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Case Number 349,2013

IN THE SUPREME COURT OF THE

STATE OF DELAWARE

HENRY BRADLEY MARSHALL, Individually and as Executor of Of the Estate of NINA MARSHALL, deceased,	:	No. 349,2013
Plaintiff Below-Appellant,	:	
v.	:	
STATE FARM FIRE & CASUALTY COMPANY,	:	
Defendant Below-Appellee.	:	

PLAINTIFF-APPELLANT'S CORRECTED OPENING BRIEF ON APPEAL

Appeal from a Decision of
The Superior Court of the State of Delaware,
In and for New Castle County
C. A. No. 11C-01-105-MMJ, dated 6/13/13
granting the Defendant-Appellee's
Motion for Summary Judgment

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NATURE OF THE PROCEEDINGS

This matter arises out of a personal injury action initially filed by the plaintiff in Nina Marshall and Henry Bradley Marshall v. Turner, et al., Case No. 05C-05-151-MMJ, in the Superior Court of the State of Delaware, in and for New Castle County. (See plaintiff's Appendix at 1 hereinafter cited as A-__). The matter went to a bench trial on 12/13/07 with a judgment entered against the defendant Turner totaling $250,000.00 plus costs and interest in the Court's Order dated 1/11/08 (A-4).

The plaintiff filed suit against the defendant State Farm Fire & Casualty Company on 1/11/11 in Henry Bradley Marshall, individually and as Executor of the Estate of Nina Marshall, deceased, v. State Farm Fire & Casualty Company, Case No. 11C-01-105-MMJ, (A-9)seeking collection of the judgment entered as outlined above. The defendant filed a Motion for Summary Judgment. Plaintiff filed a response (A-16). The motion was heard by the Court on 4/12/13 (A-22). The Court asked for supplemental submissions for any additional controlling authority from the parties which were submitted. (A-46). The Court granted the defendant's Motion for Summary Judgment in its Order dated 6/13/13.

The plaintiff filed a Motion for Reargument in the Superior Court on 6/18/13 (A-49) to be heard at the Court's convenience per the Court's

instructions. The underlying Court never scheduled the matter nor ruled granting or denying the plaintiff's Motion.

The plaintiff filed his appeal to the Supreme Court of Delaware of the underlying Court's Order granting the defendant's Motion for Summary Judgment on 7/02/13. This is the plaintiff-appellant's Opening Brief on Appeal.

SUMMARY OF THE ARGUMENT

I. THE SUPERIOR COURT ERRED AS A MATTER OF LAW IN GRANTING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN RULING THAT AN "ESTATE" CANNOT HAVE RELATIVES FOR PURPOSES OF INSURANCE COVERAGE AND, THEREFORE, THE ORIGINAL UNDERLYING INDIVIDUAL DEFENDANT WAS NOT COVERED AS AN INSURED UNDER THE DEFENDANT STATE FARM'S POLICY FOR LIABILITY COVERAGE SINCE THE TORTFEASOR WAS AN "INSURED" UNDER THE TERMS OF THE DEFENDANT'S POLICY; OR AT THE VERY LEAST THE POLICY PROVISIONS OF THE DEFENDANT ARE AMBIGUOUS

STATEMENT OF FACTS

On May 13, 2003 the plaintiff and his wife Nina Marshall (now deceased) resided at 2617 North Heald Street in Wilmington, New Castle County, Delaware 19802. Their house was in a series of row houses including the one attached next door at 2615 North Heald Street which was previously owned by Jean Richardson and covered by a homeowner's insurance policy with the defendant State Farm Fire & Casualty Company (A-51). The policy coverage period was 9/16/02-9/16/03.

Ms. Richardson died on 10/03/02. It is undisputed per her Will that Shirley T. Gladney be appointed Executrix of her Estate[1] (A-87,94-96). It is further undisputed that the house at 2615 North Heald Street be devised and bequeathed to Ms. Gladney (A-87,94-96) and that she became owner thereto as of 10/03/02 (A-29-30,87,94-96,97).

Subsequent to Ms. Gladney assuming duties as the Executrix of the Estate of Ms. Richardson, and taking ownership of the residence at 2615 North Heald Street but, prior to 5/13/03, the defendant State Farm amended its homeowner's insurance policy for the premises changing the named insured from "Jean E. Richardson" to "The Estate of Jean E. Richardson."

[1] There was a codicil to the Will dated 1/16/02 deleting the portion appointing Ms. Gladney as Executrix in substitution for John Henry Washington. Subsequently Mr. Washington no longer wished to be Executor and Ms. Gladney resumed her duties as Executrix prior to the date of the accident in question on 5/13/03. (A-87,94-96,99).

(A-100-102). On 5/13/03 Ms. Gladney was allowing her son Ronald Turner to live at the residence at 2615 North Heald Street. Ms. Gladney was not living there. It is undisputed that Mr. Turner, while cooking food in a pan on the stove in the kitchen, left the stove unattended resulting in a fire. As the fire and smoke spread to the residence next door at 2617 North Heald Street, the plaintiffs Henry and Nina Marshall attempted to evacuate the premises. During the excitement, Mrs. Marshall suffered a stroke. Her doctors subsequently testified that the stress involved in fleeing the fire caused the stroke, which severely debilitated her and resulted in permanent impairment and disabilities, and extensive medical bills totaling almost $52,000.00.

On 5/13/05 the plaintiffs filed suit against Mr. Turner alleging his negligence caused the injury to the plaintiffs (A-1).[2] The defendant State Farm refused to defend Mr. Turner in this action, asserting he was not "an insured" under the policy and, therefore, was not entitled to coverage.

A bench trial was heard before the Superior Court on 12/13/07. Mr. Turner represented himself pro se. The Court made an award for the plaintiffs totaling $250,000.00 plus post-judgment interest and costs against Turner (A-4).

[2] The complaint initially included an allegation of negligent entrustment against Shirley Gladney but she was subsequently dismissed by the Court from the action in the Court's Order dated 2/26/07.

The plaintiffs attempted to get an assignment from Mr. Turner to file suit in his name against State Farm to collect the judgment and to allege bad faith for failing to provide a defense, without success. Mr. Turner refused to sign an assignment agreement.

On 1/11/11 the plaintiff filed suit directly against the defendant State Farm Fire & Casualty Company to collect the judgment alleging that Turner was an insured under the homeowner's insurance policy in question and that State Farm was responsible for payment of the Superior Court award since the plaintiff's were judgment creditors, as well as alleging bad faith in its failure to provide a defense for Turner (A-9).[3]

The defendant State Farm filed an Answer to the Complaint and subsequently filed a Motion for Summary Judgment which was heard before the Superior Court on 4/12/13 (A-22). The Court asked for supplemental submission from the parties as to any other possible controlling authority which the parties filed (A-46). The Court in its Order dated 6/13/13, after indicating that neither party was able to submit any legal precedent, granted the defendant's Motion for Summary Judgment holding that "An Estate cannot have relatives for purposes of insurance coverage. The plaintiff cannot recover from State Farm because the tortfeasor, who is a relative of

[3] Mrs. Marshall died on 11/08/10, unrelated to causes in the accident in question. Therefore, suit was filed in Mr. Marshall's name, individually and as Executor of the Estate of Nina Marshall.

the insured's Estate's Executrix, is not an insured, as defined under the policy." On 6/17/13 the plaintiff filed a Motion for Reargument (A-49) to be heard at the Court's convenience, per the Court's instructions. The Court never scheduled a date to hear the motion, nor issued an Order granting or denying the plaintiff's motion.

On 7/02/13 the plaintiff filed a Notice of Appeal to the Supreme Court of the State of Delaware. This is the plaintiff-appellant's Opening Brief on Appeal.

