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Re: Kibler v. Wooters, et al.
C.A. No. 1351-VCN
Date Submitted: February 20, 2007

Dear Counsel:

Evelyn K. Case (the "Decedent") died on August 11, 2004. In the months leading to her death from cancer, Defendant Sharon L. Wooters ("Wooters"), her sister, managed to gain control of many of the Decedent's assets, with the result that the gifts of her then-recently executed will went unfunded. Plaintiff Catherine Kibler ("Kibler"), the Decedent's daughter and the personal representative of her Estate, brings this action to recover those assets. This letter opinion sets forth the Court's post-trial findings of fact and conclusions of law.

On May 27, 2004, the Decedent executed her will which left her Estate to her two children (15% each) and her five grandchildren (14% each).[1] Wooters was selected to be the executrix. The Decedent directed that her house be sold and the proceeds divided among her children and grandchildren.

A few days before, on May 7, 2004, the Decedent and Wooters had gone to the bank and re-titled the Decedent's bank accounts to joint accounts with Wooters.[2] The account papers clearly informed the Decedent that she was creating a joint tenancy with right of survivorship. In addition, the bank officer who handled the transaction informed her of the consequences of her decision and, also, recalled nothing out of the order. Indeed, she was satisfied that the Decedent was aware of and understood what she was doing.[3] On the Decedent's death, the accounts that had been re-titled passed to Wooters.

On July 29, 2004, several days before she died, the Decedent sold her home. By then, she was quite sick—essentially homebound. According to Wooters, the Decedent told her to deposit the proceeds ($415,046.83) in the bank account which

[1] JX 3.
[2] JX 8.
[3] Trial Transcript ("Tr.") 148.

Wooters understood to be the joint checking account which she held with the Decedent.[4] Wooters deposited the settlement check in the joint account.[5] Thus, on the Decedent's death, the balance of the proceeds from the sale of the Decedent's home passed to Wooters.[6]

Finally, much of the Decedent's furniture and furnishings had been placed in two storage sheds as the result of the sale of her home. After the Decedent's death, Wooters took those items either for herself or for her offspring.[7]

Thus, the Decedent's Estate was essentially assetless.[8] Wooters, although designated by the will to be the executrix, never petitioned for letters testamentary. Also, when Kibler approached Wooters about her mother's Estate, Wooters lied to her. Wooters told her that her mother had nothing and that everything had been

[4] Tr. 103, 130, 135.
[5] JX 1 & 2.
[6] In the interim, a portion of the proceeds ($136,471.80) had been withdrawn to assist a granddaughter in the purchase of a home. (JX12). Also, Wooters withdrew $10,000 from the account which she says she gave to the Decedent. There is no evidence of what the Decedent did with the funds, and no one else testified that the Decedent had been seen with the cash.
[7] Tr. 117-18.
[8] The Decedent's descendants, the beneficiaries of her will, did receive some benefits outside of the probate process. They were joint titleholders of some certificates of deposit and beneficiaries of some life insurance policies. Each received approximately $28,000.

given away to charity.[9] Indeed, when Kibler asked Wooters for a copy of the mother's will, Wooters refused.[10]

Both sides seek to demonstrate their closeness to the Decedent. The Decedent was especially close to Angela Morris, a grandchild who she had raised for most of her life while her mother, Kibler, was beset with life problems. The Decedent, during the last several weeks of her life, lived with Kibler and her children. There had been strains in the relationship between Kibler and the Decedent, but they appear to have been largely resolved. The Decedent's relationship with Wooters also was not particularly close; she was not even welcome in Wooters' home because of a rift between the Decedent and Wooters' husband.[11] Wooters, along with the Decedent's other siblings, visited more frequently with their sister in the last weeks of her life. Before her illness, the Decedent had only occasionally seen or talked to Wooters. Nonetheless, Wooters,

[9] Tr. 56-57.
[10] *Id.*
[11] Tr. 95.

Kibler, and other relatives all had ample access to the Decedent during the spring and summer of 2004. They visited with her and were helpful to her.[12]

The Decedent's health declined as death neared. Although she remained competent throughout, she was frequently nauseous and not stable on her feet. She could not take her medicines by herself. She was unable to leave her residence. There was occasional disorientation, apparently due to the morphine.[13] She could not bathe in a tub and she could not dress herself.[14] Thus, by the time of the sale of her home, she had become dependent on others. Her weakened condition deprived her of the ability to do for herself.

