

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

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

v.

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

BRIEF OF THE PETITIONER, CHRISTOPHER HAYMOND

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I. NATURE OF ACTION & PROCEDURAL HISTORY BELOW

By Complaint filed August 6, 2020 in the Circuit Court of Ritchie County, West Virginia (Civil Action No. 20-C-30) (Appendix pp 1-47, inclusive), Plaintiffs Stephanie Haymond and David Haymond asserted claims against Defendant Christopher Haymond, 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 (Appendix pp 7), (2) Breach of Trust/Conversion/Unjust Enrichment (Appendix pp 8), and (3) Demand for Accounting (Appendix pp 9).

In such Complaint, Plaintiffs alleged that Defendant “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” (Appendix pp 6, Complaint at ¶¶ 33-34).

On November 4, 2020, Defendant filed his Answer (Appendix pp 48-57) in this action, alleging that the transfers of Plaintiffs’ 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 (Appendix pp 58-72) pursuant to West Virginia Rules of Civil Procedure 12(c), arguing that the disputed realty transfers were allegedly barred by the Trust’s spendthrift clause, rendering the deeds void *ab initio*.

Plaintiffs' Motion for Partial Judgment on the Pleadings was opposed by Defendant by a Memorandum of Law in Opposition (Appendix pp 73-89) filed January 13, 2021 arguing that Plaintiffs' claims were time-barred via statute of limitation and laches (Appendix pp 73-89) (presumably, the two-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 (Appendix pp 93-101) 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's spendthrift clause purportedly barred the transfer of the Trust-held realty.

On March 17, 2021, Defendant filed his Findings of Fact and Conclusions of Law (Appendix pp 102-110).

On March 18, 2021, Plaintiffs filed their Proposed Findings of Fact and Conclusions of Law (Appendix pp 111-124).

On July 30, 2021, Plaintiffs filed their Proposed Certification Order (Appendix pp 132 - 144).

On August 2, 2021, Defendant filed his Predicate Facts Pursuant to the Instruction of the Court and Proposed Certified Questions (Appendix pp. 125 - 131).

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

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

By Certification Order dated May 9, 2022 (Appendix pp 145 - 150), Third Circuit Judge Timothy L. Sweeney set forth the factual background of the civil action and delineated two Certified Questions and his proposed answers to those questions to be submitted to the West Virginia Supreme Court of Appeals.

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, 50 percent 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 50 percent to the issue of Ms. Haymond's other son, 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 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 Haymond, at the request of her father, Defendant, signed a document prepared by Defendant purporting to transfer her current and future interests in the Real Property to Defendant.

7. A few months later, on December 2, 1993, Plaintiff David Haymond, also at the request of Defendant, signed a document purporting to convey his interest in the Real Property to Defendant. The aforementioned document signed by Plaintiffs Stephanie Haymond and 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 30 years at which point the Trust would terminate.

9. Christen Haymond turned 30 years old in February 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, 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, requested the Court to declare the Deeds void on the ground that the Spendthrift Clause prohibited the transfer, voluntary or otherwise, of any interest of Plaintiffs in the Trust and or Real Property until the termination of the Trust.

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

13. On or about December 14, 2020, 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, Plaintiffs cited statutory law and case law in support of Plaintiffs’ argument that a conveyance in violation of a spendthrift clause is void *ab initio*.

15. On or around January 13, 2021, Defendant filed Defendant’s Memorandum of Law in Opposition to Plaintiffs’ Motion for Judgment on the Pleadings (“the Response”) in which Defendant asserted that the Motion should be denied because the action is time-barred by statutes of limitation and/or laches and because Plaintiffs consented to the conveyance of the Real Property to Defendant.

16. In his response, 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 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.

1. CERTIFICATION OF QUESTIONS

By Certification Order (Appendix pp 127- 133) 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 (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).

"[A] certified question will not be considered by this court unless the disposition of the case depends wholly or principally upon the construction of law determined by the answer, regardless of whether the answer is in the negative or affirmative." *State ex rel. Advance Stores Co., Inc. v. Recht*, 740 S.E.2d 59, 63 (W. Va. 2013) (quotation formatting and citation omitted). Regarding disposition of questions certified to the Supreme Court of Appeals, the Court is

not sitting as an appellate court; rather, pursuant to the Uniform Certification of Questions of Law Act, W. Va. Code, 51-1A-1 to -13 [1996], we are simply asked to answer questions of law. Accordingly, the factual record regarding the legal issue in dispute must be sufficiently precise and undisputed, and this Court will assume that the findings of fact by the certifying court are correct. Further, the legal issue must substantially control the case.

