Recent Virginia Cases of Interest to Fiduciaries

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Keith v. Lulofs, 2012 Va. LEXIS 82 (Va. Apr. 20, 2012)

Mirror image nature of wills not sufficient to establish irrevocable reciprocal wills.

Arvid and Lucy Keith were married in 1972. Arvid had a son named Walter from a previous marriage. Lucy had a daughter named Venocia from a previous marriage. Arvid and Lucy executed "mirror image" wills in 1987, each leaving all of his or her assets to the surviving spouse and if none to Walter and Venocia in equal shares. In 1994, Arvid and Lucy took out a joint life insurance policy with beneficiary designations following their testamentary plans.

Arvid died in 1996. Two months after Arvid's death, Lucy revised her will and life insurance beneficiary designation form to leave all of her assets to Venocia and nothing to Walter. Lucy died in 2006 and Walter challenged the probate of Lucy's revised will in the Newport News Circuit Court. Walter argued that Arvid and Lucy had made irrevocable reciprocal wills in 1987 that, by contractual agreement, barred Lucy from subsequently revising her will. Walter testified regarding conversations in which Arvid told him that the wills were irrevocable reciprocal wills. The circuit court held that Walter failed to prove that the 1987 wills constituted a binding contract upon Lucy, and Walter appealed.

On appeal, the Virginia Supreme Court affirmed the circuit court on the grounds that: (1) the contractual nature of wills between two testators must be proved by clear and satisfactory evidence; (2) the evidence may be supplied by the language of the instrument, witness testimony, or implication resulting from the circumstances surrounding the execution of the wills; (3) these wills did not indicate that they were irrevocable reciprocal wills and a will does not become irrevocable simply because it is drafted to "mirror" another testator's will; (4) the Virginia Dead Man's Statute barred the court from issuing a judgment in favor of Walter based on his uncorroborated testimony; (5) Walter did not provide any other evidence to corroborate his testimony regarding the contractual nature of the wills; and (6) therefore, Walter failed to provide sufficient evidence to show that Lucy was contractually bound to maintain her 1987 will.

Russell Realty Assocs. v. Russell, 2012 Va. LEXIS 79 (Va. Apr. 20, 2012)

Partnership judicially dissolved due to frustration of economic purpose from disagreement among partners.

In 1978, Charles Russell created a partnership called Russell Realty Associates to invest in certain assets, including commercial real property. By 1985, Charles had withdrawn from the partnership and the remaining partners were Charles' children, Eddie and Nina, as well as trusts for the benefit of Nina's children, Rob and Isham. The partnership agreement provided that the partnership was to be managed by all of the partners, but in the event of any disagreement between them Eddie's decisions would control.

Eddie conducted the partnership business and relations between Nina and Eddie became increasingly strained. As Eddie attempted to manage the partnership's business, conflicts between Eddie and Nina escalated. Nina increased her involvement in the partnership's management and frequently questioned or objected to Eddie's business management proposals or decisions. In 2008, Eddie filed suit in the Chesapeake Circuit Court seeking judicial dissolution of the partnership under Virginia Code § 50-73.117(5). Pursuant to that section, a court may dissolve a partnership if the "economic purpose of the partnership is likely to be unreasonably frustrated." The circuit court ruled that the deteriorated relationship between the partners was sufficient to frustrate the economic purpose of the partnership. Nina appealed.

On appeal, the Supreme Court of Virginia affirmed the circuit court on the grounds that: (1) the economic purpose of the partnership was to invest in certain properties and undertake these activities in an efficient and productive manner; (2) because of the distrust and disagreement between Nina and Eddie, the partnership failed to take advantage of several lucrative economic opportunities; (3) the conflicts also added substantial costs to business operations; and (4) therefore, the economic purpose of the partnership was likely to be unreasonably frustrated and the partnership should be dissolved.

Weedon v. Weedon, 283 Va. 241 (Va. Jan. 13, 2012)

Great weight given to testimony of drafting attorney and attesting witnesses sufficient to establish validity of deathbed will.

