THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas
The Honorable Jennifer B. McCoy, Circuit Court Judge
The Honorable Tamara C. Curry, Probate Judge
Charleston County

Appellate No. 2018-01680
C/A No. 2018-CP-10-05198; 2007ES1001 1 16

Elizabeth Murray as Personal Representative
of the Estate of Minnie H. Murray and Elizabeth Stylesetters,

Appellants,

v.

The Estate of William E. Murray,

Respondent.

INITIAL BRIEF OF RESPONDENT THE ESTATE OF WILLIAM E. MURRAY

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Other Authorities

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

This probate appeal involves two claims by two parties for two separate debts allegedly owed by William E. Murray at the time of his death. In an effort to provide clarity, the Respondent would restate the issues on appeal separately as to each.

Claim by the Estate of Minnie Holmes Murray

I. As to the claim made by Elizabeth Murray as Executrix of the Estate of Minnie Holmes Murray for $6,260,845.70 arising from a 1980 Settlement Agreement regarding a debt owed by Mr. Murray to Mrs. Minnie Holmes Murray at the time of her death in 1967:

A. Did the Probate Court correctly conclude that the Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries of the Estate of Minnie Murray -- her three daughters -- reached an agreement in 1992 that transferred the debt to themselves?

B. Did the Probate Court correctly conclude that any claim for any balance still owed on the 1980 debt is barred by the statute of limitations because the February 9, 2006 letter, even if authentic, did not constitute an unqualified and unequivocal acknowledgement or a clear and explicit promise to repay the debt sufficient to revive the debt?

C. Did the Probate Court correctly conclude that any claim is also barred by the doctrine of laches because Appellant/Elizabeth Murray waited more than 22 years to pursue any legal action on the debt?

Claim by Elizabeth Murray as Elizabeth Stylesetters

II. As to the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, for $538,034 for interior design services she performed for an Inn formerly owned by her Father:

A. Did the Probate Court correctly conclude that Appellant is judicially estopped from pursuing her claim based on the July 21, 2007 letter because she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life?

B. Can the grant of summary judgment on the claim of Elizabeth's Stylesetters be affirmed on the additional sustaining ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations which expired even before the Father/Mr. Murray died in 2007?

STATEMENT OF THE CASE

Appellant Elizabeth Murray is one of three daughters of Minnie H. Murray and William E. Murray. The other two daughters of that marriage are Pamela Holmes Murray, and Catherine Murray-Smith. Their Mother/Mrs. Murray, a resident of New York, died on June 18, 1967, and Father/Mr. Murray died more than 40 years later on August 7, 2007, as a resident of this State. Hilton C. Smith, Jr.[1], was appointed as Personal Representative of Mr. Murray's estate along with James Ma.[2]

Appellant/Elizabeth Murray filed two creditor's claims against her Father's estate on June 3, 2008: (1) a claim in the amount $6,260,845.70 as Executrix of her Mother's Estate[3]; and (2) a claim in the amount of $538,034.00 on behalf of her interior design company, Elizabeth's Stylesetters. [ROA ___, ___; Claims.]

Notices of Disallowance were filed on August 21, 2008, asserting that the Stylesetters claim was not a valid debt of the Decedent, and the claim asserted on behalf of the Mother's Estate was barred by the statute of limitations. [ROA ___, ___; Notice(s).] Elizabeth Murray filed Petition(s) for Allowance of the claims on September 22, 2008. [ROA ___, ___; Notice(s).]

After years of extensive litigation and discovery on a number of issues, the Estate filed a Motion for Summary Judgment on these claims on October 31, 2016. [ROA ___; Motion.] The Probate Court granted the motion by Order, dated September 28, 2017. [ROA ___; Order.] As to

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[1] Husband of daughter, Catherine.

[2]Appellant challenged the appointment of the co-Personal Representatives Mr. Murray designated in his Last Will & Testament; however, she withdrew her petition when confronted with the "Beneficial Lapse on Contest" provision of the Will.

[3] Elizabeth Murray was appointed as a successor Executrix of her Mother's Estate in 1975. [ROA ___; Claimant's MIO to Summary Judgment Ex. C.]

the claim of Elizabeth Murray as Executrix of her Mother's Estate, the Probate Court found that she lacks standing to pursue the asserted debt because any obligation would be due to the three Daughters, personally, not the Mother's Estate. In addition, the Probate Court found that any claim by the Mother's Estate was barred as a matter of law by the statute of limitations and by the equitable doctrine of laches based on a delay of 22 years in pursuing a default of the debt which occurred in 1986. As to the claim of Elizabeth's Stylesetters, the Probate Court found that Elizabeth Murray is judicially estopped from asserting her claim, which is based on a document supposedly executed by Father/Mr. Murray 14 days before his death, in view of the fact that she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life.

On October 11, 2017, the Appellants served and filed a Notice of Appeal in the Circuit Court from the September 28, 2017 Order of the Probate Court. [ROA ___; Notice of Appeal.] The Probate Court order was amended on November 21, 2017, to correct a scrivener's error. [ROA ___; Order.] The Appellants did not amend their Notice of Appeal, or file a notice of appeal from the amended order. [ROA ___; Circuit Court Docket Sheet.]

