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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6859

In the Supreme Court of Appeals of Virginia at Richmond

WILLIAM T. GRASTY, EXEC., ETC.

v.

SUZANNE D. CLARK, ET AL.

FROM THE CIRCUIT COURT OF FAUQUIER COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6859

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

WILLIAM T. GRASTY, EXECUTOR IN ACCORDANCE WITH THE WILL OF ROBERT VANDERPOEL CLARK, JR., DECEASED, AND THE ORDER OF THE CIRCUIT COURT OF FAUQUIER COUNTY ENTERED ON MARCH 15, 1965, Appellant,

against

SUZANNE D. CLARK, ELIZABETH D. CLARK AND N. HOLMES CLARE, EXECUTOR IN ACCORDANCE WITH THE WILL OF ROBERT VANDERPOEL CLARK, JR., DECEASED, AND THE ORDER OF THE CIRCUIT COURT OF FAUQUIER COUNTY ENTERED ON MARCH 15, 1965, Appellees.

From the Circuit Court of Fauquier County
Rayner V. Snead, Judge

Upon the petition of William T. Grasty, Executor in accordance with the will of Robert Vanderpoel Clark, Jr., deceased, and the order of the Circuit Court of Fauquier County entered on March 15, 1965, an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of Fauquier County on the 3rd day of March, 1967, in a certain chancery cause then therein depending, wherein Suzanne D. Clark and another were plaintiffs and the petioner and another were defendants; no bond being required.

RECORD

* * * * *

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PETITION

Now comes the petitioners, Suzanne D. Clark and Elizabeth D. Clark, and move the Court for a temporary injunction against the defendant, William T. Grasty, for the reason that:

1. The said William T. Grasty is co-executor of the estate of Robert Vanderpoel Clark, Jr. in the State of Virginia, pursuant to the order of this Court entered March 15, 1965.

2. By decree entered in this cause on November 14, 1966, pursuant to the ruling announced orally at the con-
page 2 } clusion of the hearing in this cause held on the 11th day of October, 1966, this Court absolved the said co-executor from any responsibility to the estate or any beneficiaries thereof with respect to the filing of Federal and Virginia income, estate or inheritance tax returns.

3. On or about October 29, 1966, the said William T. Grasty caused to be instituted in the Circuit Court of the City of Richmond, Virginia, a petition for writ of *mandamus* against C. H. Morrisett, State Tax Commissioner, a copy of which is attached hereto and prayed to be read as a part hereof, which petition seeks to nullify all inheritance and income tax returns heretofore filed for said estate.

4. The said William T. Grasty has also initiated administrative proceedings for the purpose of causing and taxing authorities of the United States to nullify the federal estate tax and income tax returns heretofore filed or said estate.

5. His said actions cannot benefit the interests of said estate or of any person interested therein in any manner.

6. By his said wilful, deliberate and reckless actions the said defendant, William T. Grasty, has created the risk of subjecting the said estate to substantial penalties, interest and other charges and of losing the benefit of the election of the optional valuation date for estate tax purposes and the selection of a fiscal year for income tax purposes, all to the great expense and detriment of the estate of which he is fiduciary.

page 3 } WHEREFORE, it is prayed that the said William T. Grasty be forthwith enjoined and restrained

from proceeding further with his efforts to prosecute the said proceeding for a writ of *mandamus* and his efforts to carry on any judicial, administrative or other proceedings or action designed to question the validity of Federal or Virginia state income, estate or inheritance tax returns heretofore filed on behalf of said estate and that such injunction may extend to the said defendant, William T. Grasty, his agents, attorneys and all other persons acting on his behalf; and that petitioners shall have such other, further and general relief as to equity may seem meet.

And your petitioners will ever pray, etc.

SUZANNE D. CLARK and
ELIZABETH D. CLARK

By THOMAS V. MONAHAN
Counsel

Filed Nov. 21-1966. B. B. BEACH, D. C.

* * * * *

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* * * * *

ANSWER

Now comes the defendant N. Holmes Clare, Executor, etc. as hereinabove styled, and for answer to the petition filed in the above cause admits the allegations set out in paragraphs 1 through 6 of said petition and joins in the prayers for relief set out thereafter.

N. HOLMES CLARE

By WILLIAM R. WADDELL
Of Counsel

Filed Nov. 28, 1966. H. L. PEARSON, Clerk

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* * * * *

The 29th day of November, 1966, came the Complainants and the Defendants in the above styled cause upon the motion

of the Complainants for a temporary injunction pending a hearing, and the matter was argued by counsel.