ARGUMENT

I. THE SUPERIOR COURT ERRED AS A MATTER OF LAW IN GRANTING THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN RULING THAT AN "ESTATE" CANNOT HAVE RELATIVES FOR PURPOSES OF INSURANCE COVERAGE AND, THEREFORE, THE ORIGINAL UNDERLYING INDIVIDUAL DEFENDANT WAS NOT COVERED AS AN INSURED UNDER THE DEFENDANT STATE FARM'S POLICY FOR LIABILITY COVERAGE SINCE THE TORTFEASOR WAS AN "INSURED" UNDER THE TERMS OF THE DEFENDANT'S POLICY; OR AT THE VERY LEAST THE POLICY PROVISIONS OF THE DEFENDANT ARE AMBIGUOUS

A. Question Presented

Whether the Superior Court erred as a matter of law in granting the defendant's Motion for Summary Judgment in ruling that an "Estate" cannot have relatives for purposes of insurance coverage and, therefore, the original underlying individual defendant was not covered as an insured under the defendant State Farm's policy for liability coverage since the tortfeasor was an "insured" under the terms of the defendant's policy (A-16-21,34-45,46-48,49-50) or whether the policy provisions of the defendant are ambiguous (A-16-21,34-45,46-48,49-50).

B. Standard and Scope of Review

The Superior Court's interpretation and construction of an insurance contract is subject to de novo review. "The scope of the coverage obligation

is determined by the language in the insurance policy. Where the language is unequivocal, the parties are bound by its clear meaning. If the language is ambiguous, it will be construed most strongly against the insurance company that drafted it." Woodward v. Farm Family Casualty Insurance Company, 796 A.2d 638, 641-642 (Del. Supr. 2002). When parties make motions for summary judgment, a judge should not grant--and the Supreme Court will not affirm--summary judgment for one party unless no genuine issue of material fact exists and that party is entitled to judgment as a matter of law. Timothy J. Wygant v. Geico General, 27 A.3d 553 (Del. Supr. 2011).

C. Merits of the Argument

The issue before the Court is one of first impression in Delaware. The Superior Court erred in granting the defendant's Motion for Summary Judgment in holding that an "Estate" cannot have relatives for insurance coverage and, therefore, the plaintiff could not recover from the defendant because the underlying tortfeasor, who is a relative of the Estate's insured Executrix, is not an Insured, as defined by the defendant's homeowner's insurance policy. The proper interpretation of the language in an insurance policy is a question of law to be resolved by the Court. Hudson v. State Farm Mut. Ins. Co., 569 A.2d 1168, 1170 (Del. 1990). When the policy language is unambiguous, the parties will be bound by the plain meaning of

the insurance policy. Hallowell v. State Farm Mut. Auto. Ins. Co., 443 A.2d 925, 926 (Del. 1982). This Court interprets insurance contracts in a common sense manner and gives effect to all provisions so that a reasonable policyholder can understand the scope and limitation of coverage. When insurance contract language is clear and unambiguous, the Court "[does] not destroy or twist the words under the guise of construing them." It binds parties to the plain meaning of clear and unequivocal language in insurance contracts lest it create a new contract with rights, liabilities, and duties to which the parties did not assent. If contract language is ambiguous, on the other hand, then we employ the principle of *contra proferentem* and construe it against the insurer who drafted it. Timothy J. Wygant v. Geico General, supra.

The underlying Court, in granting the defendant's Motion for Summary Judgment, found the policy language at issue to be unambiguous and, therefore, the rule requiring the broad interpretation of ambiguous insurance policies, so as to maximize coverage, did not apply. See Superior Court Order at 6, citing Harris by Harris v. Nationwide Mut. Ins. Co., 712 A.2d 470, 472 (Del. 1997). The Court reasoned that the named insured, an Estate, like other artificial entities cannot have a relative. The error with this reasoning, however, is that an "Estate" is not recognized under Delaware

law as a separate legal entity with its own legally cognizable interest as eluded by the Court. Rather, an "Estate" is an aggregate of the property interest of the decedent. Salaam v. Unknown Claimants to a Certain Parcel of Land (unreported) 1998 W.L. 157372 at 2; citing Chambers v. Gallo, 108 A.2d 254 (Del. Super. 1954); see also Delaware State Bar Association Committee on Professional Ethics Opinion, 1989 at 4. See also Estate of Ryan v. Hyden, 2013 U.S. Dist. LEXIS 22405 at 2 citing Anthony Lombardi, individually and as Administrator for the Estate of Nancy Morocco v. Allstate Insurance Company, 2011 WL 294506 (WD PA) for proposition that an "Estate" cannot act on its own.

In Delaware, land, tenements, and hereditaments are divisible by Last Will & Testament. 12 Del. C. §204. The title to real estate vests immediately in devisees upon the death of a testator and would only be subject to divestiture if necessary to sell the property to settle debts of the deceased. In re Harris' Estate, 44 A.2d 18,19 (Del. Orph. 1945). The decedent Richardson devised the property to Gladney in the Will and title, therefore, vested in Gladney individually as of 10/03/02, the date of Richardson's death. When the policy's declaration page was updated naming the "Estate of Jean E. Richardson" as the named "Insured", titled had already vested in Shirley Gladney individually subject to the divestiture

only if Gladney, as Executrix/personal representative, will have to raise funds to pay other debts of the Estate of Richardson. Section 9 of the policy coverage conditions on page 20 of the policy specifically covered Gladney in her capacity as personal representative of Richardson's Estate from the time the policy was issued. (A-74). The declaration page, however, was seemingly updated to reflect the change in the ownership of the property. Clearly, State Farm intended to insure the property and its owner. Gladney was the owner of the property from the moment of Richardson's death. It was Turner, as the son of Gladney, who was by definition a "resident of the household" and, therefore, as the son of Gladney was an insured under the policy (A-55). Under Delaware law, the Estate of Richardson did not and could not own property. It is therefore reasonable to conclude that since the Estate of Richardson did not own the property at 2615 North Heald Street (the named insured property on the declaration page), there is ambiguity as to exactly who and/or what was insured when the named insured was changed to the "Estate of Jean E. Richardson." The logical conclusion would be that State Farm intended to insure the owner of the property for the remainder of the policy period. Gladney was the owner of the property and Executrix, and for all intents and purposes was the insured.

Consequently, Turner would fall under the definition of an "insured" as he was "a resident of the household" and a "relative" (her son) of the "named insured." (A-55).

In Anthony Lombardi, individually and as Administrator for the Estate of Nancy Morocco v. Allstate Insurance Company, 2011 WL 294506 (WD PA), the plaintiff took almost the opposite position of the plaintiff here. The plaintiff was the Administrator of his sister's Estate. Her home was insured for homeowner's insurance with the defendant Allstate Insurance Company. Allstate denied his claim under the policy to cover damage caused by a broken water pipe. He took the position that he was not the "insured", that his actions in turning off the water and not draining the pipes did not fall under the exclusion preventing coverage where loss is caused by:

> "freezing of plumbing, fire protective sprinkler systems, heating or air conditioning systems, or household appliances, or discharge, leakage, or overflow from within the system or appliances caused by freezing, while the building structure is vacant, unoccupied, or being constructed unless "***you***" have used reasonable care to...(b) shut off the water supply and drain the system and appliances." Id. At 3.

