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IN THE SUPREME COURT OF APPEALS
OF THE STATE OF WEST VIRGINIA

CIVIL ACTION NO. 22-621

CHRISTOPHER HAYMOND, individually and as Trustee of the Testamentary Trust created by the Last Will and Testament of Irene Nutter Haymond,
Defendant Below, *Petitioner*

vs.

STEPHANIE HAYMOND and DAVID HAYMOND,
Plaintiffs Below, *Respondents*

REPLY BRIEF OF THE PETITIONER, CHRISTOPHER HAYMOND, INDIVIDUALLY AND AS TRUSTEE OF THE TESTAMENTARY TRUST CREATED BY THE LAST WILL AND TESTAMENT OF IRENE NUTTER HAYMOND TO THE RESPONDENT'S BRIEF FILED BY STEPHANIE HAYMOND AND DAVID HAYMOND

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I. NATURE OF ACTION & PROCEDURAL HISTORY

The nature of action and procedural history, as set forth in the Brief of Petitioner previously filed herein, is hereinafter restated for the Court's reference and convenience.

By Complaint filed August 6, 2020, in the Circuit Court of Ritchie County, West Virginia (Civil Action No. 20-C-30), Plaintiffs Stephanie Haymond and David Haymond asserted claims against Defendant Christopher Haymond, the Plaintiffs' father, in his capacities individually and as Trustee of the testamentary trust created by the Last Will and Testament of Irene Nutter Haymond. The Complaint asserted causes of action for (1) Declaratory Judgment & Action to Quiet Title, (2) Breach of Trust / Conversion / Unjust Enrichment, and (3) Demand for Accounting.

In such Complaint, Plaintiffs allege that Defendant Christopher Haymond "manipulated Plaintiffs to sign [deeds] ... purporting to convey the [Trust] Real Estate to [himself] for Defendant's own gain...", and that when such transfers were made "Defendant was in a confidential relationship with the Plaintiffs..." (Complaint at ¶¶ 33-34).

On November 4, 2020, Christopher Haymond filed his Answer in this action, alleging that the transfers of the Plaintiff's remainder interests in title to the Trust-held realty were valid and not barred by the Trust's spendthrift provision, also denying that he breached a fiduciary duty to Plaintiffs.

On December 16, 2020, Plaintiffs filed a Motion for Partial Judgment on the Pleadings pursuant to Rule 12(c) of the West Virginia Rules of Civil Procedure, arguing

that the disputed realty transfers were allegedly barred by the Trust's spendthrift clause, rendering the deeds void *ab initio*.

The Plaintiff's Motion for Partial Judgment on the Pleadings was opposed by Defendant by a Memorandum of Law in Opposition filed January 13, 2021, arguing that the Plaintiffs' claims were time-barred via statute of limitation and laches (presumably, the 2-year limitations period for breach of fiduciary duty, the apparent core of the Complaint), as Plaintiffs filed their Complaint more than 26-years after the disputed Deeds had been executed. Additionally, the equitable doctrine of laches, i.e., unreasonable delay in initiating an action plus prejudice to the party asserting the defense.

On February 16, 2021, Plaintiffs filed a Reply Brief in support of their Motion for Partial Judgment on the Pleadings reiterating their argument that the challenged Deeds were void *ab initio* because the Trust spendthrift clause purportedly barred the transfer of the Trust realty.

On March 17, 2021, Defendants filed Findings of Fact and Conclusions of Law, with Plaintiffs filing their iteration on March 18, 2021.

On March 18, 2021, Plaintiffs filed their Proposed Findings of Fact and Conclusions of Law.

On August 2, 2021, Defendants filed their Predicate Facts Pursuant to the Instruction of the Court and Proposed Certified Questions.

On March 17, 2022, Defendant Christopher Haymond filed his First Set of Interrogatories and Request for Production on Plaintiffs.

On May 2, 2022, Plaintiffs filed their Answers to Defendant Christopher Haymond's First Set of Interrogatories and Request for Production.

By Certification Order dated May 9, 2022, Third Circuit Judge Timothy L. Sweeney set forth the factual background of the action and two Certified Questions and proposed answers to be tried by the West Virginia Supreme Court of Appeals.

On August 8, 2022, the West Virginia Supreme Court of Appeals issued a Scheduling Order acknowledging that the request for the Certified Questions to be decided by that tribunal had been received and that the Court would determine whether to accept the request to determine the offered Certified Questions.

By Order dated April 5, 2023, the West Virginia Supreme Court of Appeals set the briefing schedule regarding the proposed Certified Questions, so that the Court can determine whether to hear such issues.