Upon due consideration, it is adjudged and ordered that said motion for temporary injunction pending a hearing, be, and the same is denied to which counsel for complainants objected and excepted.

It is further adjudged and ordered that the Petition for injunction filed herein and this cause is set for hearing on the merits on the 20th day of December, 1966. Counsel for petitioners are directed to file such memorandum as they desire on or before December 7, 1966, and counsel for defendants, Grasty, Co-Executor, and W. Holmes Clare, Co-Executor are thereafter directed to file such memorandum as they desire on or before December 15, 1966.

And this cause is continued.

Enter this 29th day of Nov., 1966.

RAYNER V. SNEAD, Judge

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PLEA IN ABATEMENT

The defendant William T. Grasty, Executor, by counsel, respectfully submits that this Court ought not to take further cognizance of this the Petition in this chancery proceeding praying an injunction against him, because it is not personally verified by an affidavit of the Petitioners, or either of them, as required by Code of Virginia (1950) § 8-620.

Wherefore said defendant prays judgment whether this Court can or will take any further cognizance of the action aforesaid.

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Counsel for defendant William T. Grasty, Executor

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VERIFICATION

STATE OF VIRGINIA
COUNTY OF ,To-wit:

William T. Grasty, defendant, in the above styled cause, being duly sworn, says that the allegations therein contained

are true except so far as they are therein stated to be on information and that so far as they are therein stated to be on information, he believes them to be true.

WILLIAM T. GRASTY

Taken, sworn to and subscribed before me, a Notary Public in and for the State and County aforesaid, this 14th day of December, 1966.

My commission expires Sept. 8, 1968.

HELEN S. WALSH
Notary Public

Filed Dec. 15, 1966. B. B. BEACH, D. C.

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DEMURRER

The defendant William T. Grasty, Executor, by counsel, states that the Petition for injunction in this chancery proceeding is not sufficient in law for the following reasons:

1. The Petition does not allege facts sufficient to show that said Defendant is guilty of "willful, deliberate and reckless actions" which risk "subjecting the said estate to substantial penalties, interest and other charges and of losing the benefit of the election of the optional valuation date for estate tax purposes and the selection of a fiscal year for income tax purposes, all to the great expense and detriment of the estate of which he is fiduciary."

2. The Petition does not allege facts sufficient to show that said Defendant has violated any fiduciary duties to the Petitioners herein.

page 20 } 3. The Petition does not allege facts sufficient to show that the Petitioners herein are entitled to the injunctive relief sought or to any other relief.

4. The Petition does not allege facts sufficient to show that the Petitioners will suffer immediate and irreparable damage unless said Defendant is enjoined as prayed.

5. The Petition does not allege facts sufficient to show that Petitioners do not have an adequate remedy at law.

6. The Petition does not allege that by this Court's ruling of October 11, 1966 and its Decree of November 15, 1966, in Chancery Cause No. 3183, the Court absolved said Defendant, as co-executor, from any responsibility to the Commonwealth of Virginia or to the United States with respect to filing said Virginia and Federal income tax returns, the inheritance tax return and the estate tax return, and from any liability for the payment of said txesa. It is the adjudication of this responsibility and liability that said Defendant seeks in the *mandamus* proceeding and administrative proceeding.

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Counsel for Defendant William T. Grasty, Executor

Filed Dec. 15, 1966. B. B. BEACH, D. C.

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* * * * *

ANSWER

The defendant William T. Grasty, Executor, by counsel, in answer to the Petition filed in this cause states:

1. The said defendant admits the allegations contained in Paragraphs "1"; "3"; and "4" of said Petition.

2. The said defendant denies the allegations contained in Paragraphs "2"; "5" and "6".

3. By way of further answer to said Petition defendant alleges:

(a) In the *mandamus* proceeding he instituted in the Circuit Court of the City of Richmond on November page 22 } 1, 1966, the said defendant as co-executor seeks an adjudication of his responsibilities and liability to the Commonwealth of Virginia for filing Virginia income and inheritance tax returns, a question not adjudicated by this Court in its ruling of October 11, 1966 or in its Decree of November 15, 1966 in Chancery Cause No. 3183.

(b) In the administrative proceeding he instituted in the Internal Revenue Service, the said defendant, as co-executor, seeks an adjudication of his responsibilities and liability to the United States for filing Federal income and estate tax

returns, a question not adjudicated by this Court in its ruling of October 11, 1966 or in its Decree of November 15, 1966 in Chancery Cause No. 3183.

