

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

In the Matter of the Estate of Harriet Kathleen
Henry Tims,

Decedent,

SAMUEL H. TIMS, individually and as a Co-
Personal Representative of the Estate of Harriet
Kathleen Tims,

Petitioner,

vs.

MICHAEL TIMS, individually and as Co-
Personal Representative of the Estate of Harriet
Kathleen Tims and DEBORAH T. KRANE,
individually and as Co-Personal Representative
of the Estate of Harriet Kathleen Tims,

Respondents.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2017-CP-07-01180

**ORDER ON CROSS SUMMARY
JUDGMENT MOTIONS**

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THIS MATTER came before the Court on October 9, 2017 for a hearing on Respondent Deborah T. Krane's Motion for Summary Judgment, filed September 5, 2017, and Respondent Michael Tim's Motion for Partial Summary Judgment filed September 27, 2017¹. Having reviewed the Motions, memoranda in support and opposition thereof, filings in this matter and considered the arguments of Counsel, for the reasons contained herein, Respondent Krane's Motion for Summary Judgment is denied and Respondent Michael Tims' Motion for Partial Summary Judgment is granted.

¹ Petitioner Samuel Tims also filed a Motion for Summary Judgment on October 4, 2017 but subsequently withdrew the motion on October 10, 2017.

FACTUAL AND PROCEDURAL HISTORY

The parties in this action are siblings. A dispute has arisen between them involving real property located on Cloverdale² Drive in Beaufort County, South Carolina ("Cloverdale property"). The property in question is a 26.89 acre tract that was originally acquired by Respondent Michael Tims ("M. Tims") in 1993. It is uncontested that M. Tims purchased the property with his own funds. Resp't. M. Tims' Aff. ¶ 3.

The parties also agree that prior to the death of their mother, Harriet Kathleen Henry Tims ("Decedent"), she entered into a Land Exchange Agreement ("LEA") regarding the subject property with M. Tims. Ex. A, Am. Pet. At the time the LEA was executed on November 14, 2012, M. Tims was in danger of losing the property in question to foreclosure. *See e.g.* Resp't. M. Tims' Aff. ¶ 4; Res't Krane Mem., Oct 5, 2017. Because M. Tims was unable to refinance the property in his own name, the Decedent agreed that if the property were placed in her name, she would secure a loan from Palmetto Savings Bank to pay off M. Tims' existing Note with MCAS Federal Credit Union. Resp't. M. Tims' Aff. ¶ 6.

On November 14, 2012, the parties simultaneously executed a Deed to Real Estate, transferring title from M. Tims to the Decedent "in consideration of the sum of ONE and 00/100ths (\$1.00)." Ex. B, Am. Pet. The next day, November 15, 2012, Decedent executed a Promissory Note and Mortgage on the subject property. The Promissory Note was in the amount of Sixty-five Thousand, Two Hundred Eighty Dollars (\$65,280). Ex. C, Resp't Krane Aff. Thereafter on November 15, 2013, Decedent and Respondent M. Tims co-signed on a second loan secured by the Cloverdale property, the purpose of which was to invest in M. Tims' business located on the

² Beaufort County Tax Map Ref: R700-038-00-0052-000

subject property. Ex. E, Resp't Krane Aff. The Decedent then died on February 14, 2016 with the Cloverdale property in her name.

On March 4, 2016, following an informal application for appointment, Decedent's three children, Petitioner Samuel Tims ("S. Tims"), and Respondents M. Tims and Deborah T. Krane ("Krane") were appointed as co-personal representatives of her estate. *See* Beaufort County Probate Court Case No. 2016-ES-07-00213.

On May 19, 2017, Petitioner S. Tims filed a Summons and Petition for Declaratory Relief with the Beaufort County Probate Court. The Petition for Declaratory Relief was amended on May 22, 2017 and asks the Court to "inquire into the matters ... [and] determine the intent of the decedent when she executed the Land Exchange Agreement" pertaining to the Cloverdale property and enter a judgment declaring the rights of the parties involved in this action. Respondent M. Tims joined Petitioner's declaratory action in his Answer filed May 30, 2017.

On June 6, 2017, Respondent Krane filed a Motion to remove to the Circuit Court with her Answer asserting a Counterclaim and Crossclaims as well as demanding a jury trial on the basis that the amount in controversy is at least five thousand dollars in value. S.C. Code Ann. §62-1-302(d)(3). On June 13, 2017, the Beaufort County Probate Court issued an Order granting removal of Petitioner's action for declaratory relief, including all claims asserted therein by any party and retaining exclusive jurisdiction over the administration of the Estate and any other formal proceedings pending within the estate.

STANDARD OF REVIEW

Summary judgment is a drastic remedy that should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is appropriate when "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 and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The nonmoving party must come forward with specific facts showing a genuine issue for trial. *Id.* If not, summary judgment, if appropriate, and shall be entered against him. Rule 56, SCRPC.