Defendant, Christopher Haymond, filed his Brief of Petitioner herein on June 8, 2023.

Plaintiffs filed their Brief of Respondents herein on July 21, 2023.

II. STATEMENT OF FACTS BY THE CIRCUIT COURT

1. On May 8, 1989, Irene Nutter Haymond ("Ms. Haymond") died testate as a resident of Riverside County, California.

2. Pursuant to her Last Will and Testament (the "Will"), Ms. Haymond created a testamentary trust (the "Trust") for the benefit of her grandchildren, Daniel Haymond, IV, Plaintiff David Haymond, Plaintiff Stephanie Haymond, Jessica Haymond, and Christen Haymond.

3. According to the terms thereof, fifty percent (50%) of the assets of the Trust were to be allocated to the issue of Ms. Haymond's son, Daniel Marsh, III, being Daniel Haymond, IV, and Plaintiff David Haymond, and the remaining fifty percent (50%) to the issue of Ms. Haymond's other son, the Defendant, being Plaintiff Stephanie Haymond, Jessica Haymond, and Christen Haymond.

4. In her Will, Ms. Haymond appointed her two aforementioned sons, Daniel Marsh Haymond, III, and the Defendant, as co-trustees of the Trust.

5. The primary assets of the Trust consisted of the surface of certain real property located in Ritchie County, West Virginia, and the minerals with and underlying such property (the Real Property).

6. On or around September 4, 1993, Plaintiff Stephanie J. Haymond, at the request of her father, the Defendant, signed a document prepared by the Defendant purporting to transfer her current and future interests in the Real Property to the Defendant.

7. A few months later, on December 2, 1993, plaintiff David Haymond, also at the request of the Defendant, signed a document purporting to convey his interest in the Real Property to the Defendant. The aforementioned documents signed by Plaintiff Stephanie J. Haymond and Plaintiff David Haymond may be referred to collectively hereinafter as the "Deeds."

8. The Will instructed the co-trustees to pay to the beneficiaries the income of the Trust in monthly or other convenient installments with the principal of the Trust being held in trust until the youngest beneficiary, Christen Haymond, reached the age of thirty (30) years at which point the trust would terminate.

9. Christen Haymond turned thirty (30) years old in February of 2014.

10. The Will contained a spendthrift clause governing the Trust which stated that "[t]he interest of beneficiaries in principal or income shall not be subject to the claims of its creditors or others nor to legal process and may not be voluntarily or involuntarily alienated or encumbered." (the "Spendthrift Clause")

11. On or about August 6, 2020, the Plaintiffs initiated this action by filing their complaint ("the Complaint") with the Circuit Court of Ritchie County, West Virginia, in which they, pursuant to Count I of the Complaint, request that the Court to declare the Deeds void on the ground that the Spendthrift Clause prohibited the transfer, voluntary or otherwise, of any interest of the Plaintiffs in the Trust and or Real Property until the termination of the Trust.

12. On or about October 30, 2020, the Defendant filed his Answer to the Complaint in which he does not deny any of the factual allegations surrounding Court I, and, in fact, admits that the Plaintiffs purported to transfer their interest in the Real Property to the Defendant prior to the termination of the trust.

13. On or about December 14, 2020, the Plaintiffs moved for judgment on the pleadings with regard to Count I of the Complaint by filing their Motion for Partial Judgment on the Pleadings (the Motion).

14. In the Motion, the Plaintiffs cite statutory law and case law in support of the Plaintiffs' argument that a conveyance in violation of a spendthrift clause is void *ab inito*.

15. On or around January 13, 2021, the Defendant filed Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for Judgment on the Pleadings

("the Response") in which the Defendant asserted that the Motion should be denied because the action is time-barred by statutes of limitation and/or laches and because the Plaintiffs consented to the conveyance of the Real Property to the Defendant.

16. In his response, the Defendant cited to one case decided outside of West Virginia in which the court held that a state specific marketable title statute barred beneficiaries from enforcing a spendthrift clause to invalidate quitclaim deeds of future interests. The remainder of the statutory law and case law cited by the Defendant in response pertained to the applicability of statutes of limitation and laches to claims against trustees and the ability of beneficiaries to consent to a trustee's breach of trust.

III. CERTIFIED QUESTIONS

By Certification Order filed May 9, 2022, Third Circuit Judge Timothy L. Sweeney set forth two Certified Questions pivotal to the disposition of the matter below to be answered by the Supreme Court of Appeals. These dual Certified Questions are as follows:

1. Is the transfer by deed of real property in violation of a spendthrift clause void *ab initio* or merely voidable?

2. If the answer to number one (1) is "voidable", were the Plaintiffs required to institute a civil action asserting their claims that such deeds were void within a certain period of time following their execution and delivery of such deeds to the Defendant?

