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Re: Dryden v. Estate of Joseph A. Gallucio, Jr., et al.
C.A. No. 442-N
Date Submitted: September 21, 2006

Dear Counsel:

This post-trial letter opinion addresses a dispute between the ex-wife of Joseph A. Gallucio, Jr. (the "Decedent") and his widow over the scope of the commitments the Decedent made to his ex-wife in the Stipulation, Agreement and Order (the "Agreement") which resolved all matters ancillary to their divorce, including marital property division and alimony, and the appropriate remedy, if any, for his failure to meet his obligations at the time of his death.[1]

[1] The facts are largely undisputed. Most are drawn from the Stipulation of Facts with Trial Exhibits (the "Stip."), to which the Agreement is appended as Ex. A.

* * *

The Decedent and Plaintiff Barbara G. Dryden ("Dryden") were married from 1957 until 1995, when they divorced. In the Agreement, they negotiated the following alimony provision:

> 8. ALIMONY. Wife is awarded [lifetime] alimony in the amount of $900.00 per month until death or remarriage. Either party may petition Family Court or other Court of competent jurisdiction for modification of alimony upon a change of economic circumstances or other changes of circumstances that may warrant a modification.[2]

The word "lifetime" is in brackets because it was stricken by the parties from the final draft shortly before signing.[3] Thus, the version signed by the parties and ordered by the Family Court on July 12, 1996, did not contain the word "lifetime."

The parties also included the following provision regarding insurance:

> 9. INSURANCE. Husband agrees to keep work insurance policy active in the amount of $10,000.00 and name Wife beneficiary in the insurance policy. Further, Husband agrees to acquire a new insurance policy with Wife as beneficiary that will yield Wife the sum of $400.00 per month per life as long as alimony is required.[4]

[2] Agreement ¶ 8.
[3] Both parties were represented by counsel.
[4] Agreement ¶ 9.

From perhaps as early as 1957, the Decedent had a $10,000 life insurance policy which is the policy referenced in the first sentence of Paragraph 9 of the Agreement. At the time of the Agreement, one of the four children of the marriage was the beneficiary. The Decedent never designated Dryden as the beneficiary.

Several weeks before the Agreement was executed, the Decedent obtained a $50,000 life insurance policy with one of the children of the marriage as the beneficiary. Although the evidence is not entirely clear, the best inference is that the Decedent intended for this policy to fund the $400 per month obligation of Paragraph 9 of the Agreement.[5]

As a consequence of the Agreement, the Decedent received the Janney Montgomery Scott Account (the "Old Account"), a jointly held brokerage account established during the marriage, which contained approximately $45,000.[6]

In January 1998, the Decedent married Defendant Ann Gallucio ("Gallucio"). He promptly named her the beneficiary of the $10,000 policy.[7] By

[5] If one assumes an 8% annual interest rate, $50,000 would support a $400 per month annuity for approximately 25 years. I note that the Agreement anticipated that the policy would be acquired after its execution.
[6] Agreement ¶ 7; Stip. Exs. G & H.
[7] Stip. Ex. J.

then, the $50,000 policy had lapsed because he had not continued to pay the premiums.[8] Dryden learned, no later than the fall of 1999, that the $50,000 life insurance policy was no longer in effect. She and their children talked to the Decedent about his failure to maintain the policy, but the Decedent told them that the Old Account would be a source for funding his obligations to his ex-wife when he died. Dryden's attorney wrote the Decedent and threatened legal action if the $50,000 policy were not reinstated. Soon thereafter, however, the Decedent was diagnosed with cancer, and Dryden refrained from action against her former husband out of her compassion for the difficulties he was experiencing with his health.

On March 1, 2000, the Decedent established another account with Janney Montgomery Scott (the "New Account").[9] He transferred the assets of the Old Account into the New Account. The New Account was a joint account with Gallucio, who became a joint tenant with right of survivorship.

[8] The $50,000 policy lapsed on August 27, 1997. Stip. Ex. E.
[9] Stip. Ex. L.

