

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

ESTATE OF E. MURTON DUPONT )  
CARPENTER, )  
 )  
Petitioner, )  
 )  
v. ) Civil Action No. 1804-VCP  
 )  
STEPHEN J. DINNEEN, MARY DONNA )  
HUGHES, BRIAN GROSS and LAURI )  
GROSS, )  
 )  
Respondents. )  
 )  
and )  
 )  
STEPHEN J. DINEEN and MARY )  
DONNA HUGHES, )  
 )  
Counterclaim Plaintiff, )  
 )  
v. )  
 )  
ELEUTHERA CARPENTER FIECHTER, )  
Individually, ESTATE OF E. MURTON )  
DUPONT CARPENTER, and )  
WILMINGTON TRUST COMPANY, )  
as trustee of the Supplemental Trust )  
Agreement of E. Murton DuPont Carpenter )  
dated April 2, 2002, )  
 )  
Counterclaim Defendants. )

**MEMORANDUM OPINION**

Submitted: December 12, 2006  
Decided: April 11, 2007

Victor F. Battaglia, Sr., Esquire, BIGGS AND BATTAGLIA, Wilmington, Delaware, *Attorney for Petitioner and Counterclaim Defendant The Estate of E. Murton DuPont Carpenter, and Counterclaim Defendants Eleuthera Carpenter Fiechter and Wilmington Trust Company, as trustee of the Supplemental Trust Agreement of E. Murton DuPont Carpenter dated April 2, 2002*

Natalie S. Woloshin, Esquire, WOLOSHIN, LYNCH, NATALIE & GAGNE, Wilmington, Delaware, *Attorney for Respondent and Counterclaim Plaintiff Stephen J. Dinneen*

David J. Ferry, Jr., Esquire, Rick S. Miller, Esquire, FERRY, JOSEPH & PEARCE, P.A., Wilmington, Delaware, *Attorney for Respondent and Counterclaim Plaintiff Mary Donna Hughes*

Kathleen M. Miller, Esquire, SMITH KATZENSTEIN & FURLOW LLP, Wilmington, Delaware, *Attorney for Respondents Brian and Lauri Gross*

**PARSONS, Vice Chancellor.**

This is an action by the estate of E. Murton DuPont Carpenter (“Mrs. Carpenter”) to recover funds allegedly taken from Mrs. Carpenter, at a time when she was not competent, by two of her longtime financial advisors. Respondents Mary Donna Hughes and Stephen Dinneen each filed answers denying any liability. They also asserted counterclaims against the estate of E. Murton DuPont Carpenter (the “Estate”), Mrs. Carpenter’s daughter, Eleuthera Carpenter Fiechter (“Mrs. Fiechter”), and Wilmington Trust Company (“WTC”) in its capacity as trustee of a trust created by Mrs. Carpenter in 2002. The counterclaims relate to an alleged promise by Mrs. Carpenter to provide the equivalent of pension or retirement benefits for Hughes and Dinneen by way of testamentary gifts, and the Counterclaim Defendants’ refusal to honor any such gift under the trust or otherwise, based on Respondents’ alleged misconduct.

Presently before the Court is the Estate’s motion for summary judgment with respect to Counts II, III and IV of Hughes’ and Dinneen’s counterclaims. For the reasons stated in this memorandum opinion, the Court denies the Estate’s motion.

## **I. BACKGROUND**

### **A. Facts**

#### **1. The Carpenter Schutt office**

Mrs. Carpenter died on March 29, 2006 at 89 years of age. Since the death of her husband in 1973, Mrs. Carpenter had lived alone at Brookdale Farm except for employees who lived at the farm and worked for her.

Mrs. Carpenter used the Carpenter Schutt office to manage her financial affairs.<sup>1</sup> Dinneen worked for Mrs. Carpenter in the Carpenter Schutt office since 1973, and managed her accounting, financial and estate planning and taxes. Another employee, Carolyn Yarnell, worked at the Carpenter Schutt office for over seventeen years, performing secretarial duties, getting the mail and balancing banking and brokerage accounts. Since October 1974, Hughes also worked in the Carpenter Schutt office. Hughes had similar duties to Yarnell; she processed Mrs. Carpenter's tax returns and balanced her accounts.

Dinneen and Hughes have had a romantic relationship for about 23 years. They shared a beach house, furniture and a bank account.

## **2. Mrs. Carpenter's Durable Power of Attorney and Supplemental Trust Agreement**

In 2002, Mrs. Carpenter executed a Durable Power of Attorney (the "POA"), naming Mrs. Fiechter as her attorney in fact such that, if a condition or disability rendered Mrs. Carpenter incapable of managing her financial affairs, Mrs. Fiechter would then have springing authority to act on her behalf.<sup>2</sup>

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<sup>1</sup> Pet'r's Opening Br. for Summ. J. ("Pet'r's Opening Br.") at 3. Because this is a motion for summary judgment, unless otherwise indicated, the facts are either undisputed or reflect Respondents' version of events.

<sup>2</sup> Dinneen's Opening Br. for Summ. J., Ex. E. References to this exhibit will be cited as "POA." Specifically, the POA states in pertinent part that:

This power of attorney and the powers hereinbefore conferred upon my said attorney [Mrs. Fiechter] shall become effective only if and at the time I incur any condition or disability or incapacity that renders me unable properly to

In 2002, Mrs. Carpenter also executed another document relevant to this dispute: a Supplemental Trust Agreement.<sup>3</sup> Under the heading, “Gifts to Other Employees of Trustor,” the Supplemental Trust Agreement states:

With respect to the employees of Trustor [Mrs. Carpenter], . . . who are in the employ of Trustor at the time of her death, including, without limitation, her present office employees, Carolyn S. Yarnell, Mary Donna Hughes and Stephen J. Dinneen, Trustee is directed to transfer and deliver to each such employee, free from trust, an amount equal to one month’s pay for each such employee, at the time of Trustor’s death, multiplied by the number of full years of employment.<sup>4</sup>

The Supplemental Trust Agreement was sent to, among others, Mrs. Fiechter and Dinneen on April 2, 2002.

Mrs. Carpenter was hospitalized in June 2005. From that time until she died in March 2006, Mrs. Carpenter no longer signed any checks. During the last two weeks of June 2005, Mrs. Fiechter and her husband, Frederick Fiechter (“Mr. Fiechter”), traveled to England. In light of Mrs. Carpenter’s health and because the Fiechters were out of the country, Dinneen was authorized to sign checks during this two week period.<sup>5</sup>

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manage my own financial affairs. Any person to whom this power of attorney is presented may conclusively rely upon a certificate executed by a duly licensed physician attesting that I am disabled or incapacitated to such an extent that I am unable properly to manage my own financial affairs.

