IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BARBARA S. TAYLOR,	:	
	:	
Petitioner,	:	
	:	
v.	:	**C.A. No. 1498-K**
	:	
KATHY G. JONES and WILLIS E. JONES,	:	
	:	
Respondents.	:	

MEMORANDUM OPINION

Date Submitted: March 13, 2006
Date Decided: May 25, 2006
Revised: May 26, 2006

Constantine F. Malmberg, III, Esquire of Young, Malmberg & Howard, P.A., Dover, Delaware, Attorney for Petitioner.

Kathy G. Jones and Willis E. Jones, Jr., of Townsend, Delaware, Respondents, *pro se*.

NOBLE, Vice Chancellor

This post-trial memorandum opinion addresses a family dispute over ownership of a lot on Hawkey Branch Road near Smyrna, Delaware.[1]

I. FACTUAL BACKGROUND

In 1983, Walter Ireland ("Walter") and Betty Jo Ireland ("Betty Jo") (collectively, the "Irelands") purchased a one-acre parcel. One of their daughters, Petitioner Barbara S. Taylor ("Barbara"), a mother of four children, had been abandoned by her husband and needed a place to live. The Irelands installed a well and septic system, and Barbara placed a mobile home on the lot. Shortly thereafter, another daughter, Respondent Kathy G. Jones ("Kathy"), then known as Kathy Ellis, also needed housing. The lot was subdivided and a hardship variance was granted by Kent County to allow for the placement of a second mobile home for the benefit of Kathy.[2] Although the Irelands retained title to both parcels, it was generally understood within the family that the daughters would eventually acquire title to the lots on which their mobile homes had been placed.

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[1] This matter is before the Court on *de novo* review of a final report by the Master. *Taylor v. Jones*, 2004 WL 2694897 (Del. Ch. Nov. 18, 2004). *See* CT. CH. R. 144(a).

[2] PX 1; PX 2. For convenience, the parcel with Barbara's mobile home will be referred to as the "Taylor Parcel"; the parcel containing Kathy's mobile home will be referred to as the "Jones Parcel." The pending dispute involves the Taylor Parcel.

Barbara has resided, at least on a fairly regular basis, on the Taylor Parcel since 1983. Kathy, however, lived only intermittently on the Jones Parcel until 1997. From then until recently, she and her husband, Respondent Willis E. Jones, Jr. ("Jones"), lived there consistently. From 1990 until 1997, another daughter of the Irelands, Lisa McCain ("Lisa"), lived in her mobile home on the Jones Parcel.

In the summer of 1996, Lisa and her husband were in the process of installing a modular home on lands owned by her husband's parents. Lisa wanted to sell her mobile home on the Jones Parcel and to avoid the continuing burden of payments on the loan which had been incurred for the purchase of the mobile home. Kathy, at the time, was living in an apartment in Smyrna, but her monthly housing expenses would be reduced if she could acquire Lisa's mobile home. Thus, a transfer of the mobile home would benefit both Lisa and Kathy. This plan was developed primarily by Lisa and her mother and then presented to Kathy. Barbara was not involved in these discussions.

Lisa and her husband were financing their new home through Greentree Financial. Kathy sought to borrow the funds needed to buy Lisa's mobile home from Greentree as well. Greentree, however, would not make the necessary loan to Kathy without additional collateral. Therefore, it was decided that the Irelands

would transfer to Kathy lands that she could use the lands as collateral. The Irelands conveyed the entire one-acre parcel—not just the Jones Parcel—to Kathy.[3] Betty Jo[4] intended that Kathy could use both parcels for collateral and that, when the Taylor Parcel was no longer needed for that purpose, Kathy would convey it to Barbara.[5] Thus, on September 30, 1996, the Irelands executed a deed that conveyed the one-acre parcel—both the Taylor Parcel and the Jones Parcel—to Kathy.[6]