The Decedent died on September 4, 2003. The proceeds of the $10,000 life insurance policy were paid to Gallucio, and Gallucio, as the surviving joint tenant, received the assets in the New Account, which had increased to more than $150,000.[10] The Decedent's probate estate lacks the wherewithal to satisfy Dryden's claims.[11]

* * *

Dryden seeks the imposition of a constructive trust over the proceeds of the $10,000 life insurance policy paid to Gallucio on the Decedent's death. A constructive trust is frequently employed as an equitable remedy for unjust enrichment.[12] Dryden argues that Gallucio was unjustly enriched when she received the proceeds of that policy. Unjust enrichment has been defined as "the unjust retention of a benefit to the loss of another, or the retention of money or

[10] Stip. Ex. N.
[11] Gallucio serves as the personal representative of Decedent's Estate (the "Estate") which also is a defendant in this action. The assets in the estate consist of an automobile and household goods, all valued at slightly more than $12,000. Stip. Ex. O.
[12] DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY ("WOLFE & PITTENGER") § 12-7[b], at 12-77 (2006) ("Constructive trusts have been employed to remedy unjust enrichment in a variety of situations.").

property of another against the fundamental principles of justice or equity and good conscience."[13]

By the Agreement, the Decedent committed to maintain the $10,000 policy (which he did) and to name Dryden as the beneficiary (which he did not do). The proceeds of the policy properly belong to Dryden, and it is unjust for Gallucio to retain them.[14] It follows that Dryden is entitled to imposition of a constructive trust over the policy proceeds.[15]

* * *

Dryden also seeks imposition of a constructive trust over the assets received by Gallucio as the surviving joint tenant of the New Account in order to fund the

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[13] *Schock v. Nash*, 732 A.2d 217, 232 (Del. 1999). Gallucio suggests that Dryden may not pursue an unjust enrichment claim because Dryden's rights were defined by contract. *See, e.g.*, *Palese v. Del. State Lottery Office*, 2006 WL 1875915, at *5 (Del. Ch. June 29, 2006), *aff'd*, 2006 WL 3524054 (Del. Dec. 7, 2006). There is, however, no contract between Dryden and Gallucio and, thus, the Court may consider whether Gallucio's retention of the insurance proceeds would constitute unjust enrichment.

[14] It is not necessary for Gallucio to have known of Dryden's entitlement to the policy proceeds. *See Teachers' Ret. Sys. of La. v. Aidinoff*, 900 A.2d 654, 672 n.25 (Del. Ch. 2006).

[15] *See Richetti v. Sanzo*, 1994 WL 18683 (Del. Ch. Jan. 5, 1994) (applying Pennsylvania law).

Gallucio challenges the jurisdiction of this Court to entertain Dryden's claim. She argues that the Family Court has exclusive jurisdiction over matters involving former spouses. Gallucio holds property that was acquired on the death of the Decedent and it is properly the subject of an equitable remedy. I do not understand that the jurisdiction granted by the General Assembly over family matters to the Family Court has deprived this Court of its traditional equitable jurisdiction over claims such as those framed by the facts of this action.

$400 per month obligation for which the Decedent was supposed to (but did not) obtain sufficient insurance to assure its payment.

The Court must first attempt to figure out the parties' shared intentions in entering into the Agreement. The Court's task can be described more easily than it can be carried out:

> The Court first looks to the express terms of the contract to see whether the parties' intent can be discerned from those terms. If the terms of the contract are clear on their face, the Court will give those terms the meaning that would be ascribed to them by a reasonable third party. If, however, the contract is reasonably or fairly susceptible of different interpretations or may have two or more different meanings, it is ambiguous, and the Court will resort to extrinsic evidence to ascertain the reasonable shared expectations of the parties at the time of contracting. The extrinsic evidence may include the overt statements and acts of the parties, the business context, prior dealings between the parties, and . . . . In addition, the Court must strive to interpret contractual provisions in a way that gives effect to every term of the instrument, and that, if possible, reconciles all of the provisions of the instrument when read as a whole.[16]

The Agreement obligated the Decedent to pay alimony to Dryden "in the amount of $900.00 per month until death or remarriage." Although parties may

[16] *Frontier Oil Corp. v. Holly Corp.*, 2005 WL 1039027, at *26 (Del. Ch. Apr. 29, 2005) (footnotes, citations, and internal punctuation omitted).