(c) The aforesaid *mandamus* proceeding and administrative proceeding are in the best interests of the estate and those entitled thereto in that the adjudication of the issues therein presented are necessary to determine whether the estate is being properly administered with respect to the taxes involved and whether the tax returns required by law and regulations have been, and are being, filed.

(d) Should the Circuit Court for the City of Richmond and/or the Internal Revenue Service sustain the defendant, William T. Grasty's contention that the tax returns required by law and regulations have not been filed, it will be because of the misfeasance of the defendant N. Holmes Clare, co-executor, and The Chase Manhattan Bank, co-executor, who filed the tax returns involved notwithstanding the objections thereto of the defendant William T. Grasty, co-executor; and should the estate be subjected to penalties, interest and other charges or be prejudiced in any other way by such illegal action of N. Holmes Clare, co-executor, and The Chase Manhattan Bank, co-executor, in
page 23 } undertaking to file tax returns not complying with the requirements of law and regulations, the Petitioners herein will have a completely adequate legal remedy to surcharge said N. Holmes Clare, co-executor, and The Chase Manhattan Bank, co-executor, and recover any such damages from them and the securities on their bonds as co-executors.

(e) The Court does not have jurisdiction to enjoin the defendant from pursuing his legal remedies before the Circuit Court for the City of Richmond or before the Internal Revenue Service of the United States.

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Counsel or Defendant William T. Grasty, Executor

Filed Dec. 15, 1966. B. B. BEACH, D. C.

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This cause having come on to be heard on petitioner's petition for an injunction, this 20th day of December 1966, upon the appearance of all parties by counsel, and of the defendants in person, and having been argued by counsel, and it appearing to the court that a temporary injunction should issue, it is hereby

ORDERED, ADJUDGED AND DECREED, That the defendant, William T. Grasty, individually and as an executor in accordance with the will of Robert Vanderpoel Clark, Jr., deceased, and the order of the court entered March 15, 1965, his agents, attorneys, servants, employees, and all other persons acting on his behalf, directly or indirectly, be, and they hereby are, enjoined from:

(a) prosecuting his action seeking a writ of *mandamus* against C. H. Morrissette, the state tax commissioner of Virginia, instituted by said William T. Grasty as executor in civil action A-1910, on or about November 1, 1966, in the circuit court for the City of Richmond, Virginia; and

(b) prosecuting other proceedings described by the said defendant, William T. Grasty, executor, as administrative proceedings instituted before the Internal Revenue Service of the United States, on or about November 9, 1966, and in the national office of said service; and

page 27 } (c) instituting or prosecuting any other judicial, administrative or other proceedings or action relating to the Federal or Virginia estate or inheritance tax returns, filed or to be filed by or on behalf of the estate of said Robert Vanderpoel Clark, Jr., or seeking a ruling or other determination or guidance, formal or informal, with respect thereto.

And this injunction shall remain in full force and effect until such time as any appeal in Chancery Number 3183 in this court is finally determined or disposed of by the Supreme Court of Appeals of Virginia and the record thereof shall have been returned to and filed in this court, and thereafter until such time as the said defendant, William T. Grasty, shall have given all of the other parties hereto by their respective counsel reasonable notice that he intends to ask that this injunction be dissolved, so that the matter may be heard and a determination made by this court as to whether this injunction shall be dissolved or made permanent.

To all of which the *defemdant,* William T. Grasty, executor, by counsel noted his objections and exceptions.

ENTERED: This 20th day of December, 1966.

RAYNER V. SNEAD

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MOTION TO VACATE AND DISSOLVE INJUNCTION

William T. Grasty, Executor, Defendant, in this cause, by Counsel, moves the Court to Vacate and Dissolve the Injunction entered by the Court in this cause on December 20th, 1966, and as grounds for his Motion states:

1. The Court erred in enjoining the Defendant, William T. Grasty, Executor, from further prosecuting his pending *mandamus* proceeding in the Circuit Court of the City of Richmond (William T. Grasty, Co-Executor of the Estate of Robert V. Clark, Jr., Deceased, vs C. H. Morrissett, State Tax Commissioner, Commonwealth of Virginia, CA-A-1910, Circuit Court of the City of Richmond, Virginia) because under Code of Virginia (1950), Section 8-611, the Court did not have jurisdiction to enjoin further prosecution of said *mandamus* proceeding then pending in the Circuit Court of the City of Richmond.

page 42 } 2. The Court erred in refusing to hear and adjudicate Defendant's Plea in Abatement and his Demurrer to the petition for an injunction, as required by Rule 2:1, Rules of the Supreme Court of Appeals, and in granting the injunction without hearing and ruling upon said Plea in Abatement and Demurrer.