When Dorothy Weedon became ill in 2000, her daughter Mary Ann became her primary care-giver. In 2003, Dorothy contacted an attorney who prepared a will for Dorothy making a gift to her church and leaving the remainder of her property in various amounts to her five children, Larry, Perry, Billie, Gloria, and Mary Ann. By 2006, Dorothy's illness had progressed and Mary Ann quit her job to take care of her mother full time. In December of 2006, Dorothy had a quarrel with Billie, and thereafter in 2007 contacted her lawyer to prepare a new will eliminating all provisions for Billie. Other than eliminating the gifts to Billie, the 2007 will was similar to the 2003 will.

In 2008, Dorothy was admitted to the hospital for unplanned surgery and was informed by her doctors that she might lapse into a coma as a result of the surgery. Dorothy was given a number of pain medications and showed signs of confusion at times. Before the surgery, Dorothy contacted her lawyer to further revise her will. Dorothy spoke with her lawyer's assistant at length. During this conversation, Dorothy was adamant that she wanted to change her will to leave everything to Mary Ann and nothing to her other children. The assistant was confident that Dorothy was competent and relayed Dorothy's instructions to the lawyer who then drafted a new will. Dorothy executed the new 2008 will in the hospital in the presence of two disinterested witnesses and a notary public, and then died the next day.

Mary Ann probated the 2008 will. The other children contested the 2008 will on the grounds that (1) Dorothy did not have testamentary capacity to execute the 2008 will and (2) the 2008 will was the result of undue influence by Mary Ann. The circuit court held that the 2008 will was invalid and Mary Ann appealed.

On appeal, the Virginia Supreme Court reversed the circuit court and upheld the 2008 will on the grounds that: (1) great weight should be given to the testimony of the will's draftsman and witnesses; (2) although there was evidence that Dorothy was sometimes confused and disoriented during her hospital stay, the testimony of the lawyer, the lawyer's assistant, and the witnesses showed that Dorothy was lucid and competent at the time she requested the changes to the will and at the time she signed it; (3) with respect to undue influence, the ultimate determination is whether the influence was of such a character to control the mind and actions of the testator, and the influence must amount to coercion; and (4) although Mary Ann had a close relationship with her mother and that Dorothy had previously intended to leave bequests to her other children, Mary Ann's influence on her mother did not amount to duress and did not overtake her mother's free will.

Maretta v. Hillman, 283 Va. 34 (January 13, 2012)

Virginia statute on revocation of benefits incident to divorce is preempted by federal law for federal insurance policies.

In 1996, Warren Hillman named Judy Maretta, his wife at the time, as the beneficiary of a Federal Employees' Group Life Insurance (FEGLI) policy. Warren and Judy later divorced. In 2002, Warren married Jacqueline Hillman. Warren never changed his FEGLI beneficiary designation and died in 2008 while still married to Jacqueline. Judy filed a claim for and received the death benefits of the FEGLI policy. Jacqueline sued Judy in the Fairfax Circuit Court claiming entitlement to the death benefit.

Virginia Code § 20-111.1(A) statutorily revokes any revocable beneficiary designation for the benefit of a spouse in the event of a divorce. In addition, Virginia Code § 20-111.1(D) provides that if Virginia Code § 20-111.1(A) is preempted by federal law, a former spouse who receives a death benefit is personally liable for that amount to the person who would be entitled to it if not for the preemption.

In contrast to these provisions of the Virginia Code, the Federal Employees' Group Life Insurance Act (FEGLIA) directs that the benefits of a FEGLI policy are payable first to the designated beneficiary, or, if there is no designated beneficiary, to the insured's surviving spouse. FEGLIA also contains an express preemption provision stating that provisions of FEGLIA supersede and preempt all inconsistent state laws. The circuit court granted summary judgment to Jacqueline, finding that FEGLIA did not preempt Virginia Code § 20-111.1(D) and that Jacqueline was therefore entitled to recover the benefits from Judy under Virginia law.