Barefield v. DPIC Cos., Inc., 600 S.E.2d 256, 262 (W. Va. 2004). “A *de novo* standard is applied by this Court in addressing the legal issues presented by a certified question from a federal district or appellate court.” *Stapp v. Cottrell ex rel. Estate of Cottrell*, 874 S.E.2d 700, 703 (W. Va. 2022) (quotation formatting and citations omitted). Questions to be certified are those “of such vital importance and effect upon the final disposition as to make it imperative in the economical administration of justice, that its correctness be speedily verified or denied by the court of last resort before the incurrence of vexatious costs and delays.” *State v. Houchins*, 123 S.E. 185, 186 (W. Va. 1924), *superseded by statute on other grounds as stated in State v. Miller*, 112 S.E.2d 472 (W. Va. 1960).

IV. ARGUMENT

A. **The Transfer by Deed of the Trust-Held Real Property Is Merely Voidable Because Realty Cannot Be Subject to a Spendthrift Clause**

It is well settled under West Virginia law (and elsewhere) that while a settlor’s funds may be burdened by a trust spendthrift clause, the policy prohibition barring such restraints on alienation of real property bars lands from being subject to spendthrift restrictions on conveyance:

An equitable fee simple estate in real property ... cannot be encumbered by a spendthrift trust.

McCreery v. Johnston, 110 S.E. 464 (W. Va. 1922) (Syllabus by the Court); *see also 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.”) (emphasis added; citing *McCreery*); *see also Spann v. Carson*, 116 S.E. 427, 435 (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).

This bar on impediments to the conveyance of realty is premised on a policy concern that lands be freely transferable: “it is well settled that restraints on alienation in grants of fee simple estates are repugnant to such estates and void as against public policy.” *Cobb v. Moore*, 110 S.E. 468, 469 (W. Va. 1922). Thus, under West Virginia law, real property cannot be subject of a spendthrift trust restriction, given the policy goal of assuring that lands remain alienable, and indeed, any attempt to impose such restrictions on the free conveyance are void:

[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.

Kerns v. Carr, 95 S.E. 606, 607 (W. Va. 1918) (emphasis added). Indeed, when discussing spendthrift trust provisions, the res is described to be “funds”:

Spendthrift trust is the term commonly applied to those trusts that are created with a view of providing a *fund* for the maintenance of another, and at the same time securing *the fund* against the improvidence of the cestui que trust.

Hoffman v. Beltzhoover, 76 S.E. 968, 969 (W. Va. 1912) (emphasis added); *see also* *Zlatkiss v. All Am. Team Concepts, LLC*, 125 So. 3d 953, 955 (Fla. Dist. Ct. App. 2013) (“Spendthrift trusts are created with the intention of providing *a fund* for the maintenance of another, and at the same time securing it against his own improvidence or incapacity for self-protection.”) (quotation formatting and citation omitted; emphasis added); *In re Robben*, 502 B.R. 572, 578 (Bankr. D. Kan. 2013) (“[A] spendthrift trust is a trust with a provision that secures the *fund* against a beneficiary's improvidence or incapacity. Provisions against alienation of the *trust fund* by the voluntary act of the beneficiary or by his creditors are its usual incidents.”) (quotation formatting and citation omitted; emphasis added); *In re Estate of Beren*, 321 P.3d 615, 621 (Colo. App. 2013) (“[Spendthrift] trusts provide a *fund* for the maintenance of the beneficiary, and at the same time ... secure it against his improvidence or incapacity.”) (quotation formatting and citation omitted; emphasis added).

While Plaintiffs argue in this matter that the challenged Deeds are allegedly void *ab initio* because the realty was purportedly subject to the Trust’s spendthrift restrictions, (with Plaintiffs citing authority from Missouri and Texas) as the above-cited legal authorities confirm, such arguments are demonstrably baseless.

Under the present facts, the disputed realty interest was *not* subject to the trust spendthrift restrictions, because under West Virginia law, as a matter of policy, the free conveyance of a fee simple interest in realty cannot be validly restricted by a spendthrift clause.