(Certification Order filed May 9, 2022, at 5-6).

I. PETITIONER'S ARGUMENT IN RESPONSE TO BRIEF OF RESPONDENTS

A. The Transfer by Deed is not void *ab initio.*

As discussed in Defendant's Brief of Petitioner previously filed herein, in various cases in West Virginia and elsewhere, courts have discussed the unenforceability of spendthrift restrictions on the conveyance of real property. See *McCreery v. Johnston*, 110 S.E. 464 (W. Va. 1922) (Syllabus by the Court) ("An equitable fee-simple estate in real property ... cannot be incumbered by a spendthrift trust."); *White v. White*, 150 S.E. 531, 538 (W. Va. 1929) ("[S]pendthrift trusts are operative as a general rule on equitable life estates, not on fee–simple estates, legal or equitable, nor even upon legal life estates."); *Cobb v. Moore*, 110 S.E. 468, 469 (W. Va. 1922) ("[I]t is well settled that restraints on alienation in grants of fee–simple estates are repugnant to such estates and void as against public policy."); *Kerns v. Carr*, 95 S.E. 606, 607 (W. Va. 1918) ("[T]he right of alienation is an inherent and inseparable quality of an estate in fee simple whether the estate be created by grant or devise; and a grant or devise which forbids all alienation is void as to the limitation because repugnant to the estate granted or devised."). See also *Spann v. Carson*, 116 S.E. 427, 435–36 (S.C. 1923) ("[S]pendthrift trusts ... are confined to *equitable life estates* or to the income from certain property or funds, and that they cannot exist in reference to *equitable fee–simple estates*....) (emphasis in original).

Discussion of these historical cases is relevant and necessary to illustrate the historical and ongoing recognition of the policy prohibition baring restraints on alienation of real property and the courts' reluctance to enforce spendthrift restrictions on conveyance of real property in various circumstances. Spendthrift provisions that include restraints on alienation of real property should only be enforced where it is

determined to be "necessary to accomplish the testator's purpose." *McCreery*, 90 W. Va. at 85, 110 S.E. at 466.

Further, Plaintiffs acknowledge that the Supreme Court of Appeals of West Virginia has never found void *ab initio* a conveyance of current and future interest in real property held in trust by the beneficiary of a spendthrift trust to the trustee of said trust. As such, this appears to be a case of first impression for this Court.

In arguing that the challenged Deeds in this matter are allegedly void *ab initio* as a result of the Trust's spendthrift provisions, Plaintiffs rely on *Humphreys v. Welling*, 341 Mo. 1198, 1205, 111 S.W.2d 123, 126 (1937) and *Bradley v. Shaffer*, 535 S.W.3d 242, 250 (Tex. App. 2017). However, neither of those cases support a finding that the deeds are void *ab initio* in this case.

In *Humphreys*, an action was instituted by "the heirs (other than Fern Hoff) of Mary Ann Humphreys to quiet the title to certain real estate and cancel a deed from Fred Humphreys to Bessie Welling." 341 Mo. At 1202-03, 111 S.W.2d at 124." The parties involved were related as follows:

> Mary Ann Humphreys was the mother of James Humphreys, who was, in his lifetime, the husband of Bessie Humphreys, now Bessie Welling. James and Bessie Humphreys were the parents of Fred Humphreys and Fern Humphreys, now Fern Hoff.

Id.

The controversy involved a testamentary trust established by Mary Ann Humphreys for her grandson, Fred Humphreys. *Id.* The relevant paragraphs of the last will and testament of Mary Ann Humphreys stated:

> I hereby give, devise and bequeath unto my beloved grandson, Fred Humphreys, all the residue of my property, both real and personal and wherever situated, which said property, however, I give and bequeath to my beloved grandson, Fred Humphreys, in trust, and I hereby appoint my

