IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: THE ESTATE OF LOIS B. FINCK, DECEASED	:	No. 41-19-0534
	:	
	:	ORPHANS' COURT DIVISION

OPINION AND DECREE

AND NOW, after argument and subsequent briefing on Petitioner Delmar L. Finck's ("Delmar") Petition Requesting Court to Set Purchase Price and Authorize Sale of Real Estate to Petitioner, the Court hereby issues the following OPINION and DECREE.

BACKGROUND

A. Initial Estate Administration

Lois B. Finck ("Decedent" or "Lois") died on September 5, 2019. On September 13, 2019, Delmar and Elaine K. Finck ("Elaine")[1] admitted Decedent's Will[2] to probate and filed a Petition for Grant of Letters with the Lycoming County Register of Wills. In the Petition for Grant of Letters, Delmar and Elaine listed the estimated value of Decedent's estate (the "Estate") as $610,000, consisting of $10,000 of personal property and $600,000 of real estate located in Pennsylvania. The Attachment to the Petition for Grant of Letters indicated:

> "Decedent died owning the following real estate:
>
> (1) 98 acres +/- located in Washington Township, Lycoming County, PA (Tax Parcel No. 57-410.0-0171-00) with a mailing address of 547 Pikes Peak Rd., Allenwood, PA 17810[3]

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[1] The parties, including Elaine, generally refer to her in their filings as "Lainey." Although the Court typically attempts to refer to parties by their preferred designation, the Court will refer to Elaine K. Finck as "Elaine" because this is how her name is listed in the Will and on the Grant of Letters.

[2] The relevant provisions of Decedent's Will are discussed in detail *infra*.

[3] The Court will refer to this property as the "Stugart Farm" in conformity with the parties' designation.

(2) 103 acres +/- located in Washington Township, Lycoming County, PA (Tax Parcel No. 57-430.0-150.D-000) with a mailing address of 126 Finck Road, Montgomery, PA 17752"[4]

On that same day, the Register of Wills issued the Grant of Letters, appointing Delmar and Elaine as co-executors of the Estate. On October 15, 2019, the Register of Wills mailed the Notice to Beneficiaries and Intestate Heirs as required by Rule 10.5 of the Orphans' Court Rules of Procedure. The five beneficiaries of the Will, as listed in the Notice, are Delmar, Elaine, Barry E. Finck ("Barry"), Donna J. Knouse ("Donna"), and Stacey L. Bennett ("Stacey").

B. Inventory and Pennsylvania Inheritance Tax Return

On June 5, 2020, Delmar and Elaine filed an Inventory and a Pennsylvania Inheritance Tax Return for the Estate. As will become relevant later, the Estate did not file a Federal Inheritance Tax Return. In the Inventory, Decedent's tangible personal property was valued at $5,498.00, consisting of a car worth $2,498.00 and "[h]ousehold goods and miscellaneous personal effects" worth $3,000.00. The Inventory valued the Stugart Farm and the Home Farm – along with the personal property kept there – as worth $0.00 for Pennsylvania inheritance tax purposes, referring to corresponding Schedule AU and Schedule C-SB attachments.

The executors completed a Schedule AU form for "Agricultural Use Exemptions" for each of the two Estate properties and attached these forms to the Pennsylvania Inheritance Tax Return. The Home Farm Schedule AU listed the "[d]ate of death value of the land" as $958,031.00 and the "[d]ate of death value of

[4] The Court will refer to this property as the "Home Farm" in conformity with the parties' designation.

structures" as $119,969.00. The filing attached an appraisal prepared by Agrarian Associates, Inc. in support of this valuation. The letter exhibit to the Home Farm Schedule AU indicated that Decedent owned the Home Farm individually from December 29, 1952 until her death, and that under her Will the Home Farm passed to her five living children in undivided shares.

The Stugart Farm Schedule AU listed the "[d]ate of death value of the land" as $1,097,063.00 and the "[d]ate of death value of structures" as $64,937.00. As with the Home Farm Schedule AU, the Stugart Farm Schedule AU attached an appraisal by Agrarian Associates, Inc. and a letter exhibit indicating that Decedent owned the Stugart Farm individually from December 14, 1984 until her death, and that under her Will the Stugart Farm "passed in undivided shares to [her] five living children…."

Also attached to the Pennsylvania Inheritance Tax Return was a Schedule C-SB form, for a "Qualified Family-Owned Business Exemption," which valued Decedent's sole proprietorship at death at $297,052.00.[5] The letter exhibit attached to the Schedule C-SB stated "Decedent operated a dairy and crop farming business at the time of her death," and indicated that the buildings and structures on both the Home Farm and Stugart Farm were assets of the sole proprietorship. The letter exhibit further stated:

> "The farm business sole proprietorship and the assets used in that business and owned by Decedent are being transferred pursuant to Decedent's Last Will and Testament to her five living children in undivided interests. Decedent's sons, Barry E. Finck and Delmar L. Finck, were employees of Decedent's sole proprietorship for decades before and at the time of her death. They have continued to operate that farm business since her death and plan to continue to do so in the future. Therefore, the sole proprietorship continues to be owned and actively operated by members of the same family."

[5] This value consists of $433,921 of assets less $136,869 of liabilities.

Multiple documents were attached to the Schedule C-SB in support of the valuation of the assets of the sole proprietorship.

C. Decedent's Will

Decedent's Will dictated that if her husband Franklin J. Finck ("Franklin") survived her for six months or longer, the entirety of her Estate would go to him.[6] The distribution of Decedent's Estate in the event that Franklin did not survive her for a period of six months was described in the third, fourth, and fifth paragraphs of Decedent's Will, which read in their entirety as follows:

> "THIRD: If my said husband, FRANKLIN J. FINCK, does not survive me for a period of not less than six (6) months, then I give, devise and bequeath all the said rest, residue and remainder of my estate, to my issue, per stirpes, in the following proportions:
>
> A. A twenty (20%) per cent part thereof to my son, DELMAR L. FINCK.
>
> B. A twenty (20%) per cent part thereof to my son, BARRY E. FINCK.
>
> C. A fifteen (15%) per cent part thereof to my daughter, ELAINE K. FINCK.
>
> E.[7] A fifteen (15%) per cent part thereof to my daughter, DONNA J. FINCK.[8]
>
> F. A fifteen (15%) per cent part thereof to my daughter, STACEY L. FINCK.[9]

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[6] The pleadings aver that Franklin predeceased Decedent on September 28, 2010.
[7] The lettering of the subparagraphs skips from "C" to "E"; there is no subparagraph "D" in the third paragraph of Decedent's Will.
[8] Because the co-executors of Decedent's Estate listed "Donna J. Knouse" as one of the beneficiaries of the Estate, the Court infers that Donna J. Knouse is the same Donna J. Finck referred to in the Will as Decedent's daughter.
[9] Because the co-executors of Decedent's Estate listed "Stacey L. Bennett" as one of the beneficiaries of the Estate, the Court infers that Stacey L. Bennett is the same Stacey L. Finck referred to in the Will as Decedent's daughter.

G. A fifteen (15%) per cent part thereof to my son, BRIAN J. FINCK.[10]

FOURTH: I direct that my sons, DELMAR L. FINCK and BARRY E. FINCK or either of them, after both my husband and I have died, shall have an option to purchase any farms which I may own at my death. Such option shall be exercisable by a writing executed by either or both my said sons, binding either or both to purchase any or all of such farms and deliver [sic] to my personal representatives (or those of my husband, as the case may be) not later than three (3) months after their appointment.

If such option is so exercised the purchase price shall be the value finally determined for Federal Estate Tax purposes. Payment shall be made as follows:

A. A ten (10%) per cent part thereof at the time of closing.

B. The balance thereof payable in twenty (20) equal annual installments commencing one year from the date of closing, with interest on the unpaid principal balance at six (6%) per cent per annum. Such unpaid portion shall be evidenced by a mortgage and bond, which mortgage shall be duly recorded. Buyers shall have the right to anticipate payments without penalty.

Closing shall be held not later than one (1) month after the value of said farms for Federal Estate Tax purposes has been finally determined. At closing the buyer or buyers shall tender the payment aforesaid and the Executors of my estate shall tender the deed.

FIFTH: I acknowledge certain payment have [sic] been made by my son, DELMAR L. FINCK toward the purchase of the farm known as the Sealy Farm.[11] These payments are to be treated as debts owing by me to my said son and shall be repaid by my Executors at the time of my death or, at their option, credited to the first payments from my said son should he determine to exercise the option aforesaid. Likewise,

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[10] The pleadings indicate that Brian J. Finck ("Brian") predeceased Franklin and Lois on August 12, 1995, unmarried and without issue. Petitioner contends, and Respondents have not disputed, that under 20 Pa. C.S. § 2514(11) Brian's interest in Decedent's estate passed to the five remaining beneficiaries in the same proportion to which they are entitled under the Will.

[11] The property known as the Sealy Farm, which Petitioner avers Decedent transferred to him prior to her death, is discussed *infra*.

> any payments received from my son BARRY E. FINCK, on any future farm purchases should be similarly treated."

INSTANT PETITION AND PLEADINGS

A. Petition Requesting Court to Set Purchase Price and Authorize Sale of Real Estate to [Delmar]

On August 25, 2021, Delmar filed a Petition Requesting Court to Set Purchase Price and Authorize Sale of Real Estate to [Delmar]. The allegations in the Petition are as follows:

Franklin and Lois Finck began their farming business in 1952 with the purchase of the Home Farm, and Delmar and Barry became employees of that business in 1971 and 1982, respectively. In or around 1977, Franklin and Decedent purchased a farm at 982 Pikes Peak Road in Allenwood, PA (the "Sealy Farm") and expanded their farming operations to that location as well. Shortly before that purchase, Franklin, Decedent, and Delmar:

> "entered into an oral agreement… pursuant to which Delmar would pay one-half of the purchase price back to Franklin and Lois over a period of 10 years. The parties further verbally agreed that Franklin and Lois would retain any and all profits from the Sealy Farm during the ten (10) year period. At the conclusion of the ten (10) year period, and upon receipt of payments totaling one-half of the original purchase price of the Sealy Farm, Franklin and Lois agreed to convey the Sealy Farm to Delmar."

