COMMONWEALTH OF VIRGINIA
FOURTEENTH JUDICIAL CIRCUIT

L.A. HARRIS, JR., JUDGE

CATHERINE C. HAMMOND, JUDGE

GARY A. HICKS, JUDGE

DANIEL T. BALFOUR, JUDGE

BURNETT MILLER, III, JUDGE

George F. Tidey, Retired Judge

CIRCUIT COURT OF HENRICO COUNTY

GOVERNMENT COMPLEX
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April 30, 2008

Jacob T. Penrod, Esquire
Hoover Penrod, PLC
342 South Main Street
Harrisonburg, Virginia 22801

Glenn M. Hodge, Esquire
Wharton Aldhizer & Weaver, P.L.C.
100 South Mason Street
Harrisonburg, Virginia 22801

Terry V. Woods v. Virgil Mongold, Co-Executor and Beneficiary
of the Estate of Nina M. Dove, Deceased, et al.
Case No. CL07-00687

Dear Mr. Penrod and Mr. Hodge:

I have had an opportunity to review my trial notes and the exhibits filed by the Plaintiff and the Defendant.

There is no doubt that Paul Dove ("Paul") intended to leave the poultry business and the attendant land to Terry Woods ("Terry"). If he had not suffered the untimely tragic accident I am sure that is what would have happened. He told Terry somewhere halfway through their working relationship and continued to say it until his death. He also told many relatives, neighbors and friends in the community. Paul's wife, Nina Dove ("Nina") acquiesced in his desire.

The discussion about the gift of the land and personal property was primarily by Paul mentioning it to Terry and in front of Terry.

The question for the Court to decide is whether those statements were sufficient to create a constructive trust on the property. At the time the statements were made Paul and Nina owned the property as tenants by the entireties, with the right of survivorship as at common law. It was not his property to convey without Nina's consent.

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Paul died intestate and the property became Nina's.

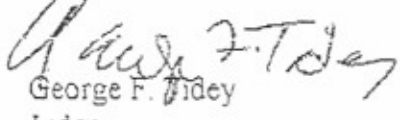
Any conversation between Nina and Terry about the property is not very clear. She did indicate to others that she wanted to do what Paul wanted to do. In furtherance of this desire she had a Will drafted sometime in 2005 after Paul's death leaving the 35.92 acres plus some personal property to Terry. This Will was never executed. This draft Will was circulated to Nina's heirs. In January 2006 Nina had drafted and executed a Will that did not leave the property to Terry. This Will was probated shortly after Nina's death in 2007. The validity of the Will is not contested. The fact that the heirs were aware of Nina's original intent is evidenced by Plaintiff's exhibit 12 wherein two of the heirs indicated their desire to sign over the chicken houses and property plus the personal property to Terry. However, four of the heirs did not sign the document that was prepared by Lorene Biller.

After reviewing the above evidence the Court is of the opinion that it does not rise to the level of clear and convincing evidence necessary to create a constructive trust on the property.

I do however find by a preponderance of the evidence that a quantum meruit claim has been established. The evidence from Terry is that the relationship began in the middle of his employment. I will award Terry a judgment against the estate in the amount of $106,444.00 (1996-2004) plus the electric bills of $4,200.00 and the propane bills of $4,528.57. The total judgment will be $115,172.57.

I ask Mr. Penrod to prepare the Order. When it has been endorsed please forward it to me at the Henrico Circuit Court.

Very truly yours,



George F. Tidey
Judge

GFT/jwb

00422

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

TERRY V. WOODS,

Plaintiff,

v. Case No: CL07-00687

VIRGIL MONGOLD, CO-EXECUTOR AND BENEFICIARY
OF THE ESTATE OF NINA M. DOVE, DECEASED, et al.,

Defendants.

ORDER

This case was heard before the Honorable George F. Tidey on April 21, 2008. The plaintiff, Terry V. Woods, appeared in person and by his attorneys, Jacob T. Penrod and M. Bruce Wallinger. The defendants appeared in person and by their attorneys, Glenn M. Hodge and David Nahm.