Kibler challenges: (1) the creation of the joint tenancy with right of survivorship in the bank accounts; (2) Wooters' disposition of the proceeds of the sale of the home while knowing that the funds would shortly be hers; and (3) Wooters' taking ownership of the Decedent's furniture and furnishings after the Decedent's death.

[12] There is no evidence of friction developing between the Decedent and Kibler (or her offspring) following execution of the will that would suggest any reason for the Decedent to have changed her asset disposition plan evidenced by the will.
[13] Hospice notes reveal that she was oriented as to person, time, and place.
[14] Tr. 17-18; 31-32; 37-38; 50.

When the Decedent converted her bank accounts[15] to joint accounts with Wooters as a tenant with right of survivorship, she knew that her illness was terminal, but there is no factual basis for concluding that her judgment was impaired or that she was not able to make her own decisions. Kibler invokes the doctrine of undue influence, an approach that has been successful in restoring funds from joint accounts to estates.[16] The proponent of an undue influence claim must demonstrate that the victim was susceptible to influence by the person gaining the benefit.[17] In early May 2004, the Decedent was living a relatively normal life, going about her daily business and managing her own affairs. Wooters' access was no more than a few times each week. Others, including Kibler, had even more frequent contact with the Decedent. As of that time, there is no basis for concluding that the Decedent was "susceptible to influence" or that Wooters was in a position to take advantage of it.

Kibler notes that the creation of the joint tenancy was inconsistent with the estate plan that was being developed at the same time. That the Decedent's

[15] There were two accounts at the bank; each was re-titled.
[16] *See, e.g., In re Will of Cammock,* 1995 WL 805161, at *1 (Del. Ch. Oct. 20, 1995).
[17] *See, e.g., In re Estate of West,* 522 A.2d 1256, 1264 (Del. 1987); *In re Will of Nicholson,* 1998 WL 118203, at *3 (Del. Ch. Mar. 9, 1998).

conduct may have been inconsistent with her instructions to her attorney does not prove that Wooters improperly induced the challenged act. The Decedent may have made a mistake in judgment, but even that conclusion—not likely to provide any substantial benefit to Kibler in any event—cannot fairly be drawn because the bank's documents, read and signed by the Decedent, are clear as to the survivorship aspect[18] and the bank's representative testified—even if the testimony only reflected her standard operating procedures—that the Decedent understood the nature of the re-titled accounts.[19]

By the time of the sale of the home, the Decedent's condition had markedly deteriorated—she was only thirteen days from death. She was homebound, weak, and on pain medication, although she understood what was occurring. Indeed, the

[18] The bank's Deposit Account Agreement and Disclosure form (JX 8 at 3) recites that for multiple-party accounts, unless otherwise specified, joint account holders will be treated as joint tenants with right of survivorship. That form also informed the Decedent: "**Joint Tenants With Right of Survivorship.** If your Account is a joint account with right of survivorship, upon the death of one of the Account Holders, that person's ownership interest in the Account will immediately pass to the other joint Account Holder(s)."

[19] Tr. 145, 147-49. *Cf. In re Estate of Gedling*, 2000 WL 567879, at *3-*5 (Del. Ch. Feb. 29, 2000). There is also limited evidence suggesting that all the Decedent intended to achieve by creating the joint accounts was to make it easier for Wooters to handle her funds. *See* Tr. 47-49. That frequently is one post-hoc explanation for the creation of a joint tenancy with right of survivorship, *see, e.g.*, *Schock v. Nash*, 732 A.2d 217, 230 (Del. 1999), but the evidence in this instance is too skimpy to raise any question about the sufficiency of the account documents or the understanding with which the Decedent accomplished the re-titling.

closing was held at the Decedent's residence because of her weakened condition.[20] Wooters assisted with the closing; Wooters attended the closing with her. The Decedent was relying upon Wooters with respect to the closing. Moreover, she entrusted the sale proceeds check to her. This melding of a weakened condition and a trusting or confidential relationship cloaked Wooters with the duties of a fiduciary.[21] Because Wooters acquired control of the sale proceeds under these circumstances, while she knew that within a few days a joint account would become hers, she has the burden of showing the fairness and propriety of her conduct.[22]

