

This matter is before the Circuit Court for an appeal of a case that has been pending in Hampton County Probate Court for the Estate of Willie Gelzer Weekley since 2006. Mr. Weekley died in 1977, and his estate has been open since 1983. Mr. Weekley devised about 300 acres of land between his then-living relatives. Currently, the Personal Representative is Betty W. Denney. Key to this dispute, for any sale of the subject property, the Will had a provision that a right of first refusal must first be offered to the other devisees of the estate. The right of first refusal is provided in Section VII of the Will, as follows:

I hereby direct that any time after Two (2) years of my death, that the devisees agree on the location of their portion, that the property can be divided. **I further direct that any time one of the devisees desires to sell his portion of the property, that he first offer it to the remaining devisees.** Should they not be able to agree on a price for the property to be sold, then the seller would choose one appraiser and the remaining devisees another appraiser and the third appraiser [sic] would be the Bank of Hampton, South Carolina. The average of the three appraisals would be the selling price. The devisees purchasing the property would contribute to the purchase price according to the proportions they received in Paragraph IV, and the portion so purchased would likewise be divided.

(Will, Section VII)(emphasis added).

Upon her appointment as Personal Representative, and while marshalling the assets of her father's Estate, Ms. Denney commissioned a title search that revealed that certain real estate assets of her father's Estate had been conveyed or sold in violation of her father's Will.

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(Complaint, November 14, 2007)(Order, February 6, 2015).

These inappropriate transactions include the following:

- (a) Conveyances from L.C. Weekley to William J. Weekley the Appellant's decedent (conveying L.C. Weekley's interest in Tact 2¹ under (1) the Will of Willie Gelzer Weekley and/or; (2) the death of Jasper J. Weekley by Deed filed on 12/20/1999 in Hampton County Deed Book 236 at Page 283.

¹ This 'Tract 2' is reference to Tact 2 on plat by W.A. Miley dated December 17, 1938 filed in Plat Book 3. Page 135 in Hampton County Records. This plat was agreed upon division regarding Estate of J.J. Weekley, deceased. See also Deed Book 31 at Page 120(the "Plat").

- (b) Mortgage from William James Weekley to Lucas Carroll Weekley dated 12/20/1999 and filed in Hampton County Mortgage Book 260 at Page 271.
- (c) Deed from Mary Elizabeth Weekley Saad to Mary Elizabeth Weekley Saad Trust dated 10/7/1997 (conveying her interest in Tract 2 originally the property of her father Willie Gelzer Weekley) being dated 5/8/2000 and filed in Hampton County Public Records in Deed Book 242 at Page 112.
- (d) Deed from Mary Elizabeth Weekley Saad as Trustee of the Mary Elizabeth Weekley Saad Trust dated 10/7/1997 to Laura W. Segal (conveying all the Trust interest in Tract 2 received from her father W.G. Weekley) which deed is filed in Hampton County Public Records in Deed Book 246 at Page 225.

(Complaint, 11/14/2007).

On January 5, 2015, the Probate Court held a hearing of the Motion to Reconsider and issued its final Order on February 6, 2015, granting the Plaintiff's Motion for Summary Judgment upon the Motion to Reconsider and upon a Motion Hearing on January 5, 2015.

Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law. Bank of New York v. Sumter County, 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010). "On review of an order granting summary judgment, the appellate court applies the same standard as that used by the trial court." Id. at 155, 691 S.E.2d at 477.

In construing a will, the court should strive to determine and give effect to the testator's intent. May v. Riley, 279 S.C. 248, 305 S.E.2d 77 (1983); In re Estate of Fabian, 326 S.C. 349, 483 S.E.2d 474 (Cl. App. 1997).

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The Probate Court looked at the testator's intent and spent close to five years examining the evidence in this case before issuing its ruling. In granting the Motion for Summary Judgment to the Respondent, the Probate Court relied on the affidavit of the Appellant, Laura W. Segal, ruling that "she cannot demonstrate compliance with the intent of her grandfather's will in that no offer of first refusal was provided to the devisees as described in Sections IV and VII of the Will.

Had there been one in compliance with the Will, then Ms. Segal's affidavit should have stated the compliance." (Order, February 6, 2015, p.10). Additionally, the Probate Court denied the Appellant's equitable defenses, stating that "it would be inequitable for the Estate to be deprived of these properties." (Order, February 6, 2015, p.10).

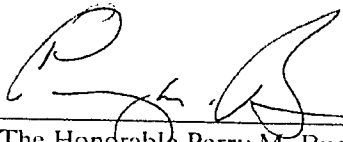
After considering the arguments at the hearing, the Probate Court's Order of February 6, 2015, and the submissions of the Appellant and Respondent, this Court finds that the Appellant cannot produce any evidence of compliance with the testator's intent, namely that the right of first refusal provision in Section VII of the Will was complied with.

In addition, in response to the Appellant's affirmative defenses of laches, waiver, and estoppel, this Court notes that Ms. Denney was appointed Personal Representative on July 14, 2006, and the Complaint was filed on November 14, 2007. Therefore, this Court finds that the time which passed before filing did not invoke the equitable remedies of laches, waiver, and estoppel.

For these reasons, the decision of the Hampton County Probate Court is affirmed, and

IT IS SO ORDERED!

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Walterboro, SC
June 30, 2015



The Honorable Perry M. Buckner, III
Judge of the Fourteenth Judicial Circuit