

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: THE ESTATE OF
MARY T. KRAMER,
deceased.

: NO. 41-18-0670
:
:
:
: ORPHANS' COURT
: DIVISION
:
:
: *Three Preliminary Objections*

DECISION & DECREE

This matter concerns an alleged oral agreement between a son and his mother that the son would be bequeathed the mother's property at the time of her death. Before this Court are the *Preliminary Objections* of Respondents Estate of Mary T. Kramer and Executors Michele Hudson and Wendy Thomas (collectively "Respondents") regarding Petitioner Earl Kramer, III's ("Petitioner") March 26th *pro se* Complaint (the "Complaint").¹ This matter was transferred from the civil division by this Court's July 17th Order. As both parties submitted timely briefs, this matter is now ripe for adjudication.

A. THE PARTIES' CONTENTIONS

Respondents assert three objections to the Complaint: (1) the Statute of Frauds bars Petitioner's request for specific performance of an oral contract, (2) the Dead Man's Act bars Petitioner's request as the other party to the oral contract, Mary T. Kramer ("decedent"), is deceased, and (3) the Parol Evidence Rule bars Petitioner's request because the oral contract would contradict the terms of the probated will.²

¹ Petitioner's counsel entered his appearance in this matter on May 8, 2019.

² Respondents' Preliminary Objections to Plaintiff's Complaint ¶¶7, 9-10 (Apr. 15, 2019) [hereinafter "Respondents' Objections"]; Brief in Support of Preliminary Objections filed by Defendants Michele Hudson, Wendy Thomas, and the Estate of Mary T. Kramer 3-8 (May 22, 2019). Respondents raise two additional objections: (4) an oral promise is unenforceable absent a supportive writing and (5) Petitioner

Petitioner filed an Answer to Respondents' objections denying their assertions.³ In response to Respondents' first objection, Petitioner asserts that Pennsylvania courts have recognized a trial court's ability to grant specific performance in the conveyance of real estate based on an oral agreement.⁴ Additionally, Petitioner argues that two exceptions to the Statute of Frauds are relevant to this matter. First, where the titleholder admits to making an oral contract and, second, where the oral agreement is "followed by a change of possession and the making of specific improvements on the property that cannot be adequately compensated in damages."⁵

Regarding Respondents' second objection, Petitioner claims the Dead Man's Act cannot be utilized as an affirmative defense to prevent the presentation of evidence.⁶ Alternatively, Petitioner asserts he can establish his claim with "proof by witnesses who heard admissions by the decedent that a contract existed."⁷ Finally, in retort to Respondents' third objection, Petitioner claims the Parol Evidence Rule is inapplicable because "there is no written agreement to amend or change."⁸ Petitioner argues he is not seeking to amend the will, and the Parol Evidence Rule does not apply to a

has failed to plead fraud with particularity. For reasons that will become clear below, discussion of these other objections is unnecessary. Respondents' Objections, ¶¶8, 11.

³ Petitioner's Answer to Preliminary Objections filed by Defendants Hudson and Thomas and the Estate of Mary T. Kramer 1-3 (May 8, 2019).

⁴ Petitioner's Brief in Response to Respondents' Preliminary Objections 5-6 (June 10, 2019) [hereinafter "Petitioner's Brief"] (citing *Schoenbachler Estate*, 105 A. 505 (Pa. 1933); *In re: Tressler's Estate*, 66 Pa. Super. 547 (1917), *Fay's Estate*, 62 A. 991 (Pa. 1906); *In re Tetlow's Estate*, 184 A. 129 (Pa. 1936); *Hostetter v. Hoover*, 547 A.2d 1247 (Pa. Super. Ct. 1988); *Klingensmith v. Klingensmith*, 100 A.2d 79 (Pa. 1953); *Zlotziver v. Zlotziver*, 49 A.2d 779 (Pa. 1946); *Brotman v. Brotman*, 46 A.2d 175, 177 (Pa. 1946); *Briggs v. Sackett*, 418 A.2d 586 (1980)).

