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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA  
In The Circuit Court  
Ninth Judicial Circuit

APPEAL FROM PROBATE COURT

The Honorable Irvin G. Condon, Probate Judge

Probate Case No. 2017-ES-10-00268  
Circuit Court Case No. 2023-CP-10-01189

*Ex-Parte*, Estate of Joseph P. Hamilton,

*In Re*:

Yvonne Hamilton, Albertha Hamilton Grant, Alfred Hamilton, Afreda Hamilton, Joan Hamilton  
Walker..... Respondents,

vs.

Lloyd O. Heyward, Personal Representative of the Estate of Joseph P.  
Hamilton.....Appellants.

**ORDER ON APPEAL  
FROM PROBATE COURT**

This case came before me for hearing on July 9, 2024, as an appeal from the Order of Honorable Irvin G. Condon, Charleston County Probate Judge, filed June 17, 2022. This Court has jurisdiction over the Appeal pursuant to Section 62-1-308 of the Code of Laws of South Carolina.

Appearing on behalf of Appellant Lloyd Heyward, who was not present, were Barry Krell and Gregory D. Keith of the Charleston Bar. Respondents Yvonne Hamilton, Alfred Hamilton, and

Albertha Hamilton, the latter through her husband Joseph Grant, appeared with their attorney Capers G. Barr, III of the Charleston Bar.

Having heard oral arguments, and having reviewed appeal Briefs and all submissions and evidence in the record before me, this Court concurs with and affirms the Probate Court's Order granting the motion for partial summary judgment.

### **I. STANDARDS OF REVIEW**

Appeals from the Probate Court. The South Carolina Supreme Court held, in the case of *In re Howard*, 315 S.C. 356, 434 S.E.2d 252 (1993) that the circuit court should apply the same standard of review when it considers an appeal from the probate court as an appellate court would apply on appeal...thus, if the action is equitable, the circuit court may find its own facts in accordance with its own view of the preponderance of the evidence. *Weeks vs. Drawdy*, 329 S.C. 251, 261, 495 S.E.2d 454 (Ct.App. 1996); *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (S.Ct. 2005.) The within case, being an action to enforce a contract to will, is an action in equity *Wright vs. Trask*, 329 S.C. 170, 175, 495 S.E.2d 222, 224 (Ct.App. 1997).

Contracts To Will. A contract to will must be proved by definite, cogent, clear, and convincing evidence. *Wright vs. Trask*, *supra*, citing *Brown vs. Graham*, 242 S.C. 491, 493, 131 S.E.2d 421, 422 (1963).

The Standard of Review of an Order Granting Summary Judgment: An appellate court reviews the grant of summary judgment under the same standard applied by the trial court. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001); *In re Howard*, 315 S.C. 356, 434 S.E.2d 254, (S.Ct. 1993). The standard of proof for the grant of summary judgment is later addressed in this order, with my conclusions of law.

## **II. INTRODUCTION**

I have considered the arguments of counsel at hearing and have carefully reviewed their written Briefs and the complete Record in this case. I have also carefully studied the well-reasoned Order of the Probate Judge and, as preliminarily stated, I concur with the conclusions reached therein. Rather than summarily expressing my concurrence, I deem it my responsibility to nevertheless state, *ad seriatim*, my own findings and conclusions, albeit they may be in terms almost identical to those of the Probate Judge. The gravity of the issues presented by this case demand no less. Accordingly, I make the following findings of fact, and reach the following conclusions of law:

## **III. FINDINGS OF FACT:**

1. Decedent Joseph P. Hamilton died on February 4, 2017, leaving his Will dated December 21, 2015 in which he expressly disinherited his children, the Respondents in this appeal. Instead, the Decedent devised and bequeathed the entirety of his estate to Appellant Lloyd O. Heyward, his nephew, who is also named as Personal Representative.

2. Procedurally, Respondents initially filed this case on November 7, 2017 alleging that the Decedent's Will was void on grounds of Decedent's mental incapacity, and because of the undue influence of the Appellant Lloyd O. Heyward. In their Amended Petition filed February 26, 2021, Respondents further allege that Decedent's Will is void and unenforceable to the extent that it purports to devise specific parcels of real property in contravention of a contract to will made between Decedent and his late wife, Sophie Brown Hamilton; and that the contract to will must be enforced.