agree otherwise, it is presumed that the obligation to pay alimony does not survive the death of either spouse.[17] The language of the Agreement, at Paragraph 8, is not sufficient to demonstrate the intention of the parties that any alimony obligation would survive the Decedent's death. The Agreement, however, also required the Decedent to obtain a new life insurance policy to fund a $400 per month payment "as long as alimony is required." If the obligation to pay alimony did not survive the Decedent's death, then the requirement to obtain life insurance to fund an alimony obligation makes no sense because, obviously, the life insurance proceeds would not be available to satisfy any obligation until the Decedent's death.[18] Thus, the Agreement with respect to the Decedent's obligation to provide for payments to Dryden after his death is ambiguous. With that conclusion, the Court must turn to extrinsic evidence. It, too, is inconsistent. The striking of the word "lifetime" from the provision granting alimony strongly suggests an intent that there would be no alimony obligation after the Decedent's death. On the other hand, Dryden

[17] *See* 13 *Del. C.* § 1512(g) ("Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon the death of either party or the remarriage or cohabitation of the party receiving alimony.").
[18] There is nothing in the record to suggest that the parties envisioned a life insurance product other than "normal" life insurance.

agreed to delete the word "lifetime" only upon Decedent's assertion that the word was redundant.

If one reads the alimony provision in isolation, especially with the benefit of the extrinsic evidence demonstrating that the word "lifetime" had been stricken, the reasonable inference is that no alimony obligation was to survive the Decedent's death. In this instance, however, the most helpful guidance for interpreting the Agreement is provided by the principle that the Court must, if possible, interpret all of the provisions of the Agreement "in a way that gives effect to every term of the instrument, and that, if possible, reconciles all of the provisions of the instrument when read as a whole."[19] The final sentence of Paragraph 9 of the Agreement would, if there were no obligation to pay alimony after the Decedent's death, become a nullity. The only way both to give meaning to the last sentence of Paragraph 9 and to reconcile the alimony provision and the life insurance provision is to conclude that the parties intended for a $900 per month alimony obligation that would end upon the death of either the Decedent or Dryden (or her remarriage) and that, if Dryden survived the Decedent, there would

[19] *Council of Dorsett Condo. Apts. v. Gordon*, 801 A.2d 1, 7 (Del. 2002).

be a $400 per month payment to her, until her death or remarriage, to be funded through the new insurance that the Decedent was to acquire.

Thus, the Decedent was required to have in place, at the time of his death, a life insurance policy that would reasonably be expected to generate $400 per month for Dryden's benefit. He, of course, did not meet that obligation. Because he failed to obtain the necessary insurance, he directly and, thus, the Estate, became liable for funding the periodic payment obligation.

* * *

Dryden, recognizing that the Estate is unable to meet the Decedent's commitment to provide her a $400 per month payment, looks to the New Account as a source of funding. First, she asks the Court to impose a constructive trust. Second, she challenges the creation of the New Account with Gallucio as a joint tenant with right of survivorship under the Fraudulent Transfer Act (the "Act").[20]

* * *

In seeking imposition of a constructive trust over a portion of the New Account, Dryden notes that Gallucio enjoys the benefits of those assets which

[20] 6 *Del. C.* Ch. 13.

should have been used by the Decedent to satisfy his obligations under the Agreement. Dryden is correct that it is unjust for Gallucio to retain the benefits at her expense. Dryden's argument, however, suffers from a critical structural flaw. Dryden never had any right to the New Account (or the Old Account after she transferred her interest in it to the Decedent in accordance with the Agreement). "[A] constructive trust may only be imposed 'only upon specific property, . . . identifiable proceeds of specific property, and even money so long as it resides in an identifiable fund to which the plaintiff can trace equitable ownership.'"[21] Because Dryden did not have any equitable claim to the New Account (or the Old Account), the Court may not impose a constructive trust on the New Account for her benefit.[22]

* * *

[21] *Teachers Ret. Sys. of La.*, 900 A.2d at 672-73 (quoting WOLFE & PITTENGER, § 12-7[b], at 12-75–12-76).

[22] Dryden points out that the Decedent told her that the $400 per month obligation would be met through the Old Account. That the assets in the Old Account were transferred to the New Account would not defeat the Court's ability to impose a constructive trust. The difficulty is that a mere promise to pay a debt from a particular asset does not create an equitable claim to that asset. Otherwise, any creditor who is told by a debtor that she will be paid with a particular asset would have an equitable lien on that asset.