POA at 5 (emphasis omitted).

<sup>3</sup> Pet’r’s Opening Br., Ex. 3.

<sup>4</sup> *Id.* at 12.

<sup>5</sup> Dinneen’s Opening Br. at 9; F. Fiechter Dep. at 22-23.

On July 13, 2005, Dr. Donald Hayes, Mrs. Carpenter's physician, signed an affidavit certifying that she was unable to manage her financial affairs.<sup>6</sup> Consistent with the springing POA, Mrs. Fiechter commenced her duties as attorney in fact for Mrs. Carpenter on that date.<sup>7</sup> On July 13, 2005, Mrs. Carpenter's legal counsel sent a copy of the Durable Power of Attorney to Mr. and Mrs. Fiechter and to Dinneen at the Carpenter Schutt office.<sup>8</sup>

### **3. The telephone transfers**

In its Complaint, the Estate accuses Hughes and Dinneen of complicity in eighteen separate incidents between March and October, 2005, of improperly transferring funds from Mrs. Carpenter's accounts to accounts that directly or indirectly benefited Hughes. Initially, those actions involved having Mrs. Carpenter sign certain checks. By July 2005, however, Mrs. Carpenter no longer could sign checks. The undisputed evidence shows that between August 3 and October 12, 2005, Hughes made four transfers by telephone from an account of Mrs. Carpenter to an account of Hughes and her daughter, Lauri Gross, in a total amount of \$43,000.<sup>9</sup> Petitioner's summary judgment arguments focus on those four telephone transfers.

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<sup>6</sup> Dinneen's Opening Br., Ex. F.

<sup>7</sup> Pet'r's Reply Br. at 8.

<sup>8</sup> Pet'r's Opening Br., Ex. 3B (July 13, 2005 letter from Thomas P. Sweeney, Esq., to Mr. and Mrs. Fiechter).

<sup>9</sup> Specifically, it appears undisputed that \$12,000 was transferred on Aug. 3, 2005; \$11,000 on Aug. 26, 2005; \$10,000 on Sept. 30, 2005; and \$10,000 on Oct. 12, 2005 from Mrs. Carpenter's account to an account owned by Hughes.

Hughes made each of the telephone transfers after Mrs. Fiechter had begun acting as attorney in fact for her mother. There is no dispute that Hughes knew Mrs. Fiechter was serving as attorney in fact when she made the transfers.

On or around October 13, 2005, Mr. Fiechter met with Dinneen to inform him that Mrs. Carpenter's affairs would be moved from the Carpenter Schutt office to Mr. Fiechter's office some time in 2006.<sup>10</sup> Most of the files relating to Mrs. Carpenter's accounts were then transferred from the Carpenter Schutt office to Mr. Fiechter's office.<sup>11</sup>

In the same time period, Mr. Fiechter called WTC for a list of Mrs. Carpenter's accounts. From these records, Mrs. Fiechter identified an unknown account associated with Mrs. Carpenter's accounts.<sup>12</sup> Mrs. Fiechter then began an investigation into transactions involving Mrs. Carpenter's accounts and learned that the unidentified account was in the name of Hughes and her daughter, Laurie Gross, and funds had been transferred from one of Mrs. Carpenter's accounts to that account without Mrs. Fiechter's authorization. After discovering the Hughes-Gross account, Mrs. Fiechter terminated Dinneen, Hughes and Yarnell.<sup>13</sup>

On September 6, 2006, Hughes tendered a cashier's check for \$175,500 to Petitioner's counsel to reimburse the Estate for the challenged transactions. This

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<sup>10</sup> F. Fiechter Dep. at 11.

<sup>11</sup> *Id.* at 14.

<sup>12</sup> *Id.* at 55.

<sup>13</sup> *Id.* at 60-61.

repayment was part of a plea bargain under which Hughes pleaded *nolo contendere* to, and therefore was convicted of, theft and exploitation of an elderly person.<sup>14</sup>

#### 4. Procedural history

Mrs. Carpenter and Mrs. Fiechter filed a Verified Complaint on November 23, 2005 against Dinneen and Hughes, seeking, among other things, an accounting and imposition of a constructive trust based on a series of improper monetary transfers from Carpenter's accounts to accounts for the direct or indirect benefit of Hughes. The Complaint alleges that these transfers were unlawful and that Respondents misappropriated the funds for their own use and benefit. On January 10, 2006, Respondents filed separate answers and counterclaims, seeking a declaratory judgment against the Estate that the transfers were lawful and asserting, among other things, a claim against Mrs. Fiechter individually for tortious interference with contractual relations.

On March 29, 2006, Mrs. Carpenter passed away. Shortly thereafter, this Court granted a motion to substitute the Estate for Mrs. Carpenter and Mrs. Fiechter, as Petitioner. On May 12, 2006, the Estate filed an Amended Verified Complaint, adding Hughes' daughter and son-in-law, Lauri and Brian Gross, as Respondents. I later granted a motion to amend counterclaims filed by Dinneen and Hughes on September 27, 2006.<sup>15</sup>

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<sup>14</sup> Pet'r's Opening Br., Ex. 1.

<sup>15</sup> After argument on the pending motion, the Estate filed, and the Court granted, another motion to amend the Complaint to add explicitly a claim for breach of fiduciary duties. Therefore, the operative pleadings are now Petitioner's Second Amended Verified Complaint, filed February 7, 2007; Respondent Hughes'



Respondent Dinneen filed a motion for summary judgment on October 4, 2006. Respondents Brian and Lauri Gross also moved for summary judgment on October 26, 2006. That same day, the Estate filed its summary judgment motion as to Counts II, III and IV of the counterclaims. At the argument on those motions on December 12, 2006, I denied the summary judgment motions of Dinneen and the Grosses. This opinion addresses the Estate's motion for summary judgment.

## **5. Parties' contentions**

The Estate seeks dismissal of three of Hughes' and Dinneen's counterclaims. Counts II and III involved related issues. Count IV asserts an alternate cause of action to Count III. In general terms, the Estate contends that the counterclaim for tortious interference with Hughes' and Dinneen's alleged contracts of employment (Count II) must fail because Mrs. Fiechter was an agent of Mrs. Carpenter and, as a party to the alleged contracts, is immune from this claim as a matter of law. The Estate also contends that Hughes' and Dinneen's claims for the gifts to them provided for in the Supplemental Trust Agreement (Count III) must fail because a condition identified in that Agreement was not met.