The Appellants filed a brief in the Circuit Court on January 19, 2018, and the Respondents served and filed a brief on March 20, 2018. [ROA ___, ___; Briefs]. However, the Appellants did not timely file a Record on Appeal. [ROA ___; Circuit Court Docket Sheet.] On June 8, 2018, the Respondent served and filed a motion to dismiss the appeal based on the failure to file a Record on Appeal. [ROA ___; Motion.] The Appellants then finally filed separate documents purporting to constitute the Record on Appeal. [ROA ___, ___; Appendix with Response to Motion, filed June 11, 2018; Supplemental Record on Appeal, filed June 19, 2018.] The appeal was heard by the Honorable Jennifer McCoy on June 18, 2018. Thereafter, the Circuit Court

issued its formal order affirming the Probate Court, filed August 15, 2018.[4] [ROA ___; Order.] The Appellants served their notice of appeal in the Court of Appeals on September 6, 2018. [ROA ___; Notice of Appeal.]

STATEMENT OF FACTS

Mr. Murray was a proud native of Charleston, South Carolina. He earned his law degree at the University of South Carolina, and an LLM in Taxation from Harvard. Over his career, he practiced in New York, Georgia, and South Carolina for over fifty years. In addition to being a successful attorney, Mr. Murray was also an entrepreneur and philanthropist. He was the founder and Chairman of the Board of East Bay Company which was instrumental in the revitalization of many historic areas of Charleston. Mr. Murray was involved in numerous philanthropic endeavors, including support of the Medical University of South Carolina, East West Institute, Spoleto Festival USA, Allen University of South Carolina, the Cancer Research Institute and Sloan Kettering Cancer Hospital.

Mr. Murray was first married to Minnie Holmes Murray and they had three daughters - Elizabeth Murray (1953), Pamela Holmes Murray (1951, deceased), and Catherine Murray-Smith (1954). Minnie Holmes Murray, died in 1967.[5]

During the decade preceding his death on August 7, 2007, Mr. Murray was diagnosed with Parkinson's disease and suffered a gradual decline in physical and mental abilities. During that time, he engaged the services of estate planning attorney Edward G.R. Bennett, through whom he

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[4] The Circuit Court did not rule on the Respondent's motion to dismiss the appeal based on the untimely filing of the Record on Appeal in the circuit court.

[5] Mr. Murray also had a fourth daughter, Brianna Murray, who was born in 1980.

executed a Durable Healthcare Power of Attorney and a Last Will and Testament. Also, regrettably, he had to endure through a substantial amount of family discord involving the Appellant.

During the two years preceding Mr. Murray's death, there was substantial family discord regarding the Samuel Freeman Charitable Trust (SFCT) when Mr. Murray, who was Chairman of the SFCT, removed his daughters Pamela and Elizabeth Murray as trustees. Highly contentious litigation ensued related to the administration of the SFCT. While the details of that litigation are not directly relevant to the issue before the Court, in the course of that litigation, Elizabeth Murray asserted claims that her Father was mentally incompetent and incapable of executing the removal documents. Those assertions, which are discussed in more detail below, form part of the foundation for the Probate Court's judicial estoppel ruling on the Stylesetters' Claim.

Despite Mr. Murray's generosity towards his daughters Pamela and Elizabeth Murray, they began posturing during his lifetime to challenge his estate planning. For example, in July of 2004, Mr. Murray indicated to his physician that he had been having difficulty with his daughters (Pamela and Elizabeth) and that he was concerned that they would make a "grab for inheritance." [ROA ___, ___; Estate Summary Judgment Ex. 5 ¶ 8; Ex. 6.] During 2004, Appellant Elizabeth Murray repeatedly tried to convince her father not to trust Hilton Smith, who was Mr. Murray's trusted friend, business partner and son-in-law. [ROA ___; Estate Summary Judgment Ex. 7 ¶¶ 8-12.] She consulted with lawyers about how to "remove" people who were close to her Father and ways to change her Father's estate plan. [Id. at ¶14, ¶¶22-29.]

Appellant's meddling and scheming included recording her Father and his companion, Helen Flynn, and enlisting reports from her Father's health care attendants. [ROA ___, ___; Estate Summary Judgment Ex. 8 & 9.] She even went so far as to break a lock on Mr. Murray's desk

drawer to copy his Last Will and Testament. [ROA ___, ___; Estate Summary Judgment Ex. 10 ¶ 10; see also Ex. 7 at ¶20.]

During the last months of Mr. Murray's life, Appellant's machinations escalated. Ms. Murray made allegations that Ms. Helen Flynn and son-in-law Hilton Smith (agents under this Health Care Power of Attorney) were giving Mr. Murray morphine with the intent of causing an overdose. She even was involved in calling the police to have her Father transported to the emergency room; however, the ER physicians found Mr. Murray's condition to be consistent with advanced Parkinson's disease and found Mr. Murray well cared for with no signs of abuse. [ROA ___; Estate Summary Judgment Ex. 11, 12.] Appellant even went so far as to enlist the aid of a former paramour of Mr. Murray to make allegations that Mr. Murray was "poisoned." [ROA ___; Estate Summary Judgment Ex. 13.]

Appellant's maneuvering did not stop when her Father died. She and her sister, Pamela Murray, called the police to inspect his apartment and treat it as a crime scene. [ROA ___; Estate Summary Judgment Ex. 12 pp. 3-6.] They demanded an out-of-state autopsy and toxicology study, even after the local coroner had released the body finding no evidence of foul play and without requesting an autopsy. The "independent" autopsy they demanded "revealed no evidence of injury or neglect, and toxicologic studies were not contributory." The manner of death was deemed natural. [ROA ___; Estate Summary Judgment Ex. 14.]

Further details of the pertinent facts are set forth below under the argument of the separate claims.

