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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
Court of Common Pleas

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SC Court of Appeals

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

Appellate No. 2018-01689
Case No. 2017-CP-10-5198, 2007ES1001116

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

v.

The Estate of William H. Murray, ... Respondent.

INITIAL REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT[1]

I. The lower courts erroneously concluded as a matter of law that the claim of the Minnie H. Murray Estate was barred by the statute of limitations and the doctrine of laches ignoring the material questions of fact which must be resolved after a trial and not on summary judgment.

The lower courts erroneously concluded that the PRs are entitled to summary judgment as to the debt owing to the Estate of Minnie H. Murray based on the statute of limitations and the doctrine of laches overlooking and ignoring the substantial material question of fact as to whether Mr. Murray renewed the debt by acknowledging it during his lifetime. The question of whether Mr. Murray acknowledged and reaffirmed the debt flowing from the 1980 Settlement Agreement is a question of fact which the Probate Court should ***not*** have resolved as a matter of law at the summary judgment state of the proceedings.

The PRs' admit that debt could have been revived and still be valid as of Mr. Murray's death ***if*** he had acknowledged the debt in a manner as would imply a new promise to pay the debt. Respondent's Brief at pgs. 13 – 14. *See* 4 Williston on Contracts §8:20 (4th ed.); 51 Am. Jur. 2d Limitation of Actions §301 ("a new promise to pay a debt, or an unqualified acknowledgement of a debt, from which a promise to pay may be implied, tolls or removes the bar of the statute of limitations"); 51 Am. Jur. 2d Limitation of Actions §314 ("Any language of the debtor that clearly admits the debt and shows an intention to pay it will be considered an implied promise to pay and will take the case out of the statute of limitations"); *Suber v.*

[1] Appellant believes the issues are, by and large, properly joined and briefed by both sides. Rather than restate the entirety of Appellant's arguments, Appellant craves reference to her brief and submits these limited reply arguments as a supplement to her initial arguments.

Richards, 61 S.C. 393, 401, 404 (S.C. 1901) ("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," and "it should contain nothing inconsistent with an intention on the part of the debtor to pay it." *C.f., Middlebrooks v. Cabaniss*, 193 Ga. 764, 767, 20 S.E.2d 10, 12, *aff'd*, 194 Ga. 26, 20 S.E.2d 574 (1942) (A new promise, in order to renew a right of action already barred, or to constitute a point from which the limitation shall commence running on a right of action not yet barred, shall be in writing, either in the party's own handwriting, or subscribed by him or someone authorized by him, and, an acknowledgment in writing of the existing liability is equivalent to a new promise to pay.).

Respondents' argument on this point found at pgs. 14 – 15 of their brief are almost entirely about the credibility of Appellant's evidence. Such credibility determinations cannot and should not be made on summary judgment where the courts are required to construe all facts in the light most favorable to the non-moving party – in this case for the Appellant.

Respondents then argue the writing at issue cannot, as a matter of law, be construed as a clear and explicit promise to pay or as an unqualified and unequivocal admission that this particular debt is still due as will imply a promise to pay such debt. Again, the lower courts and Respondents ignore the well-settled law of South Carolina that intent is nearly always a question of fact rather than a question of law. "The determination of the parties' intent is a question of fact." *S. Bank Tr. Nat. Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 205 (Ct. App. 2009) (*citing S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 81, 562 S.E.2d 482, 485 (Ct. App. 2002). "To give effect to the parties' intentions, the court will endeavor to determine the situation of the parties and their purposes at the time the contract was entered." *Id. C.f.*, *State v.*

Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012) ("The question of the intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon. The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.")

At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination at trial for summary judgment to be denied. *Anders v. South Carolina Farm Bureau Mutual Insurance Co.*, 307 S.C. 371, 415 S.E.2d 406 (Ct. App. 1992). Here, the document explicitly asked Mr. Murray to acknowledge the debt was still owed and that it would be paid. He signed the document, and whether of not Respondents contest the proof of his signing, some proof does exist in the record and Respondents should not have been granted summary judgment. Again, Appellant more than met her burden of production as to Mr. Murray's reaffirmation of the debt by producing the signed letter and the sworn testimony of Gil Mestler and Dana Flavin, and producing the document itself which are evidence of Mr. Murray's intent to reaffirm the debt. The contradictory evidence presented by the parties creates exactly the sort of factual dispute that cannot and should not be resolved on summary judgment and must be decided only after a full trial on the merits. The PRs' summary judgment motion should have been denied, and this Court should reverse and remand this matter back to the Probate Court for a full trial on the merits.