Respondents assert that Mrs. Fiechter dismissed Hughes and Dinneen as part of her plan to move the work for Mrs. Carpenter from the Carpenter Schutt office to her

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Answer to Second Amended Verified Complaint and Counterclaims, filed February 15, 2007; Respondent Dinneen's Amended Answer and Counterclaims, filed February 16, 2007; the February 26, 2007 Answer of Respondents Brian and Lauri Gross; and the February 19, 2007 replies to Dinneen's and Hughes' counterclaims.

husband's office, thereby effecting a self-interested transaction for financial gain, contrary to the intent of Mrs. Carpenter. According to Respondents, Mrs. Fiechter decided to close the Carpenter Schutt office before she knew of any of the alleged misconduct of Hughes and Dinneen. Thus, they claim that those allegations of wrongdoing are merely a pretext for Mrs. Fiechter's real motives.

Hughes and Dinneen also contend that they did nothing wrong and that Mrs. Fiechter's firing of them to serve her own self interest improperly precluded them from fulfilling the condition precedent of employment applicable to the gifts Mrs. Carpenter provided for in her Supplemental Trust Agreement. Respondents argue that Mrs. Fiechter's actions exceeded the scope of her authority under the POA and, as actions in her personal capacity, would expose her to liability for tortious interference. Dinneen and Hughes further urge the Court to excuse their failure to satisfy the condition, because Mrs. Fiechter's actions were inconsistent with Mrs. Carpenter's intent.

In Count IV of their counterclaims, Hughes and Dinneen allege that during the course of their work for Mrs. Carpenter, she repeatedly promised each of them that in lieu of a pension she would make a disposition to them in the context of her estate. Respondents aver that they relied on that promise in continuing to work for Mrs. Carpenter. On that basis, Dinneen and Hughes claim, as an alternative to their contention that the Trust condition was excused, that Mrs. Carpenter breached her promise to them by making the gift provided for in the Supplemental Trust Agreement conditional on their being in her employ at the time of her death.

The Estate seeks summary judgment that Count IV fails to state a claim because an oral agreement to make a testamentary disposition cannot be inconsistent with a written trust and still be enforced. Specifically, the Estate argues that without a requirement of continued employment, the alleged oral contract would fail for lack of consideration, that the alleged agreement is too ambiguous and vague to be enforceable in any event, that admission of an oral agreement to vary and contradict the terms of Mrs. Carpenter's written trust would violate the parole evidence rule and that Dinneen knew about the Supplemental Trust Agreement and conditional gift since April 2002, but never complained about it until after Mrs. Carpenter's death in 2006.

## **II. ANALYSIS**

### **A. Summary Judgment Standard**

On a motion for summary judgment pursuant to Rule 56, judgment will be granted where the moving party demonstrates that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law.<sup>16</sup> The burden is on the moving party to prove the absence of a material issue of fact, and the record must be viewed in the light most favorable to the non-moving party.<sup>17</sup>

### **B. Respondents' Counterclaims for Tortious Interference with Contract**

In Count II of their respective counterclaims, Dinneen and Hughes allege almost identical claims for tortious interference with "a contractual relationship of employment

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<sup>16</sup> *Scureman v. Judge*, 626 A.2d 5, 10 (Del. Ch. 1992).

<sup>17</sup> *Id.* at 10-11; *Judah v. Del. Trust Co.*, 378 A.2d 624, 632 (Del. 1977).

whereby [they] provided employment to Mrs. Carpenter in exchange for compensation”<sup>18</sup> and with deposit account contracts each of them had with WTC.<sup>19</sup> In each case, the Counterclaim Defendant is Mrs. Fiechter. Dinneen and Hughes contend that Mrs. Fiechter knew of their contractual relationship with Mrs. Carpenter and, acting under the auspices of her power of attorney, caused a breach of that relationship by unlawfully discharging Respondents, contrary to the wishes of Mrs. Carpenter. The discharge was unlawful, according to Respondents, because Mrs. Carpenter was at all times capable of managing her own affairs and voluntarily authorized the challenged transfers to assist Hughes with her financial difficulties. Respondents further allege that Hughes made Mrs. Fiechter aware in July 2005 of Mrs. Carpenter’s agreement to provide financial assistance and that Mrs. Fiechter had acquiesced to the disputed gifts. The claimed breach of contract allegedly caused Respondents to suffer damages through the loss of the benefits of employment with Mrs. Carpenter, including the conditional gift provided for in the Supplemental Trust Agreement.

Delaware courts recognize a cause of action tortious interference with contractual relations.<sup>20</sup> The elements for tortious interference with a contract are well established. There must be (1) a contract, (2) about which respondent knew and (3) an intentional act

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<sup>18</sup> Stephen J. Dinneen’s Amended Answer and Counterclaims, filed Sept. 29, 2006, (“Dinneen’s Countercls.”) ¶ 15; Mary Donna Hughes’ Amended Answer and Counterclaims (“Hughes’ Countercls.”) ¶ 15.

<sup>19</sup> Dinneen’s Countercls. ¶¶ 21-25; Hughes’ Countercls. ¶¶ 21-25.

<sup>20</sup> *Gillenardo v. Connor Broad. Delaware Co.*, 1999 Del. Super. LEXIS 530, at \*7 (Oct. 27, 1999).

that is a significant factor in causing the breach of such contract (4) without justification (5) which causes injury.<sup>21</sup>

Mrs. Fiechter seeks summary judgment on the tortious interference counterclaims on essentially two grounds. First, she contends that there was no contract of employment between Mrs. Carpenter and Dinneen or Hughes. And second, Mrs. Fiechter argues that she acted at all times as the duly appointed attorney in fact for her mother with full authority to fire Respondents and did so to protect her mother from their malfeasance. Because she acted properly as Mrs. Carpenter's attorney in fact, Mrs. Fiechter further contends that, as a matter of law, she could not have tortiously interfered with a contract to which her mother was a party. I address each of these arguments in turn.

**1. The alleged employment contracts between Mrs. Carpenter and Hughes and Dinneen**

In their counterclaims, Dinneen and Hughes conclusorily assert that they had a contractual employment relationship with Mrs. Carpenter whereby they provided services to her in exchange for compensation. As Petitioner's evidence demonstrates, however, Dinneen and Hughes worked at all relevant times for the Carpenter Schutt office and always received their salaries from that office, not Mrs. Carpenter individually. In fact, Dinneen's income and Hughes' income did not change at all after their services for Mrs. Carpenter were terminated.<sup>22</sup> Respondents failed to submit any contrary evidence.