3. The late Sophie Brown Hamilton (hereafter, "Sophie") was Decedent's wife, who died in Charleston County on April 22, 1966, survived by her husband, Decedent Joseph P. Hamilton (hereafter, "Joseph"), and by their children, the Respondents above named; and leaving in full force

and effect her last will and testament made September 15, 1958, as will appear by reference to Probate Court file number 912-61, a copy of which was made a part of the Record in this case.

4. Sophie's Last Will and Testament provides, *inter alia*, in Item II thereof as follows:

*“Whereas my husband and I by mutual agreement have this day executed various deeds of conveyances, wherein and whereby all of the real property owned in fee simple by myself and my husband were placed in our joint names, so that each owned a one-half undivided interest, and whereas this was done so that in the event of the death of myself or my husband, our children would share equally with the surviving parent, and in order to carry out said mutual agreement, it was agreed that we would execute mutual wills; now therefore I do give, devise and bequeath all of my real property that I may now own to my children, Alfreda, Evon (sic, Yvonne), Johan (sic, Joan), Albertha and Joseph Hamilton, Jr., share and share alike, per stirpes in fee simple absolute.”*

5. Prior to the date of execution of her Last Will and Testament on September 15, 1958, the record evidence in this case shows that Sophie and Joseph owned interests in real property in Charleston County, titled as follows:

	<u>ADDRESS</u>	<u>TMS #</u>	<u>TITLED IN THE NAME OF</u>
a)	22 Blake Street	459-06-01-051	Sophie and Joseph as Joint Tenants
b)	1442 Alma Street	351-06-00-089	Sophie
c)	1443 Alma Street	351-06-00-080	Joseph
d)	0 Savage Road	351-06-00-077	Sophie and Joseph as Joint Tenants

6. On the same date of the signing of their Wills on September 15, 1958, and in

accordance with Item II thereof as recited above, Sophie and Joseph, the latter being the Decedent herein, each performed pursuant to Item II's provisions by signing and recording deeds of conveyance of real property to each other as follows:

a. Sophie Hamilton conveyed an undivided one-half interest in the real property at 1442 Alma Street (the family home, which prior to 9/15/58 was titled only in the name of Sophie) to Joseph Peter Hamilton for a consideration of one dollar and "natural love and affection" by deed dated September 15, 1958 and recorded February 5, 1959 in the RMC Office for Charleston County in Book U66, Page 520; just as was recited in Item II of Sophie's will; and

b. Joseph Hamilton conveyed an undivided one-half interest in the real property at 1443 Alma Street (a rental property across the street from the family home at 1442 Alma Street, which prior to 9/15/1958 was titled only in the name of Joseph) to Sophie Brown Hamilton for a consideration of one dollar and "natural love and affection for my wife", by deed dated September 15, 1958 and recorded February 5, 1959 in the RMC Office for Charleston County in Book U66, Page 523; just as was recited in Item II of Sophie's will.

7. On the date of the critical transactions in this case, September 15, 1958, Sophie and Decedent Joseph P. Hamilton also jointly held title to the following real properties:

a. 22 Blake Street.

b. 0 Savage Road.

8. The properties described in paragraphs 5, 6, and 7, above, are also listed in the Inventory and Appraisal and in the Devise/Descent of Real Estate form in the Sophie Hamilton Probate Estate File.

9. This Court concludes as fact, by clear, convincing and undisputed evidence, that Sophie Hamilton's Will and the deeds exchanged, as found in Paragraph 6 above, were signed at

the same time, September 15, 1958, in the law office of Laurence O. Stoney at 51 Broad Street in Charleston, based upon the following evidence:

- a. Sophie's Will was signed on September 15, 1958 in the presence of witnesses Laurence Stoney, Barbara J. (*LNU*) and Velma M. Shields, who gave their addresses as 51 Broad Street; and
- b. The deed from Sophie to Joseph conveying a one-half interest in 1442 Alma Street was signed by Sophie, and witnessed, on September 15, 1958 by Laurence Stoney and Velma Shields, just as recited in Sophie's Will signed the same day and witnessed by the same witnesses; and
- c. The deed from Joseph to Sophie conveying a one-half interest in 1443 Alma Street was signed by Joseph, and witnessed, on September 15, 1958 by Laurence Stoney and Velma Shields, just as recited in Sophie's Will dated the same day, September 15, 1958, and signed by the same witnesses.

