

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

ABIGAIL M. LEGROW  
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 11400  
WILMINGTON, DE 19801-3734

October 24, 2013

Dean A. Campbell, Esquire  
Law Office of Dean A. Campbell, LLC  
P.O. Box 568  
Georgetown, DE 19947

Susan Huesman Mitchell, Esquire  
Tunnell & Raysor, P.A.  
30 East Pine Street  
Georgetown, DE 19947

Blake W. Carey, Esquire  
The Smith Firm, LLC  
34634 Bay Crossing Boulevard, Suite A  
Lewes, DE 19958

James E. Deakyne, Jr., Esquire  
James E. Deakyne Jr., P.A.  
323D Rehoboth Avenue  
Rehoboth Beach, DE 19971

Re: *Damiano v. Damiano Estate, et al*  
C.A. No. 6396-ML  
(ROW No. F01232010JMD)

Dear Counsel:

I have reviewed the respondents' motions for partial summary judgment on count V of the petitioner's complaint. In count V, the petitioner, Christine Damiano ("Christine")<sup>1</sup> alleges that the decedent, Joseph Damiano (the "Decedent"), withdrew \$20,000 from his account two days before his untimely death and used those funds to obtain a treasurer's check payable to his father, Baptist Damiano ("Baptist"). Christine, who was the Decedent's wife, contends that the Decedent and Baptist agreed that Baptist would hold the funds in trust for the Decedent for a period of time, and would later return those funds to the Decedent. The respondents dispute that factual contention, but contend that any alleged agreement between the Decedent and Baptist is of no moment, because, upon issuance, the treasurer's check became an obligation of the issuing bank, payable to Baptist upon demand, and therefore is not an asset of the estate.<sup>2</sup>

Christine does not appear to contest the respondents' argument that a treasurer's check operates as an obligation of the issuing bank, much like a promissory note, and ordinarily is

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<sup>1</sup> I use certain parties' first names for the sake of clarity. No disrespect is intended.

<sup>2</sup> See *Polotsky v. Artisans Savings Bank*, 188 A. 63, 65-66 (Del. 1936); 12 *Del. C.* § 1901(c).

not an asset of the estate of the person who obtained the check. Christine instead argues that the question of whether an implied trust arose between the Decedent and Baptist is a disputed issue of fact that precludes entry of summary judgment. In other words, Christine contends that, whatever the typical legal effect of the issuance of a treasurer's check, the agreement between the Decedent and Baptist creates an implied or resulting trust over the funds, which trust is an asset of the Decedent's estate.

The factual issue of whether the Decedent and Baptist agreed that the funds would be held in trust precludes summary judgment in this matter. Even if the respondents are correct that a treasurer's check purchased by a testator before his death is not an asset of the estate, but instead a contract between the bank and the payee named on the check, the respondents have offered no authority that this rule overrides an agreement between two parties that the funds would be held in trust once paid by the bank. If Christine succeeds in establishing the existence of the implied or resulting trust at trial, the funds delivered by the treasurer's check will be treated no differently than any other delivery of property between a grantor and a trustee. The respondents have offered no authority that the manner of payment dictates whether or not a trust was formed.

The respondents offer two other arguments that they contend support summary judgment in this matter: (1) even if Christine establishes that the \$20,000 is an asset of the estate, she will receive no benefit from the funds because the debts of the estate exceed the estate assets by more than \$20,000; and (2) Christine's claim regarding the check is barred by laches. The first argument ignores the fact that other counts in Christine's amended complaint seek the return of other estate assets, the combined value of which may result in the estate's assets exceeding its debts. The respondents' laches defense is based on their contention that, although Christine filed her claim within the statute of limitations, it would be inequitable to allow her to maintain the claim because, in the time before the complaint was filed, the respondents used some of the funds to purchase a truck. Laches is a fact-based affirmative defense that often cannot be resolved short of trial.<sup>3</sup> The respondents' argument focuses on the third element of laches, prejudice, without addressing the other two elements, including whether Christine's delay in bringing the claim was unreasonable. Accordingly, even if the prejudice asserted by the respondents was sufficient to support the third element of laches,<sup>4</sup> the respondents have not demonstrated an absence of material fact with respect to the other elements of that defense.

For the foregoing reasons, I recommend that the Court deny the respondents' motions for partial summary judgment. This is my final report on the pending motions. The oral argument scheduled for tomorrow on the pending motions is cancelled. The parties are

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<sup>3</sup> See, e.g. *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 210 (Del. 2005).

<sup>4</sup> For the record, I remain deeply skeptical that the respondents' decision to spend part of the funds constitutes prejudice sufficient to support a laches defense.

instructed to stipulate within 30 days to a scheduling order that will bring this case to trial in an efficient and expeditious manner.

Very truly yours,

*/s/ Abigail M. LeGrow*  
Master in Chancery