The plaintiff contended that he was not an insured because he did not fall within the definition of "***you***" under the terms of the policy. The policy provided that "***you***" or "***your***" means the person named on the policy declarations as the insured and that person's resident spouse. Furthermore,

the policy defined "insured persons" to mean "***you*** and ***if a resident of your household***." The plaintiff in Lombardi contended that because he was neither the ***insured***, nor the ***resident spouse of the insured*** he does not fit into the definition of "you" or "your." Nor, because he was not a relative residing in the insured's household or a dependent person in her care, did he believe he fit into the definition of "insured person". The plaintiff relied upon a clause under the policy, similar to the one in the instant case, providing "continued coverage after your death" which then would provide coverage for "your legal representative"...and "an insured person" having proper temporary custody of ***your*** property until a legal representative is appointed. The plaintiff argued that "because a legal representative is not defined as "you" or "your" under the provisions of the policy, which would obligate "you" to use reasonable care to maintain the heat or shut off the water supply and drain the system, then the exclusions and provisions did not apply to him. Id. At 3-4.

The Court disagreed with this position. It held that "your legal representative" is the equivalent of the insured. It concluded that if "you" as outlined in the definitions portion of the policy is not so broad as to include the "Estate"...and the Administrator acting on its behalf, then the "settlement of loss" provision would be nonsensical. Consequently, unless

"you" is understood to mean the legal representative of the Estate of the insured, then there is no one or no entity with which Allstate can contractually settle any covered loss. This term is perfectly clear and unambiguous. "You" means the policyholder. By virtue of Lombardi's status as the Administrator of the Estate, he stands in the shoes of the policyholder and is bound by all of the obligations of the policyholder. Id. At 4-5

The same would apply to the similar policy language in the present case. Here, the policy with State Farm provided under definitions "you" and "your" mean the "named insured" shown in the declarations. It further defines "(4) "insured" means you, and if residents of your household: (a) your relatives." (A-55).

The Court in Lombardi held that the Administrator as the Estate of the plaintiff fell under the definition of "you" and therefore was an "insured" under the terms of the policy. Here, the same would apply to Gladney as being an "insured" as falling under the definition of "you". Consequently, since the Estate of Jean Richardson (Gladney) would be considered "you" and an "insured" under the definitions of the policy, it follows that Ronald Turner, as a resident relative, would also be insured.

Furthermore, under the provision of "#9 Death", "if any person shown on the declarations or the spouse, if a resident of the same household, dies...(a) we insure the legal representative of the deceased". (A-74). If Shirley Gladney was automatically insured as the "legal representative" of the deceased Jean Richardson at the time of her death, there would be no reason to have amended the named insured under the declarations page from "Jean Richardson" to the "Estate of Jean Richardson." It follows that Shirley Gladney as the Executrix of the "Estate of Jean Richardson", per the Lombardi decision, would fall under the definition of "you", an "insured", and therefore include her son Ronald Turner as a "resident relative" of her. The plaintiff submits that it is clear and unambiguous that Ronald Turner was therefore an insured under the policy in question. It is the only logical and reasonable interpretation under the plain language of the policy. At the very least, the language is ambiguous and, therefore, should be construed in favor of Gladney and Turner as insureds. If the Court decides that the language of the policy is ambiguous, and open to multiple reasonable interpretations, then the policy must be construed most strongly against the insurer who drafted it O'Brien v. Progressive Northern Insurance Company, 785 A.2d 281, 288 (Del. Supr. 2001).

Section 9 of the liability coverage conditions on page 20 of the policy (A-74) further provides, under "death", if any person shown in the **Declarations** or the spouse, if a resident of the same household dies: (a) "we insure the legal representative of the deceased…", namely Shirley Gladney, as Executrix of the Estate of Jean E. Richardson. The policy then indicates that (b) **Insured** includes: (1) "any member of your household is an insured at the time of your death, but only while a resident of the residence premises…" This portion of the policy only indicates as **included** insureds, but is not all inclusive. Taking the policy as a whole, once Gladney was the insured as the legal representative of the deceased, it followed that Turner became an insured as a relative/resident of the household under the other terms of the policy defining insureds as previously outlined. Again, at the very least, the terms of the policy are ambiguous and should be construed in favor of Turner as an insured under the terms of the policy.

Consequently, if Turner is found to be an insured, as a judgment creditor, plaintiff can bring a direct action against State Farm in an attempt to recover on the judgment against Turner. Rowlands v. Phico Insurance Company, 2000 WL 1092134 (Del. Super.). Under the "no action clause" contained within the defendant's policy (page 15 Section II – Liability Coverages, Coverage L-Personal Liability):

"If a claim is made or suit is brought against an insured for damages because of bodily injury or property damage to which this coverage applies, caused by an occurrence, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable; and

2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages, to effect settlement **or satisfy a judgment** resulting from the occurrence, equals our limit of all liability; " [emphasis added] (A-69).

and page 18-19, II-Conditions Limit of Liability...

"6. Suit Against Us. No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have the right to join us as a party to an action against an insured. Further, no action with respect to coverage L shall be brought against us until the obligation of the insured has been determined **by final judgment** or agreement signed by us." (A-72-73).

Per the Court's holding in Rowlands, supra, after the plaintiff recovered judgment against the insured, he acquired a contractual right to a cause of action against the insurer for the amount of the judgment **within the policy limits. Once judgment had been entered against the insured**, the plaintiff was more than simply a judgment creditor of the insured (he had a contractual right under the insurer's policy to sue the company directly). He did not need an assignment of rights from the insured, although he may have

obtained one. The contractual right of a third-party claimant to sue the insurer directly after judgment must include the right to receive payment of the determined third-party claim after judgment. After judgment against the insured, the claimant is in the same position as an insured with respect to the insurance company. The contractual duties that exist then are protected by the same concepts of good faith and fair dealing that pertain to contract between insurers and insureds. Id. at 4. See also Willis v. City of Rehoboth Beach, 2004 WL 2419143 (Del. Super.); Chittick v. State Farm Mutual Auto Insurance Company, 170 F.Supp. 276 (D. Del. 1958); Cassidy v. Millers Casualty Insurance Company of Texas, 1 F.Supp.2d 1200 (D. Col. 1998); Montana ex rel. Fitzgerald v. District Court, 703 P.2d 148, 158 (Mont. 1985); 8 Appleman Insurance Law & Pr., Chap. 201, Sec. 4831.

The plaintiff's judgment against Turner was for $250,000.00 plus post-judgment interest and costs. The personal liability policy limits under State Farm's policy was $300,000.00 (A-51,102). Therefore, the plaintiff can bring a direct action against State Farm for collection of the judgment amount.

The plaintiff submits that the policy language in question provides liability coverage for Gladney, and therefore her son Turner, as "insureds." At the very least, the language and provisions are ambiguous and,

consequently, should be construed in favor of Gladney and Turner as insureds. Therefore, the plaintiff respectfully submits that the Court below erred in granting the defendant's Motion for Summary Judgment and should be reversed.

CONCLUSION

The plaintiff-appellant respectfully submits that the Court below erred as a matter of law in granting the defendant's Motion for Summary Judgment because the underlying tortfeasor was an insured" of the defendant's policy provisions or, at the very least, the provisions were ambiguous and should be construed in favor of the plaintiff. Therefore, the Court's order should be reversed.

/s/ William R. Peltz

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HENRY BRADLEY MARSHALL, individually and as Executor of the Estate of Nina Marshall, deceased,	)	
Plaintiff,	)	C.A. No. N11C-01-105 MMJ
v.	)	
STATE FARM FIRE & CASUALTY COMPANY,	)	
Defendant.	)	

Submitted: April 24, 2013
Decided: June 13, 2013

On Defendant State Farm Fire & Casualty Company's Motion for Summary Judgment

GRANTED

OPINION

William R. Peltz, Esquire, Kimmel, Carter, Roman & Peltz, Attorney for Plaintiff

David G. Culley, Esquire, Christina M. Gafford, Esquire , Tybout, Redfearn & Pell, Attorneys for Defendant

JOHNSTON, J.