10. The deeds above described were signed pursuant to Sophie and Joseph's "mutual agreement", an event recited three times in Item II of Sophie's Will, which is published in paragraph 4, above.

11. On the date of Sophie's death on April 22, 1966, her Last Will and Testament dated September 15, 1958 remained in full force and effect, was probated, and the interests in real property devised by Sophie to the children of Sophie and Joseph were vested in the children in accordance with the terms of Sophie's Will. Sophie thus fully and completely performed on her part the agreement with Joseph that was set forth and memorialized in Item II of her Will, which agreement ultimately benefitted the children of Decedent and Sophie, who are named in Sophie's Will.

12. On December 21, 2015, Joseph executed the Last Will and Testament at issue in this case, whereby Joseph purported to devise all real property that he then owned at his death to his nephew Lloyd Heyward; and more specifically including Joseph's undivided one-half interests in the properties at 1442 Alma Street, 1443 Alma Street, 0 Savage Road, and 22 Blake Street, which had been owned by Sophie and Joseph, jointly, following the exchange of deeds and the executions of their Wills on September 15, 1958, notwithstanding, and contrary to, the agreement recited in Item II of Sophie's will as discussed above.

13. I conclude, based upon the definite, clear, cogent and convincing circumstantial evidence, that on September 15, 1958 Decedent Joseph P. Hamilton signed his Last Will and Testament in the law office of Attorney Laurence O. Stoney, with terms identical to those of Item II of Sophie's Will as found in paragraph 4 above, based upon the following:

- a. That Item II of Sophie P. Hamilton's Will signed September 15, 1958 recites the fact that she and Joseph were "this day" making mutual Wills and have "this day" executed various deeds conveying interests to each other in real property.
- b. That Sophie P. Hamilton's Will signed September 15, 1958 was witnessed by Barbara J. (LNU), Velma M. Shields and Laurence O. Stoney, each of whom endorsed their address as 51 Broad Street, in Charleston
- c. That the Decedent Joseph Hamilton was also present at 51 Broad Street on the same day, because he executed a deed that same day, September 15, 1958, conveying a one-half interest to Sophie of the real property at 1443 Alma Street (a part of Lot 11, Granville), which was witnessed by Laurence Stoney and Velma Shields; who also witnessed Sophie's Will on that same date.

- d. That Sophie executed a deed on the same day, September 15, 1958 conveying a one-half interest to Joseph of the real property at 1442 Alma Street (Lot 19, Grantville), which was witnessed by Laurence O. Stoney and Velma M. Shields; who also witnessed Sophie's will, and who also witnessed Joseph's deed, as recited above.
- e. The deeds exchanged by Sophie and Joseph were each recorded the same date, February 5, 1959 in simultaneous recording pages in the RMC Office; Book U66 Pages 520-522, and Book U66 Pages 523-524.

14. I further conclude that Item II of Sophie's Will is more than a simple expression of her testamentary intent. Item II is also a signed and witnessed memorandum of the events and transactions that occurred on September 15, 1958, in the law office of Laurence Stoney at 51 Broad Street in Charleston, between Sophie Brown Hamilton and her husband, Joseph P. Hamilton.

### **III. CONCLUSIONS OF LAW:**

#### **A. The Standard For Summary Judgment.**

A court should grant a motion for summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Summary Judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. In order to resist a motion for summary judgment the non-moving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries their initial burden of

showing an absence of evidentiary support for the non-moving party's case, the non-moving party may not simply rest on mere allegations or denials contained in the pleadings. Rule 56, South Carolina Rules of Civil Procedure; *Skyways Corp. v. Branch Banking and Trust Co.*, 423 S.C. 432, 814 S.C. 2d 643 (Ct. App. 2018) (internal citations omitted).

**B. The Applicable Law.**

Code Section 62-2-701. Whereas South Carolina Code Section 62-2-701 provides requirements necessary to prove a contract to will, the statute specifically excepts Wills executed prior to the effective date of the act. The effective date of the act being well before September 15, 1958, the Will at issue here, executed on September 15, 1958, is not effected by the statute.