ARGUMENT

Standard of Review

On appeal from the final order of the probate court, the appellate courts apply the same standard of review. Matter of Howard, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "An appellate court reviews the grant of summary judgment using the same standard employed by the circuit court." Columbia/CSA–HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 411 S.C. 557, 560, 769 S.E.2d 847, 848 (2015). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that ... no genuine issue [exists] as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361–62, 563 S.E.2d 331, 333 (2002).

As the Circuit Court correctly found, the Probate Court properly applied the summary judgment standard to the undisputed facts and considered any disputed facts in the light most favorable to Elizabeth Murray. The claim of Elizabeth Murray as Executrix of her Mother's Estate was properly disallowed for lack of standing because the alleged debt had been transferred out of Mrs. Murray's estate to the three Daughters personally; and for the additional and independent ground that any claim on the debt was barred as a matter of law by the statute of limitations. As to the claim of Elizabeth's Stylesetters, the Probate Court also properly applied judicial estoppel in finding that Elizabeth Murray should be barred from asserting her claim on behalf of Elizabeth's

Stylesetters based on her repeated assertions in prior litigation that her Father lacked mental capacity in the last years of his life.

Claim by the Estate of Minnie Holmes Murray

I. THE PROBATE COURT PROPERLY GRANTED SUMMARY JUDGMENT TO THE ESTATE ON THE CLAIM MADE BY ELIZABETH MURRAY AS EXECUTRIX OF THE ESTATE OF MINNIE HOLMES MURRAY ARISING FROM A 1980 SETTLEMENT AGREEMENT REACHED DURING THE PROBATE OF HER WILL.

The Probate Court granted summary judgment to the Estate of William E. Murray on three legal grounds, each and all of which support affirmance of the order on appeal. First, the Estate of Minnie Holmes Murray lacks standing to pursue any claim on the 1980 Settlement Agreement because the beneficiaries of the Estate of Minnie Murray reached a further agreement in 1992 that transferred the debt to themselves as joint community property. The other two grounds are grounded in the decades-long delay in pursuing this debt since the default in 1986. As a matter of law, the claim is barred by the statute of limitations, and in addition, the claim is barred as a matter of equity under the doctrine of laches because Appellant/Elizabeth Murray waited so long to pursue any legal action on the debt to the extreme prejudice of the Estate.

The 1980 Settlement Agreement of Father's Debt to Mother's Estate

The following facts are incontrovertible under the evidence of record. Mr. Murray had borrowed $142,685 from his wife, Minnie Holmes Murray, and upon her death, the note became the property of her Estate. During the course of the probate of her Estate, Mr. Murray reached an agreement with the beneficiaries (his three daughters)[6] pursuant to which he agreed to (1) pay $240,000 with an 8% interest rate and a default interest of 12%, and (2) transfer a life insurance

[6] See ROA ___; Estate Summary Judgment Ex. 35 - Mrs. Murray's Will. According to the terms of her Will, a trust was to be established for the life of the three daughters.

policy to Mrs. Murray's Estate in the amount of $385,000. [ROA ___; Estate Summary Judgment Ex. 15.]

The 1980 Settlement Agreement recites that:

> COME NOW Pamela Holmes Murray Smith, Elizabeth Edwards Murray and Catherine Peronneau Murray-Smith, each both individually and as heir to her mother, Minnie Holmes Murray, (all hereinafter collectively referred to as "Daughter") and Elizabeth Edwards Murray as Administratrix DBN of the Estate of Minnie Holmes Murray (referred to hereafter as "The Estate"), and William Edwards Murray (hereinafter referred to as "Father"), and enter into this Agreement this 22 day of April 1980.
>
> ****
>
> WHEREAS, Daughters, The Estate, and Father wish to conclude the administration of the Estate of the late Minnie Holmes Murray ... and thereby to establish the trust under the Will of Mother...." [ROA ___; *Id.* p.1.]

No trust was ever established. [ROA ___; Estate Summary Judgment Ex. 36.]

Mr. Murray made six yearly payments pursuant to the 1980 Settlement Agreement – the last being on February 24, 1986. At some point, Mr. Murray also stopped paying the premiums on the life insurance policy. Although the Settlement Agreement contained an arbitration clause[7], no effort was ever made to invoke it.

The 1992 Liquidation of Mother's Estate and Transfer of Debt to the Daughters

In 1992, 25 years after Mrs. Murray died, the three Daughters reached an agreement for a final accounting and liquidation of the Mother's Estate. [ROA ___; Estate Summary Judgment Ex. 37 – In the Matter of the Settlement of the Final Account of Proceeding of Elizabeth Edwards Murray, as Executrix and Administratrix of the Estate of Minnie Holmes Murray, "Release, Refunding, Receipt and Indemnity Agreement."] This agreement expressly released and forever

[7] Ex. 15 §6 p. 5

discharged the Executrix, Elizabeth Murray, in her fiduciary capacities and individually, "for any matter or thing growing out of or in any way connected thereto or to the Trust."

Appellant testified this was a partial liquidation of the estate because there were only "parts of the estate that were liquid." [ROA ___; Estate Summary Judgment Ex. 38.] Appellant further testified that following the "partial" liquidation, according to Ms. Murray, the Estate still contained an asset worth approximately $125,000 which was an interest-bearing note unrelated to the claim in issue. [ROA ___; Estate Summary Judgment Ex. 39.]

However, as to the instant claim, the three Daughters executed an agreement on December 12, 1992, to transfer the debt owed by Mr. Murray to the three beneficiaries, jointly:

> This letter constitutes an agreement by and between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith, the three beneficiaries of the Estate of Minnie Hohnes Murray, Deceased, that the total obligation owing from William E. Murray to the Estate as outlined in a prior agreement dated April 22, 1980 between William E. Murray and the above-mentioned three beneficiaries, as well as accrued interest, penalty interest, interest owned on his loans from the New England Life Insurance policy, as well as the accrued interest thereon and other monies which may become due, shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis. Any monies remitted thereon to any one or more beneficiaries shall impose and constitute liability and obligation on that beneficiary(ies) to remit a pro-rata share to the other parties to this agreement.