⁵ *Id.* at 7 (citing *Williams v. Stewart*, 168 A.2d 769 (Pa. Super. Ct. 1961); *Zlotziver*, 49 A.2d at 779). While these cases are cited under the heading titled "The Plaintiff's Complaint Stated with Adequate Specificity a Cause of Action that Can Be Enforced in Equity," Petitioner refers to these cases in the subsequent section, which specifically concerns the Statute of Frauds. *Id.* at 8 ("This writer would also point to all the cases cited in Argument A, in which the Court found exceptions to a bar under the Statute of Frauds.")

⁶ *Id.* at 8.

⁷ *Id.*

“separate contract.”⁹ Further, his allegation of fraud preempts the rule’s application.¹⁰

B. DISCUSSION

On December 5, 2018, the decedent’s October 31, 2018 will (the “Will”) was admitted to probate. “Item II” in the Will states:

I direct that my son, Earl R. Kramer, III, shall have the first option to purchase my real estate situate at 31 Davis Lane, Muncy, Clinton Township, Lycoming County, Pennsylvania; and the purchase price shall be set at the then fair market value. This option shall remain for a period of sixty (60) days following my death. Should the said Earl R. Kramer, III, decline from purchasing the property as set forth herein, I direct my Co-Executrices to sell the property with the net proceeds of such sale to become part of my residuary estate.¹¹

“Item III” in the Will bequeaths the remainder of the estate to the decedent’s daughters: Elizabeth Maynard, Michele Hudson, Bernadette Crawford, and Danette Confer.¹²

On January 31, 2019, co-executors Michelle Hudson and Wendy Thomas entered into a purchase agreement (“Agreement of Sale for Real Estate”) with James Daniel Landis and Jan Elizabeth Landis (“Mr. and Mrs. Landis”) regarding the property at 31/60 Davis Lane in Muncy, Pennsylvania (the “Property”).¹³ The agreement expressed a final settlement and closing date of April 1, 2019.¹⁴

On March 26, 2019, Petitioner filed this Complaint, describing the oral agreement as follows:

[Petitioner] was asked to move in with his parents, including [Respondent] decedent Mary T. Kramer and Earl R. Kramer, Jr., to maintain the

⁸ *Id.* at 9.

⁹ *Id.* at 9-10 (citing *Iron Workers Savings & Loan Assoc. v. IWS, Inc.*, 622 A.2d 367 (Pa. Super. Ct. 1993)).

¹⁰ *Id.* at 10.

¹¹ Last Will & Testament 1-2 (Oct. 31, 2018).

¹² *Id.* at 2.

¹³ Petitioner’s Complaint 3, Exhibit A (Mar. 26, 2019) [hereinafter “Petitioner’s Complaint”]. Mr. and Mrs. Landis were named as defendants in the civil action.

¹⁴ *Id.*, Ex. A.

premises and make improvements, and if he did so the parents, Mary T. Kramer and Earl T. Kramer[,] Jr.[,] would leave “the premises” to [Petitioner] by will. [Petitioner] agreed and moved into “the premises” relying upon this agreement, and made substantial improvements to “the premises” and[,] further, maintained “the premises” in many ways. In accordance with this agreement, [Petitioner] has continued to make improvements and maintenance to the property and resided in “the premises” as his residence since 1999 to the date of this Complaint, relying upon said oral agreement.

[. . .]

[Petitioner] has kept his promise by caring for his parents and ma[king] improvements and [providing] maintenance as agreed. Also, [Petitioner] [] assisted his mother and father, and upon the death of his father, Earl R. Kramer, Jr., [] assisted [decedent] by paying utilities, food and help[ing] his mother with her other needs.¹⁵

Petitioner requests this Court enforce “specific performance of his oral agreement” with the decedent and declare Mr. and Mrs. Landis’ agreement void.¹⁶

1. Regarding the Statute of Frauds

The Statute of Frauds bars Petitioner’s claim as the partial performance exception to the Statute of Frauds is not applicable here. Generally, the Statute of Frauds requires a transfer of real estate to be in writing.¹⁷ However, a plaintiff’s partial performance pursuant to an oral agreement will allow an oral agreement to evade the Statute of Frauds if the exception’s demanding criteria are met.¹⁸ As the Commonwealth Court of Pennsylvania has explained:

The terms of the contract must be shown by full, complete, and

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 4.

