

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Michel D. Haynes,

Plaintiff,

vs.

Saverne Haynes,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No.: 2020-CP-37-00249

ORDER

RECEIVED

MAY 25 2022

SC Court of Appeals

INTRODUCTION

This action involves a document entitled Personal Loan Agreement which was signed by three (3) parties on June 4, 2015: Saverne D. Haynes ["Saverne"] identified as "Borrower"; Rev. Efford Haynes ["Reverend"] identified as "Lender"; and Michel D. Haynes ["Michel"] identified as "Witness". Reverend was the father of Saverne and Michel. Michel has brought this action against Saverne claiming that he is now the owner of the Personal Loan Agreement and is entitled to be paid Fifty Thousand and No/100 (\$50,000.00) Dollars by Saverne. Saverne has denied she ever intended to enter into a loan arrangement and even if she did Michel's action is barred by the statute of limitations found in §15-3-530, S.C. Code of Laws, as amended. A trial was held at the Oconee County Courthouse on February 24, 2022 at which Michel was represented by Robert L. Waldrep, Jr. and Elizabeth Waldrep of Robert L. Waldrep, Jr., P.A. and Saverne appeared *pro se*. At the conclusion of the trial both parties were given until March 10, 2022 to submit written arguments or memoranda.

FINDINGS OF FACT

Based upon the testimony and evidence presented, the Court makes the following findings of fact:

1. On June 4, 2015 a document entitled Personal Loan Agreement ["Agreement"] (Plaintiff's Exhibit 1) was signed by Saverne (identified as

Borrower and Reverend (identified as Lender). Michel also signed as witness.

2. The body of the Agreement reads as follows:

Saverne Haynes promise [sic] to repay to Rev. E. Haynes, Fifty thousand dollars (\$50,000.00) beginning September 1, 2015 and will pay on or before the 10th day of every month the monthly payments in the amount of four hundred dollars (\$400.00) continuously until paid in full.

This loan is binding between Saverne Haynes and Rev. E. Haynes and his heirs and assigns as named: Michel D. Haynes and/or Mrs. Lucille J. Haynes until this loan has been paid in full.

This agreement and the contract enforcement shall be governed by the law of the Land.

3. A check dated June 8, 2015 (Plaintiff's Exhibit 2) was made payable to the order of Saverne Haynes in the amount of \$50,000.00 and signed by Efford Haynes. (The check shows the names of Efford Haynes, Lucille J. Haynes and Michael D. Haynes and the address of 209 S. Poplar St., Seneca, SC 29678-3351).
4. The June 8, 2015 check was endorsed by Saverne Haynes and deposited into her account.
5. Saverne never made a payment under the Agreement.
6. Lucille J. Haynes, who was the wife of Reverend and mother of Saverne and Michel and their siblings, died on July 1, 2017.
7. Reverend died on September 27, 2017.
8. Michel came into possession of the Agreement about two (2) months prior to the death of Reverend who made no endorsement thereon.
9. Over the years prior to June 2015, Saverne "deposited" with Reverend from time to time money in excess of \$50,000.00 which was to be retained for Saverne by Reverend.
10. This action was commenced by Michel on April 8, 2020.

LEGAL ANALYSIS AND DISCUSSION

STATUTE OF LIMITATIONS

It is undisputed that Saverne's signature is on the Agreement. The initial question is whether or not the Agreement is a negotiable instrument within the meaning of Article 3 of the Commercial Code. § 36-3-101 *et seq*, S.C. Code of Laws, as amended. In order to qualify as a negotiable instrument the document in question must: (1) be in writing and signed by the person undertaking to pay, see, definition of "Promise". § 33-3-103(12) S.C. Code of Laws, as amended; (2) contain an unconditional promise or order to pay a sum certain in money. § 36-3-104(a), S. C. Code of Laws, as amended; (3) be payable on demand or at a definite time. § 36-3-104(a)(2); and (4) be payable to order or to bearer. § 36-3-104(a)(1), S.C. Code of laws, as amended. "Instrument" means a negotiable instrument. § 36-3-103(b), S.C. Code of laws, as amended. An instrument is a "note" if it is a promise and a "draft" if it is an order. § 36-3-103(e), S.C. Code of Laws, as amended. However, all notes are not necessarily negotiable instruments if they do not meet all four of the requirements set forth above to be an instrument.