Contracts To Will. The Supreme Court of South Carolina has held in numerous cases that when an oral contract to make a will is relied upon, "It is necessary that such contract be established by clear, cogent and convincing evidence which carries irresistible conviction to the mind that such a contract actually existed and that the parties thereto understood and acquiesced to its terms..." *Pruitt v. Moss* 271 S.C. 305, 247 S.E. 2d 324 (S. Ct. 1978), citing *Havird v. Schissell*, 251 S.C. 416, 162 S.E. (2d) 877 (1968); *Hayes v. Israel*, 242 S.C. 497, 131 S.E. (2d) 506 (1963); *Dicks v. Cassels*, 100 S.C. 341, 84 S.E. 878 (1915); *Wilson v. Gordon*, 73 S.C. 155, 53 S.E. 79 (1905); *Stuckey v. Truett*, 124 S.C. 122, 117 S.E. 192 (1923); *Looper v. Whitaker*, 231 S.C. 219, 98 S.E. (2d) 266 (1957).

Proof of a contract to make a will need not, however, be by direct evidence. *Pruitt v. Moss*, *supra*, citing *Ellisor v. Watts*, 227 S.C. 411, 88 S.E. 2d 351 (1955) ("Proof of a testamentary compact may expressly appear in the language of the instrument, or it may be supplied by competent witnesses who testify to admissions of the testators, or it may result as an implication from the

circumstances and relations of the parties and what they have actually provided for by the instruments.”) (Emphasis added.)

An action for specific performance of a contract to make a will is an action in equity. *Wright v. Trask*, 329 S.C. 170, 495 S.E. 2d 422 (Ct. App. 1997), *citing Wright v. Patrick* 262 S.C. 434, 205 S.E. 2d 175 (1974) and *Kerr v. Kennedy*, 105 S.C. 496, 90 S.E. 2d 177 (1916).

Whereas, specific reciprocal bequests in separate wills of husband and wife are not in themselves sufficient proof that the wills were executed pursuant to an agreement to make wills that should stand without revocation, in order to establish that separate wills containing reciprocal provisions were the result of a contract between the testators, there must be proof of the contract *aliunde* the wills, notwithstanding that the testators were husband and wife. The wills of husband and wife executed at the same time, before the same witnesses, and strictly reciprocal in their terms are not, in the absence of a recital that they are made pursuant to a contract, in themselves sufficient evidence of an enforceable contract between the testators for the execution of the wills”. *Hayes v. Israel*, 242 S.C. 497, 131 S.E. 2d 506 (1963), *citing* 169 A.L.R. 76; *Looper v. Whitaker et al.*, 231 S.C. 219, 98 S.E. 2d 266 (emphasis added).

The Supreme Court has also held that proof of a contract to will may be made out by the circumstances and relations of the parties and what they have actually provided for by the instruments. *Hayes v. Israel, supra*, 242 S.C. at 500 *citing Ellisor v. Watts*, 227 S.C. 411, 88 S.E. 2d 351 (emphasis added).

### **C. The Contract To Will In This Case.**

In this case, proof of the contract to will is overwhelmingly made out by direct evidence, and by no less than clear and convincing circumstantial evidence because of the “circumstances and relations of the parties” and “what they actually provided for by the instrument”. *c.f. Hayes v. Israel*,

*supra*, 242 S.C. at 500; *Pruitt v. Moss*, 271 S.C. 305; and, as well, because of the evidence *aliunde* the wills. i.e. the simultaneous, mutual exchange of real estate conveyances by each party to the other, as recited in the instrument, Item II of Sophie’s will.

By clear and direct evidence, the terms of Sophie’s Will expressly provide and recite that mutual wills were made pursuant to contract. Item II states: “...**my husband and I by mutual agreement** have **this day** executed various deeds of conveyances...” and that “...in order to carry out **said mutual agreement**, it was **agreed** that we would execute mutual wills...”. (Emphasis added).

By circumstantial evidence *aliunde*, that is to say, “outside the will”, as well, a contract to Will is proved. As previously found, on the same date, September 15, 1958; at the same place, Laurence Stoney’s law office at 51 Broad Street; before the same witnesses; Laurence Stoney, Velma Shields and Barbara J. (LNU), not only did Sophie sign her Last Will and Testament, but on the same date they signed their Wills, Sophie and Joseph each signed deeds before the same witnesses, each conveying one-half interests to the other of the properties at 1442 and 1443 Alma Street, respectively. Their simultaneous, contemporaneous executions of the deeds, witnessed by the same witnesses who witnessed Sophie’s will, constitute overwhelming corroboration of the agreement as recited in Item II of Sophie’s Will.