[ROA ___; Ex. 37.] In a sworn affidavit submitted in this probate litigation[8], Appellant affirmatively stated that the debt under the 1980 Settlement Agreement was the property of the three Daughters: "On December 12, 1992, at the advice of Hilton C. Smith, Catherine, Pam, and I entered into a mutual agreement that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not several basis." [ROA ___; Claimant's MIO –

[8] Opposing the appointment of Hilton Smith as co-Personal Representative.

Affidavit of Elizabeth Murray, 4/3/13 ¶30.] Pamela Murray also submitted a sworn affidavit testifying to the same. [ROA ___; Claimant's MIO – Affidavit of Pamela Murray, 4/3/13 ¶29.]

A. The Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries of the Estate of Minnie Murray reached an agreement in 1992 that transferred the debt to themselves as joint community property.

The general law on standing as correctly identified by the Probate Court provides:

> Standing refers to a "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." Black's Law Dictionary 1413 (7th ed.1999). "Standing is ... that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." 1A C.J.S. Actions § 101 (2005). It concerns an individual's "sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*

Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 665 S.E.2d 237, 241 (Ct. App. 2008). Similarly, "'Generally, a party must be a real party in interest to the litigation to have standing.' Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). 'A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.' *Id.*" Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010).

Most recently, the Supreme Court has stated:

> The question of who may bring a civil action arises under Rule 17(a) of the South Carolina Rules of Civil Procedure, which provides, "Every action shall be prosecuted in the name of the real party in interest." As the court of appeals has recognized, the real party in interest is "'the party who, by the substantive law, has the right sought to be enforced.' It is ownership of the right sought to be enforced which qualifies one as a real party in interest." Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013).

Fisher on behalf of Estate of Shaw-Baker v. Huckabee, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018).

The Probate Court correctly concluded that the Estate of Minnie Holmes Murray is not the real party in interest and has no standing to pursue this claim because any debt owed under the

1980 Settlement Agreement is the community property of the three Daughters. That conclusion is supported by the language of the 1992 Agreement that the debt "shall become community property between Pamela Murray Stack, Elizabeth E. Murray and Catherine Peronneau Murray Smith on a joint, not a several basis." The conclusion is further supported by the sworn testimony of Appellant Elizabeth Murray and her sister Pamela in their April 3, 2013 affidavits that they had "entered into a mutual agreement that all obligations due under the note dated April 22, 1980 are community property between us, on a joint, not several basis."[9] Other supportive evidence is the fact during the same time frame, the Daughters executed a Release in connection with a "Final Account," liquidating assets and discharging Appellant as the PR. And, not to be overlooked, is the fact that the 1980 Settlement Agreement itself involved the Daughters in their individual capacities and expressly contemplated concluding the administration of the Estate of the late Minnie Holmes Murray.

Appellant contends that summary judgment was inappropriate with attempts to explain how the settlement agreement was reached. However, her supposed motivation for circumventing the directions of her Mother's will to create a trust and the purported advice of others are wholly irrelevant to the standing question presented in this case. Whatever their underlying intent may have been, the undisputed fact is that an agreement was reached between the sisters and the clear, unambiguous terms accomplished a transfer of the debt asset to the individual beneficiaries. In that same way, the fact that a New York probate court issued a "Certificate of Appointment of Administrator(s)" [ROA ___], in 2010 affirming that the Appellant's 1975 letter of appointment was "unrevoked and in full force" did not make any ruling on the substance of the 1992 agreement

[9] Appellant also acknowledged in the "Dear Daddy" letter discussed below that the three Daughters had agreed to share equally in all monies on this debt, and that the debt was owed to his "original daughters" as his "first three children." [ROA ___, ___, ___; Estate Summary Judgment Ex. 19.]

and cannot negate the transfer that was accomplished by that agreement. The Probate Court, as affirmed by the Circuit Court, properly considered the 1992 agreement and correctly concluded that the Appellant, as PR of her Mother's estate, has no standing to pursue any claim against Mr. Murray's estate to collect that old debt.

B. Any claim for any balance still owed on the 1980 debt is barred by the statute of limitations based on a default in 1986.

Pursuant to the Probate Code, in the absence of a waiver, "no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid." S.C. Code Ann. § 62-3-802(a). The current statute of limitations for breach of contract is three years. S.C. Code Ann. § 15-3-530(1). However, prior to 1988 -- at the time that Mr. Murray defaulted on the note in 1986 – the applicable period was six years. In any event, the statute of limitations had long expired by the time the claim was presented after Mr. Murray's death in 2007. To avoid the bar from her delay, the Appellant claims that she regularly sent default letters to her Father and that the debt was revived when Mr. Murray acknowledged and reaffirmed the debt by signing a letter written and presented to him by Elizabeth Murray in February 2006. Under settled law, the default letters did not stop the statute of limitations from running,

When the statute of limitations expires, it bars a legal action to collect the debt, but it does not erase the debt. In re Vaughn, 536 B.R. 670, 677 (Bankr. D.S.C. 2015). Stale debts may be revived by either partial payment of the debt or a signed writing. Id. (quoting S.C. Code Ann. § 15-3-120 (2015)):

> No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. But payment of any part of principal or interest is equivalent to a promise in writing.