In this case the significance of whether the Agreement is a negotiable instrument is important since that determines the proper statute of limitations to apply. Saverne has raised as a defense the statute of limitations contained in § 15-3-530, S.C. Code of Laws, as amended. Michel argues that because the Agreement is a negotiable instrument the statute of limitations contained in § 36-3-118(a) governs in this case and not § 15-3-530 which applies to "a contract, obligation or liability, expressed or implied". Under § 15-3-530 a claim is barred unless commenced within three (3) years of its accrual. Under § 36-3-118(a) a claim must be commenced within six (6) years of the due date specified in the negotiable instrument. Thus, in this case, if the Agreement is deemed a negotiable instrument and, measuring from the earliest possible due date of September 2, 2015 when the first payment was not made, an action against Saverne could have been commenced up to at least September 2, 2021. However, if the Agreement is not a negotiable instrument, but rather a contract between private parties, the action against Saverne would have had to be brought on or before September 2, 2018. This action was commenced on April 8, 2020. If the Agreement is a negotiable

instrument the action was commenced in a timely fashion and the statute of limitations is not a bar. However, if the Agreement is not a negotiable instrument, but rather a contract, then the action was not commenced in a timely fashion and is barred by the statute of limitations.

So, is the Agreement a negotiable instrument or merely a private contract? The Agreement is in writing and is signed by Saverne. By the language of the Agreement Saverne agreed to pay a sum certain in money (\$50,000.00 without interest at \$400.00 per month beginning September 1, 2015). The Agreement provides for payment, not on demand, but at a definite time. However, the Agreement does not provide for payment on demand nor "to the order" of the payee. It only provides for payment to Reverend. Absent a provision for payment on demand or payment to order the Agreement cannot be deemed a negotiable instrument. As written, the Agreement is merely a private contract between Saverne and Reverend, which is not subject to the statute of limitations contained in § 36-3-118(a). It is also noteworthy that Reverend took no action against Saverne for nonpayment from her default on September 2, 2015 through his death on September 27, 2017. The applicable statute of limitations is § 15-3-530 as raised by Saverne in her Answer. Since this action was not commenced within three (3) years of its accrual, Michel's claim is barred.

ADDITIONAL CONSIDERATIONS

There are several additional issues which militate against Michel's claim. These will be discussed for clarity and thoroughness even though they may be moot in light of the statute of limitations bar as discussed above.

STANDING

Does Michel have the requisite standing to pursue his claim against Saverne? The second paragraph of the Agreement which reads: "This loan is binding between Saverne Haynes and Rev. E. Haynes and his heirs and assigns named: Michel D. Haynes and/or Mrs. Lucille J. Haynes until this loan has been paid in full.", is ambiguous as to intended effect. Michel testified that he came into possession of the agreement a couple of months prior to Reverend's death. Apparently, Lucille had died shortly before. It is not clear whether Reverend actually delivered possession of the Agreement to Michel or Michel simply came across the document as he was assisting

his declining father who died only a couple of months later. There is no indication that Reverend "endorsed" the Agreement over to Michel. Even if the Agreement was considered a negotiable instrument, transfer of ownership would require delivery of possession and endorsement since the Agreement was clearly not bearer paper. § 36-3-201, S.C. Code of Laws, as amended. Likewise, there is no clear indication that the Agreement was assigned by Reverend to Michel. The following language from *Moore v. Weinberg*, 373 S.C. 209, 644 S.E. 2d 740 (S.C. App. 2007) is helpful in this regard:

Three elements constitute an assignment: (1) an assignor; (2) an assignee; and (3) transfer of control of the thing assigned from the assignor to the assignee. *Donahue v. Multi-media, Inc.*, 362 S.C. 331, 338, 608 SE 2d 162, 165 (CT. App. 2005) (citing *Leon v. Martinez*, 84 NY 2d 83, 614 N.Y.S. 2d 972, 638 N.E. 2d 511 (1994)). "An assignment of a right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance." Restatement (Second) of Contracts § 317(1)(1981).

There is no language in the Agreement which indicates an assignment of ownership from Reverend to Michel or anyone else. The language regarding the duration of the binding effect of the Agreement speaks to the length of time that the obligations contained in the Agreement were binding on the parties to that Agreement. See, *Wilbur Smith and Associates v. National Bank of South Carolina*, 274 S.C. 296, 263 S.E. 2d 643 (1986). It does not, however, transfer ownership or indicate a specific intention by Reverend to assign the Agreement prior to his death. The obligations contained in the Agreement were Saverne's agreement to make monthly payments and the Reverend's agreement to accept those payments without acceleration or interest. Those obligations would continue to be binding after the death of Reverend. However, if the language was intended to transfer ownership of the Agreement upon death, then the language utilized is not adequate to create a testamentary disposition. Thus it would appear that the net effect of the language was that the obligations of the parties under the Agreement would continue after the Reverend's death and be binding upon his estate. It is doubtful, based upon the language of the Agreement, that Michel became the owner of the Agreement except as an heir at law of Reverend after his

death, however, that ownership would have been through Reverend's estate and would have been properly shared by the remaining heirs at law of Reverend.

