a project with Northrop Grumman that would have generated significant revenue for the partnership. (*Id.* at 107, 116-117). Chris Young testified he had not been able to continue the business of the partnership because he did not have the data, and that Respondent Appellant Dr. Joey Paynter had it and refused to provide him any access to it since at least as far back as 2016. (*Id.* at 108-111).

STANDARD OF REVIEW

DE NOVO

The contract construction issues in this appeal are to be reviewed *de novo*. *See e.g., Bennett & Bennett Constr., Inc. v. Auto Owners Ins. Co.*, 405 S.C. 1, 4, 747 S.E.2d 426, 427, (2013) (holding "[w]hether a contract is ambiguous is a question of law, and the interpretation of an unambiguous contract is a question of law."). This is the standard of review to be applied to Arguments II and III below.

DEFERENTIAL

The factfinding of the trial court is reviewed under a deferential standard. *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004) (citing *King v. PYA/Monarch, Inc.*, 317 S.C. 385, 388, 453 S.E.2d 885, 888 (1995) (noting trial court "findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings."). This is the standard of review to be applied to Argument I and IV below.

SUMMARY OF ARGUMENT

I. The trial court committed reversible error in finding the Respondent Daughters were the owners of the Factor, absent a material breach of the GPA and / or fraud perpetrated on the Probate Court.

II. The trial court committed reversible error by construing the GPA to provide for a 90 / 10 split on the sale of the Factor in favor of Respondents, who are "heirs / estate of the deceased partner,"[4] not the "remaining partner."

III. The trial court committed reversible error by construing the GPA without recognizing the partners' intent that profits related to the Factor be split on a 50 / 50 basis during their lifetimes, and 90 / 10 thereafter in favor of the "remaining partner," who has rights of use and sale of the Factor "in the event of a death of a partner."

[4] Dr. Joanna Paynter, as the Personal Representative of her mother's estate, should have disclosed the General Partnership Agreement to the Probate Court for at least the reason that it provided a benefit to the "heirs / estate" of Dr. Valerie Paynter.

IV. The trial court committed error in failing to find Paynter Consulting, LLC breached the Partnership, and in failing to find Respondent/Appellants intentionally interfered with the partnership.

ARGUMENT

I. The Finding of Ownership of the Factor is Unsupported

Plaintiffs filed their Motion for Partial Summary Judgment / Fraudulent Conveyance on April 13, 2022, along with Exhibits 1-13, setting forth the basis for an inevitable finding of either fraud on the Probate Court, or a fraudulent conveyance of the Factor out of the partnership. The trial court order found that the Daughters became the sole owners of the Factor upon the death of their mother. (*Id.* at 4). The only statement in the record on their claim of ownership is in Dr. Joanna Paynter's May 20, 2020, Declaration.

The Factor was owned by Paynter Consulting, LLC. The 2015-Lawsuit confirms this, as does the undisputed testimony of Kevin Dillard, including in the 2016 to 2017 time period. There is no evidence a transfer of the Factor occurred, apart from Dr. Joanna Paynter's Declaration, which the trial court expressly rejected in finding, instead, the Daughters became the owners upon death of their mother.

If the Factor passed from Paynter Consulting, LLC to the Daughters upon the death of their mother, then it had to have been done through the Probate Court. Yet, the record in the Probate Court shows that "the estate Inventory … does not reflect the Partnership as an estate asset." (Pltf. Tr. Ex. 5). Accordingly, there is no evidence in the record to support the trial court's finding that the Respondent/Appellant Daughters became the sole owners of the Factor upon the death of their mother.

I(A). Ownership of the Factor – No Probate?

There are only two ways Respondents/Appellants Daughters could become owners of the Factor Technology from Paynter Consulting, LLC:

- They became owners in 2016, as alleged by Dr. Joanna Paynter in Para. 13 of her Declaration, filed May 20, 2020; or
- They became the owners on or after September 4, 2017, upon the death of their mother, and pursuant to her will, probated in Pickens County as Case No. 2017-ES-39-00607.