¹⁷ 33 P.S. § 1 (“[M]oreover, that no leases, estates or interests, either of freehold or terms of years, or any uncertain interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall, at any time after the said April 10, 1772, be assigned, granted or surrendered, unless it be by deed or note, in writing, signed by the party so assigning, granting or surrendering the same, or their agents, thereto lawfully authorized by writing, or by act and operation of law.”).

¹⁸ See *Firetree, Ltd. v. Dep’t of Gen. Servs.*, 978 A.2d 1067, 1075 (Pa. Commw. Ct. 2009).

satisfactory proof. The evidence must define the boundaries and indicate the quantity of the land. It must fix the amount of the consideration. *It must establish the fact that possession was taken in pursuance of the contract, and, at or immediately after the time it was made, the fact that the change of possession was notorious, and the fact that it has been exclusive, continuous and maintained.* And it must show performance or part performance by the vendee which could not be compensated in damages, and such as would make rescission inequitable and unjust.¹⁹

This exception's burden is "very high."²⁰ Thus, although Petitioner is correct that a partial performance exception to the Statute of Frauds "has been recognized as horn book law,"²¹ the exception is not applicable here.²² The cases that Petitioner cites in his brief that squarely address the partial performance exception specifically state that exclusive possession is required.²³ In fact, *Brotman v. Brotman*, which Petitioner relies on for the proposition that the Pennsylvania Supreme Court has "allowed specific performance of an unwritten agreement to transfer or will real estate,"²⁴ stands for the

¹⁹ *Id.* (quoting *Kurland v. Stolker*, 533 A.2d 1370, 1373 (Pa. 1987)) (emphasis added).

²⁰ *Id.*

²¹ Petitioner's Brief at 8.

²² Petitioner relies on nine cases in support of this "horn book" exception. *Id.* at 5-6. Not one case supports his assertions. The following cases are improperly relied on for varying reasons. *In re: Schoenbachler Estate* is irrelevant to this proceeding as the matter involved a claim for quantum meruit and the Pennsylvania Supreme Court found that specific performance for conveyance of real estate was not warranted in that case. 105 A. 505, 506 (Pa. 1933). *In re Fay's Estate* merely states "PER CURIAM. Decree affirmed, on the opinion of the court below." 62 A. 991 (Pa. 1906). The Court cannot locate the lower court's opinion from Allegheny County. Although, the Westlaw synopsis under 62 A. 991 notes the property was sold and immediately possessed by the purchaser. *Id.* Contrary to Petitioner's reliance, the Supreme Court in *Klingensmith v. Klingensmith* found that specific performance was not warranted. 100 A.2d 79, 79-80 (Pa. 1953). *Klingensmith* also required exclusive possession, which it did not find. *Id.* at 79. *Zlotziver v. Zlotziver* is also not analogous, as the Supreme Court found that the defendant had admitted to the oral agreement. 49 A.2d 779, 781 (Pa. 1946).

²³ See *In re: Tressler's Estate*, 66 Pa. Super. 547, 549-51 (1917) (tenant who purchased a "double house" from the landlord and who became a landlord to the tenant in one partition of the property could claim exclusive possession, and specific performance was warranted); *In re Tetlow's Estate*, 184 A. 129, 1329-30 (Pa. 1936) (former patient agreed to sell former health specialist one of her properties if he would be her personal trainer); *Hostetter v. Hoover*, 547 A.2d 1247, 1248, 1251 (Pa. Super. Ct. 1988) (former tenant was evicted and the plaintiffs made substantial improvements to the "once-dilapidated" property); *Briggs v. Sackett*, 418 A.2d 586, 588 (Pa. Super. Ct. 1980) (former owners vacated the property and new residents exclusively possessed the property, paying mortgage arrearages and a delinquent water bill).