Lisa moved out in 1997, and Kathy moved in. Also in 1997, Kathy married Jones. On June 21, 2000, Kathy executed a deed establishing a tenancy by the entireties with Jones to hold title to the one-acre parcel.[7]

The relationship between Barbara and Kathy and, especially, the relationship between Barbara and Jones were not good ones. Jones, on several occasions, called the police to complain about Barbara's children. The police even directed one of Barbara's children to stay off the property—off both the Jones Parcel and the Taylor Parcel. Eventually, the relationship deteriorated to the point where

[3] It is likely that they did not fully understand the effect of the 1983 subdivision, which allowed the separate conveyance of the Jones Parcel and the Taylor Parcel. No new deed description or legal description had been prepared.
[4] Although Walter participated in the process, he was following Betty Jo's instructions.
[5] Betty Jo intended that Kathy would pay the taxes on the lot while she was using it for collateral, even though Barbara was residing there.
[6] PX 3.
[7] PX 6. The deed was executed after this action had been commenced.

Jones and Kathy demanded that Barbara either start paying rent to them or vacate the premises.[8] That step prompted the filing of this action in which Barbara seeks a resulting trust to preserve her rights in the Taylor Parcel. In substance, Barbara contends that, when the Taylor Parcel was given to Kathy, everyone understood that it was to provide collateral essential for Kathy to obtain the Greentree loan and that it was to be conveyed to Barbara in due course. Thus, according to Barbara, Kathy and Jones only hold title to the Taylor Parcel for purposes of carrying out the wishes of her parents that it be the property of Barbara. The Court, applying a clear and convincing evidence standard, finds that Kathy (and, thus, Jones thereafter) acquired title to the Taylor Parcel for the purposes of meeting her own needs for collateral and then implementing the Irelands' intention that Barbara own those lands.

The Respondents offer a different explanation. They point out that Barbara and her mother, at the time of the conveyance, were at odds, perhaps not even speaking to one another. Thus, they assert that Betty Jo gave the entire parcel to Kathy because Betty Jo no longer cared about what might happen to Barbara. They quote Walter as having said that Barbara would be "their [Jones and Kathy's] problem." The other family members vigorously deny that the Taylor Parcel and

[8] *See, e.g.*, PX 9; PX 10.

the Jones Parcel were transferred under this set of facts. I reject the Respondents' factual presentation—not because it is implausible, which it is not, but as a result of my assessment of the witnesses' credibility. Two examples of the inconsistent and conflicting nature of the Respondents' testimony should highlight my skepticism.

First, the parties dispute when the family learned that Kathy was dating Jones. The family members contend that they did not know of Kathy's relationship with Jones until shortly before Christmas of 1996, several months after both parcels were conveyed to her. The Respondents argue that the relationship was well known before the conveyance. In an effort to bolster the Respondents' credibility, Jones, during the trial before the Master, told a story of how he met the lawyer who had prepared the deed as the lawyer was leaving an eatery known as the Dairy Sweet (operated by Betty Jo) after execution of the deed. Jones recited that he had come from "Bear" (the State Department of Transportation's yard) in his State vehicle. Ordinarily, that type of detailed recollection would enhance the credibility of testimony. Unfortunately for Jones, it came out during the trial before the Court that he did not start working for the State until 1998. Thus, he could not have been coming from "Bear" in a State vehicle for any purpose in 1996.

Second, Kathy's testimony was inconsistent as to the reasons why the Irelands put both parcels in her name. At various times, she testified that it was outright gift. At other times, she testified that it was a reward for loyal service to her mother at the Dairy Sweet. The latter version was all-too-conveniently invoked when the Respondents were trying to link the conveyance of the parcels to them with the dispute between Betty Jo and Barbara (having placed special emphasis on the fact that Barbara had stopped working at the Dairy Sweet).

