

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KATHLEEN BROWN, )  
)  
Plaintiff, )  
)  
v. ) C.A. No. 2170-MA  
)  
BENJAMIN WILTBANK, II and )  
YVONNE WILTBANK, husband )  
And wife; CLAUDIA )  
WILTBANK-JOHNSON; )  
HOMEOWNERS LOAN CORP., a )  
Delaware corporation; and )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC., )  
A Delaware corporation, )  
)  
Defendants. )

MASTER'S REPORT

Date Submitted: August 10, 2009  
Draft Report: April 8, 2009  
Final Report: February 22, 2010

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AYVAZIAN, Master

Pending before me is a partition action filed by Plaintiff Kathleen Brown (“Kathleen”), seeking the sale of real property located at 406 St. Paul Street, Lewes, Delaware (the “Property”). The Property was the residence of the late Arlington J. Wiltbank, Sr. (“Wiltbank” or “Decedent”), and now each of his three surviving children, Kathleen, Defendant Claudia Wiltbank-Johnson (“Claudia”) and Defendant Benjamin Wiltbank, II (“Benjamin) holds an undivided one-third interest in the Property.<sup>1</sup> A trial was held on April 8, 2009, on the narrow issue whether the decedent had promised Claudia a life estate in the Property in exchange for Claudia caring for him for the rest of his life. At the end of the trial, I issued an oral draft report in which I concluded that Claudia had not demonstrated by clear and convincing evidence the existence of an oral contract and, therefore, she was not entitled to a life estate in the Property. Claudia has taken exception to my draft report, and this is my final report in which I reiterate my conclusion that Claudia has not met her burden of demonstrating that she is entitled to a life estate in the Property. As a result, Claudia does not have valid grounds for objecting to the partition sale of the Property.

### I. Factual Background and Procedural History

The partition action follows a successful challenge by Kathleen and Claudia to Wiltbank’s purported Last Will and Testament dated September 26, 2002. The will, which had been drafted by Benjamin, gave Wiltbank’s entire residuary estate to

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<sup>1</sup> Other defendants named in the suit are Benjamin’s wife Juanita Yvonne Wiltbank (“Juanita”), Homeowners Loan Corporation (“Homeowners”), and Mortgage Electronic Registration Systems, Inc. (“MERS”). To avoid confusion, I shall refer to the surviving members of the Wiltbank family by their first names. I intend no disrespect by this practice. Homeowners and MERS subsequently filed a crossclaim against Juanita and Benjamin, who had obtained a refinance loan in 2004 secured by a mortgage on the Property in the principal amount of \$200,000. *Brown v. Wiltbank*, C.A. No. 2170-MA, Docket Entry No. 35.

Benjamin, and named Benjamin as personal representative of the estate.<sup>2</sup> At the time he signed the will, Wiltbank was impaired both physically and mentally as a result of a stroke he had suffered in early 2001.<sup>3</sup> Wiltbank suffered a second stroke on November 18 and died on December 5, 2002.<sup>4</sup> On January 3, 2003, Benjamin transferred the Property from himself as executor to himself individually.<sup>5</sup> After a trial in the will contest, the Court concluded that the will was the product of undue influence by Benjamin and therefore void.<sup>6</sup> Subsequently, the Court entered a Final Order on November 15, 2005 that held: (1) Decedent died intestate; (2) the deed conveying the Property to Benjamin was void; and (3) the Property passed to Kathleen, Claudia and Benjamin *per stirpes*, with each sibling holding an undivided one-third interest.<sup>7</sup>

On May 19, 2006, Kathleen filed a complaint for declaratory judgment, quiet title to real estate, and partition by sale of the Property. On November 28, 2008, Claudia filed an answer that contained numerous affirmative defenses, counterclaims, and cross-claims.<sup>8</sup> After some discovery, Kathleen moved for summary judgment on February 19, 2008 against Benjamin, Juanita, and Claudia. On June 3, 2008, I issued a draft report denying summary judgment in part because I found that a material issue of fact existed

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<sup>2</sup> *In the Matter of the Purported Last Will and Testament of Arlington J. Wiltbank, Sr.*, 2005 WL 2810725, at \*2 (Del. Ch. Oct. 18, 2005). The factual background recited above is taken from Vice Chancellor Parson's post-trial findings of fact.