I find and conclude as a matter of law that Sophie and Joseph executed mutual Last Wills and Testaments on the same date, September 15, 1958, containing identical provisions found in Item II of Sophie’s Will, and that the Wills were made by mutual agreement between them; that is to say, by contract to Will.

The words of Item II further conclusively prove, by clear and convincing evidence, that Sophie and Joseph provided in their Wills that their children specifically named would be not only

the initial devisees of a one-half interests (that is to say, upon the death of the first of Sophie and Joseph to die), but also the ultimate devisees of the remaining one-half interests, upon the death of the last of them to die, thus ultimately vesting complete, 100% interests with their children in the respective properties that Sophie and Joseph owned on September 15, 1958.

I conclude the children to be the ultimate beneficiaries to be true for a number of reasons: First, the concluding phrase of Item II provides: “...**now therefore** I do give, devise and bequeath all of my real property that I may now own to my children, Alfreda, Evon, (sic Yvonne), Johan, (sic Joan), Albertha and Joseph Hamilton, Junior, share and share alike, per stirpes in fee simple absolute.” (Emphasis added).

The introduction to the concluding phrase of Item II, invoking the term “now therefore”, is much used in legal documents to introduce final or ultimate conclusions, culminating and flowing from preliminary findings or reasoning. Indeed, the phrase “now therefore” is a mechanism so often used in legal documents and in reported court decisions that a word search of the term, on its own, yields references too numerous to be of assistance. The dictionary definition of “therefore” is, “for that reason”; “consequently” and “because of that”; and “on that ground”; and “to that end”. (*Webster’s New Collegiate Dictionary*, 1981).

"In construing a Will, a court should give effect to the expressed intention of the testator. *Bagwell v. Alexander* 285 SC. 331, 329 S.E. 2d 771 (Ct. Appt. 1985). In asserting this intent, a court's first reference is always to the Will's language itself. *Fenzel v. Floyd*, 289 S.C. 495, 498, 347 S.E. 2d 105, 107 (Ct. Appt. 1986). When construing this language, the reviewing tribunal must give the words contained in the document their ordinary and plain meaning. In re *Estate of Fabian* 326 S.C. 349,353,483 S.E. 2d 474,476 (Ct. Appt. 1997)." *In re Estate of Hyman* 362 S.C. 2d, 606 S.E. 2d 205, (Ct. Appt. 2004).

It is altogether fitting and proper, therefore, that the dictionary definition of “now, therefore” is a reliable tool in construing Item II of the Wills of Sophie and Joseph Hamilton. The clear and convincing construction of Item II of Sophie's Will, and circumstantially of Joseph's, is that "for the reason" and "because" and "on the grounds" that on February 15, 1958 Sophie and Joseph exchanged mutual agreements to place their real properties in joint names so that each owned a one- half undivided interest was that, first, on the death of the first of Sophie and Joseph to die the children would share equally with the surviving parent.

The "consequence" of those foregoing reasons was that, having been named in each of the mutual Wills as devisees of the specific properties owned by Sophie and Joseph on September 15, 1958, was that, secondly, the named children would ultimately also inherit the other 50% interest in the real property upon the death of the last of Sophie and Joseph to die. The agreement between Sophie and Joseph having been fully performed by the exchange of deeds on September 15, 1958, it thus became irrevocable, and enforceable from that date.

Item II of Sophie's will, and of Joseph's, must necessarily be construed in no other way. A cardinal rule of construction, no matter whether it be of a will, or of a contract, or of a statute, is that "a proper construction seeks to harmonize the various provisions and a construction which gives meaning to all should be preferred over one which renders some provisions meaningless. *Blackmon v. Weaver* 366 S.C. 245, 620 S.E.2d 42 (Ct. App. 2004).

Any construction of Item II, other than the conclusion that the ultimate intent of Sophie and Joseph was to benefit their children, would render meaningless the clause "now therefore I do give, devise and bequeath all of my real property that I may now own to my children...", as expressed in Item II of Sophie's will and, inferentially, in Joseph's. A conclusion that Item II is meaningless must be avoided in order to give import to the precept of *Blackmon v. Weaver*, discussed above.

**Items II and III Of The Wills Must Be Reconciled.**

Appellant argues, nevertheless, that even if there were a contract to Will as expressed by Item II of Sophie's will, its intent was only, and no more than, that upon the first of Sophie and Joseph to die, the children and the surviving spouse would then equally share interests in the real property they owned.