The Respondents seek to attribute the adverse testimony of family members who make no claim to the Taylor Parcel—Betty Jo and Lisa, in particular—to the ongoing discord between Kathy and Betty Jo. The Respondents, in substance, suggest that the family's testimony has been colored by the current fissure between Kathy and the rest of her family. The evidence, however, demonstrates that the problems between Kathy and her family trace from the Respondents' decision to evict (or demand rent from) Barbara, an action which the rest of the family then viewed (and still views) as inconsistent with the terms under which Walter and Betty Jo gratuitously transferred title. There is undeniably substantial hostility between Kathy and the rest of her family. That hostility arose out of the position taken by the Respondents that is now at issue in this litigation. In that light, it is not so much a source of bias, but, instead, it accurately reflects their frustration at

the decision of Kathy to renege on the terms under which she acquired record title to the Taylor Parcel.

II. ANALYSIS

In this action, Barbara seeks imposition of a resulting trust on the Taylor Parcel for her benefit, arguing that she was the intended beneficiary of the "transaction" among the Irelands, Lisa, and Kathy. Specifically, Barbara contends that the true intent of the Irelands, in granting Kathy record title to both the Taylor and Jones Parcels, was that Kathy hold title to the Taylor Parcel as trustee for her sister Barbara, who was the actual, intended beneficiary. Barbara now asks this Court to exercise its equitable powers to grant her claim for equitable and legal title in the Taylor Parcel.

A. *Preliminary Analysis of Petitioner's Claims*

This Court's authority to grant relief under the implied trust doctrine has long been recognized.[9]

[9] *See, e.g.*, *Dillon v. Dillon*, 1987 WL 11282, at *3 (Del. Ch. May 19, 1987) ("[E]quity has long recognized the remedy of resulting trust to, in a proper case, effectuate the intention of one who conveys property subject to an express or implied agreement or limitation."), *aff'd*, 538 A.2d 1113 (Del. 1988) (TABLE). It should be noted, at the outset, that a resulting trust is "not a trust at all," *Hudak v. Procek*, 806 A.2d 140, 146 (Del. 2002); it is a form of "equitable remedy." *Id. Cf.* RESTATEMENT (THIRD) OF TRUSTS § 7 cmt. d (2003).

> A resulting trust arises from the presumed intentions of the parties and upon the circumstances surrounding the particular transaction. A resulting trust is found where the legal estate is acquired with accompanying facts and circumstances from which it can be inferred or assumed that the beneficial interest is not to go with the legal title.[10]

Barbara, as petitioner, bears the burden of demonstrating that a resulting trust should be imposed on the Taylor Parcel in her favor by clear and convincing evidence.[11]

The Court finds that Barbara has satisfied her burden. The testimony at trial established that Betty Jo granted record title to Kathy in the Taylor Parcel only for the purpose of providing the collateral necessary for Kathy to obtain the Greentree loan and that Kathy understood and accepted this condition. All of the parties to the "transaction," other than Kathy, agree that Barbara was the intended beneficial

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[10] *Subt v. Subt*, 1990 WL 29755, at *5 (Del. Ch. Feb. 16, 1990) (citing *Adams v. Jankouskas*, 452 A.2d 148, 152 (Del. 1982) ("A resulting trust arises from the presumed intentions of the parties and upon the circumstances surrounding the particular transaction."); 4 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 1031, at 61-63 (5th ed. 1941)); *see also Hudak*, 806 A.2d at 146 ("A resulting trust is an equitable remedy by which a court of equity may give effect to the intentions of the parties to a transaction."). *See generally Adams*, 452 A.2d at 152 n.4 (describing generally the doctrine of equitable trusts (quoting 1 POMEROY, *supra*, § 155)); DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY §§ 12-7[a], 12-7[c] (2005).