The evidence supporting Wooters' claim to the balance of the sale proceeds comes only from her. That, of course, may be unavoidable. Wooters' credibility, based on the Court's observation at trial and based on her falsehoods to Kibler as to the disposition of her mother's Estate, is subject to doubt. She testified, somewhat inconsistently, that the Decedent told her to deposit the check in the

[20] Tr. 101.
[21] *See, e.g., Faraone v. Kenyon*, 2004 WL 550745, at *8-*9 (Del. Ch. Mar. 15, 2004). Thus, Kibler has proved by a preponderance of the evidence: the Decedent was in a weakened condition; Wooters had a confidential relationship with the Decedent as to the sale of the home and the disposition of the proceeds; and Wooters gained a substantial benefit.
[22] *See, id.*; *see also Swain v. Moore*, 71 A.2d 264, 295 (Del. Ch. 1950).

bank account, presumably the joint bank account. There is no credible evidence that the Decedent ever squarely expressed her intention that Wooters receive the sale proceeds (or any portion of them) for her personal benefit. Instead, Wooters' position requires accepting both that the Decedent told her to place the funds into a joint bank account and that the Decedent understood that by placing those funds in the joint bank account, they would accrue to Wooters exclusively on her death. That, the Court cannot do.[23] Given the Decedent's condition in late July 2004,

[23] The Court's lack of confidence in Wooters' explanation is amplified by its varying formulations. In the Pretrial Stipulation, at 2, Wooters described her reasons for depositing the proceeds in the joint account to which she was the surviving tenant: "[The Decedent] requested that Wooters deposit the proceeds in the bank. Wooters, only having knowledge of the joint accounts, and only having instructions to 'make a deposit,' deposited the proceeds into joint checking account No. 03-816574." At trial, however, she expanded upon the Decedent's supposed generosity. For example, when asked why would the Decedent have given the proceeds to her when there would then not have been funds to meet the objectives set forth in her will, Wooters responded, "She intended for me to have it." Tr. 113. Wooters also agreed (responding "yes, sir") to the following question: "Now, you have made the claim that [the Decedent] handed you the $415,000 check and told you to take this check and put it in *your* bank account, deposit it." Tr. 102 (emphasis added). Wooters testified that, when the Decedent gave her the proceeds check, "[The Decedent] said, 'Honey, go put this in your checking account.'" Tr. 137. If nothing else, Wooters' testimony reveals the casual nature of the oral gifting instructions upon which she must now rely. There is significant difference in meaning between "put it in the bank" and "put it in your account." The critical difference, of course, is that one directly suggests a donative intent and the other does not directly suggest any donative intent, unless one understands that there is no other account and, therefore, by this second step, it must have been a gift through that particular account. How much, if any, of this was appreciated by the Decedent cannot be ascertained with any degree of confidence.

Wooters is unable to demonstrate that her acquiring the Decedent's funds from the sale of her house was intended by the Decedent.[24]

In sum, Wooters' conduct to assure that the balance of the sale proceeds accrued to her benefit exclusively on the Decedent's death was inconsistent with the duties arising out of the trusting relationship she had with the Decedent. Accordingly, the balance of the funds from the sale of the home remaining at the Decedent's death[25] shall be turned over to Kibler as representative of the Decedent's Estate.[26]

Also, on the day of the closing (or shortly thereafter), Wooters wrote a check from the joint checking account, payable to cash, for $10,000. She cashed the check. She maintains that she gave the $10,000 to the Decedent.[27] No one else ever saw the cash; no one has offered an explanation as to what happened to the cash; no one has come forward with an explanation as to why the Decedent would want to have so much cash. In short, Wooters' explanation of the disposition of

[24] Relatedly, it is discomforting to believe that hundreds of thousands of dollars would be disposed of, in lieu of a formal testamentary gift, by little more than a short oral statement.
[25] This amount is subject to adjustment for one payment made by Wooters for a medical bill after the Decedent's death. *See* notes 29 & 30, *infra* and accompanying text.
[26] With this conclusion, it is not necessary to consider Kibler's undue influence argument in this context.
[27] Tr. 106-10.

the $10,000 is not credible. Accordingly, she is charged with the duty to repay $10,000 to the Estate.