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<sup>21</sup> *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus.*, 871 A.2d 428, 437 (Del. 2005); *Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 992 (Del. Ch. 1987).

<sup>22</sup> Dinneen Dep. at 18, 33, Ex. 12B.

Indeed, Hughes admitted in her deposition that she did not have any kind of agreement with Mrs. Carpenter.<sup>23</sup> Furthermore, in responding to Petitioner's argument that neither Dinneen nor Hughes had an employment contract with Mrs. Carpenter, Respondents pointed only to the Supplemental Trust Agreement.

Based on the record presented on Petitioner's motion for summary judgment, I find that Respondents have failed to present sufficient evidence to support a reasonable inference that there was any form of employment agreement between either of them and Mrs. Carpenter other than in relation to the anticipated testamentary gift in lieu of a pension, which is the subject of counterclaim Count IV. In their tortious interference counterclaims, Respondents claim that Mrs. Fiechter's actions caused them to lose that expectancy.

As explained in Part II.D *infra*, I have concluded that there are genuine issues of disputed fact that preclude summary judgment on Count IV of Respondents' counterclaims. That count alleges that during the course of Dinneen and Hughes' employment by Mrs. Carpenter, she repeatedly promised each of them that in lieu of a pension for their years of service, she would make a disposition to them in the context of her estate. Respondents aver that they remained in Mrs. Carpenter's employ and forsook other employment opportunities in reliance on that promise. Arguably, the conditional gift provided for in the Supplemental Trust Agreement was in satisfaction of that alleged promise by Mrs. Carpenter or, at least, would support characterizing Respondents as third

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<sup>23</sup> Hughes Dep. at 161, 162.

party beneficiaries of the Trust Agreement. In either case, I find that there is sufficient evidence of a possible contractual relationship between Mrs. Carpenter and Respondents pertaining to the expectancy of a gift in lieu of a pension to support a claim for tortious interference, assuming all the other elements of the tort are shown.<sup>24</sup>

**2. Did Mrs. Fiechter act within the scope of her authority, in good faith and in the interests of Mrs. Carpenter when she terminated Respondents in October 2005?**

In seeking summary judgment on the tortious interference counterclaims, Mrs. Fiechter argues that the four telephone transfers from Mrs. Carpenter's account between August and October 2005 occurred after she had assumed exclusive authority for handling her mother's financial affairs. There is no dispute that Respondents knew during this period that Mrs. Fiechter was Mrs. Carpenter's attorney in fact and that they did not disclose the telephone transfers to Mrs. Fiechter until after she independently discovered them in October. According to Mrs. Fiechter, therefore, she had good cause to fire Hughes and Dinneen and did so in good faith and in the interests of Mrs. Carpenter.<sup>25</sup> As an agent for a party to the alleged employment contract,

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<sup>24</sup> The only other contractual relationship Respondents alleged in Count II of their counterclaims was a deposit account contract between each of them individually and WTC. In response to Petitioner's summary judgment motion, Respondents presented no evidence of those contracts or any damages they allegedly suffered as a result of the claimed interference with them. Consequently, the Court considers that aspect of Respondents' counterclaims abandoned.

<sup>25</sup> Petitioner also cites to the *nolo contendere* plea by Hughes in the parallel criminal proceeding, positing that it underscores the propriety of Mrs. Fiechter's termination of Hughes. Respondents challenge the admissibility of any evidence regarding that plea under Del. R. Evid. 410 and 803(22). For purposes of this opinion, the Court need not resolve that objection, because I have not relied on the

Mrs. Fiechter contends that, as a matter of law, she cannot tortiously interfere with that contract.

In response, Respondents Dinneen and Hughes allege that a genuine issue of material fact exists as to whether Mrs. Fiechter acted within the scope of her authority when she fired them. Respondents characterize Mrs. Fiechter's reliance on the allegedly improper telephone transfers as merely a pretext. Indeed, Petitioner admits that, "Before discovery of the thefts [Mrs.] Fiechter had in mind to terminate the services of the Carpenter Schutt office at the end of 2005."<sup>26</sup> Respondents note that the Fiechters manifested that intent when Mr. Fiechter spoke to Dinneen in mid-October 2005 about transferring Mrs. Carpenter's business to him and contemporaneously removed some of her files.<sup>27</sup> Respondents also presented evidence, albeit disputed, to support their view that shifting Mrs. Carpenter's work to Mr. Fiechter's office would have been inconsistent with her wishes and best interests. Thus, Respondents contend that Mrs. Fiechter exceeded the scope of her power of attorney when she dismissed them and acted improperly for self-interested goals unrelated to her principal's interests. At a minimum, according to Dinneen and Hughes, this creates an issue of material fact central to whether Mrs. Fiechter can claim immunity from their tortious interference claims.

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*nolo contendere* plea, and even if I were to consider it, the plea would not alter my conclusion that there are genuine issues of fact on the counterclaims in question.

<sup>26</sup> Pet'r's Reply Br. at 2.

<sup>27</sup> Dinneen Aff. at 11, 19.



Additionally, Respondents adduced evidence of Mrs. Carpenter's generosity to those who worked for her, including providing financial assistance for a worker to purchase hearing aids and paying for an employee's convalescent care.<sup>28</sup> Respondents also contend that Mrs. Carpenter was competent at all times relevant to this action and expressly approved the transfer of funds to Hughes to assist her and her daughter with their financial difficulties.<sup>29</sup> Hughes and Dinneen contend that whether Mrs. Carpenter had the capacity to make these gifts or was subject to undue influence by Hughes involves material issues of fact that cannot be resolved on summary judgment.

Dinneen further contends that the Estate has failed to show that he diverted any of Mrs. Carpenter's funds, knew about any improper diversions or worked in a capacity where he should have known about the telephone transfers. Dinneen denies having had any awareness of the telephone transfers by Hughes until Mrs. Fiechter brought them to his attention.<sup>30</sup> Therefore, Dinneen contends that Petitioner's allegations are insufficient to meet the summary judgment standard and that genuine issues of material fact exist as to the satisfactory performance of his duties and his knowledge about the transfers.