On appeal, the Supreme Court of Virginia reversed the circuit court on the grounds that: (1) because Congress intended that FEGLI policy benefits should belong to the designated beneficiary, FEGLIA preempts the applicable Virginia Code provisions; (2) Judy, as the designated beneficiary, is entitled to the death benefit of the FEGLI policy; (3) because Virginia Code § 20-111.1(A) revokes the beneficiary designation upon divorce, it alters the order of precedence outlined in FEGLIA and therefore directly conflicts with its provisions; (4) as such, Virginia Code § 20-111(A) is preempted by federal law.

Unlike Virginia Code § 20-111.1(A), Virginia Code § 20-111.1(D) does not alter the direct payment of FEGLI benefits, but rather grants a third party the right to recover those benefits from the former spouse. Jacqueline argued that since the statute was not in direct conflict with the federal law, it should not be preempted. However, the Virginia Supreme Court held that Congress intended the benefits to *belong to* (and not merely be payable to) the designated beneficiary. Therefore, Virginia Code § 20-111.1(D) is preempted since it serves as an obstacle to the accomplishment of the federal statute's goals and frustrates the purposes of Congress. Under FEGLIA, Congress intended that no persons other than the designated beneficiary should have an interest in the FEGLI policy benefits. Since the federal statute preempts the applicable Virginia Code sections, Judy, the designated beneficiary, is entitled to the policy benefits and Jacqueline has no claim against Judy for the benefits.

Bell v. Casper, 282 Va. 203 (2011)

Slayer statute in effect on date of death, not date of murder conviction, applies to estate.

In 2009, Clayton Devoy Lynn was convicted of the 2005 murder of his mother, Collette Lynn Lockard. At the time of her death, Collette was survived by her son Clayton,

Clayton's children, Abigail and Jordan, and her mother, Lena. Under her will, Collette named her son as sole beneficiary and did not name contingent beneficiaries.

The Virginia slayer statute in effect at the time of Collette's death provided that neither Clayton (as the slayer under the statute by his criminal conviction) nor any person claiming "through" Clayton could acquire any property from Collette's estate. The Virginia slayer statute was modified in 2008 to provide that an heir who establishes kinship to the decedent by way of the slayer is deemed to be claiming "from" the decedent, and not "through" the slayer, and thus would be entitled to take property.

Abigail and Jordan sued for declaratory judgment that they were entitled to receive Collette's estate as her intestate heirs under the slayer statute in effect at the time of Clayton's criminal conviction in 2009. Lena claimed to be her daughter's sole heir under the slayer statute in effect at the time of Collette's murder. The circuit court held that Collette's estate was distributable to her mother Lena by operation of the slayer statute in effect at the time of Collette's murder.

On appeal, the Virginia Supreme Court affirmed the circuit court on the grounds that Collette's estate was governed by the slayer statue in effect on the date of Collette's murder, stating that "Virginia has long recognized that the law in existence on the date of a decedent's death governs the distribution of the decedent's estate."

Ott v. Monroe, 282 Va. 403 (2011)

Residuary bequest does not transfer membership interest in LLC.

Admiral Dewey Monroe, Jr. and his wife Lou Ann Monroe created a limited liability company in which they each owned membership interests, with Lou Ann as the managing member of the LLC. The LLC operating agreement provided that (1) "no Member shall transfer his membership or ownership, or any portion or interest thereof, to any non-Member person, without the written consent of all other Members, except by death, intestacy, devise, or otherwise by operation of law" and (2) "any Member . . . may transfer all or any portion of the Member's Interest at any time to . . . [o]ther Members [or] [t]he spouse, children or other descendants of any Member."

Dewey died and under his will gave his entire estate to his daughter, Janet. Janet asserted that under the will she was entitled to Dewey's membership interest in the LLC, and putatively removed Lou Ann as the managing member and elected herself as the new managing member. Lou Ann objected, claiming that Janet was entitled only to Dewey's right to share in the LLC's profits and losses. Janet sued for declaratory judgment that she inherited Dewey's full membership interest. The circuit court held that Janet was only entitled to Dewey's share of the profits and losses and not a membership interest in the LLC. Janet appealed.