> son, Charlie Humphreys, as trustee, which said property is to be held in trust by the said Charlie Humphreys as trustee for the said Fred Humphreys until my said grandson Fred is thirty (30) years of age. I hereby require and request that such trustee have control and possession and the rental of said real estate, using the same first to pay taxes thereon, and to keep the same in reasonable repair, and the remainder, after deducting a reasonable allowance for his time and trouble in so looking after said property, to be paid to my said grandson Fred, to be by him used and expended as he may see fit; and, if my said grandson, Fred Humphreys, after reaching twenty-five (25) years of age can show to the satisfaction of the then acting Probate Judge of Sullivan County, Missouri, that he is frugal, industrious and shows a disposition to take care of and manage said land in a prudent manner so as to not squander or waste the same, or any part thereof, then that the same shall be turned over by such trustee after so reaching twenty-five (25) years of age, and after so satisfying such probate judge to him absolutely, otherwise to be managed by such trustee, as hereinbefore provided, until the said Fred shall reach the age of thirty (30) years, when the same shall be turned over to him absolutely.
>
> I further provide that the said Fred shall not have the power of alienation or disposing of said land or of selling or managing or in any way conveying the same until he shall reach the age of thirty (30) years, unless the same be turned over to him after reaching the age of twenty-five (25) years in which event he may then have the full power of alienation and disposal. **If the said Fred Humphreys shall die without children then the property hereinbefore devised and bequeathed to the said Fred Humphreys shall descend and go to my heirs and not to the heirs of the said Fred Humphreys.**

Id. At 1202-03, 111 S.W.2d at 124 (emphasis added).

There was never an action turning the land over to Fred and he died without children before he reached the age of thirty. *Id.* at 1203, 1206, 111 S.W. 2d at 124, 126. Prior to his death, Fred conveyed his interest in the land by deed to his mother. *Id.*

"The trust created by the testatrix never terminated during the lifetime of Fred, and, giving consideration to all the provisions of the will, the legal title never vested in him." *Id.* at 1206, 11 S.W. 2d at 126. Accordingly, the court found that "the deed to his

mother was ineffective as a conveyance of his interest to his mother and ineffective against the contingent executory devise to the heirs of Mary Ann Humphreys, which ripened into an estate in said executory devisees upon the death of Fred Humphreys without children on March 31, 1933." *Id.* at 1212, 111 S.W. 2dat 129.

The facts of *Humphreys* are distinguishable from the facts of the present case. In *Humphreys*, the beneficiary (Fred) purported to transfer his interest in the trust land by deed to a third party (his mother), without the consent of the trustee or beneficiaries. The contingent executory devisees then initiated an action to recover the property. In the instant case however, the beneficiaries executed deeds conveying their current and future interest in the trust property to the trustee (Defendant), with the full approval and authorization of the trustee.

Additionally, in *Humphreys*, the court considered the fact that the trust never terminated and that legal title never vested in Fred in determining that the conveyance by Fred to his mother was ineffective. In the present case, however, the trust terminated by its own terms in February 2014, and, at that time, full legal title vested in the Plaintiffs. Therefore, application of the court's reasoning in *Humphreys* to the facts of this case would render the opposite result.

Plaintiffs also relied on the Texas case, *Bradley v. Shaffer*, 535 S.W.3d 242 (Tex. App. 2017), which involved a family trust consisting of mineral interests. *Id.* at 244. There, the trust instrument contained a spendthrift provision precluding the beneficiaries of the trust from anticipating or assigning their interests in the trust. *Id.* A beneficiary of the trust executed deeds purporting to convey his share of the mineral estate to a third

party. *Id.* The trustees of the trust asserted a claim on behalf of the trust for recovery of the alleged trust property. *Id.*

There, the court held that the beneficiary's attempted transfer of her interest under a spendthrift trust was void and that the Texas doctrine of after-acquired title did not apply to the void conveyance. *Id.* at 250.

Again, the facts of this case are distinguishable from the facts of the instant case. Like *Humphreys*, in *Bradley*, the spendthrift trust was still in effect and legal title never vested in the beneficiary. Additionally, similar to *Humphreys,* in Bradley, the beneficiary purported to convey his interest in trust property to a third party without the knowledge or consent of the trustees. The trustees then initiated a claim for recovery of the trust assets.

As previously stated, in the present case, unlike in *Humphreys*, in *Bradley*, the Defendant, under his powers and authority as trustee, approved and authorized the conveyance of Plaintiff's interest in the trust property and said property interests were conveyed by Plaintiffs to Defendant.

Spendthrift trust provisions prohibit a beneficiary from transferring his or her interest in the trust property. Restatement (Third) of Trusts § 58(1) (2003). However, this does not preclude the trustee from approving a transfer proposed by the beneficiary when it is in the trust's best interest. This ability for the trustee to exercise such discretion is affirmed in §60 of the Restatement (Third) of Trusts.