Between the deposit of the sale proceeds and the Decedent's death, the Decedent directed the sum of $136,471.80 from the joint checking account to the purchase of a home by Angela Morris, one of her granddaughters.[28] Wooters, of course, is not to be charged with responsibility for those sums. Furthermore, following the Decedent's death, Wooters paid a medical care bill for the benefit of the Decedent in the amount of $66,005.95. Again, these funds ultimately were directed for a proper purpose, one clearly benefiting from the Decedent's Estate, and there is no reason for Wooters to be charged with any further responsibility as

[28] Wooters fairly argues that this demonstrates the Decedent's willingness and capacity to deviate from the estate disposition plan documented by her will. With the large gift to one granddaughter, the total gifts—even in the absence of Wooters' self-dealing—would have been grossly disproportionate in favor of the selected granddaughter. Two points may be appropriate. First, the gift to the granddaughter (Angela Morris), clearly the Decedent's favorite relative, was unambiguous, was accomplished by the Decedent herself, and, without doubt, reflected her intentions. Second, the Decedent's deviation from her estate plan, although acknowledged, has not been a factor in the Court's analysis. In addition, that the Decedent may have deviated from an estate plan designed to treat her offspring in approximately equal fashion by giving one grandchild a larger share does not suggest that the Decedent intended to confer a substantial benefit on Wooters.

to those funds.[29] In summary, Wooters is liable to Kibler, as personal representative of the Decedent's Estate, in the amount of $212,569.08.[30]

Kibler also seeks the return of certain furniture and furnishings that Wooters took following the death of the Decedent. At most, the Decedent told Wooters she could have the furniture and furnishings. There is no evidence, other than Wooters' questionable testimony to support this position. Also, there is no evidence that the gift was completed during the Decedent's life. Wooters simply took advantage of her ability to gain access to the furniture and furnishings and

[29] Wooters gave some of the money to siblings, claiming that the Decedent had asked her to do so because she wanted her sister to have "a little bit" and because her brother would need "some help" in paying his bills. Tr. 111-12. The Court measures the consequences of Wooters' actions as of the date of the Decedent's death, except for those steps taken that benefited the Decedent's Estate. The only item falling within this latter category is the payment of a medical bill. In short, it was not for Wooters to revise the Decedent's testamentary plan as Wooters might have seen fit.

[30] That sum is calculated as follows:

Home sale proceeds:	$415,046.83
Check payable to cash:	(10,000.00)
Granddaughter's home purchase:	(136,471.80)
Medical bill:	(66,005.95)
	$202,569.08
Check payable to cash:	10,000.00
Total:	$212,569.08

converted them for her benefit. Accordingly, she is charged with the duty to return the furniture and furnishings to Kibler.[31]

Finally, Kibler also brought this action against Brenda Collins ("Collins"), Wooters' daughter. Following the Decedent's death, Wooters used $160,000 of the funds obtained from the joint account as the result of the Decedent's death to purchase a house, which she jointly titled with Collins.[32] Wooters' transfer of an interest to Collins was, however, a fraudulent one. Under the Uniform Fraudulent Transfer Act ("UFTA"),

> [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 the debtor made the transfer . . . [w]ith the actual intent to hinder, delay or defraud any creditor of the debtor.[33]

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[31] The Court will enter an order directing the return of the furniture and furnishings, without a particular itemization. If it turns out that there is a dispute as to (a) the precise identity of the items or (b) the necessity for an award of damages either because the items are no longer available or because the items have been damaged, a subsequent hearing will be necessary.

The Decedent's will granted the executrix the ability to direct the disposition of the personal property as she saw fit. Had Wooters bothered to be appointed executrix of the Estate, she might have been within her rights to have directed the personal property to herself or to her offspring. Because she never qualified to act as a formal fiduciary, however, the provisions of the will afford her no protection.

[32] Tr. 110. The house is located in Federalsburg, Maryland. Title to the property is held jointly by Wooters and Collins, with Collins' joint ownership premised on Wooters' desire to prevent her estranged husband from inheriting the property should she predecease him. At trial, Wooters testified that this was her "only reason" for including Collins on the title. Tr. 111.