On appeal, the Virginia Supreme Court affirmed the circuit court on the grounds that: (1) the Virginia Limited Liability Company Act expressly provides that an ownership interest in an LLC is divided into a control interest, which may not be unilaterally transferred, and a financial interest; (2) without becoming a member, an assignee of a financial interest in an LLC has no control interest; (3) Dewey did not have the authority under the Act to unilaterally convey his control interest in the LLC to Janet, and the terms of the operating agreement should not be so construed to grant that control; and (4) because Janet was not a member, she lacked the authority to remove the acting managing member and elect herself as managing member.

Derringer v. Emerson, 435 Fed. Appx. 4 (D.C. Cir. 2011)

Purported suit for guidance violates no contest clause.

Richard Solem created a revocable trust for the benefit, after his death, of his daughters and a charitable foundation. The trust agreement included a broad no contest clause. Richard later drafted a "modification" memorandum and a "summary" concerning the trust that purported to remove the daughters as both beneficiaries and successor trustees. Richard died after executing the modification and summary. A number of years later, Richard's daughters brought suit asking the court for "guidance and clarification", but asked the court to declare that the modification and summary did not effectively amend the trust and that they were still beneficiaries.

The federal district court, applying Virginia law, held that the daughters' suit was a contest to the trust that triggered the no contest clause, and was not merely a suit seeking interpretation and clarification of the trust terms. The court found that the relief requested was declaratory in name only and that, as such, the action violated the no contest clause because the daughters were effectively challenging the terms of the trust. The court further held that the contest to the trust was barred by the Virginia two-year statute of limitations. The daughters appealed, and on appeal, the U.S. Court of Appeals for the District of Columbia affirmed the district court's ruling on the grounds stated by the district court.

Kummer v. Donak, 282 Va. 301 (2011)

Adult adoption of parent bars intestate succession of children from parent's biological sister.

Justine Critzer died intestate in 2006. The administrator of Justine's estate determined that Justine's only possible heirs-at-law were: (1) the children of Justine's biological sister, Mary Frances Kummer; or (2) distant cousins. Mary, however, was adopted in 1981, at the age of 53, by her husband's aunt. The administrator petitioned the court for aid and direction on the proper heirs at law. The circuit court held that Mary's children were not Justine's heirs at law, and the children appealed.

On appeal, the Virginia Supreme Court affirmed the circuit court on the grounds that: (1) under Virginia Code § 64.1-5.1, an adopted child is deemed to be the child of the adopting parent and not of the biological parents; (2) upon her adoption as an adult, Mary ceased to be the child of her biological parents for purposes of intestate succession; (3) Mary was therefore no longer Justine's sister for intestate succession purposes; (4) under Virginia law, the adoption of an adult has the same effect as the adoption of a child; (5) the effect of Mary's adoption was that she and her descendents were divested of all intestate inheritance rights running from Mary's biological family; and (6) Mary's children were therefore not Justine's heirs at law and could not inherit from her intestate estate.

Schafer v. Astrue, 641 F.3d 49 (4th Cir. N.C. 2011)

Child born by reproductive technology more than 10 months after father's death not entitled to Social Security survivor benefits.

Shortly after his marriage in 1992, Don Schafer was diagnosed with cancer. Don deposited sperm samples in a storage facility and died a few months later, a resident of Virginia. Many years later, through the use of assistive reproductive technology, Don's surviving spouse, Janice, conceived and gave birth to Don's biological child.

Janice applied on the child's behalf to the Social Security Administration for survivorship benefits. The SSA rejected the claim for benefits because: (1) under its interpretation of the Social Security Act, a child must be able to inherit from the decedent under local intestacy law in order to be a "child" under the Act entitled to benefits; and (2) Virginia law does not recognize any child born more than ten months after the death of a parent for intestate succession purposes.