INTRODUCTION

This is a contract dispute that presents the novel issue of whether an estate can properly be said to have a "relative" under the homeowner's insurance policy ("Policy") in question. State Farm Fire & Casualty Company ("State Farm") has moved for summary judgment, claiming that the plain language of the Policy does not include a relative of a legal representative/executrix of the original policy holder, as an insured. Henry Bradley Marshall ("Plaintiff") contends that the son of the executrix is covered as an insured

FACTUAL AND PROCEDURAL CONTEXT

Plaintiffs[1] filed a Complaint on May 13, 2005 against Shirley Gladney, Ronald Turner, and "John Doe," seeking compensation for property damage to their home. Damage to Plaintiffs' home was caused by a fire occurring in an adjacent house. Shirley Gladney was the owner of the house where the fire originated. Gladney acquired ownership of the house from Jean E. Richardson, as the Executrix of Richardson's estate after she passed away on October 3, 2002.

Gladney permitted her son, Ronald Turner, to reside at the house at some point prior to May 13, 2003. At the conclusion of a trial in this Court, Turner was

[1] At the time, "Plaintiffs" included Nina Marshall and Henry Bradley Marshall. The caption now reflects that Ms. Marshall is deceased.

found to have proximately caused the fire that damaged Plaintiffs' home.[2] Plaintiffs were awarded $250,000.00, plus costs and post-judgment interest.

State Farm issued the Policy to Richardson, with a coverage period of September 16, 2002 through September 16, 2003. Plaintiff filed the present action against State Farm Defendant in an effort to recover the damages awarded against Turner. Plaintiff contends that Turner was an "Insured" under the Policy. Plaintiff also alleges that State Farm willfully, wantonly, recklessly, and intentionally failed to provide Turner with a defense in connection with the May 13, 2005 Complaint and subsequent January 11, 2008 trial.

On December 5, 2012, State Farm filed the pending Motion for Summary Judgment, urging the Court to find as a matter of law that Turner is not an Insured under the Policy. Argument on State Farm's Motion was heard on April 12, 2013, The parties filed supplemental submissions on April 22, 2013 and April 24, 2013. The parties have agreed that the only issue presently before the Court is the narrow question of whether an estate can be said to have a relative, pursuant to the terms of the Policy and under Delaware law.

[2] *Marshall v. Gladney*, Del. Super., C.A. No. 05C-05-151, Johnston, J. (Jan. 11, 2008).

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[3] All facts are viewed in a light most favorable to the non-moving party.[4] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[5] When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[6] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.[7]

ANALYSIS

Policy Terms

The crux of the matter presently before the Court is whether Turner is an Insured under the Policy. It is undisputed that Turner was not an Insured at the time

[3] Super. Ct. Civ. R. 56(c).

[4] *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).

[5] Super. Ct. Civ. R. 56(c).

[6] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[7] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

of Richardson's passing. Therefore, the Court must look to those parts of the Policy defining what occurs in the event that a named Insured dies.

Section 4 of the Policy provides:

> 4. **"Insured"** means you and, if residents of your household:
>
> a. your relatives; and
>
> b. any other person under the age of 21 who is in the care of a person described above.

This portion of the Policy plainly refers to Richardson. Richardson is "you," and therefore subsections a. and b. refer to Richardson's relatives and persons under the age of 21 in Ms. Richardson's care.

In the event of Richardson's passing, the Policy was written to extend coverage to Richardson's legal representative:

> 9. **Death.** If any person shown in the **Declarations** or the spouse, if a resident of the same household, dies:
>
> a. we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death;
>
> b. **Insured** includes:
>
> (1) any member of your household who is an **insured** at the time of your death, but only while a resident of the **residence premises**; and

(2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

When Ms. Richardson died, Gladney eventually became the Executrix of her Estate. As Executrix, Gladney was the legal representative of Richardson's Estate, and became an Insured pursuant to Policy Section 9.a. A new Declarations Page was issued by State Farm. The Named Insured was changed from "Jean E. Richardson" to the "Estate of Jean E. Richardson."

It is undisputed that Turner was not and is not an insured under Policy Section 9.b.1, since Turner clearly was not an Insured at the time of Richardson's death. Additionally, Turner cannot be an Insured under Policy Section 9.b.2, because he only resided in the house after his mother became Richardson's legal representative.

Parties' Contentions

Turner is Gladney's son, and Gladney became an Insured pursuant to Policy Section 9.a. Plaintiff contends that with Gladney as the Estate's representative, and with the Estate as the Named Insured listed on the Declarations Page, Gladney became the "you" referred to in Policy Section 4. According to Plaintiff, it follows that as a relative of Gladney, Turner also is an Insured under Policy Section 4.a.

Defendant asserts that there is no precedent in Delaware, or in any other jurisdiction, for the proposition that an estate has relatives. State Farm urges the Court not to create a new doctrine in this case. In sum, the question before the Court is whether, under the terms of the Policy, Turner can be a relative of Richardson's Estate.

Discussion

The narrow issue in this case is one of first impression in Delaware.

The proper interpretation of the language in an insurance policy is a question of law to be resolved by the Court.[8] When the policy language is unambiguous, he parties will be bound by the plain meaning of the insurance policy.[9] The Court finds the Policy language at issue in this case to be unambiguous. Therefore, the rule requiring the "broad" interpretation of ambiguous insurance policies, so as to maximize coverage, does not apply.[10]

Neither party was able to submit any legal precedent on the issue of whether an estate can have a relative - for purposes of insurance coverage, or for any other reason. Common sense dictates that people have relatives. Artificial entities, such as corporations and partnerships, do not have relatives.

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[8] *Hudson v. State Farm Mut. Ins. Co.*, 569 A.2d 1168, 1170 (Del. 1990).

[9] *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982). .

[10] *See Harris by Harris v. Nationwide Mut. Ins. Co.*, 712 A.2d 470, 472 (Del. 1997).

After carefully considering the fair bounds of coverage and exposure under the Policy, the Court has concluded that the Estate cannot properly have a relative. This Court declines to create an unprecedented legal fiction here. Principles of judicial restraint mandate that this Court refrain from promulgating entirely new law, whenever possible.[11]

Further, there has been no public policy reason offered to support creating an additional source of exposure, within the Policy before the Court, by creating a new principle of Delaware law. The Court is unaware of any jurisdiction that has held that an estate, executor/executrix, or other legal representative can have relatives. To find otherwise would extend the exposure under the insurance contract beyond what reasonably could have been foreseen or contemplated by the parties negotiating this policy.

This Court finds that estates do not have relatives. Therefore, Turner is not an Insured under the Policy.

CONCLUSION

On this issue of first impression in Delaware, the Court finds that an estate cannot have relatives for purposes of insurance coverage. Plaintiff cannot recover

[11] *See In re Southern Peru Copper Corp. Shareholder Derivative Litigation*, 30 A.3d 60, 87 (Del. Ch. 2011).

from State Farm because the tortfeasor, who is a relative of the Insured Estate's Executrix, is not an Insured, as defined under the Policy.

THEREFORE, State Farm Fire & Casualty Company's Motion to Dismiss is hereby **GRANTED.** This case is hereby **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston

DELAWARE STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL ETHICS
OPINION 1989 - 4

A member of the Delaware Bar has requested the opinion of the Committee on Professional Ethics of the Delaware State Bar Association (the "Committee") as to whether he may properly represent the individual interests of an executor of an estate in a matter in which the attorney has been "representing the estate." Specifically, a beneficiary of the estate has filed an exception to the final accounting challenging a previous inter vivos gift made by the testator to the executor. The beneficiary claims the gift was wrongful and the property given to the executor should revert to the estate. In the resulting litigation the beneficiary has noticed the executor's deposition both in his role as an executor and as donee of that inter vivos gift, and the attorney has inquired whether it would be a conflict of interest for him to represent the executor in both capacities.