After the purchase of the Sealy Farm, Delmar moved into the residence there and began making monthly payments to Franklin and Lois, as reflected in the fifth paragraph of Decedent's Will. Franklin and Lois executed reciprocal wills in 1977, and although they did not provide Delmar with copies of the wills, they told him that the wills "provided him and his brother, Barry, with the option to purchase their farm

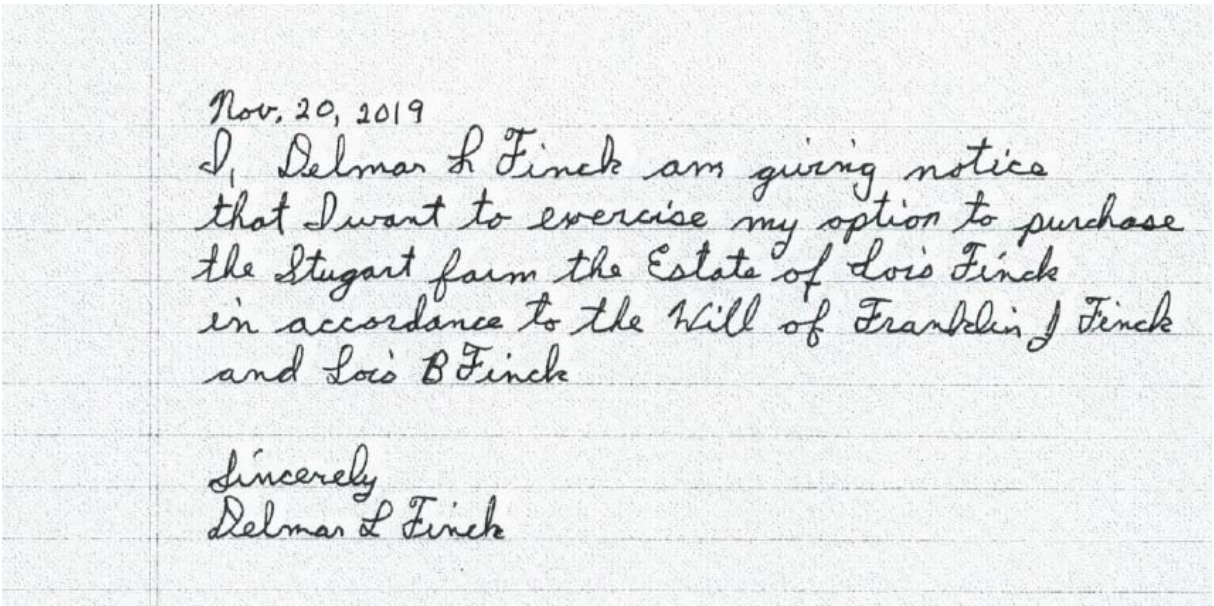
real estate at 'agricultural value for tax purposes.'" After this, Delmar's continued employment with the family business was "in reliance on those representations."

In 1984, the Stugart Farm, which is adjacent to the Sealy Farm, became available for purchase. Delmar wished to purchase the Stugart Farm and informed Franklin, but learned that Franklin also wished to purchase the Stugart Farm. After Franklin "reminded Delmar that Franklin and Lois had arranged their estate plan such that Delmar and Barry would have the option of purchasing any farm real estate owned by himself and Lois after their deaths at 'agricultural value for tax purposes,'" Delmar was "[s]atisfied with these representation from Franklin and in reliance on them" did not purchase the farm, allowing Franklin and Lois to purchase it themselves on December 14, 1984. Shortly thereafter, Barry moved into the residence at the Stugart Farm, where he resided until 1998.

Delmar continued making payments on the Sealy Farm until 1987, and although he had "complied with his obligations pursuant to the verbal agreement, Delmar never made a demand on Franklin and Lois to formally convey the Sealy Farm to him when his payment obligations ceased." Franklin and Lois conveyed the Sealy Farm to Delmar and his wife on September 11, 1998. Franklin, Lois, Delmar and Barry continued the family farming operations until Franklin's death, at which time Lois "continued the farming operations as a sole-proprietorship with Delmar and Barry as her employees until [her] death on September 5, 2019."

The final averments in the Petition state that on November 20, 2019 Delmar exercised his option to purchase the Stugart Farm in accordance with the Fourth Paragraph of Decedent's Will, and that "Barry has not exercised his option to

purchase any of Lois's estate's farm real estate." The Petition attached as Exhibit B a "November 20, 2019 document executed by Delmar" which consists of the following note:[12]


Nov. 20, 2019
I, Delmar L Finck am giving notice
that I want to exercise my option to purchase
the Stugart farm the Estate of Lois Finck
in accordance to the Will of Franklin J Finck
and Lois B Finck

Sincerely
Delmar L Finck

The Petition asks the Court to "set the purchase price of the Stugart Farm at special use valuation pursuant to 26 U.S.C. §2032A[13] for purposes of Delmar's exercise of the option granted to him by the Fourth Paragraph of the Decedent's Will" and to "direct the Decedent's Estate to convey the Stugart Farm to Delmar in accordance therewith." In support of this request, the Petition notes that the Federal Estate Tax exemption increased from $120,000.00 per individual in 1977 (when

[12] The text of Exhibit B reads:

> "Nov. 20, 2019
> I, Delmar L Finck am giving notice that I want to exercise my option to purchase the Stugart farm the [sic] Estate of Lois Finck in accordance to the Will of Franklin J Finck and Lois B Finck
>
> Sincerely
> Delmar L Finck"

[13] This provision is discussed in detail *infra*.

Franklin and Lois executed their Wills) to $11.4 million per individual at the time of Decedent's death, and suggests that, because the assets of the Estate were well under the $11.4 million limit, "a Federal Estate Tax Return was deemed unnecessary and therefore has not [been] filed with the Internal Revenue Service as of the filing of this Petition."

The Petition characterizes 26 U.S.C. §2032A as "permit[ting] succeeding generations of farmers to use special use valuation by valuing real property based on its value as agricultural land rather than on its highest and best use for Federal Estate and Gift Tax purposes." The Petition avers that, in addition to the appraisal of the Stugart Farm that established its fair market value as $1,097,063.00, Agrarian Associates, Inc. also completed a second appraisal to ascertain the "Agriculture Use Value" or "§2032A Special Use Value" of the Stugart Farm.[14] This second appraisal, attached to the Petition as Exhibit F, places the Special Use Value of the Stugart Farm at $213,000.00.[15]

Ultimately, the legal result the Petition asks the Court to reach can be characterized as follows:

- The Will gives Delmar the option to purchase the Stugart Farm at the "value finally determined for Federal Estate Tax purposes."
- The Estate did not file a Federal Estate Tax Return because its total value was less than the $11.4 million limit.
- Had the Estate filed a Federal Estate Tax Return, it could have chosen to value the Stugart Farm at $213,000 pursuant to §2032A, rather than

[14] The Court will refer to this concept as "Special Use Value" or "Special Use Valuation."
[15] The Petition similarly attaches as Exhibit D a second appraisal of the Home Farm, which places its Special Use Value at $215,000.00. The Petition contends that these Special Use Value Appraisals were prepared by Co-Executors Elaine and Delmar "[o]n advice of counsel...."

its value on the open market of $1,097,063, because Delmar intended to continue using the Stugart Farm for its special agricultural use.[16]

- "The lack of a Federal Estate Tax return creates an ambiguity with respect to the option purchase price…."

- Allowing Delmar to exercise the option to purchase the Stugart Farm at its Special Use Value of $213,000 rather than its fair market value of $1,097,063 is appropriate and necessary in light of:

    - The intent of Decedent and Franklin;

    - The promises made by Decedent and Franklin to Delmar;

    - Delmar's reliance on those promises generally, as evidenced by his willingness to allow Franklin to purchase the Stugart Farm in 1984 and his continued employment in Decedent's and Franklin's farming operations; and

    - Decedent's and Franklin's "expressed desires… that the farming operations would continue to the next generations of the family."

- Therefore, the Court should "enter an order in accordance with 20 Pa. C.S. §3356[17] setting the purchase price of the Stugart Farm at $213,000.00 and directing [Elaine] to convey the Stugart Farm to Delmar in accordance with [the fourth paragraph] of Lois's Will," along with any other relief the Court deems just and appropriate.

The Court scheduled an evidentiary hearing on the Petition for November 12, 2021.

[16] The Petition leaves unstated that the Estate would have presumably selected the lowest value legally permissible in order to minimize its tax burden.

[17] 20 Pa. C.S. § 3356 provides that "[a] personal representative, in his individual capacity, may… purchase… real or personal property belonging to [an] estate, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to parties in interest as it shall direct. The court may make an order directing a co-fiduciary, if any… to execute a deed or other appropriate instrument to the purchasing personal representative."

B. Answer with New Matter of Adverse Respondents

On October 6, 2021, Barry, Donna and Stacey (collectively, "Adverse Respondents") filed an Answer with New Matter to Delmar's Petition. In their Answer, the Adverse Respondents specifically deny that Delmar executed his option to purchase the Stugart Farm, indicating "the Will requires that the exercise of the option be delivered to the personal representatives within three (3) months after their appointment… but Elaine… did not receive the alleged exercise of the option until on or about September 10, 2020, long after the three (3) month delivery deadline had expired." The Adverse Respondents also aver that one of the requirements of §2032A "is that there be 'a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection 'C' [pertaining to the Special Use Valuation and tax treatment of the farmland] with respect to such property." The Adverse Respondents contend that they are "persons in being who have an interest… in the property" but that Delmar has not obtained their consent, written or otherwise, as would be required by §2032A prior to the Estate's utilization of the Special Use Valuation in a Federal Estate Tax Return. They further aver that they would not agree to execute such an agreement if asked.

In their New Matter, the Adverse Respondents preliminarily contend that this Court must base any interpretation of the Will on its contents, rather than any alleged statements made by Decedent or Franklin. They reiterate as affirmative pleadings a number of their specific denials contained in their Answer, first averring that under the language of the Will Delmar has flatly failed to exercise his option to purchase the

Stugart Farm. They further plead that, had the Estate prepared a Federal Estate Tax Return, "it was not required or necessary" that the Special Use Valuation be the value used. The Adverse Respondents conclude that "[t]here is no basis or requirement in the Will that the Special Use Valuation be the value determined for Federal Estate Tax purposes," and that Delmar "has no right or expectation, based on the express terms of the Will, to purchase the Stugart Farm at the Special Use Valuation amount calculated for the property."

C. Answer of Elaine Finck

On October 15, 2021 Elaine filed an Answer to Delmar's Petition. Elaine's Answer denied some of the averments in the Petition because she did not possess sufficient information as to their truth or because they constitute averments of law, but she did not specifically deny any allegations in the Petition and did not ask the Court for any particular relief.

D. Delmar's Reply and Elaine's Answer to New Matter of Adverse Respondents

On October 28, 2021, Delmar filed a Reply to the Adverse Respondents' New Matter. He denied the contention that he had not exercised the option to purchase the Stugart Farm, and averred that therefore the Adverse Respondents "have no interest in the subject property as residuary beneficiaries."