3. The Court erred in awarding the injunction when there was no competent sworn testimony by affidavit or otherwise establishing plaintiff's equity as required by Code of Virginia (1950), Section 8-620.

4. The Court erred in awarding the injunction without requiring the plaintiffs to post the injunction bond required by Code of Virginia (1950), Section 8-623.

5. The Court erred in characterizing its injunction as "temporary" when in fact and in law it is not temporary since the Court did not prescribe a definite and specific period of time for it to remain in effect as required by Code of Virginia (1950), Section 8-614.

6. The Court erred in characterizing its injunction as "temporary" when in fact and in law it is not temporary since the Court did not prescribe a definite and specific period of time for it to remain in effect which would be no longer than necessary to hear and adjudicate plaintiffs' petition for an injunction on its merits.

7. The Court erred in enjoining Defendant from obtaining a timely hearing before and adjudication by the U. S. Treasury Department, Internal Revenue Service, concerning his responsibilities, obligations, authority and liability as Co-Executor for the preparation and filing of the U. S. Estate tax return and income tax returns as Co-Executor of this Estate and paying all taxes due thereunder in that;

(a) The Court is without jurisdiction to enjoin Defendant from exhausting his administrative remedies before the U. S. Government in a timely manner;

page 43 } (b) The Court's injunction denies to the Defendant due process and equal protection of law before a duly constituted administrative agency of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Court erred in enjoining Defendant from having his day in Court before the Circuit Court of the City of Richmond and from obtaining an adjudication by that Court of his responsibilities, obligations, authority and liability as Co-Executor to the Commonwealth of Virginia for the preparation and filing of the Virginia inheritance tax return and the income tax returns and paying all taxes due thereunder as Co-Executor of this Estate, in that;

(a) The Court is without jurisdiction to enjoin Defendant from exhausting his judicial remedies in a timely manner before the Circuit Court of the City of Richmond;

(b) The Court's injunction denies to the Defendant due process of law before a duly constituted Court of the Commonwealth of Virginia with jurisdiction to hear said *mandamus* proceeding, all in violation of the Fourteenth Amendment to the Constitution of the United States.

9. The Court erred in enjoining Defendant from obtaining a timely hearing and adjudication of his responsibilities, obligations, authority and liability for the preparation and filing of U. S. and Virginia tax returns and for paying all taxes due thereunder as Co-Executor of this Estate, when, on the record of this cause;

(a) There is no competent showing of the plaintiffs' legal standing to bring this suit;

(b) There is no competent showing that plaintiffs do not have adequate remedy at law;

(c) There is no competent showing that plaintiffs will suffer immediate and irreparable damage unless the De-
page 44 } fendant is enjoined from exercising the judicial and administrative remedies available to him under the law of Virginia and of the United States.

10. The injunction was improvidently granted.

DATED this 15th day of February, 1967.

G. A. HORKAN, JR.
BOLLING R. POWELL, JR.
Counsel for William T. Grasty,
Co-Executor, Defendant

Filed Mar. 3, 1967. WM. D. HARRIS, Dep. Clerk

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DECREE

This cause came on to be heard this day upon the petition of Suzanne D. Clark and Elizabeth D. Clark; the separate answers of defendants N. Holmes Clare and William T. Grasty; the motion of defendant William T. Grasty to continue the cause; the demurrer and plea in abatement of defendant William T. Grasty; the record in N. Holmes Clare, Executor, etc. v. William T. Grasty, Executor, etc., et al (Chancery File No. 3183 in this Court); the injunction entered herein December 20, 1966; and the motion of defendant William T. Grasty to vacate and dissolve the said injunction issued herein; the affidavit of Lewis B. Greenbaum, of counsel for the defendant N. Holmes Clare, sworn to February 23, 1967 in opposition thereto; the Order Filing Stipulation entered this day, and the petitioners and said defendant N. Holmes Clare having denied the allegations of the said motion to vacate and dissolve; and the matter was argued by counsel.

The Court being of the opinion that the said injunction hereinbefore issued should remain in full force
page 46 } and effect until such time as any appeal in Chancery Number 3183 in this Court is finally determined or disposed of by the Supreme Court of Appeals of Virginia and the record thereof shall have been returned

to and filed in this Court, and thereafter until such time as the said defendant, William T. Grasty, shall have given all of the other parties hereto by their respective counsel reasonable notice that he intends to ask that this injunction be dissolved, so that the matter may be heard and a determination made by this Court as to whether this injunction shall be dissolved or made permanent, all as provided in the Court's Order of December 20, 1966, it is hereby,

ORDERED, ADJUDGED AND DECREED that the Motion to Vacate and Dissolve the Injunction filed by the defendant, William T. Grasty, is hereby denied.