CONCLUSION

It is the Committee's opinion that under Delaware law the term "estate" merely refers to the aggregate property interests of a decedent and is not a separate legal entity with its own legally cognizable interests. Therefore, we are of the view that while in common usage an attorney is said to represent "the estate," in fact he or she represents the executor in the

nagement of that estate, and accordingly there is no conflict between representation of the executor as such and representation of the executor in his or her individual capacity.

DISCUSSION

Rule 1.7 of the Delaware Lawyers' Rules of Professional Conduct provides, among other things, that:

> "(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless
>
> (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
>
> (2) each client consents after consultation."

Rule 1.7 thus prohibits a lawyer from representing directly adverse interests unless (i) all affected clients consent, and (ii) the lawyer can make a professional judgment that there will be no actual adverse effect on his relationship with any client. The question presented to the Committee here is whether such directly adverse interests exist under these circumstances. That question, in turn, presents the question of who is the lawyer's client, the executor or the estate?

The argument that a directly adverse relationship exists under these circumstances proceeds as follows: The current litigation involves an inter vivos gift to the executor. If that gift is found to have been improper, the property given to the executor will revert to the estate. Thus, to the extent the lawyer's duty is to the estate as a cognizable entity, he is

bound to support (or at least not oppose) those measures increasing the value of the estate. Therefore, since it would increase the value of the estate for the property to be forfeited, the lawyer may not properly represent the executor in attempting to uphold the validity of the gift. If, however, the executor is seen as the lawyer's client, then there would not appear to be a directly adverse interest sufficient to require the lawyer to decline to represent the executor individually.

Authorities outside Delaware have touched upon this issue, but they are not especially helpful to its resolution. In the two such decisions referred to us, the American Bar Association Committee on Ethics and Professional Responsibility's Informal Opinion 1017 (Dec. 7, 1967), and In The Matter Of Walter O. Estes, Mich. Sup. Ct., 221 N.W. 2d 322 (1974), the authorities in question appear to assume their conclusions to reach essentially opposing results.

In Informal Opinion 1017, the American Bar Association Committee was asked whether "an attorney employed by two co-executors to represent an estate is disqualified from seeking additional compensation for the co-executors for the estate." The Committee conceded that the attorney had a fiduciary responsibility to the estate but concluded, without any analysis of the point, that "[t]he attorney's clients are the executors and not the heirs or beneficiaries" and that the attorney therefore had a duty to seek additional compensation on the executor's behalf. Thus, without explaining the basis for its conclusion, the

Opinion treats the "estate" as having no independent existence but instead looks directly to the interests of the person having claims upon the estate.

The Supreme Court of Michigan in In The Matter Of Walter O. Estes, supra, apparently operated from a contrary presumption. There, the attorney in question was a co-executor of, and apparently the attorney for, an estate. A question arose as to whether the co-executor had properly received certain property of the testatrix before her death, and the attorney represented his co-executor "against the estate" in the ensuing litigation. The Michigan court held that this conduct "clearly warranted disciplinary action" since the attorney was "named and appointed co-executor of the estate" but had "represented a client whose claim was contrary to the provisions of the will and was antithetical to the best interests of the estate and beneficiaries. This is a self-evident basis for discipline." While self-evident to the Court, it is not entirely clear whether the Court believed that the lawyer had violated his duties as a lawyer to the estate as well as his duties as an executor.

Although we reach the same conclusion reached by the American Bar Association Committee, we believe the question presented here cannot be solved by the methodology used in either of these opinions. Rather, we believe it is first necessary to inquire into the nature of an estate to determine whether it has an independent legal existence sufficient to enable it to be a "client" as that term is used in Rule 1.7. Only then is it possible to determine whom the lawyer actually represents.

A review of the Delaware decisions indicates that as a technical matter the word "estate" in fact only refers to the actual property of the decedent. For example, in Tippett v. Tippett, Del. Ch., 7 A.2d 612 (1939), the Court was called upon to construe "estate" as that word was used in a will, and concluded that it meant "in a broad and comprehensive sense ... all class of property belong to the testator." Id. at 617; see also In re Spicer's Estate, Del. Orph. Ct., 120 A. 90 (1923); Harman v. Eastburn, Del. Ch., 76 A.2d 315 (1950). Our research has not uncovered any Delaware decision that expresses the logical corollary to this definition -- that while the term is often used loosely, an estate in fact has no independent legal existence. Cases in other jurisdictions, however, have so held, and it is the Committee's view they express the law of Delaware as well.

For example, in Tanner v. Best's Estate, 104 P. 2d 1084 (Cal. App. 1940), a California Court of Appeals dismissed a lawsuit brought solely against an estate because in its view an estate could not be sued as a separate entity. As stated by the Court:

> "[t]he 'estate' of a decedent is not an entity known to the law. It is neither a natural nor an artificial person. It is merely a name to indicate the sum total of the assets and liabilities of a decedent."

Id. at 1086. A similar view was expressed by the Supreme Court of Pennsylvania in Jones v. Beale, 66 A. 254 (Pa. 1907):

> "there is no such legal entity [as an estate]. It is a convenient phrase sometimes to identify the subject of litigation in the

> Orphan's Court, and in proceedings in rem it may be treated as a harmless superfluity."

Id. at 256; see also Webster v. State Mutual Life Assurance Co., 50 F. Supp. 11, 17 (S.D. CAL. 1943) (the term estate "is a word used to describe a condition of property and not to describe its owner").

Accordingly, we are of the view an "estate" has no legal existence, but instead describes the property and debts of a decedent. Given that conclusion, we do not believe an estate can be a "client" as that term is used under Rule 1.7, and the commonly used phrase "attorney for the estate" incorrectly describes the relationship existing between a lawyer and the executor. An attorney does not serve as an attorney for the estate; rather he or she serves as an attorney for the executor or other personal representative in that person's dealings concerning the estate of the decedent.

This conclusion is buttressed by other Delaware cases as well, although it should be noted these decisions also show evidence of the confusion engendered by the common, though technically incorrect, use of the term to describe an estate as if it were an independent entity. For example, in Vredenburgh v. Jones, Del. Ch., 349 A.2d 22 (1975), an attorney in question was repeatedly referred to by the Court as the "attorney for the estate." Yet, the estate's executor, who was found liable for various breaches of fiduciary duty, sought contribution from the attorney for alleged professional negligence in the advice he rendered the executor. See 349 A.2d at 40-41. As the Court stated the matter:

"[T]he basis for this claims is that in acting to acquire estate property for himself and in selling it to his friends and associates, [the executor] relied on the advice of [the attorney], and that consequently any liability to [the executor] for his action as executor must be charged to [the attorney]."

Id. at 40.

The Court held the attorney had not committed malpractice, but the nature of the inquiry demonstrates the Court assumed that the executor was the attorney's client, since, if the estate was his client then the attorney could have only been held liable for advice that injured the estate rather than the executor.*

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* More problematic is the Court's recognition that the lawyer had a fiduciary duty to the estate. This raises the questions of what are the sources of this duty and how extensive is it? If the duty is seen as derivative of the lawyer's duty to the executor who is also a fiduciary to the ultimate beneficiaries, it is less troubling (if somewhat theoretically murky) than if it is seen as a direct duty to the estate, which would seem to imply both that the estate had an independent legal existence and that it was somehow the lawyer's client. If an estate is a distinct entity to which a direct duty is owed, however, then it is difficult to understand how the lawyer also owes a duty to the executor. Given the problematic nature of analyzing such questions, which deal with the fundamental definition of words, we believe it is appropriate to use a more functionally oriented analysis, which focuses upon the results the court is trying to reach. See, e.g., Katz v. Oak Industries, Del. Ch., 508 A.2d 873 (1986) (describing the problems inherent in attempting to reach a conclusion purely through the application of formal logic to vaguely defined terms). Under such an analysis, the utility of holding that an attorney may, under the proper circumstances, be held accountable by the beneficiaries as well as by his client, the executor, would seem apparent. Such an analysis, however, might also lead to a conclusion that a lawyer should be seen to represent the interests of the beneficiaries at all times. The problems with that conclusion is it would be at odds with the case law and create an untenable position for the attorney.

