

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-07-001980

IN RE: ELEANOR MCCARTHY )  
LENAHAN TRUST under agreement )  
Dated July 12, 2001 )

**RECEIVED**

APR 10 2017

SC Court of Appeals

KATHLEEN SUZANNE HESLIN and )  
MAUREEN THERESA MOSELY, in )  
their capacities as Co-trustees of the Eleanor )  
McCarthy Lenahan Trust under agreement )  
dated July 12, 2001, )

Petitioners, )

v. )

**SUPPLEMENTAL ORDER**

MARY KATHLEEN LENAHAN, )  
individually and in her capacity as Trustee )  
of the Art. X(35) MKL Trust Share UAD )  
071201, JEAN MARIE QUALLIU, JOAN )  
ELEANOR DEMAIO, and CHRISTINE )  
ANN LENAHAN, )

Respondents. )

**THIS ORDER SHALL** serve as supplement to and clarification of this Court's Order, filed February 3, 2017, granting Respondents', Mary Kathleen Lenahan, individually and in her capacity as Trustee of the Art. X(35) MKL Trust Share UAD 011201, and Jean Marie Qualliu, Motion for Partial Summary Judgment.

Respondents by written motion had moved for an order dismissing Petitioners' second cause of action and a determination by the Court that Respondents' submission of complaints regarding one of Petitioners' counsel with the South Carolina Office of Disciplinary Counsel (the "ODC") did not and could not violate a trust agreement's no contest restriction justifying Petitioners' removal of Respondents as trust beneficiaries and did not breach a private agreement between

Petitioners and Respondents. The hearing on the Respondents' Motion for Partial Summary Judgment, along with Respondents' Motion to Amend the Answer and Petitioners' Motion to Amend the Complaint, was held on February 2, 2017. Present at the hearing were Sean Michael Bolchoz, Esquire, attorney for Petitioners, and Kelly M. Jolley, Esquire, attorney for Respondents. On February 3, 2017, this Court issued a Form 4 order granting Respondents' Motion for Partial Summary Judgment, Respondents' Motion to Amend the Answer, and Petitioners' Motion to Amend the Complaint (the "Order"). On February 10, 2017, Petitioners filed a Motion for Reconsideration, Alteration and/or Amendment. For the reasons stated herein, Petitioners' motion is granted in part.

Petitioners argue that the Order is in error and unclear for several reasons. Petitioners' arguments and this Court's response to each are set forth below:

1. The Order is in error and/or unclear in that it identifies no specific basis or grounds for the grant of partial summary judgment to Respondents Mary Jean Lenahan and Jean Marie Qualliu ("Respondents"), sets forth no reasoning for the ruling, and points to no evidentiary material as support for the ruling.

Respondents' motion for partial summary judgment did not end the case and this Court's Form 4 order was not issued in error. Nonetheless, for the sake of clarity, this Court grants Petitioners' motion in part and provides the following grounds for the Court's earlier grant of partial summary judgment to Respondents. In their Petition, Petitioners' complain that Respondents violated a no contest restriction contained in the Fourth Amendment and Restatement of Trust Agreement of Eleanor McCarthy Lenahan, dated February 22, 2012 (the "Trust Agreement"), as well as a private agreement between the parties, defined as the Agreement and Release in the Petition, by filing letters of complaint with the ODC. Respondents argue that these letters were solely regarding Petitioners' counsel Douglas Delaney and that they should be granted summary judgment on Petitioners' first cause of action for a

declaratory judgment insofar as that claim is based on the allegation that Respondents' actions, including their communications with the ODC, constituted and constitute a violation of Article XI of the Trust Agreement. Respondents also argued that they should be granted summary judgment on all of Petitioners' second cause of action for a breach of contract, which contends that the "proceedings" initiated by Respondents in the ODC constituted and constitute a violation of the Agreement and Release.

This Court finds as a matter of law that Respondents' letters of complaint to the ODC did not constitute a contest of the Trust Agreement and did not breach the Agreement and Release between the parties. The ODC's jurisdiction is strictly limited to complaints involving attorneys and judges and the ODC has no jurisdiction over trust contests or anyone other than judges or lawyers, and it has no authority to alter the administration or handling of a trust. Complaints to the ODC, regardless what any individual may fear, are privileged and, due to the limited jurisdiction of the ODC, cannot harm a person who is neither an attorney nor a judge. Additionally, Lawyer Disciplinary Enforcement Rule 13 included in Rule 413, South Carolina Appellate Rules, provides that all communications from a complainant to the Commission of Lawyer Conduct and Office of Disciplinary Counsel are absolutely privileged and grants complainants with immunity from a civil suit related to such communications. As stated in Rule 13:

Communications to the Commission, Commission counsel, disciplinary counsel, or their staffs relating to misconduct, incapacity, or the inability to participate in a disciplinary investigation or assist in the defense of formal proceedings and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit predicated thereon may be instituted against any complainant or witness.

SCACR Rule 413.

Furthermore, it is well settled in South Carolina that public policy is against enforcing no contest clauses, especially where – as in this instance – probable cause exists for the contest based on justice and morality. Individuals have a right to complain to the ODC about the harm they believe they have received due to the actions of counsel. Trustees should not be able to retaliate against beneficiaries who file confidential claims against the legal counsel of trustees and should not be able to use those privileged letters to the ODC as grounds for refusing to make trust distributions to the beneficiaries or for charging all legal fees to the complaining beneficiaries. Therefore, insofar as the no contest provision in the Trust Agreement would disinherit Respondents based on their initiating a complaint with the ODC, that no contest provision is void as against public policy.