[11] *See Quill v. Malizia*, 2005 WL 578975, *8 (Del. Ch. Mar. 4, 2005); *see also Greenly v. Greenly*, 49 A.2d 126, 129 (Del. Ch. 1946); 4 POMEROY, *supra* note 10, § 1040, at 82. See note 32, *infra*, for a brief discussion of the implications of the parol evidence rule in this case. *Compare Hudak*, 806 A.2d at 146-47 (explaining that presumption of gift to child arises in certain circumstances). In this instance, the burden of proof required is still clear and convincing, and the transfer was not for the benefit of the parents, but instead for the benefit of a child of the transferors. This matter, of course, is the result of a dispute between children of the transferors.

owner of the Taylor Parcel—on which Barbara's mobile home had been placed and where she had resided more or less continuously since 1983. Furthermore, they agree that Kathy was to convey record title in the Taylor Parcel to Barbara once Kathy no longer needed it for the limited purpose of providing collateral. The Respondents have presented an alternative description of events; however, the Court, as trier-of-fact and having heard the testimony of the witnesses, finds it without merit because it is not credible.[12]

B. *General Applicability of Resulting Trust Doctrine*

Although the Court finds that Barbara has satisfied her burden in this case, the Court notes that her reliance on the resulting trust theory potentially raises doctrinal questions that—though interesting as well as vexing—may not need to be resolved for purposes of this litigation. As explained above, this Court's power to employ the implied trust doctrine in granting relief has long been recognized and widely applied when circumstances warranted. Indeed, the Court has significant latitude in crafting and implementing such remedies; however, its discretion is not without bound.

Foremost among the Court's concerns is that strict application of the majority approach to implied trust theory raises the question of whether, on these

[12] The Court also finds that Jones, being the recipient of a gift and having knowledge of the relevant facts, took his interest in the Taylor Parcel subject to Barbara's beneficial interest.

facts, Barbara is the doctrinally-proper party to stand as beneficiary of any resulting trust that may be imposed. The doctrinal obstacle presented by Barbara's theory of relief flows primarily from the understanding, espoused by many commentators, that resulting trusts are *reversionary* in nature.[13] As a consequence, the possibility exists that Barbara's parents (the Irelands), as transferors who remain living, instead of Barbara, would be the parties to whom the Court should grant relief by imposition of a *resulting trust* in their favor.[14]

An issue of only secondary importance, here, potentially arises because the reason for the trust's failure may, at least under the approach of modern commentators, also have an impact on the form of relief that may be potentially granted. This litigation arises primarily because no writing was made to demonstrate Kathy's agreement with the Irelands regarding Barbara's beneficial interest in the Taylor Parcel. It has been said that resulting trusts are available largely, if not exclusively, in two contexts: (1) when a party pays the purchase

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[13] *See, e.g.*, RESTATEMENT (THIRD) OF TRUSTS § 7 ("A resulting trust is a *reversionary*, equitable interest implied by law in property that is held by a transferee, in whole or in part, as trustee *for the transferor or the transferor's successors in interest*." (emphasis added)); *id.* at cmt. a (explaining, *inter alia*, that "resulting trusts and resulting-trust interests are reversionary in nature"); *cf.* 4 POMEROY, *supra* note 10, § 1032.

[14] *See, e.g.*, RESTATEMENT (THIRD) OF TRUSTS § 8 (providing that where "owner of property makes donative transfer and manifests an intention that the transferee is to hold the property in trust but the intended trust fails in whole . . . the transferee holds the trust estate . . . *on resulting trust for the transferor or the transferor's successors in interest* . . . ."); 4 POMEROY, *supra* note 10, § 1032; *cf.* RESTATEMENT (THIRD) OF TRUSTS § 7 cmt b. *See also supra* note 13 and accompanying text.

price for property that is transferred to another (*i.e.*, purchase-money resulting trusts), and (2) "when there is a failure, in whole or in part, of an express trust or the purpose of an express trust or when the purpose of an express trust is achieved without exhausting the income or corpus of the trust."[15] Under this rubric, Barbara's claim for a resulting trust is best viewed as having been asserted under the latter theory—specifically, as an express trust that has failed. The *Restatement (Third) of Trusts*[16] suggests that, under the modern, majority approach, in the event an express trust fails for noncompliance with a statute of frauds requiring a writing in order to establish *the trust*,[17] a resulting trust may not arise at all.[18] On the