However, any such new promise to pay "'must amount to an unqualified admission of a subsisting legal liability and must be established by evidence unambiguous and full.'" Id. (quoting Black v. White, 13 S.C. 37, 40 (S.C.1880)). "Where a new promise is relied on to recover a debt which is barred by the statute of limitations, such new promise must be a clear and explicit promise to pay the debt sued on, or such an unqualified and unequivocal admission that this particular debt is still due as will imply a promise to pay such debt, otherwise such new promise will be insufficient to warrant a recovery of such debt." Suber v. Richards, 61 S.C. 393, 402, 39 S.E. 540, 542 (1901). "'It seems to be the general doctrine that the writing, in order to constitute an acknowledgment must recognize an existing debt, and that it should contain nothing inconsistent with an intention on the part of the debtor to pay it.'" Id. at 543 (quoting Manchester v. Braedner, 107 N. Y. 346, 14 N. E. 405, 1 Am. St. Rep. 831 (1887)). *See also* 4 *Williston on Contracts* §8:20 (4th ed.); 51 Am. Jur. 2d *Limitation of Actions* §§ 301, 314. The burden of proof rests on the plaintiff who seeks to recover on a debt once barred by the statute of limitations. Cross v. Stackhouse, 212 S.C. 100, 105, 46 S.E.2d 668, 670 (1948).

The Appellant's theory of revival of the debt defaulted for 22 years before presentment as a claim in her Father's probate proceedings is founded upon a letter dated February 9, 2006 – generally referred to as the "Dear Daddy" letter. [ROA ___; Estate Summary Judgment Ex. 19.] The letter, prepared by Appellant, is a rambling seven-page document in which Elizabeth Murray generally complains about her Father's estate planning decisions and jealous anger over his intentions to make bequests to his long-time companion/life partner (Helen Flynn), his son-in-law (Hilton Smith), and his fourth daughter (Brianna); and she also expresses concern about her liability to her Mother's Estate as the executrix. She implored her Father to "formally certify below that you are in agreement with your original stated obligation to Mommy's Estate:"

> I must have you, as soon as possible, *memorialize this agreement that those monies are due, as outlined in the 1980 agreement (see attached), by you to* ***her Estate***, whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us. (Emphasis in original).
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> ****
>
> I must ask you affirm this decades old debt owed to your first three children, which you have always stated is your intention, both legally and as our father.

[ROA ___, ____; Id.]

Despite Appellant's repeatedly stated concerns in the Dear Daddy letter about needing her Father to acknowledge the debt to protect her from liability to her sisters for neglect of her fiduciary duties as Executrix of Mother's Estate, it is incredulous that Appellant did not obtain possession of the letter for safekeeping in her fiduciary capacity; nor did she present the document with her claim. It was not until several months after the PRs denied her claim (February 2009), that Appellant produced the letter that Mr. Murray's former paramour (Dana Flavin) had supposedly "uncovered" while cleaning out her office. [ROA ___, ___; Estate's Summary Judgment Ex. 20, 21.]

The Estate has presented evidence from several sources that the signature is not Mr. Murray's. Mr. Murray's long-time assistant (Sanjin Sujak), who worked for Mr. Murray during his last years testifies that the signature on the Dear Daddy letter did not match the signature known to be Mr. Murray's during his weakened condition in that time frame. [ROA ___, ___; Estate Summary Judgment Ex. 22, 27.] Mr. Sujak further testifies that he spoke with Mr. Murray the next day about the letter and he declared he had not signed it.[10] [ROA ___; Estate Summary Judgment Ex. 24.] Additionally, Ms. Mahri Givers, who served as Mr. Murray's legal secretary and

[10] In addition, there is evidence that Mr. Murray had stated on a number of occasions over the years that he did not intend to ever re-acknowledge this debt. [ROA ___, ___; Estate Summary Judgment Ex. 22, 23, 24, 25.]

executive assistant from 1987-2000, testified in a sworn affidavit that the signature on the 2006 "Dear Daddy" letter is not Mr. Murray's signature. [ROA ___; Estate Summary Judgment Ex. 11.] The Estate also presented expert opinion evidence from a Certified Forensic Document Examiner, who opined that Mr. Murray's signature on the February 10, 2006 "Dear Daddy" letter was not a genuine signature by Mr. Murray. [ROA ___; Estate Summary Judgment Ex. 29.]

The Estate challenged the authenticity of the letter based on all this evidence in its Motion for Summary Judgment, but the Probate Court did not grant summary judgment on this point. Nonetheless, the Estate affirmatively does not abandon or waive those points and maintains that the evidence supports sustaining the grant of summary judgment on this additional ground. However, assuming only for the purposes of argument on appeal that the Dear Daddy letter was executed by Mr. Murray, taking the letter itself in the light most favorable to the Appellant/Claimant, it does not constitute a clear and explicit promise to pay the debt or an unqualified and unequivocal admission that the debt was still due to imply a new promise to pay the debt under the legal standard as set forth in Suber v. Richard, supra. As the Circuit Court ruled in affirming the Probate Court:

> While the Estate presented evidence from several sources to prove that the signature on the Dear Daddy letter is not Mr. Murray's, for the purposes of the summary judgment motion, the signature was properly accepted as genuine. However, even considering the Dear Daddy letter in the light most favorable to the Appellant/Claimant, it does not constitute a clear and explicit promise to pay the debt or an unqualified and unequivocal admission that the debt was still due to imply a new promise to pay the debt under the legal standard as set forth in *Suber v. Richard*, supra. As the Probate Court correctly held: "Nowhere in the letter does it contain a statement in which it can be ascertained that by signing the letter the Decedent intended to repay the debt." The Probate Court's conclusion is supported by the analysis in *In re Vaughn*, 536 B.R. at, 677, regarding a promise that "the debt will 'come in to be paid with my other debts,' then the debt is not revived.'" (Citing *Horlbeck v. Hunt*, 26 S.C.L. 197, 201 (S.C.Ct.App.1841)). The Dear Daddy letter contains similar equivocal language anticipating that the debt may not be due until Father's death as evidenced in the language that the debt was due "whether on a currently due basis or as part of debt that will be due upon your death as a valid

> claim to the three of us." In addition, the letter contains an equivocation that the debt was due "both legally and as our father." Accordingly, in the absence of a sufficient acknowledgement, the Probate Court correctly disallowed the claim as barred by the statute of limitations.

