

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

Final Report: January 24, 2014
Submitted: November 4, 2013

Barbara James, Esquire
UAW Legal Services Plan
200 Continental Drive, Suite 212
Newark, DE 19713

Ms. Edna Krajewski
316 Charleston Drive
Wilmington, DE 19808

Re: *In re: The Estate of Mary Elizabeth Hutton*
C.A. No. 6863-ML

Dear Ms. James and Ms. Krajewski:

The petitioner, Nancy C. Hutton (“Nancy”),¹ filed this petition under 12 *Del. C.* § 2702, seeking an order requiring the executrix of the estate of Mary Elizabeth Hutton (the “Estate”) to present an order for the sale of real estate to pay the debts of the Estate. Ms. Hutton contends the Estate owes her late husband’s estate a debt of approximately \$40,000, arising from a judgment bond and corresponding mortgage executed by Mary Elizabeth Hutton (the “Decedent”) in favor of Nancy’s late husband. The Estate contends that the bond and associated mortgage are invalid or, in the alternative, that the amount of any debt owed is substantially below \$40,000. For the reasons that follow, I recommend that the Court enter an order granting summary judgment in favor of Nancy and requiring

¹ I use certain of the parties’ first names for the sake of clarity. No disrespect is intended.

the executrix of the Estate to file a timely petition for the sale of real estate to pay the debts of the estate.

FACTUAL BACKGROUND²

The Decedent acquired title to real estate located at 2006 Telegraph Road, Stanton Delaware (the “Property”) on October 17, 1983 through a deed executed by the Decedent’s former husband, Dennis E. Hutton (“Dennis”).³ On October 18, 1983, the Decedent executed a “Judgment Bond with Warrant of Attorney” (the “Bond”) and a mortgage against the Property (the “Mortgage”). Both the Bond and the Mortgage were executed in connection with the Decedent and Dennis’s divorce. The Bond binds the Decedent to Dennis in the amount of \$10,000, to be paid to Dennis or his attorney, executors, administrators, or assigns, “in full, with interest thereon at the rate of Ten (10%) percent per annum, upon the happening of any one of the following conditions, whichever occurs first – the sale of the [P]roperty by [the Decedent], the death of [the Decedent] or the remarriage of [the Decedent].”⁴ The Bond further provides that if the Decedent defaults on the Bond by failing to pay “principal and interest” within thirty days after it becomes due, the entire debt will be due and may be enforced immediately against the Decedent, her heirs, executors, and administrators.⁵ The Mortgage, which secures the bond, contains identical terms.⁶ Both the terms of the repayment obligation

² Except as noted, the following facts are not in dispute.

³ Pet’r’s Opening Br. in Support of Mot. for Summ. J. (hereinafter “Opening Br.”) Ex A.

⁴ Opening Br. Ex. B.

⁵ *Id.*

⁶ Opening Br. Ex. C.

and the provision that default will occur if both “principal and interest” are not paid within thirty days of becoming due were added to the contract by the parties or their representatives, and were not part of the form contract.

Dennis died in 2000, and Nancy, his second wife, is the personal representative and sole beneficiary of his estate (“Dennis’s Estate”). The Decedent died on June 8, 2008. Because the Decedent had not remarried or sold the Property, her death was the first event triggering the repayment obligation under the Bond and Mortgage. The Estate was opened on July 14, 2008, and Edna J. Krajewski is the executrix of the Decedent’s Estate. According to the inventory filed by Ms. Krajewski, the Property was valued at \$80,000 at the time of the Decedent’s death. The other assets in the Estate consisted of personal property valued at less than \$5,000. The Decedent’s will devised the property to John B. DePrisco, Edna J. Krajewski, Marie A. May, and Frank M. DePrisco, the Decedent’s children. John B. DePrisco now resides in the property.

Nancy filed a claim against the Estate on September 5, 2008 on behalf of Dennis’s Estate. Nancy contends the Estate owes Dennis’s Estate approximately \$40,000, which consists of the \$10,000 principal obligation and simple interest at a rate of 10% per annum. Because the other assets in the Estate are not sufficient to satisfy the debt, Nancy seeks an order compelling Ms. Krajewski to petition this Court to sell the property to pay the Bond. Ms. Krajewski contends Nancy’s motion for summary judgment should be denied because the Bond is not valid and because, even if it is valid, interest did not begin to accrue until the Decedent’s death.