ANALYSIS

I. Applicability of Nonclaim Statute

Krane takes the position that the Cloverdale property is an asset of the Estate of Harriet Kathleen Henry Tims, because the Decedent held title to the subject property at the time of her death. It is undisputed that neither Petitioner S. Tims nor Respondent M. Tims presented any claim against the estate within one (1) year of decedent's death relating to the subject property. Due to the non-moving parties' failure to file a claim against the estate within this time period, Respondent Krane claims to be entitled to summary judgment as a matter of law regarding any obligation of the Estate to return the property in question because these claims are now barred by South Carolina Probate Code's nonclaim statute.

In South Carolina, all claims against an estate, whether due or to become due, absolute or contingent, founded on contract or other legal basis must be brought within one (1) year of the Decedent's death or eight (8) months after the first publication of notice. S.C. Code Ann. § 62-3-803. This statutory bar is not all encompassing. With respect to the estates of decedents and protected persons, the term claims "includes liabilities of the decedent ... whether arising in

contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent." S.C. Code Ann. § 62-1-201. However, the Probate Code expressly excludes disputes regarding the title of a decedent to specific assets alleged to be included in the estate. *Id.* See also *Matter of Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993) (dispute over title to a gun was not a claim for purposes of nonclaim statute).³

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

Because this action is one in which the dispute involves title to the Cloverdale property, property which Krane alleges to be included in the Decedent's estate, the nonclaim statute does not apply. Accordingly, Petitioner S. Tims and Respondent M. Tims' action is not time barred and Krane's Motion for Summary Judgement is denied.

³ Similarly, courts in other jurisdictions have generally found that disputes over title to specific items of real or personal property are not "claims" under statutory counterparts to S.C. Code Ann. § 62-3-804. See, e.g., *Matter of Estate of Powers*, 552 N.W.2d 785, 787 (N.D. 1996) (non-claim statute is not applicable to dispute involving title to vehicle asserted by virtue of joint tenancy interest); *In re Estate of Renczykowski*, 409 N.W.2d 888, 891 (Minn.App.1987) (claim for farm equipment and machinery commenced before decedent's death not barred by nonclaim statute); *Labayog v. Labayog*, 83 Hawai'i 412, 927 P.2d 420, 441 (App.1996) (motion to enforce divorce decree ordering deceased husband to convey property to children was a demand regarding title of decedent and not subject to the nonclaim statute).

II. Resulting and/or Constructive Trust

Respondent M. Tims claims entitlement to summary judgment on the issue of whether a resulting or constructive trust is or was created by the LEA and other agreements between the parties to the LEA. The evidence required to establish either a constructive or resulting trust must be clear, definite, unequivocal, and convincing. *Hodges v. Hodges*, 243 S.C. 299, 306, 133 S.E.2d 816, 819 (1963).

a. Resulting Trust

A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason, is titled in the name of another. *McDowell v. S.C. Dep't of Social Servs.*, 296 S.C. 89, 370 S.E.2d 878 (1987). Generally, when real property is conveyed to one person but the consideration is paid by another, a presumption arises that the party who paid for it intended to benefit himself, and a resulting trust is created. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002); *Caulk v. Caulk*, 211 S.C. 573, 43 S.E.2d 600 (1947). This presumption may be rebutted and the actual intention shown by parole evidence. *Larisey v. Larisey*, 93 S.C. 450, 77 S.E. 129 (1913); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248-9, 489 S.E.2d 472, 475 (1997).

The determination of whether a resulting trust should be imposed is specific to the time of the transaction. South Carolina trust law is clear that a resulting trust "arises at the time the purchase is made. The funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Hodges v. Hodges*, 354 S.C. 299, 306-307, 133 S.E.2d 816, 819-820 (1963)(emphasis added).

It is undisputed that the property in question was transferred with the sole purpose of preventing its foreclosure. The record establishes that Respondent M. Tims purchased the property

in 1993 and in 2012 had an outstanding balance owed on the property of approximately Sixty-five Thousand and No Dollars (\$65,000.00). A recent appraisal⁴ on the subject property values it at Four Hundred Fifteen Thousand and No Dollars (\$415,000). These facts establish Respondent M. Tims, having possessed title to the property for almost twenty years, amassed considerable equity in the property, although the exact amount is unknown. After having paid the majority of the purchase price, M. Tims then placed title in his mother's name for nominal consideration in the amount of One Dollar (\$1). Thereafter, Respondent M. Tims continued to occupy the property and operate his business thereon, made all loan payments and paid expenses related to the property. Resp't M. Tims' Aff. These facts give rise to the presumption that M. Tims intended to benefit himself and a resulting trust was created.

