In The

Supreme Court of Virginia

RECORD NO. 141277

WILLIAM D. EVANS, in his Capacity as Trustee of the Wanda S. Evans Trust,

Appellant,

v.

WAYNE L. EVANS, Individually and as the Personal Representative of Douglas E. Evans, Deceased, LLOYD D. EVANS, LISA M. EVANS, and JASON L. EVANS,

Appellees.

BRIEF OF APPELLANT

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IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. 141277

WILLIAM D. EVANS, in his capacity
as Trustee of The Wanda S. Evans Trust,

Appellant,

v.

WAYNE L. EVANS, Individually and as the
Personal Representative of Douglas E. Evans,
deceased,

LLOYD D. EVANS,

LISA M. EVANS,

JASON L. EVANS,

Appellees.

OPENING BRIEF OF APPELLANT WILLIAM D. EVANS, TRUSTEE

To the Honorable Justices of said Court:

William D. Evans, as Trustee of the Wanda S. Evans Trust, hereinafter "Trustee," states that he is aggrieved by the final order entered by the Circuit Court of Tazewell County on May 27, 2014, and requests the Court to reverse and grant final judgment in his favor on the basis of the following:

ASSIGNMENTS OF ERROR

1. The Trial Court erred when it held that the deed dated December 27, 1976, between Douglas E. Evans, husband, and Wanda Evans, wife, recorded in Deed Book 456, page 322, was a void conveyance that did not transfer the interest of the grantor to his wife, with whom he held title as tenants by the entirety, and when it granted judgment to the Defendants on the cross-motions for summary judgment and on the motion for rehearing. (Preservation references -- App. 68--72, Pl. Mot. S.J., 3-26-13; App. 131, Pl. Mot. Recon., 12-5-13; Hearing Trans. 7-9-13, throughout; Hearing Trans. 4-15-14--page 4, lines 16-18; page 13, line 17--page 14, line 18; page 17, lines 4-12).

2. The Trial Court erred when it held that Douglas Evans, deceased, and the Defendants who claim through him, were not estopped to deny the title to the disputed property of the Trustee of the Wanda S. Evans Trust as required by the doctrine of "estoppel by deed" and by §§ 55-52, 55-68, and 55-70 of the Code of Virginia, and when it granted judgment to the Defendants on the cross-motions for summary judgment and on the motion for rehearing. (Preservation references -- App. 66-67, 72-74, Pl. S.J. 03-26-13; App. 94-98, Pl. Resp., 7-3-13; App. 128-131, Pl. Mot. Recon. 12-5-13; App. 205-208, Pl. Rep. Brief, 02-18-14; Hearing Trans. 7-9-13, throughout; Hearing Trans. 4-15-14--page 4, lines 16-18; page 14, line 19--page 17, line 3).

3. The Trial Court erred when it held that the "Mutual General Release" ("Agreement") dated November 30, 1995, did not constitute a valid, binding compromise and settlement and bar to re-litigation of the issues raised in the instant litigation and when it granted judgment for the Defendants on the cross-motions for summary judgment and on the motion for rehearing. (Preservation references -- App. 93-94, Pl. Resp. 7-3-13; App. 123-128, Pl. Mot. Recon. 12-5-13; App. 198-205, Pl. Rep. on Mot. Recon. 2-18-14; Hearing Trans. 7-9-13, throughout; Hearing Trans. 4-15-14--page 4, lines 14-15; page 4, line 21--page 13, line 16; page 17, line 13--page 20, line 12).

STANDARD OF REVIEW

This case presents questions of law which are reviewed *de novo* by this Court.

NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

This case, which arises out of the twice-litigated and once-previously-settled dispute among the Evans family as to the ownership of the family home in Bluefield, Virginia, presents significant questions of first impression in the real estate law of the Commonwealth. The issues presented are (1) whether a husband who is one tenant by the entirety can convey his interest in the property to his wife without the wife signing the deed of conveyance; (2) whether the grantor and his successors can deny that title passed to the wife under the husband's deed based upon the rules of "estoppel by deed;" and (3) whether a 1995 Settlement Agreement resolving the first two issues should be enforced to perfect the title of the grantee and her successors.