<sup>3</sup> *Id.* at \*1.

<sup>4</sup> *Id.* at \*3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at \*\*8-9.

<sup>7</sup> *In the Matter of the Purported Last Will and Testament of Arlington J. Wiltbank, Sr.*, 2005 WL 5783305 (Del. Ch. Nov. 15, 2005).

<sup>8</sup> Claudia initially represented herself in this action, and filed largely handwritten documents that were difficult to decipher and contained much irrelevant material. She eventually obtained counsel who filed an answer to the complaint and response to Kathleen's motion for summary judgment, but was later allowed to withdraw. Claudia appeared *pro se* at the trial on April 8, 2009, but new counsel later entered an appearance on her behalf and filed a Reply Brief in Support of Exceptions to Master's Draft Report of April 8, 2009.

whether Wiltbank had promised Claudia a life estate in the Property.<sup>9</sup> Kathleen took exception to my draft report, arguing that Claudia's claim of a life estate was barred by the doctrine of collateral estoppel. On February 20, 2009, I issued my final report rejecting Kathleen's argument, and stayed exceptions to the final report until a limited trial on the factual issue of the life estate could take place.<sup>10</sup>

## II. The Trial

Trial was held on April 8, 2009. Kathleen testified that during 2001, Claudia traveled back and forth between the Property and Philadelphia, and the improvements to the Property, i.e., a ramp and toilet for use by their handicapped father, were paid for by the government, not Claudia. According to Kathleen, Wiltbank sent Claudia back to Philadelphia in March 2002 because of an altercation that occurred between them. Wiltbank lived alone until September 2002 when his grandson, Harold Johnson, came to live with him. After Wiltbank suffered a second stroke and was hospitalized in November 2002, Claudia returned to the Property, but Wiltbank died shortly thereafter.

Claudia testified that she had always considered the Property as her home, and she received her mail and continued to maintain her car registration, insurance and driver's license at the Property during the two previous decades when she lived and worked in and around Philadelphia. Starting in the late 1980s, Claudia was employed by Fisher's Transportation Services, a business run by Godwin Fisher in Philadelphia. When Claudia left Philadelphia to take care of her father in 2001, she stopped receiving checks from the

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<sup>9</sup>*Brown v. Wiltbank*, C.A. No. 2170-MA, (Del. Ch. June 2, 2008) (Transcript of Oral Argument on Summary Judgment Motions, at 60-65)

<sup>10</sup>*Brown v. Wiltbank*, C.A. No. 2170-MA (Del. Ch. Feb. 20, 2009) (Transcript of Rule to Show Cause Hearing, at 26-31).

business, but continued to be supported by Fisher, who is her “significant other.”<sup>11</sup> After Claudia went to Lewes, Fisher maintained his business in Philadelphia and stayed in a residence in Sharon Hill, Pennsylvania. He and others drove Claudia frequently back and forth between Lewes and Philadelphia where Claudia’s family lived.

According to Claudia’s testimony, Wiltbank asked her to come home because he was upset about a real estate transaction involving another family property in Lewes that Kathleen and her husband had sold. Claudia testified that her father wanted her to look after him, and as the oldest child, she was glad to come home and take care of her father because she loved her father and it was the right thing to do. Claudia testified that her father said: “Kathleen has a house, Benjamin has a house and this is going to be your house.”<sup>12</sup> According to Claudia, her father gave the Property to her for the rest of her life because it was the family’s inheritance and was not supposed to be sold.