[15] WOLFE & PITTENGER, *supra* note 10, § 12-7[c], at 12-87; *see also* RESTATEMENT (THIRD) OF TRUSTS §§ 7 – 9; *id.* at § 7 cmt. a; *cf.* 4 POMEROY, *supra* note 10, § 1031, at 63 (describing the two situations as being either a gift—and citing as potential example conveyance by deed—or a purchase-money resulting trust).

[16] The Delaware Supreme Court has variously relied on both the *Restatement (Second) of Trusts* and *Pomeroy's Equity Jurisprudence*. *See, e.g.*, *Hudak*, 806 A.2d at 147 (citing RESTATEMENT (SECOND) OF TRUSTS § 442 (1959)); *Adams*, 452 A.2d at 152 n.4 (quoting 1 POMEROY, *supra* note 10, § 155, at 210-11). The Court assumes that the *Restatement (Third) of Trusts*, although only recently adopted, would apply to the facts presented by this litigation.

[17] "Statute of frauds," as used in the *Restatement*, refers to statutes (or judicially-created rules) "requiring that inter vivos trusts be created or proved in writing . . . ." RESTATEMENT (THIRD) OF TRUSTS § 22 cmt. a.

[18] *See id.* at § 8 cmt. h. Comment h explains that the rule set forth in § 8, regarding resulting trusts, "is not applicable where the transferor's intention to create a trust is not properly manifested—that is, where the intended trust cannot be enforced because of either a statute of frauds or a statute of wills." Comment h describes several potential results in that instance, pointing the reader to §§ 22 – 24 in the context of *inter vivos* transfers (*see infra* note 19 and accompanying text), but the comment also provides that "[n]one of these outcomes, however, involves a resulting trust."

contrary, the property may be subject to a *constructive trust*, or the transferee may, under some circumstances, retain the property free of trust.[19]

This secondary issue may be resolved since analysis under the modern, majority approach described above may be inapplicable because, at least as of 1996, Delaware had not adopted a requirement that an express *trust* in land be established in writing.[20] Indeed, it could be argued that resort to the resulting trust doctrine is altogether obviated by the opportunity which Barbara had to demonstrate the existence of an oral express trust by clear and convincing

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[19] *See* RESTATEMENT (THIRD) OF TRUSTS § 24; *see also id.* at § 8 cmt. h. Section 24 of the *Restatement (Third) of Trusts* sets forth the potential outcomes in the context of an *inter vivos* trust that fails to comply with the statute of frauds (as that term is used in the *Restatement*, *see supra* note 17). *See* RESTATEMENT (THIRD) OF TRUSTS § 24 cmt. a. Barbara's theory for relief, in this instance, relies upon resulting trust doctrine. Although this section provides for a resulting trust in certain narrow circumstances, *see id.* at § 24(3), it appears to be only for the benefit of a living transferor or heirs (and not the intended beneficiary). *See also id.* at cmts. d, g; *cf. id.* at cmt. i. Also compare *id.* at cmt. a, with *infra* note 20 and accompanying text.

[20] Section 20 of the *Restatement (Third) of Trusts* provides: "Except as required by a statute of frauds, a writing is not necessary to create an enforceable inter vivos trust, whether by declaration, by transfer to another as trustee, or by contract." *See supra* note 17. Delaware is among the small minority of jurisdictions that have recognized the validity of oral express trusts in land. *Compare Levin v. Smith*, 513 A.2d 1292, 1297 (Del. 1986) ("Under the law of this State, oral trusts in land are recognized." (citing *Hall v. Livingston*, 1869 WL 1363, at *11 (Del. Ch. Sept. 1, 1869))), *with* 6 *Del.C.* § 2714. *Cf.* RESTATEMENT (THIRD) OF TRUSTS §§ 20 cmt. a, 22 cmt. a. *But cf.* 12 *Del.C.* § 3545 (limiting the creation of oral trusts on or after January 1, 2001).