[ROA ___; McCoy Order, pp. 9-10.]

Appellant argues that both lower courts ignored the "well-settled law of South Carolina that intent is nearly always a question of fact rather than a question of law," citing to U.S. Bank Tr. Nat. Ass'n v. Bell, 385 S.C. 364, 374, 684 S.E.2d 199, 205 (Ct. App. 2009), for the proposition that: "The determination of the parties' intent is a question of fact." However, the Appellant ignores or fails to appreciate the critical distinction that the contract in *Bell* was an ***oral*** contract. As a matter of general contract law, while parole evidence may be allowed to prove intent in the absence of a written document or where a contract is silent or ambiguous on a particular matter, the intent of written instrument must be considered on the four corners of the document. Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013). The Appellant also ignores or fails to accept further critical point that in the situation, such as this, asserted a claim under a written "new promise" as required by §15–3–120, no ambiguity is even allowed. The new promise must be a clear and explicit or an unqualified and unequivocal admission, and if there is any ambiguity or qualification, the purported new promise is not sufficient to support any recovery. Suber v. Richards, supra.

As noted, the lower courts' conclusion is supported by the analysis in In re Vaughn, 536 B.R. at, 677, regarding a promise that "the debt will 'come in to be paid with my other debts,' then the debt is not revived.'" (Citing Horlbeck v. Hunt, 26 S.C.L. 197, 201 (S.C.Ct.App.1841)). Similarly, in this case, even if Mr. Murray's signature on the rambling Dear Daddy letter could be considered an acknowledgement that he owed the Mother's Estate (or his three Daughters) any balance on the 1980 Settlement Agreement, it was not sufficient to revive the barred claim based

on the equivocal language in the Dear Daddy letter. For example, the letter anticipates that the debt may not be due until Father's death as evidenced in the language that the debt was due "whether on a currently due basis or as part of debt that will be due upon your death as a valid claim to the three of us." And similarly, the letter contains an equivocation that the debt was due "both legally and as our father." The Dear Daddy letter does not meet the requirement of a "new promise" or acknowledgement to substantiate any claim arising from the 1980 Settlement, and the Probate Court ruling on the statute of limitations issue was properly affirmed

C. Any claim still owed also is barred under the doctrine of laches because Appellant/Elizabeth Murray waited more than 22 years to pursue any legal action on the debt.

In addition to correctly finding that the Appellant's claim is barred as untimely under the applicable statute of limitations, the Probate Court also correctly found that her delay in bringing legal action to collect on the default of the 1980 Settlement Agreement justifies barring her claim under the equitable doctrine of laches. "Laches is 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) (citing Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324 (1961)). "Under the doctrine of laches, if a party, knowing his rights, does not timely assert them, but by unreasonable delay causes his adversary to incur expenses or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce these rights." Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 599 (Ct. App. 1999). To establish the affirmative defense of laches, a party must establish (1) delay, (2) unreasonable delay, and (3) prejudice. Hallums, 371 S.E.2d at 527.

This is certainly a case of unreasonable delay. Appellant waited twenty-two years to pursue a claim for Mr. Murray's alleged default of the 1980 Settlement Agreement. As a result of her

unreasonable delay, the Estate has been prejudiced by the fact that the clock has been running on interest calculations (at a rate of 12%) for over twenty years, such that Appellant now claims she and her two sisters are entitled to over $6 million for an original debt of a little over $200,000. Essentially, Appellant sat on her rights and "laid in wait" until Mr. Murray passed away, well knowing the interest calculations were growing exponentially. In view of the 22-year delay and the serious prejudice, the Probate Court properly ruled that she is now barred from asserting her claim by the equitable doctrine of laches as well as the statute of limitations.

Claim by Elizabeth Murray as Elizabeth's Stylesetters

II. THE PROBATE COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE CLAIM MADE BY ELIZABETH MURRAY AS OWNER OF ELIZABETH'S STYLESETTERS FOR INTERIOR DESIGN SERVICES SHE PERFORMED FOR AN INN FORMERLY OWNED BY HER FATHER.

Many years ago, Mr. Murray paid the tuition for the Appellant to attend the New York School of Interior Design, which later allowed her to establish her own interior design company, Elizabeth's Stylesetters. At various times, Mr. Murray hired his Daughter for design projects, including the Inn at Quogue, a New York property owned by Mr. Murray and Hilton Smith. Appellant ceased working at the Inn in 2002. [ROA ___; Estate Summary Judgment Ex. 44.] After her Father died, she asserted this claim against his Estate for reimbursement for certain expenses supposedly incurred with her work at the Inn. However, her claim is not supported by any specific invoice(s) that she had submitted to the Inn or her Father on behalf of her company for her work at the Inn. Rather, consistent with her "Dear Daddy" letter as discussed above, she relies upon a letter she drafted, dated July 21, 2007—just two weeks before her Father died, purporting to be an agreement by Mr. Murray to pay Appellant for work at the Inn (as well as other monies supposedly owed in conjunction with her divorce). [ROA ___; Estate Summary Judgment Ex. 46]

During the probate litigation, Appellant produced a jumble of hundreds of pages of unorganized receipts, invoices, credit card statements and spreadsheets attempting to establish a foundation for her claim. The Estate's co-PR, James Ma, who was Mr. Murray's bookkeeper of all records and payments and worked with Mr. Murray during Elizabeth Murray's employment at the Inn, reviewed the records and confirmed that Ms. Murray is not owed any money related to her employment at the Inn. [ROA ___; Estate Summary Judgment Ex. 42.]