It is well settled that discretionary power may be conferred on trustees either by the express terms of the trust or by implication from the nature of the duty imposed on them whenever the object of the trust is certain. 19 M.J. TRUSTS AND TRUSTEES §

89, citing *Cowles v. Brown*, 8 Va. (4 Call) 477 (1803); *Hill v. Bowman*, 34 Va. (7 Leigh) 650 (1836); *Frazier v. Frazier*, 29 Va. (2 Leigh) 642 (1831); *Harrison v. Harrison*, 43 Va. (2 Gratt.) 1 (1845); *Cochran v. Paris*, 52 Va. (11 Gratt.) 348 (1854); *Steele v. Levisay*, 52 Va. (11 Gratt.) 454 (1854); *Robinson v. Allen*, 52 Va. (11 Gratt.) 785 (1854); *Shearman's Adm'r v. Hicks*, 55 Va. (14 Gratt.) 96 (1857); *Whelan v. Reilly*, 3 W. Va. 597 (1869).

Further, the Uniform Trust Code, as adopted in West Virginia, grants trustees extensive default powers, which could be construed to encompass the authority to approve a transfer of trust property initiated by a beneficiary under the circumstances of this case. See W. Va. Code § 44D-8-815 (reaffirming the trustee's duty to administer the trust in good faith, according to the terms and purposes of the trust and the interests of the beneficiaries), and W. Va. Code § 44D-8-816 (providing a list of the specific powers a trustee may exercise, implicitly entrusting trustees with a range of discretionary powers).

As Plaintiffs point out in their brief, "the restraint on alienation of the Real Property created by Ms. Haymond was limited, by intentional design, to a spendthrift restriction placed upon the beneficiaries' equitable title to the land, not the legal title to the land held by the trustee. Indeed, Ms. Haymond was apparently keenly aware of the limitations the law imposed on her ability to restrict or restrain alienation of the Real Property, which is why she did not prohibit the trustee from selling the Property, only the beneficiaries from selling their equitable title to the Property." Accordingly, it was within Defendant's discretion, based upon the authority and discretion conferred upon him as

trustee, to authorize the conveyance of the trust property by the beneficiaries to him, if doing so was in the best interest of the trust.

Furthermore, as set forth in the Brief of Petitioner previously submitted by Defendant, West Virginia law is clear that where a fiduciary (such as an executor or trustee) improperly obtains property of the trust or decedent estate, such circumstance renders the disputed transaction merely voidable, and not void *ab initio*:

> [A] party holding a fiduciary relation to trust property can not either directly or indirectly become the purchaser thereof, without rendering the sale *voidable*, at the mere pleasure of the beneficiaries...

Gilmore Mfg. Co. v. Lewis, 141 S.E. 529, 532 (W. Va. 1928) (emphasis added); *see also Chesapeake Appalachia, L.L.C. v. Hickman*, 781 S.E.2d 198, 214 (W. Va. 2015) ("Fraud in the procurement of a deed or contract always renders it voidable.") (quotation formatting and citation omitted); *Dillon v. Dillon*, 362 S.E.2d 759, 762–63 (W. Va. 1987) ("Where a fiduciary while actually holding such relationship acquires interest in property from a sale thereof, such sale is *voidable* although the fiduciary may have given adequate consideration and gained no advantage whatsoever.") (emphasis added); *Jones v. Comer*, 13 S.E.2d 578, 579 (W. Va. 1941) ("Misrepresentations as to contents of deed, by which grantor was induced to sign deed, constituted 'fraud in the procurement', so that deed was *'voidable' and not 'void'*") (Syllabus by the Court) (emphasis added); *Bank of Mill Creek v. Elk Horn Coal Corp.*, 57 S.E.2d 736, 749 (W. Va. 1950) ("A purchase[] by a fiduciary, while actually holding a fiduciary relation, of the trust property, either of himself or of a party to whom he holds such fiduciary relation, *is voidable* at the option of the party to whom he stands in such a relation, although the fiduciary may have given an adequate price for the property and gained no advantage

whatever.") (emphasis added); *Newcomb v. Brooks,* 16 W. Va. 32, 58 (1879) (a purchase, by a fiduciary, while actually holding a fiduciary relation, of trust property, either of himself or of the party to whom he holds such fiduciary relation, *is voidable* at the option of the party to whom he stands in such relation) (emphasis added).

As Plaintiff's in this matter allege that Defendant (Trustee) obtained property rightfully belonging to the trust, the challenged conveyance is merely voidable, and not void *ab initio*. See *Middleton v. Bowyer*, 83 S.E. 723, 724 (W. Va. 1914) ("[A] purchase of the trust subject by the executor *is not void, but voidable* at the option of the party beneficially interested, who is required to exercise reasonable diligence in the assertion of his right.").