Delaware, having been originally a part of the Pennsylvania colony, was settled before enactment of the English Statute of Frauds of 1677 under Charles II (what, in most jurisdictions, is commonly referred to as the "Statute of Frauds"). *See* 29 Charles II, c. 3 ("An Act for the Prevention of Frauds and Perjuries"); *see also* RESTATEMENT (THIRD) OF TRUSTS § 22 cmt. a. As a consequence, Delaware did not incorporate § 7 of the Statute of Frauds of 1677, requiring a writing for the establishment of an express trust in land, into its common law. *See generally Hall*, 1869 WL 1363; GEORGE G. BOGERT & GEORGE T. BOGERT, LAW OF TRUSTS AND TRUSTEES § 64, at 132.

evidence.[21] Barbara, however, has not raised the possibility of an oral express trust in the Taylor Parcel.[22]

Despite the Court's concerns regarding doctrinal precision, it should also be noted that the modern approach enunciated by commentators is not necessarily to be followed slavishly. The Court's apprehension is animated by the realization that implied trusts cannot be available to parties entirely without limit in order to grant relief for actions they later regret. It may also be said, however, that the Court's capacity to grant this form of flexible equitable relief most closely

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[21] In this context, a petitioner bears the burden of demonstrating the existence of an oral express trust by clear and convincing evidence. *See, e.g.*, *Levin*, 513 A.2d at 1296-97; *Bodley v. Jones*, 32 A.2d 436, 438 (Del. 1943). This burden is the same as is required under resulting trusts; therefore, under the doctrine of oral express trusts, when the burden of clear and convincing evidence is met, and no writing is required to establish an oral express trust in land, a petitioner may be granted relief without resort to the equitable trust doctrine. *See, e.g.*, RESTATEMENT (THIRD) OF TRUSTS § 20 cmt. a; RESTATEMENT (SECOND) OF TRUSTS § 39 cmt. a.

This analysis is also consistent with *Quill*'s explanation that the demanding evidentiary burden is imposed on petitioners because the implied trust doctrine serves as an "exception" to the ordinary understanding that interests in *land* must be proved by a writing satisfying the "statute of frauds"—*i.e.*, the requirements found in 6 *Del.C.* § 2714. *See Quill*, 2005 WL 578975, at *8. Indeed, permitting oral *trusts* in land does raise the specter of fraud, necessitating the high standard of clear and convincing evidence.

The question may legitimately be asked as to why, in a state recognizing oral express trusts in land, would the doctrine of resulting trust be necessary in circumstances similar to those presented here? This answer may have much to do with traditional rules of pleading in equity that are no longer rigidly followed. *See Jones v. Bodley*, 39 A.2d 413, 416 (Del. Ch. Oct. 26, 1944) ("Any relief granted a complainant in equity must correspond with the case alleged in the bill. When, therefore, a resulting trust is alleged, there can be no decree for an express trust . . . ." (citations omitted)), *aff'd*, 59 A.2d 463 (Del. 1947).

[22] It could be argued that § 8 of the *Restatement (Third) of Trusts*, describing relief under resulting trusts, would now be applicable to these facts, *compare supra* note 18 (describing inapplicability of § 8 when trust "not properly manifested"); however, this would perhaps not overcome the obstacle that a resulting trust merely returns the property to the transferor when the transferor remains living. *See supra* note 14 and accompanying text.

comports with the historical foundations of Chancery jurisdiction.[23] This Court's historical readiness to adapt to the circumstances of each case and craft appropriate remedies,[24] in contrast to the perhaps more rigid application of law in jurisdictions without similar traditions, should not be lightly discarded or circumscribed.[25] Indeed, trusts arising by the operation of law have been described as the category of relief "which in this country especially affords the widest field for the jurisdiction of equity in granting its special remedies so superior to mere recoveries of damages . . . ."[26] As a consequence, given the Court's analysis below, these issues (especially the secondary issues discussed above) are perhaps best only identified here and left for future resolution after having been fully and squarely tested in fully informed adversary litigation.