In that respect, however, it is noteworthy that Item III of Sophie's Will accomplishes the identical purpose that Appellant contends was intended by Item II; that is to say, Item III, the residuary clause of the will, leaves all residual property to "my husband Joseph Peter Hamilton and my children, share and share alike per stirpes".

If Item II, as contended by Appellant, intended an agreement only that the properties owned by Sophie and Joseph on September 15, 1958 would descend no further than joint tenancies between the children and Joseph, it is clear that Item III accomplishes that same purpose. If Appellant's contention were correct, then one or the other of the Will provisions, Item II or Item III, would be surplusage and meaningless. As before noted, a proper construction of a Will seeks to harmonize its various provisions, and a construction which gives import to all provisions is preferred over one which renders some other provision meaningless. *Blackmon vs. Weaver*, 366 S.C. 245, 621 S.E. 2d 42 (Ct. App. 2005).

Items II and III of Sophie's Will, and circumstantially of Joseph's, address two distinct and separate categories of property. Item II addresses the disposition of the real properties owned by Sophie and Joseph Hamilton as of the date of their contract to will on September 15, 1958. This conclusion is supported by the clear language of Item II which recites that Sophie and Joseph have "this day" executed various deeds whereby all real properties owned by them were placed "in our joint names". Item II further provides, following the statement of purpose, the words "now

therefore”, they each devised “all of my real property that I may now own to my children ...” (Emphasis added). As previously concluded, on September 15, 1958 Sophie and Joseph jointly owned the properties at 1442 Alma Street, 1443 Alma Street, 0 Alma Street, and 22 Blake Street.

Item III, on the other hand, is the general residuary clause of the Will that disposed of all properties not specifically devised or bequeathed in Item II; for example, any properties acquired after September 15, 1958 would not have been included in the disposition intended by Item II of the Wills.

**Irrevocability.**

This construction, harmonizing Items II and III, gives force to the proposition that Item II of the mutual wills partakes of a different meaning and intent than Item III. Item II comprises an independent, fully integrated, executed agreement between Sophie and Joseph Hamilton, applying only to the real properties they owned as of September 15, 1958. Particularly because of the contemporaneous exchange of valuable consideration in the form of deeds to each other, its provisions are irrevocable. When the Wills were signed on September 15, 1958, and when valuable consideration was exchanged in the form of the deeds executed on September 15, 1958, Sophie and Joseph Hamilton thereby entered into a complete, final, and executed agreement, whereby having each devised their undivided interests to their named children, it would follow as a natural consequence of those mutual provisions that not only would the children inherit undivided one-half interests upon the death of the first parent but, with the survival of the same, irrevocable Will provisions upon the death of the last parent, the children would thereby ultimately inherit the remaining one-half interest that Sophie and Joseph owned as of September 15, 1958.

Particularly when Sophie died first without attempting a change to her Will, thereby fully

vesting their children with her undivided title interests to the real properties she and Joseph owned as of September 15, 1958, the proposition became more fixed on Sophie's death that the contract to will was final, settled, vested, executed and irrevocable. Sophie's performance was full and complete. Sophie's complete performance bound Joseph to perform his side of the agreement; that is, to devise all real property interests he owned as of September 15, 1958 to the children named in the Will; who are the Petitioners in this case. *See Stuckey vs. Truett, supra* ("When she died, leaving in force her Will, all that the agreement exacted from her was done. Therefore, the contract was completely performed on her part, the exceptions to the statute of frauds have been met, and the agreement becomes binding and enforceable.") (emphasis added). Although the citation from *Stuckey vs. Truett* was also responsive to a statute of frauds issue in that case, there challenged because the contract to will was not in writing, the principle was also dispositive of the durability and irrevocability of the agreement made because of the full performance by the Decedent Eliza Truett in that case. Indeed, Eliza Truett, in the case of *Stuckey vs. Truett*, and Sophie Hamilton in the case here before the court, occupied identical positions, inasmuch as they each entered into contracts to will with their respective spouses during their lifetimes; they each thereafter predeceased their respective spouses; and thus, "*having completely performed on (their) part(s)*", the agreements they had struck with their spouses were fully executed and were thereby irrevocable. *Stuckey vs. Truett* has also been cited in later contract to will cases. *See, e.g., Pruitt vs. Moss, supra*, and *Looper vs. Whitaker, supra*.