Additionally, the Plaintiffs (grantors of the deeds) are challenging the validity of deeds, which they executed, conveying all of their current and future interests in the real property. Under the West Virginia principles of estoppel by deed, Plaintiffs are estopped from asserting title thus acquired against their former conveyance, as the subsequently acquired title enures to the benefit of the purchaser as if it had passed by the original deed. See *Clark v. Lambert*, 55 W. Va. 512, 526-27, 47 S.E. 312, 317-18 (1904), where court stated:

> [I]f a person conveys land with general warranty, and does not own it at the time, but afterwards acquires the same land, such acquisition enures to the benefit of the grantee, because the grantor is estopped to deny against the terms of his own warranty that he had the title in question; but it does not operate actually to transfer the estate subsequently acquired. The court cites 4 Kent. Com. 98: "If the conveyance be with general warranty, not only the subsequent title acquired by the grantor will enure by estoppel to the benefit of the grantee, but a subsequent purchase from the grantor, under his after acquired title is equally estopped, and the estoppel runs with the land." *Raines* v. *Walker*, 77 Va. 92. Mr. Justice Story, in *Carver*, v. *Jackson*, 4 Peters 86, says: In the next place it shows that such estoppel binds all persons claiming the same land, not only

> under the same deed, but under any subsequent conveyance from the same party; that is to say, it binds not merely privies in blood but privies in estate, as subsequent grantees and alienees. In the next place, it shows that an estoppel which (as the phrase is) works on the interest of the land, runs with it into whosoever's hands the land comes. In *Myers* v. *Croft*, 13 Wall. (U.S.) 291, 20 L. Ed. 562, it is held, that a grantor not having perfect title, who conveys for full value is estopped, both himself and others claiming by subsequent grant from him, against denying title; a perfect title afterwards coming to him. *Irvine* v. *Irvine*, 9 Wall. (U.S.) 617, 19, 19 L. Ed. 800 Am. & Eng. Enc. Law, 1022, citing a long array of authorities in support thereof, says: In most states the covenant of general warranty is held not only to estop the grantor and his heirs from setting up an after acquired title, but also actually to transfer the estate subsequently acquired, as if it had passed by the deed in the first instance.

See also *Booker T. Wash. Constr. & Design Co. v. Huntington Urban Renewal Auth.,* 181 W. Va. 409, 411 n.3, 383 S.E.2d 41, 43 (1989) ("[W]hen a vendor acquires title after a conveyance by general warranty deed, the subsequently acquired title inures to the benefit of the purchase as if it had passed by the original deed."); and *Wellman v. Tomblin*, 140 W. Va. 342, 345, 84 S.E.2d 617, 619 (1954), where the court stated:

> It is well established in this jurisdiction that the principles of estoppel by deed are in force...all authorities agree upon the fundamental proposition that where a person conveys land by deed of general warranty, and has at that time no title, or a defective title thereto, and thereafter acquires perfect title, he is estopped to assert the title thus acquired against his former conveyance.

Therefore, even assuming, as Plaintiffs argue, that Plaintiffs did not have title sufficient to make such a conveyance, or that their title to said property was defective at the time of the conveyances by deed as a result of the spendthrift provisions of the trust, it is undisputed that Plaintiffs acquired legal title in fee upon the termination of the trust by its terms in February 2014. Accordingly, the subsequently acquired title enured to

the benefit of the Defendant as if it had passed by the original deed and Plaintiffs are estopped from asserting title.

THEREFORE, Defendant respectfully requests that this Court answer the first question by finding that: (1) the transfer by deed of the real property by Plaintiffs to Defendant (Trustee) was not prohibited to the Trust spendthrift clause; (2) if such transfer was otherwise improper (for instance, as a breach of fiduciary duty by the Trustee), West Virginia law mandates that such conveyance is merely voidable, and not void *ab initio*; (3) that Plaintiffs are estopped from asserting title against Defendant under the principles of estoppel by deed.

B. Plaintiffs Claims Were Untimely Pursuant to the Relevant Statute of Limitations and/or Laches.

1) The Breach of Trust / Fiduciary Duty Claim Was Untimely Filed

As previously set forth, the crux of the Plaintiffs' claims in the action below are that Defendant, in his capacity as Trustee, allegedly breached his fiduciary duties to Plaintiffs as trust beneficiaries when he entered into consensual deeds with them wherein the beneficiaries/Plaintiffs conveyed their remainder interest in the trust realty to him by Deeds executed in 1993. Here, the Plaintiffs allege that Trustee/Defendant purportedly "manipulated" Plaintiffs to convey their interest in the trust-held realty to him, acts Plaintiffs characterize as a breach of trust. (Complaint at ¶¶ 33-36; 48-51). A breach of fiduciary duty claim falls under the catch-all two-year limitations period:

> Every personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property...