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[23] *See, e.g.*, William T. Quillen & Michael Hanrahan, *A Short History of the Delaware Court of Chancery—1792-1992*, 18 DEL. J. CORP. L. 819, 820-22 (1993).

[24] *See, e.g.*, *Weinberger v. UOP, Inc.*, 1985 WL 11546, at *9 (Del. Ch. Jan. 30, 1985) (citing maxim of equity: "[E]quity will not suffer a wrong without a remedy."), *aff'd*, 497 A.2d 792 (Del. 1985) (TABLE). It should be noted, however, that the existence of a judicially cognizable right of action may first need to be established. *Cf. O'Neill v. Town of Middletown*, 2006 WL 205071, at *22 n.186 (Del. Ch. Jan. 18, 2006).

[25] In general, the treatises and the *Restatements* are in agreement. A subtle evolution in the law of trusts, however, can be seen by comparing *Pomeroy's* with the *Restatements*—an evolution that Delaware may have only partially followed. *Compare, e.g.*, 4 POMEROY, *supra* note 10, § 1035, *with* RESTATEMENT (SECOND) OF TRUSTS § 405 cmt. a; *compare* RESTATEMENT (SECOND) OF TRUSTS § 45, *with* RESTATEMENT (THIRD) OF TRUSTS § 24.

[26] 1 POMEROY, *supra* note 10, § 155, at 209. Of course, the mere fact that a doctrine is contained in a *Restatement* does not, itself, require this Court's adherence.

C. *Considerations Applicable to this Petitioner*

Barbara's theory for relief rests on imposition of a resulting trust. The parties did not raise the issues reviewed above. Moreover, notwithstanding the Court's enumeration of doctrinal concerns, the Court also concludes that Barbara's entitlement to the relief that she seeks is consistent with the "law of the case" doctrine. Furthermore, consideration of the equities presented by the facts of this case counsels in favor of granting Barbara the relief she seeks.

First, the Court views its opinion on the Respondents' Motion for Summary Judgment as effectively answering the questions raised above, at least for the purposes of this litigation.[27] In its prior opinion, this Court held:

> A resulting trust may be imposed in circumstances where it is intended that one party will hold legal title to property for the benefit of another party who has equitable or beneficial ownership of that property. The basis for the remedy is the presumed intent of the parties and the circumstances of the transaction. [The Court] conclude[s] that the facts alleged in the verified petition are sufficient to establish a *prima facie* claim for a resulting trust.[28]

In reaching its decision that a triable issue of material fact existed as to whether an oral agreement was entered into for Barbara's benefit between her parents and

[27] *See Taylor v. Jones*, 2002 WL 31926612 (Del. Ch. Dec. 17, 2002) (denying Respondents' Motion for Summary Judgment).
[28] *Id.* at *3 (citing *Subt*, 1990 WL 29755, at *5; *Coughlin v. Hall*, 1995 WL 317003, at *3 (Del. Ch. May 16, 1995)).

Kathy, the Court considered facts that are essentially the same as those compelling the Court's decision, now.[29] This implicates the "law of the case" doctrine.

