

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) FIFTEENTH JUDICIAL CIRCUIT

)

CASE NO.: 2017-CP-26-8333

Stephanie Nicolaides (f/k/a Stephanie De Rosa) and Jennifer Weydert (f/k/a Jennifer De Rosa),

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Plaintiffs,

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ORDER

v.

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Mary A. De Rosa (f/k/a Mary C. Northam), in her capacity as Trustee of the Douglas De Rosa Trust, as Attorney-in-Fact for Douglas De Rosa, and Individually,

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Defendant.

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SC Court of Appeals

On March 26, 2018, hearings were held before the below-signed judge on the Motion to Amend of Plaintiffs Stephanie Nicolaides and Jennifer Weydert and the Motion to Quash Subpoena to Morgan Stanley Smith Barney, LLC of Defendant Mary A. De Rosa. Plaintiffs were represented by E. Brandon Gaskins, and Defendant was represented by Benjamin Baroody. Based on the arguments and materials presented to the Court, Plaintiffs' Motion to Amend is **GRANTED**, in part, and **DENIED**, in part, and Defendant's Motion to Quash is **GRANTED**, in part, and **DENIED**, in part.

DISCUSSION

This case arises from disputes relating to Douglas De Rosa Trust (the "Trust"). Plaintiffs are the daughters of Mr. De Rosa, and Defendant was married to Mr. De Rosa prior to his death. The Amended Petition in this action was filed in Horry County Probate Court on August 15, 2016. In the Amended Petition, Plaintiffs asserted claims against Defendant for breach of fiduciary duty and breach of trust based on actions allegedly taken by Defendant in her capacity

as attorney-in-fact for Mr. De Rosa and as trustee of the Trust. This case was removed to the Court of Common Pleas in the Fifteenth Judicial District on December 15, 2017.

### **I. Motion to Amend**

Following Defendant's amendment to her answer to the petition in which she denied acting in the capacity of trustee during Mr. De Rosa's lifetime and following the deposition of Defendant, Plaintiffs moved on February 6, 2018 to amend the complaint to assert additional causes of action for constructive trust and interference with expectancy of inheritance. Defendant consents to the amendment adding the claim for constructive trust but opposes the addition of the claim for interference with expectancy of inheritance.

Defendant's basis for opposing the amendment is that the tort of interference with expectancy of inheritance has never been recognized in South Carolina. *See Douglass v. Boyce*, 344 S.C. 5, 542 S.E.2d 715 (2001) (declining to decide whether the tort of intentional interference with inheritance should be recognized under South Carolina law). Because the tort of interference with expectancy of inheritance has not been recognized in South Carolina, the motion to amend as to that claim is denied as futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' this court has held that it may be denied where the proposed amendment would be futile.")

### **II. Motion to Quash**

On March 6, 2018, Plaintiffs served a subpoena on Morgan Stanley Smith Barney, LLC ("Morgan Stanley"), which commanded the production of certain documents and communications relating to the accounts of the Trust, which were also later distributed into separate, personal accounts of Defendant. On March 13, 2018, Defendant filed a motion to

quash the subpoena to Morgan Stanley on the basis that the date limitations on the requested documents were too broad and sought communications and financial information after the death of Mr. De Rosa on October 17, 2015. Prior to the hearing, Plaintiffs' counsel and Defendant's counsel agreed to remove Item No. 11 of Exhibit A to the subpoena.

Based on the arguments presented at the hearing, I find that those certain documents and communications relating to the accounts of the Trust up until the time at which those accounts were distributed or converted to ownership or control by Defendant are within the scope of discovery under Rule 26, SCRCP. However, all communications and documents relating to the account(s) of Defendant after the funds in the Trust were distributed or converted to ownership or control by Defendant are not relevant to this action and are not discoverable. Therefore, the subpoena should be modified accordingly.

### **ORDER**

For the reasons stated above, it is hereby **ORDERED** that:

1. Plaintiffs' Motion to Amend is granted as to the claim for constructive trust;
2. Plaintiffs' Motion to Amend is denied as to the claim for interference with expectancy of inheritance;
3. Defendants' Motion to Quash is granted, in part, and denied, in part, and is hereby modified as follows:
  - a. Morgan Stanley shall be required to produce all documents, communications, and materials responsive to Items Nos. 1-6 and 8-10 of Exhibit A to the subpoena under the limitations set forth herein above, namely that no records shall be produced containing communications or activity following the distribution or conversion of the Trust to ownership or control by Defendant.
  - b. Morgan Stanly shall not be required to produce documents, communications, or materials in response to Items Nos. 7 and 11 of Exhibit A to the subpoena.

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Judge Larry B. Hyman, Jr.  
Circuit Court Judge, Fifteenth  
Judicial Circuit



Horry Common Pleas

**Case Caption:** Stephanie Nicolaides , plaintiff, et al VS Mary A De Rosa ,  
defendant, et al  
**Case Number:** 2017CP2608333  
**Type:** Order/Other

So Ordered

s/ Larry B. Hyman 2152