This view is supported in a number of other cases as well. For example, in In re Estate of Whiteside, Del. Supr., 258 A. 2d 279 (1969), the Court addressed the position taken by the New Castle County Register of Wills that commissions paid to an executor ordinarily would be expected to cover all attorney's fees as well. See also Chancery Court Rule 192 (establishing normal "commission and fee allowable for the personal representative and attorney"). The Court held to the contrary. As stated by the Court: "[w]hen [an executor] is obliged in good faith to employ others in order to properly protect the interests of the estate, he is entitled to credit for them ... We are given no reason why an executor's commission should be affected simply because he finds it necessary to employ legal counsel." 258 A.2d at 282. (emphasis added).

The interesting point for present purposes is that both positions -- that of the Register and that of the Court -- seem to assume it is the executor who employs the attorney rather than the estate as an entity. The Register assumes -- and that is an assumption that appears to be built into Chancery Rule 192 as well -- that the executor should pay the attorney out of the executor's own commission, rather than from the estate. Under these circumstances, it would be clear the executor is personally paying for the attorney; if he does not hire an attorney his personal compensation increases. The Court disagreed that the fee should necessarily come from the executor's commission, but in its statements appeared to assume counsel was hired to assist the executor in the executor's obligation to protect the

estate. See also Bodley v. Jones, Del. Supr., 65 A.3d 484, 488 (1948) (attorney for the estate "rendered valuable service to [the executor]"); cf., Matter Of The Estate of duPont, Del. Ch., 376 A.2d 91, 94 (1977) (holding that an attorney, who serves as a co-executor, is entitled only to executor's commission and may not separately bill for time associates spent on the matter).

Thus, the Committee believes, based upon both the court decisions defining the word "estate," and the implications arising from their treatment of lawyers "representing estates," that the Delaware Courts would conclude an attorney "for" an estate represents (and indeed could only represent) the executor and not the estate as a separate entity. From this we draw the further conclusion that there is no conflict between the lawyer's representation of the executor when serving in such role and in his role as the donee of an inter vivos gift. We base this conclusion upon the fact that a lawyer represents a client, and not the underlying function that client performs. See, e.g. Rule 1.2. Thus while the executor might have an internal conflict of interest between his different roles, the lawyer has no such conflict because he represents the person and not the role. We note, however, that this conclusion leaves unresolved certain tensions relating to a lawyer's potential fiduciary duties to the beneficiaries of an estate. Although we have found no court decision that thoroughly explores those duties, they do appear to exist, and thus raise questions relating to the lawyer's conduct in relation to the beneficiaries. But, whatever the nature and extent of a lawyer's duties to a decedent's beneficiaries, we do

not view them as rising to a level that would implicate a lawyer's duty of loyalty as expressed in Rule 1.7. Accordingly, we believe the attorney here may properly represent the executor in his capacity as the donee of the inter vivos gift.*

* In this Opinion, we have not addressed the fee arrangements between the attorney and the executor, although to the extent the attorney is representing the executor in the executor's capacity as the donee of the inter vivos gift, his fee should, of course, be paid by the executor personally.

1998 WL 157372
Only the Westlaw citation is currently available.

Court of Chancery of Delaware.

Sakeenah SALAAM, a resident of the State of Delaware, Petitioner,
v.
UNKNOWN CLAIMANTS TO A CERTAIN PARCEL OF LAND AND IMPROVEMENTS THEREON KNOWN AS 305 WEST 5TH STREET, WILMINGTON, DELAWARE 19801, Respondents.
In the Matter of the Estate of Carman B. Skidmore, Jr.

No. 15348. | Feb. 13, 1998.

Attorneys and Law Firms

John E. Sullivan, Sullivan & Marston, P.A., Wilmington, Delaware, for petitioner Sakeenah Salaam.

John J. O'Brien, Wilmington, Delaware, for Mary Ellen Balaguer, Personal Representative of the Estate of Carman B. Skidmore, Jr.

Heirs at Law of Carman B. Skidmore, Jr.

Opinion

KIGER, Master.

*1 This is a report on proceedings to quiet title to real estate. A hearing was held on April 2, 1997 after notice to all known interested parties. Notice was given by certified mail, return receipt requested, and by publication once a week for three consecutive weeks preceding the hearing in a newspaper in general circulation in New Castle County, Delaware. The petitioner appeared at the hearing, but no other claimants appeared in person. One claimant, Cynthia Kammann, notified the Court several days before the hearing that she had just received notice of it and was unable to attend, but wished the Court to be aware of her position on the request to quiet title.

After the draft report was issued, the attorney for the personal representative of the estate of Carman B. Skidmore, Jr., filed a motion to reopen the record. That motion was granted and a further hearing was held on September 16, 1997. The personal representative testified at that hearing. Much testimony was placed in evidence that explained a great deal as to how the problem with the real estate came about and put a number of matters in a new light. Because of this I have revised the draft report substantially in an effort to be as fair as possible to all sides to this dispute.

It is my recommendation, after taking into consideration the testimony given at the September 16, 1997 hearing, that title to the subject real estate be quieted in the petitioner and that the representative of the estate of Carman B. Skidmore, Jr be required to file a further first and final account in this matter showing all the heirs to this estate and establishing that they have been paid what is owed to them.

I

Background

Carman B. Skidmore, Jr.[1] died on May 20, 1993. He was not survived by a wife or children, nor did he leave a will. On June 2, 1993, an estate was opened for him by Mary Ellen Balaguer, who is identified in the petition for letters as Mr. Skidmore's niece. *See* New Castle County Register of Wills Folio No. 104674. The petition for letters states that Mr. Skidmore was survived by two brothers and a sister[2] and that they had renounced in Ms. Balaguer's favor because of their advanced ages. The inventory filed by Ms. Balaguer on March 2, 1995 shows an estate consisting of real estate valued at $33,836.59 and cash amounting to $2,677.24. The debts of the estate and the costs of administration came to $12,782.24, a cash shortfall of over $10,000.00.

The need to raise cash to pay the claims against the estate and the costs of administration would have been an acceptable reason for the personal representative to seek court permission to sell the real estate. The record in the Register of Wills Office shows that the claim for the funeral alone was greater than the cash in the estate, as stated on the inventory much later.

The real estate was offered for sale in order to raise money to pay the claims against the estate. A willing buyer, the petitioner in this case, was found, and settlement took place at the office of the lawyer representing the buyer. The

September 16 hearing established that the lawyer for the personal representative knew that settlement on the property was being handled by another local attorney, and assumed that this attorney would either (1) petition for sale of the property to pay debts or (2) require all the co-owners to sign the deed. Because there was no will, ownership of the real estate shifted to the heirs at law at the moment of Mr. Skidmore's death, and hence the need for each of the owners to sign if the second approach were taken. Since the personal representative is the child of an heir, but not an heir herself, her signature on the deed passed no title to the buyer and the sales contract and the deed, even though they refer to the Estate of Carman Skidmore, Jr. as the seller and to the personal representative as having authority to bind the estate, do not confer authority on the personal representative to act as she did.