That same day, Elaine filed an Answer to the Adverse Respondents' New Matter, averring generally that Delmar had properly exercised his option to purchase the Stugart Farm and specifically that she "received Delmar Finck's exercise of option in writing within the three (3) month period required by the Will." She further denied

any averments that "insinuate[] that a Special Use Valuation cannot be used as a valuation method without the election and filing of the Federal Estate Tax Return."

PARTIES' BRIEFS

At the time scheduled for evidentiary hearing on November 12, 2021, the Court and parties agreed that the time allotted was insufficient to create a full evidentiary record. After argument concerning the appropriate procedural steps, the Court directed the parties to file briefs, and indicated "[t]he Court will issue an appropriate decree ruling on the petition as a matter of law or scheduling an evidentiary hearing if the Court deems it necessary." The remainder of this section discusses the arguments raised in the parties' briefs.

A. Trial Brief of Adverse Respondents

The Adverse Respondents filed a Trial Brief on November 18, 2021. The brief began with a factual summary, which expanded on the factual averments in the Petition.[18] The Adverse Respondents present the following four questions to the Court, suggesting the Court answer each in the affirmative:

> "1. Where the language of the Will is unambiguous, and the terms dictate that the purchase price of the Stugart Farm shall be the value finally determined for Federal Estate Tax purposes, should the purchase price be set at the fair market value and not the special use value?
>
> 2. In the alternative, because no Federal Estate Tax Return was filed, does Paragraph 4 of the Will become moot?
>
> 3. Where the language of the Will is unambiguous, should [parol] testimony regarding the Decedent's intended meaning of the language be excluded?
>
> 4. If the court admits extrinsic, [parol] testimony regarding the Decedent's intent behind the language of Paragraph 4 [of the Will], does the Petitioner's claim fail where:

[18] To the extent it covered topics addressed in the Petition, the factual summary of the Trial Brief was materially consistent with the Petition.

a. Delmar and his children are not ready, willing, and able to farm the land;

b. There is no evidence of Decedent's intent to set the purchase price based upon a special use valuation; and

c. Any sale for the special use value lacks the protections of 26 USCS §2032A, which are integral to the sale price instructions of the Decedent in her will?"

Adverse Respondents first argue that an executor of an estate has a duty to secure the best possible price for a decedent's property, and an executor that causes loss to an estate by selling property below market value is, in the absence of authorization in the will, subject to surcharge.[19] They cite the well-established principle that Courts may not second-guess the language of a will, rewriting it to achieve an outcome that appears more desirable with the benefit of hindsight. Adverse Respondents argue that, because the Will clearly states that if the option to purchase the Stugart Farm "is… exercised, the purchase price shall be the value finally determined for Federal Estate Tax purposes," Petitioner's attempts to set a purchase price "as if those with an interest in the property elected to value the property by special use valuation pursuant to 26 USCS §2032A" constitutes a forbidden attempt to rewrite a clear provision of the Will.

Adverse Respondents stress that §2032A requires "specific procedural steps [to be] satisfied" before an executor may elect Special Use Valuation for farm real estate, with one crucial step being that "each person who has an interest in any property designated for a special use valuation must sign an agreement consenting

[19] Adverse Respondents cite *Chiswell v. Campbell*, 150 A. 90, 91 (Pa. 1930); *In re Estate of Gordon*, 511 A.2d 869, 871 (Pa. Super. 1986); and *2 Remick's Pennsylvania Orphans' Court Practice § 15.03 (2021)*.

to the application of a special use valuation with respect to such property." Adverse Respondents cite to the Code of Federal Regulations' definition of "persons having an interest in the designated property," which states:

> "An interest in property is an interest which, as of the date of the decedent's death, can be asserted under applicable local law so as to affect the disposition of the specially valued property by the estate. Any person in being at the death of the decedent who has any such interest in the property, whether present or future, or vested or contingent, must enter in to the agreement. Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants and holders of other undivided interests when the decedent held only a joint or undivided interest in the property or when only an undivided interest is specially valued, and trustees of trusts holding any interest in the property…"[20]

Adverse Respondents contend that "[a]s of the date of the Decedent's death, Barry had… a contingent interest in the Stugart Farm… as he is specifically named as having an option to purchase the property. Thus, in order for the property to be specially valued for Federal Estate Tax purposes, his consent to this valuation was required."

Adverse Respondents note that a §2032A election also requires an agreement "provid[ing] that during the ten (10) year period following the decedent's death, the decedent's qualified heir(s) will continue to materially participate in the farm operation and use the property for the qualified use, among other provisions. This is known as a Recapture Agreement." Adverse Respondents argue that, in the absence of a Recapture Agreement prepared in conjunction with a Federal Tax Return and binding Delmar to an agricultural use of the Stugart Farm for 10 years, he "could take advantage of the special use valuation to purchase the property at a reduced price,

[20] 26 C.F.R. § 20.2032A-8(c)(2).

and then sell the property at fair market value, thereby obtaining a windfall and depriving the remaining beneficiaries from the profits of this sale. This defeats the protection provided by Section 2032A creating the special use valuation only when the land will continue to be farmed by the family."

Adverse Respondents stress that Decedent's Will "did not direct that the value of the property be determined by electing the special use valuation for Federal Estate Tax purposes," though it could have done so; rather, "the Will states that 'the purchase price shall be the value finally determined for Federal Estate Tax purposes.'" Thus, Adverse Respondents argue,

> "In the absence of direction from the Decedent to value the Stugart Farm using a special use valuation, and in the absence of the necessary agreement prescribed by Section 2032A, the Stugart Farm cannot be valued based upon Section 2032A's special use valuation. Instead, the executor is bound by law to attempt to obtain the best price for the property for the benefit of all beneficiaries. As such, the Petition should be denied."

In the alternative, Adverse Respondents argue that the Court may appropriately find that the failure to file a Federal Estate Tax Return renders the pricing language of Paragraph 4 of the Will moot, in which case the same background principles of law operate to require setting the purchase price at fair market value. More specifically, Adverse Respondents contend that the filing of a Federal Estate Tax Return is a condition precedent to the setting of the purchase price, and inasmuch as that condition did not occur, the Will is effectively silent on the matter, providing no direction on how the Stugart Farm is to be valued.

Adverse Respondents next argue that the language of the Will is unambiguous, and therefore the Court is constrained to the four corners of the Will in

ascertaining Decedent's intent. They essentially suggest that, because §2032A was enacted in 1976, Decedent could have easily crafted her will the following year to set the Stugart Farm's purchase price at the Special Use Value. Adverse Respondents argue that Decedent's choice not to do so, and instead to explicitly tie the purchase price of the farm to "the value finally determined for Federal Estate Tax purposes," whatever it might be, is clear evidence of Decedent's intent not to tie the purchase price to the farm's agricultural Special Use Value. Adverse Respondents argue that even if Decedent had been unaware that she could choose to set the farm's purchase price at its Special Use Valuation, it would be inappropriate for the Court to insert language accomplishing such.[21]

Finally, Adverse Respondents argue that if the Court disagrees and believes it must hear parol evidence regarding Decedent's intent, the Court should still deny the petition for multiple reasons.

The first of these reasons is that even if Defendant's intent was to keep the Stugart Farm in the family and actively farmed, this is not possible because "Delmar is the only descendant that is still living at the farm. [He] is sixty-eight (68) years old, is diabetic, and has sold the dairy cows. His children are not farmers…. [E]ven if Delmar were to express a desire to continue farming at his age, his physical disability, a shoulder injury, and his health are likely to prevent him from doing so. Since 2019, the farm has earned practically no income, and has actually operated at

[21] Adverse Respondents quote the proclamation in *Hennessey v. Hennessey*, 883 A.2d 649, 652 (Pa. Super. 2005) that "[i]f a will is silent regarding a particular contingency, a court cannot rewrite a will to supply a testator's unexpressed intent, or to cover circumstances or conditions or contingencies which he apparently did not foresee or provide for. Silence in a will does not, in itself, create an ambiguity."

a loss." In light of this, Adverse Respondents argue, the Court should find that any alleged intent of Decedent to keep the farm in the family is futile, and thus the Estate should sell the Stugart Farm at fair market value for the benefit of all of the beneficiaries. Adverse Respondents suggest that to allow Delmar to purchase the Stugart Farm at its Special Use Valuation would "incentivize[] [him] to capitalize on the reduced purchase price by selling the property for a non-agricultural use and obtaining a windfall."

Second, Adverse Respondents contend that "there is nothing in the estate planning file to show that the Decedent intended to use the special use valuation to price the farms," and that the evidence in the file actually indicates that Decedent's primary wish was "for her daughters to receive some of her assets." Adverse Respondents argue that, inasmuch as the Home Farm and Stugart Farm are the Estate's primary assets, it would be perfectly rational for Decedent to not allow Delmar (or Barry) to purchase those properties at a steep discount; this would effectuate both her intent to keep the farms in the family as well as to allow her non-farming daughters to recoup the benefits of her assets.

Finally, Adverse Respondents reiterate that §2032A requires the family to continue to farm the land for ten years and for all interested parties to sign a Recapture Agreement. Adverse Respondents aver that if this Court proceeded to hear evidence, they would show that Barry would not consent to signing a Recapture Agreement, meaning that even the Estate had prepared a Federal Estate Tax Return it would not have been able to meet the requirements for utilizing the agricultural Special Use Valuation. In such an event, the value of the Stugart Farm for Federal

Estate Tax purposes would be $1,097,063, and this would be the option price as set by the Will.

B. Delmar's Memorandum in Support of Petition

On December 13, 2021, Delmar filed a Memorandum in support of his Petition, first presenting a summary of the factual background and then proposing the following counterstatement of questions involved (suggesting the Court answer the first two in the negative and the final two in the affirmative):

> "1. Does the language of the Will unambiguously mandate that Delmar pay full fair market value to the Estate for his purchase of the Stugart Farm?
>
> 2. Should the Court treat the entire fourth (4th) paragraph of the Will as moot because, to date, no federal estate tax return has been filed?
>
> 3. If the Court finds that the will is ambiguous as to the amount Delmar must pay for the Stugart Farm, may it consider extrinsic evidence?
>
> 4. Does the extrinsic evidence support the purchase price being set at §2032A special use value rather than fair marker value?"