For a tortious interference claim, an agent for a party to a contract cannot interfere with her principal's own contract, provided the agent does not exceed the scope of her

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<sup>28</sup> *Id.* at 10.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> Dinneen's Opening Br. at 9.

authority.<sup>31</sup> Absent an express and unambiguous waiver or modification of the fiduciary duties implied by law,<sup>32</sup> an attorney in fact must act in good faith and in the interests of the principal. Where an attorney in fact engages in a self-dealing transaction without the informed consent of the principal, the attorney in fact bears the burden of persuasion to justify upholding the transaction.<sup>33</sup>

Both parties' arguments as to Counts II and III hinge, in whole or in part, on whether Mrs. Fiechter acted properly within the scope of her authority under the POA. I already have recited the contentions on Count II. In Count III of their counterclaims, Respondents allege that they failed to fulfill a condition precedent to their expected gifts due to an improper termination, again alleging that Mrs. Fiechter's actions fell outside of her scope of authority. Because the POA is in the nature of a contract and contract

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<sup>31</sup> *Tennenco Auto. Inc. v. El Paso Corp.*, 2007 Del. Ch. LEXIS 4, at \*21 (Jan. 8, 2007); *Wallace v. Wood*, 752 A.2d 1175, 1182-83 (Del. Ch. 1999). *See also* Restatement (Second) of Torts § 770 (1979), stating that:

One who, charged with responsibility for the welfare of a third person, intentionally causes that person not to perform a contract . . . does not interfere improperly with the other's relation if the actor (a) does not employ wrongful means and (b) acts to protect the welfare of the third person.

<sup>32</sup> *Nash v. Schock*, 1997 Del. Ch. LEXIS 174, at \*10-12 (Dec. 3, 1997), *aff'd*, 732 A.2d 217 (Del. 1999).

<sup>33</sup> *Schock v. Nash*, 732 A.2d 217, 225-26 (Del. 1999); *see also Dorman v. Plummer*, 2001 Del. Ch. LEXIS 3, at \*16-20 (Jan. 9, 2001) (durable power of attorney specifically treating "fiduciary capacity" to mean no self-dealing acts).

interpretation is an issue of law properly decided at the summary judgment stage,<sup>34</sup> I first turn to the scope of the Durable Power of Attorney.

**a. The scope of the Durable Power of Attorney granted by Mrs. Carpenter to Mrs. Fiechter**

The Estate contends that Paragraphs 16 and 30 of the POA both grant Mrs. Fiechter the authority to fire Hughes and Dinneen. The Respondents do not aver that any other paragraph is relevant to this motion nor do they challenge the validity of the POA. Paragraph 16 grants Mrs. Fiechter the power in Mrs. Carpenter's name:

To engage and dismiss agents, brokers, employees, and counsel upon such terms and conditions as . . . [Mrs. Fiechter] deems appropriate.

Because Paragraph 30 is a general "catch-all" provision,<sup>35</sup> I need not assess the language of that paragraph if Paragraph 16 specifically addresses this situation.

Delaware courts interpret contract language from the perspective of an objective and reasonable third party.<sup>36</sup> Powers of attorney, however, are construed more strictly

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<sup>34</sup> See, e.g., *AHS N.M. Holdings, Inc. v. Healthsource, Inc.*, 2007 Del. Ch. LEXIS 24, at \*11 (Feb. 2, 2007) (interpreting contractual language at summary judgment stage).

<sup>35</sup> Paragraph 30 of the POA authorizes Mrs. Fiechter:

[G]enerally, to act in every capacity and in respect of all matters and things as fully and effectively as I myself could do if personally present. No enumeration of specific powers contained herein shall be construed as a limitation upon the foregoing general power, nor shall any of the powers conferred herein upon my said Attorney be exhausted by the use thereof, but each shall be continuing.

<sup>36</sup> *Energy Partners, Ltd. v. Stone Energy Corp.*, 2006 Del. Ch. LEXIS 182, at \*50 (Oct. 11, 2006). A court must first determine whether the pertinent contract language is ambiguous. *Cantera v. Marriott Senior Living Servs., Inc.*, 1999 Del. Ch. LEXIS 26, at \*4 (Feb. 18, 1999). Contract ambiguity in a legal sense occurs

than ordinary contracts.<sup>37</sup> The principal's intent controls the interpretation of the instrument,<sup>38</sup> and courts imply a corresponding fiduciary relationship obligating the attorney in fact to act in good faith at all times in the best interest of the principal.<sup>39</sup> Therefore, Delaware courts will enforce a principal's decision to waive or otherwise modify the implied fiduciary duty of loyalty only if such an intent is clearly and unambiguously expressed in the language of the contract.<sup>40</sup>

Having reviewed the POA, I hold that Paragraph 16 explicitly grants Mrs. Fiechter, as attorney in fact, the ability to engage (e.g., hire) and dismiss (e.g., fire) agents and employees, which would include Hughes and Dinneen no matter how the parties characterize their relationship to Mrs. Carpenter. The POA limits that authority,

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when the disputed language is fairly susceptible of different interpretations or has two or more different meanings. *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).

<sup>37</sup> *Realty Growth Investors v. Council of Unit Owners*, 453 A.2d 450, 455 (Del. 1982).

<sup>38</sup> *Annan v. Wilmington Trust Co.*, 559 A.2d 1289, 1292 (Del. 1989); *In re Estate of Shank*, 2004 WL 1587567, at \*4 (Del. Ch. July 6, 2004).

<sup>39</sup> *Faraone v. Kenyon*, 2004 Del. Ch. LEXIS 26, at \*35-36 (Mar. 15, 2004); *Schock v. Nash*, 732 A.2d 217, 224 (Del. 1999) (the creation of a power of attorney imposes the fiduciary duty of loyalty on the attorney in fact); see *Cheese Shop Int'l, Inc. v. Steele*, 303 A.2d 689, 690-91 (describing the fiduciary relationship as one where a person "reposes special trust in and reliance on the judgment of another"), *rev'd on other grounds*, 311 A.2d 870 (Del. 1973).

