

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

March 20, 2014

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Re: *Peace v. Rust*
C.A. No. 8323-ML

Dear Counsel:

I have reviewed the plaintiff's motion for summary judgment and the briefing submitted by the parties. Summary judgment is appropriate only where there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law.¹ The Court considers the evidence presented and the inferences to be drawn therefrom in the light most favorable to the non-moving party.

The plaintiff contends that the factual predicate for the pending motion is taken from the defendant's deposition testimony and this Court therefore can resolve on the present record whether the joint accounts were convenience accounts that are the property of the estate rather than the defendant. As the defendant points out, however, the defendant testified at several points during her deposition that the decedent told the defendant that the joint accounts were a gift to the defendant that she could use during the decedent's lifetime.

¹ Ct. Ch. R. 56(c).

It is not the function of this Court to weigh evidence when considering a motion for summary judgment.² The pending motion would require me to weigh the evidence and make a determination regarding the defendant's credibility and the consistency of her testimony.

Because this case cannot be resolved on the present record, and because trial is scheduled to commence in less than six weeks, I recommend that the Court deny the pending motion for summary judgment. This is my final report on this motion and the period for taking exceptions will be stayed until I issue a final post-trial report in this action.

Sincerely,

/s/ Abigail M. LeGrow
Master in Chancery

² *Frank v. Elgamal*, 2014 WL 957550, at *17 n. 196 (Del. Ch. Mar. 10, 2014) (quoting *Cont'l Oil Co. v. Pauley Petroleum, Inc.* 251 A.2d 824, 826 (Del. 1969)).