

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Perry M. Buckner, III, Circuit Court Judge

FEB 17 2016

SC Court of Appeals

Civil Action No. 2015-001721

Estate Of Willie G. Weekley, Deceased, By Its Personal
Representative, Betty W. Denney,.....Respondent,

v.

L.C. Weekley, Laura Weekley Segel, Individually and as
Personal Representative of the Estate Of William James Weekley,
Deceased, Peter Saad as Personal Representative of Mary Elizabeth
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth
Saad Trust,

Of whom Laura Weekley Segel, Individually And As Personal
Representative Of The Estate Of William James Weekley, Deceased,
is the.....Appellant.

APPELLANT'S FINAL BRIEF

JOLLEY LAW GROUP, LLC
Kelly M. Jolley, SC Bar #72573
Michael C. Cerrati, SC Bar # 78011
Post Office Box 22230
Hilton Head Island, SC 29925
(843) 681-6500

McNAIR LAW FIRM, P.A.
Amanda A. Bailey, SC Bar #71085
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	7
STANDARD OF REVIEW	14
ARGUMENT	15
I. The Probate Court lacked subject matter jurisdiction to order the return of the contested real estate to the Estate of Willie G. Weekley	15
A. The Probate Court lacked subject matter jurisdiction to order the return of the contested real estate to the Estate of Willie G. Weekley.....	15
B. The Probate Court does not have subject matter jurisdiction over the property to order its return to the Estate of Willie G. Weekley.....	18
II. The Probate Court erred in relying on the allegations from Respondent's Complaint, assertions of counsel, unsworn, hearsay statements, and documents and information not admissible at trial in granting summary judgment	19
III. The Probate Court erred in shifting the burden of proof to Appellant and in failing to consider evidence of questions of material fact presented in Appellant's affidavit and exhibits in granting Respondent's motion for summary judgment.....	22
IV. The Probate Court erred by failing to consider Respondent's affirmative defenses of laches, waiver, and estoppel and evidence in their support in granting Respondent's motion for summary judgment.....	25
A. Respondent should be estopped from bringing this suit to overturn transfers to which the Estate is not a party and to which the Estate acquiesced.....	26
B. Respondent's claims are barred by the equitable doctrine of laches.....	27

V.	The Probate Court erred by ordering the return of real property to the Respondent estate by setting aside recorded deeds that are presumed valid.....	30
CONCLUSION.....		33

TABLE OF AUTHORITIES

CASES

<u>Badeaux v. Davis</u> , 337 S.C. 195, 522 S.E.2d 835 (Ct. App. 1999) -----	18
<u>Baughman v. AT&T</u> , 306 S.C. 101, 410 S.E.2d 537 (1991)-----	24, 25
<u>Bloom v. Ravoira</u> , 339 S.C. 417, 529 S.E.2d 710 (2000). -----	17
<u>Boyd v. Bellsouth Tel. & Tel. Co.</u> , 369 S.C. 410, 633 S.E.2d 136 (2006). -----	16
<u>Chambers of South Carolina, Inc. v. County Council of Lee Country</u> , 315 S.C. 418, 434 S.E.2d 279 (1993). -----	28, 29
<u>Connor v. City of Forest Acres</u> , 348 S.C. 454, 560 S.E.2d 606 (2002).-----	17
<u>Frazier v. Smallseed</u> , 384 S.C. 56, 682 S.E.2d 8 (Ct. App. 2009). -----	27
<u>Hallums v. Hallums</u> , 296 S.C. 195, 371 S.E.2d 525 (1988).-----	28, 29
<u>Hansen v. DHL Laboratories, Inc.</u> , 316 S.C. 505, 450 S.E.2d 624 (Ct. App. 1994)-----	17
<u>Hudson v. Leopold</u> , 288 S.C. 194, 341 SE 2d 137 (1986) -----	30
<u>Jones v. Leagan</u> , 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009). -----	28
<u>Koester v. Carolina Rental Center, Inc.</u> 313 S.C. 490, 443 S.E.2d 392 (1994).-----	17
<u>Lake v. Reeder Const. Co.</u> , 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998)-----	18
<u>Lujan v. Defenders of Wildlife</u> , 504 U.S. 555 (1992).-----	31
<u>Owens v. McGill</u> , 308 S.C. 556, 419 S.E.2d 786 (1992)-----	23
<u>Pierce v. State</u> , 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000). -----	18
<u>Rothrock v. Copeland</u> , 305 S.C. 402, 409 S.E.2d 366 (1991).-----	17, 23
<u>State v. Ervin</u> , 333 S.C. 351, 510 S.E.2d 220 (Ct. App. 1998) -----	18
<u>State v. Langford</u> , 223 S.C. 20, 73 S.E.2d 854 (1953)-----	18
<u>Tupper v. Dorchester County</u> , 326 S.C. 318, 487 S.E.2d 187 (1997). -----	24
<u>Wilson v. Wilson</u> , 117 SC 454, 109 SE 278 (1921) -----	30

STATUTES

S.C. Code Ann. Section 62-3-709-711.-----	31
S.C. Code Ann. Section 61-1-302. -----	18, 19, 20

RULES

Rule 56(c), SCRCP. -----	16
--------------------------	----

CONSTITUTIONAL PROVISIONS

S.C. Constution, Art. 1, §22 -----	2
------------------------------------	---

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE PROBATE COURT LACKED SUBJECT MATTER JURISDICTION TO ORDER THE RETURN OF THE CONTESTED REAL ESTATE TO THE ESTATE OF WILLIE G. WEEKLEY.
2. WHETHER THE PROBATE COURT ERRED IN RELYING UPON STATEMENTS FROM RESPONDENT'S PETITION; ASSERTIONS OF COUNSEL; UNSWORN, HEARSAY STATEMENTS; AND DOCUMENTS AND INFORMATION NOT ADMISSABLE AT TRIAL IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.
3. WHETHER THE PROBATE COURT IMPROPERLY SHIFTED THE BURDEN OF PROOF TO APPELLANT AND FAILED TO CONSIDER EVIDENCE OF QUESTIONS OF MATERIAL FACT PRESENTED IN APPELLANT'S AFFIDAVIT AND EXHIBITS IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.
4. WHETHER THE PROBATE COURT ERRED BY FAILING TO CONSIDER RESPONDENT'S AFFIRMATIVE DEFENSES OF LACHES, WAIVER, AND ESTOPPEL AND EVIDENCE IN THEIR SUPPORT IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.
5. WHETHER THE PROBATE COURT ERRED BY ORDERING THE RETURN OF REAL PROPERTY TO THE RESPONDENT ESTATE BY SETTING ASIDE RECORDED DEEDS THAT ARE PRESUMED VALID.