CONSIDERATION

There is no evidence that Michel provided any consideration to Saverne to support her promise to pay under the terms of the Agreement. Although Michel testified that the funds which were provided to Saverne under the Agreement came from a multi-party bank account in the names of Reverend, Lucille and Michel, there is no evidence that anyone other than Reverend had deposited funds into that account at the time of the Agreement and the advance of funds to Saverne. During the lifetime of the parties to a multi-party account, the funds on deposit are the property of the person who deposited those funds into the account, in this case apparently Reverend. § 62-6, 201, S.C. Code of Laws, as amended.

Likewise there is no indication that Michel provided any payment or other consideration to Reverend to support an assignment of the Agreement from Reverend to Michel as he claims. The only consideration which is shown by the evidence was the \$50,000.00 advanced by Reverend to Saverne pursuant to the Agreement. That consideration would have supported the obligation of Saverne under the Agreement during the life of Reverend and as to any claim asserted after Reverend's death by his estate. However, Michel has provided nothing to Saverne to support her obligation to pay nor has he provided any consideration to Reverend for an assignment or negotiation of the Agreement. Without such valid consideration it appears that Michel's claim against Saverne is not enforceable.

EQUITABLE SETOFF

Saverne testified that for a number of years prior to the date of the Agreement she had placed funds in the hands of the Reverend presumably for safekeeping or investment on her behalf. Those funds exceeded the \$50,000.00 amount specified in the Agreement according to her testimony. Michel offered no contradiction to such testimony.

Although Saverne did not specifically plead a defense of equitable setoff such was not required since an equitable setoff is distinguished from a counter claim and affirmative defenses. It is within the inherent power of a court in the exercise of its

equitable jurisdiction to find and apply an equitable setoff. *W. M. Kirkland v. Providence Washington Insurance, Co.*, 264 S.C. 573, 216 S.E. 2d 518 (1975). Even if pleading were required, Saverne was acting as a *pro se* litigant. Giving her the benefit of the doubt and conforming the pleadings to the evidence presented at trial would set up a defense of equitable setoff on her behalf.

It is undisputed that Saverne deposited funds in excess of \$50,000.00 with Reverend which she was never able to locate and retrieve after his death. Accordingly, even if she was obligated to pay the \$50,000.00 under the terms of the Agreement she would certainly be entitled to an equitable setoff up to that amount from Reverend or his estate based upon the facts as presented.

It is also important to comment on the credibility of the witnesses. In this case Saverne, on one hand, and Michel on the other. Saverne was highly credible. She presented herself as an intelligent, experienced person who is sincere in all that she states and presents. Thus her testimony regarding the deposit of funds with Reverend in support of the equitable setoff defense is highly believable. On the other hand, Michel, although seeming to be a perfectly nice person, really had no information to offer other than he had come into possession of the Agreement and felt that he was entitled to be paid \$50,000.00 by Saverne based on the terms of that Agreement. He offered no information regarding any deposit of funds by Saverne with Reverend and very little information regarding the facts surrounding his obtaining possession of the Agreement after his mother had died and shortly before his father died.

Based upon the undisputed evidence presented by Saverne it appears that she has successfully established the basis for an equitable setoff which would completely offset any obligation on her part to pay \$50,000.00 under the terms of the Agreement. Applying an equitable setoff in this case is necessary to promote justice and prevent irreparable injustice. *Elliott v. Carroll*, 172 S.C. 278, 173 S.E. 908 (1934).

CONCLUSION

Based upon the evidence and testimony presented and the law as discussed hereinabove, the Court concludes that the Agreement in question was not a negotiable instrument and is accordingly barred by the applicable three (3) year statute of limitations as raised by Saverne in her Answer. It also appears that Michel has no

standing to pursue this matter as the owner of the Agreement and has provided no consideration to support the enforcement of his claim against Saverne. Saverne has presented adequate evidence of her payment to Reverend necessitating application of an equitable setoff. Accordingly, it is ordered judgment is for Saverne and Michel's claims against Saverne in this case are dismissed and forever ended with prejudice.

It is so ordered.

Steven C. Kirven, Master-in-Equity