Although Claudia claimed in an affidavit<sup>13</sup> that she and Fisher had paid to renovate and maintain the Property for her father, at trial Claudia conceded that renovations to the Property in the amount of \$23,910 had been paid by the government. Claudia was able to provide only two checks to substantiate her claim that she had provided goods and services to her father. Both checks were written on Fisher’s account; the first was in the amount of \$65 to pay one of Wiltbank’s medical bills, and the second in the amount of \$200 paid toward the balance of Wiltbank’s electrical bill.<sup>14</sup>

Claudia’s daughter, Pamela Mabin, testified that Wiltbank’s house was a mess in 2001 and, while Claudia was watching Mabin’s children, Mabin cleaned Wiltbank’s

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<sup>11</sup> April 8, 2009 Trial Transcript at 62-63.

<sup>12</sup> *Id.* at 61-62.

<sup>13</sup> Plaintiff’s Exhibit No. 2.

<sup>14</sup> Plaintiff’s Exhibit No. 4.

house. Pamela testified that she came down from Philadelphia every other day to help make the residence livable for her mother and grandfather. She acknowledged that her brother Harold Johnson and his girlfriend also helped to clean the house and, starting in September 2002, Harold came to Lewes to take care of his grandfather. Pamela testified that if her mother left Lewes during this time it was at her own free will. According to Pamela, her son was modeling in New York, and she often drove to Lewes to pick up Claudia and bring to her to New York to sit in the car while the child was auditioning, and then she would return Claudia to Wiltbank's house.

Carol Carter also testified on Claudia's behalf.<sup>15</sup> Carter testified that she visited "Daddy" Wiltbank in April 2000 before Claudia returned to Lewes, and Wiltbank told her: "Benny's got a house and Lenny's [Kathleen] got a house, and this is going to be Claudia's house."<sup>16</sup>

### III. Legal Analysis

Claudia has taken exception to my draft report, arguing that she presented clear and convincing evidence at trial that an oral contract existed between herself and her father that would entitle her to a life estate in the Property.<sup>17</sup> An exception to the statute of frauds controlling real property, *see* 6 Del. C. § 2715, an oral promise to devise an interest in real property for consideration may be enforced upon proof of clear and convincing evidence of actual part performance. *Shepherd v. Mazzetti*, 545 A.2d 621, 623 (Del. 1988); *Eaton v. Eaton*, 2005 WL 3529110, at \*3 (Del. Ch. Dec. 19, 2005).

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<sup>15</sup> Carter has known the Wiltbank family since she was five years old, and has lived with Claudia in the Property since February 2009. April 8, 2009 Trial Transcript at 124-125, 128-129.

<sup>16</sup> April 8, 2009 Trial Transcript at 125-126.

<sup>17</sup> As the holder of a life estate in the Property, Claudia would be in a position to prevent a forced partition sale. *In re Smith's Estate*, 86 A.2d 357 (Del. Orph. 1952). *See Peters v. Robinson*, 636 A.2d 926 (Del. 1994) (concurrence of ownership interests needed to maintain partition proceeding)

Claudia claims that she has clearly demonstrated that her father offered her the property and, in return, she came down from Philadelphia, leaving behind her family and employment, to care for her father. According to Claudia, she will be left homeless if partition is ordered.

In order to prove that an oral contract existed between herself and her father, Claudia had to demonstrate: (1) the existence of a bargain in which (2) there was mutual assent to the terms of an agreement between the parties and (3) consideration. *See in re Estate of Justison*, 2005 WL 217035, at \*10, n.27 (Del. Ch. Jan. 21, 2005) (citing *Wood v. State*, 815 A.2d 350 (Del. 2003)). Claudia failed to meet her burden of presenting clear and convincing evidence of the existence of a bargained-for agreement between herself and her father; that is, in return for promising to taking care of her father for the rest of his life, Wiltbank would give Claudia a life estate in the Property. The evidence of an agreement consisted almost exclusively of Claudia's testimony and affidavit. As an interested witness, Claudia's testimony in this regard was self-serving and does not constitute clear and convincing evidence of an oral contract.

At times, however, Claudia's testimony was also self-defeating and undermined her claim of an oral contract existing between herself and her father. Claudia testified that she came down to Lewes because of her father's concern about another family property that had been sold by Kathleen and her husband.<sup>18</sup> According to Claudia, Kathleen's failure to share the sale proceeds from that other property with her family forced Wiltbank to live in squalor and left Claudia unable to obtain her own residence in Philadelphia.<sup>19</sup> As a result, Claudia needed Wiltbank as much as he needed her.<sup>20</sup> In

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<sup>18</sup> April 8, 2009 Trial Transcript at 56-60.