To all of the foregoing defendant William T. Grasty noted his objections and exceptions on the grounds stated in the motion to vacate and dissolve.

ENTERED this 3rd day of March, 1967.

RAYNER V. SNEAD, Judge

Entd. Mar. 3, 1967. WM. D. HARRIS, Dep. Clerk

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Counsel for William T. Grasty, Executor in accordance with the Will of Robert Vanderpoel Clark, Jr., Deceased, and the Order of this Court entered March 15th, 1965, Defendant in the above styled Chancery Cause, hereby gives Notice of Appeal from the Final Judgment and Decree entered herein on March 3, 1967.

The said William T. Grasty, Executor, will petition the Supreme Court of Appeals of Virginia for an Appeal and *Supersedeas* with respect to said Final Judgment and Decree and hereby sets forth his Assignments of Error as follows:

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1. The Court erred in enjoining the Defendant, William T. Grasty, Executor, from further prosecuting his pending *mandamus* proceeding in the Circuit Court of the City of Richmond (William T. Grasty, Co-Executor of the Estate of Robert V. Clark, Jr., Deceased, v C. H. Morrissett, State Tax Commissioner, Commonwealth of Virginia, CA-A-1910, Cir-

cuit Court of the City of Richmond Virginia) because under Code of Virginia (1950) Section 8-611, the Court did not have jurisdiction to enjoin further prosecution of said *mandamus* proceeding then pending in the Circuit Court of the City of Richmond.

2. The Court erred in refusing to hear and adjudicate Defendant's Plea In Abatement and his Demurrer to the Petition for an injunction, as required by Rule 2:1, Rules of the Supreme Court of Appeals, and in granting the injunction and then in refusing to dissolve it, without hearing and ruling upon said Plea In Abatement and Demurrer.

3. The Court erred in awarding the injunction and then refusing to dissolve it, when there was no competent sworn testimony by affidavit or otherwise establishing plaintiffs' equity as required by Code of Virginia (1950), Section 8-620.

4. The Court erred in awarding the injunction and then in refusing to dissolve it, without requiring the plaintiffs to post the injunction bond required by Code of Virginia (1950), Section 8-623.

5. The Court erred in characterizing its injunction as "temporary" when in fact and in law it is not temporary since the Court did not prescribe a definite and specific period of time for it to remain in effect as required by Code of Virginia (1950), Section 8-614.

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6. The Court erred in characterizing its injunction as "temporary" when in fact and in law it is not temporary since the Court did not prescribe a definite and specific period of time for it to remain in effect which would be no longer than necessary to hear and adjudicate plaintiffs' petition for an injunction on its merits.

7. The Court erred in enjoining Defendant from obtaining a timely hearing before and ajudication by the U. S. Treasury Department, Internal Revenue Service, concerning his responsibilities, obligations, authority and liability as Co-Executor for the preparation and filing of the U. S. Estate tax return and income tax returns as Co-Executor of this Estate and for paying all taxes due thereunder, and then in refusing to dissolve said injunction, in that;

(a) The Court is without jurisdiction to enjoin Defendant from exhausting his administrative remedies before the U. S. Government in a timely manner;

(b) The Court's injunction denies to the Defendant due process and equal protection of law before a duly constituted administrative agency of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Court erred in enjoining Defendant from having his day in Court before the Circuit Court of the City of Richmond and from obtaining an adjudication by that Court of his responsibilities, obligations, authority and liability
page 61 } as Co-Executor to the Commonwealth of Virginia for the preparation and filing of the Virginia inheritance tax return and the income tax returns and paying all taxes due thereunder as Co-Executor of this Estate, and then in refusing to dissolve said injunction, in that:

(a) The Court is without jurisdiction to enjoin Defendant from exhausting his judicial remedies in a timely manner before the Circuit Court of the City of Richmond;

(b) The Court's injunction denies to the Defendant due process of law before a duly constituted Court of the Commonwealth of Virginia with jurisdiction to hear said *mandamus* proceeding, all in violation of the Fourteenth Amendment to the Constitution of the United States.