*2 The real estate is known as 305 West 5th Street, Wilmington, Delaware, and is further identified by New Castle County Tax Parcel No. 26-035.30-215. The deed was signed by the personal representative as the "Administratrix of the estate of Carman Skidmore, Jr." as instructed by the attorney for the buyer at closing on July 12, 1994 and was recorded on July 19, 1994. New Castle County Recorder of Deeds Book 1772, Page 333.

Although the estate was opened in 1993 and the real estate was sold in 1994, the inventory was not filed until March 2, 1995, the same day the first and final account was filed. The filing of the account apparently raised concerns among Mr. Skidmore's survivors, and several letters were received in the months that followed. One of these letters states that the personal representative failed to inform the Register of Wills that Mr. Skidmore had a sister who predeceased him, but who was survived by four children, and a brother who predeceased him, but was survived by one child. In other words, there were at least five heirs[3] to this estate whose identity and existence were not disclosed to the Register of Wills and who deserve to share in Mr. Skidmore's estate. There is no explanation in the files, nor was any given at the hearing, for this omission.

The petitioner has filed this action to quiet her title to this real estate. The disenfranchised heirs wish to asset their rights to whatever it is they are entitled to receive from the Skidmore estate.

II

Issues

As a matter of hindsight, this estate is one that ought to have been fairly easy to administer. There were few assets, and a number of claims that would justify selling the real estate to pay debts. Since the interests of the buyer of the real estate were protected by her having her own attorney at settlement, the attorney for the personal representative may have been warranted in his assumption that the other attorney would protect his client's interests better than he apparently did. The record before the Register of Wills was flawed as to the identities of the actual heirs to this estate, but had either of the two means of going to settlement already discussed been employed, the situation would be easier to address than it is now.

The way in which the real estate has been handled results in serious consequences for the title. If a proper request were made to sell the real estate to pay debts, and if the sale were ordered, the sale would have been a judicial sale, *In Re Wheeler's Estate*, Del.Ch., 101 A. 865 (1917), and the purchaser would have taken whatever Mr. Skidmore owned at the time of his death, *Lynch v. Doordon*, Del.Super., 78 A. 296 (1910). In the absence of a court-ordered sale, it is clear that the real estate passed at death to the intestate heirs, *In Re Harris*, Del.Ch., 44 A.2d 18 (1945), and arguably the liens of their judgement creditors, if any, attached to the real estate and remain as claims against it if the sale is not validated. The deed given in this case certainly does not convey good title, *cf. Chambers v. Gallo*, Del.Super., 108 A.2d 254 (1954), one reason being that the seller is the estate of Carman B. Skidmore, Jr., but the law does not recognize estates as legal entities, *Republic Bankers Life Ins. Co. v. Bunnell*, Tx.Ct .Civ.App., 478 S.W.2d 800 (1972).

*3 To conclude this part of the discussion, the only person who appears to be without fault in this matter is the petitioner. She hired a lawyer to conduct settlement for her and she paid the purchase price required by the sales contract. No appraisal of the real estate by a neutral party has been placed in evidence to show that the sale price was a fair one, but presumably some kind of appraisal was conducted because the inventory states a value for the property that is slightly greater than the sale price. The difference is a matter of $836.59. The difference between the appraised value shown on the inventory and the sale price is not so great as to shock the conscience unless it can be shown that the valuations given the Register of Wills Office were fraudulent.

The petitioner did all she could reasonably be expected to do before settlement. If anyone is an innocent victim in this case, it is she. In any event, is hard to see that she could have done anything more or different to resolve this matter than she has done by bringing this action. Title to the real estate should be quieted in her at this time on the basis that a judicial sale of the real estate would almost certainly have been ordered if requested because the legitimate claims against the estate so far outstrip the available personal property and the real estate had to be sold. An additional merit of proceeding in this fashion is that it recognizes that title to the real estate vested in the heirs at law subject to defeasement in order to pay claims against Mr. Skidmore's estate, and so the issues of the rights of the heirs' creditors in this real estate do not arise. This approach is consistent with the one taken by this Court in *Skinner v. Redding*, Del.Ch., 48 A.2d 809 (1946).

Skinner is far from identical to the present case, but is close enough to give guidance. Rosa Skinner was the devisee of real estate under the will of Amelia Cooper. Other real estate was left to Mrs. Cooper's son through the residuary clause of the estate. There was not enough money in the estate to pay the claims against it, and so the executor sold the specifically devised real estate to raise funds because he preferred not to sell the residuary real estate. Mrs. Skinner sued to quiet her title to the real estate left to her in the will. The Court was presented with a difficult situation not unlike the one here: something had to be sold to raise money to pay bills, but the wrong piece of real estate was the one sold. Depending on whose evidence was believed, even if the residuary real estate had been sold, it might still have been necessary to sell the real estate devised to Mrs. Skinner in order to raise enough money to pay the bills. Chancellor Seitz wrote that

> I have concluded that the facts of this case call for a denial of the complainant's prayer to remove a cloud on her title to the specifically devised real estate, but the granting of other relief under the general prayer for relief. However, the denial of complainant's prayer for specific relief and the affirmation of the actions of the defendants with respect to 934 Walnut Street are based on the condition that the executor, or some one or more of the other defendants, pay the complainant the sum of $881.03 with interest. A court of equity can refuse to grant the relief requested and in lieu thereof can grant some alternative relief, as I have done here. This principle is well recognized. [Citations omitted.]

*4 *Id.*, 813. Among the defendants in *Skinner* was the purchaser of the property in question. It is not as clear from the decision in *Skinner* that the buyer was without fault in the transaction as the petitioner appears to be in this case.

The relevance of *Skinner* to the present case is this. Courts of equity, in an appropriate case, may disregard technical considerations and view the matters placed before them from a practical viewpoint. When the Chancellor did this in *Skinner*, he ruled that the executor had acted wrongly, but that the facts of the case were such that the same result probably would have come about if the executor had carried out his duties properly. Based on that, rather than upset a transfer of title to real estate that had already occurred, he allowed the transfer to stand but required the executor to make good to the heir the money she would have been entitled to receive, had the property been properly sold and some of the proceeds applied to the debts of the estate.

Quieting title in the petitioner removes her from the controversy over this estate, but issues remain to be resolved. It is my understanding of the position of the heirs that they want whatever they were entitled to receive from the estate, and that point is made in Ms. Kammann's letter. There must, therefore, be an accounting that sets forth with particularity the assets of this estate and how they have been used and what remains for the heirs. I think there is no dispute at this point as to who the heirs are, or as to the extent of their respective interests in the estate, but for their own peace of mind they deserve a full accounting that answers their questions. Once this is done, it should be possible to close this estate.

It is also worthwhile pausing for a moment to comment on the way in which the personal representative has handled herself in this matter. While things might have been done better, it is my view, based upon my review of the record and my observation of the personal representative in open court, that she did not act in bad faith. I think she attempted to save attorney's fees for the estate by doing as much as possible, when as a matter of hindsight it would have been more prudent to turn the matter over to her own lawyer sooner, but I also note that the settlement on the real estate transfer was handled by a member of the Bar whose expertise in such matters the personal representative, as a layman, had

no reason to question. Thus, while it is unfortunate that things have turned out as they did, there is no basis in this record to say that the personal representative was anything but too trusting in her handling of the real estate and too trusting in not investigating further the next of kin of Mr. Skidmore.

III

Conclusion

The petitioner is entitled to have title to this real estate quieted in herself. In addition, the heirs are entitled to full disclosure as to how this estate has been handled. Therefore, an order should be entered at this time approving the sale to the petitioner, *nunc pro tunc*, as a judicial sale. Further, the personal representative should be required (1) to file with the Register of Wills, within thirty days after the entry of an order approving and implementing this report, a further first and final account to correct the statements previously made to the Register of Wills; (2) as part of this filing she should include a statement, under oath, as to the manner in which the estate of Carman B. Skidmore, Jr. has been distributed or alternatively file a petition for decree of distribution; and (3) provide receipts from each of the heirs showing that he or she has received whatever is due to him or her if distribution has been made.