²⁴ Petitioner's Brief at 6.

exact opposite proposition.²⁵ In *Brotman*, a wife purchased a property and resided in the property with her three sons while her husband and she were estranged.²⁶ The wife eventually persuaded the husband to live with them based on her verbal agreement that she would transfer title of the property to him if he assumed and paid the mortgage.²⁷ After the husband had performed substantial repairs on the property, contributed substantially to the mortgage payments, and collected rents from a part of the property, his wife would not transfer title.²⁸ The husband sought specific performance.²⁹ The *Brotman* Court refused to allow specific performance because he did not possess “exclusive and continuous open possession,” and remanded for findings related to monetary damages.³⁰

In the present case, Petitioner does not aver in the Complaint that he “exclusively” possessed the property upon creation of the oral agreement with the decedent. This is likely because such fact is antithetical to his claim, since the agreement was for Petitioner to move in with his parents to care for them. Hence, as in *Brotman*, Petitioner cannot claim exclusive possession.³¹ Because the partial

²⁵ The Court encourages citation to precedent and is certainly sympathetic if a quote is misattributed or a mistaken citation included. Even the twisting of precedent to fit an advocate’s narrative is understandable. However, incorrect statements of law bolstered by inapposite citations are unhelpful. See *supra* notes 22-23 & *infra* note 40. The Court’s workload is sufficiently laborious without the added duty of correcting a brief’s argument section. See *Cook v. Hilltown Twp.*, 1990 WL 109985, at *2 (E.D. Pa. Aug. 1, 1990) (“First, the carelessness manifested by inaccurate citations is not in keeping with the tradition of the legal profession. For as long as I can remember, one of the hallmark’s of an outstanding legal brief was the accuracy of its citations.”); accord *Samuel v. Equifax Info. Servs., LLC*, 2018 WL 3105658, at *4 n.1 (E.D. Pa. June 22, 2018) (“It is this Court’s fervent hope that counsel will take heed of these observations and ensure that future filings with the court are prepared with a greater level of care, accuracy and candor.”).

²⁶ *Brotman v. Brotman*, 46 A.2d 175, 177 (Pa. 1946).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 177-78.

³¹ Importantly, an oral contract must be removed from the grasp of the Statute of Frauds before specific performance becomes a possibility. See *Nationwide Life Ins. Co. v. Franklin Mills Assocs. Ltd. P’ship*,

performance exception does not allow Petitioner's claim to survive the Statute of Frauds, and allowing Petitioner to amend his Complaint would be a futile exercise, his Complaint must be dismissed.³²

2. In Consideration of the Parol Evidence Rule

The Parol Evidence Rule also bars Petitioner's claim as the alleged oral agreement contradicts the will. The Pennsylvania Supreme Court has defined the Parol Evidence Rule as follows:

Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract ... and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.³³

In the context of a will, the Supreme Court has stated, "When a will as written is clear and unambiguous, it is error for the court to consider external evidence tending to impute an intent to the testator different from that appearing on the face of the will."³⁴

The Supreme Court's admonishment is based on the fact that the testator's intent, when expressed in a clear manner, is paramount.³⁵ In the case *sub judice*, the Will is clear that Petitioner had right of first refusal to purchase the Property for fair market value up to sixty days after the decedent's death. Decedent passed away on November 27,

2017 WL 1196633, at *10 (E.D. Pa. Mar. 31, 2017).

³² Petitioner's argument that this matter is placed outside the purview of the Statute of Frauds because "[t]here were many admissions of the decedent in this case" is also unpersuasive. Petitioner's Brief at 7. Petitioner cannot rely on admissions of the decedent based on the Dead Man's Act. See *infra* note 40.

³³ *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004) (quoting *Gianni v. Russell & Co.*, 126 A. 791, 792 (Pa. 1924)).

³⁴ *Estate of Schwenk*, 490 A.2d 428, 430-31 (Pa. 1985) (citing *Kelly Estate*, 373 A.2d 744, 746-748 (Pa. 1977)).

2018. There is no evidence in the record that Petitioner asserted his right by January 26, 2019.

Petitioner's argument that the Parol Evidence Rule does not apply because he is not seeking to amend a contract separate from the will is puzzling. While "it is true that the parol evidence rule does not bar evidence of separate contracts entered into prior to or contemporaneously with the contract in question," the contracts must not concern the same "subject matter."³⁶ The alleged oral agreement at issue here directly contradicts the subject matter of the Will. If the oral agreement is found to be valid, then "Item II" in the Will would be deemed a nullity.³⁷ Therefore, the alleged oral agreement is not a "separate contract" as that phrase is legally understood.