Dryden next invokes the Act in an effort to set aside the Decedent's transfer of the assets in the Old Account to the New Account held jointly with Gallucio.

The Act requires, not surprisingly, a "transfer." "Transfer" is defined broadly as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of any lien or other encumbrance."[23] Gallucio argues that the creation of the joint account was not a transfer; the Defendant never relinquished control of the asset. By transferring the assets to a jointly-held account with his wife, however, the Decedent placed the property beyond the reach of his own creditors.[24] A husband's conveyance of his real estate to his wife and himself has been held to constitute a transfer which can be set aside.[25] Similarly, a "transfer," for purposes of the Act, includes the creation

[23] 6 *Del. C.* § 1301(12).
[24] In Delaware, a husband and a wife may hold personal property as tenants by the entireties and, thereby, protect the property from the claims of the creditor of one of them. In addition, the assets held by husband and wife as tenants by the entireties will not be part of the estate of the first spouse to die and, thus, will not be available for that spouse's creditors even in death. *See William M. Young Co. v. Tri-Mar Assocs., Inc.*, 362 A.2d 214, 215-16 (Del. Super. 1976); *see also IRS v. Gaster*, 42 F.3d 787, 791 (3d Cir. 1994).
[25] *See Givens v. Givens*, 1986 WL 2270 (Del. Super. Feb. 4, 1986) (applying predecessor Fraudulent Conveyance Act).

of a joint tenancy with right of survivorship between spouses in personal property and, in this instance, encompasses the creation of the New Account.[26]

A transfer can be fraudulent to a creditor with a "claim." "Claim" is defined as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured."[27] It may be present or future.[28] Dryden has held two claims under the latter sentence of Paragraph 9 of the Agreement: (1) the Decedent's obligation to make the necessary payments and maintain the life insurance specified by that provision and (2) when the Decedent died without having the required insurance, an entitlement to the anticipated periodic payments.[29] Thus, as of the transfer, there was a present claim and a future claim.

> A transfer made . . . by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made . . . if

[26] Gallucio relies upon *Law Office of Staats, P.A. v. Kelly*, 316 B.R. 629 (D. Del. 2004), but there, the court expressly avoided deciding the question of whether the creation of a joint tenancy with a spouse constituted a "transfer."
[27] 6 *Del. C.* § 1301(3).
[28] *See* 6 *Del. C.* § 1304(a) ("whether the creditor's claim arose before or after the transfer was made").
[29] It is conceivable that this latter claim, which is characterized as "future," is instead a present, but unmatured, claim in light of the clear intent of the Decedent not to maintain the required life insurance.

> the debtor made the transfer . . . : (1) [w]ith actual intent to hinder, delay or defraud any creditor of the debtor.[30]

The Decedent, with the creation of the New Account, made a transfer at a time when Dryden was a creditor with either a present or future claim (or both). The question, thus, becomes whether he had the "actual intent to hinder, delay or defraud" Dryden.

The Act provides a nonexclusive list of factors for the Court to consider in determining whether a debtor transferred property with "actual intent."[31] It is not

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[30] 6 *Del. C.* § 1304(a).

[31] In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:

> (1) The transfer or obligation was to an insider;
> (2) The debtor retained possession or control of the property transferred after the transfer;
> (3) The transfer or obligation was disclosed or concealed;
> (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
> (5) The transfer was of substantially all the debtor's assets;
> (6) The debtor absconded;
> (7) The debtor removed or concealed assets;
> (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
> (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
> (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

necessary that all of the factors support a finding of actual intent. Instead, "the confluence of several [factors] in one transaction generally provides conclusive evidence of an actual intent to defraud."[32] The Decedent's transfer of the assets in the Old Account to a joint tenancy with Gallucio satisfies several of the statutory criteria. First, the transfer to his wife was a transfer to an insider.[33] Second, the Decedent retained full use of the assets during his life, despite creation of the joint tenancy with his wife. Third, he did not disclose the transfer to Dryden or their children and, indeed, he told them that the assets which he placed in the New Account would be available to satisfy his posthumous obligations to Dryden. Fourth, a few months before the transfer, Dryden's attorney had written a demand letter with respect to the lapse of the insurance, thereby threatening litigation. Fifth, the Decedent received no consideration for the transfer.

> (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Id. § 1304(b).