<sup>19</sup> *Id.* at 59-60, 64, 71-72,



addition, Claudia testified that she was glad to come home and care for her father because she loved him and it was the right thing to do.<sup>21</sup> Claudia testified that she cried when she saw the condition in which her father was living, and when he asked her to come home and take care of him, she replied: “Daddy, you don’t have to ask me. There’s no question about that. I’m going to come home and take care of you.”<sup>22</sup> Claudia thus portrayed herself as a loving daughter selflessly offering to come home to take care of her ailing father. Her portrayal, however, refutes the existence of a contractual agreement between father and daughter.

As for Wiltbank’s alleged promise to give her a life estate, Claudia testified that her father had often promised her the Property, telling her: “Kathleen has a house, Benjamin has a house, this is going to be your house.”<sup>23</sup> According to Claudia, the reason her father wanted her to have the house was because the Property was the family’s inheritance and she was not greedy; her father knew that she would keep the Property in the family and not sell it.<sup>24</sup> Claudia testified: “It’s the rules of the Wiltbanks that we stay here and take care of business in the house so everybody can have a safe haven to come back home to in their old age.”<sup>25</sup> According to Claudia, her father repeatedly told her during the 1990s and in 2000 that she was going to have the Property.<sup>26</sup> Carter echoed Claudia’s testimony, stating that during a visit in April 2000, Wiltbank told her that the Property was going to be Claudia’s house.<sup>27</sup> Wiltbank told Carter that Claudia was going

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<sup>20</sup> *Id.* at 61-62.

<sup>21</sup> *Id.* at 60-61, 89-90.

<sup>22</sup> *Id.* at 107.

<sup>23</sup> *Id.* at 61, 62, 70

<sup>24</sup> *Id.* at 62, 69-70

<sup>25</sup> *Id.* at 105.

<sup>26</sup> *Id.* at 69-70.

<sup>27</sup> *Id.* at 126, 129.

to get the Property because she was not greedy and never sold anything; Wiltbank did not want the Property ever to be sold.<sup>28</sup>

Assuming this testimony to be truthful, then Wiltbank's alleged promises to Claudia during the years before his first stroke were for reasons completely unrelated to any need for a caregiver. Wiltbank's statements were thus more consistent with expressions of an intended gift of property than with the existence of a specific promise to devise the Property for consideration. Unfortunately for Claudia, Wiltbank never executed a will that reflected this alleged testamentary scheme.<sup>29</sup>

It is undisputed that Claudia lived in the Property for a time after her father's stroke and, with the help of family members, friends, and services such as Meals on Wheels, she cared for Wiltbank at the end of his life. It is undisputed that renovations were made to the Property at government expense. It is undisputed that Claudia loved her father. Notwithstanding, there was no clear and convincing evidence presented at trial that Wiltbank promised Claudia a life estate in the Property in exchange for her taking care of him. In the absence of an oral contract to devise a life estate, the partition sale can proceed. Although Claudia may be forced to leave the Property, she should not be left homeless because, as an owner of an undivided one-third interest in the Property, Claudia will be entitled to one-third of the net sale proceeds after the sale of the Property.

#### IV. Conclusion

For the reasons discussed above, I conclude that Claudia has failed to present clear and convincing evidence of an oral contract to devise a life estate in the Property in

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<sup>28</sup> *Id.* at 129-130.

<sup>29</sup> At trial, an unsigned will that left the Property to Claudia was admitted into evidence. Plaintiff's Exhibit No. 1. Claudia testified that she found this document in her father's Bible after the will contest litigation was initiated, and showed it to her lawyer at that time. April 8, 2009 Trial Transcript at 92-104.

exchange for Claudia's care of her father. Accordingly, the Petition for Partition shall be granted as soon as this report becomes final.