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OF THE
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Re: *Conaway v. Hawkins, et al.*
C.A. No. 1942-VCN
Date Submitted: April 26, 2011

Dear Counsel:

I.

This post-trial letter opinion addresses a relatively narrow question of fact remaining after the Court's earlier substantive decisions in this matter.¹ For the

¹ See *Conaway v. Hawkins*, 2010 WL 403313 (Del. Ch. Feb. 4, 2010); Tr. of Oral Arg. (Apr. 9, 2008) (the "Bench Ruling"). The context—both factual and legal—given in those earlier decisions to the parties' dispute is important to an understanding of the Court's current task.

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reasons set forth below, the Court finds that Petitioners Ernest E. Conaway, James Robert Conaway, and Mabel H. Conaway (collectively, the “Remaining Plaintiffs”)² were, by at least 1980, aware of (and, therefore, on notice of) the claims of William Wiggins (“William”) to the exclusive, fee simple ownership, as a surviving husband of Anna Wiggins (“Anna”), to attractive real property in Sussex County, Delaware (the “Property”).³ More particularly, William’s possession was known to the Plaintiffs at least by then to be exclusive as to them. With these findings of fact, the rights of William and, thus, those claiming under him, including Respondent Parker Enterprises, Inc. Profit Sharing Plan (“Parker”), now the only record owner of the Property, to title by adverse possession—are hereby confirmed in light of passage of more than twenty years

² The claims of Petitioners A. Martin Conaway and Evelyn M. Conaway (the “Dismissed Plaintiffs”) were dismissed in 2010 under principles of adverse possession.

³ The Property consists of approximately 1.92 acres and bears the address of 231 West State Street, Millsboro, Delaware. William’s title comes from a deed (Trial Exhibit (“TX”) 25), dated February 26, 1958, with a grant of title to the Property to “Anna W. Wiggins and or Wm T. Wiggins her husband.” No specific designation of the nature of the title, such as one of joint tenant, was specified (unless one draws meaning from “and or”). A deed to a woman and “her husband” would have created a tenancy by the entirety in the wife and her husband.

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between 1980 and 2006, the date when this action was commenced.⁴

Accordingly, Parker has demonstrated that it is the fee simple owner of the Property and that the Remaining Plaintiffs have no rights as to the Property.

William and Anna lived together for several decades as husband and wife. That is how they described themselves; how they conducted themselves; and how they were perceived. Anna's children, the Remaining Plaintiffs and the Dismissed Plaintiffs,⁵ however, had doubts about the validity of the marriage that seem to have arisen shortly after their mother's death. If Anna and William were in fact legally married, then on Anna's death in 1978, William would have become vested in full title. If they were not legally married, then on Anna's death, Anna's estate would have had a one-half interest in the Property and William would have had a one-half interest in the Property. Also, because Anna died intestate, William would have obtained a one-half life interest in the balance

⁴ See 10 Del. C. § 7901; *Walker v. Five North Corp.*, 2007 WL 2473278, at *3 (Del. Super. Aug. 31, 2007) (to prevail on a claim for adverse possession, plaintiffs "must prove . . . by a preponderance of the evidence, that they have openly, notoriously and adversely possessed the land in question for a period of at least twenty years.").

⁵ The Remaining Plaintiffs and the Dismissed Plaintiffs are, at times, referred to as the "Plaintiffs."

of the Property, but Anna's children (the Plaintiffs) would have held the remainder interest.

The record evidence of their marriage is less than perfect. A license for marriage was taken out in Maryland,⁶ but it seems that the license was never filled out and returned for proper registration.

After Anna's death, William lived in the Property and exercised full control over it. Later, he remarried and thereafter devised, on his death in 1993, his interest in the Property to Elois Wiggins ("Elois"), his wife. Her interest passed when she died in 2001 to her children, Respondents Linda A. Hawkins, Sterling A. Doughty, Clyde Doughty, and Laverne Andrews Maddox (the "Heir Defendants"), who, in turn, conveyed the Property to Parker in December 2005.⁷

Parker's motion for summary judgment against all Plaintiffs was denied as to the Remaining Plaintiffs because the record did not allow the Court to conclude, as a matter of undisputed fact, that they were on notice of William's claims to exclusive title. In other words, William, as a co-tenant and a life

⁶ TX 18.

⁷ Jt. Pre-trial Order, ¶ I; TX 28.

tenant,⁸ had rights to possession to be shared with the Plaintiffs if he did not hold full title; thus, his simple possession, which as to the rest of the world might have been deemed exclusive, could not be deemed exclusive as to fellow tenants. This is so especially because his arguable life estate would have given him a transient possessory right.

The question, thus, becomes one of whether the Remaining Plaintiffs knew that William was claiming exclusive ownership of the Property, if, in fact, he was. The evidence demonstrates that the Remaining Plaintiffs were on notice that William was claiming full ownership of the Property, to the exclusion of any of their claims. First, the Remaining Plaintiffs were aware that William viewed himself as the surviving spouse of Anna. That factual circumstance, if accurate, would have vested William with full title as the surviving spouse of Anna. Second, and even more important, the papers issued during the administration of Anna's estate conclusively demonstrate that William was of the view that he was the surviving spouse and full owner of the Property. Sufficient documentation

⁸ This, of course, accepts the Plaintiffs' view that William and Anna had not married.

from the estate was available to each of the Remaining Plaintiffs, as Anna's surviving children, to put them on full notice of the scope of William's claims.