STATEMENT OF THE CASE

This matter is an attempt by a personal representative to overturn transfers of real property to which the estate is not a party and in which the estate has no legal interest. The Respondent, Betty Denney, sues as successor personal representative of the estate of Willie G. Weekley (“Weekley”), her father, who died in 1977. Respondent became successor personal representative after the deaths of the original personal representatives named by Weekley in his will. On July 14, 2006, Respondent filed this action on behalf of Weekly’s estate, seeking to set aside transfers of inherited real property shares between certain beneficiaries of Weekley’s estate. (R. pp. 36-39). Weekley’s Last Will and Testament (“Will”) directed that, upon his death, Weekley’s farm property located in Hampton County, South Carolina (“Farm Property”) be divided into thirty-three shares of ten acres each and distributed to his designated heirs in the amounts recorded in his Will. (R. p. 117). Four shares attributed to forty acres of land specifically identified in his Will, and containing Weekley’s home and homesite (“Homesite”), were bequeathed to all of Weekley’s then living children. (R. pp. 79, 117-118). After Weekley’s death, some of his children transferred their shares to Appellant or to Appellant’s late father William J. Weekley. (R. pp. 37-39, 78). In her Complaint filed in the Hampton County Probate Court on November 14, 2007, Respondent prayed that the Probate Court would declare these share transactions, which are specifically listed in the Complaint, and hereinafter referred to as the “Disputed Transactions”, invalid and order the “rescission of each challenged transaction and restitution of the various parties to their pre-conveyance

status.” (R. p. 39). Appellant filed an Answer and Counterclaim seeking to remove the personal representative and requesting a jury trial on February 13, 2008. (R. pp. 44-49).

Appellant served Respondent with her First Set of Interrogatories and Request for Production on April 14, 2009. (R. p. 62). Instead of answering Appellant’s discovery requests, Respondent filed a Motion for Summary Judgment on September 30, 2009 without any supporting affidavits or deposition testimony. (R. pp. 59-61). On October 9, 2009, Appellant filed a Motion to Compel responses. (R. pp. 62-64). The Probate Court never heard Appellant’s Motion to Compel. A year later, Respondent provided some written discovery responses on October 14, 2010, the day before the Motion for Summary Judgment was heard by Judge Odom. (R. pp. 67-76). On October 14, 2010, Appellant filed a Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment along with an Affidavit of Laura Weekley Segel. (R. pp. 77-107, 139-153). On October 14, 2010, Respondent also filed a Memorandum in Support of her Motion for Summary Judgment supported only by a letter addressed to the Probate Court from Respondent’s sister Margaret Weekley Shinar. (R. pp. 108-138). At no time did Respondent file affidavits in support of her Motion for Summary Judgment or even affidavits in reply to Appellant’s affidavit. Respondent never supplemented her discovery responses to Appellant, never noticed any depositions and never served Appellant with any discovery requests. Accordingly, although this case has been pending for several years, this appeal concerns an order on a motion for summary judgment that was made before meaningful discovery was conducted and without hearing or ruling on the Appellant’s Motion to Compel.

While the motion for summary judgment was pending, Respondent deeded the Homesite to herself and her sister Margaret Weekley Shinar by deed of distribution recorded in the records of Hampton County. (R. pp. 203-206). On or around June 4, 2012, after years of no action by the Probate Court, and as a result of Respondent issuing this deed of distribution, Appellant filed a Petition for Removal of Personal Representative, Petition to Set Aside Deed of Distribution, Motion to Consolidate Petitions before the Probate Court, and Motion to Remove Action to Circuit Court. (R. pp. 154-164). These motions were never granted a hearing by the Probate Court; the Motion to Remove Action to Circuit Court was never opposed by Respondent.

An additional year later, on August 29, 2013, Judge Odom issued an order partially granting Respondent's Motion for Summary Judgment and granting Appellants' Motion to Remove. (R. pp. 5-15). In partially granting Respondent's Motion for Summary Judgment, the Probate Court looked only at whether the contested transactions were in accord with Weekley's testamentary intent and only cited case law pertaining to ascertaining testamentary intent. (R. pp. 5-15). Judge Odom held that there was no genuine issue of material fact that the Disputed Transfers relating to the Homesite did not comply with the Will. (R. pp. 12-15). The Court declined to grant summary judgment as to the remaining real estate in the Disputed Transfers. (R. pp. 12-15). On or about September 13, 2013, Respondent filed a Motion to Reconsider the Probate Court's Order dated August 29, 2013 granting partial summary judgment. (R. pp. 168-170). Respondent's Motion to Reconsider was finally heard a year and a half later on January 5, 2015, more than five (5) years after Respondent filed her Motion for Summary

Judgment. Although Respondent's Motion to Reconsider is vague, Respondent's argument at the hearing focused solely on the grant of partial summary judgment to Respondent. (R. pp. 1174-185).

On February 6, 2015, Judge Odom signed an Order Granting Respondent's Motion for Summary Judgment Upon the Motion to Reconsider and Upon a Motion Hearing on January 5, 2015. (R. pp. 16-27). Unlike the August 29, 2013 Order, the February 6, 2015 Order granted Respondent's full Motion for Summary Judgment, finding that all of the contested transactions violate the intent of Weekley's Will. (R. pp. 16-27). In fact, Judge Odom granted Respondent relief beyond that requested in her Complaint by finding the contested transactions were invalid and ordering the return of the contested real estate to the Estate of Willie G. Weekley for disposition – without ordering any restitution to the parties who had purchased the real property by general warranty deed in good faith – instead of returning the parties to their position prior to the transactions as originally sought by Respondent. (R. pp. 16-27, 39). Additionally, the Probate Court found that the Deed of Distribution made by Respondent for the Homesite, which occurred after Petitioner's Complaint and Motion for Summary Judgment were filed, was also subject to the Disputed Transactions, was proper; thereby, also ruling on the Petition to Set Aside Deed of Distribution, which had been previously transferred to Circuit Court. (R. p. 24).

In finding that the Disputed Transactions were inappropriate under the Will, the Probate Court made several findings of fact without citing to any evidence in the record aside from arguments by counsel at the hearing on January 5, 2015. (R. p. 21). Many of

the findings repeat allegations made by Respondent in her Complaint without any citations to the record at all. (R. pp. 21-23, 37-39). Further, the February 6, 2013 Order found the Deed of Distribution for the Homesite proper, although this distribution was not raised and had not occurred when Respondent moved for Summary Judgment. (R. p. 18). Moreover, the February 6, 2015 Order disregards the affirmative defenses entirely except to blithely assert that Appellant “cannot demonstrate compliance with the Will by any mere scintilla of evidence” because her affidavit – which is unopposed in the record – does not affirmatively state the Disputed Transactions complied with the Will. (R. p. 25).