[33] 6 *Del. C.* § 1304(a)(1).

Wooters purchased the house in November 2004, approximately three months after the Decedent's death.[34] Although Kibler would not file this action until May of the following year, Wooters had learned from the Decedent that she had a will (which Wooters reviewed) and that it called for the disposition of her assets to her descendants.[35] Also, shortly after Wooters purchased the house, she was contacted by Kibler as to what actions she was taking as the personal representative designated to administer the Decedent's Estate. Wooters was less than forthcoming. She balked at Kibler's request for a copy of the will and informed her that a reading was unnecessary because the Estate was without assets.[36] When Wooters acquired the real estate and granted a partial interest to Collins, the Decedent's Estate was a creditor: it had a claim to the funds Wooters had acquired from the sale of the home. The question that remains, of course, is whether Wooters had the "actual intent to hinder, delay or defraud" the Decedent's Estate (and its intended beneficiaries).

[34] Tr. 133.
[35] Tr. 133-34.
[36] Tr. 55-58.

The UFTA provides a nonexhaustive list of factors for the Court to consider in making a determination of a debtor's "actual intent."[37] The confluence of several of these factors, without the presence of all of them, is generally sufficient to support a conclusion that one acted with the actual intent to defraud.[38] Here, several of the statutory factors are satisfied. First, Wooters' transfer of partial title to her daughter was a transfer to an insider.[39] Second, despite creation of joint title with Collins, Wooters retained full possession, control, and use of the house

[37] By 6 *Del. C.* § 1304(b), courts may consider, among other factors, 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
(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

[38] *See, e.g., Dryden v. Estate of Gallucio*, 2007 WL 185467, at *5 (Del. Ch. Jan. 11, 2007), *reargument denied*.

[39] *See* Tr. 142-43. Relatives of a debtor are generally considered insiders. *See* 6 *Del. C.* § 1301(7)(a)(1).

thereafter.[40] Third, Wooters received no consideration for designating Collins as a joint titleholder to the property.[41] Fourth, the transfer to Collins occurred less than a month before Kibler inquired of Wooters as to the Estate's assets and what action Wooters had taken as executrix of the Estate. Wooters' response to Kibler's inquiries suggests that she did not want Kibler to inquire further because of the fragility of Wooters' claim to the Decedent's assets.

For these reasons, the Court, despite Wooters' statement of a different exclusive purpose, finds that Wooters, within the meaning of 6 *Del. C.* § 1304(a)(1), acted with actual intent to hinder the Decedent's Estate, as a creditor with a claim at the time, when she transferred title in part to Collins. By 6 *Del. C.* § 1307(a)(1), the proper remedy is avoidance of the transfer to Collins.[42]

In conclusion, Kibler's challenge to the creation of the joint accounts with right of survivorship in Wooters is dismissed. Wooters is liable to Kibler, as the

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[40] At trial, Collins made clear that, despite her joint title in the property with Wooters, she has never lived at the house and does not consider the house to be hers. Tr. 143.
[41] Tr. 110-11, 142.
[42] Collins did not acquire her interest for "a reasonably equivalent value." *See* 6 *Del. C.* § 1308(a). By 6 *Del. C.* § 1308(b), Kibler is entitled to judgment for the value of the asset transferred at the time of the transfer or the amount necessary to satisfy Kibler's claim, whichever is less. Kibler has not demonstrated that the equities require an upward adjustment in Collins' liability. *See* 6 *Del. C.* § 1308(c). Because the relief available under the UFTA is sufficient, it is unnecessary to consider whether the imposition of a constructive trust would otherwise be appropriate.

personal representative of the Decedent's Estate, for the sum of $212,569.08, together with the duty to return the furniture and furnishings which she converted for her benefit or the benefit of her offspring. The transfer of real property in Federalsburg, Maryland by Wooters to a joint tenancy with Collins is set aside, subject to the limitation of 6 *Del. C.* § 1308(b) as to the amount that can be recovered from Collins. The monetary award shall bear interest at the legal rate from August 11, 2004. Any award of costs and attorneys' fees will be addressed separately. Counsel are requested to confer and submit an implementing form of order within ten days.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K