James D. Griffin, Esquire handled the probate of Anna's estate. Both William and one of the Dismissed Plaintiffs, who served as co-administrators of the estate, told him that Anna and William were married. Various estate documents recited that the Property had been jointly owned by them and that William had become its owner.⁹ The Remaining Plaintiffs (and others) were informed by the Register of Wills in January 1980 that the first and final account of Anna's estate was available for review.¹⁰ None of the Remaining Plaintiffs filed an objection, although it is not entirely clear how many of them actually reviewed the file in the Register of Wills' office. Nonetheless, Mr. Griffin had no doubt that the Remaining Plaintiffs were, in fact, on notice that William claimed and treated Anna as his wife¹¹ and that William had taken title to the Property as Anna's surviving spouse.

⁹ TX 5 at Ex. G.

¹⁰ TX 7.

¹¹ TX 1 (Deposition of James D. Griffin, Esq.) at 54, 66, 70-71.

It has been more than thirty years since Anna's death. The record before the Court convinces the Court that, as a factual matter, the Remaining Plaintiffs understood that William and Anna viewed each other as husband and wife; that William claimed full title to the Property as her surviving spouse; that William's possession of the Property, including the time during which he was married to Elois, was exclusive as to the interests of the Remaining Plaintiffs, which they understood; and that the possession and control of Elois after William's death until her death and the possession and control of her children up until the time of the sale to Parker was also exclusive. The Court, thus, concludes that the requirements for establishing title to real property through adverse possession, even as against claims asserted by co-tenants, was adequately and sufficiently demonstrated. The Court finds that title to the entire Property vested in those claiming through William at the end of the twenty-year period that started no later than 1980 or 1981—in any event, before the Plaintiffs brought this action.¹²

¹² Although the Plaintiffs did file a partition action, they have not claimed a right analogous to a right that might be conferred by, for example, the Savings Statute, 10 *Del. C.* 8118, which might have tolled the running of the time-bar.

Accordingly, Parker is entitled to judgment.¹³

II.

Following dismissal of the claims against them,¹⁴ the Heir Defendants petitioned for the imposition, under Court of Chancery Rule 11, of sanctions against the Plaintiffs and for an award of their attorneys' fees. They claim that the Plaintiffs prosecuted this matter without cause and in bad faith. They point out that the substance of their claims was resolved when their partition action—dependent upon an interest in the Property—was dismissed in 2005, after pending for almost ten years in this Court, under Court of Chancery Rule 41(b). They also argue that the lack of merit of the claims against them is readily determined

¹³ With this conclusion, it is not necessary to address other arguments presented by Parker. These include, first, the dismissal with prejudice in September 2005 (TX 33) of an action filed in this Court in April 1996 by the Plaintiffs which sought partition of the Property based on their one-half interest in the Property as the children of Anna. Second, there remains a substantial question of the validity of Anna and William's marriage under Maryland law. Even though the proper documentation may not have been filed with the appropriate office in Maryland following the marriage, it is still, at least theoretically, possible for that marriage to have been valid under Maryland law. *See, e.g., Picarella v. Picarella*, 20 Md. App. 499, 512-14 (Md. Ct. Spec. App. 1974). Finally, Parker invokes the doctrine of equitable estoppel to support its position.

¹⁴ *See Conaway*, 2010 WL 403313.

by the reference to the dismissal, without difficulty, of those claims on summary judgment.

Under the American Rule, litigants generally bear their own legal expenses. There are certain exceptions that warrant a shifting of fees. The recognized exceptions include instances of bad faith conduct in which parties have (i) knowingly asserting a frivolous claim or defense; (ii) delayed the litigation and asserted frivolous motions; (iii) falsified evidence; (iv) changed their testimony to suit their needs; (v) needlessly made litigation more expensive by asserting numerous theories with “minimal grounding in fact and law”; and (vi) made numerous and duplicative discovery requests while ignoring their own discovery obligations.¹⁵

The Court is satisfied that the Plaintiffs generally believe in the substance of their claim to an interest in the Property. It is, after all, their “home place.”

¹⁵ *Montgomery Cellular Holding Co., Inc. v. Dobler*, 880 A.2d 206, 227-28 (Del. 2005) (citing *Kaung v. Cole Nat'l. Corp.*, 884 A.2d 500 (Del. 2005); *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542 (Del. 1998); *RGC Int'l Investors, LDC v. Greka Energy Corp.*, 2001 WL 984689 (Del. Ch. Aug. 22, 2001)).

The core of their claim is that their mother and William never married. With respect to that issue, they may be right. It certainly is a question upon which reasonable persons may disagree. The Heir Defendants' title—and, thus, their right to sell a full interest in the Property to Parker—would, if William and Anna never married, depend primarily on an adverse interest claim against the Plaintiffs—not an easy claim to prosecute when it must be asserted against a co-tenant. In any event, the Plaintiffs' claims cannot fairly be considered frivolous, and no shifting of the Heir Defendants' legal fees to the Plaintiffs is warranted.¹⁶

In short, the Court understands the Heir Defendants' frustration in having to pay legal fees regarding the Property, which they had sold before this action was commenced,¹⁷ but their claim does not meet the requirements for fee shifting, and, accordingly, their motion must be denied.

¹⁶ The Heir Defendants also complaint that the Plaintiffs filed with the Office of Disciplinary Counsel a complaint against the conduct of their attorney. Those claims were summarily dismissed. Nonetheless, the Plaintiffs' challenged conduct was not before this Court and, thus, it is not for this Court to resolve any claim for a shifting of fees regarding charges brought before the Office of Disciplinary Counsel.

¹⁷ Even though the Heir Defendants had sold the Property, litigation about the proper owner—or who should have the benefits of the sale proceeds—at least arguably, unavoidably ensnares them.

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III.

For the foregoing reasons, Parker is entitled to judgment in its favor against the Remaining Plaintiffs as to their claims regarding title to the Property. Also, the Heir Defendants' motion for an award of attorneys' fees and the imposition of sanctions against Plaintiffs is denied. An implementing order will be entered.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-K