Delmar contends that, although Adverse Respondents are correct that an executor has a duty to secure the best possible price for "property passing through the residuary of the estate," such a duty "does not apply to specific devises or property subject to a testamentary option." Delmar argues that the cases cited by Adverse Respondents are readily distinguishable from the situation here, and that when a Will contains a specific devise of property the executor's duty is obviously to convey it to the devisee in accordance with the terms of the Will rather than to sell it to the highest bidder. Delmar notes that the Will provides him "an option to purchase any farms which [Decedent] may own at [her] death," and argues that case law

shows such an option to be in the nature of an intent to benefit the person with the right to exercise the option.[22]

Delmar argues that "the only question is how to interpret the language setting the purchase price," and that it is indisputable that a "§2032A valuation is a valuation for 'Federal Estate Tax purposes.'" This is because "the Federal Estate Tax statute provides for an alternative valuation for Federal Estate Tax Purposes of actual, special 'use value' in the case of qualified farm property," namely, the §2032A valuation.[23]

Delmar agrees with Adverse Respondents that the intent of the testator is key in interpreting a will, but believes Adverse Respondents' suggestion that the "use of the phrase 'for Federal Estate Tax purposes' is equivalent to having used the phrase 'fair market value'… completely defies the intent of the testators." Citing numerous background principles applicable to courts' interpretation of wills, Delmar highlights that a court must interpret a will in light of the circumstances existing at the time of its drafting, and in doing so must presume the testator knew the law.[24] Delmar observes that, when Decedent and Franklin executed their reciprocal wills in 1977, §2032A had been enacted four months prior, and Delmar was employed full-time farming for

[22] Delmar, like Adverse Respondents, cites *2 Remicks Orphans' Court Practice §15.03*. Delmar also cites *In re: Yarnall's Estate*, 364 A.2d 922, 925 (Pa. 1976) for this proposition.
[23] Delmar cites secondary sources indicating that, prior to the enactment of §2032A, many families had to give up their farms upon the death of the owner because, although they were actively farming the land and intended to do so in perpetuity, they could not pay the appropriate estate taxes when the value of the land was tied to what it would sell for on the open market. Thus, Delmar claims, §2032A was "[h]eralded as a measure to 'save the family farm'" by greatly reducing the tax burden associated with passing actively-farmed land down from one generation of a family to the next.
[24] Delmar cites *In re: Estate of Tower*, 470 A.2d 568, 574 (Pa. Super. 1983) and *In re: Estate of McFadden*, 100 A.3d 645 (Pa. Super. 2014) for these propositions.

his parents; accordingly, "[t]heir wills very clearly express an intention that Delmar be given an opportunity to continue their farming operations after their demise." Delmar argues that, to accept Adverse Respondents' position, the Court would have to conclude that Decedent's and Franklin's "desire for Delmar to have the opportunity to continue farming was outweighed by their desire to pay the maximum amount of Federal Estate taxes."

Delmar argues that many of the arguments made by Adverse Respondents could be likewise employed against them. In the same way that Adverse Respondents contend Decedent could have easily used language explicitly setting the option price of the Stugart Farm at its agricultural Special Use Value, but chose not do to so, Delmar points out that Decedent could have easily set the farm's purchase price at "full market value" but chose not to do so. Similarly, in the same way an executor may be surcharged for failing to obtain full value for the sale of estate property, Delmar points out that an executor can also be surcharged for causing an estate to incur a greater tax liability than necessary.

With regard to Adverse Respondents' specific arguments concerning §2032A, Delmar first contends that they, as residuary beneficiaries, "have only an interest in the remaining assets of the estate after all debts are paid and specific bequests and devises are fulfilled," and are thus not "persons having an interest in the designated property" as defined in the tax code. To the extent that Adverse Respondents updated this argument in their Trial Brief to claim merely that Barry is such an interested person by virtue of his option to purchase the farms, Delmar avers that

Barry has never claimed that he timely exercised his option, and thus at present "has no claim to the subject property whatsoever."

Delmar next argues that it would be improper for the Court to treat the entire fourth paragraph of the will as moot due to the Estate's failure to file a Federal Tax Return.[25] First, Delmar points out that nothing is currently preventing the Estate from filing a federal tax return now or in the future. Second, Delmar contends that the language of the Will does not render the filing of a Federal Estate Tax Return a condition precedent to the setting of an option price, and cites *In re: Yarnall's Estate* as the most analogous case in Pennsylvania.[26] Delmar ultimately suggests that, if the Court does believe the failure to file a Federal Estate Tax Return renders language in the Will moot, the appropriate remedy is for the Court to order the filing of a Federal Estate Tax Return, rather than to disregard entire portions of the Will. This is especially true, Delmar argues, in light of background principles that a Court's reading of a will should not subvert or defeat the testator's testamentary scheme.

Delmar finally argues that, if the Court does believe the Will is ambiguous, extrinsic evidence is required, and such evidence will support Delmar's position. Delmar contends that all parties are well aware that Decedent and Franklin repeatedly expressed their intent that the farms continue to operate within the family. Delmar takes exception to Adverse Respondents' contention that his age and shoulder injury have prevented him from farming, and characterizes their descriptions

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[25] Although the question presented in Adverse Respondents' Trial Brief asks the Court to declare the "Fourth Paragraph" moot, the argument made in the body of that Brief asks the Court only to declare the specific language setting the option price of the farms to be moot. Delmar's arguments are largely applicable to either request.

[26] *In re: Yarnall's Estate*, 364 A.2d 922.

of his family situation as "at the very least, misleading, if not plainly untrue." Delmar avers that the evidence will show that "[h]is son, Curtis, has lived, and continues to live, with Delmar on the Sealy Farm. Despite having a part-time job off the farm, the evidence will show that Curtis very much remains actively engaged in the farming operations. Similarly, though Delmar's other son, Mark, has had other employment in the past, he has always remained continuously active in his family's farming operations."

Delmar argues that Adverse Respondents have mischaracterized the contents of the estate planning file, taking them out of context. Specifically, Delmar contends that the discussions between Decedent and her attorney about "leaving something for her daughters" took place in the context of proposed testamentary schemes that would have replaced Decedent's Will, and contemplated giving each Elaine, Donna, and Stacey cash payments while transferring Decedent's farms to Barry and Delmar, either through her Will or *inter vivos*. Delmar avers that these proposals, ultimately rejected by Decedent, would have resulted in Elaine, Donna, and Stacey receiving *less* total money than they would have even if both the Home Farm and Stugart Farm are sold at their appraised Special Use Values rather than fair market value.

Delmar concludes by disputing Adverse Respondents' contentions that the absence of a Recapture Agreement weighs in their favor. Delmar suggests that the purpose of a recapture agreement is to protect the government when a §2032A election takes the value of an estate from over the $11.4 million inheritance tax exemption to below that cut-off. Because the Estate is worth well under $11.4 million even if priced at fair market value, Delmar argues, a Recapture Agreement would be

pointless for all parties involved. Delmar again suggests in the alternative that if the Court believes the Adverse Respondents' argument may have merit, the appropriate course of action would be for the Estate to "file the federal estate tax return, make the special use value election, and let the Internal Revenue Service make a 'final determination.'"

C. Elaine's Responsive Brief

On December 13, 2021, Elaine filed a Responsive Brief. Elaine explains that she does not believe that either Adverse Respondents' or Delmar's preferred outcome is strictly compelled by the language of the Will, suggesting:

> "Assuming the Executors' Federal Estate Tax filing or proposed filing satisfied the requirements to elect special use valuation, the value finally determined for Federal Estate Tax purposes and the price set for purchase by Delmar from the Estate should be the special use valuation. Assuming the Executors' Federal Estate tax filing or proposed filing does not satisfy the requirements to elect special use valuation, the value finally determined for Federal Estate Tax purposes and the price set for purchase by Delmar from the Estate should instead be the fair market value."

Elaine further states her belief that the Court has the power to order the Estate to file a Federal Estate Tax Return, and indicates that she is willing to do so as Co-Executor. She avers that, should the Estate file a Federal Estate Tax Return, it could elect to utilize §2032A Special Use Valuation unimpeded by Barry's refusal to consent to such an election, because Barry ceased to be an interested party for §2032A purposes when his option to purchase the Stugart Farm expired. She also indicates her belief that Delmar and his sons currently farm and will continue to farm the property in the future.

On the question of Decedent's intent, Elaine contends that it is clear Decedent intended the farms to remain in the family. She disagrees that it can "be assumed that the Decedent was aware or unaware of the special use valuation for farmland," instead arguing that, because the Will ties the farms' valuation to "the Federal Estate Tax value… it could be [fairly] assumed that the Decedent intended the flexibility as to the determination of value – whether that be special use valuation or fair market value." She objects to Adverse Respondents' description of the Special Use Valuation as a "contingency," instead characterizing it as "one valuation method that can be finally determined for Federal Estate Tax purposes." Elaine suggests that, inasmuch as Decedent's clear intent was for the farms to remain in the family and be actively utilized for farming, "it is reasonable to provide an accepted Federal Estate Tax valuation in a way that values the property for farming purposes, and allow the Decedent's intention for her heirs to continue farming to be realized."

Finally, Elaine concludes that "[i]f the court permits evidence as to Decedent's intent outside of the four corners of the Will, evidence may be obtained to support each valuation. This is a fact specific question of which a hearing would be required." Elaine avers that the evidence would ultimately show Delmar and his sons are willing and able to farm the land for ten years as required by §2032A, and suggests that it would be appropriate to make the sale of the Stugart Farm to Delmar at its Special Use Valuation "contingent on the filing and acceptance of a Federal Estate Tax Return for the estate to afford such protections to the beneficiaries."

D. Stipulation of Parties to Fair Market Value and Special Use Value Appraisals

On December 30, 2021, the parties filed a Joint Stipulation, indicating that all parties stipulated and agreed that the Fair Market Value Appraisals for both the Home Farm and the Stugart Farm "shall be entered into evidence and establish[] the Fair Market Value of" each farm, and that the §2032A Special Use Value Appraisals for both the Home Farm and the Stugart Farm may be similarly entered into evidence to establish the §2032 Special Use Value of each farm.

E. Adverse Respondents' Reply Brief

On January 6, 2022, the Adverse Respondents filed a Reply Brief in response to Delmar's and Elaine's filings. The Adverse Respondents disputed any suggestion that Decedent's Will evinces an intent "to favor any of her children over the others," and argues that the cases cited by Delmar (such as *Maier v. Henning*[27] and *Yarnall*) are inapposite to this case inasmuch as they both merely upheld the clear language of the particular will at issue. Adverse Respondents aver that "the plain language of the Will [and the cases cited by Delmar] do not support [his] assertion that [he] has the right to purchase the farm at an 80% discount, nor do they excuse the executors from obtaining the highest and best value for the farm." Adverse Respondents reiterate their contention that in the absence of language or law dictating otherwise, it is the "clear and inescapable duty of the executor to obtain the highest and best value for the assets of the estate when they are sold."