9. The Court erred in enjoining, and then in refusing to dissolve said injunction, Defendant from obtaining a timely hearing and adjudication of his responsibilities, obligations, authority and liability for the preparation and filing of U. S. and Virginia tax returns and for paying all taxes due thereunder as Co-Executor of this Estate, when, on the record of this cause:

(a) There is no competent showing of the plaintiffs' legal standing to bring this suit;

(b) There is no competent showing that plaintiffs do not have adequate remedy at law;

(c) There is no competent showing that plaintiffs will suffer immediate and irreparable damage unless the Defendant is enjoined from exercising the judicial and administrative remedies available to him under the law of Virginia and of the United States.

page 62 } 10. The granting of the injunction and the refusal to dissolve it was improvident.

DATED this 6th day of March, 1967.

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Counsel for William T. Grasty, Co-Executor, Defendant

Filed Mar. 7, 1967. B. B. BEACH, D. C.

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MEMORANDUM OPINION

The questions presently before the Court in these two cases concern the administration of the estate of Robert Vandepoel Clark, Jr. To answer these questions necessitates a review of the records in these cases and the records of other proceedings involving this estate.

Robert Vanderpoel Clark, Jr., hereinafter called testator, a resident of Fauquier County, Virginia, died testate in New York City October 4, 1964, leaving an estate valued at from nineteen to twenty-six million dollars of which $300,000.00 to $400,000.00 of real estate, tangible and intangible personal property was in Fauquier County, Virginia. The page 81 } great bulk of the estate consisting of intangible personal property was held by the testator in New York. His will was dated January 26, 1962, and probated in the Surrogate Court of the County of New York on October 16, 1964, and in this Court on February 1, 1965.

Testator's mother, Suzanne D. Clark and his widow, Elizabeth D. Clark, hereinafter called beneficiaries, are the principal beneficiaries of the estate and both are parties in these proceedings. The testator in his will named The Chase Manhattan Bank and N. Holmes Clare, a New York attorney and his former counsel and draftsman of the will executors "of all my assets with the exception of my Virginia assets which will consist only of my real property in Virginia, any tangible personal property situated in that State, and any funds on deposit in banks located in Virginia". He named N. Holmes Clare and William T. Grasty hereinafter called Clare and Grasty respectively, executors "for my Virginia assets". "Letters testamentary and letters of trusteeship" were directed to be issued to the executors and trustees by the Surrogate's probate order of October 14, 1964, and pursuant to said order Clare and The Chase Manhattan Bank qualified as executors and trustees under the will page 82 } in New York. Grasty signed waiver of citation in connection with the New York probate. By letter of January 14, 1965, to the Clerk of this Court, Grasty renounced his right to qualify "as an Executor of the Virginia assets". This letter evidently was written as the result of an agreement between Grasty and the firm of Caplin, Battle and Harris dated November 18, 1964, which recited that

Grasty considered primary probate should be in Virginia but Clare would not modify probate proceedings in New York. This agreement which was signed by Caplin and Grasty provided that Grasty will renounce the executorship in Virginia and will not qualify as executor, and if asked by the estate, Caplin will act as attorney for the estate in Virginia. It further provided that in consideration for services already rendered by Grasty, and upon Grasty's agreement to give further assistance "Caplin will remit to Grasty 50% of any net fee (i.e. total fee, less any unreimbursed out-of-pocket expenditures) received by Caplin from the aforesaid estate; *provided, however,* that in no event will Caplin be obligated to pay, nor shall he pay, Grasty more than $20,000.00".

It was also agreed $5000.00 would be withheld
page 83 } by Caplin to cover indebtedness of Grasty to the
testator. By letter of February 2nd, to the Clerk of this Court Grasty retracted the renunciation and asked to be permitted to qualify on the estate. By letter of February 1, 1965, and check the agreed fee of $20,000.00 less $5000.00 and interest was forwarded to Grasty by the Battle firm. By letter of February 8, 1965, G. A. Horkan, Jr., counsel for Grasty returned the said check to the Battle firm.

Over the objections of the beneficiaries and Clare, Grasty was allowed to qualify with Clare as executor in this Court by order of March 15, 1965, upon payment of probate taxes and costs of $25,946.67 on the total estate estimated at $19,448,000.00. No appeal was taken from this order.

Virginia inheritance taxes of over one million dollars on the total estate have been paid; state and federal income taxes have been paid; federal estate taxes of over 5½ million have been paid.

There was renunciation of the will by Elizabeth D. Clark on October 2, 1965.