Janice filed suit in the U.S. District Court for the Western District of North Carolina asserting the child's right to benefits. The district court held that: (1) the SSA's interpretation of the Act was reasonable; and (2) because the child was not able to inherit under Virginia's intestacy law, the child was not Don's child for purposes of the Act and was not entitled to survivorship benefits. Janice appealed. On appeal, the U.S. Court of Appeals for the Fourth Circuit upheld the district court ruling and denied the child benefits.

Smack v. Smack, 81 Va. Cir. 22 (Va. Cir. 2010)

Trustee entitled to compensation notwithstanding negligent breaches of duty.

A father created a trust for the benefit of two brothers and their step-brother with the step-brother named as trustee. The step-brother, as trustee, borrowed money from the trust and did not pay interest on the loans, failed to file income tax returns for several years, made an imprudent investment in his employer's notes receivable, failed to create three separate trusts as provided in the trust declaration, comingled trust assets, and borrowed funds from a trust account with a negative balance.

The two brothers sued the trustee in the Norfolk Circuit Court for breach of fiduciary duty and seeking an accounting, damages, and other relief. The trustee sought collection of his trustee's fees. The circuit court ruled that the trustee was entitled to reasonable compensation, less payments to the trust for certain costs associated with his breaches of trust. While noting that a trustee who commits breaches of trust may forfeit his right to receive compensation, the circuit court held that because the breaches were merely negligent and not in bad faith, the trustee was entitled to reasonable compensation. However, the circuit court required the trustee to pay back into the trust certain charges, including interest on borrowed funds and funds that were comingled with his personal bank account, as well as refunding the trust account for interest charges resulting from his borrowing of funds from the account with a negative balance. These payments were subtracted from the compensation amounts to which the trustee was entitled.

Browder-Martin v. Meneses, 81 Va. Cir. 199 (Va. Cir. 2010)

Impermissible delegation of performance of personal services waives right to sue for breach of a contract to make a will.

In 1987, Nettie Browder Martin's elderly neighbor asked Martin and her husband to care for her for the duration of her life. In exchange, the neighbor made a will leaving her residence to Martin. Martin fulfilled her obligation to care for the decedent until 2004 when, after her husband's death, Martin moved away from the neighbor and ceased to serve as her primary caretaker. In her place, Martin's son and daughter-in-law provided full time care to the neighbor until the neighbor died in late 2009. Before her death in early 2009, the decedent executed a new will leaving the residence to her granddaughter instead of to Martin.

After the neighbor's death, Martin filed suit in the Norfolk Circuit Court seeking damages for breach of a parol contract to make a will. Martin argued that since her son and daughter-in-law continued to care for the neighbor in Martin's absence, Martin was still entitled to receive the residence under the contract to make a will.

The court concluded that Martin stopped performing the required services under the contract, and impermissibly delegated her responsibilities to her son and daughter-in-law. Noting that contracts for personal services are not assignable in Virginia until the services have been performed, the court held that Martin could not recover on the contract after delegating the responsibilities to others. Therefore, the neighbor did not breach the contract by executing a new will. The fact that other parties continued to provide care for the neighbor after Martin moved away did not entitle Martin to damages with respect to the contract.

Gunter v. Martin, 281 Va. 642 (Va. 2011)

Probate action does not bar by *res judicata* a claim to title to Virginia real property that is not part of the probate estate.

In 2005, Donald Gunter filed an action against Robbie S. Martin individually and in her capacity as administrator of the estate of George F. Martin. Gunter alleged that Robbie, the decedent's widow, filed an incorrect list of heirs as administrator indicating that she was the sole heir of the decedent and excluding Gunter, who claimed to be the decedent's biological child. The court granted Robbie's to dismiss the lawsuit because Gunter failed to file an affidavit of parenthood within one year of the decedent's date of death as required under Virginia law.