Having timely appealed the Probate Court’s February 6, 2015 Order granting summary judgment to Respondent without full discovery, any depositions, or supporting affidavits from Respondent, Appellant asked the Circuit Court to have the Order overturned so that this case could finally move forward after seven and a half years. Instead, the Circuit Court, by order of the Honorable Perry M. Buckner, III, perpetuated the Probate Court’s errors by affirming the Probate Court’s order without analyzing the evidence, or lack thereof, in the record and Appellant’s affirmative defenses of laches, waiver, and estoppel. (R. pp. 28-31).

On August 13, 2015, Appellant timely filed a Notice of Appeal with this court and now respectfully requests the Court of Appeals overturn the Probate Court’s order

granting summary judgment to Respondent and remand this now removed case to the Hampton County Circuit Court¹ for discovery and disposition on the merits.

STATEMENT OF FACTS

Weekley died testate on November 6, 1977. (R. p. 77). As set out in his Will dated May of 1973, Weekley left shares in farm property to his eight children: William J. Weekley, Doris Weekley Zahler, Lucas Carroll Weekley, Jasper Josiah Weekley, Margaret Weekley Shinar, Elizabeth Weekley Saad, Ruth Weekley Chakides, and Betty Weekley Denney. (R. p. 117). The initial executors of the estate were William J. Weekley, Lucas Carroll Weekley, and Doris Weekley Zahler, who are all now deceased. (R. p. 119). Weekley's estate remains open. (R. p. 36).

Respondent, Betty Denney, is one of Weekley's eight children and sues as successor personal representative of her father's estate. She sues to set aside the Disputed Transactions of "shares" in farm property, consisting of approximately 330 acres, owned by Weekley at the time of his death. (R. pp. 36-39). Weekley's eight children were each devised "shares" in farm property under his Will. (R. p. 117). In the years since Weekley's death, some of the children transferred those shares to other family members, including Weekley's granddaughter, Laura Weekley Segel. Laura is the daughter of one of Weekley's eight children, William J. Weekley ("W.J. Weekley"), who is deceased. Respondent complains that the

¹ Remand should be made to the Hampton County Circuit Court pursuant to the August 29, 2013 Order Granting the Motion to Remove, and section 61-1-302 of the South Carolina Probate Code. S.C. Code Ann. § 61-1-302(d).

Disputed Transactions made over the course of several years did not comply with specific requirements of the Will. (R. pp. 36-39).

Weekley's estate is governed by the provisions of his Will. Section III of the Will provides as follows: "In order to distribute my real estate among my sons and daughters in a manner I feel, after long and thorough deliberation, fair and equitable, I hereby, for the purpose of this instrument, divide my lands into thirty-three (33) shares of ten (10) acres each". (R. p. 117). Section IV then provides:

I hereby give, devise and bequeath the shares above referred to under the terms and conditions hereinafter set forth to my children in the following proportions: William J. Weekley, eight and one-half (8 ½) shares; Doris Weekley Zahler, five (5) shares; Lucas Carroll Weekley, eight and one-half (8 ½) shares; Jasper Josiah Weekley, two and one-half (2 ½) shares; Margaret Weekley Shinar, one (1) share; Elizabeth Weekley Saad, one (1) share; Ruth Weekley Chakides, one and one-half (1 ½) shares; and Betty Weekley Denney, one (1) share. (R. p. 117).

Section V states:

I hereby further devise and bequeath four (4) shares equally to all of my surviving children located immediately east and west of Salkehatchie Road at the northern extremity of my land, including my home and home site. I further direct that no part of this forty (40) acres can be sold or divided without unanimous agreement of all surviving heirs. Taxes shall be shared equally by all surviving heirs. Maintenance, use of, and physical developments that occur on this forty (40) acres must have majority agreement of all surviving heirs. In this instance, each vote shall be by surviving heirs rather than by shares owned. Upon the death of my last surviving child, provided this forty (40) acres has not been disposed of prior to that time by unanimous agreement of all surviving heirs, then I further direct that this forty (40) acres be divided equally among all of my surviving grandchildren or sold at auction to the highest bidder, and the proceeds of same be distributed equally among the surviving grandchildren. Regardless of the time of sale, prior to the death of my surviving children, or after, the proceeds of the sale of this forty (40) acres, or any part thereof shall be divided equally among my then surviving grandchildren. (R. pp. 117-118).

Section VI provides:

The location of each devisee's portion of land is to be determined by a majority vote of the devisees. The vote of each devisee will be in proportion to their shares. It is my desire and intention that Jasper Josiah Weekley's portion be in the "Pine Thicket". His portion will be on the Salkehatchie Road joining the J.F. Weekley property and going back to the swamp. (Emphasis added). (R. p. 118).

The Respondent apparently premises her claims on the following provisions of Section VII:

I hereby direct that at 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 one appraiser and the third appraiser would be the Palmetto State 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 be likewise divided.** (Emphasis supplied). (R. pp. 118-119).

Section VIII provides:

I further direct that from my death, until my entire estate has been distributed, as hereinabove set forth, that all decisions necessary to the management of the property be made by vote of the devisees. The vote of each devisee will be in proportion to their shares. Also, until divided, all profits and losses will likewise be proportionately divided. (R. p. 119).

Section XI of the Will provides that survivors of the beneficiaries who predecease the Testator shall take their parent's share *per stirpes*. (R. p. 119).

The Disputed Transactions are comprised of the following instruments appearing in the public record:

- a) Mary Elizabeth Weekley Saad transferred her one (1) share in the farm to the Mary Elizabeth Weekley Saad Trust on October 7, 1997. This deed is filed in the Hampton County Deed Book 242 at page 112. (R. pp. 132-135).
- b) Lucas Carroll Weekley (“L.C. Weekley”) gave W.J. Weekley a general warranty deed dated December 20, 1999 for all of his interests in certain property in consideration for payment of \$132,000.00. (R. pp. 85-87). L.C. Weekley’s interests included: eight and one-half (8 ½) shares inherited under Section IV of the Will and a sibling’s portion under the statute of descent and distribution from the estate of Jasper Joseph Weekley, who died intestate and without children. (R. pp. 81, 85-87, 119). The conveyance from L.C. Weekley to W.J. Weekley was recorded on December 20, 1999 in Hampton County Deed Book 236 at Page 293. (R. pp. 85-87).
- c) Additionally, the Mortgage from W.J. Weekley to L.C. Weekley for the purchase price also dated December 20, 1999 is recorded in the Hampton County Mortgage Book 260 at page 271. (R. pp. 128-130).
- d) On September 12, 2000, Mary Elizabeth Weekley Saad, as trustee of the Mary Elizabeth Weekly Saad Trust, transferred her share to Appellant by general warranty deed in consideration for payment of \$15,000. (R. pp. 88-90).