[32] *VFB LLC v. Campbell Soup Co.*, 2005 U.S. Dist. LEXIS 19999, at *109 (D. Del. Sept. 13, 2005) (quoting *Gilchinsky v. Nat'l Westminster Bank*, 732 A.2d 482, 490 (N.J. 1999)) (applying New Jersey law).

[33] If the debtor is an individual, a "relative of the debtor" is an insider. 6 *Del. C.* § 1301(7)(a)(1). Courts routinely look with suspicion upon transfers to relatives. *See, e.g.*, *In re Estate of Fenimore*, 1999 WL 959204, at *7 (Del. Ch. Oct. 8, 1999); *Mitchell v. Wilmington Trust Co.*, 449 A.2d 1055, 1060 (Del. Ch. 1982), *aff'd*, 461 A.2d 696 (Del. 1983) (TABLE); *Richard v. Jones*, 142 A. 832, 835 (Del. Ch. 1928).

The questions of whether the transfer was of "substantially all of" the Decedent's assets and whether the transfer rendered him insolvent are not clearly answered by the record.[34] If one looks to the assets remaining in the Decedent's individual possession as of his death, the assets that were transferred to Gallucio would have constituted substantially all of his assets. The Estate, if the obligation to fund the post-death periodic payments to Dryden is considered, was, and remains, insolvent. Extrapolating back more than three years from his death to the date of the transfer, however, is speculative. The Decedent, after all, made the $900 per month alimony payments to Dryden without fail, and there is no evidence that he was not paying his other bills as they became due.

The record is, however, clear as to the practical consequences of the transfer. The Decedent took the assets with which he had promised to fund Dryden's $400

[34] "A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation." 6 *Del. C.* § 1302(a). A debtor also is presumed to be insolvent if he is "generally not paying debts as they become due." *Id.* § 1302(b). In determining whether or not the debtor's debts are greater than his assets, assets which have been transferred "with intent to hinder, delay or defraud creditors" are not considered. *Id.* § 1302(d). In this instance, this latter statutory guidance is, at best, circular. The Court is attempting to determine whether or not the transfer was made with "actual intent." The question of whether there was "actual intent" is influenced by whether a debtor was "insolvent," which leads back to the question, in valuing the debtor's assets, of whether they were transferred with "actual intent."

per month income stream and transferred them to the joint account, beyond her legal reach. Nothing in the record would suggest that he had, or ever had, any other means of meeting that obligation. In short, even though Dryden may not have proved either insolvency at the time of the transfer or the transfer of substantially all of the Decedent's assets, the transfer made it highly unlikely that the Decedent would meet his obligations to her.[35]

For the foregoing reasons, I find that, within the meaning of 6 *Del. C.* § 1304(a)(1), the Decedent acted with actual intent to hinder Dryden, as a creditor with a claim, when he established the New Account with Gallucio.[36]

* * *

[35] Assuming that the Decedent could have obtained life insurance (he had been diagnosed with cancer before the transfer), it appears that he would have been able to pay the periodic insurance premiums. He had, however, no intent to reinstate the insurance and, thus, it was entirely predictable that the long-term payments would ultimately become a direct obligation of his estate.

[36] With this conclusion, it is unnecessary to explore whether Dryden established a *prima facia* case that the Decedent was insolvent at the time of the transfer and, thus, the burden of proving his solvency and the fairness of the transfer shifted to Gallucio. *See Wilmington Trust Co.*, 449 A.2d at 1060. Gallucio made no attempt to prove either.

Other factors identified in 6 *Del. C.* § 1304(b) are not applicable. For example, the Decedent did not abscond, and the transfer did not occur near the time of incurring a substantial debt. Of course, a plaintiff pursuing a fraudulent transfer claim need not satisfy every (or any particular) statutory factor. In this instance, measuring the Decedent's conduct with the statutory metrics leads conclusively to a finding of "actual intent" on the part of the Decedent.