Counsel for both parties gave their opening statements and the Court then accepted an agreed stipulation of undisputed facts. The evidence of the plaintiff was then presented and the plaintiff rested.

The defendants then moved to strike the evidence of the plaintiff on grounds that the plaintiff's constructive trust claim sounded in promissory estoppel and such a claim is not cognizable in Virginia. The defendants also moved to strike the evidence of the plaintiff on the grounds that the plaintiff's quantum meriut claim was barred due to the existence of an express contract. Upon consideration of the argument of the defendant's counsel, the Court overruled the motion to strike.

The evidence of the defendant was then presented and the defendant rested.

After taking the case under consideration the Court returned with the following verdict:

> "After reviewing the above evidence the Court is of the opinion that it does not rise to the level of clear and convincing evidence necessary to create a constructive trust on the property.
>
> I do however find by a preponderance of the evidence that a quantum meruit claim has been established. The evidence from Terry is that the relationship began in the middle of his employment. I will award Terry a judgment against the estate in the amount of $106,444.00 (1996-2004) plus the electric bills of $4,200.00 and the propane bills of $4,528.57. The total judgment will be $115,172.57."

UPON CONSIDERATION WHEREOF, the Court, being of the opinion that Plaintiff should be awarded judgment in the amount of $115,172.57 for the reasons stated in the Court's letter opinion dated April 30, 2008 which is attached and made part of this Final Order, it is therefore

ADJUDGED and ORDERED that Plaintiff is awarded judgment against Defendants in the amount of ONE HUNDRED FIFTEEN THOUSAND, ONE HUNDRED SEVENTY-TWO DOLLARS AND FIFTY-SEVEN CENTS ($115,172.57)

It is further ADJUDGED and ORDERED that the temporary injunction currently in place shall dissolve upon 21 days from the date of entry of this from the date of entry of this final order for appeal purposes, absent Plaintiff's appeal of the Court's ruling in regards to his constructive trust claim.

6/22/08

The Clerk of the Court is directed to send certified copies of this Order to Jacob T. Penrod, Esquire, counsel for Plaintiff; and Glenn M. Hodge, Esquire, counsel for Defendants.

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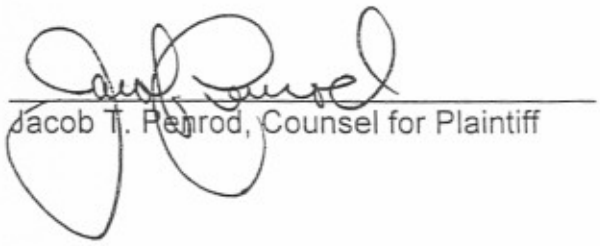
ENTER: 6-10-08

~~DATE~~:
Judge: Pat Fitzday Judge

00418

SEEN *and objected to on the following grounds: (1) The law of quantum meruit requires Plaintiff to be compensated from 1985, the date Plaintiff first rendered services at Paul and Nina Dove's request; (2) The law of Constructive Trust does not allow the promisor to renege on the agreement after the promisee has substantially performed.*



Jacob T. Penrod, Counsel for Plaintiff

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SEEN AND OBJECTED TO FOR THE FOLLOWING REASONS:

1. Both of Plaintiff's claims are based on promissory estoppel; the Virginia Supreme Court has held that there is no cause of action based on promissory estoppel in Virginia.

2. The Plaintiff's *quantum meruit* claim is barred by the express employment contract between the Plaintiff and Paul Dove for which he received a bi-weekly salary plus performance bonuses.

3. The measure of recovery for a *quantum meruit* claim is the reasonable value of services and labor performed less any compensation received. The Plaintiff failed to present evidence with reasonable certainty of the services performed and the reasonable value of the services.

Glenn M. Hodge
Counsel for Defendants Virgil Mongold and Donald E. Showalter,
Co-Executors of the Estate of Nina Dove

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