

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 2020

HARVEST HILLS CHRISTIAN FELLOWSHIP CHURCH, INC.

VERSUS

POPLAR GROVE HELPING OTHER PEOPLE ENDURE, INC.; DR.
STUART H. FREEMAN, EXECUTIVE DIRECTOR OF POPLAR
GROVE HELPING OTHER PEOPLE ENDURE, INC.; POPLAR
GROVE CHAPEL MISSIONARY BAPTIST CHURCH, INC.; DR.
STUART H. FREEMAN, SENIOR PASTOR OF POPLAR GROVE
CHAPEL MISSIONARY BAPTIST CHURCH, INC.; AND DR.
STUART H. FREEMAN, INDIVIDUALLY

Judgment Rendered: JUN 07 2013

* * * * *

On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. C609870

The Honorable Wilson E. Fields, Judge Presiding

* * * * *

Joseph A. Prokop, Jr.
Courtney King Humphrey
Baton Rouge, Louisiana

Attorneys for Plaintiff/Appellant,
Harvest Hills Christian Fellowship
Church, Inc.

Mark D. Plaisance
Thibodaux, Louisiana

Attorney for Defendants/Appellees,
Poplar Grove Helping Other People Endure,
Inc.; Dr. Stuart H. Freeman, Executive
Director of Poplar Grove Helping Other
People Endure, Inc.; Poplar Grove Chapel
Missionary Baptist Church, Inc.; Dr. Stuart
H. Freeman, Senior Pastor of Poplar Grove
Chapel Missionary Baptist Church, Inc.;
and Dr. Stuart H. Freeman, Individually

* * * * *

BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

CRAIN, J.

In this breach of contract claim, the trial court granted exceptions of no cause of action and no right of action and dismissed the plaintiff's petition. We affirm.

FACTS AND PROCEDURAL HISTORY

Harvest Hills Christian Fellowship Church, Inc. filed suit against multiple defendants alleging one of the defendants, Poplar Grove Helping Other People Endure, Inc., agreed to serve as a "fiscal sponsor" to facilitate the delivery of a legacy of one-seventh of George Daniels' residual estate to Harvest Hills. Because the trial court acted on the defendants' exception, the facts are determined from the plaintiff's petition and documents annexed thereto.

George Daniels formed a personal friendship with Harvest Hills' pastor, Walter Smith, and wanted to leave a testamentary bequest to Harvest Hills. He instructed his attorney to prepare an amendment to his will to add Harvest Hills as a residual legatee; however, a complication arose when it was discovered that Harvest Hills did not have "501(c)(3) tax exempt status."

Harvest Hills agreed to apply for tax exempt status but learned that the approval might take over six months. Smith then approached another church's pastor, Dr. Stuart Freeman, and asked if Freeman's church "could act as a fiscal sponsor" for Harvest Hills "for the purpose of accepting the testamentary bequest made by Mr. Daniels." After some consideration, Freeman agreed that Poplar Grove, a tax exempt entity for which Freeman served as the executive director, rather than his church, would act as the "fiscal sponsor" and accept the bequest "on behalf of" and "for the sole benefit of" Harvest Hills. The agreement was not in writing. Upon learning of the arrangement, Daniels executed a new last will and testament and bequeathed one-seventh of his residual estate to Poplar Grove.

After Daniels' death, Poplar Grove received an initial monetary distribution from the estate but failed to notify Harvest Hills of its receipt of the funds. Efforts to contact Poplar Grove and Freeman were unsuccessful, until Freeman ultimately told Smith that Poplar Grove was the intended recipient of the testamentary bequest. The testamentary bequest to Poplar Grove is valued at an estimated \$750,000.00 or more and is currently used for the benefit of Poplar Grove and Freeman's church.

Upon these allegations, Harvest Hills asserts that Poplar Grove and Freeman failed to perform the obligation created by the oral agreement.¹ Harvest Hills requests damages and specific performance of the agreement, namely the delivery of Daniel's testamentary bequest.

The defendants filed exceptions of no cause and no right of action, arguing that the alleged agreement was a prohibited substitution under Louisiana Civil Code article 1520, and, therefore, had an unlawful cause and was not enforceable. *See*, La. Civ. Code arts. 1966, 1968, and 2030. The trial court granted the exceptions and dismissed the petition. Harvest Hills appeals.

LAW AND ANALYSIS

We first consider whether the trial court erred in granting the exception of no cause of action. A "cause of action" refers to the operative facts which give rise to the plaintiff's right to judicially assert the action against the defendant. *Scheffler v. Adams and Reese, LLP*, 06-1774 (La. 2/22/07), 950 So. 2d 641, 646. The peremptory exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. *Scheffler*, 950 So. 2d at 646. An exception of no cause of action is triable on the face of the pleadings; and for purposes of resolving the issues raised by the exception, the well-pleaded facts in the petition are accepted as true.