The instant case commenced when William D. Evans, as Trustee of the Wanda S. Evans Trust, dated February 2, 1993, filed a complaint seeking declaratory judgment and quiet title that the Trust was vested with ownership of the property located at 605 Fairway Drive, Bluefield, Virginia. The complaint alleged that there existed an actual

controversy between the Trustee and the remaining family members, Wayne Evans, in his individual capacity and in his capacity as personal representative of Douglas Evans, deceased, Lloyd Evans, and Wayne Evans's children, Lisa and Jason, all of whom stated that they claimed the property through the will of Douglas Evans. These parties defendant are hereinafter referred to as the "Evans Defendants."

The Evans Defendants each filed answers to the complaint and then to the first amended complaint filed by the Trustee.

After the pleadings, there were no issues of material fact, and each of the parties moved for summary judgment. Before the Court were pertinent deeds, the Wanda S. Evans Trust Instrument, the will of Wanda Evans, the list of heirs of Douglas E. Evans, and the Mutual General Release dated November 30, 1995, (hereinafter referred to as the "Settlement Agreement"), Also before the Court were pleadings and orders in Chancery Case No. 95-000094, Lisa M. Evans, an infant, et al, by her next friend, v. Diluard Shrewsberry, Executor and Trustee of Wanda S. Evans, a case filed in 1993 and involving the same issues as are in the present action. The Trial Court heard argument of the parties on July 9, 2013, and on October 10, 2013, issued a written opinion overruling the Trustee's motion and granting the motion of the Evans Defendants, the

Trial Court holding that the Douglas to Wanda deed of December 27, 1976, did not convey any property to Wanda and that the doctrine of "estoppel by deed" did not preclude the Evans Defendants from prevailing. Although, during the course of the July 9, 2013, hearing, the Court stated that "the 1995 Settlement Agreement is relevant, and the Court does need to read that" [and] "that the Court intends as a part of its preparation to make this ruling, to examine that document," the October 10, 2013, opinion did not address this issue.

The Trustee then filed a "Motion to Reconsider," asking the Court to more specifically address the issues raised by the Settlement Agreement and to reverse its former rulings. Following a hearing on April 15, 2014, the Court denied the Trustee's motion and directed the preparation of a final order, which was entered on May 27, 2014.

The Trustee filed his notice of appeal on June 18, 2014. Transcripts of the hearings of July 9, 2013, and a transcript of the proceedings of April 15, 2014, were timely filed and noticed, and the Trustee has presented his petition for appeal in a timely fashion.

This Court granted an appeal on all issues on December 15, 2014.

STATEMENT OF FACTS

By deed dated November 26, 1973, and recorded in the Office of the Clerk of the Circuit Court of Tazewell County in Deed Book 359, page 682, Ply Developing Corporation conveyed to Douglas E. Evans and Wanda Evans, his wife, as tenants by the entirety with right of survivorship, Lot 5, Section A, on a plat of Ply Developing Corporation, with such property having the address of 605 Fairway Drive, Bluefield, Virginia. Douglas and Wanda lived in this property as their family residence. (Complaint, Para. 3, Ex. 1--admitted) (App. 2, 8, and 22)

On December 27, 1976, Douglas, who expressed "love and affection" for Wanda, and for "ten dollars, cash-in-hand paid, and other good and valuable consideration" conveyed to Wanda "all of his interest" in the Fairway Drive property. This instrument was a general warranty deed, and it was signed under seal by Douglas Evans and recorded by Wanda Evans in the Clerk's Office on April 11, 1979, in Deed Book 456, page 322. (Complaint, Para. 3, Ex. 2--admitted) (App. 2, 10, and 22)

On February 2, 1993, Wanda settled an *inter vivos* trust, the Wanda S. Evans Trust, dated February 2, 1993. Among other provisions of the Trust was Article V, which provided Douglas with a life estate only, and which further provided "upon my husband's death, the personal residence

and household goods shall be distributed to my son, William D. Evans." This distribution has not occurred because of the pendency of this suit. (Complaint , Para. 7, Ex. 4--admitted) (App. 3, 13, 23--language of trust agreement admitted)

By deed dated and executed February 2, 1993, Wanda Evans conveyed the Fairway Drive property to Wanda S. Evans, Trustee of the Wanda S. Evans Trust, by deed recorded in Deed Book 673, page 189. (Complaint, Para. 5, Ex. 3--admitted) (App. 2, 11, and 23) William Evans is the successor Trustee.