<sup>40</sup> *Nash v. Schock*, 1997 Del. Ch. LEXIS 174, at \*11-12 (Dec. 3, 1997), *aff'd*, 732 A.2d 217 (Del. 1999). Delaware courts also have recognized a principal's consent to conduct to be an additional situation where the fiduciary relationship can be waived. *Faraone v. Kenyon*, 2004 Del. Ch. LEXIS 26, at \*35-36. This situation is inapplicable here, however.

however, to what the agent, Mrs. Fiechter, “deems appropriate.” The POA does not elaborate on the meaning of “appropriate” in this context, nor does it explicitly reflect any intent by Mrs. Carpenter to modify or waive her agent’s duty of loyalty. In this context, then, the attorney in fact’s discretion to take “appropriate” action is constrained by her duty to act in good faith in the interests of the principal. Consequently, as of July 13, 2005, Mrs. Fiechter had the legal authority to act on behalf of Mrs. Carpenter to engage and dismiss agents, brokers, employees and counsel, subject to her obligation to do so only in good faith and in the interests of Mrs. Carpenter.<sup>41</sup>

**b. Did Mrs. Fiechter’s firing of Dinneen and Hughes violate her duty to act in good faith and in the best interests of Mrs. Carpenter?**

The next question in evaluating Respondents’ claims for tortious interference with contract is whether Mrs. Fiechter acted loyally, in good faith and in the interests of Mrs. Carpenter when she terminated Dinneen and Hughes in October 2005. The evidence supports a reasonable inference that removing Mrs. Carpenter’s work from Dinneen and Hughes benefited Mrs. Fiechter in at least two respects. First, she transferred the work to her husband’s firm in which she presumably shared at least an indirect financial interest. And second, by terminating Dinneen and Hughes as office workers for her mother, Mrs. Fiechter arguably precluded them from receiving testamentary gifts under the Supplemental Trust Agreement and thereby increased Mrs. Carpenter’s residuary estate, of which Mrs. Fiechter is a beneficiary. Thus, the

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<sup>41</sup> The same reasoning would apply to Paragraph 30 of the POA. Therefore, I need not discuss that paragraph further.

challenged actions of Mrs. Fiechter were self-interested, and she has the burden of proving that they were justified in the circumstances.<sup>42</sup>

In terms of the requirements for a claim for tortious interference with contract, these issues relate to the second and third elements: an intentional act that is a significant factor in causing a breach of contract and the absence of justification. Determining whether a breach of contract occurred depends on the terms of any oral employment contract the Court might find existed between Mrs. Carpenter and Dinneen and Hughes. For example, the Court ultimately might find that there was such a contract and one of its implicit terms was that Mrs. Carpenter could not dismiss Dinneen or Hughes without good cause. In that case, a key issue would be whether good cause existed for Mrs. Fiechter's firing of Respondents. A finding of good cause would negate the allegation of a breach and defeat the counterclaims. Conversely, if Mrs. Fiechter's actions were found to have caused a breach of the contract, she still might avoid liability if she could demonstrate that she acted in good faith and in the interests of Mrs. Carpenter. In the circumstances of this case, the distinction between these two theories of liability is not that important, because the issues of good cause for the terminations and justification for the agent, Mrs. Fiechter's, actions are essentially two sides of the same coin.

Mrs. Fiechter describes the firings as necessary to protect Mrs. Carpenter from theft, as reflected in the unauthorized telephone transfers between August and October

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<sup>42</sup> See note 33, *supra*, and accompanying text.

2005 to accounts in which Hughes had an interest. Respondents counter that Mrs. Carpenter was competent at all times relevant to this action and expressly approved the gifts and transfers to Hughes.<sup>43</sup> From July 13, 2005 on, however, it seems irrelevant to Petitioner's motion whether, in fact, Mrs. Carpenter was or was not competent. By that date, her physician had certified that Mrs. Carpenter was not able properly to manage her own financial affairs. Under the express terms of the POA, any person shown the POA could "conclusively rely" upon that certificate and recognize Mrs. Fiechter as the duly appointed attorney in fact for Mrs. Carpenter. Both Dinneen and Hughes knew about Mrs. Fiechter's appointment as attorney in fact, but neither of them mentioned anything about the telephone transfers to her until after she independently discovered them.

Focusing on the period after July 13, 2005, Respondents allege that Mrs. Fiechter knew Mrs. Carpenter was assisting Hughes financially and indicated that she wanted to continue that practice. Hughes testified that she told Mrs. Fiechter on or about July 19, 2005 that Mrs. Carpenter was assisting Hughes financially.<sup>44</sup> In addition, both Dinneen and Yarnell testified about a conversation Mrs. Fiechter had with Dinneen in the Carpenter Schutt office after she began serving as attorney in fact. While sitting at her desk, Yarnell overheard Mrs. Fiechter say to Dinneen that she understood her mother was helping Hughes, which was between her mother and Hughes, and that Mrs. Fiechter

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<sup>43</sup> See Resp'ts' Jt. Answering Br. in Opp'n to Pet'r's Mot. for Summ. J. ("Resp'ts' Answering Br.") at 23.

<sup>44</sup> Hughes Dep. at 136.

would like that to continue.<sup>45</sup> Dinneen described the only conversation about Hughes he had with Mrs. Fiechter in her position as attorney in fact as follows:

[Mrs. Fiechter] came in the office one day and said she was aware of her mother helping – I forget the exact words that were used, but that she was aware of her mother helping [Hughes] and she wanted it to continue.<sup>46</sup>

Mrs. Fiechter denies that these conversations occurred as recounted and that she knew of, or authorized, the telephone transfers before her investigation revealed them.

The self-serving and vague nature of the testimony of Hughes, Dinneen and Yarnell about Mrs. Fiechter's knowledge of, and acquiescence in, the alleged gifts and transfers to Hughes makes the underpinnings of Respondents' tortious interference counterclaims weak. But the evidence from Mrs. Fiechter on this point is not particularly detailed either. The Court therefore is likely to be called upon to make credibility judgments on these issues. For purposes of a motion for summary judgment, however, the Court must draw all reasonable inferences in favor of the nonmoving party and generally avoid making make credibility judgments. Thus, I conclude that genuine issues of material fact exist at this stage of the proceeding as to Mrs. Fiechter's communications and interactions with Respondents between mid-July 2005 and the time she fired them.

In addition, there are other issues of disputed fact that preclude the entry of summary judgment for Mrs. Fiechter on Count II of the counterclaims. In terms of the firing of both Dinneen and Hughes, Respondents have adduced evidence, for example,

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<sup>45</sup> Yarnell Dep. at 51-52.