If the first option identified above is the factual basis for the trial court's finding, then the provisions of the GPA were breached by Paynter Consulting, LLC in 2016, and the GPA was interfered with by Defendants Paynter and Nelson. In addition, as there was no consideration for the transfer of the Factor out of the GPA, such conveyance is subject to being set aside under S.C. Code Ann. § 27-23-10 *et seq*., the Statute of Elizabeth.

If the second option identified above is the factual basis for the trial court's finding, then the asset consisting of Paynter Consulting, LLC's ownership of the Factor Technology had to have been probated in her estate in Case No. 2017-ES-39-00607. Yet, Dr. Joanna Paynter, an officer of the Probate Court / Personal Representative, withheld both the GPA and the existence of Paynter Consulting, LLC from the Probate Court. (*See e.g.*, Pltf Tr. Ex. 5, Judge Zorn noting to Appellant Chris Young, "the estate Inventory is enclosed, please note that it does not reflect the Partnership as an estate asset.").

The trial court order finds that upon the death of their mother, "Defendants Joanna Marie Paynter, a/k/a Joey Paynter and Samantha P. Nelson became the sole owners of the Factor Biotechnology." (*Id.* at 4). If the Factor passed to the Respondent/Appellant Daughters upon the death of Dr. Valerie Paynter, then one of Dr. Valerie Paynter or Paynter Consulting, LLC owned

it up until that time. The 2015 Lawsuit alleged that Paynter Consulting, LLC was the "sole" owner of the Factor. (*Id.* at ¶ 5).

Remarkably, this is contrary to Dr. Joanna Paynter's Declaration, which states she and her sister became the owners of the Factor "between February and April of 2016." (*Id.* at ¶ 13). Respondents/Appellants elected not to present any evidence at trial as to how, when, or why the transfer occurred.

The evidence of record is of a fraud, regardless of which way the Factor transfer occurred. Transfers do not occur in a vacuum, and certainly not when those assets have been pledged to "exclusive" use in a partnership. Yet, there is not a single document in the record to corroborate or support the trial court's finding of a transfer of the Factor to the Daughters.

If the Factor transfer occurred in 2016, as Dr. Paynter 's Declaration alleged, that violated the GPA at Para. 8, which states, "No partner may sell his or her interests in the Partnership business to a third party unless mutually agreed to by the other partner." (*Id.*). Failure to disclose this during the lifetime of Dr. Valerie Paynter was a breach of her fiduciary duties to Appellants/ Respondents, the cause of material breach and failure of the essential purpose of the Partnership.

If the Factor transfer occurred upon death of Dr. Valerie Paynter, as the trial court has found, then the asset had to go though the probate estate. It did not and the intentional withholding of a multi-million dollar asset from disclosure in the Probate Court is a serious matter. However, that is the trial court's finding in its Nov. 17, 2022 order.

Similarly, what one partner cannot sell without consent, he or she also cannot just give away, and certainly not without disclosure to the other partner, as allegedly occurred here.

Third-Party witness, Kevin Dillard, testified Dr. Valerie Paynter, Dr. Joanna Paynter and another third-party, EnvirogenX, all knew the Factor was very valuable in 2016-2017. Chris

Young also knew the Factor had tremendous value in 2015 and afterwards, if only it could have been put to use. Dillard expected to get a finder's fee in an amount of $500,000.00 for assisting Paynter Consulting, LLC in brokering a deal with EnvirogenX / Jason Dibble. There was never a doubt in anyone's mind(s) that the Factor had value, perhaps tremendous value, yet it was not disclosed by the Personal Representative, who now claims to own it herself. How much more convenient could that have worked out for her?

The Factor was a multi-million dollar remediation technology, capable of wiping out toxaphene and PCB contaminated sites like nothing seen before. Yet, there is not one single document to corroborate its transfer from Paynter Consulting, LLC to the Daughters.