Wanda died April 18, 1994. Her will, admitted to probate in Tazewell County, poured over into her Trust. (Mot. Recon. 12-5-13) Douglas Evans continued to live in the property as life tenant until his death on March 12, 2012. His personal representative, Wayne Evans, who is an attorney practicing in Princeton, West Virginia, filed a list of heirs in Will Book 83, page 720, stating that the Estate of Douglas Evans had a "LIFE ESTATE ONLY!!!!" in the said property. (Complaint, Para. 11--admitted) (App. 3 and 23--list of heirs speaks for itself) The Evans Defendants are all of the beneficiaries of the Estate of Douglas Evans.

Shortly after Douglas died, Wayne, Lloyd, and Wayne's children communicated to Bill Evans that they claimed ownership to the property

through the will of Douglas, and this claim ultimately lead to the current declaratory judgment suit. (Complaint, Para. 16--admitted) (App. 4 and 24) They did that, notwithstanding that the issue of the claimed invalidity of the December 27, 1976, deed was subject to prior litigation in Tazewell County Circuit Court which was finally settled by the "Settlement Agreement" dated November 30, 1995. (Ex. 7-3-13, Pl. "Response"; Ex. 1, 12-5-13, Mot. for Recon.) (App. 100, 135)

In that case, Wayne Evans, as father and next friend of the infants Lisa Evans and Jason Evans, filed suit against the Executor of the Estate of Wanda Evans, William Evans and Douglas Evans, to invalidate the Wanda S. Evans Trust and to invalidate the conveyance to the trust of the Fairway Drive property on the ground that the December 27, 1976, deed was an invalid conveyance of entireties property. (Ex. 3, 12-5-13, Mot. for Recon.; Complaint, Para. 18 C) (App. 145) Pleadings were filed in opposition, and on November 13, 1995, the Trial Court sustained demurrers and dismissed the action with leave to amend. (Chan. Ord. Bk. 98, page 625--12-3-13, Mot. for Recon.) (App. 183) Prior to the amendments, however, the parties entered into negotiations and concluded the "Settlement Agreement" of November 30, 1995, referenced above. Executed by Douglas Evans, Paragraph 2 provided as follows:

> Diluard Shrewsberry, William D. Evans . . . agree that nothing herein set forth shall affect or prejudice in any manner the rights of Douglas E. Evans, now or at any time in the future, in and with respect to the Trust and Estate of Wanda S. Evans, deceased, to-wit, His right to use the residence during his life and to use for his life all the household goods held by the Trust at Wanda S. Evans's death, and to direct the Trustee in writing to exchange or sell the residence and purchase substitute residence in accordance with the terms of the Trust. Provided, however, that Shrewsberry and William D. Evans guarantee that Douglas E. Evans shall receive from the Estate of Wanda S. Evans the sum of $81,869.63 in cash by December 13, 1995, upon the settlement of the Estate of Wanda S. Evans, deceased, which the foregoing reflects a full satisfaction of his claims against the Estate, whether under the Trust, the will, his elective share or otherwise, Douglas E. Evans waives any right he may have to Lot 5, Section A, of Ply Developing Corporation except for his life interest.

Paragraph 6 of the Settlement Agreement stated that:

> Wayne L. Evans . . . agrees to dismiss expeditiously, or cause to be dismissed, with prejudice, the above-described Bill for Declaratory Judgment.

Wayne Evans failed to perform his duties under Paragraph 6, and the cause was ultimately stricken from the docket under the two-year rule.

ARGUMENT AND AUTHORITIES

1. The Trial Court erred in holding that the deed from Douglas Evans to Wanda Evans was void and did not convey property to Wanda under the law of "tenancies by the entireties. (Assignment of Error No. 1)

By the deed dated December 27, 1976, (DB 456, page 322), and for good and valuable consideration, including cash-in-hand-paid and love and affection, Douglas Evans conveyed all of his interest in the Bluefield, Virginia, property to his wife Wanda, and the intention of that deed to vest all interest in the property in Wanda is absolutely clear. Under these circumstances, the Trial Court had no valid reason for invalidating the conveyance:

> In absence of a contrary public policy or prohibitive legislation, the express intention of the parties should override purely formulistic objections to real estate conveyancing based on technical distinctions.

See Leonard vs. Boswell, 197 Va. 713, 90 S.E.2d 872 (1956) at page 720.