Adverse Respondents next reject the contention that the Co-Executors have discretion to choose among multiple valuations of the farms, noting that although it is

[27] *Maier v. Henning*, 578 A.2d 1279 (Pa. 1990).

common for a will to "grant the executor general powers to sell, lease, or mortgage real estate without specifying that the executor must obtain a fair market value," the "failure to specify the duty to obtain the fair market value does not change the fact that the executor has the legal duty to do so." In general, Adverse Respondents suggest, an executor who has a good reason for selling estate property below fair market value always "has options to sell at lower prices (although they face a surcharge claim if the beneficiaries object)." Adverse Respondents argue that this case is no different, because "Section 2032A neither removes the legal duty of the executors to obtain the best price for the farm, nor does it create a unique option putting [Delmar] in a position different from any other executor"; this is especially problematic, they claim, because Delmar "is a co-executor with fiduciary duties to the Estate" and is "putting himself in the position of benefitting himself at the expense of his brother and sisters by purchasing the farm at below market value, which is exactly what the court in *Chiswell* rejected."[28] Adverse Respondents ultimately suggest that "[t]he fact that [Delmar] has the ability to purchase the property at below market value does not mean that he is granted the legal authority to do so."[29]

[28] In *Chiswell*, 150 A. 90, the decedent died with 400 shares of a railroad company each ostensibly worth $50. The administrator of the decedent's estate purchased these 400 shares at public auction for a *total* of $30, and distributed portions of it to attorneys involved in the estate's administration, keeping some for himself. The Supreme Court of Pennsylvania had no difficulty concluding that "[t]he impropriety of… [the] administrator of the estate… buying the stock at a nominal price and… parceling it out, is manifest." This was especially true in light of the fact that the administrator and attorneys knew that the 400 shares represented 100% of the ownership interest in the company – which had assets worth hundreds of times the purchase price of $30 – but had not publicly disclosed this fact prior to the sale.

[29] Emphasis in original.

Finally, Adverse Respondents contend that parol evidence is not required because the Will is unambiguous, but if the Court hears such evidence it does not support Delmar's position. The essence of Adverse Respondents' claim in this regard is that any evidence of Decedent's intent that the Stugart Farm remain in the family does not shed light on the price at which Decedent intended such an intra-family transfer to occur. Adverse Respondents generally dispute the other evidentiary contentions made by Delmar.

LEGAL PRINCIPLES

The parties have cited numerous cases to elucidate the background principles governing this Court's decision. The parties generally agree about the existence of these principals; rather, their disagreement concerns which principles are implicated by the factual circumstances of this case and how those principles apply to the facts as alleged. A summary of these background principles is necessary.

A. Interpretation of Wills Generally

The general rules guiding courts in the interpretation of wills were well settled over 50 years ago:

> "It is now hornbook law (1) that the testator's intent is the polestar and must prevail; and (2) that his intent must be gathered from a consideration of (a) all the language contained in the four corners of his will and (b) his scheme of distribution and (c) the circumstances surrounding him at the time he made his will and (d) the existing facts; and (3) that technical rules or canons of construction should be resorted to only if the language of the will is ambiguous or conflicting or the testator's intent is for any reason uncertain."[30]

In following these rules:

> "[T]he primary goal of the construing court is to effectuate the intent of the testator. In order to ascertain testamentary intent, a court must

[30] *In re Houston's Estate*, 201 A.2d 592, 595 (Pa. 1964).

> focus first and foremost on the precise wording of the will, and if ambiguity exists, on the circumstances under which the will was executed. The words of a will are not to be viewed in a vacuum, and specific words or phrases will be rejected when they subvert or defeat the testator's whole testamentary scheme and divest the bounty from those whom he obviously intended to benefit."[31]

A court must scrupulously avoid rewriting a will if the testator's intent is clear and lawful: "it is not what the Court thinks he might or would or should have said in the existing circumstances, or even what the Court thinks he meant to say, but what is the meaning of his words" that controls.[32] A court is required to "give effect to word and clause where reasonably possible so as not to render any provision nugatory or mere surplusage. Further, technical words must ordinarily be given their common legal effect as it is presumed these words were intentionally and intelligently employed…."[33] The "technical rules or canons of construction" available to courts "should be resorted to only if the language of the will is ambiguous or conflicting or the testator's intent is for any reason uncertain."[34] In this regard, the Supreme Court of Pennsylvania has stated:

> "[T]he Courts will uphold, carry out and require enforcement of every valid will and every provision thereof, in compliance with testator's intent as therein expressed, unless the will or a challenged provision thereof is unlawful or unconstitutional or against public policy. The fact that a testator makes a gift or gives powers or rights or provides duties or obligations or conditions or limitations which a disappointed heir or even a Court believes were and/or are inequitable or unwise or unjust or foolish, is no justification for invalidating or changing or shackling [the] testator's clearly expressed wishes and intent, or rewriting his will or any part or provision thereof… One possessed of testamentary capacity, who makes a will in Pennsylvania, may die with the justifiable

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[31] *Murphy v. Karnek*, 160 A.3d 850, 861 (Pa. Super. 2017) (internal citations omitted).
[32] *Houston*, 201 A.2d at 595.
[33] *In re Estate of Rider*, 711 A.2d 1018, 1021 (Pa. Super. 1998).
[34] *In re Estate of Tscherneff*, 203 A.3d 1020, 1024 (Pa. Super. 2019) (emphasis in original).

> conviction that the courts will see to it that his dispositions, legally made, are not departed from or improperly defeated."[35]

Generally, the executor of an estate who is implementing a decedent's testamentary intent as expressed in a will owes a fiduciary duty to at the very least "use the common skill, prudence, and caution that a prudent man, under similar circumstances, would employ to manage his own estate," including a duty to "obtain the highest price available for an asset of the estate," and may not engage in self-dealing.[36] In the absence of fraud, accident, or mistake, however, such duties will not defeat a testator's clear intent as expressed unambiguously in a provision of a will, even if the beneficiary of that provision is an executor who otherwise owes a fiduciary duty to the estate.[37]

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[35] *In re Meyers' Estate*, 206 A.2d 37, 38-39 (Pa. 1965).

[36] *In re Estate of Gordon*, 511 A.2d 869, 871 (Pa. Super. 1986); *Meyers*, 206 A.2d at 38; *see Chiswell v. Campbell*, 150 A. 90 (Pa. 1930).

[37] *Meyers,* 206 A.2d 37. In *Meyers*, the decedent's will granted co-executor Davis the option to purchase real estate, and specified the manner of setting the price: co-executor Davis was to choose an appraiser; co-executors Hileman and Goulstone were to choose an appraiser; these two appraisers were to choose a third; and the appraisers (or a majority of them) were to "fix a fair and just value upon" the real estate, which was to be the option price. The co-executors undertook this procedure as specified, and the appraisers fixed the value of the real estate at $24,000. When co-executor Davis attempted to exercise his option and purchase the property for $24,000, the other co-executors refused, having received an offer of $34,100 on the property. Co-executor Davis sued to effect the conveyance, and the other co-executors argued "that Davis' exercise of his option under these circumstances would constitute (1) improper self-dealing by a fiduciary, and (2) a violation of his fiduciary duty as an executor to the other residuary legatees to obtain the highest price available for an asset of the estate." The Supreme Court of Pennsylvania noted that "[t]he general principles advanced by appellants, which prescribe the duties owed by a fiduciary, are sound." Nonetheless, the Court had no difficulty holding that those principles did not apply to the issue before it, as the decedent "provided in the clearest language the mechanics and the persons (1) who were to determine the fair and just value of the property and (2) who was to have the option to buy the property, and at what price." Thus, the Court concluded, "[i]n the absence of fraud, accident or mistake, neither the executors nor the Court can disregard or void testatrix's clearly expressed intent."

Ultimately, the foundational principle underlying each of these cases – and guiding this Court – is if the will contains a clear expression of the decedent's testamentary intent, then the Court must make every effort to give effect to that intent subject only to the constraints of impossibility, illegality, and unconstitutionality. In such a case, an analysis of the fairness, wisdom, or sensibility of an otherwise clearly stated disposition is inappropriate and the Court must not search outside the four corners of the will to cast doubt upon a provision that is clear. However, if – and only if – the testator's intent is ambiguous as expressed in the four corners of the will, the Court may look to extrinsic evidence and technical rules of construction to ascertain the decedent's intent.

B. Ambiguity

As discussed above, "[a]n ambiguity in a will must be found… before extrinsic evidence is admissible" to determine a Decedent's intent.[38] "[T]he test for ambiguity is whether the testator's intent is uncertain, given the language of the will and the surrounding circumstances."[39] The Superior Court has summarized the different types of ambiguities and the ways a court may resolve them:

> "There are two types of ambiguity: patent and latent. This court has described the difference between patent and latent ambiguity as follows.
>
> > A patent ambiguity appears on the face of the [document] and is a result of defective or obscure language. A latent ambiguity arises from collateral facts which make the meaning of a written [document] uncertain, although the language appears clear on the face of the [document]. To determine whether there is an ambiguity, it is proper for a court to hear evidence from both parties and then decide

[38] *Tscherneff*, 203 A.3d at 1024.
[39] *In re Estate of Schultheis*, 747 A.2d 918, 926 (Pa. Super. 2000).

> whether there are objective indications that the terms of the document are subject to differing meanings.
>
> Where a latent ambiguity exists we have repeatedly held that parol evidence is admissible to explain or clarify the ambiguity, irrespective of whether the latent ambiguity is created by the language of the Will or by extrinsic or collateral circumstances. Where a latent ambiguity exists, the court may resort to parol evidence (such as testimony of the scrivener) to determine the decedent's true intent. One limitation to the foregoing is that extrinsic evidence of surrounding facts must only relate to the meaning of ambiguous words of the will. It cannot be received as evidence of testator's intention independent of the written words employed."[40]

A latent ambiguity occurs when a will "does not contain inherently defective or obscure language" but is susceptible to multiple potential interpretations "when extrinsic circumstances" not addressed in the will "are taken into account."[41]

In *In re Estate of Schultheis*, Article III of the decedent's will contained a provision stating "I give my shares of [PNC Bank] stock… as follows," and listed eight separate beneficiaries; five beneficiaries were given 100 shares each, one was given 200 shares, one was given 400 shares, and one was given 945 shares, for a total of 2,045 shares.[42] The will also contained the following provision:

> "If there shall be any change of capital structure of [PNC Bank] after the date of this will which effects [sic] the number of shares I own or am entitled to, I direct that the total number of shares owned by me at my death shall be allocated and distributed to the beneficiaries listed in [Article III] in the same ratio or proportion as the shares are presently distributed…."[43]

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[40] *Id*. 923 (*citing In re: Estate of Beisgen*, 128 A.2d 52 (Pa. 1969) and *Krizovensky v. Krizovensky*, 624 A.2d 638 (Pa. Super. 1993)) (internal citations omitted).
[41] *Schultheis*, 747 A.2d at 923.
[42] *Id*. at 920.
[43] *Id*.

