

to the various family members seeking to intervene in this matter, did not represent any current parties to this action, he was provided a chance to argue against the motion for summary judgment.

For the reasons stated herein, Segel's Motion for Summary Judgment is granted.

This matter originally came before the Circuit Court upon removal from the Probate Court in or around 2012. This case was initiated in 2006 by Betty Weekley Denney (hereinafter "Denney"), in her capacity as Personal Representative of the Estate. Willie G. Weekley (hereinafter "Weekley") died in 1977, and his Estate has been open since 1983. Weekley devised "shares" in approximately 300 acres of land to his children—William J. Weekley, Doris Weekley Zahler, Lucas Carroll ("L.C.") Weekley, Jasper Josiah Weekley, Margaret Weekley Shinar, Elizabeth Weekley Saad, Ruth Weekley Chakides, and Betty Weekley Denney (collectively, the "Property Owners"). This dispute centers on a right of first refusal provision contained in Weekley's Will. The right of first refusal is provided in Section VII of the Will as follows:

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

(Will, Section VII)(emphasis added).

Denney's action sought to set aside certain transactions between the Property Owners and to return those parcels of real property to the Estate for redistribution. Denney's Complaint alleges that those certain real property transactions violated the terms of Weekley's Will because all Property Owners did not receive the notice or right of first refusal required under the Will. By order of this Court on January 17, 2017, Denney was subsequently removed as Personal

Representative of the Estate pursuant to S.C. Code Section 62-3-611 *et seq.*, and Ms. Ruff was named successor Personal Representative of the Estate. Since Denney brought this action solely in her capacity as Personal Representative for the Estate, she is no longer a party to this action although her name is still in the caption.

Segel argued that summary judgment should be granted because all disputed transactions were completed and duly recorded between 1997 and 2000 and that this action, which was filed on June 14, 2006 violates the statute of limitations and should be barred by the doctrines of laches and estoppel. Segel presented evidence at the hearing that each Property Owner had notice of the transactions that are disputed in this action as a matter of law because the transactions were filed with the register of deeds of Hampton County, South Carolina, each received further notice from accountings, annual distribution summaries, and a deed to Mixon Zahler, Jr. signed by the then current Property Owners and filed in 2000, and from Weekley family meetings held regarding the tomato leases and division of the property.

Segel argued that the disputed transactions are valid and cannot be overturned because transfers by recorded deeds are presumed legally valid by operation of law, the Personal Representative of the Estate does not dispute the transactions, and no party has produced evidence or argument in favor of finding the recorded deeds invalid. Segel also argued that the Property Owners are barred from bringing this action because (1) the statute of limitations has now expired against any action to recover an interest in real property pursuant to South Carolina Code Section 15-3-340; (2) the equitable doctrine of laches bars this claim, as the disputed transactions were completed between 1997 and 2000, all parties had notice of the transactions, and this action was not filed until July 14, 2006; and (3) the doctrine of estoppel prohibits the remedy sought in the complaint because the Property Owners had notice of the disputed transactions, acquiesced in the transfers for many years, took no action or raised no issue with the transfers until 2006, and Segel and her father relied upon their conduct in their decisions to expend substantial sums of money on the property at issue. Finally, Segel argued that the right of first refusal provision contained

in the Will itself is invalid under South Carolina law because it does not contain a time limit for its enforceability.

Ms. Ruff, as Personal Representative of the Estate, agreed at the hearing that the right of first refusal provision was invalid under South Carolina law and that the Estate does not dispute the transactions at issue in the Complaint in this matter. Provided an opportunity to argue against the motion, Mr. O'Kelley argued that two affidavits submitted prior to the hearing created a question of fact regarding whether the Property Owners had notice of the transactions.

Summary judgment "shall be rendered" when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; *see, also Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

After considering the arguments at the hearing and the evidence in the record, this Court finds that the right of first refusal purportedly contained in the Will is invalid as an unreasonable restraint on alienation of the property of the Estate and that the statute of limitations bars any further claimants' dispute of the transactions raised in the Complaint in this action. In construing a will, the court should strive to determine and give effect to the testator's intent. *May v. Riley*, 279 S.C. 248, 305 S.E.2d 77 (1983); *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct. App. 1997). However, pre-emptive rights, such as rights of first refusal, are subject to the rule against restraint of alienation of interest in land. *Page v. Page*, No. 2004-UP-110, (Ct. App. Feb. 24, 2004) (citing 61 Am. Jur. 2d Perpetuities and Restraints on Alienation § 110 (2002)). When the length of time the right of first refusal remains open cannot be established, the restraint on

alienation is unreasonable, and the restraint is therefore violative of public policy of this state and has no force and effect. *Page v. Page*, No. 2004-UP-110, (Ct. App. Feb. 24, 2004); *McCravey v. Otts*, 90 S.C. 447, 452, 74 S.E. 142 (1912); *Wise v. Poston*, 281 S.C. 574, 579, 316 S.E.2d 412, 415 (Ct. App. 1984). As the right of first refusal provision contained in Weekley's Will lacks any time constraint for its enforcement, I find that the provision is invalid.

Additionally, since Denney is no longer the Estate's Personal Representative and no interested party intervened in this matter before the expiration of the statute of limitations for any action by an individual for recovery of the real property transfers at issue in this litigation, I find that the expiration of the statute of limitations precludes recovery from any party.²

For these reasons, Segel's Motion for Summary Judgment is granted, and

IT IS SO ORDERED.

Carmen T. Mullen
Circuit Judge for the Fourteenth Circuit

October ____, 2018
Beaufort, South Carolina

² Having decided this matter based on the invalidity of the right of first refusal and the expiration of the statute of limitations, I decline to address Segel's additional arguments.



Hampton Common Pleas

Case Caption: Estate Of Willie Weekley VS L C Weekley , defendant, et al
Case Number: 2013CP2500295
Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142