The Trial Court, however, did not honor or respect the intention of the parties. In its opinion of October 10, 2013, and in its final order of May 27, 2014, the Trial Court held that the purported deed of December 27, 1976, was absolutely void and of no effect because it had not been a joint conveyance signed by Wanda Evans. The Trial Court cited Vasilion v. Vasilion, 192 Va. 735, 66 S.E.2d 599 (1951), and Waskey v. Thomas, 218

Va. 109, 235 S.E.2d 346 (1977), for the proposition that a conveyance of entireties property could only be valid if it was a joint conveyance signed by both the husband and the wife, concluding that this was the only way in which the requirements that the husband and wife "join" in a conveyance be satisfied. A deed signed by only one of the tenants could not convey title.

This Court has not previously addressed the question as to whether a deed from one tenant in a tenancy by the entireties to the other tenant is a valid conveyance between the two parties to the original entireties deed. The cases cited by the Trial Court and the reasoning expounded in those cases were erroneously applied in its attempt to answer that question. Those cases dealt with the relationship of the two tenants to third parties and third-party creditors, and they did not deal with the rights and interests of the two tenants *inter se*. In Vasilion, for example, the plaintiff was a judgment creditor of the husband, seeking to subject the entireties property for payment of the husband's debt. In Waskey, the complainant was a party to a real estate sales contract on entireties property signed only by the husband. In Hausman v. Hausman, 233 Va. 1, 353 S.E.2d 710 (1987), there was a contest between a third-party creditor--a bank claiming under a deed of trust signed only by the husband on the

one hand, and the wife who had not signed the deed of trust on the other. The rule in all of these cases is that neither spouse by his sole act can convey the entireties property to the prejudice of the other spouse. The purpose of the Court in these cases has been to protect the interests of the non-signing innocent spouse.

The Evans case does not involve third parties or prejudice to one spouse and deals with the rights of the tenants between themselves. Here, the husband expressed “love and affection” for his wife and executed a deed that benefited her in vesting an estate of inheritance which was greater than the expectancy of survivorship. The deed was executed for the expressed monetary and other good and valuable consideration and was executed under seal, an act which imports the inference of consideration. Such facts and considerations were not involved in the third-party creditor cases.

The Trial Court ruled that Mrs. Evans had not “joined” in the deed, but all facts of record show that she did exactly that. First, she was a party to the deed--a grantee. Second, she accepted and recorded the deed as described in the Statement of Facts above. Third, she conveyed the Fairway Drive property to her *inter vivos* trust, again evidencing her acceptance and participation in the transfer from her husband. Fourth, the

terms of Paragraph V of her trust made disposition of the property by giving her husband a life estate. There is no question that she was an active participant in the December 27, 1976, conveyance.

> " . . . the construction placed upon the language by the parties themselves is entitled to great weight in determining the intention of the parties."

Hamlin v. Pandapas, 197 Va. 659, 90 S.E.2d 829 (1956) at page 654. See also Hostetter v. Hitchings, 119 Va. 131, 89 S.E. 135 (1916).

There is no requirement in Virginia law that a grantee sign a deed in order to have its benefits and be obligated with its burdens. See Langman v. Alumni Association of the University of Virginia, 247 Va. 491, 442 S.E.2d 669 (1994) (Grantee bound by assumption clauses).

> Acceptance on the part of the grantee is implied because the conveyance is presumed to be beneficial unless the grantee refuses to accept the deed by some act of renunciation, dissent, disagreement or disclaimer. (Citations omitted) The question of whether a grantee has accepted a deed is not determined by the presence or absence of the grantee's signature on the deed, but by factual evidence of the grantee's actions tending to prove either acceptance or renunciation of the conveyance. It remains true today that "innumerable deeds of conveyance . . . have been made and are now on record in our courts which have never been signed by the grantees, their acceptance being evinced by taking possession and other acts *in pais*." (Citation omitted).

247 Va. at 500.

Again, all of Wanda Evans's acts with respect to the deed show that she joined actively in the conveyance.

Part of the Trial Court's reasoning was based upon the supposed "unity" of the husband-wife relationship and that a conveyance by only a husband could not occur because of that "unity." This, however, is not the law of Virginia. Before enactment of the "Married Woman's Property Acts," Code § 55-35, et seq, a woman suffered the disability of coverture and was bound with the husband in a "unity" that prevented a conveyance between them if judged by the standards of "law." In equity, however, a conveyance from husband to wife would be recognized:

> In consequence of the unity of person between the husband and wife, neither can grant to the other an estate to take possession during the coverture. But although such a conveyance be void at law, a court of equity is not precluded under certain circumstance from giving effect to it.