Appellant inherited all of her father’s shares, which included his original

eight and one-half (8 ½) shares and the shares he purchased from L.C. Weekley, following his death in 2003. (R. p. 81). Other than the Disputed Transactions, what happened from 1977 to 2006 regarding the Estate Administration is uncertain as the original executors and many of the devisees are deceased.²

Respondent petitioned the Probate Court to become the personal representative on May 1, 2006 and was appointed personal representative of the Estate on July 14, 2006. (R. pp. 3-4, 32-35). Respondent seeks in this case to have the Disputed Transactions that resulted in W.J. Weekley and Laura Weekley Segel purchasing additional shares from family members in exchange for monetary consideration declared invalid. (R. pp. 36-39).

Oddly, Respondent allegedly brings this action on behalf of the Estate, but the Estate was not a party to the Disputed Transactions, all of which took place many years after the original personal representatives distributed the shares to Weekley's devisees. Respondent does not claim that the original distribution of shares was inappropriate or failed to meet the intent of Weekley. Respondent seeks summary judgment on the ground that the interfamily Disputed Transactions that took place long after the initial distribution of shares were not in accord with Mr. Weekley's testamentary intent as set forth in his Will and that the devisees were not all allowed to vote on, participate in, or share in profits from the Disputed Transactions when they took place. (R. pp. 37-38). Respondent did not set forth any admissible evidence in support of her motion for summary judgment. (R. pp. 108-138).

² Respondent alleges other Estate transactions occurred during the time, but does not dispute them, apparently because she was an active participant.

The record supports Appellant's assertion that all of the devisees were aware of the transactions and declined to participate. (R. pp. 81-83). Although Respondent claims in her Complaint that she only learned of the Disputed Transactions upon hiring a title abstractor while acting as personal representative of the Estate, all of the transactions were filed and became part of the public record between 1997 and 2000. (R. pp. 81-83). Additionally, there is at least an inference that Respondent had actual knowledge of the transactions based on the names listed on the lease agreement for the Farm Property signed by Respondent in 2002 and rent payments distributed according to the ownership interest. (R. pp. 81-83). Beginning in the year 2001, and continuing through the pendency of this case, the Farm Property has been leased to an unrelated third party for farming. (R. pp. 81-83). In August of 2002, all parties holding an ownership interest signed a formal Lease Agreement between Weekley Farms et. al. and Paragon Produce Corporation (the "Lease Agreement"). (R. pp. 81-83, 91-99). Laura Weekley Segel's name is on the Lease Agreement, and she, along with the other heirs, including Respondent, signed it. (R. pp. 81-83, 91-99). Neither L.C. Weekley nor a representative of Mary Elizabeth Weekley Saad is mentioned in the Lease Agreement, as they no longer held any ownership interests as a result of the Disputed Transactions. (R. pp. 81-83, 91-99).

Even more telling, from the year 2001 and continuing through the initiation of this action, rents were collected from the tenant of the Farm Property by the majority shareholder – first W.J. Weekley and then Laura Weekley Segel – and distributed in accordance with the number of shares owned by each individual shareholder as

calculated in accordance with the transfers. (R. pp. 81-83, 100-107). All shareholders received summaries of the distributions. (R. pp. 81-83, 100-107). On every summary of distribution, Laura Weekley Segel is shown as receiving her distribution in accordance with her shares. (R. pp. 81-83, 100-107). Every summary of distribution shows that L.C. Weekley did not receive distributions after the sale of his shares to W.J. Weekley. (R. pp. 81-83, 100-107). W.J. Weekley received the distributions that would have been paid to L.C. Weekley but for the transfer. (R. pp. 81-83, 100-107). After the death of W.J. Weekley in 2003, Laura Weekley Segel began receiving those distributions. (R. pp. 81-83, 100-107). The Lease Agreement together with the distribution summaries that were delivered annually to every shareholder gave notice of the transfer of the shares. However, no shareholder and no party to the real estate transactions that are the subject of this suit ever challenged the transfers.

STANDARD OF REVIEW

In reviewing the grant of summary judgment, this Court applies the same standard as the court below. *Boyd v. Bellsouth Tel. & Tel. Co.*, 369 S.C. 410, 415, 633 S.E.2d 136, 138 (2006). A party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. Rule 56(c). Summary judgment is only appropriate when the evidence is such that a reasonable jury could not resolve the case in favor of the non-moving party. *Bloom v. Ravoirra*, 339 S.C. 417, 421, 529 S.E.2d 710, 712 (2000). All evidence and all inferences must be viewed in

the light most favorable to the non-moving party. *Koester v. Carolina Rental Center, Inc.* 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). “[S]ince it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues.” *Connor v. City of Forest Acres*, 348 S.C. 454, 462, 560 S.E.2d 606, 610 (2002).

In deciding a motion for summary judgment, only competent evidence that would be admissible at trial may be considered. *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994), *Clarified by, affirmed by* 319 S.C. 79, 459 S.E.2d 850 (1995). In deciding a motion for summary judgment, a court must not try issues of fact, but must discern whether genuine issues of fact exist to be tried. *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 367 (1991). “Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Koester*, 313 S.C. at 493, 443 S.E.2d at 394.

ARGUMENT

The Circuit Court erred as a matter of law in upholding the Probate Court’s grant of summary judgment to the Respondent based solely on the claims alleged in Respondent’s Complaint without any supporting affidavits or other evidence that meets the requirements of the South Carolina Rules of Evidence, in wrongly shifting the burden of proof to Appellant and finding that Appellant failed to meet this misplaced burden in her affidavit, and in cavalierly dismissing Appellant’s affirmative defenses of laches, waiver, estoppel and evidence in their support.

I. The Probate Court lacked subject matter jurisdiction to order the return of the contested real estate to the Estate of Willie G. Weekley.

A. The Probate Court lacked subject matter jurisdiction to order the return of the contested real estate to the Estate of Willie G. Weekley.

“Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.” *Pierce v. State*, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000). The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. *Badeaux v. Davis*, 337 S.C. 195, 522 S.E.2d 835 (Ct. App. 1999); *Lake v. Reeder Const. Co.*, 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998); *see also State v. Ervin*, 333 S.C. 351, 510 S.E.2d 220 (Ct. App. 1998) (holding issues related to subject matter jurisdiction may be raised at any time).

“The question of subject jurisdiction cannot be waived by any act or admission of the parties, for the very obvious reason that the parties have no power to invest any tribunal with jurisdiction of a subject over which the law has not conferred jurisdiction upon such tribunal.” *State v. Langford*, 223 S.C. 20, 27, 73 S.E.2d 854, 857 (1953) (*quoting City of Florence v. Berry*, 61 S.C. 237, 240, 39 S.E. 389, 390 (1901)).

