IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SHARON L. EATON, et al.	)	
	)	
v.	)	C.A. No. 3484-MG
	)	
MARY ANN LARRIMORE	)	
	)	
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	)	
IMO Estate of Robert L. Larrimore, Sr.	)	C.A. No. 3683-MG

MASTER'S FINAL REPORT
(The 1999 Document)

Date Submitted: January 16, 2009
Final Report Issued: May 5, 2009

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GLASSCOCK, Master

These two cases were consolidated for decision. At issue in both is an untitled document (the "1999 document") signed by Robert C. Larrimore ("Mr. Larrimore") and Mary Ann Larrimore ("Mrs. Larrimore") on January 7, 1999. After Mr. Larrimore's death, his daughters, Sharon L. Eaton ("Sharon") and Terri L. Larrimore ("Terri"), became personal representatives of the estate of Mr. Larrimore. Mrs. Larrimore had been married to Mr. Larrimore until 1989, when they divorced. Thereafter (by 1998), they began living together again as husband and wife, and continued to do so up until Mr. Larrimore's death in 2007. The couple, however, never remarried. After Mr. Larrimore's death, Mrs. Larrimore attempted to admit the 1999 document to probate. The 1999 document contains a clause in which Mr. and Mrs. Larrimore agree that upon the death of one of them, the survivor would inherit a farm property that the Larrimores owned jointly. The Kent County Register of Wills determined that the 1999 document was not a will, and therefore declined probate. One of the actions before me is Mrs. Larrimore's "Petition to Appeal a Decision of the Register of Wills," which seeks the admission of the 1999 document to probate.

The second action is a declaratory judgment action brought by the estate seeking a declaration from the Court that the farm property was owned in common and that, notwithstanding the 1999 document, the heirs of Mr. Larrimore own a 50% undivided interest in the property, with Mrs. Larrimore owning the remaining 50%. At issue in both actions, therefore, is the validity and effect of the 1999 document.

This matter was brought to trial on December 11, 2008 and the parties have exchanged post-trial memoranda. This is my report after trial.

In November, 1998, Mr. and Mrs. Larrimore purchased, in a single transaction, two contiguous parcels[1] of land consisting of a house, out-buildings and farm acreage in south Murderkill Hundred. The parties purported to purchase this land as husband and wife. Although they were living together as husband and wife at the time, they had divorced and never remarried. Therefore, the property was purchased in common, and not by the entireties as would have otherwise been the case, had the parties been husband and wife. *See, e.g.*, Huston v. Lambert, Del. Ch., 281 A.2d 511, 512 (1971). Mr. and Mrs. Larrimore lived on the property and ran it as a horse-farm business.

Shortly after buying the property, Mr. Larrimore became concerned about his rights, and those of Mrs. Larrimore, as partners in the farm business, should one of them leave the partnership. He therefore engaged a used-car salesman, Bert Enslen, who practices law without benefit of license or legal training, to draft a partnership agreement. The evidence at trial indicates that Mr. Larrimore had a marked aversion to lawyers, or at least to their fees. The cost of that aversion can be measured by the expense that this lawsuit has brought to his children and ex-wife. Instead of consulting a lawyer, Mr. Larrimore relied solely on Mr. Enslen to produce the 1999 document.

That document provides as follows:

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[1]The parcels are separated by the thread of Hudson's Branch.

1) I Robert Larrimore and I Mary Ann Larrimore have jointly purchased a farm at 6010 Sandtown Road Felton Delaware 19943
2) We Both agree that in the event of death the surviving party will inherit the full ownership of the farm and all livestock and domestic animals
3) We also agree that any debts and outstanding liabilities associated with farm [sic] will transfer to surviving party and will not be part of the deceased partys [sic] estate
4) In the event that one of use [sic] decides to leave[,] the other will be required to return all monies the other partner had in this venture plus a [sic] interest rate comparable to the banks [sic] for years of being there and contributing

The document is signed by Robert C. Larrimore and Mary Ann Larrimore and witnessed by two witnesses.

Mrs. Larrimore pointed out in her petition that the 1999 document complies with some of the requisites for a valid will including the witnessing requirement. She initially argued that part 2 of the 1999 document was a testamentary device. The evidence at trial did not support this theory, and at the end of the trial, Mrs. Larrimore conceded that the document had not been intended as a will. What did become clear at the trial was that Mr. and Mrs. Larrimore were partners in the farm business, and that the 1999 document is a partnership or joint venture agreement. The document indicates that a property of the partnership was "a farm" at 6010 Sandtown Road in Felton, to which Mr. and Mrs. Larrimore held title jointly. It is implicit in the 1999 document that the farm property is owned by the partnership, because the document addresses the disposition of "the full ownership of the farm" upon the death of a partner. The 1999 document provided that on the death of either partner, the surviving party would be entitled to the farm together with

the livestock thereon, and that any debts and liabilities of the business would also be the responsibility of the surviving partner, and not the deceased partner's estate. Finally, the 1999 document contained a buy-out clause: it provided that if one partner left the business, the remaining partner must pay the withdrawing partner only an amount equal to the money the withdrawing partner had placed in the business, together with interest at a commercial rate.