ANALYSIS

Summary judgment should be awarded if “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁷ When considering a motion for summary judgment, the evidence and the inferences drawn from the evidence are to be viewed in the light most favorable to the nonmoving party.⁸ A party seeking summary judgment bears the initial burden of showing that no genuine issue of material fact exists.⁹ If the movant makes such a showing, the burden then shifts to the non-moving party to submit sufficient evidence to show that a genuine factual issue, material to the outcome of the case, precludes judgment before trial.¹⁰

As an initial matter, I must consider whether this Court has subject matter jurisdiction over the parties’ dispute. Although Ms. Krajewski did not raise the question of subject matter jurisdiction in response to the motion for summary judgment, the issue of this Court’s jurisdiction was raised in the Estate’s answer to the petition. In any event, as a court of limited jurisdiction, this Court has an independent obligation to consider its

⁷*Twin Bridges Ltd. P’ship v. Draper*, 2007 WL 2744609, at *8 (Del. Ch. Sept. 14, 2007) (citing Ct. Ch. R. 56(c)).

⁸*Judah v. Del. Trust Co.*, 378 A.2d 624, 632 (Del. 1977).

⁹*Johnson v. Shapiro*, 2002 WL 31438477, at *3 (Del. Ch. Oct. 18, 2002).

¹⁰*Id.*; *Conway v. Astoria Fin. Corp.*, 837 A.2d 30, 36 (Del. Ch. 2003).

jurisdiction over an action.¹¹ As a court of equity, this Court can acquire subject matter jurisdiction over an action only if (1) one or more of the plaintiff's claims is equitable in character, (2) the plaintiff requests relief that is equitable in nature, or (3) subject matter jurisdiction is conferred by statute.¹² In this case, the language of 12 *Del. C.* § 2702 plainly confers on this Court jurisdiction over this matter. Section 2702 provides:

A creditor of the decedent may apply to the Court of Chancery of the county wherein the letters were granted to issue a citation to an executor or administrator to appear before it, on a day to be therein mentioned, to show cause why the creditor shall not present a petition to the Court for the purpose mentioned in § 2701 of this title. The citation shall be served at least 10 days before its return. If upon a hearing it appears that there is a deficiency of assets for the payment of the decedent's debts, and that the creditor will be remediless without the sale of the real estate, or part thereof, then the Court may order the executor or administrator to present such petition to it on or before such date to be fixed by the Court as will enable the notice required by § 2701 of this title to be given.

Ms. Krajewski's response to the petition asserts this Court lacks subject matter jurisdiction because "[Nancy] is seeking monetary relief based on a mortgage agreement and has an adequate remedy at law."¹³ Whether Nancy has an adequate remedy at law is not relevant to the inquiry, however, because jurisdiction arises from the statute, rather than the nature of the relief available to Nancy.

Because this Court has jurisdiction over the matter, I turn to the substance of the issues at hand. Nancy's motion for summary judgment relies on undisputed facts,

¹¹ *Reed v. Brady*, 2002 WL 1402238, at *3 n.8 (Del. Ch. June 21, 2002). The issue of subject matter jurisdiction may be raised at any time before final judgment. *Appoquinimink Educ. Ass'n v. Appoquinimink Sch. Dist.*, 2003 WL 1794963, at *3 n.24 (Del. Ch. Mar. 31, 2003).

¹² *Candlewood Timber Gp., LLC v. Pan American Energy, LLC*, 859 A.2d 989, 997 (Del. 2004).

¹³ Answer to Pet. to Sell Real Estate (hereinafter "Answer") ¶ 21.

namely the terms of the Bond and Mortgage and the documents Ms. Krajewski submitted to the Register of Wills, to establish that the Estate owes a debt to Dennis that cannot be satisfied from other assets of the Estate. Although Ms. Krajewski's response to the motion for summary judgment stated that the motion should be denied because the terms of the Bond and Mortgage are ambiguous regarding when interest on the debt began to accrue, Ms. Krajewski did not identify any disputed issues of fact and failed to attach an affidavit regarding any additional discovery Ms. Krajewski believes is necessary before this Court considers the summary judgment motion.¹⁴