Section 61-1-302 of the Probate Code provides that the case must be removed to Circuit Court upon motion of the party. *See* S.C. Code Ann. § 61-1-302(a) and (d). On June 4, 2012 Appellant filed a Petition for Removal of Personal Representative, Petition to Set Aside Deed of Distribution, Motion to Consolidate Petitions before the Probate Court, and Motion to Remove Action to Circuit Court. Pursuant to S.C. Code Ann. § 62-

1-302 (d)(2) and (3), upon motion of a party, any action or proceeding related to the construction of a will or the title to real property must be removed to circuit court.

In this case, the Probate Court lacked jurisdiction to issue the August 29, 2013 Order or the February 6, 2015 Order as it followed the timely Motion to Remove Action to Circuit Court. In the August 29, 2013 Order, the Probate Court states “there have been several motions and petitions to which this Court admits has been unable to timely hear in this matter. The Motion to Remove this action to Circuit Court is therefore incorporated into this final Order of this Probate Court.” (R. pp. 14-15). Thus, the Probate Court lacked jurisdiction to issue the August 29, 2013 Order as removal to the circuit court was required under S.C. Code Ann. § 62-1-302 (d)(2) and (3).

The Probate Court also lacked subject matter jurisdiction to issue the February 6, 2015 Order for the same reasons. In addition, with respect to the February 6, 2015 Order, the Probate Court lacked subject matter jurisdiction as it granted additional relief not contemplated in the Motion for Summary Judgment or the August 29, 2013 Order. Rather, the issues surrounding this additional relief arose after the Motion for Summary Judgment was granted and related to the Petition for Removal of Personal Representative, Petition to Set Aside Deed of Distribution, and Motion to Consolidate. By its August 29, 2013 Order, the Probate Court had granted the motion to remove the action to Circuit Court, specifically related to these motions/petitions³. (R. pp. 14-15). Specifically, the February 6, 2015 Order found “transfer of the 40 acres by Deed of Distribution to Denny and Shinar, Recorded in Book 266 at Page 297 in the Office of the Register of Deeds for

³ The portion of the August 29, 2013 Order granting the motion to remove to Circuit Court is unappealed by any party.

Hampton County, was made in compliance with the Will”. (R. p. 27). This Deed of Distribution was subject to the Petition for Removal of Personal Representative, Petition to Set Aside Deed of Distribution, and Motion to Consolidate Petitions, which were ordered removed to the circuit court by the August 29, 2013 Order. (R. pp. 14-15, 154-164). The Probate Court lacked jurisdiction over these petitions and no court having jurisdiction over these petitions ever held a motions hearing. To rule on these motions, after removal to the Circuit Court and without a hearing violates Appellant’s due process rights. See, e.g., S.C. Const. Art. 1, §22 (The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review).

As a result, because the matter was required to be removed prior to the August 29, 2013 Order under S.C. Code Ann. § 62-1-302 (d)(2) and (3), and because the matters were removed by virtue of the August 29, 2013 Order prior to the February 6, 2015 Order, the Probate Court lacked subject matter jurisdiction to issue either order, and summary judgment should be reversed and this case remanded to the Hampton County Circuit Court.

B. The Probate Court does not have subject matter jurisdiction over the property to order its return to the Estate of Willie G. Weekley

Section 62-1-302(a)(1) provides, *inter alia*, that the Probate Court has subject matter jurisdiction to construe wills and to determine the property in which the estate has a protected interest.

Respondent moved and was granted summary judgment on the grounds that the Disputed Transactions did not comply with the intent of Weekley’s Will. (R. pp. 16-27). However, the Weekley Estate is not a party to any of these transactions. These Disputed

Transactions occurred long after the Weekley died in 1977 and the shares of the Farm Property were distributed by consent to each of the eight children. Respondent cannot seek to bring property back into the Estate nearly forty years after Weekley's death. Importantly, Respondent is not challenging in her motion for Summary Judgment the distribution of the shares to each of the eight children⁴; rather Respondent is challenging the subsequent interfamily Disputed Transactions on the grounds that the children failed to comply with purported restrictions on transfer contained in the Will.

Proper jurisdiction in this case falls outside of the Probate Court because this case is, in reality, the individual claim of Betty W. Denny to set aside the Disputed Transactions: a) between Mary Elizabeth Weekley Saad and the Trust in 1997; b) between L.C. Weekley and W.J. Weekley in 1999; c) between Mary Elizabeth Weekly Saad as trustee of the Mary Elizabeth Weekley Saad Trust and Laura Weekley Segel in 2000, and (d) between W.J. Weekley and Laura Weekly Segel upon W.J. Weekley's death in 2003, based upon the alleged right of first refusal Respondent received under the Will.

The Probate Court lacks jurisdiction to set aside a transfer of real property to which the Weekley Estate was not a party. The property has not been Estate property for nearly forty years, and therefore is not subject to the jurisdiction of the Probate Court. As a result, the Probate Court lacked jurisdiction to order the return of the real property subject to the Disputed Transactions to the Estate of Weekley.

⁴ Importantly, Respondent does not name all eight children, or their representatives, as parties to this lawsuit. To set forth any challenge to the initial distribution under the Will, Petitioner would have been required to name all interested parties, including all eight children and/or their representatives.

II. The Probate Court erred in relying upon statements from Respondent's petition; assertions of counsel; unsworn, hearsay statements; and documents and information not admissible at trial in granting Respondent's Motion for Summary Judgment.

Respondent did not produce sufficient evidence to overturn the inferences that must be weighed in Appellant's favor in a motion for summary judgment. The Probate Court's reliance on Respondent's unsubstantiated allegations and documentary evidence that would not comply with the South Carolina Rules of Evidence was in error and Respondent should not have prevailed on her Motion for Summary Judgment as genuine issues of material fact regarding the claims and the affirmative defenses were presented to the Court. Both the Circuit Court and the Probate Court emphasize the "close to five years" the Probate Court spent "examining the evidence in this case before issuing its ruling" and rely on Respondent's repeated assertion that Appellant cannot defeat Respondent's Motion for Summary Judgment because Appellant did not affirmatively claim in her affidavit that the Disputed Transactions were compliant with the testamentary intent of William Weekley. (R. pp. 16-31).

However, both the Probate Court and the Circuit Court overlook the fact that Respondent did not submit an affidavit or any other evidence in support of her Motion for Summary Judgment at all. No order cites to any evidence in the record that the transactions were non-compliant. There is no such evidence. Rather, the Circuit Court and Probate Court relied on the Complaint without requiring any actual evidence in support of these allegations and ignoring the genuine issue of material fact created by

the Affidavit of Laura Weekly Segel as to the affirmative defenses.