As to Appellant's point that her legal claim cannot be defeated by equitable defenses, Respondents' Brief ignores this argument entirely because they cannot dispute the well-settled

rule that equitable defenses do not apply to legal claims against an Estate. *Edens v. Edens*, 312 S.C. 488, 491, 435 S.E.2d 851, 852 (1993). "The statute of limitations rather than laches applies to all legal claims against an estate." *Id. citing Kirksey v. Keith*, 32 S.C.Eq. (11 Rich.Eq.) 33 (1859). "A claim based upon breach of contract is a legal as opposed to equitable claim. Therefore, laches does not apply." *Id.*

Respondents continue to argue and complain that because of the length of time the debt has been owing, there is now substantial interest due. This is a problem not of Appellant's making as the debt could have been paid at any time either before or after Mr. Murray's death. Appellant's delay in forcing the issues is entirely understandable given the familial relationship between the heirs of Minnie Murray and their father. The lower courts should not have applied equitable standards to a legal cause of action and should not have ascribed bad intent only to Appellant where the record is replete with evidence of Respondents' bad faith and lack of fair dealing. This Court should apply only the legal standards for decision and should remand the matter for a full trial on the merits.

II. The Elizabeth Stylesetters' claim does not depend on the July 21, 2007 acknowledgment letter, rather there was competent evidence that the debt was actually created, acknowledged, and even partially paid at a time when there was no challenge as to competence.

As to the Elizabeth Stylesetter's claims, the lower courts and Respondents assume that the only possible theory under which the Elizabeth Stylesetter's claim remains viable is if Mr. Murray was competent to sign the July 21, 2007 letter reaffirming his obligation to pay for work performed by Elizabeth Murray doing business as Elizabeth Stylesetters (which even the Probate Court declined to decide on summary judgment). However, the debt had been acknowledged and renewed in April 2007 in the Canaday letter (ROA at pp. 1431 to 1432) and was obviously valid and being paid until Mr. Smith, one of the PR's and Respondents herein took over paying Mr.

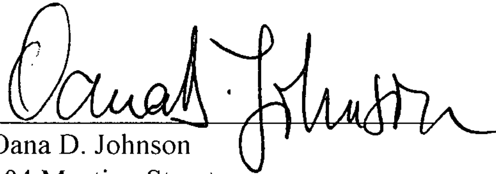
Murray's debts upon his admission to hospice. There was no issue of payment to Elizabeth's Stylesetters until then. Up until that point, Mr. Murray was paying the debt as previously agreed and Appellant submitted a vast amount of documentation to support the claim for repayment. Again, there is amply factual evidence in the record to support Appellant's claims and summary judgment was wholly inappropriate.

As to Respondents' additional sustaining ground argument that the Elizabeth Stylesetters' claims are barred by the statute of limitations is misplaced. The Claim of Elizabeth's Stylesetters, an interior design company owned by Elizabeth Murray, arises from services provided for multiple properties owned by Mr. Murray and other properties used by him as residences during the last few years of his life. Elizabeth's Stylesetters remodeled and redecorated Mr. Murray's residences, his office and other properties owned by Elizabeth's Stylesetters also advanced certain expenses at certain commercial properties. Mr. Murray made monthly payments towards the debt owed for the Inn at Quogue property and for the other services to her father's properties until May 2007 when Mr. Murray was admitted to Hospice Care and Mr. Smith stopped making the payments. (See Affidavit of Elizabeth Murray ROA at pp. 1972 to 1979) The Estate acknowledged these payments but characterizes them as gifts and says any amounts owed to Elizabeth's Stylesetters have already been fully paid. Respondents' brief summarily and without citation to the record declares that the amounts claimed were all incurred in 2002 or prior. That unsupported allegation misses the point that if the payments were being made until 2007, as Appellant alleges, then the statute of limitations did not begin to run until the PR ceased making the payments which he most certainly did not do until 2007 shortly before Mr. Murray's death. Respondent mistakenly seeks to have the Court apply the statute of limitations found in S.C. Code § 15-30-530 rather than the limitation imposed by S.C. § 15-30-610 which applies, "[i]n an

action brought to recover a balance due upon a mutual, open and current account when there have been reciprocal demands between the parties." In that event, "the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side." S.C. Code § 15-3-610. Here, payments were made until May of 2007 and as such, the statute of limitations did not expire. Again, the nature of the amounts owed, when they were incurred, and when and whether they have been paid are quintessential questions of fact that must be resolved at trial and should not have been summarily dismissed by the lower court.

CONCLUSION

For the reasons stated above, the lower court's decisions to grant the Estate's Motion for Summary Judgment should be reversed and the case should be remanded for further proceedings.



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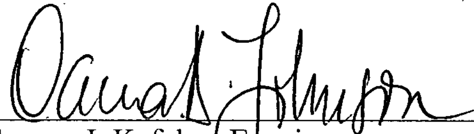
CERTIFICATE OF COUNSEL PURSUANT TO RULE 211(b) SCRAP

The undersigned certifies that the Initial Brief of Appellant and Initial Reply Brief of Appellant comply with Rule 211(b) of SCRP.



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