Gallucio argues that Dryden's claims are barred by the doctrine of laches. Gallucio, as the party asserting this affirmative defense, has the burden of demonstrating that (1) Dryden "waited an unreasonable length of time before bringing the suit" and (2) Gallucio was "unfairly prejudice[d]" by the delay.[37]

Dryden knew, by the fall of 1999, that the Decedent was not meeting his obligations under Paragraph 9 of the Agreement.[38] It would be almost five years before she pursued her rights.[39] If she had acted promptly, the dispute could have been resolved in the appropriate forum—the Family Court which not only approved the Agreement but also had jurisdiction over disputes between Dryden and the Decedent. Dryden, however, has an understandable human explanation for her delay: she did not want to litigate with her former husband while he was suffering with cancer. Moreover, he assured her that he was otherwise taking care

[37] *Hudak v. Procek*, 806 A.2d 140, 153 (Del. 2002); *Fike v. Ruger*, 752 A.2d 112, 113 (Del. 2000).
[38] It is clear that Dryden knew that the $50,000 policy had lapsed and that no other policy had been purchased to fund the $400 per month obligation. It is not so clear that she was also aware that Gallucio had been designated as the beneficiary of the $10,000 policy.
[39] The statute of limitations—to which equity may refer for guidance—for a breach of contract claim is three years. 10 *Del. C.* § 8106.

of the obligation. Also, the duty to maintain the insurance and the funding for the periodic payment was ongoing.

As to prejudice suffered by Gallucio from the delay, the Decedent's testimony, of course, was not available for trial; his understanding of the Agreement and his version of the facts were lost as a result of Dryden's delay. Although testimony from the Decedent would undoubtedly have informed the Court's decision, Gallucio has not suggested how such testimony might have aided her case; indeed, the facts are largely undisputed. In addition, the focus of this litigation has been on the meaning to be ascribed to the Agreement, and the Court's conclusions with respect to the parties' intentions drew relatively little from the extrinsic evidence.

In sum, Gallucio has failed to meet her burden of demonstrating that Dryden's delay in bringing this action was unreasonable and that it prejudiced her.[40]

* * *

[40] Gallucio interposed no time-bar defense under 6 *Del. C.* § 1309 to the fraudulent transfer claim.

Thus, Dryden has established (1) her entitlement to a constructive trust over the proceeds of the $10,000 life insurance policy; (2) a right to the payment of $400 per month from the Decedent's death until her death or remarriage; and (3) a right to avoid the transfer of assets to the New Account in an amount sufficient to meet the monthly payment obligations.[41]

The constructive trust remedy can be achieved by entry of judgment against Gallucio in the amount of $10,000, together with interest at the legal rate from her receipt of those proceeds.

The remedy for the balance of Dryden's claims is somewhat more complicated. Dryden seeks judgment in the amount of $50,000 as the lump sum equivalent of the monthly payment stream. Although the $50,000 policy was, most likely, purchased by the Decedent to fund the periodic payment obligation, Dryden has no right to a lump sum payment. She is entitled only to a monthly payment that will end upon either her death or remarriage. There are two components to the

[41] By 6 *Del. C.* § 1307(a), Dryden is entitled to set aside the transfer to the New Account "to the extent necessary to satisfy [her claim]." Those assets set aside would become available to satisfy the Decedent's periodic payment obligations to her. Dryden might also be entitled to set aside an additional amount to fund the Decedent's $10,000 obligation, but, with imposition of the constructive trust, that additional relief would be duplicative and unnecessary.

periodic payment claim. The first consists of the payments that have not been made. That may be readily calculated by multiplying the number of months without payment by $400 and adding the accumulated interest. That amount can now be reduced to judgment. The second is the value of the future income stream. Dryden has offered no evidence that would provide a basis for calculating the going-forward value of the periodic payments. The Court may not speculate as to a value, but it would be unfair to deny Dryden the opportunity to prove what should be a relatively uncomplicated set of facts. Thus, the record will be opened to allow, if necessary, the presentation of such evidence.[42]

Finally, because the Decedent was primarily responsible and liable both for designating Dryden as the beneficiary of the $10,000 policy and for arranging funding for the periodic payments, judgment will be entered against the Estate in the same amounts as entered against Gallucio.

* * *

[42] The easiest approach likely would be the purchase of an annuity for the balance of Dryden's life with a provision that, if she remarries, the remaining payments under the annuity would be directed to Gallucio.

Counsel are requested to confer and to submit a form of order to implement this letter opinion. If an evidentiary hearing is necessary to address the future payment obligation, one will be scheduled promptly.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Ralph F. Keil, Esquire
Register in Chancery-NC