Because fee simple interests in real estate cannot be validly restricted by restraints on free conveyance of title to such realty, Plaintiffs’ assertion that the conveyance of the realty

at issue was purportedly barred under the Trust's Spendthrift Clause is wholly meritless.

Furthermore, 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 (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).

Perhaps the closest common law rule on the issue reads:

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.

Middleton v. Bowyer, 83 S.E. 723 (W. Va. 1914) (Syllabus by the Court) (emphasis added).

Thus, the case law in West Virginia is clear that where a fiduciary such as an executor or trustee obtains property rightfully belonging to the estate or trust as alleged in the matter below, such circumstance renders the challenged conveyance merely voidable, and not void *ab initio*.

THEREFORE, if this Honorable Court chooses to docket the present dual Certified Questions for decision, Defendant respectfully requests that this Court answer the first question by finding that: (1) the transfer by deed of the real property in the matter below was not subject to the Trust's Spendthrift Clause; and (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*.

Plaintiffs Were Required to Institute Their Civil Action Asserting

B.

Their Claim That the Challenged Deeds of Trust Realty Were Void Within 10 Years at the Latest, and Failing to Do So, Their Claims Were Untimely Pursuant to the Relevant Statute of Limitations and/or Laches

1) Statute of Limitations Law Generally

The object of statutes of limitations is to compel the bringing of an action within a reasonable time. In this manner, we have noted that statutes of limitations are favored in the law and cannot be avoided unless the party seeking to do so brings himself strictly within some exception. It has been widely held that such exceptions are strictly construed and are not enlarged by the courts upon considerations of apparent hardship.

Hupp v. Monahan, 858 S.E.2d 888, 894 (W. Va. 2021) (quotation formatting and citations omitted). Therefore, “[d]efendants have a right to rely on the certainty the statute of limitations provides.” *Southern Env’t, Inc. v. Bell*, 854 S.E.2d 285, 293 (W. Va. 2020). “The purposes of statutes of limitations are to prevent stale claims and permit defendants fair opportunity to defend.” *Gray v. Johnson*, 267 S.E.2d 615, 617 (W. Va. 1980). As a matter of policy, enforcement of statutes of limitation are favored:

Statutes of limitations “represent a pervasive legislative judgment ... that ‘the right to be free of stale claims in time comes to prevail over the right to prosecute them.’”

Province v. Province, 473 S.E.2d 894, 903 (W. Va. 1996) (quoting *United States v. Kubrick*, 444 U.S. 111, 117, 100 S. Ct. 352, 357, 62 L. Ed. 2d 259, 266 (1979)).

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

The crux of Plaintiffs’ claims in the action below is 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 beneficiaries Stephanie Haymond and David Haymond conveyed their remainder interest in the Trust-held realty to him by Deeds executed in 1993. Here, Plaintiffs allege that Trustee Christopher Haymond 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. “[C]auses of action ... for misappropriation and conversion; fraud; ... and breach of fiduciary duty—are [all] governed by the two-year statute of limitation found in W. Va. Code, 55-2-12 [1959].” *Dunn v. Rockwell*, 689 S.E.2d 255, 268 (W. Va. 2009). The statute of limitations on a breach of fiduciary duty claim against a 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). Under the express trust terms, such testamentary Trust terminated by its own terms in February 2014 when the youngest grandchild beneficiary, Christen Haymond, attained the age of 30 years.

Therefore, pursuant to West Virginia Code § 55-2-12, Plaintiffs’ cause of action for breach of fiduciary duty/trust accrued in February 2014 (when the Trust terminated by its own terms), such that Plaintiffs *had until February 2016* (two years later, under West Virginia Code § 55-2-12) to file such claim, or else the claim was time-barred.

Here, Plaintiffs did not file their Complaint in this action until August 6, 2020, i.e., rendering their breach of trust claim 4 years, 6 months untimely. As a result, Plaintiffs’ breach of trust/fiduciary duty claim was untimely filed and, therefore, barred.

3) The Quiet Title Claim Was Untimely Filed

Additionally, Plaintiffs assert a claim for declaratory relief to Quiet Title regarding the transferred Trust-held realty, alleging that the Trust's spendthrift provision barred any transfer of the realty by Plaintiffs/beneficiaries, allegedly rendering the disputed Deeds void *ab initio*. (Complaint at ¶¶ 38-46).