In 2009, Gunter filed an action in the Colonial Heights Circuit Court to quiet title to real property owned by the decedent at the time of his death, claiming that he was entitled to an interest in the property as the decedent's biological son. Robbie filed a plea in bar of *res judicata* based on the judgment of the 2005 action, arguing that Gunter's 2009 action was barred because all of the relief he sought was dependent upon the determination that he was a child of the decedent, a matter decided in the 2005 action. The court found in Robbie's favor on the grounds that both cases involve the same cause of action because they arise out of the same transaction or occurrence - the paternity status of the decedent. Gunter appealed.

On appeal, the Virginia Supreme Court reversed the circuit court decision and held that the 2009 quiet title action was not barred by *res judicata* on the grounds that: (1) Gunter did not seek the same remedy that he sought in the 2005 action; (2) in the prior action, Gunter sought relief as an heir to the decedent's estate, while in the 2009 action Gunter was seeking an interest in real estate that would have passed to him outside of the estate; and (3) therefore, the remedy sought in the two actions did not have the same identity and the second action was not barred.

Stevens v. Stevens, 59 Va. App. 274 (Va. Ct. App. Dec. 13, 2011)

Property purchased from a trust is marital property subject to division upon divorce.

In 2001, Danny Stevens's parents established a trust for the benefit of Danny and his three brothers. The parents then sold a piece of real property known as the "Farm" to the trust. Later, Danny and his wife jointly purchased the Farm from the trust for cash and a promissory note. Danny and his wife later paid off the promissory note using the proceeds from the sale of their current residence.

In Danny's subsequent divorce action against his wife in the Nelson County Circuit Court, Danny claimed that the Farm was separate property not subject to division since he received it as a gift or inheritance from his parents. Danny's wife claimed that the

Farm was marital property subject to division because Danny and his wife jointly purchased the Farm from the trust. The trial court ruled that the evidence showed that Danny and his wife purchased the Farm from the trust and, as such, Danny did not inherit the Farm by means of gift or bequest.

On appeal, the Virginia Court of Appeals upheld the circuit court's decision on the grounds that because Danny and his wife purchased the Farm from the trust, the Farm was owned jointly by Danny and his wife and was marital property subject to division upon divorce.

Riverside Healthcare Ass'n v. Forbes, 281 Va. 522 (2011)

Trust terms supersede the Uniform Principal and Income Act on allocation of eminent domain proceeds.

Sarah Forbes created an *inter vivos* trust and conveyed a certain parcel of real property located in Newport News to the trust. The trust terms instructed the trustee to distribute all of the trust net income Forbes during her lifetime. Upon Forbes' death, the remaining assets were to be distributed to Riverside Healthcare Association, Inc.

In 2008, the Commonwealth of Virginia acquired a portion of the trust property through eminent domain and paid compensation to the trust for the property taken. The trustee sought declaratory relief from the Newport News Circuit Court whether the eminent domain compensation should be deemed trust income distributable to Forbes or trust principal to be held for Riverside. The trust terms defined income as "all funds received from the rental of the trust property and/or generated from or by the trust property and/or any proceeds from the trust property." Under the Virginia Uniform Principal and Income Act (UPIA), in the absence of a contrary provision in the trust instrument a trustee is generally required to allocate the proceeds of property taken by eminent domain to principal.

The circuit court held that the eminent domain compensation should be deemed trust income under the terms of the trust instrument. Riverside appealed. On appeal, the Virginia Supreme Court affirmed the circuit court on the grounds that: (1) it was Forbes' intent that any assets derived from the trust property would constitute proceeds from the trust property; (2) under the trust terms, eminent domain compensation should therefore be considered trust income, and as such, would be distributable to Forbes; and (3) the trust terms supersede the provisions of UPIA.

Salazar v. US Bank NA, 82 Va. Cir. 344 (Va. Cir. Ct. 2011)

Tort action not permitted for purely contractual claims.