W. Va. Code Ann. § 55-2-12. See also *Dunn v. Rockwell*, 689 S.E.2d 255, 268 (W. Va. 2009).

The statute of limitations on breach of fiduciary duty claim against trustee begins to run when the trust terminates by its own terms. *Vorholt v. One Valley Bank*, 498 S.E.2d 241 (W. Va. 1997). In the present case, the testamentary trust terminated by its own terms in February 2014, when the youngest grandchild beneficiary, Christian Haymond, attained the age of 30 years old.

Plaintiffs did not file their Complaint in this action until August 6, 2020, 4 years and 6 months after expiration of the two-year limitation period. Plaintiffs failed to cite to any authority or assert any arguments in support of their position that said claim should not be barred by the two-year limitation period pursuant to W. Va. Code Ann. § 55-2-12.

Therefore, Plaintiffs' cause of action for breach of fiduciary duty/trust accrued in February 2014 (when the trust terminated by its own terms). Plaintiffs did not file their Complaint in this action until August 6, 2020. Accordingly, the Plaintiff's breach of trust/fiduciary duty claim was untimely filed and is therefore barred.

2) The Quiet Title Claim Was Untimely Filed

The relevant statutory limitations period for actions to recover land and quiet title mandates that such actions be brought within ten years from the date the plaintiff's interest in the disputed realty was allegedly impaired. W. Va. Code, § 55-2-1. Plaintiffs claim that said ten year statute of limitations is applicable to their claim for declaratory relief to Quiet Title regarding the transferred Trust realty. W. Va. Code, § 55-2-1 provides:

> No person shall ... bring an action to recover any land, but within ten years next after the time at which the right ... to bring such action shall have first accrued to himself or to some person through whom he claims.

Accordingly, a plaintiff has "ten years to assert his ownership to land, [which] is a statute of limitations that is indicative of the legislative desire to settle disputes and *quiet title* to real property within that period." *Naab v. Nolan*, 327 S.E.2d 151, 153 (W. Va. 1985) (emphasis added).

Plaintiffs rely solely on *Bennett v. Bennett*, 92 W. Va. 391, 398, 115 S.E. 436, 438 (1922), in asserting their argument that the ten year statute of limitation period did not begin to run until after the termination of the trust on its own terms. However, said case is not applicable to the circumstances of this case and was misapplied by Plaintiffs.

In *Bennett*, the court held that an express trust was created wherein brother-in-law was the trustee for the wife as the beneficiary of certain land when Wife executed an agreement with Brother-in-law agreeing that Brother-in-law would sell the real property, pay off debts, and split the sales profits with Wife. *Id.* at 392 (Syl. Pt. 3). Brother-in-law "produced an instrument signed by the wife and the landowner purporting to convey all their title in the land to the brother. The evidence established that the landowner signed the wife's name to the instrument." *Id.* There, the court held that "neither the statute of limitations nor laches will apply to an express trust until there is a denial or repudiation of the trust, of which the beneficiary has notice; after that time the statute begins to run and the doctrine of laches will apply." *Id.*

The instant case involves completely different circumstances and does not involve denial or repudiation of a trust. Under the present facts, the alleged injurious transfers triggering the § 55-2-1 right to initiate an action to recover such realty occurred when the deeds were executed transferring fee simple title to the Trust-held lands from

the Plaintiffs (as remaindermen of such Trust lands) to Defendant (their father and Trustee). Plaintiff, Stephanie Haymond executed said deed on September 4, 1993. Plaintiff, David R. Haymond executed said deed on December 2, 1993.

Thus, Plaintiff Stephanie Haymond had until on or before September 4, 2003, to initiate an action to recover such realty interest (ten (10) years after execution of said deed, and Plaintiff David R. Haymond had until on or before December 2, 2003, to initiate an action to recover such realty interest (ten (10) years after execution of said deed).

Plaintiffs waited more than 26 years to initiate the Circuit Court action below seeking in part to quiet title to this disputed realty and filed their Complaint on August 6, 2020. As a result, the Quiet Title claim in Plaintiffs' Complaint is barred under the applicable limitations period. *See, e.g. Engel v. S. Penn Oil Co.*, 146 S.E. 385, 385 (W. Va. 1928) (where a suit to set aside deed for fraud was not commenced for a quarter of century after discovering alleged fraud, such suit was held barred by laches).

3) Plaintiffs Claims Are Also Stale Via Laches

The equitable doctrine of laches also bars the Plaintiffs' inexplicably untimely-filed action below.