For example, on granting Respondent's Motion for Summary Judgment, the Probate Court relied upon Respondent's allegation in Paragraph 8 of the Complaint that "based on the abstractor's report, she has determined that certain real estate assets of her father's estate have been conveyed or sold without: (1) first complying within probate court procedures ... and/or; (2) Interfamily transfer without Notice to and approval of other members...." (R. pp. 22-23). The Probate Court ultimately adopted Respondent's assertion as a finding of fact: "Ms. Denney hired a title abstractor to determine the status of the 330 acres. As a result of that abstract, Ms. Denney discovered that there were several transfers This Court now agrees with Mrs. Denney that at no time did this conveyance comply with the Will." (R. pp. 22-23). The Circuit Court similarly relied on the Probate Court's Order and arguments in finding "that the Appellant cannot produce any evidence of compliance with the testator's intent." (R. p. 31). Both Courts ignored the fact that neither the report by the unidentified abstractor referenced in the Complaint, nor any supporting affidavits, were filed with the Probate Court in support of Respondent's motion.⁵ Since Respondent's Complaint was not verified, there is no sworn evidence in the record to support the claims alleged in the Complaint. This is insufficient evidence on which to grant a

⁵ Both Courts also appear to misinterpret the notice requirement found in the Will. Contrary to the Circuit Court's assumption, the Will does not require a written waiver or offer. The Will simply states that the heirs must first offer property to be sold to the other beneficiaries. (R. pp. 118-119). An oral offer would suffice. However, in any event, Respondent has produced no evidence that an offer was not made.

motion for summary judgment.

Additionally, there is no evidence in the record to support Respondent's claim or the Probate Court's finding in the February 6, 2015 Order that "[n]one of the remaining devisees were advised of the transactions nor were they offered the chance to purchase the shares of L.C. Weekley and Mary Elizabeth Weekly Saad as required by the Will." (R. pp. 24-25). Moreover, any such allegations in Respondent's Complaint were denied by Appellant in her Answer and contested by facts in her affidavit, which create genuine issues of material fact. Respondent's allegations, unsupported by affidavits or other testimony, are insufficient to support a grant of summary judgment. *Owens v. McGill*, 308 S.C. 556, 562, 419 S.E.2d 786, 790 (1992) (Merely reasserting allegations from the pleadings is "clearly insufficient" to support a motion for summary judgment.). Rather than acknowledge this genuine issue of material fact that goes to the heart of this litigation, the Probate Court erroneously usurped the power of the jury in making this finding in deciding a motion for summary judgment. See *Rothrock*, 305 S.C. at 405, 409 S.E.2d at 367 (1991) ("In determining whether summary judgment is appropriate, a court must not try issues of fact, but must discern whether genuine issues of fact exist to be tried.") Accordingly, the grant of summary judgment should be reversed.

III. The Probate Court erred in shifting the burden of proof to Appellant and in failing to consider evidence of questions of material fact presented in Appellant's affidavit and exhibits in granting Respondent's Motion for Summary Judgment.

Both the Circuit Court and the Probate Court erred in shifting the burden of

proof to Appellant and in finding that the Appellant could not meet this burden in granting summary judgment to Respondent. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant.” *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

In the February 6, 2015 Order, the Probate Court finds that “Laura W. Segel cannot demonstrate compliance with the Will by any mere scintilla of evidence.” (R. p. 25). In support of this finding, the Court further asserts “Ms. Segel’s affidavit in this matter does not claim compliance with the Will and does not provide any evidence of compliance with her grandfather’s Will.” (R. p. 25). The Court goes on to assert that Appellant:

does not, and cannot, claim that the transfers are in compliance with the Will 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. Segel’s affidavit should have stated the compliance. ... That the Will has been violated warrants this Court voiding those transfers so that the property may be returned to the Estate. (R. p. 25).

The Court’s reliance on what Appellant’s affidavit does not say is in error. Appellant does not bear the burden of proving that the Disputed Transactions were in compliance with the Will in defeating the Respondent’s Motion for Summary Judgment because Respondent presented no testamentary evidence – no affidavit or other sworn testimony –

to prove that the Disputed Transactions were *not* in compliance with the Will. There is no testimony asserting lack of notice or inability to participate in the transfers. Rather, the Probate Court appears to rely solely on Respondent's assertions from the Complaint that claim that the transactions were generally inappropriate. Such assertions do not shift the burden of proof to the party opposing summary judgment.

Appellant was only required to come forward with specific facts that show there is a genuine issue of fact remaining for trial once the moving party carried its initial burden. *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545. Here, Respondent never met her initial burden by producing actual evidence in support of her motion; she produced no depositions, answers to interrogatories, admissions on file or affidavits. She relies instead on her pleadings in asserting that the Disputed Transactions were improper. Appellant's affidavit was not submitted in reply to sworn testimony by Respondent stating that the transactions were not in compliance. There is no sworn testimony by anyone, much less Respondent or an expert, to that effect. Appellant wrote her affidavit in an attempt to clarify the history regarding the transactions in question at the beginning of the case before any discovery had been completed. Appellant's submission of an affidavit did not remove the burden of proof for summary judgment from Respondent and impose it on Appellant. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) ("Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact."). The deciding factor for purposes of this appeal is not that Appellant did not testify regarding compliance with the testator's intent, but that there is no testimony outside of the Appellant's affidavit at all.

Moreover, Appellant specifically denied that the transfers were improper, “especially the allegations that these transactions were inappropriate and/or unauthorized and would demand strict proof thereof.” (R. p. 45). Appellant did not need to produce strict proof in support of her denial to survive Respondent’s summary judgment motion. Her allegation was sufficient to create a question of material fact that Respondent’s reliance on her pleadings alone could not overcome. Nevertheless, Appellant provided an affidavit that not only supported her denial of the baseless allegations in the Complaint, but also included additional facts and evidence in furtherance of her position that Respondent has been unable to oppose. (R. pp. 77-107). At the very last, Appellant’s affidavit created a genuine issue of material fact as to both compliance with the Will and various affirmative defenses, especially those related to the Respondent’s knowledge and consent. Accordingly, the Probate Court’s finding that the Appellant bore the burden of proof and grant of summary judgment were in error and should have been overturned by the Circuit Court.

IV. The Probate Court erred by failing to consider Appellant’s affirmative defenses of laches, waiver, and estoppel and evidence in their support in granting Respondent’s Motion for Summary Judgment.