See Jones v. Obenchain, X Gratt (51 Va.) 259 (1853) at 262.

In this case, the husband conveyed property to the wife without the wife's signature or privy examination. Finding, however, that the deed was supported by consideration and done to make provision for the wife and that it was for her benefit, the Court found that it was appropriate to exercise equitable jurisdiction and uphold the conveyance:

> I think [the deed] was intended to be an operative instrument from the time of its execution; and as it was defective at law, it presents a proper case for the interposition of a court of equity to aid the defect.

51 Va. at 268.

Equities favor the Trustee in the present case. The conveyance from Douglas to Wanda was done out of "love and affection," and the Evans Defendants come before the Court to relitigate a claim that has already been settled and resolved and in which they admit that Douglas owned "LIFE ESTATE ONLY!!!!". The intention of the parties in the 1976 deed should be honored in equity.

When presented with this issue, the courts of other jurisdictions have upheld a conveyance of entireties property from a husband to a wife without signature by the wife:

> A spouse can convey or transfer to the other spouse his or her interest in an estate held by them by the entireties so as to relinquish his or her rights in such estate and vest it as a separate estate in the grantee or transferee, even in jurisdictions where neither spouse can convey or transfer any interest in such an estate without the consent of the other, the theory being that consent is implied from the grantee or transferee spouse's acceptance of the conveyance or transfer. However, some courts, without deciding the validity of a conveyance from

> one spouse to the other of an interest in an estate held by the entirety, have sustained such conveyances on the grounds of estoppel.

41 American Jurisprudence 2d "Husband and Wife," § 104, "Transfer of an Interest in an Estate by Entireties"

One such case was cited by this court in its decision in Vasilion. That case was Runco v. Ostroski, 361 Pa. 593, 65 A.2d 309 (1949.) In Vasilion, the husband and wife initially took title as tenants by the entireties under deed from their vendor, and the husband and wife then conveyed the property by deed to Mrs. Vasilion. The creditor sought to set aside the deed from the husband and wife to the wife on the ground that their judgment should attach and that the deed to the wife was fraudulent. The analysis of the court was that since the creditor had no rights to the entireties property, he had no basis for complaint when that property was conveyed to the wife alone. To explain its decision further, the Virginia Supreme Court cited the then-recent Pennsylvania case of Runco to show that even a conveyance from the husband alone would have been a valid conveyance under these circumstances.

In summary, the Trial Court misinterpreted the holding of the Vasilion case and other cited decisions and adopted a highly-technical rule of law that did not meet the requirements of the situation. Again, under

Leonard v. Boswell, 197 Va. 713, 90 S.E.2d 872 (1956), the Trial Court should have given effect to the parties' conveyance.

The Trial Court should have granted the Trustee's Motion for Summary Judgment and granted the relief requested in the Trustee's Motion for Rehearing.

2. The Trial Court erred in holding that the Evans Defendants, who claimed through Douglas Evans, were not estopped under the doctrine of "estoppel by deed" from claiming title against the Trustee and that the "estoppel by deed" doctrine did not apply to tenancy by the entireties property. (Assignment of Error No. 2)

In ruling for the Evans Defendants, the Trial Court misapplied the law of "estoppel by deed." The position of the Trustee was that in the event that the Court were to hold that the conveyance from Douglas to Wanda was void or ineffective under the tenancy by the entirety rules, that the Trustee should nonetheless prevail under the rules dealing with "estoppel by deed." These rules arise under case law interpreting the common law and also under Virginia Code § 55-52. Code § 55-68 and § 55-70 setting forth the effects of covenants of general warranty also apply.

The common law rule was expressed in Vepco v. Buckwalter, 228 Va. 684, 325 S.E.2d 95 (1985), a case where a party sought to avoid the application of an easement created by his grantor:

> It is well established that a party who purports to convey an estate is estopped as against his grantee from asserting anything in derogation thereof. That is to say, a grantor cannot deny his title to the prejudice of his grantee. (Citations omitted.) Similarly, "those who derive title from or through the parties ordinarily stand in the same position as the parties and are bound by every estoppel that would have been binding on the parties. (Citations omitted)

228 Va. at 688.

See also Greenan v. Solomon, 252 Va. 50, 472 S.E.2d 54 (1996)--easement binds grantee who took from grantor who acquired property by adverse possession; School Board v. Smith, 134 Va. 98, 113 S.E. 868 (1922)--School Board, grantor, is estopped as to its grantee to challenge deed on the ground that the School Board did not comply with statutory requirements for conveyance of school lands; Marshall v. Jameson, 145 Va. 605, 134 S.E. 573 (1926).