The principal and controlling issue in these proceedings
arises out of the dispute between Grasty and Clare
page 84 } as to whether the whole estate should be adminis-
tered under the laws of Virginia because of the doctrine of *mobilia sequuntur personam* and Virginia Code Section 64-131, or whether the intent of the testator as set forth in his will should govern and the "Virginia assets" be administered in Virginia and all other assets in New York pursuant to the *lex situs* doctrine. ,

The Court has resolved this issue in Chancery Cause 3183, by decree dated November 15, 1966, from which Grasty seeks an appeal. In this nine page decree, the Court spelled out the

intent of the testator and the duties and obligations of the executors with respect to the administration of the estate.

The intent of the testator as set forth in his will was imminently plain that he desired all of his estate except his "Virginia assets" administered under the laws of New York. This Court so adjudicating then determined there was no policy or statute that prohibited this intent from being carried out by the executors under the terms of the will.

In this respect it is important to remember that no creditor, or other person was found to be prejudiced by this ruling and the beneficiaries of the estate expressly requested that the testator's intent in this regard be affirmed.

page 85 } The doctrine of *mobilia sequuntur prsonam* which counsel for executor Grasty so strongly urged the Court to consider and follow by bringing the New York assets to Virginia is meant to aid in the administration of estates and to assist in carrying out the testator's intent and not to frustrate or thwart that intent. In my opinion to have applied the doctrine to the administration of this estate would have meant that the intent of the testator would have been ignored and the estate would have undergone burdensome expenses for no benefit to anyone. See the excellent article on "Conflict of Laws and The Administration of Decedent's Personal Property" in Virginia Law Review, Volume 46, page 1345.

Before the conclusion of the proceeding involving the construction of the will, Grasty attempted to have certain of the federal and state tax returns declared null and void because he had not signed these returns although the tax authorities had indicated no dissatisfaction with them. In this regard he filed a proceeding in the Circuit Court of the City of Richmond on November 1, 1966, asking that Court to issue a writ of *mandamus* against C. H. Morrissette, the State Tax Commissioner, compelling him to

(1) require all tax returns of the Clark estate be jointly made and signed by both Clare and Grasty;

page 86 } (2 & 3) to reject as nullities the Virginia income tax return and the Virginia inheritance tax return filed by Clare.

Deeming this and the similar requests to the Internal Revenue Department to be in derogation of the decree of this Court of November 15, 1966, without benefit of the estate and in fact detrimental thereto and perceiving no useful purpose to be served thereby this Court on the petition of the bene-

ficiaries of the estate in its discretion enjoined Grasty from prosecuting the *mandamus* proceeding and administrative proceedings instituted before the Internal Revenue Service and from instituting other judicial, administrative or other proceedings relating to the federal or Virginia estate or inheritance tax returns. The injunction of December 20, 1966, is to remain in effect until Chancery Cause 3183 is finally determined by the Supreme Court of Appeals of Virginia.

On February 15, 1967, Grasty by counsel filed a motion to vacate and dissolve the temporary injunction previously entered alleging the grounds therefor. It appearing to the Court that the injunction was temporary, that a final determination of all questions in the cause could be made at a later time, that it was beneficial for the estate for the injunction to remain in full force and effect and that the rights of no person would be prejudiced by having the page 87 } injunction remain in effect until such time as there is a final determination of the question as to whether Grasty is a limited or general executor, the motion to dissolve was denied.

The present motion for a limited dissolution of the injunction by Grasty so that he might determine his responsibility in regard to filing tax returns for the estate is denied for the following reasons:

1. There would be no benefit to the estate by a limited dissolution of the injunction.
2. The decree of November 15, 1966, and Virginia statutes defined Grasty's responsibility.
3. Federal law and instructions issued by the Internal Revenue Department also sufficiently delineate his responsibility in regard to the federal estate taxes.
4. It would be a detriment to the estate and the beneficiaries thereof for him to continue to litigate and appear in administrative proceedings to have his responsibilities defined when they have already been defined.

The beneficiaries of the estate filed a suit to remove Grasty as executor of the estate on November 21, 1966, page 88 } alleging substantially the same grounds as in the injunction petition they filed against him; i.e. his (Grasty's) activities relating to tax matters. There was a motion by the beneficiaries to consolidate this with the injunction suit, Chancery Cause 3295. The matter was continued by order of November 29, 1966. On December 15, 1966, counsel for Grasty filed a motion to quash service of motion

for his removal. On December 20, 1966 counsel for Grasty filed a motion for a continuance which was granted. On January 20, 1967, an amended motion to quash service of motion for removal was filed by counsel for Grasty. On February 13, 1967, counsel for Clare moved that the motion to remove be consolidated with Probate File 382. On February 15, 1967, after considering briefs and argument of counsel the Court denied the motion of Grasty to quash service and denied the motion of the beneficiaries to remove him as executor. On March 3, 1967, the Court took under advisement the motion of beneficiaries and Clare to vacate the decree of February 15, 1967; the motion to consolidate and the motion to remove Grasty. On March 27, 1967, the Court considering there was no objection by counsel for Grasty scheduled the cause for further hearing on all issues raised by the pleadings.

page 89 } Reasons for the adverse ruling on the objections made by counsel for Grasty to procedural matters need not be outlined since the motion for removal is denied.