Although Appellant alleged affirmative defenses of laches, waiver, and estoppel in her Answer, offered testimony and documentary evidence in support of these affirmative defenses in her affidavit, and argued these defenses in memoranda and at the hearings on both Respondent’s Motion for Summary Judgment and Motion for Reconsideration, the Probate Court does not mention Appellant’s affirmative defenses at all in the February 6, 2015 Order. The Circuit Court’s finding that the Probate Court

denied the Appellant's equitable defenses by stating that "it would inequitable for the Estate to be deprived of these properties" misstates the Probate Court's Order and exceeds the jurisdiction of the Court as the Complaint never sought to have these properties returned to the Estate. (R. p. 31, 39). More importantly, the Circuit Court's finding that Appellant's affirmative defenses failed because Respondent was only appointed Personal Representative in 2006 confuses the elements of laches, waiver and estoppel, ignores the evidence in the record, and discounts the genuine issues of fact presented by Appellant's affidavit. (R. p. 31). Pursuant to the foregoing, well-established case law and rules surrounding the granting of summary judgment, it was improper for the Probate Court to ignore this evidence as it created a genuine issue of material fact as to Respondent's right to the relief ordered.

A. Respondent should be estopped from bringing this suit to overturn transfers to which the Estate is not a party and to which the Estate acquiesced.

Respondent contends that real estate transactions to which the Respondent Estate was not a party were inappropriate under the Will that was filed with the Probate Court in 1983. Appellant raised an affirmative defense of estoppel in her Answer and Counterclaim. (R. p. 47). The Probate Court ignored this defense in the February 6, 2015 Order. Appellant's affidavit establishes a *prima facie* case of affirmative estoppel, which Respondent could not overcome by way of an unsupported motion for summary judgment.

Estoppel requires, by the party being estopped: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is

calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party, and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position. *Frazier v. Smallseed*, 384 S.C. 56, 65, 682 S.E.2d 8, 13 (Ct. App. 2009).

In this case, the evidence in the record supports finding that the family members, including Respondent, had notice of the Disputed Transactions. (R. pp. 81-83). They acquiesced in the transfers for many years. (R. p. 83). They took no action. (R. p. 83). Appellant relied upon their conduct in expending substantial monies, as shown by her Affidavit. (R. p. 83). Viewing this evidence and all inferences that can be drawn from it in the light most favorable to Appellant, Respondent is estopped to deny the validity of the transfers and the Probate Court's grant of summary judgment to Respondent was in error as a genuine issue of material fact exists as to Respondent's right to relief.

B. Respondent's claims are barred by the equitable doctrine of laches.

Similarly, viewing the evidence in the record, including the Affidavit of Laura Weekley Segel, and all resulting inferences in the light most favorable to Appellant, it is apparent that the Respondent failed to take any action within a reasonable time and her Complaint is barred by the equitable doctrine of laches. Laches defeats the

voidance of all of the Disputed Transactions and creates a genuine issue of material fact as to Respondent's right to relief.

Laches is the delay in asserting a legal right for an unreasonable length of time. Laches connotes an undue lapse of time and negligence and an opportunity to have acted more timely. *Chambers of South Carolina, Inc. v. County Council of Lee Country*, 315 S.C. 418, 421, 434 S.E.2d 279, 281 (1993) "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Jones v. Leagan*, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct.App. 2009). The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Chambers of S.C.*, 315 S.C. at 421, 434 S.E.2 at 280. The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. *Hallums*, 296 S.C. at 199, 371 S.E.2d at 528.

Respondent brought this action as Personal Representative of Willie G. Weekley's estate and not as an individual. (R. p. 36). Respondent is the fourth Personal Representative and the Estate has been open for more than 30 years. (R. pp. 36, 119). No one contends that the previous Personal Representatives were unaware of

the Disputed Transactions, some of which involved W.J. Weekley while he was Personal Representative.⁶ Accordingly, the Circuit Court's ruling that the Estate only had notice when Ms. Denney was named Personal Representative in 2006 is nonsensical. (R. p. 31). Nonetheless, as discussed above, Respondent had constructive notice of any claims at the time of recording of the deeds in 1999 and 2000. (R. p. 81). She had actual notice of the transfers by way of the course of conduct over the years, specifically, the annual distribution summaries related to the lease of the Farm Property. (R. pp. 82, 100-107). Respondent was on notice. W.J. Weekley and Laura Weekley Segel expended substantial monies and conducted certain activities in reliance upon the unchallenged transfers. (R. p. 83).

Accordingly, Appellant's defense of laches especially should have overcome the Probate Court's finding that "it would be inequitable for the Estate to be deprived of [the disputed] properties and shares when the Will sets forth a method for transferring them so that Ms. Segel will eventually receive the proper distribution under her grandfather's Will." (R. p. 25). Not only is this finding mistaken about the basic facts of the case (the Disputed Transactions did not impact the Estate since the property had been properly transferred to the devisees more than twenty years before and Appellant had already inherited her father's shares in the Farm Property before this suit was filed), it disregards the inequity the Probate Court itself is imposing by depriving Ms. Segel and W.J. Weekley's Estate of property for which they paid consideration over time

⁶ The Will named three executors. (R. p. 119). W.J. Weekley served as executor under the Will until he died in 2003.

pursuant to an arms length transaction in reliance on the ongoing acquiescence of the Respondent, previous Personal Representatives of the Estate and other Weekley devisees. Viewing the evidence offered by Appellant in support of laches in the light required here, at a minimum, establishes a question of fact that defeats summary judgment.

V. The Probate Court erred by ordering the return of real property to the Respondent Estate by setting aside recorded deeds that are presumed valid.

Respondent seeks to overturn transfers that were filed in the public record by the end of year 2000, which are presumed valid by the common law of South Carolina. Transfers by recorded deeds are presumed valid, and all conditions precedent to execution and delivery of the deeds are presumed satisfied. *Hudson v. Leopold*, 288 S.C. 194, 196, 341 SE 2d 137, 138 (1986)(“A deed regular and valid on its face raises a presumption of validity.”); *Wilson v. Wilson*, 117 SC 454, 460, 109 SE 278, 279 (1921). A deed ordinarily, when properly executed, is presumed to be what it purports to be. And the party assailing it is charged with the burden of rebutting this presumption and proving his case.”). Neither the Probate Court nor Respondent disputes the initial distribution of the property under the Will of Willie G. Weekley. (R. pp. 38, 183-184). Respondent’s complaint is only that certain transactions undertaken by Weekley’s beneficiaries after distribution and with the knowledge of Weekley’s original Personal Representatives named in his Will did not follow the formal procedure for notification outlined in the Will. (R. pp. 36-39). Since none of the actual parties to those transactions have ever challenged those transactions or are parties to this suit, it is doubtful that the Estate even

has standing to unravel the conveyances. Standing requires the Estate to have a concrete and particular injury. *See, e.g. Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The Estate has no alleged injury in this case. The Farm Property transferred to the devisees under the Will almost forty years ago. However, even if it did, there is no legal authority for the Probate Court to seize property already distributed to heirs and transferred to third parties in good faith by recorded deed in this manner because the Personal Representative disapproves of the way the heirs conducted the real estate transactions. This is particularly true when the conveyances at issue occurred seven to ten years prior to Respondent's appointment as Personal Representative and the filing of the Petition.