The successors to the original grantor who might be estopped are also bound by the estoppel. See Code § 55-68:

> Effect of Covenant of General Warranty—A covenant by a grantor in a deed "that he will warrant generally the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, will forever warrant and defend such property unto the grantee, his heirs, personal representatives and assigns against the claims and demands of all persons whomsoever.

The estoppels that operate against the grantor operate against his successors, such as the Evans Defendants. See Wilkerson v. Wilkerson, 151 Va. 322, 144 S.E. 497 (1928). In this case, the grantor of a deed had only a life estate, but believed that he owned the fee and made a conveyance thereof. The putative remainderman who took under the grantor challenged the title to the property, holding that the grantor's heirs were estopped, the Court stated:

> Plaintiffs must fail for another reason. If the Margaret M. Wilkerson interest went back to the Willliam Wilkerson estate, and passed from it to Ulysses Wilkerson, and afterwards to his heirs, his children, the plaintiffs here, we have this situation: Ulysses Wilkerson's deed to Margaret M. Wilkerson was with general warranty. He believed he had the right to execute such a deed. If he was mistaken in this, he was still bound by his covenant, and any interest in this property which afterwards came to him, passed to his grantees.

151 Va. at page 332.

The rule enunciated by these cases is that regardless of whether the grantor owns the property that he purports to convey or later acquires an interest in the property which he purports to convey, that he and his successors are bound by their warranties and estopped to deny the title of the grantee. Douglas Evans made a general warranty deed to Wanda Evans on December 27, 1976, and whether he owned the property

or not, given the nature of the entireties title, he and his successors were bound by the conveyance to Wanda Evans, and the Evans Defendants recognized that in filing the list of heirs for Douglas showing "LIFE ESTATE ONLY!!!!".

The Trial Court did not apply this rule or even refer to it in its October 10, 2013, ruling. Instead, the Trial Court focused on language of § 55-52, which states:

> When a deed purports to convey property, real or personal, describing it with reasonable certainty, which the grantor does not own at the time of the execution of the deed, but subsequently acquires, such deed shall as between the parties thereto, have the same effect as if the title which the grantor subsequently acquires were vested in him at the time of the execution of such deed and thereby conveyed.
>
> The Trial Court stated:
>
> "this common law doctrine purports to disallow one to convey realty in which he has no interest, denying the validity of the transfer if at a later time he acquires an interest . . . Mr. Evans at all times retained an interest in the tract as a tenant by the entirety . . . thus Virginia Code § 55-52 cannot apply due to Mr. Evans retaining his ownership interest as a tenant by the entirety, and any subsequent interest must pass as Mr. Evans intended.

October 10, 2013, opinion, Page 2.

First, the Trial Court erred in that the common law doctrine does not apply only when one "conveys realty in which he has no interest." In Vepco, supra, the grantor had an interest in the property he subjected to the easement. In Greenan, supra, the grantor had title by adverse possession. In School Board, supra, the School Board had title to the property conveyed. In Marshall, supra, the grantor had held the property with respect to which his boundary description was given. In some instances, the grantors did not have title, such as Wilkerson, supra. Nevertheless, in each case, the court held that the grantor could not renege on the title he had purported to convey.

Second, the Trial Court construed Vepco as holding that "any person that has an interest in realty may not seek shelter under this doctrine" (estoppel by deed). This most definitely was not the holding of Vepco. Vepco held that the successor to the grantor was bound by his conveyance, even if it were arguably in contravention of restricted covenants.

The Trial Court also erred in its description of the interest or title that may have been held by Douglas Evans. At the time of the conveyance to his wife, Douglas Evans was vested with title to the property as a tenant by the entirety with right of survivorship as at common law. This title

bestowed a joint right to possession and an expectancy of survivorship. After the death of his wife, the title that he would have acquired if the deed to his wife were held to be invalid would have been a different title--a title of an estate of inheritance which he could then divide, encumber, and devise to his successors in such a way as he might desire, and this is exactly what the Trial Court found: "Upon the death of his beloved wife, Mr. Evans acquired fee simple ownership." The Trial Court itself refers to the title of Mr. Evans after the death of his wife as a "subsequent interest." Even under the Trial Court's requirement of a newly-acquired title, this case would fit under § 55-52.