The will also explicitly named two residual beneficiaries, who were to receive "all property… not otherwise effectively disposed of…."[44] Following the decedent's death, the executrix of his estate discovered that the decedent actually owned 3,288 shares of PNC Bank stock rather than the 2,045 he had disposed of in his will.[45] After the executrix filed a proposed distribution resulting in "the additional 1,243 shares [being] distributed *pro rata* to the Article III beneficiaries," the residual beneficiaries objected, arguing *inter alia* that "the additional shares belong in the residuary estate…."[46] The residual beneficiaries argued that, although the will contemplated *pro rata* distribution of additional shares, such distribution was allowed "under only one condition: a change in the stock structure of PNC Bank, which never took place."[47]

The orphans' court held an evidentiary hearing, at which the decedent's attorney testified that "the decedent convinced [the attorney] that the decedent owned only 2,045 shares" of PNC Bank stock, and although the attorney "asked for the stock certificates… the decedent did not have them."[48] The attorney "testified that he used the words 'my shares of stock' to describe the 2,045 shares in Article III because 'it was my understanding from talking to him, that he only owned 2,045 shares, and it was his intention to give away all the stock that he had in PNC to the designated beneficiaries in Article III.'"[49] The executrix then testified that:

> "[s]he helped the decedent fill out a form to obtain replacement certificates; however, she does not remember the number of shares

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[44] *Id*.
[45] *Id*.
[46] *Id*.
[47] *Id*. at 922.
[48] *Id*. at 921.
[49] *Id*.

> that she listed on that form. She was not aware of the number of shares that he listed in his will. PNC Bank mailed replacement certificates to the decedent, who placed the **unopened** envelope in a safety deposit box. The executrix found the unopened envelope in the safety deposit box after the decedent's death."[50]

Following the evidentiary hearing, the orphans' court approved the proposed accounting. The residuary beneficiaries appealed, arguing broadly that the orphans' court's interpretation of the will was erroneous, and more specifically that the court "err[ed] when it determined the will [was] ambiguous" because it "expressly and unambiguously grants 2,045 shares to the Article III beneficiaries," and "if the decedent had intended to give away **all** of his shares to the Article III beneficiaries, he could have done so by reference to percentages of his total holdings… rather than by reference to specific numerical amounts."[51]

The Superior Court of Pennsylvania affirmed the orphans' court's approval of the proposed accounting. First, the Court concluded that the will contained a latent ambiguity, finding that "the phrase 'I give my shares of stock… as follows' is ambiguous, because it is unclear whether this phrase refers to only 2,045 shares or to **all** of the stock owned by the decedent at the time of his death."[52] Having found the will ambiguous, and thus that the orphans' court had not erred in considering parol evidence, the Superior Court concluded that "the decedent intended the phrase to mean all of the stock that he owned." The Superior Court based this conclusion on several factors:

> "First, the phrase 'I give my shares of stock… as follows' gives the impression that the decedent intends to bequeath **all** of his stock in the manner described. Next, the will expressly grants stock only to the

[50] *Id*. (emphasis in original).
[51] *Id*. at 922 (emphasis in original).
[52] *Id*. at 923 (emphasis in original).

> Article III beneficiaries and not to any other beneficiaries or to the residuary estate. This fact supports the conclusion that the Article III beneficiaries are the only parties entitled to stock under the will. Third, Article III states that in the event of a change in the capital structure of PNC Bank which results in a change in the number of shares the decedent owns, the Article III bequest shall be adjusted proportionally. Thus, Article III suggests an intent to grant all shares to the Article III beneficiaries in the proportions suggested by the list. Finally, we note that the decedent owned different classes of stock at the time of his death. Article III does not specify whether the beneficiaries are to receive common stock, preferred stock, or some combination of the two. Accordingly, the fact that the decedent listed 2,045 shares in Article III could simply reflect a **mistaken understanding** that he owned 2,045 shares, rather than an **express intent** to grant only 2,045 shares to the Article III beneficiaries."[53]

It is clear from *Schultheis* and the other cases discussing latent ambiguities that the Court may resolve a latent ambiguity, if one exists, by looking to the language utilized in a will, the testamentary scheme, the circumstances surrounding the drafting of the will and any particular provision therein, and any other factual circumstances relevant to the decedent's intent.

C. Conditional Devises and Lapse

The Adverse Respondents argue, in the alternative to their primary contention that the Will is unambiguous, that the failure to file a Federal Estate Tax Return renders the pricing language of Paragraph 4 of the Will moot. In other words, the Adverse Respondents argue that the filing of a Federal Estate Tax Return is a condition precedent to the setting of the purchase price, and because the Estate did not file a return the Will is effectively silent regarding how the Stugart Farm is to be valued.

[53] *Id*. at 924 (emphasis in original).

Pennsylvania courts have long held that a decedent may impose conditions precedent or subsequent on any distributions in their will:

> "A condition is defined to be any qualification, restriction, or limitation annexed to a gift, and modifying or destroying essentially its full enjoyment and disposal. Conditions on which estates are limited in wills may be precedent or subsequent. If precedent, the estate does not vest until the condition is fulfilled. If subsequent, it is liable to be divested on the subsequent failure of the condition. A condition precedent must be strictly, literally, and punctually performed. It may be valid although there is no ulterior limitation of the estate to which it is annexed. In construing a particular provision of a will, the intention of the devisor to create an estate on condition governs, but it must be manifested in express terms, or by clear implication, and it is to be gathered from the whole instrument and the existing facts."[54]

It is possible for a latent ambiguity to exist as to whether a will contains a condition precedent. In *In re Bloch*, the decedent's will granted certain personal effects and her residuary estate to "Charles E. Shoemaker, Sr. and Cheryl Passaro, in equal shares, who have agreed to care for my [spouse] and myself for as long as we each shall live, utilizing any or all of such property for this purpose, and who have agreed to care for my dog and cats for as long as said shall live."[55] After her death, the decedent's siblings sought to invalidate any distribution to Shoemaker and Passaro on the grounds that, *inter alia*, the language of the will indicating Shoemaker and Passaro had "agreed to care for" decedent's spouse, decedent, and decedent's pets during their lifetimes "utilizing any or all of such property for this purpose" created a condition precedent that Shoemaker and Passaro had not fulfilled.[56]

The orphans' court held a hearing and took evidence, at which time Shoemaker and Passaro did not dispute that they had in no manner provided care to

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[54] *Adams v. Johnson, et al.*, 76 A. 174 (Pa. 1910).
[55] *In re Bloch*, 625 A.2d 57, 59 (Pa. Super. 1993).
[56] *Id*. at 61.

the decedent, her spouse, or her pets during their lifetimes. The evidence showed that Shoemaker and Passaro "learned for the first time while attending [the decedent's] funeral that they were included in [her] will."[57] The attorney who drafted the will[58] also testified, explaining:

> "My understanding was that… [the decedent and her husband] both, and independently, wished to leave the residuary of their estates, in the event that the other was dead, to [Shoemaker and Passaro]. And… when there are existing family members, that was so unusual that I asked for an explanation of why that was so. And the language [referring to "care"] was my attempt to explain why it was that [Shoemaker and Passaro] were named as the beneficiaries."[59]

The attorney further testified that he "ascertained from [the decedent and her husband] that there was no contractual obligation by [Shoemaker or Passaro] to do anything," and that "[o]n the contrary, the [attorney] had used the language ('agreed to care for') to explain their *motivation* for wanting to make the gift to [Shoemaker and Passaro]."[60]

The Superior Court first held that the will contained a latent ambiguity as to the existence of a condition precedent, because "nowhere did the [decedent] make provision for an avoidance of intestacy had [Shoemaker and Passaro] failed to comply with the article in the will referencing the 'care' to be provided to herself and her animals."[61] The Court noted that the decedent was clearly aware of what a conditional clause consisted of (since one appeared elsewhere in her will), but she

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[57] *Id*. at 60.
[58] The attorney who drafted the decedent's will was Shoemaker's son, and was hired by the decedent at Shoemaker's recommendation; the Superior Court separately considered and rejected the argument of the decedent's siblings that the will should be invalidated on the basis of undue influence.
[59] *Bloch*, 625 A.2d at 62.
[60] *Id*.
[61] *Id*. at 61.

"took no measure to state in specific, clear and unequivocal terms that a condition ('if, then') existed to [Shoemaker and Passaro] under her… will."[62] In light of the evidence presented, the Superior Court ultimately affirmed the orphans' court's approval of the distribution to Shoemaker and Passaro, providing a helpful explanation of the appropriate procedure of the orphans' court in resolving a latent ambiguity concerning a possible condition precedent:

> "We cannot deny the fact that the phraseology utilized by the scrivener ('agreed to care for') was less than clear in expressing the testatrix' intention to make [Shoemaker and Passaro] the 'unconditional' beneficiaries of her estate. As such, the Orphans' Court acted properly in examining the four corners of the [decedent's] will… and the existing facts in ascertaining the true intention of the testatrix.
>
> In the course of determining the intention of the testatrix, the scrivener of the will… testified, in unequivocal terms, to the purpose sought to be achieved by the testatrix: devise her assets to non-blood relations ([Shoemaker and Passaro]) to the exclusion of her blood relatives (brother, sisters and nephew).
>
> Because the Orphans' Court judge saw and heard the witnesses for both sides, he was in a much better position to determine the credibility of the witnesses to explain away the latent ambiguity. We, therefore, conclude that the testatrix did not wish to change or abrogate her [will], and that under its terms and conditions hereinbefore recited, [Shoemaker and Passaro] are entitled to all of her residuary estate."