II. *Construction of the Post-Death Provisions*

In its order dated Nov. 17, 2022, the trial court states the method of termination of the GPA was not ambiguous and correctly concludes the GPA was terminated by the death of Valerie Paynter on Sept. 4, 2017. (*Id.* at 3). Likewise, the final sentence of Para. 4 of the GPA is not ambiguous and its meaning cannot be changed by the trial court. That sentence, which the partners added to the GPA in May 2006 provides:

> The continuing partner will pay 10% of net profits annually to the heirs / estate of the deceased partner on any contract involving the use of the Factor, and 10% gross from the sale of the Factor Technology.

(*Id.* at 1, ¶ 4).

There can only be one remaining / continuing partner with a "right to continue the business of the Partnership." (*Id.*) That remaining / continuing partner was Appellant Christopher Young and his company, Biotech Restorations, LLC (Appellants/Respondents). The "heirs / estate of the deceased partner" consists entirely of the Respondent/ Appellant Daughters of Dr.

Valerie Paynter. According the GPA, the "heirs / estate" receive "10 % of net profits annually … on any contract involving use of the Factor." (*Id.*). According the GPA, the "heirs / estate" receive "10 % gross from the sale of the Factor Technology." (*Id.*).

The trial court order has interpreted this unambiguous sentence to provide for the "heirs / estate" to have an unwritten right to receive 90 % from "the sale of the Factor Technology," if they chose to "sell the Factor Biotechnology." (*Id.* at 6). This is a flip / flop of the agreed upon percentages in the May 2006 GPA, as well as unambiguous provisions providing the "remaining / continuing" partner has the right to sell the Factor.

The trial court order is silent on Appellant/Respondents' obligation to pay the "heirs / estate" 10 % annually on any "contract involving use of the Factor." Instead, this provision has been re-written to provide for a directive to the Respondents/Appellants Daughters to now cooperate with Appellants/Respondents in business, as follows:

> Continuation of the business of the Partnership would be impossible for Plaintiffs without use of the Factor Biotechnology. Therefore, Plaintiffs have the right to use the Factor Technology and enter into contracts for use of the Factor Technology.

(*Id.* at 5).

This is tantamount to a mandatory injunction to the Respondent/Appellant Daughters to now cooperate with the Appellant/Respondents to "get some third party to provide those services to [Appellants/Respondents] so that he can – so that he can continue the business." (Trial Transcript at 261). The trial court later stated that the partners never truly contemplated that this situation would come about." (*Id.* at 265). The partners absolutely contemplated that one of them would die before the other. The addition of the final sentence of Para. 4 to the May 2006 GPA specifically provides for that occurrence. *See e.g.*, *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d

487, 488 (1994) (stating, "[t]he court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.").

Upon death, the remaining / continuing partner can continue the business of the Partnership, but he or she has to pay 10 % to the "heirs/estate of the deceased partner," on business conducted as well as on sale. (Pltf. Tr. Ex. 3 at ¶ 4). The GPA specifically provides a mutually beneficial "right" to the surviving partner. As stated by the trial court in its order, "[c]ontinuation of the business of the Partnership would be impossible for Plaintiffs without use of the Factor Biotechnology." (*Id.* at 5). Likewise, sale of the "Factor Technology," as specifically provided for in the last clause in the sentence added to Para. 4 would be, has been and is impossible.

Despite the above-described and analyzed unambiguous provisions, the trial court order states in support of its finding that the Daughters own the Factor, *inter alia*, "Nothing in the remainder of the Agreement requires Paynter Consulting or Dr. Paynter to share, transfer, or otherwise disclose the formula of the Factor Biotechnology to anyone, including Plaintiffs." (*Id.* at 4). This is error.

III. A Remedy Must be Provided to Plaintiffs

The three agreements executed by the partners between 2004 and 2006 (Pltf Tr. Exs 1-3), evidence an over-riding intention to share profits 50 / 50 during their lifetimes, and, if, the remaining / continuing partner choses to "continue the business of the Partnership," he (or she) could do so at their expense and labor, but they had to pay the "heirs/estate of the deceased partner" 10 % on use or sale of the Factor. (*Id.*). The actions of the Respondent Appellants

prevented this from happening, dating all the way back to 2015 when they filed the 2015-Lawsuit unsuccessfully seeking a judicial dissolution the GPA, and then refusing to arbitrate, as ordered by the District Court.