The Estate moved for summary judgment on grounds that the letter is not a valid contractual basis for the claim because Mr. Murray did not possess the requisite mental capacity to enter into a legally binding contract during those last days of his life. Because the letter was signed only fourteen days prior to his death, there is simply no way Mr. Murray could have appreciated the terms of the contract or possessed the requisite capacity to enter into that contract. Evidence from Mr. Murray's personal physician recounts his dire medical condition and cognitive impairment during those last weeks of his life, and the MUSC physician testified to a reasonable degree of medical certainty, that as of May 2007, Mr. Murray did not have the mental capacity to enter into a contract. [ROA ___, ___; Estate Summary Judgment Ex. 5, 49, 50.]

The Probate Court declined to grant summary judgment on the factual dispute as to whether Mr. Murray had the mental capacity when he signed the letter; however, the Probate Court did grant summary judgment on the alternative ground that the Appellant was judicially estopped to claim that her Father had the legal mental capacity to execute the July 21, 2007 letter based on statements she made in prior legal proceedings declaring that her Father already was mentally incompetent and incapable of handling his own affairs before July 2007. Appellant claims that the Probate Court improperly considered her claim as relying on the July 21, 2007 letter, and asserts

that the underlying receipts/documentation are the foundation of her claims.[11] However, if that is so, then the grant of summary judgment can be sustained on the additional ground that her claim is barred by the three-year statute of limitations.

A. Appellant is judicially estopped from pursuing her claim based on the July 21, 2007 letter because she had asserted that her Father lacked mental capacity in several legal proceedings over the last years of his life.

In Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 25-52, 489 S.E.2d 472 (1997), the South Carolina Supreme Court adopted the doctrine of judicial estoppel as it relates to matters of fact based on a policy concern that "for the judicial process to function properly, litigants must approach it in a truthful manner." "When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him." Id. In Cothran v. Brown, 357 S.C. 210, 215–16, 592 S.E.2d 629, 632 (2004), the Court later adopted/articulated the elements necessary for the doctrine to apply:

> (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *See* Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct.App.2001).

The Probate Court considered each of these elements, and correctly concluded that Appellant's prior factual representations in earlier proceedings justifies applying this equitable doctrine to

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[11] Appellant argues that, apart from the 2007 letter, the debt was valid because Mr. Murray reaffirmed the debt in 2006, and that the Circuit Court entirely ignored the argument of Appellant as to the 2006 reaffirmation. However, the Appellant did not make any Rule 59(e) motion for reconsideration asking the Court to rule upon that argument in order to preserve the point for appeal. Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that where a trial court does not explicitly rule on an argument raised, and appellant makes no Rule 59(e) motion to obtain a ruling, the appellate court may not address the issue). Moreover, the claim submitted by the Appellant to the probate court explicitly and affirmatively based her claim on the 2007 letter. [ROA ___, ___; 6/3/08 Claim, letter.]

judicially estop her from claiming that her Father had the capacity to execute the July 21, 2007 letter.

As referenced above, the Murrays were embroiled in litigation in 2006 involving the Samuel Freeman Charitable Trust, and during that litigation, Appellant made numerous representations that her father was mentally incompetent well before his last weeks.[12] She filed an Answer and Cross-Petitions in regards to the Trust litigation, on November 17, 2006, and in that sworn and verified pleading, she alleged that Mr. Murray was incapacitated and asserted that he "lacked the requisite mental capacity to intelligently and knowingly execute a document." [ROA ___; Estate Summary Judgment Ex. 54 ¶¶96-101.] More specifically, she alleged – as a matter of fact – that "Over the past several years [Father's] physical condition and mental competency have been severely impaired. As of this date [11/17/2006] he is unable to fully focus upon, understand and deal with basic and fundamental business and financial matters." [ROA ___; Id. Cross-Petition p. 10 ¶2.] Appellant also submitted a motion in the Trust litigation, dated January 17, 2007, alleging that her father "suffers from serious physical and mental impairments" and that "serious questions have been raised concerning [his] mental competency." [ROA ___; Estate Summary Judgment Ex. 56.] The New York court did not make a specific finding on Mr. Murray's mental capacity in the Trust litigation; however, Appellant and her sister Pamela were reinstated as Trustees.

Apart from the Trust litigation, the Appellant commenced a guardianship proceeding in the Probate Court during July 2007 – immediately prior to Mr. Murray's death. She affirmatively alleged that he lacked mental capacity during the same time period that she contrived to have him

[12] While the Estate of William Murray in no way concedes that William Murray was, in fact, mentally incapacitated at all times alleged by Ms. Murray, he clearly did not have the requisite capacity to enter into the subject contractual documents only two weeks prior to his death.

execute the July 21, 2007 letter agreeing to pay her over $500,000. A temporary guardian was appointed by the Probate Court. [ROA ___; Guardianship petition.]