If a will contains a condition precedent to a particular devise – either facially or after the resolution of any ambiguity – then that condition precedent must be strictly satisfied, and a failure to do so will cause the devise to lapse.[63] In *In re Thompson's Estate*, the decedent left real estate and machinery to three beneficiaries "conditioned upon the formation of a partnership within one (1) year after my death… by the three [beneficiaries]… [t]o continue the business, conducted by my brothers

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[62] *Id*.
[63] *See In re Thompson's Estate*, 155 A. 925 (Pa. 1931).

and myself, under the name of 'Thompson Brothers….'"[64] One of the three named beneficiaries was 15 years old when decedent died, and his guardian refused to consent to his entry into the proposed partnership, and a year went by without the partnership being formed.[65]

The Supreme Court of Pennsylvania held that this language unambiguously created a condition precedent, because the requirement that the three beneficiaries form a partnership "was inseparably annexed to the gift and not a limitation on its enjoyment".[66] The Court held that the failure to form the partnership within one year defeated the gift as to all three beneficiaries, and rendered the specified property part of the decedent's residual estate, despite the fact that "the two adult beneficiaries were ready and tried to create the partnership" and "the failure to establish the partnership was through no fault of theirs."[67] As the Court explained, "[w]hen the testator made the bequest on the condition that the three form a partnership, he

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[64] *Id*. at 926.
[65] *Id*.
[66] *Id*. In other words, the will did not say "my estate shall go to the three beneficiaries, who *must then* use the estate funds to carry on the Thompson Brother's business," which would have created a condition subsequent. Rather, the will made clear that the beneficiaries were to receive the decedent's estate *only if* they formed a partnership within a year. The Court further noted that "[t]he time for performance of the condition here being definitely limited to one year is a circumstance indicating that it is a condition precedent. Whereas, the fact that the time of performance is indefinite leads to the opposite conclusion" that a provision is a condition subsequent.
[67] *Id*. at 927. The Court suggested its analysis may have been different had a question existed as to whether the minor's guardian acted in good faith in refusing to permit him to join the proposed partnership. However, the Court explained that the guardian – the Harrisburg Trust Company – believed in good faith that allowing a 15-year-old to enter a business partnership in the midst of "the depressed economic conditions" then prevalent would subject the minor to far greater potential liability than profit, especially given that Thompson Brothers "had been running at a loss during the last years of [the decedent's] life…."

placed it in the power of one of them to defeat the gift by refusing to join therein. So long as the disposition is lawful, a testator may do as he likes with his property."[68]

If a condition on a devise in a will is a condition subsequent, rather than a condition precedent, then the devise shall be effected but is subject to divestment should the condition subsequent not be satisfied.[69] A classic example is a devise of estate property to a beneficiary, with the condition that the beneficiary utilize that property to accomplish a certain task (such as providing housing and medical care to a family member of the decedent). Unlike a condition precedent, a condition subsequent will generally not fail due to impossibility when the impossibility is through no fault of the beneficiary.[70]

D. Options in Wills

One of the myriad ways in which a testator may legally dispose of their property is by granting a particular person an option to purchase that property.[71] When a will clearly sets an option price or clearly specifies a method to determine the price, the option-holder may purchase the property at that price even if the estate has received a higher offer for the property and the option-holder is an executor of the estate.[72]

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[68] *Id*.
[69] *In re Wachstetter's Estate*, 216 A.2d 66, 69 (Pa. 1966).
[70] *See id*. In *In re Wachstetter's Estate*, the decedent left her entire estate to a nursing home, "absolutely, with the understanding that [the estate] shall be used for the care and keep of [her] beloved husband… as long as he may live." The decedent's husband, however, predeceased her by 40 days. The Supreme Court of Pennsylvania affirmed the lower court's holding that "the 'understanding' clause… was a *condition subsequent*, and that the [nursing home's] inability, because of the prior death of [the decedent's] husband to perform the aforesaid condition of caring for and keeping her husband as long as he lived, did not invalidate the absolute legacy which she had given to the [nursing home]."
[71] *See, e.g., Meyers*, 206 A.2d 37.
[72] *Id.*; *see fn. 37, supra*.

Delmar cites *In re Yarnall's Estate* as highly analogous to this case; Adverse Respondents find its applicability dubious in light of the principle that the specific language of any particular testamentary instrument is the primary guiding force in any given case. In *Yarnall*, the decedent's will contained the following provision:

> "I hereby direct that [my son Edson] shall have the opportunity of purchasing [my 81-acre farm] at the price set for Pennsylvania Transfer Inheritance Tax purposes within twenty (20) days after said appraisement is made by the inheritance Tax appraiser. My son shall notify my Executors, in writing, within said period whether or not he desires to purchase said real estate at said price. If my son fails to give such notice or does not desire to purchase said real estate my Executors are hereby authorized to sell and dispose of said real estate at public or private sale."[73]

The executors of the decedent's estate filed an inventory placing the value of the farm at $81,000, but approximately seven months after the decedent's death the Chester County inheritance tax appraiser filed an appraisal valuing the farm at $125,000.[74] One of the executors appealed the tax appraisal, and the Inheritance Tax Protest Board sided with the executor "and determined that the value of the farm, for inheritance tax purposes, was $81,000. Within twenty days of this decision, Edson… notified the executors of his desire to exercise his option to purchase the property."[75] Edson and Eugene, another beneficiary, filed dueling motions in the orphans' court: Edson asked the Court to direct the estate to sell him the farm for $81,000, and Eugene asked the Court to set aside the Inheritance Tax Protest Board's decision and value the farm at $125,000.[76] Eugene contended that the "intent of the testator, as expressed in his will, was to avoid appeals and the

[73] *Yarnall*, 364 A.2d at 923-24.
[74] *Id*. at 924.
[75] *Id*.
[76] *Id*.

consequent delay in liquidation of his estate by investing the inheritance tax appraiser with the sole power to set the option price of the farm property."[77]

The Superior Court, after reviewing *Meyers* and *Breisch Estate*,[78] first noted that "[i]t is clear, from the will, that testator intended to favor his son, Edson… with an option to purchase the… farm, while the residue of the estate fell to his surviving issue…."[79] The Court held that, "[h]aving reviewed all the language of the will we cannot agree… that testator desired to foreclose attack on the valuation made by the inheritance tax appraiser."[80] This was because, although "[t]he will clearly states that the option price is to be that set for Pennsylvania Transfer Inheritance Tax purposes… it does not provide, in so many words, that that price is to be finally determined by the inheritance tax appraiser."[81] The Court found relevant that the will "did not identify [an] appraiser by name… or otherwise demonstrate reliance on the appraisal of a particular individual," and the testator "did not attempt to insure a just and fair valuation which would satisfy both the optionee and himself. Participation of the executors and the optionee in the selection of the appraiser was not provided for and confidence in the result to be reached by the inheritance tax appraiser was not expressed."[82] Thus, the Court concluded, "the testator left the decision as to the

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[77] *Id*.
[78] *Meyers*, 206 A.2d 37; *Breisch Estate*, 51 Pa.D. & C.2d 725 (C.P. Montgomery County, 1970). As summarized by the Superior Court, in *Breisch*, "[u]nder the will in question, an optionee was given the opportunity to buy certain properties 'at appraiser's figures (by Sandford Alderfer, Auctioneer),…' The lower court held that, in light of the specific language of the testator, the appraisal arrived at by the appraiser named in the will was unchallengeable in the absence of fraud or other impropriety."
[79] *Yarnall*, 364 A.2d at 926.
[80] *Id*.
[81] *Id*.
[82] *Id*.

finality of the inheritance tax appraiser's valuation in the hands of the interested parties. The appeal taken to the Protest Board was not foreclosed by the will and the Board's reappraisal of the farm is properly the option price under the terms of the will."[83] For this reason, Edson's exercise of his option within twenty days after the Inheritance Tax Protest Board reversed the appraiser's decision was valid, even though it was not "within twenty (20) days after said appraisement is made by the inheritance Tax appraiser" as the exact language of the will specified, because the testator "allowed for appeal and obviously intended that notice be given after the price was settled."[84]

E. 26 U.S.C. §2032A

In addition to the typical principles underlying the interpretation of wills, this case also involves 26 U.S.C. §2032A, the provision of Chapter 11 (Estate Tax) of the federal Internal Revenue Code titled "Valuation of certain farm, etc., real property." Section 2032A reads in relevant part:

> "**(a) Value based on use under which property qualifies.—**
> **(1) General rule.** … for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.
> …
>
> **(b) Qualified real property.—**
> **(1) In general.**—For purposes of this section, the term 'qualified real property' means real property… which was… passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family….[85]

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[83] *Id*.
[84] *Id.* at 926.
[85] Subsection (b)(1) contains a number of qualifications relating to the proportional value of the property and estate and the ownership history of the property. No party has suggested in its pleadings or briefings that the Stugart Farm fails to satisfy these requirements (*but see fn. 91*, *infra*).

> **(2) Qualified use.**—For purposes of this section, the term 'qualified use' means the devotion of the property to… use as a farm for farming purposes….
>
> …
>
> **(c) Tax treatment of dispositions and failures to use for qualified use.—**
>
> **(1) Imposition of additional estate tax.**—If, within 10 years after the decedent's death and before the death of the qualified heir—
>
> **(A)** the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or
>
> **(B)** the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,
>
> then, there is hereby imposed an additional estate tax.[86]
>
> …
>
> **(d) Election; agreement.—**
>
> **(1) Election.**—The election under this section… shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.
>
> **(2) Agreement**.—The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property."[87]

In their brief, Adverse Respondents also cited the definition of "persons having an interest in the designated property" located in the Code of Federal Regulations, which states:

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[86] Subsections (c)(2) through (c)(8) govern when the additional tax applies and in what amount.

[87] 26 U.S.C. § 2032A. The statute goes on to provide the "method of valuing farms" to determine their Special Use Value. Here, the parties have stipulated that the Special Use Value Appraisal of the Stugart Farm may be entered into evidence to establish the Special Use Value of that farm under § 2032A.

> "An interest in property is an interest which, as of the date of the decedent's death, can be asserted under applicable local law so as to affect the disposition of the specially valued property by the estate. Any person in being at the death of the decedent who has any such interest in the property, whether present or future, or vested or contingent, must enter in to the agreement. Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants and holders of other undivided interests when the decedent held only a joint or undivided interest in the property or when only an undivided interest is specially valued, and trustees of trusts holding any interest in the property…"[88]

ANALYSIS

A. Clarification of Issues

The parties disagree about the intent of Decedent as expressed in her Will, specifically as it relates to the price at which Delmar may execute his option to purchase the Stugart Farm. Therefore, the Court must first determine whether the Decedent's Will contains an ambiguity, for if it does not, the Decedent's intent as clearly expressed in her Will controls.

If the Will contains an ambiguity, the Court must determine its nature and scope, as the existence of an ambiguity with respect to one provision of the Will does not necessarily create ambiguity with respect to the Decedent's other expressed intentions, even if they are related.

Once the Court has delineated the scope of the ambiguity, it will determine whether the ambiguity can be resolved as a matter of law, or whether additional proceedings are required to resolve the ambiguity.

[88] 26 C.F.R. § 20.2032A-8(c)(2). Regulation 26 C.F.R. § 20.2032A-8 details the requirements to make a Special Use Valuation election under 26 U.S.C. §2032A.

B. Claim of Ambiguity

Adverse Respondents claim "the language of the Will is unambiguous," because the Will clearly dictates that "the purchase price of the Stugart Farm shall be the value finally determined for Federal Estate Tax purposes…." Based on this contention, they urge the Court to determine that the Will sets the option price of the Stugart Farm at its fair market value. Conversely, Delmar disputes that the Will "unambiguously mandate[s] that [he] pay full fair market value to the Estate for his purchase of the Stugart Farm." Elaine likewise contends the Will is ambiguous.