Lawyer Disciplinary Enforcement Rule 13 included in Rule 413 also bars Petitioners' claim that the Respondents' letters to the ODC breached the Agreement and Release. In addition, the Agreement and Release does not contain any provision prohibiting Respondents from filing grievances against Petitioners' counsel. Even if such a provision were included in the Agreement and Release, that provision would be void as against public policy and unenforceable. As a result, this Court finds as a matter of law that Respondents' initiation of the ODC "proceedings" and complaint letters to the ODC cannot serve as the basis for any liability. Accordingly, this Court grants Respondents partial summary judgment on Petitioners' declaratory judgment action and determines that Respondents' initiation of a proceeding with the ODC and letters of complaint with the ODC did not violate the no contest restriction in the Trust Agreement. Additionally, this Court grants Respondents summary judgment on Petitioners' second cause of action and finds that Respondents did not breach the Agreement and Release by sending letters of complaint to the ODC.

2. The Order is in error and/or unclear in that it appears to disregard and conflict with this Court's prior order, dated April 18, 2016, denying the Respondents' motion to dismiss, which motion was based on the same legal grounds as the Respondents' motion for partial summary judgment.

This Court's April 18, 2016, Form 4 Order denying Respondents' motion to dismiss the Petition, also based on Lawyer Disciplinary Enforcement Rule 13 included in Rule 413, did not establish the law of the case nor does it preclude this Court from granting Respondents' motion for summary judgment for the reasons set forth above. Accordingly, Respondents' motion for reconsideration on this ground is denied.

3. The Order is in error and/or unclear in that, by ruling that "Defendants' Motion for Partial Summary Judgment is hereby granted," it appears to grant all relief requested by the Respondents in their motion for partial summary judgment, which relief includes a request for "an Order dismissing Petitioner's second cause of action" for breach of contract, even though the Order grants the Petitioners' motion to amend their original petition, which amended petition also includes a cause of action for breach of contract.

South Carolina Rule of Civil Procedure 15(a) requires that leave to amend a complaint "be freely given if justice so requires..." and South Carolina Courts interpret this rule liberally. "Leave to amend pleadings pursuant to Rule 15 SCRPC, shall be liberally and freely given when justice so requires and does not prejudice any other party." *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (S.C. App. 1998). "This rule strongly favors amendments and the Court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (S.C. App. 1987).

Respondents did not argue against the amendment by the Petitioners, other than alleging that the Court should not allow Petitioners to add a claim for defamation based solely on Respondents' communications with the ODC. This Court found that no prejudice would inure against the Respondents and determined that justice required the Court to allow Petitioners'

proposed amendment. Accordingly, this Court granted Petitioners' Motion to Amend. The grant of Petitioners' Motion to Amend in no way reverses this Court's grant of partial summary judgment to the Respondents, which still applies to the causes of action set forth in Petitioners' Amended Petition and any other future pleadings in this matter. Therefore, Petitioners' motion for reconsideration on this ground is denied.

4. The Order is in error and/or unclear in that it appears to grant the requested relief of dismissal of the entire breach of contract cause of action, notwithstanding that, in their motion for partial summary judgment, Respondents also indicate they are only seeking summary judgment as to the issue of whether the Office of Disciplinary Counsel (ODC) complaints can "breach a private agreement between [the parties]."

Respondents stated in their motion for Partial Summary Judgment that the "motion seeks the complete dismissal of Petitioners' second cause of action and a determination by the Court that Respondents' initiation of a proceeding with the ODC did not violate the no contest restriction of the Trust Agreement." Motion for Partial Summary Judgment p. 2. Additionally, both in their motion and at the hearing on the motion, Respondents argued that the entire second cause of action for breach of contract was based on Petitioners' contention that the "proceedings" Respondents initiated at the ODC by submitting their complaint letters constituted a violation of the Agreement and Release. Respondents' argument and request for relief encompassed all of Petitioners' second cause of action for breach of contract and this Court's Order granted Respondents summary judgment on Petitioner's entire breach of contract action as requested by Respondents. Accordingly, Petitioners' motion for reconsideration on this ground is denied.

5. The Order is unclear in that it grants the Petitioners' motion to amend their original pleadings to include a claim for defamation against the Respondents based solely upon the ODC proceedings, while apparently ruling at the same time that the ODC proceedings, or materials from the ODC proceedings, cannot serve as the basis for any part of Petitioners' other two causes of action.

As set forth above, this Court follows precedent in allowing the liberal amendment of pleadings. However, in granting Petitioners leave to amend their petition, this Court was not ruling and has not ruled on the validity or appropriateness of the causes of action proposed by Petitioners in their Amended Petition. Therefore, Petitioners' motion for reconsideration on this ground is denied.

Accordingly, Petitioners' Motion for Reconsideration, Alteration and/or Amendment is GRANTED IN PART and DENIED IN PART as set forth above.

IT IS SO ORDERED.

\_\_\_\_\_  
Carmen T. Mullen  
Circuit Judge for the Fourteenth Circuit

March \_\_\_\_, 2017  
Beaufort, South Carolina



Beaufort Common Pleas

**Case Caption:** Kathleen Suzanne Heslin , plaintiff, et al VS Mary Kathleen Lenahan ,  
defendant, et al  
**Case Number:** 2015CP0701980  
**Type:** Order/Other

So Ordered

s/Carmen T Mullen 2142