Ms. Krajewski first questions the "validity" of the Bond, arguing that Dennis relinquished all his rights, title, and interest in the Property when he deeded it to the Decedent. That argument, however, ignores the Mortgage the Decedent granted Dennis and also misunderstands the nature of the deed and the Bond. That Dennis relinquished his right to the Property in the deed does not render the Bond unenforceable. Ms. Krajewski also appears to argue that any debt the Decedent owed expired upon Dennis's death, pointing out that Dennis's last will and testament did not mention the debt and Dennis's Estate did not take any action upon his death "that would have advised [the Decedent] that [Dennis's Estate] would be seeking enforcement of [the Bond]"¹⁵ The terms of the Bond and Mortgage, however, indicate that the debt must be paid to Dennis's executors or administrators, removing any suggestion that the obligation terminated upon his death. That Dennis did not mention the obligation in his last will and

¹⁴ Ct. Ch. R. 56(f).

¹⁵ Resp't's Response to Pl.'s Mot. for Summ. J. (hereinafter "Answering Br.") at 2.

testament is of no moment; a testator need not list all of his assets, or indeed any of his assets, in order for them to be considered part of his estate. Finally, the fact that Dennis's Estate took no action to collect the debt at the time of Dennis's death is unremarkable, because the Decedent's obligation to repay the debt had not then been triggered and was not triggered until her own death.

Ms. Krajewski's final argument in response to the motion for summary judgment relates to the amount of the debt owed to Dennis's Estate. Ms. Krajewski contends that interest on the \$10,000 principal obligation did not begin to accrue until the obligation to repay the principal was triggered. To reiterate, the Bond and the Mortgage provide that:

Mary E. Hutton ... is held and firmly bound unto Dennis E. Hutton ... in the sum of ... [\$10,000.00] To be paid to [Dennis E. Hutton], ... *in full, with interest thereon at the rate of Ten (10%) percent per annum*, upon the happening of any one of the following conditions, whichever occurs first – the sale of the property by [Mary Hutton], the death of [Mary Hutton] or the remarriage of [Mary Hutton].

* * *

Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of principal and interest for the space of thirty (30) days after the same shall fall due, then and in such case the whole principal debt aforesaid shall at the option of [Dennis Hutton] ... become due and payable immediately, and payment of said principal, and all interest thereon, may be enforced and recovered at once.¹⁶

Ms. Krajewski contends that the word “upon” refers not only to the requirement to repay the \$10,000 principal amount of the debt, but also to the date on which interest would

¹⁶ Opening Br. Ex. B (emphasis added).

begin to accrue. She offers no principled argument in support of this interpretation of the terms of the Bond.

The terms of the Bond and the Mortgage bind the Decedent to pay Dennis \$10,000, with interest at 10% per year, upon the occurrence of the Decedent's marriage, death, or the sale of the Property. Nothing in the terms suggests that interest only begins to accrue once one of those events occurs. Ms. Krajewski's argument that the word "upon" identifies the date interest accrues is not a sensible reading of the Bond. If interest only began to accrue when the obligation became due, the provision that default would occur if principal and interest were not paid within thirty days of coming due would be virtually meaningless. Had the parties intended the interest to accrue only as a penalty for nonpayment once the principal became due, they would have included the interest provision in the portion of the Bond establishing the consequences of default. Instead, the interest term is contained immediately after the amount of the principal obligation, and before the terms explaining when payment was required, signaling that interest began to accrue immediately, and not only after the principal became due.

A contract is ambiguous only if its terms are susceptible to two reasonable interpretations.¹⁷ Because the interpretation proffered by Ms. Krajewski is unreasonable, it does not introduce an ambiguity precluding summary judgment. The unambiguous terms of the Bond required the Decedent to pay Dennis \$10,000, plus interest accruing at 10% per year, with the entire sum due and payable upon the Decedent's death.

¹⁷ *AM General Holdings LLC v. The Renco Gp., Inc.*, 2013 WL 5863010, at * 5 (Del. Ch. Oct. 31, 2013).

Because Dennis's Estate is a creditor of the Decedent, it has standing to proceed under 12 *Del. C.* § 2702. Ms. Krajewski has not shown why an order should not be entered compelling her to file a petition for the sale of the Property to pay the debts of the Estate.

CONCLUSION

For the foregoing reasons, I recommend that the Court grant summary judgment in favor of the petitioner and enter an order requiring Ms. Krajewski to present a petition consistent with 12 *Del. C.* § 2701. This is my final report and exceptions may be taken in accordance with Court of Chancery Rule 144.

Respectfully submitted,

/s/ Abigail M. LeGrow
Master in Chancery