The motion to consolidate with probate proceedings number 382 is denied because:

(1) This is within the discretion of the Court and no sufficient reason to consolidate has been shown.

(2) Probate procedure 382 is made an exhibit in Chancery Cause No. 3296 which in effect makes it a part of Chancery Cause No. 3296.

The motion to remove Grasty as an executor is denied for the following reasons:

(1) He was enjoined from doing the acts which the beneficiaries now state are grounds for his removal. Having obtained the relief by the injunction which they now seek in this suit, complainants have no good cause to seek the removal of Grasty as executor.

(2) The estate is being administered pursuant to previous directions of this Court which has continuing jurisdiction to see that these directions are carried out.

page 90 } (3) Although the record indicates there is friction between the two executors this alone is not grounds for removal of one. There is no allegation or evidence that Grasty is guilty of any fraud, breach of trust or gross neglect that would justify removal. See *Wilson* v. *Kable,* 177 Va. 668. This case and the citations therein set forth some of the grounds for removal of a fiduciary none of which appear in the case at bar.

In all of these proceedings involving this estate there seems to be little if any conflict in the evidence and not great enough conflict in the law to justify the extensive litigation that has taken place. The executors should cease and desist from bickering between themselves, resolve any disagreements they have and proceed to administer this estate as expeditiously and economically as possible for the benefit of any creditors and the beneficiaries.

The decrees previously presented will be entered this 1st day of June, 1967.

RAYNER V. SNEAD, Judge

Filed June 5, 1967. B. B. BEACH, Dep. Clk.

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The Court: Now, it seems only reasonable for this Court to take whatever action is necessary to see that its decrees are carried into effect until they are reversed by the Court of Appeals.

It seems to me that in taking these actions against the Federal authorities and against the state tax authorities, that you are trying to go beyond the terms of this decree of November 15, 1966 which attempted to define our authority.

page 22 } So, it seems only reasonable that you defer any attack on these returns until your rights are adjudicated by the Court of Appeals in some manner differently from the way this Court has adjudicated them.

This injunction seems only reasonable and necessary to uphold a decree entered in this Court on November 15, 1966.

Now, I am not making any final adjudication on the injunction suit, of course, until I hear the evidence or until I rule on the demurrers; but certainly, temporarily until we can get a more definitive action or definitive ruling, certainly you shouldn't proceed to attack these returns that have been regularly and duly filed and regularly and duly accepted by the tax authorities.

If you point out something to the Court that shows that they are erroneous or fraudulently filed or that they will be costly to the estate, of course you should proceed; but simply

because Mr. Grasty hasn't signed them, that is ridiculous to this Court.

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The Court: I will tell you how I would suggest that you proceed.

I would proceed with all due speed to get before the Court of Appeals in Chancery 3183.

Mr. Powell: We will do that, Your Honor.

The Court: Then you may have some more authoritative guidelines. But until you do that; there is a ruling in the Court of Appeals, the injunction will continue in effect.

* * * * *

The Court: This is a temporary injunction. I will hear all of these other matters when you get a ruling on

page 24 } this in the master case, 3183.

This is a temporary injunction. I am not entering any permanent injunction on this.

Mr. Powell: Now, is the Court now entering an injunction at this point of the proceeding? I am a little confused.

The Court: Yes, there is no question about that. I am asking that you proceed regularly and not attack the estate and not cause it burdens of defending all of these suits until you know what your authority is. Let the Court of Appeals direct you as to what your authority is and how far you can go. Then you will know; you will know what you are supposed to do when you get a ruling in this suit for the construction of the will.

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Mr. Powell: I take it, then, it is the disposition of the Court this morning, simply to enter a temporary restraining order.

The Court: That's correct.

Mr. Powell: Now, can we define—of course, we will note our objection and exception to entering such an order to protect our position on the record. There are several features of the order—

The Court: This should have been done. If I had had any idea you were planning to attack this estate in the manner that has been alleged here, or without ruling on the merits of the case, I would have made this part of the November 15, 1966 decree.

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A Copy—Teste:

Howard G. Turner, Clerk

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