> The "law of the case" doctrine requires that issues already decided by the same court should be adopted without relitigation, and "once a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that court unless compelling reason to do so appears."[30]

The Court is not without some discretion in determining the applicability of "law of the case" doctrine. The Delaware Supreme Court has explained that "[t]he law of the case doctrine is not inflexible in that, unlike *res judicata,* it is not an absolute bar to reconsideration of a prior decision that is clearly wrong, produces an injustice, or should be revisited because of changed circumstances."[31] Nevertheless, the Court finds no persuasive reason to ignore its prior ruling that Barbara could proceed on her theory of resulting trust.[32] As a consequence, the

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[29] *See id.*

[30] *May v. Bigmar, Inc.*, 838 A.2d 285, 288 n.8 (Del. Ch. 2003) (holding prior summary judgment opinion in that case to have determined law of the case as to particular issue (quoting *Odyssey Partners v. Fleming Co.*, 1998 WL 155543, at *1 (Del. Ch. Mar. 27, 1998))), *aff'd*, 854 A.2d 1158 (Del. 2004) (TABLE); *see also Kenton v. Kenton*, 571 A.2d 778, 794 (Del. 1990) ("The 'law of the case' is established when a specific legal principle is applied to an issue presented by facts which remain constant throughout the subsequent course of the same litigation."). *Cf. Izquierdo v. Sills*, 2004 WL 2290811, at *4 n.28 (Del. Ch. June 29, 2004) (comparing principles of collateral estoppel and "law of the case" doctrine).

[31] *Gannett Co., Inc. v. Kanaga*, 750 A.2d 1174, 1181 (Del. 2000) (analogizing to doctrine of *stare decisis*) (citations omitted); *see also VGS, Inc. v. Castiel*, 2003 WL 723285, at *12 - *13 (Del. Ch. Feb. 28, 2003); *Birowski v. Redman*, 2001 WL 1088759, at *3 (Del. Ch. July 18, 2001) (Master's Report).

[32] The Court notes also that questions regarding the parol evidence rule were similarly resolved in the opinion denying summary judgment. *See* 2002 WL 31926612, at *3 - *4. Additionally, however, the *Restatement (Third) of Trusts* points to why parol evidence is permissible *under*

Court will not now hold that Barbara may not recover under a resulting trust for doctrinal reasons raised *sua sponte* after trial, especially given the analysis below.

Second, the equities of this case would appear to require this result. The significance of the concerns identified by the Court regarding the resulting trust doctrine, above, is by no means without doubt. Additionally, the Court finds, by clear and convincing evidence, that an oral understanding existed between Kathy and her parents that the Taylor Parcel was to be held for Barbara's benefit. As a consequence, it would be unjust to permit the Taylor Parcel to remain in the hands of Kathy and Jones. Moreover, the above concerns would, at most, point only to the Irelands as the proper parties to whom equitable relief in the form of a resulting trust should be granted. Given the Court's earlier ruling that this case could proceed on the theory of resulting trust advanced by Barbara, it would be contrary to equity now to require separate litigation only so that her parents, the grantors, could assert a claim for Barbara's ultimate benefit—especially because the Irelands

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these circumstances. *See* RESTATEMENT (THIRD) OF TRUSTS § 21(2) ("If the owner of property transfers it inter vivos to another person *by a writing* that does not state either that the transferee is to take the property for the transferor's own benefit or that the transferee is to hold it upon a particular trust, except as excluded by a statute of frauds or other statute, extrinsic evidence may be used to show that the transferee was to hold the property in trust for either the transferor or one or more third parties, or for some combination of the transferor, the transferee, and one or more third parties." (emphasis added)); *see also id.* at Reporter's Notes on § 21 cmt. a (responding to arguments that resort to extrinsic evidence is "unsettling"); *cf. supra* note 20 and accompanying text. *But see Taylor*, 2002 WL 31926612, at *4 (implicitly describing result when deed is fully integrated).

(as well as Lisa—*i.e.*, all parties to the "transaction," other than Kathy) are in agreement that Barbara should by now be the record owner of the Taylor Parcel.

III. CONCLUSION

Accordingly, for the foregoing reasons, a resulting trust shall be imposed over the Taylor Parcel for Petitioner's benefit, granting and confirming her legal and equitable title in the property. The parties shall bear their own costs. Counsel for Petitioner, on notice to Respondents, shall submit a form of order to implement this memorandum opinion.