The Court is also perplexed by Petitioner's assertion that his allegations of fraud place this matter beyond the reach of the Parol Evidence Rule. Although "parol evidence may be introduced to vary a writing meant to be the parties' entire contract where a party avers that a term was omitted from the contract because of fraud, accident, or mistake,"³⁸ Petitioner has alleged fraud in the procurement of the Will, not the oral agreement. Additionally, even if Petitioner's position was logically sound, fraud in the inducement does not prevent the applicability of the Parol Evidence Rule. As the Supreme Court has opined:

³⁵ *Id.*

³⁶ *Iron Worker's Sav. & Loan Ass'n v. IWS, Inc.*, 622 A.2d 367, 373 (Pa. Super. Ct. 1993).

³⁷ It strikes the Court that perhaps § 2701 was enacted for this very situation. 20 Pa.C.S.A. § 2701 ("A contract to [. . .] make [. . .] an obligation dischargeable only at or after death can be established in support of a claim against the estate of a decedent only by: (1) provisions of a will of the decedent stating material provisions of the contract; (2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or (3) a writing signed by the decedent evidencing the contract.").

³⁸ *Yocca*, 854 A.2d at 437.

Notably, while parol evidence may be introduced based on a party's claim that there was a fraud in the execution of the contract, i.e., that a term was fraudulently omitted from the contract, parol evidence *may not be admitted based on a claim that there was fraud in the inducement of the contract*, i.e., that an opposing party made false representations that induced the complaining party to agree to the contract.³⁹

Petitioner's argument would be one of undue influence. Therefore, Petitioner's argument is not persuasive.

C. CONCLUSION

Based on the aforementioned reasoning, Petitioner's Complaint is **DISMISSED with prejudice**.⁴⁰ Fundamentally, this Court's Opinion should not be interpreted as preventing Petitioner from filing a will contest if he so chooses. Questions regarding the Will's validity were not before this Court.

IT IS SO DECREED this 8th day of August 2019.

³⁹ *Id.* at 437 n.26.

⁴⁰ The Dead Man's Act prevents Petitioner from testifying regarding the alleged oral agreement; however, it does not prevent Petitioner's unnamed witnesses from testifying. See 42 Pa.C.S.A. § 5930. Of course, that is presuming these witnesses' interests are not adverse to the decedent's interests. See *In re Mihordin*, 162 A.3d 1166, 1173 (Pa. Super. Ct. 2017), *rearg. denied* (July 28, 2017), *appeal denied sub nom.*, 180 A.3d 1212 (Pa. 2018) (" 'This disqualification extends to two classes of witnesses (surviving parties to a transaction and any other person) whose interest is adverse to [the] deceased.' Only a fixed vested interest disqualifies the proposed testimony; 'The true test of the interest of a witness is that he will either gain or lose, as the direct legal operation and effect of the judgment, or that the record will be legal evidence for or against him in some other action. It must be a present, certain and vested interest, and not an interest uncertain, remote, or contingent.' " (quoting *In re Hendrickson's Estate*, 130 A.2d 143, 146 (Pa. 1957); *In re Groome's Estate*, 11 A.2d 271, 273 (Pa. 1940)) (internal citations omitted)). Granted, Petitioner has not named these individuals or stated whether their testimony would meet the sufficiency threshold set out by the Pennsylvania Supreme Court. See *In re Shaffer's Estate*, 54 A. 711, 713 (Pa. 1903) (" 'The contracting parties must be brought together face to face. The witnesses must have heard the parties repeat it in each other's presence. The contract is not to be inferred from the declaration of one of the parties.' " (quoting *Edwards v. Morgan*, 100 Pa. 330 (1882))). Generally, the Court would allow Petitioner the right to amend the complaint to include these witnesses; however, here, Petitioner's claim is barred by Respondents' other objections.

The Court also notes that Petitioner's reliance on *In the Matter of Kulbitsky* for the proposition that this Court should not apply the Dead Man's Act as an affirmative defense because the Pennsylvania Commonwealth Court there held that "although the Dead Man's Statute applied, the presentation of evidence in the case could proceed," is nonsensical. First, the Commonwealth Court did not find that the Dead Man's Act applied, merely that it was "applicable to forfeiture proceedings." 536 A.2d 458, 462 (Pa. Commw. Ct. 1988). Second, the presentation of evidence was allowed to proceed because the act did not apply, not because it was found to be procedurally premature. *Id.*

BY THE COURT,

Eric R. Linhardt, Judge

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