ORDER

*5 **WHEREAS,** a hearing was held in this matter and thereafter a draft report was issued, and good cause being shown, the matter was reopened for the taking of additional testimony, following which a revised draft report was issued, and no exceptions being filed thereto, the revised draft report was filed as the final report on February 13, 1998, and more than twenty days having passed and no exceptions having been filed thereto.

NOW, THEREFORE, the Court having reviewed the final report dated February 13, 1998 and it appearing that there are grounds to so hold, said report is hereby approved and the findings of fact made therein are hereby adopted and in reliance thereon:

(1) title to real estate known as 305 West 5th Street, Wilmington, Delaware (which is also identified by New Castle County Tax Parcel Number 26-035.30-215) is hereby quieted in the petitioner **SAKEENAH SALAAM nunc pro tunc** as of July 19, 1994; and

(2) the personal representative shall file with the Register of Wills, within 30 days following the docketing of this Order, a further first and final account to correct statements previously made to the Register of Wills, which account shall include:

(a) the correct identification of the heirs to this estate and their respective shares of the estate, and

(b) either a statement that the estate has been distributed or alternatively that a petition for decree of distribution is being filed simultaneously with the further first and final account, and

(c) if distribution has already taken place, receipts from each of the heirs showing that he or she has received whatever is owed.

IT IS SO ORDERED this 19th day of March, 1998.

Footnotes

1 Mr. Skidmore's name is spelled "Carman" and "Carmen" on different documents in evidence in this case. I have used the Carman spelling because it is the spelling used on Mr. Skidmore's death certificate in the Register of Wills file.

2 According to Cynthia Kammann's letter to me of March 26, 1997, the identification of heirs to the Register of Wills not only omits some heirs, but mischaracterizes one of the heirs there mentioned as a full sister to Mr. Skidmore instead of a half sister. This is important because apparently there is a contention that heirs were omitted because it was the personal representative's belief that half-siblings were not entitled to inherit. Ms. Kammann goes on to state that two of the people omitted from the listing were full brother and sister to Mr. Skidmore. Ms. Kammann's letter is not under oath and this is not the time or place to conduct what would amount to decree of distribution deliberations, but suffice it to say for now that Ms. Kammann's letter raises serious questions about the way this estate was handled.

3 Ms. Kammann's letter, already referred to, raises the question whether there were more heirs omitted from the filings with the Register of Wills than indicated in the petition.

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Estate of Ryan v. Hyden, 2013 U.S. Dist. LEXIS 22405 (Copy citation)

United States District Court for the Southern District of California
February 14, 2013, Decided; February 19, 2013, Filed
CASE NO. 13cv311-LAB (RBB)

Reporter: 2013 U.S. Dist. LEXIS 22405

ESTATE OF JOHN JAMES RYAN, Plaintiff, vs. TIMOTHY M. HYDEN, et al., Defendant.

Core Terms

burn, proper plaintiff, federal court, slip opinion, state court, license

Counsel: [1] Estate of John James Ryan, Plaintiff, Pro se, San Diego, CA.

For Timothy M. Hyden, a California resident and as Trustee of the John and Christy Ryan Family Trust, Matthew S. Toth, a California Resident and as Attorney for the John and Christy Ryan Family Trust and as Attorney for Christy Babbitt, Pedder, Hesseltine, Walker, & Toth L.L.P., a California Limited Liability Partnership, Christy Babbitt, a California Resident, and as Guardian Ad Litem of Jack Emory Ryan, R.J. Coughlan, a California Resident, Harold C. Trimmer, a California Resident, Coughlan, Semmer, Fitch & Pott L.L.P., a California Limited Partnership, Alisa Gray, an Arizona Resident, Gray & Fassold P.C., an Arizona Professional Corporation, Lee M. Quick, a Virginia Resident, Mary T. Morgan, a Virginia Resident, Cooper, Spong, & Davis P.C., a Virginia Professional Corporation, Lee M. Quick, PC, Defendants: Harold C. Trimmer, LEAD ATTORNEY, Coughlan, Semmer, Fitch & Pott, LLP, San Diego, CA.

For Kelly M. Barnhart, a Virginia Resident, Roussos, Lassiter, Glanzer, Marcus P.L.C., a Virginia Public Limited Company, Defendants: Howard Franco, Jr, LEAD ATTORNEY, Collins Collins Muir and Stewart LLP, Orange, CA.

For USA, Defendant: [2] Ernest Cordero, Jr., LEAD ATTORNEY, U.S. Attorney's Office, Southern District of California, Civil Division, San Diego, CA.

Judges: HONORABLE LARRY ALAN BURNS, United States District Judge.

Opinion by: LARRY ALAN BURNS

Opinion

ORDER REQUIRING SUBSTITUTION OF COUNSEL

On February 7, 2013, this action was removed from California state court on the grounds that two Defendants were federal employees acting within the scope of their employment at the time the events complained of happened. The U.S. Attorney provided the required certification of this. Because the Federal Tort Claims Act provides the exclusive remedy for negligent or wrongful acts or omissions under such circumstances, this Court appears to have jurisdiction at least over those claims.

The Plaintiff, Estate of John James Ryan, purports to be proceeding *pro se*. Regardless of California state courts' rules and decisions on the permissibility of this, it is impermissible in federal court for two reasons. First, an estate cannot act on its own; it must act through its administrator. *See, e.g., Lombardi v. Allstate Ins. Co.*, 2011 U.S. Dist. LEXIS 157544, *12, 2011 WL 294506, slip op. at *4 (W.D.Pa. Jan. 27, 2011) ("Because the Estate is incapable of acting on its own, it must act—or fail to act—through [3] its administrator. . . ") The Estate itself is therefore not a proper Plaintiff in this case.

Second, neither an estate nor the administrator of an estate can proceed *in pro per* in federal court. *See Swenson v. United States*, 2013 U.S. Dist. LEXIS 5505, 2013 WL 147814, slip op. at *3 n.2 (E.D.Cal., Jan. 14, 2013) (citing *Iannaccone v. Law*, 142 F.3d 553, 559 (2d Cir. 1998)). *See also* Civil Local Rule 83.3(k)

(permitting only natural persons to appear *in pro per* in this Court, and requiring all other parties, including legal entities, to appear in court only through a duly admitted attorney).

It should be noted that neither the Estate nor its executor could not proceed in California state court *in pro per*, either. *See City of Downey v. Johnson*, 263 Cal. App. 2d 775, 780, 69 Cal. Rptr. 830 (Cal. App. 1968) (executor of estate was not entitled to appear *in pro per*). Requiring Plaintiff to be represented by counsel at this point does not create an undue burden or a danger of unfair surprise.

Plaintiff is therefore **ORDERED** to substitute in licensed and qualified counsel no later than **March 11, 2013**. Counsel shall then file an amended complaint stating a proper Plaintiff no later than **March 18, 2013**. If Plaintiff fails to do either of these **[4]** things within the time permitted, this action will be dismissed for failure to prosecute.

Pursuant to Civil Local Rule 83.3(k), only a duly admitted attorney may make appearances. Obviously, the Estate itself cannot file documents. Any documents to be filed, therefore, must be filed by a duly licensed and admitted attorney; documents submitted for filing by anyone else will be summarily rejected for filing.

IT IS SO ORDERED.

DATED: February 14, 2013

/s/ Larry Alan Burns

HONORABLE LARRY ALAN BURNS

United States District Judge