Evidence to rebut the presumption of resulting trust must pertain to "the actual intent of him who pays the purchase price at the time of the transaction and limited according to his intention at that time..." *Larisey* at 450. Krane argues the LEA is "[a]t best, it is a contingent contract or agreement between Michael Tims and the decedent." Resp't. Krane Mem. Oct 5, 2017. This Court disagrees. The LEA states unequivocally that (1) Son (M. Tims) is the owner of the property; (2) Son (M. Tims) is indebted to MCAS Beaufort; (3) Mom (Decedent) will secure financing to pay off MCAS; (4) that Son (M. Tims) will deed the title of the property to Mom (Decedent) in Order to have a first Mortgage on the premises placed in her name.

Rather than rebut the presumption of a resulting trust in the instant case, the agreement supports the conclusion that at the time of the transfer, the Decedent was to hold the property in trust for his benefit. The Decedent's financial intervention and obligation to pay off Respondent

⁴ The appraisal is dated Feb 14, 2016. The subject property was appraised as vacant land, and does not include any buildings on the property. *See* Beaufort County Probate Case No. 2016-ES-07-00213 at 260.

M. Tims indebtedness equates to a loan from Decedent to M. Tims. "Where a transfer of property is made to one person and the purchase price is advanced by him as a loan to another, a resulting trust arises in favor of the latter, but the transferee can hold the property as security for the loan." *Campbell v. Campbell*, 300 S.C. 68, 386 S.E.2d 305 (1989). There is no evidence that the parties intended the Decedent have an ownership interest in the subject property. This inference is further supported by language in the LEA which anticipates Mom being repaid for any monies expended upon the sale of the subject property and the property being deeded back to M. Tims at that time as his primary residence. Ex. A, Am. Pet.

Krane alleges Decedent paid significant sums of money either personally or through Ridings Corp.⁵ for improvements to the Cloverdale property and that she made all payments on the 2013 loan. See Resp't. Krane Aff. ¶7-10. "[E]vents subsequent to the purchase of the property and the transfer of the title may be considered in determining if a resulting trust was raised where they throw light on the intention with which the purchase was made," however, what is essential to the creation of a resulting trust is that the consideration for the purchase be paid at or before the time of the original transaction by the person claiming the benefit of the trust. *Ex parte Stokes*, 256 S.C. 260, 264–65, 182 S.E.2d 306, 308 (1971). At most, these facts give rise to the possibility that the Decedent may have an equitable interest in the property but it does not serve to rebut by clear and convincing evidence the presumption of a resulting trust in favor of Respondent M. Tims.

Viewing the evidence in the light most favorable to the non-moving party, the evidence clearly establishes Respondent M. Tims' paid all or some of the purchase price prior to the transfer and, in titling the property in the Decedent's name, intended to benefit himself. Respondent Krane

⁵ According to Resp. Krane, Decedent is the sole shareholder of Ridings Corporation. Resp't. Krane Aff. ¶ 2.

has failed to rebut the presumption of a resulting trust. There exists no genuine issue of material fact regarding the existence of a resulting trust and Respondent M. Tims' Motion for Partial Summary Judgment is granted.⁶

b. Constructive Trust

Because this Court finds the Decedent is the trustee of a resulting trust in favor of her son, Respondent M. Tims, it need not address the applicability of a constructive trust on these facts.

III. Jury Trial

Respondent M. Tims seeks an Order of this Court striking Respondent Krane's request for a jury trial on the basis that the complaint is equitable and her counterclaims/crossclaims are legal and permissive. Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (2004). An action to determine a resulting trust sounds in equity. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (2002). Defendant in action begun in equity who asserts permissive counterclaim that is legal in nature, is deemed to have waived right to jury trial on issues raised by counterclaims. *North Carolina Federal Sav. & Loan Asso. v DAV Corp.*, 294 SC 27, 362 SE2d 308. (1987). Respondent Krane's counterclaims are permissive as they involve claims regarding the handling of the Estate. Furthermore, cross-claims are always permissive and by asserting those, a party in action begun in equity loses any right it might otherwise have to jury trial on issues that cross-claims raise. *Id.* Accordingly, Respondent's Motion to strike Respondent Krane's request for a jury trial is granted.

⁶ In finding a resulting trust was created, the Court does not make any finding regarding what equitable interest, if any, the Decedent had in the subject property at the time of her death.

CONCLUSION

For the reasons stated herein, the Court finds as follows:

1. Respondent Krane's Motion for Summary Judgment barring Petitioner and Respondent M. Tims' claims on the basis of the nonclaim statute is DENIED.
2. Respondent M. Tims' Motion for Partial Summary Judgment regarding the existence of a resulting trust in his favor is GRANTED.
3. Respondent M. Tims' Motion for Partial Summary Judgment striking Respondent Krane's request for a jury trial is GRANTED.

IT IS SO ORDERED.

CARMEN TEVIS MULLEN
Fourteenth Judicial Circuit

_____, 2018
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Samuel H Tims VS Michael Tims

Case Number: 2017CP0701180

Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142