<sup>46</sup> Dinneen Dep. at 62.



from which one reasonably could infer that Mrs. Fiechter's reliance on the allegedly wrongful transfers was merely a pretext for her real reason for firing Respondents, namely, to facilitate transferring Mrs. Carpenter's work to her husband's office. Although that is not the only inference that could be drawn, and there is much to support a contrary inference, the Court cannot choose among competing, but reasonable, inferences on a motion for summary judgment. Additional issues of material fact exist as to whether Mrs. Fiechter's firing of Dinneen was justified by good cause and done in the interests of Mrs. Carpenter. Dinneen presented evidence that Mrs. Carpenter considered it important that he continue to work with her throughout the remainder of her life and that he was not aware of the challenged telephone transfers by Hughes until after Mrs. Fiechter brought them to his attention. Whether that evidence is convincing and, in any event, whether Dinneen's alleged ignorance of the transfers itself presents good cause for his termination present genuine issues of fact that can only be resolved through trial.

Accordingly, I deny Petitioner's summary judgment motion as to Count II of Respondents' counterclaims.

**C. Respondents' Counterclaims to Compel Distribution of Gifts under the Supplemental Trust Agreement.**

Under the heading "Gifts to Other Employees of Trustor," the Supplemental Trust Agreement Mrs. Carpenter entered into in 2002 provided for gifts to Dinneen and Hughes in an amount equal to one month's pay for each year of their full time employment with her. The only condition of the gift was that Dinneen and Hughes be employed by Mrs. Carpenter at the time of her death. Respondents contend that they substantially

performed this condition by continuing to work for Mrs. Carpenter until they were involuntarily terminated by Mrs. Fiechter in October 2005. In Count III of their counterclaims, Respondents assert that any nonperformance of this condition should be excused, because Mrs. Fiechter caused their removal for her own self-interest and without good cause. Dinneen and Hughes argue that they were unable to meet the condition through no fault of their own. Count III therefore seeks to compel the Trustee, WTC, to distribute the gifts made to them in the Supplemental Trust Agreement.

In seeking summary judgment on Count III, Petitioner emphasizes that the gifts were conditional and both Dinneen and Hughes admit that they did not meet the condition. Petitioner further asserts that Respondents' "termination was in the interest of Mrs. Carpenter and caused by [Respondents'] misconduct and neglect."<sup>47</sup> For the reasons stated in Part II.B above, however, I have concluded that the latter proposition raises genuine issues of material fact that cannot be resolved on summary judgment.

Furthermore, all parties seem to agree that the Trust condition that Dinneen and Hughes remain in the employ of Mrs. Carpenter until her death implicitly reflects her intention that they would have to perform their duties loyally and competently.<sup>48</sup> Likewise, there does not appear to be any dispute that Mrs. Carpenter probably contemplated that if she found it necessary to dismiss Dinneen or Hughes for cause, they would not receive a gift under the Supplemental Trust Agreement.

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<sup>47</sup> Pet'r's Opening Br. at 21.

<sup>48</sup> See Pet'r's Opening Br. at 22; Resp'ts' Answering Br. at 21-22.

Moreover, I find the evidence presented thus far sufficient to support a reasonable inference that Mrs. Carpenter did not intend to deprive Dinneen or Hughes of their specified gift, if they were dismissed arbitrarily or without cause. In that regard, I note the Mrs. Carpenter's attorney, Thomas P. Sweeney, who prepared the trust document, testified that he discussed the condition of employment with her and understood her basis for including it as follows: "Her reasoning, as explained to me, was that she wanted the employees to be working for her, providing her competent work until she died."<sup>49</sup> Sweeney further testified that Mrs. Carpenter said that she did not want Dinneen or Hughes to receive the specified gift if they predeceased her or were no longer able to work for her because of disability. Regarding the possible dismissal of an employee, Sweeney testified:

Q: Did you have any discussions about a contingency in the event that any employee was terminated by her before her death as to whether they would be covered by this provision?

A. Yes.

Q. And what discussion was that?

A. That they would not take.

Q. Did you have any discussion with Mrs. Carpenter about what would happen if any of the employees mentioned in this paragraph were terminated not by her but by someone else?

A. We didn't discuss that precisely. I think she assumed that they would be terminated by her agent; they wouldn't take.

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<sup>49</sup> Sweeney Dep. at 51.

Q. What leads you to believe she assumed that?

A. Because she was a very strong person and wanted good, competent help and wanted that up until the time she passed away.

Based on this and the other evidence presented, I find that it is without substantial controversy that Mrs. Carpenter intended the condition set forth in the Supplemental Trust Agreement to prevent Dinneen and Hughes from receiving any gift if they were terminated from working for her for good cause. Conversely, I find that the evidence is sufficient to support a reasonable, but not conclusive, inference that Mrs. Carpenter intended that a dismissal without good cause would not necessarily preclude Dinneen or Hughes from receiving the specified gift.

Petitioner argues strenuously that the evidence clearly demonstrates theft and misconduct on the part of Hughes and Dinneen between March and October 2005 or, alternatively, in the case of Dinneen, at least gross negligence, justifying the denial of the gifts under the Trust. It is true that the evidence in this case raises a myriad of questions regarding the propriety of Respondents' actions. As previously explained, however, determining whether Mrs. Fiechter terminated Respondents for good cause involves a number of disputed questions of material fact. Thus, I must deny Petitioner's motion for summary judgment on Count III of the counterclaims.

**D. Respondents' Counterclaim for Breach of an Agreement to Make a Testamentary Disposition**

Count IV of the counterclaims seeks to enforce against the Estate an oral agreement that Dinneen and Hughes each allegedly entered into with Mrs. Carpenter

during the course of their employment under which Mrs. Carpenter promised that in lieu of their receiving a pension for their years of service, she would make a disposition to them in the context of her estate. Respondents assert that this agreement is a separate, enforceable contract, independent of the Supplemental Trust Agreement.<sup>50</sup> Dinneen and Hughes contend that, in reliance on Mrs. Carpenter's promises and in consideration for them, they continued to work for her and did not pursue other employment opportunities with retirement benefits. According to Respondents, however, Mrs. Carpenter breached her promise to them by making the gifts in the Supplemental Trust Agreement conditional on Dinneen and Hughes being in her employ at the time of her death. Therefore, Count IV of the counterclaims asserts, in the alternative, that if the condition placed on the gift is not excused, Respondents are victims of a breach of contract which has caused them to lose the benefit of their bargain with Mrs. Carpenter.

Petitioner seeks summary judgment on Count IV on the ground that an oral agreement to make a testamentary disposition cannot be inconsistent with a written trust and still be enforced.<sup>51</sup> The Estate further argues that, absent a requirement of continued

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<sup>50</sup> Resp'ts' Answering Br. at 28. At the December 12, 2006 argument, I explicitly reserved decision on whether summary judgment could be granted as to Counts II and III of the counterclaims. The Estate also sought summary judgment on Count IV, however, and I did not expressly rule on that counterclaim. Accordingly, this memorandum opinion clarifies my comments from the bench on December 12, regarding Count IV.