The agreement between Sophie and Joseph on September 15, 1958, as expressed in Item II of their Wills, was therefore an executed one. It was fully performed by both of them when deeds were exchanged and recorded. Because of Sophie's and Joseph's complete performance, the Court concludes that the agreement, that is to say, Sophie and Joseph's contract to will, was complete,

final, and fully performed. As such, the agreement was irrevocable; as compared with an agreement that is merely executory, that is to say, an agreement requiring further performance prior to finality. *See McManus vs Little*, 251 S.C. 490, 163 S.E.2d 613 (S.Ct. 1968).

Title to the properties at 1442 Alma Street, 1443 Alma Street, and 0 Savage Road must therefore be confirmed and vested in the names of the Respondents, who were the specific devisees and beneficiaries of the contract to Will as provided by Item II of the Wills. As for 22 Blake Street, I concur with the Probate Court that summary judgment as to that parcel would be premature and should not be granted, inasmuch as issues of fact must be resolved there.

**Appellant's Arguments on Appeal.**

I have carefully studied the several arguments of Appellant as written in his Brief and argued at hearing.

Appellant's arguments that the order of the Probate Court must be reversed because no mutual will of Joseph Hamilton, nor evidence of such mutual will, has been produced, are of no avail. First, as previously held by the Probate Court and by this Court, a contract to will may be proved, and has been proved here, by circumstantial evidence. *See Pruett vs. Moss, supra*. As previously reasoned, the evidence that Joseph Hamilton did execute a mutual will has been proved in this case by clear and convincing evidence based upon the clear and unambiguous terms of Item II of Sophie's will and, circumstantially, of Joseph's; as well as by the contemporaneous and mutual execution, delivery, and recording of the conveyances of one-half interests by Sophie to Joseph, in 1442 Alma Street, and by Joseph to Sophie in 1443 Alma Street.

In this latter respect, it is noteworthy that Appellant does not challenge the conclusions by the Probate Court, which are affirmed by this Court, that the contract to will made between Sophie

and Joseph, as expressed in Item II of Sophie's will, is an executed agreement; fully performed by each of them, and was thereby final, and irrevocable; a conclusion with which this Court concurs.

I finally conclude that the contact to will in this case has been proved by definite, cogent, clear and convincing evidence

Accordingly, it is,

**ORDERED, ADJUDGED AND DECREED**, that the Order and Judgment of Hon. Irvin G. Condon here on appeal be, and the same is hereby, **AFFIRMED**; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Respondents be, and they are hereby adjudged to be, the equitable and legal owners of the one-half interests presently titled of record in the name of Decedent Joseph P. Hamilton's devisee, Appellant Lloyd Heyward, of the properties at 1442 Alma Street, 1443 Alma Street and 0 Savage Road in accordance with this Court's findings and conclusions herein; and it is further

**ORDERED, ADJUDGED AND DECREED**, that the Appellant, Lloyd O. Heyward, individually and as personal representative of the Estate of Joseph P. Hamilton, or his attorneys on his behalf, shall within 31 days after the filing of the within Order, execute and deliver to Capers G. Barr, III, attorney for Respondents, a deed or deeds conveying to the Respondents, as tenants in common in fee simple, title to the properties at 1442 Alma Street, 1443 Alma Street and 0 Savage Road; and its further

**ORDERED, ADJUDGED AND DECREED**, that in default of executing and delivering such deed or deeds, the Respondent Lloyd O. Heyward shall appear before this Court to show cause why he should not comply with the within Order; and it is further

**ORDERED**, that this Order is not dispositive of the claims of the parties to the property

or the proceeds thereof from the sale of 22 Blake Street, which issue must be decided by further hearing in the Probate Court; and it is further

**ORDERED**, that each party shall pay her or his own fees and costs in this matter.

**AND IT IS SO ORDERED.**

Charleston, South Carolina  
August \_\_\_\_\_, 2024

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Thomas W. McGee, III  
Circuit Court Judge



Charleston Common Pleas

**Case Caption:** Lloyd O Heyward , plaintiff, et al VS Yvonne Hamilton , defendant, et al  
**Case Number:** 2023CP1001189  
**Type:** Order/Other

So Ordered

s/ Thomas W. McGee III, Judge Code 2786