The Court agrees with Delmar and Elaine, and finds that the Will contains a latent ambiguity. Adverse Respondents are correct that the Will, on its face, does not contain contradictory or missing terms, or other "defective or obscure language." This is sufficient to conclude that the Will does not contain a *patent* ambiguity. The absence of defective or obscure language, however, does not definitively foreclose the possibility of a latent ambiguity, which exists when "collateral facts… make the meaning of [a will] uncertain, although the language appears clear on the face of the [will]."[89]

This is precisely what has occurred here. The Will appears on its face to clearly set the option price of the Stugart Farm at "the value finally determined for Federal Estate Tax purposes." However, collateral facts – namely, the fact that the Estate did not file a Federal Estate Tax Return – have rendered the meaning of the provision setting the option price uncertain.

[89] *Schultheis*, 747 A.2d at 923 (*quoting Krizovensky*, 624 A.2d at 643).

The Superior Court has noted that "[t]o determine whether there is an ambiguity, it is proper for a court to hear evidence from both parties and then decide whether there are objective indications that the terms of the [document] are subject to differing meanings."[90] This case, however, is not one in which one party is arguing that a particular term in a will means something unusual in the specific context of the decedent's life circumstances. Here, the Will sets the option price at "the value finally determined for Federal Estate Tax purposes"; had a Federal Estate Tax Return been filed and accepted this phrase would have had one straightforward meaning, and a party seeking to challenge this interpretation of the phrase would have needed to present evidence to show it was susceptible to a different, non-obvious, interpretation. In the absence of the filing of a Federal Estate Tax Return, however, the provision setting the option price at "the value finally determined for Federal Estate Tax purposes" is *clearly* susceptible to multiple interpretations: it could express an intent that the option price be set at the value that *would have been* finally determined had a Federal Estate Tax Return been filed, or it could express an intent that in the absence of the filing of a Federal Estate Tax Return no price should be set.[91]

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[90] *In re Estate of Schultheis*, 747 A.2d 918.

[91] The Court notes that this case is in an uncommon posture. The parties and the Court have agreed to resolve many of the preliminary issues on the parties' pleadings and briefs, and these filings reference many allegations about which the parties clearly agree, such as the allegation that the Estate has not filed a Federal Estate Tax Return. The only actual evidence of record, however, consists of the various appraisals of the farms, admitted pursuant to the parties' Joint Stipulation. For the purposes of the issue currently before the Court – which is essentially the cross-motions of Adverse Respondents and Delmar for judgment on the pleadings – the Court will accept as true all uncontested allegations of fact, including that the Estate has never filed a Federal Estate Tax Return. As explained *infra*, however, this Opinion and Decree does not resolve all of the issues raised by the parties in their pleadings, and for the reasons discussed herein the Court believes an evidentiary hearing in this matter may be necessary. At any future evidentiary hearing in this

Because collateral facts not apparent on the face of the Will have rendered the provision setting the option price of the Stugart Farm susceptible to multiple potential meanings, the Court holds that the Will contains a latent ambiguity and thus Decedent's intent cannot be determined from the four corners of the Will alone. Thus, the Court must next evaluate the scope and effect of the ambiguity.

C. Scope of Ambiguity, Lapse, and Question of Condition Precedent

The ambiguity in the Will is clearly limited to the price at which Delmar may exercise his option to purchase the Stugart Farm. The provision of the Will granting this option reads:

> "I direct that my sons, DELMAR L. FINCK and BARRY E. FINCK or either of them, after both my husband and I have died, shall have an option to purchase any farms which I may own at my death. Such option shall be exercisable by a writing executed by either or both my said sons, binding either or both to purchase any or all of such farms and deliver [sic] to my personal representatives (or those of my husband, as the case may be) not later than three (3) months after their appointment."

This clear grant of an option to purchase does not mention price, and it is not tied in any way to the price at which either son may purchase any farm. The option contains only a single condition: Barry or Delmar must execute it in a writing delivered to Decedent's personal representatives within three months of their appointment. As in *Yarnall*, it is indisputable that Decedent intended Barry and Delmar to have the option to purchase any farm she owned at her death at *some* price. What that price should be is separate from the clear grant of the option.

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matter, the parties will need to establish their allegations, and any party may of course present evidence that contravenes any portion of another party's pleadings or assertions made in their briefs. Should any party present evidence that undermines this Court's rulings as expressed in this Opinion and Decree, the Court will reconsider its rulings in light of that evidence.

Additionally, the Will is silent on the *method* by which the value shall be "finally determined for Federal Estate Tax purposes," or *who* must make that determination. The Will does not specify whether the value is to be determined by an appraiser, the executors, the Internal Revenue Service, or otherwise, so long as it is "the value finally determined for Federal Estate Tax purposes." Thus, it is not clear from the face of the Will that a Federal Estate Tax Return must necessarily be filed before an option price can be set.

As such, the Court cannot conclude from the face of the Will that the failure to file a Federal Estate Tax Return necessarily means the option price of the Stugart Farm defaults to fair market value. Certainly, this is one possible interpretation. The Court cannot say with certainty, however, that this is the only possible interpretation as a matter of law. Therefore, the Court cannot conclude on the pleadings alone that the failure to this point to file a Federal Estate Tax Return causes the valuation provision of the Will to lapse, rendering the Will silent on the option price of the Stugart Farm, which may then cause the price to revert to fair market value as a matter of law.[92]

Similarly, the Court cannot conclude that the language of the Will created a condition, either subsequent or precedent, on the valuation provision. In other words, the Court cannot conclude on the pleadings that the filing of a Federal Estate Tax

[92] For similar reasons that should be apparent, the Court cannot conclude that the ambiguity should be resolved as a matter of law by setting the purchase price of the Stugart Farm at its Special Use Value. As the parties noted, Decedent could have easily tied the option price to fair market value, or Special Use Value, but chose to do neither, instead tying the purchase price to the value "finally determined for Federal Estate Tax purposes." There are many reasons Decedent may have chosen to do this. The Court will not evaluate the relative merits of any potential interpretation of this provision unless and until such an evaluation becomes necessary.

Return was a prerequisite to a purchase price being set, or that the Special Use Valuation of the Stugart Farm would somehow be rendered retroactively moot unless later ratified by the final acceptance of a Federal Estate Tax Return. This is not to say the Will did not *contemplate* the filing of a Federal Estate Tax Return or that filing a Federal Estate Tax Return would not be appropriate now. Rather, it is unclear that the language of the Will is sufficient to create a condition subsequent or precedent, as "the intention of the devisor to create an estate on condition… must be manifested in express terms, or by clear implication, and… is to be gathered from the whole instrument and the existing facts."[93] Here, the Will does not seem to create a condition by express terms; it contains no "if… then" statement, and does not direct anyone to file a Federal Estate Tax Return through the use of words such as "shall" or other imperative language. It does not set a timeframe, either before or after the exercise of the option, during which the Estate or any other party must file a Federal Estate Tax Return. The fact that the Will does not direct any party to file a Federal Estate Tax Return, however, does not answer the question of whether the filing of a Federal Estate Tax Return would aid the parties or the Court in resolving the ambiguity in the Will.

D. Resolution of the Ambiguity

Typically, the only way to resolve a latent ambiguity in a will is for the parties to present evidence in an attempt to piece together the decedent's intent, establishing the factual circumstances surrounding the drafting of the will in order to ascertain the meaning of the ambiguous language.

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[93] *Adams v. Johnson, et al.*, 7 A. 174. The principal expressed over a century ago in *Adams* is clear from *Bloch*, *Thompson*, and *Wachstetter*, each discussed above.

Here, though, the ambiguous language is the phrase "the value finally determined for Federal Estate Tax purposes." As the parties have noted, there is a readily available method to resolve that ambiguity: the filing of a Federal Estate Tax Return. The latent ambiguity in the Will arises from the fact that no "value" has been "finally determined for Federal Estate Tax purposes." If a value is finally determined, the ambiguity is resolved, at least in part and quite possibly entirely. For this reason, the Court will direct the Co-Executors of the Estate to file a Federal Estate Tax Return on its behalf.

Based on the parties' filings, the Court expects the Co-Executors will attempt to elect to value the Stugart Farm at its §2032A Agricultural Special Use Valuation as opposed to fair market value. To do so, they will need to satisfy a number of procedural requirements, including obtaining all signatures required by §2032A(d)(2). Presumably, Barry will refuse to sign off on this valuation and the Estate will submit the Federal Estate Tax Return without his signature, arguing that he is not a "person having an interest in the designated property" as defined in the Federal Code. Some form of collateral litigation may ensue to resolve this issue. After the Estate submits the Federal Estate Tax Return, the federal government will determine the value, for Federal Estate Tax purposes, of the Stugart Farm.

This will not necessarily be the end of the matter. As in *Yarnall*, the initial decision of the federal government may be susceptible to some form of review. Additionally, nothing facially precludes a party who disagrees with the federal government's valuation from arguing that the valuation does not fully resolve the ambiguity, and the parties may be entitled to present additional evidence in light of

any new information the parties learn through the Federal Estate Tax process. At the very least, the parties will need to present evidence at some point regarding whether Delmar has successfully exercised his option to purchase the Stugart Farm in accordance with the Will. Ultimately, though, the filing of a Federal Estate Tax Return is a straightforward way to resolve or greatly reduce the scope of the ambiguity, and the presence of an external valuation as contemplated by the Will will render the issues before the Court, and the parties' arguments, much more definite. Therefore, the Court directs the Estate to take this step prior to any final adjudication of this issue.

DECREE

For the reasons discussed above, the Court concludes that a latent ambiguity exists in Decedent's Will. Because this ambiguity can be partially or fully resolved by the filing of a Federal Estate Tax Return, the Court hereby DIRECTS the Co-Executors of the Estate, Elaine and Delmar, to file a Federal Estate Tax Return on behalf of the Estate within sixty (60) days of the date of this Decree. Elaine and Delmar should be prepared to account for any actions they take to prepare the Federal Estate Tax Return. The parties shall keep the Court apprised of the status of the Federal Estate Tax Return, and any party may file a petition for argument or hearing on any issues that arise. Following the final acceptance of the Federal Estate Tax Return, whatever the accepted value of the Stugart Farm may be, any party may petition the Court for a final adjudication of Delmar's request to set purchase price and authorize sale of real estate.

IT IS SO DECREED this 28th day of April 2022.

By the Court,

_____
Eric R. Linhardt, Judge

ERL/jcr
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