¹ Freeman's church, Poplar Grove Chapel Missionary Baptist Church, Inc., is the only other defendant and is sued based on these same allegations.

Because the exception raises a question of law and the trial court's decision is based solely on the sufficiency of the petition, review of the trial court's ruling on an exception of no cause of action is *de novo*. The pertinent question is whether, in the light most favorable to the plaintiff and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief. *Scheffler*, 950 So. 2d at 646; *Louisiana State Bar Ass'n. v. Carr & Associates, Inc.*, 08-2114 (La. App. 1 Cir. 5/8/09), 15 So. 3d 158, 167, *writ denied*, 09-1627 (La. 10/30/09), 21 So. 3d 292.

At the hearing, the trial court expressed concern with whether the alleged agreement was an attempt to circumvent tax laws or defraud the government. We do not base our decision on either of these reasons and express no opinion on their merit. Instead, we find that the object of the alleged agreement was the succession of a living person, which makes the agreement unenforceable under Louisiana Civil Code article 1976.

Article 1976 provides, in pertinent part, "The succession of a living person may not be the object of a contract other than an antenuptial agreement." According to Comment (b) of the article, "Under this Article, a contract for the succession of a living person is null even if made with that person's consent." The reason for this prohibition, which can be traced back to the Code Napoleon and Roman Law, was explained by one court as follows:

The Code establishes a public policy prohibiting dealing in the rights whose coming into existence require the death of a living person. . . .

Planiol says that a motive behind the prohibition is the immorality of parties speculating on the deaths of another, usually a relative; or the danger of non-relatives, having obtained an interest in the death of a living person, considering crime to hasten its commission.

Henry R. Liles v. Bourgeois, 517 So. 2d 1078, 1080 (La. App. 3 Cir. 1987) (quoting trial court's reasons and citing Planiol, *Civil Law Treatise*, Vol. 2, Part 1 §§ 10, 12 (West 1959)).

This court previously applied Article 1976 to declare a notarial act to be null and void. In *Successions of Plummer Through Guttuso v. Plummer*, 577 So. 2d 751 (La. App. 1 Cir. 1991), writ denied, 580 So. 2d 676 (La. 1991), Plummer executed an act of adoption whereby he purported to adopt his wife. The motive originated with a testamentary legacy that Plummer was to receive from his father. However, Plummer was terminally ill and did not expect to out-live his father, so he adopted his wife as his “daughter” to steer a portion of the legacy to her through the principle of representation. Relying in part on Article 1976, we held that the act of adoption was null and void, explaining:

In executing the adoption of his wife, James Robert Plummer was attempting to give one-sixth of his father’s succession, *while his father was still alive*, to his wife Sheila, circumventing the explicit prohibition against the same in our civil code. This we cannot allow.

Successions of Plummer, 577 So. 2d at 754-55 (emphasis in original). See also, *Henry R. Liles*, 517 So. 2d at 1080-1082 (contingency fee contract was unenforceable where fee was based upon a percentage of the client’s future inheritance from her living mother).

In the present case, the petition establishes that the object of the alleged oral agreement was one-seventh of the residual property from the succession of a living person. After Daniels’ death, Poplar Grove allegedly breached this agreement by failing to remit the funds to Harvest Hills. Accepting these allegations as true, the object of the oral contract was a share of the succession of Daniels, a living person at the time the agreement was entered. Thus, the alleged agreement is null and void, and the trial court properly granted the exception of no cause of action. See, La. Civ. Code arts. 1976, 2030; *Successions of Plummer*, 577 So. 2d at 744-755; *Henry R. Liles*, 517 So. 2d at 1080-1082. Because the grounds for the exception cannot be removed by amending the petition, the petition was properly dismissed. See, La. Code of Civ. Pro. art. 934; *Pelican Educ. Found., Inc. v. Louisiana State*

Bd. of Elementary & Secondary Educ., 11-2067 (La. App. 1 Cir. 6/22/12), 97 So. 3d 440, 450-51.

The alleged contract is also deficient in two other respects that render it invalid. The petition does not identify any advantage conferred upon Poplar Grove as the cause or consideration for entering the agreement. Instead, the allegations suggest a gratuitous contract whereby Poplar Grove agreed to give the legacy to Harvest Hills. *See*, La. Civ. Code arts. 1468, 1910. An oral contract for a donation of a future legacy is null and void under Louisiana Civil Code article 1529, which prohibits a donation *inter vivos* of future property, and Article 1541, which requires that a donation *inter vivos* be made by authentic act unless otherwise permitted by law. No provision of law permits an oral donation *inter vivos* of this nature. For these additional reasons, the alleged agreement is null and void, and the trial court properly granted the exception of no cause of action.²

Accordingly, we affirm the judgment of the trial court and assess all costs of this appeal to Harvest Hills.

AFFIRMED.

² Because we affirm the granting of the exception of no cause of action and the dismissal of the petition, we pretermitt any review or ruling on the merit of the exception of no right of action.