Dr. Valerie Paynter became ill in 2013 with cancer, and eventually passed away in 2017. The Paynters knew her death was imminent. They sought advice on how to monetize her interest in the GPA. They were advised to file suit and seek a judicial dissolution, knowing the GPA arbitration provisions would require the partnership to be "repaired" and / or the problems to be "solved" by the arbitrator.

Partnership for Life

At the time of Dr. Valerie Paynter's death, the GPA was still in effect. The GPA states at Para. 4, opening sentence, "The Partnership shall commence on and continue until dissolved by mutual agreement of the partners." (*Id.*). The GPA not only uses some form of the word "exclusive" four separate times, but it also has references to some form of the "arbitrate" included three times. (Id.). Paragraph 7 of the GPA includes this final sentence:

> Any disagreements or differences that affect the management of the Partnership business and would jeopardize new business, contracts, or existing clients and cannot be resolved by the partners within thirty days will be submitted to an arbitration process designed to repair the partnership relationship and solve said differences or disputes.

(*Id.*) (underline emphasis added).

Respondents/Appellants refused to arbitrate because all they wanted from the 2015-Litigation was to get out from under the provisions their mother and her company made with Appellants/Respondents. They no longer wanted 10 % for doing nothing, as she agreed, they wanted 100 %, and were going to take it whether or not the court system they ended up in provided for it or not. That much is evident from this record.

At the time of Dr. Valerie Paynter's death, Paynter Consulting, LLC was an active company. S.C. Secretary of State records show Paynter Consulting, LLC, as dissolved on Jan. 21, 2020, after the filing of this lawsuit. The person authorized to terminate / dissolve it was Dr. Joanna Paynter, who identified herself as its "fiduciary," on the filing document. This is consistent with her "fiduciary" and other duties to the Probate Court to disclose all assets of the estate, including the existence of Paynter Consulting, LLC and its assets. These are the same multi-million dollar assets she was just recently directly involved in attempting to sell to EnvirogenX.

Transferring the main partnership asset and withholding it from use by the partnership, before and after the failed dissolution claims in the 2015-Lawsuit was a breach by Dr. Valerie Paynter. It was also a breach not to cooperate with the provisions of the General Partnership Agreement prior to Dr. Paynter's death.

CONCLUSION

This Court must reverse the trial court and remand with instructions to address the fraud perpetrated on the Probate Court by the Personal Representative. Withholding a multi-million dollar asset from probate, only to later claim it for herself is grounds for an investigation, appointment of a Special Prosecutor, or, at a minimum, a referral to the Solicitor. It is now over five years after Appellant received the letter from the Probate Court, advising of the failure to disclose the partnership / Paynter Consulting, LLC. Appellant has been irreparably harmed by this conduct from the Personal Representative, which has frustrated his efforts to exercise his "right" to continue the business of the Partnership for years, and continues to do so.

On the second argument, Appellant requests remand with instructions to enforce the and properly interpret the unambiguous provisions of the final sentence of Para. 4 of the GPA. Specifically, Appellant has the right to use and sell the Factor, and such rights does not require him to continue to beg and plead with Respondents to cooperate, which they have shown since 2015-2017, they will not do, absent an express order from the Court.

On the third argument, Appellant is entitled to a remedy, again, enabling him to exercise the rights he bargained for in the GPA. At this point, remand for instructions to appoint a Receiver is the only chance, at age 70, he has of getting any remedy during his lifetime.

On Appellants' fourth argument, consistent with the unsupported finding in argument I above, Appellant request, at a minimum, remand with instructions to reconsider and provide specific factual findings in support of the trial court's decision to deny Appellants' relief for breach of contract and intentional interference with contact.

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