<sup>51</sup> There is some confusion in the briefing as to whether this aspect of Petitioner's motion constitutes a motion for dismissal for failure to state a claim or one for summary judgment. Consistent with my understanding of Petitioner's position, I have not limited my consideration of their motion to matters set forth in the well-

employment, there would be no consideration for the gift in the Supplemental Trust Agreement. In addition, the Estate contends that the parole evidence rule provides that where the terms and intent of the settlor of a trust are integrated in a written trust agreement, a court may not admit extrinsic evidence to contradict or vary those terms. Lastly, Petitioner alleges that Dinneen knew about the conditional gift in the Supplemental Trust Agreement since 2002, but never complained about it until after Mrs. Carpenter's death in 2006.

As a preliminary matter, the parties dispute whether Dinneen and Hughes actually were "employees" of Mrs. Carpenter. The Estate says no, arguing that they were at all times employees of the Carpenter Schutt office. For purposes of the alleged oral agreement, I find that the evidence supports a reasonable inference that Mrs. Carpenter recognized that Dinneen and Hughes' employer was the Carpenter Schutt office, but also viewed them as her own "office employees."<sup>52</sup> The Supplemental Trust Agreement reflects a decision by Mrs. Carpenter to make a gift to her office employees, including Dinneen and Hughes. Therefore, for the limited purpose of any gift or anticipated gift from Mrs. Carpenter to Hughes and Dinneen, I find that they can be considered her employees. The same is true for any oral promise Mrs. Carpenter may have made to Respondents relating to retirement-type benefits.

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pleaded complaint. Accordingly, I have evaluated Petitioner's motion under the summary judgment standard.

<sup>52</sup> Pet'r's Opening Br., Ex. 3, at 12.

Dinneen worked for Mrs. Carpenter for over 30 years and Hughes for over 20 years. They testified that Mrs. Carpenter repeatedly promised them over the years that she would make a testamentary gift to them in lieu of a pension. Neither Dinneen nor Hughes, however, provides any further details as to the terms of the alleged agreement.

In resisting summary judgment, Respondents rely heavily on the case of *Hughes v. Frank*.<sup>53</sup> In *Hughes v. Frank*, petitioner Zilphia Hughes sought specific performance and imposition of a constructive trust from the estate in order to enforce an oral contract to bequeath property. Hughes began working for Margaret Alden and, as time passed, Hughes' responsibilities slowly grew. Alden's health began to deteriorate due to Parkinson's disease and Hughes' responsibilities expanded to accommodate Alden's needs. In lieu of a salary, Alden promised Hughes that she would receive "everything" upon Alden's death.<sup>54</sup> In the interim, however, Alden made several gifts to Hughes, totaling nearly \$300,000. Late in her life, Alden executed a will, leaving Hughes \$125,000. The estate, however, was worth \$2.1 million.

In *Hughes*, the Court of Chancery invoked the principle that a party can enforce an oral agreement to make a will if the party claiming property has partially performed.<sup>55</sup>

The court then identified the essential elements to a contract:

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<sup>53</sup> 1995 *Del. Ch.* LEXIS 143 (Oct. 20, 1995).

<sup>54</sup> *Id.* at \*3.

<sup>55</sup> *Id.* at \*4-5. *Hughes* also states that, in these situations, the party seeking enforcement must show by clear and convincing evidence that the parties entered into a legally binding agreement. *Id.* at \*4-5.

(1) a promise on the part of one party to act or refrain from acting in a given way; (2) offered to another, in a manner in which a reasonable observer would conclude the first party intended to be bound by acceptance, in exchange for; (3) some consideration flowing to the first party or to another; (4) which is unconditionally accepted by the second party in the terms of the offer, which may include (a) a verbal act of acceptance; and (b) performance of the sought-after act.<sup>56</sup>

The court then determined that Hughes' loyal performance of her duties for nearly 20 years proved that Alden had made an enforceable promise to compensate Hughes.

Turning to the facts of this case, the Court finds the Estate's argument that the alleged agreement lacked consideration unconvincing. Respondents have presented adequate evidence that they continued in the employment of Mrs. Carpenter in reliance on her promise of a testamentary gift in the nature of a pension. In addition, the record is incomplete on whether, as the Estate suggests, Dinneen and Hughes' performance can be attributed solely to the oral agreement and on the precise contours of such a legal requirement. These issues will have to be developed further at trial.<sup>57</sup>

The Estate argues more persuasively that Respondents have not provided adequate evidence of the terms of the alleged agreement. Although Hughes and Dinneen aver that they were to continue working for Mrs. Carpenter, they do not specify for how long. One inference the evidence plausibly could support is that Respondents would have to work

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<sup>56</sup> *Id.* at \*8-9 (quoting *Hunger v. Diocese of Wilmington*, 1987 Del. Ch. LEXIS 468 (Aug. 4, 1987)).

<sup>57</sup> *Tunnell v. Stokley*, 2006 Del. Ch. LEXIS 37, at \*5 (Feb. 15, 2006) (quoting *Cooke v. Oolie*, 2000 Del. Ch. LEXIS 89, at \*37-38 (May 24, 2000)). The Court "maintains the discretion to deny summary judgment if it decides that a more thorough development of the record would clarify the law or its application." *Id.*



for Mrs. Carpenter for the remainder of her life. In that case, however, it also would be reasonable to infer that the parties intended that, if Mrs. Carpenter terminated Dinneen or Hughes without good cause, they still would receive the anticipated testamentary gifts. The record may support other reasonable inferences, as well, regarding the terms of the alleged oral contract.<sup>58</sup>

Based on the current record, I conclude that the Estate has not shown as to Count IV of the counterclaims that there is no genuine issue of material fact and that it is entitled to the entry of judgment in its favor as a matter of law. Therefore, the Petitioner is not entitled to summary judgment on Count IV.

### **III. CONCLUSION**

For the reasons stated, I deny Petitioner's summary judgment motion for counts II, III and IV as they pertain to both Hughes' and Dinneen's counterclaims.

**IT IS SO ORDERED.**

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<sup>58</sup> Depending on the Court's ultimate conclusion regarding the terms of any enforceable oral agreement, there may or may not be a conflict between that agreement and the gift provided for in the Supplemental Trust Agreement. Thus, the Court need not address Petitioner's parole evidence argument for purposes of the pending summary judgment motion.