The relevant statutory limitations period for actions to recover land and quiet title mandates that such actions be brought within 10 years from the date the plaintiff's interest in the disputed realty was allegedly impaired:

§ 55-2-1. Entry upon or recovery of lands

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.

W. Va. Code § 55-2-1 (emphasis added). West Virginia Code § 55-2-1 thereby “gives a [plaintiff] 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).

Under the present facts, the alleged injurious transfers triggering the West Virginia Code § 55-2-1 right to initiate an action to recover such realty occurred when the dual Deeds were executed transferring fee simple title to the Trust-held lands from Plaintiffs (as remaindermen of such Trust lands) to their father and Trustee, Christopher Haymond, via Deeds dated September 4, 1993 (the deed from Stephanie Haymond to Christopher Haymond) and December 2, 1993 (the deed from David Haymond to Christopher Haymond).

Thus, Plaintiff Stephanie Haymond had 10 years from the date she deeded her interest in the Trust-held lands to Christopher Haymond, such that she had to initiate an action to recover such realty interest *on or before: September 4, 2003*.

Similarly, Plaintiff David Haymond had 10 years from the date he deeded his interest in the Trust-held lands to Christopher Haymond, such that he had to initiate an action to recover such realty interest *on or before: December 2, 2003*.

In reality, however, Plaintiffs inexplicably slept on their rights for *more than 26 years* before initiating the Circuit Court action below seeking in part to quiet title to this disputed realty (i.e., their Complaint was filed August 6, 2020). *See, e.g., Engel v. S. Penn Oil Co.*, 146 S.E. 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).

As a result, the Quiet Title claim in Plaintiffs' Complaint is unequivocally more than two decades stale, and Plaintiffs cannot maintain such cause of action as such claim was filed far too late, and thus should be held barred under the applicable limitations period.

4) Plaintiffs' Claims Are Also Stale Via Laches

The equitable doctrine of laches also bars 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) (doctrine of laches did not bar landowners' action for reformation of deed and for adverse possession of property, even though action was filed approximately 24 years after deed was executed, where landowners did not learn of challenge to ownership in tract until just before filing action) (quotation formatting and citations omitted); *but compare Engel*, 146 S.E. at 385 (suit to set aside deed for fraud, not commenced for quarter of century after discovering alleged fraud, held barred by laches); *Nelson v. McMullin*, 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).

A judicial opinion directly relevant to the facts in the matter below held that laches will bar the claims of an allegedly injured testamentary legatee who fails to timely assert his claim. *Middleton*, 83 S.E. at 725–26 (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.).

V. STATEMENT REGARDING ORAL ARGUMENT

Petitioner deems oral argument to be unnecessary.

THEREFORE, Petitioner respectfully requests the Court to determine that the deeds in question were not *void ab initio*, and answer the second question by finding that: (1) Plaintiffs' Breach of Trust/Fiduciary Duty claim was untimely filed under the applicable statute of limitations; (2) Plaintiffs' Quiet Title claim was untimely filed under the applicable statute of limitations; and (3) Plaintiffs' claims are also barred under the equitable doctrine of laches.

Dated: June 7, 2023

Respectfully submitted,

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VI. APPENDIX

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STATE OF WEST VIRGINIA
THE SUPREME COURT OF APPEALS REF: 22KSYSZ1X

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.)

No. 22-621

Stephanie Haymond and
David Haymond,
Plaintiffs Below, Respondents

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Petitioner, Christopher Haymond, in the above styled civil action, hereby certifies that on the 8th day of June 2023, he served the foregoing and hereto attached BRIEF OF THE PETITIONER, CHRISTOPHER HAYMOND, upon Joshua S. Rogers and Paige K. Vagnetti at Dinsmore & Shohl, LLP, Dinsmore & Shohl Building, 215 Don Knotts Blvd., Suite 310, Morgantown, WV 26501 and upon John R. Whipkey at Block & Associates, LLC, 6514 Wilkins Avenue, Pittsburgh, PA 15217, by United States mail, postage pre-paid, and by West Virginia Electronic Filing System.

/s/ Robert S. Fluharty, Jr.

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