The Evans Defendants are, therefore, bound by the act of their predecessor, Douglas Evans, and are estopped to deny the title of the Trustee.

3. The Settlement Agreement of November 30, 1995, bars the claims of the Evans Defendants (Assignment of Error No. 3).

In his remarks at the April 15, 2014, hearing on the Motion to Rehear, the Trial Judge overruled the Trustee's summary judgment motion based upon the Settlement Agreement, saying that this was "implicitly addressed" in his earlier rulings. (App. 211A, 4-15-14 Transcript, Page 21, lines 22--25). The Settlement Agreement, however, is a contractual obligation binding on all of the parties to this action, and it is conclusive as

a matter of contract law and as a matter of estoppel as to the rights of the parties.

In Paragraph 2 of the Settlement Agreement, Douglas Evans waived and released any interest he had in the Fairview Drive property, agreeing " . . . that he waives any right he may have to Lot 5, Section A, of Ply Developing Corporation except for his life interest." He also received consideration of $81,869.63, which reflected "full satisfaction of his claims against the estate, whether under the trust, the will, his elective share, or otherwise." After Wanda's death, Douglas Evans continued to reside in the property as life tenant, and when he died, his personal representative, Attorney Wayne Evans, filed a list of heirs describing the real estate as "LIFE ESTATE ONLY!!!!".

All of the Evans Defendants are all the successors to Douglas Evans, who was a party to this Settlement Agreement. William Evans was a party to the Settlement Agreement as were the representatives of the Estate and Trust of Wanda Evans. As privies, they are, therefore, bound by the Settlement Agreement.

Applicable law requires the Court to enforce this Settlement Agreement and rule in favor of the Trustee. Virginia law encourages the settlement and compromises of disputes. Mansfield v. Bernabei, 284 Va.

116, 727 S.E.2d 69 (2012). Agreements that end litigation are particularly favored. Murayama 1997 Trust v. NISC Holdings, LLC, 284 Va. 234, 727 S.E.2d 280 (2012) ("There are also very important policies that favor giving effect to agreements that put an end to the expensive and disruptive process of litigation."). An agreement to settle a doubtful right is binding, even if it later appears that the right was not as the settling party supposed; the right must always be on one side or the other; therefore, "the compromise of a doubtful right is a sufficient foundation for an agreement." Moore v. Fitzwater, 23 Va. 442 (1824) (holding that two parties in dispute about the title to land were bound by their agreement to convey a certain part from one to the other on payment of a settlement price).

Forbearance of a legal right is sufficient consideration for a contract. Alexakis v. Mallios, 261 Va. 425, 544 S.E.2d 650 (2001) (upholding in court settlement agreement). When a court's opinion is favorable to one side or the other, settlement agreements can still be made, with the consideration of forbearance of a right to rely on the favorable decision, or forbearance to appeal from an adverse decision. Martin v. Basham, 216 Va. 914, 223 S.E.2d 899 (1976) (upholding settlement agreement reached after letter opinion issued).

Settlement agreements ending family litigation, in the absence of clear and convincing evidence of fraud, are granted even more respect than agreements between strangers:

> Compromises having for their object the settlement of family difficulties or controversies are favored at law and in equity if at all reasonable. The termination of such controversies is considered a valid and sufficient consideration for the agreement, and the court will go further to sustain it than it would under ordinary circumstances. Accordingly, it has been laid down as a general rule that a family agreement entered into on the supposition of a right, or of a doubtful right, although it afterwards turns out that the right was on the other side, is binding, and the right cannot prevail against the agreement of the parties.

Weade v. Weade, 153 Va. 540, 150 S.E. 238 (1929) (upholding family agreement to distribute estate as stated in unsigned codicil); see also Lucketts v. Lucketts, 37 Va. 50, 56-57 (1839) (upholding family contract to effect last will, although it had not been attested and was not accepted for probate); Foster v. Carlin, 218 F.2d 795, 801 (4th Cir. 1955) (upholding family settlement agreement ending multiple lawsuits).