As set forth in Section 62-3-101 of the South Carolina Code, “[u]pon the death of a person, his real property devolves to the persons to whom it is devised by his last Will....” Under the South Carolina Probate Code, a personal representative is only able to recover or take title to property in the estate if necessary to satisfy claims by creditors. S.C. Code Ann. Sections 62-3-709-711. The personal representative does not have authority under the law to take back property already distributed to beneficiaries under the Will by a prior personal representative simply because she disagrees with the beneficiaries' use of the real property they inherited. The Probate Court's Order voiding the contested transactions and returning the real property involved in those transactions to the Estate of Willie G. Weekley for redistribution is in error.

Respondent bears the burden of proving that the transfers are invalid in order to prevail in her Motion for Summary Judgment. The warranty deed from L.C. Weekley to

W.J. Weekley was recorded on December 22, 1999, in the Office of the Clerk of Court, Hampton County, South Carolina in Deed Book 236 at Pages 293-296. (R. pp. 85-87). The deed from Elizabeth Weekley Saad to Laura Weekley Segel was recorded on September 21, 2000, in the Office of the Clerk of Court, Hampton County, South Carolina in Deed Book 246 at Pages 225-228. (R. pp. 88-90). These deeds are presumed valid by operation of law. *See, Hudson*, 288 S.C. at 196, 34 S.E.2d at 138. The Probate Court erroneously adopted Respondent's claim from her Complaint and argument at the hearing that the Disputed Transactions were invalid without addressing the presumed validity of the deeds. Respondent produced no evidence or argument in favor of finding the recorded deeds are invalid. Both the Respondent and the Probate Court instead look only to whether the Disputed Transactions met the proposed requirements for transfers discussed in the Will and not into the legal validity of the deeds themselves under South Carolina law. Having failed to overcome the presumption that the transfers are valid by the presentation of admissible testimony and evidence, Respondent's Motion for Summary Judgment should not have been granted as a matter of law.

Moreover, Respondent's claim that it would be inequitable for the Estate to be deprived of the real property involved in these transactions is ludicrous. There is nothing inequitable about maintaining the status quo of more than twelve years regarding these transactions. To the contrary, it is inequitable for the Personal Representative to take real property from Appellant that Appellant and her father

purchased in good faith with valuable consideration without any return of the money paid by Appellant and her father. It is also further inequitable for the Estate to be deeded these real properties and to require they be re-distributed under the Will almost 40 years after their original distribution and after six of Weekley's eight beneficiaries have passed away. The Estate Administration requirements created by this Order at this stage impose a nearly insurmountable burden on both this Estate and on the estates of Weekley's now deceased beneficiaries.

CONCLUSION

Summary judgment is a drastic remedy that should not have been invoked in this case. Although this matter has been pending for an inordinate amount of time, Respondent's Motion for Summary Judgment was premature and the Probate Court's order granting Respondent's Motion for Summary Judgment is unsupported by the record. As an initial matter, this lawsuit should be barred by Respondent's failure to meet her burden of proof in support of a finding of summary judgment as well as her acquiescence to the transfers over several years, and delay in asserting any claim within a reasonable period of time. Most importantly, there are material facts in dispute that Respondent did not resolve by any evidence in the record, which precludes summary judgment. Finally, the Probate Court did not have the requisite jurisdiction over the subject matter of this action to issue the Orders now being contested.

For these and the foregoing reasons, and any other reason supported by the Record, the Circuit Court's Order upholding the Probate Court's grant of Summary Judgment in favor of the Respondent should be OVERTURNED.

Respectfully submitted,

JOLLEY LAW GROUP, LLC



Kelly M. Jolley, SC Bar # 72573
Michael C. Cerrati, SC Bar # 78011
Post Office Box 22230
Hilton Head Island, SC 29935
(843) 681-6500 phone
(877) 513-3444 fax

McNAIR LAW FIRM, P.A.

Amanda A. Bailey, SC Bar #71085
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107

Attorneys for Appellant

Hilton Head Island, South Carolina

Date: February 15, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Civil Action No. 2015-001721

RECEIVED
FEB 17 2016
SC Court of Appeals

Estate Of Willie G. Weekley, Deceased, By Its Personal
Representative, Betty W. Denney,.....Respondent,

v.

L.C. Weekley, Laura Weekley Segel, Individually and as
Personal Representative of the Estate Of William James Weekley,
Deceased, Peter Saad as Personal Representative of Mary Elizabeth
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth
Saad Trust,

Of whom Laura Weekley Segel, Individually And As Personal
Representative Of The Estate Of William James Weekley, Deceased,
is the.....Appellant.

CERTIFICATE OF COUNSEL

I, Kelly M. Jolley, hereby certify that I have served the Appellant's Final Brief
and that it is in compliance with Rule 211(b) SCACR in that no changes were made
excepting references to the Record on Appeal and correction of typographical errors and
misspellings.

February 16, 2016

JOLLEY LAW GROUP, LLC

By:

Kelly M. Jolley
Kelly M. Jolley (SC Bar # 62573)
Michael C. Cerrati (SC Bar # 78011)
Post Office Box 22230
Hilton Head Island, SC 29935
(843) 681-6500 phone
(877) 513-3444 fax

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

FEB 17 2016

SC Court of Appeals

The Honorable Perry M. Buckner, III, Circuit Court Judge.

Civil Action No. 2015-001721

Estate Of Willie G. Weekley, Deceased, By Its Personal
Representative, Betty W. Denney,.....Respondent,

v.

L.C. Weekley, Laura Weekley Segel, Individually and as
Personal Representative of the Estate Of William James Weekley,
Deceased, Peter Saad as Personal Representative of Mary Elizabeth
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth
Saad Trust,

Of whom Laura Weekley Segel, Individually And As Personal
Representative Of The Estate Of William James Weekley, Deceased,
is the.....Appellant.

PROOF OF SERVICE

I, Kelly M. Jolley, hereby certify that I served the Appellant's Final Brief and
Certificate of Counsel by depositing a copy of it in the United States Mail, postage
prepaid, on February 16, 2016, addressed to the counsel of record, at the following
address:

G. Hamlin O'Kelley, III, Esq.
Buist, Byers, & Taylor, LLC
652 Coleman Blvd., Suite 200
Charleston, SC 29464
Attorneys for Respondent

JOLLEY LAW GROUP, LLC

February 16, 2016

By: Kelly M. Jolley
Kelly M. Jolley (SC Bar # 72573)
Michael C. Cerrati (SC Bar # 78011)
Post Office Box 22230
Hilton Head Island, SC 29935
(843) 681-6500 phone
(877) 513-3444 fax
Attorneys for Appellant