Based on these filings and proceedings each element has been met. ONE: it is clear that Appellant has taken totally inconsistent positions on the factual matter of her Father's mental capacity. TWO: The Trust litigation and the guardianship proceedings both involved the Appellant and Mr. Murray, and they are related as comparable to the divorce proceeding and the foreclosure proceeding in the Hayne Federal Credit Union opinion. THREE: Appellant and her sister Pamela were successful in being reinstated as Trustees and in having a temporary guardian appointed for her Father. FOUR: The selective positions taken by the Appellant for the strategic advantage of her own financial benefit evidences an intentional effort to mislead the courts as to Mr. Murray's true mental status. FIVE: The positions are completely inconsistent. Accordingly, the Probate Court's ruling was properly affirmed on this ground.

B. The claim of Elizabeth's Stylesetters can be affirmed on the additional sustaining ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations which expired before the Father/Mr. Murray died in 2007.

Without the July 21, 2007 letter, Appellant is barred from pursuing her claim for the expenses related to her employment at the Inn at Quogue as they are untimely.[13] Ms. Murray stopped working at the Inn at Quogue in 2002, approximately six years prior to her initiation of this creditor's claim and five years prior to the death of her father. However, she never filed suit against her father to collect the money she claims she is owed. Ms. Murray testified filing suit on her Father would have "evoked a Draconian reaction." [ROA ___; Estate Summary Judgment Ex. 57.] Appellant testified she waited until after her Father's death to file a lawsuit because she

[13] The Estate asserted the statute of limitations bar in both the Probate Court and in the Circuit Court. [ROA ___, ___; Memorandum in Support of Summary Judgment, p. 32-33; Respondent's brief, p. 19.]

thought "it was cleaner...that it was a more polite way to handle it." [ROA ___; Estate Summary Judgment Ex. 58.] Whatever her emotional/personal motivations may have been for waiting, they do not constitute any legal justification for avoiding the statute of limitations bar.

As discussed above, S.C. Code Ann. §62-3-802 provides "no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid." Appellants claims for monies and/or personal property supposedly owed to her from her last employment at the Inn in 2002 is subject to a three-year period. S.C. Code §15-3-530(1) & (4). Applying the three-year statute of limitations in this case would bar any claims or lawsuits after the year 2005.

CONCLUSION

As to the claim made by Elizabeth Murray on behalf of the Estate of Minnie Holmes Murray for $6,260,845.70 arising from a 1980 Settlement Agreement regarding a debt owed by Mr. Murray to Mrs. Holmes at the time of her death in 1967, the Probate Court, as affirmed by the Circuit Court, properly granted summary judgment to the Estate on multiple grounds, each and all of which support affirmance. The Estate of Minnie Holmes Murray lacks standing to pursue any claim on the obligations because the beneficiaries in the Estate of Minnie Murray -- her three daughters -- reached an agreement that transferred the debt to themselves. In addition, any claim is barred because Appellant/Elizabeth Murray waited more than 22 years to pursue any legal action on the debt. Under §15-3-120 and applicable case law, the statute of limitations bar cannot be avoided because the February 9, 2006 letter did not constitute an unqualified and unequivocal acknowledgement or a clear and explicit promise to repay the debt sufficient to revive the debt.

As to the claim made by Elizabeth Murray as owner of Elizabeth's Stylesetters, for $538,034 for interior design services she performed for an Inn formerly owned by her Father, the Probate Court properly granted summary judgment on the ground that the Appellant is judicially

estopped from pursuing her claim based on the July 21, 2007 letter. In addition, the summary judgment can be sustained on the additional ground that any claim for monies owed since 2002 are barred by the three-year statute of limitations.

WHEREFORE, based on the foregoing, the Circuit Court order affirming the Probate Court's grant of summary judgment should be affirmed as to both claims.

Respectfully submitted,

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Attorneys for The Estate of William E. Murray

February 6, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge
The Honorable Tamara C. Curry, Probate Judge

Appellate Case No. 2018-01680
C/A No. 2018-CP-10-05198; 2007ES1001 1 16

Elizabeth Murray as Personal Representative
of the Estate of Minnie H. Murray and Elizabeth Stylesetters,

Appellant,

v.

The Estate of William E. Murray,

Respondents.

Certificate of Service

The undersigned certifies that on this 6th day of February, 2019, a copy of the Initial Brief and Designations on behalf of Respondent The Estate of William E. Murray, were served by depositing said copy in the U.S. Mail, with sufficient first class postage, on the following counsel at the addresses listed below:

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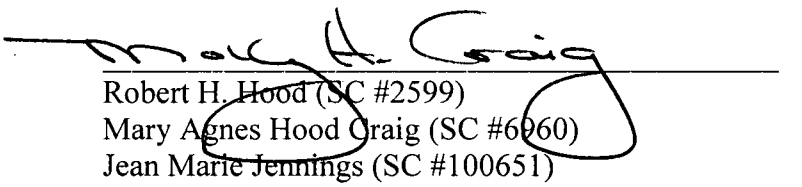

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February 6, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Elizabeth Murray as Personal Representative of the Estate of Minnie H. Murray and Elizabeth Stylesetters v. The Estate of William E. Murray
Appellate Case No. 2018-001680
HLF File No. 156.000

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Respondents' Initial Brief and Designations of Matter to Include in the Record in the above matter, along with the Certificate of Service. I am serving all counsel of record with copies of the each. Please return a clocked-in copy of each in the envelope provided.

Kind regards,

Yours truly,

Molly H. Craig

MHC/spc
Enclosure(s)
cc: Oana D. Johnson, Esquire
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