Gloria and Wilian Salazar owned a piece of real property in Lorton, Virginia subject to a deed of trust granting a security interest in the property to the Salazars' mortgage lender, GE Money Bank. In May of 2009, Equity Trustees was appointed as substitute trustee under the deed of trust. In June of 2009, when the Salazars allegedly became delinquent in mortgage payments, Equity Trustees initiated foreclosure proceedings. The Salazars filed suit in the Fairfax Circuit Court alleging two claims: (1) negligence as to Equity Trustees; and (2) a quiet title action. Equity Trustees filed a demurrer arguing that the Salazars failed to state a claim on both counts.

The circuit court sustained the demurrer as to the negligence claim on the grounds that: (1) Virginia law does not allow a plaintiff to plead a cause of action in tort with respect to duties that arise solely by virtue of a contract; (2) the negligence claim, a tort action, was based upon the alleged breach of fiduciary duties of Equity Trustees; and (3) because Equity Trustees owed fiduciary duties to the Salazars only based upon its contractual obligations under the deed of trust, the claim was in actuality based on contractual duties.

The court overruled the demurrer as to the quiet title action on the grounds that: (1) a plaintiff in a quiet title action must plead and prove that he possesses superior title to the property over the defendant; (2) in this case, the Salazars dispute that any debt is owed under the deed of trust because the deed of trust was never properly transferred; (3) if no debt is owed to the defendant, then the foreclosure would be invalid and the Salazars would possesses superior title; and (4) thus, the Salazars properly asserted a claim of superior title and the quiet title action was appropriate.

Sellman v. FloranceGordonBrown, P.C., 82 Va. Cir. 59 (Va. Cir. Ct. 2010)

Lack of privity defeats claim against counsel for Ponzi schemer.

Certain investors invested money with Donald Lacey and business entities owned by Donald Lacey in what turned out to be a Ponzi scheme. The law firm of FlorenceGordonBrown, P.C. and attorney David Bernhardt, provided legal representation and services to Donald Lacey and his business entities. After discovering that the investment was a Ponzi scheme, the investors filed suit in the Richmond Circuit Court against Bernhardt and the law firm alleging legal malpractice and fraud. The defendants filed a demurrer. The circuit court sustained the demurrer on the grounds that: (1) with respect to the legal malpractice claim, the plaintiffs failed to allege privity between the defendants and the plaintiffs; (2) the plaintiffs failed to identify any contract of which they were third-party beneficiaries; (3) since there was no privity between the law firm and the investors, and there was no allegation that Donald Lacey retained the law firm in order to bestow a benefit on the investors, the legal malpractice claim could not stand; (4) the plaintiffs also failed to allege with particularity the elements of fraud by the defendants; and (5) while the plaintiffs alleged that the law firm aided and abetted the fraud of Donald Lacey, the Supreme Court of Virginia has never specifically recognized a claim of aiding and abetting a tort.

Nationstar Mortg., L.L.C. v. Artis, 82 Va. Cir. 220 (Va. Cir. Ct. 2011)

Purchase of property from heirs within one year of death not protected from claims of decedent's creditors.

LaJuane Artis and others purchased a piece of real property from the heirs of a decedent named Woodward before one year had elapsed after Woodward's death. Nationstar Mortgage, L.L.C., a creditor of Woodward, filed suit in the Norfolk Circuit Court claiming title to the property. The purchasers filed a demurrer claiming that they were *bona fide* purchasers who could not be divested of title.

Virginia Code § 64.1-183 provides that a *bona fide* purchaser who buys real estate from an heir will not be liable to the decedent's creditors. However, the statute also provides that if the sale is within one year of the date of the decedent's death, the transfer is not valid against creditors of the decedent regardless of whether a suit or report of debts has been filed by the creditor. The statute provides creditors with a *quasi* lien on the decedent's real estate for a period of one year.

The court overruled the demurrer on the grounds that: (1) the purchase was made within one year of the date of the decedent's death; (2) neither the heirs nor the purchasers may defeat the statutory lien; and (3) the purchasers were not *bona fide* purchasers and could be divested of title in the property by legitimate creditors.