People may waive their own rights as long as they do so intentionally and voluntarily. May v. Martin, 205 Va. 397, 137 S.E.2d 860 (1964) ("Voluntary choice is the essence of waiver.")

> Where two parties are contending before this Court, and one releases his pretensions to the other, there can be no color to set aside this compromise.

Moore, 23 Va. at 445.

When an adult has contracted regarding his property rights, courts are without authority to annul the contract in the absence of fraud. Weade, 153 at 548.

In this case, when Douglas Evans' signed the Settlement Agreement, the state of the recorded title for the Property showed title in The Wanda S. Evans Trust. If he had wanted the record title to reflect his fee ownership, a conveyance from the Trust, or some other corrective action, would have been necessary.

However, he waived any claim to a fee ownership in favor of the existing record title as part of a compromise of disputed claims. In support of this, between the date of the 1995 Settlement Agreement and his death in 2012, he made no effort and took no action to correct the record title.

As a matter of contract, therefore, Douglas Evans agreed that he had no interest in the disputed property except the life estate granted to him under both Wanda Evans' Will and the terms of the Trust. Wayne Evans, Lloyd Evans, and the other Defendants in this action are claiming

through Douglas Evans, and, therefore, are bound by his agreement that he had no right to the now-disputed property.

This is also true as a matter of estoppel and of fairness. Paragraph 9 of the complaint, Lisa M. Evans, an infant, et al v. Diluard Shrewsberry, et al, set up as a grounds for avoidance of title in the Wanda Evans Trust the very same tenancy by the entirety problem and defect that the Evans Defendants are advocating in the present litigation. If Wayne Evans had carried through his duty under Paragraph 6 of the Settlement Agreement to dismiss the action with prejudice, the current suit would clearly be barred by *res judicata*. It is completely inconsistent for the Evans Defendants to have settled the first case and to have failed to secure its dismissal with prejudice and then contend in the present case that they have a right to the property. Again, they must be estopped to take this position. Hobbs v. Virginia National Bank of Petersburg, 147 Va. 802, 128 S.E. 46 (1926) and Reynolds vs. Cook, 83 Va. 817, 3 S.E. 710 (1887).

Having contractually waived any interest in the Property beyond a life estate, Douglas Evans did not have the power to devise any interest in the Property under his will, and he had no interest to pass by intestacy. The current Defendants all claim their interest in the Property through Douglas Evans, but his waiver caused the interest to remain in the Trust.

Based on this waiver and settlement and strong estoppel, the Defendants have no grounds to claim ownership of the Property.

CONCLUSION

For the forgoing reasons, William Evans, Trustee, requests this Court to reverse the judgment of the Trial Court, grant judgment in favor of the Trustee, and to remand the matter for entry of a judgment perfecting his title to the 605 Fairway Drive, Bluefield, Virginia, property.

WILLIAM D. EVANS, TRUSTEE
OF THE WANDA S. EVANS
TRUST
BY COUNSEL

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CERTIFICATE REQUIRED BY RULE 5:26(h)

I HEREBY CERTIFY THAT:

A. The names of the Appellants and Appellees, the names, addresses and telephone numbers of counsel for each party, and the names, addresses and telephone numbers of any party not represented by counsel are as follows:

Appellant:	William D. Evans, in his capacity as Trustee of the Wanda S. Evans Trust
Counsel for Appellant:	John E. Kieffer - VSB #14599 Attorney at Law 1934 Euclid Avenue P. O. Box 2125 Bristol, VA 24203-2125 Tel. 276-466-5522 Fax 276-466-2124 jekpc@bvu.net
Appellees:	Wayne L. Evans, Individually and as the Personal Representative of Douglas E. Evans, deceased, Lloyd D. Evans, Lisa M. Evans and Jason L. Evans

Counsel for
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B. On January 22, 2015, fifteen printed copies of the Brief of Appellant and ten copies of the Appendix, with ten electronic copies on CDs, were hand-filed with the Clerk of this Court. On this same day, three printed copies of the Brief and one copy of the Appendix, with one electronic version on CD, was served, via U.S. Mail, postage prepaid, at the foregoing address.

C. All parties are represented by counsel.

D. Counsel for Appellant states that he does wish to present oral argument to this Court as to the reasons the judgment of the Trial Court should be reversed.

Respectfully submitted this 22nd day of January, 2015.

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