> Laches is a delay in the assertion of a known right which works to the disadvantage of another, or such delay as will warrant the presumption that the party has waived his right.
>
> [T]he basis for the application of the doctrine of laches presupposes the want of diligence and activity of the party litigant, which has wrought a change of position by, or disadvantage to his adversary. We noted, however, that a lack of activity and diligence does not affect the rights of a party, when such party has no knowledge of his rights, and knew no fact or facts putting him on inquiry...

> Laches does not commence to run against a party complaining of a wrongful transaction of another until such complaining party has knowledge thereof, or knows facts sufficient to put him on inquiry with respect thereto...

Warner v. Kittle, 280 S.E.2d 276, 280 (W. Va. 1981). See also *Engel v. S. Penn Oil Co.*, 146 S.E. 385, 385 (W. Va. 1928) (suit to set aside deed for fraud, not commenced for quarter of century after discovering alleged fraud, held barred by laches); *McMullin v. Pritt*, 138 S.E. 384 (W. Va. 1927) (parties waiting over eight years after learning of adverse claims to prejudice of adverse party held prevented by laches from having deed canceled as cloud on title); *Reynolds v. Gore*, 136 S.E. 184 (W. Va. 1926) (remainderman, after delaying 30 years, cannot have conveyance of contingent remainder for consideration canceled on ground of ignorance and lack of consideration); *Middleton v. Bowyer*, 83 S.E. 723, 725–26 (W. Va. 1914) (a legatee, who is informed shortly after one of the executors had indirectly purchased a part of the land belonging to the estate and acquired a deed therefor, and knows the price paid, and receives his portion of the proceeds of sale, and, notwithstanding such information, fails to sue to annul the sale and deeds for nearly five years, and until after the death of such executor, will be denied relief. Under such circumstances his delay is laches, defeating his remedy).

Again, Plaintiffs erroneously rely on *Bennett* in asserting that the ten (10) year limitations period pursuant to West Virginia Code § 55-2-1 has not yet expired and therefore assert that the doctrine of laches is inapplicable to their claim to quiet title to the Real Property by declaring the Deeds void. However, as set forth above, the dates in which the alleged injurious transfers occurred were the dates in which the deeds were executed. Plaintiffs waited over 26 years to assert their claims, and Defendant was

prejudiced by said unreasonable delay. Therefore, Plaintiff's claims are barred by laches and Plaintiffs should be denied relief.

THEREFORE, the Defendant respectfully requests that this Court answer the second question by finding that: (1) the Plaintiffs' Breach of Trust / Fiduciary Duty claim was untimely filed under the applicable statute of limitations; (2) the Plaintiffs' Quiet Title claim was untimely filed under the applicable statute of limitations; and (3) the Plaintiffs' claims are also barred under the equitable doctrine of laches.

Dated: August 10, 2023

Respectfully submitted

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IN THE SUPREME COURT OF APPEALS
OF THE STATE OF WEST VIRGINIA

CIVIL ACTION NO. 22-621

CHRISTOPHER HAYMOND, individually and as Trustee of the Testamentary Trust created by the Last Will and Testament of Irene Nutter Haymond,
Defendant Below, *Petitioner*

vs.

STEPHANIE HAYMOND and DAVID HAYMOND,
Plaintiffs Below, *Respondents*

CERTIFICATE OF SERVICE

I, Robert S. Fluharty, hereby certify that a true and exact copy of the foregoing **REPLY BRIEF OF THE PETITIONER, CHRISTOPHER HAYMOND, INDIVIDUALLY AND AS TRUSTEE OF THE TESTAMENTARY TRUST CREATED BY THE LAST WILL AND TESTAMENT OF IRENE NUTTER HAYMONDTO THE RESPONDENT'S BRIEF FILED BY STEPHANIE HAYMOND AND DAVID HAYMOND** was served on the following on this 10th day of August, 2023, via U.S. Mail to the following addresses:

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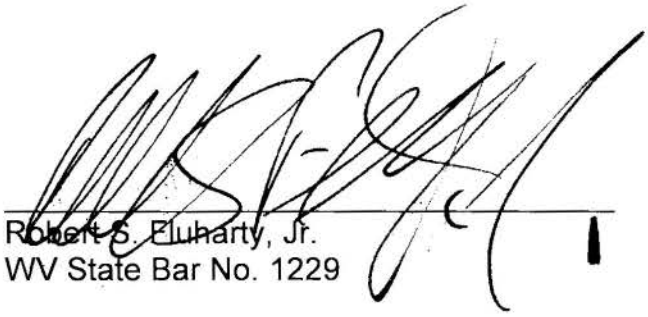

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