The buy-out clause was never exercised and Mr. and Mrs. Larrimore continued to run the farm business until Mr. Larrimore's death in 2007. Under the terms of the 1999 document, which I have deemed to be a partnership agreement, Mr. Larrimore's interest in the farm property, livestock, and domestic animals, together with all liabilities and debts associated with the farm, became the property and sole responsibility of Mrs. Larrimore.

Under 6 Del. C. Ch. 15, the Delaware law of partnership as it existed at the time the 1999 document was entered, "[a]ll property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property." 6 Del. C. § 1508(a), *superceded* July 12, 1999. *See also* 6 Del. C. §1510 (indicating that partnership property may be titled in the name of the partners or the partnership).

The 1999 document indicates that the farm property purchased jointly by Mr. and Mrs. Larrimore was property of the partnership, and specifically provided that the

property, together with livestock and any partnership debt, was to devolve upon the surviving partner, upon a partner's death. *See* 6 Del. C. §1525(b)(4), *superceded* July 12, 1999 (stating that specific partnership property vests in surviving partner, upon death of partner).

The estate concedes that "survivorship clauses placed in partnership agreements for non-testamentary provisions giving the whole or part of one's property to another upon death are valid provided there is valuable consideration."[2] The estate contends, however, that the partnership agreement is not valid, because there was no consideration given by either party for the survivorship provision of the agreement.

To the extent specific consideration–beyond the agreement of each party to operate the partnership–is necessary to the validity of the survivorship clause of the agreement, that consideration is present here. Each party owned an undivided one-half interest in the farm real estate. By entering the partnership agreement memorialized in the 1999 document, and in particular by agreeing to the survivorship provision, both parties were devoting their interest in the property to the partnership and giving up their right to transfer that interest, either *inter vivos* or at death. That is ample consideration to support the survivorship clause.

The estate also points out that the document was not drafted by an attorney and that its contents were not explained to the parties. It was, however, drafted at the

[2] Estate's supplemental brief, at 6-7.

direction of Mr. Larrimore. While the document has numerous errors in grammar, spelling and punctuation, there is nothing unclear about the survivorship clause which is at issue here, nor is there any reason to believe that it was unclear to Mr. Larrimore upon signing. The estate also argues that, because the scrivener of the document was engaged in the unauthorized practice of law, enforcing the agreement "will likely lead to future litigation as similar agreements [drafted by Mr. Enslen] come to light when discovered by the heirs of decedents…."[3] There is no doubt that Enslen has created much mischief in the drafting of this agreement, and potentially in the many other documents he admits to having drafted.[4] However, *not* enforcing otherwise-enforceable agreements between parties, simply because they were drafted by a non-lawyer acting without authority of the Delaware Supreme Court, is far more likely to frustrate the intentions of the parties to those agreements than otherwise.

Finally, the estate points out that the record is incomplete as to what property is referred to in the 1999 document. That agreement refers to "a farm" at 6010 Sandtown Road, Felton. The parties had recently purchased two parcels, one just over six acres and one just over twenty-one acres, separated by Hudson's Branch in south Murderkill Hundred. The estate points out that there was insufficient testimony to demonstrate

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[3] Estate's supplemental brief, at 9.

[4] At trial, Enslen was asked why Mr. Larrimore had asked him to draft the 1999 document; he answered that: "Joe Adamo recommended me because I done a lot of work for him, and I do a lot of work for other people. I can draw these things up so they make sense, but whether they're legal or not, I have no idea."

whether this property, taken as a whole, is the "farm" referred to in the January 7, 1999 agreement, or whether only part of the property was used in the partnership business.

Conclusion

The January 7, 1999 document is not a will. It is a partnership agreement under which two parties provided real property and livestock to the partnership to operate a farm business, and allocated certain rights between the partners. The agreement—including the survivorship clause providing that the farm and livestock, together with the debts and liabilities of the business, would pass to the surviving partner upon the other partner's death—is enforceable. The parties should schedule a hearing on the remaining issue: what portion of the acreage purchased by Mr. and Mrs. Larrimore in the November 1998 deed comprises the partnership property. Exceptions to this report are stayed, and are preserved pending the resolution of the issues remaining here.

/s/ *Sam Glasscock, III*
Master in Chancery