

Orphans' Court for Anne Arundel County
Estate No. 82847

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2349

September Term, 2017

IN RE: ESTATE OF HARRY BARNES

Arthur,
Leahy,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: April 22, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Harry Haddleton Barnes (“Harry”)¹ died testate on September 6, 2013. His will named his son, appellant Christopher Erik Barnes (“Christopher”), as personal representative. In his will, Harry gave “the entire value of Bartex, Inc.” to appellee, Kristen Clegg (“Kristen”). Bartex, Inc. (“Bartex”) forfeited its corporate charter in October 2006, but the corporation’s assets were never liquidated and distributed. Bartex’s sole assets at Harry’s death consisted of a Raymond James account and MetLife stock valued in excess of \$400,000 (“the Bartex assets”). In the First and Final Administration Account (“First and Final Account”) of the estate, Christopher reported the Bartex assets as part of Harry’s estate. However, in a footnote in the First and Final Account, Christopher asserted that because Bartex’s charter was forfeited in 2006, “the bequest to Kristin [sic] Clegg lapsed and the investment account and individual security are part of the residuary estate.” Kristen filed exceptions and the orphans’ court ultimately determined that she was entitled to the value of the Raymond James and MetLife assets. Christopher, in his individual capacity and as the personal representative, filed this timely appeal.

In his brief, Christopher presents two questions for our review, which we slightly rephrase:

1. Does the orphans’ court have jurisdiction to determine title to personal property exceeding fifty thousand dollars in value?
2. Did the bequest to Kristen under the Will adeem by extinction because Bartex forfeited its corporate charter in 2006?

¹ Because multiple individuals share a last name, we will refer to those involved by their first names. We mean no disrespect in doing so.

We hold that the orphans' court did not improperly determine title of personal property exceeding \$50,000 in value, and that the orphans' court correctly concluded that Kristen's bequest was not adeemed by extinction.²

FACTS AND PROCEEDINGS

In December 1979, Harry and his late wife, Brenda Sue Barnes ("Brenda"), incorporated Bartex. On February 15, 1999, Bartex sold its primary product line and the corporation became "completely inactive." Harry and Brenda, the corporation's only officers, appointed Christopher as the "Director of Assets of Bartex, Inc." on March 3, 2004. Although the corporation was inactive, neither Harry nor Brenda dissolved the corporation. However, the State Department of Assessments and Taxation forfeited Bartex's corporate charter on October 6, 2006. Bartex's corporate charter was never revived and no action was taken to liquidate and distribute its assets. Despite being a dormant corporation, Harry, as an officer of Bartex, signed a signature card for a new account at Raymond James on February 27, 2009, and designated Bartex as the owner of the account.³ Bartex also owned individual shares of MetLife stock. As noted, the Raymond James account and MetLife stock will collectively be referred to as "the Bartex assets."

² In her brief, Kristen challenged Christopher's standing to appeal, but at oral argument she conceded that he has standing pursuant to *Knight v. Princess Builders, Inc.*, 393 Md. 31 (2006).

³ Harry apparently transferred the assets in a Smith Barney account titled to Bartex to the new account at Raymond James.

On July 4, 2006, Harry executed the will at issue in the present case. In relevant part, it states:

FOURTH:

(A) If my Wife, Brenda Sue Barnes survives me, I direct that one half of Bartex, Inc. shall be liquidated, and delivered to my former bookkeeper, Kristin [sic] Clegg, and one half of Bartex Inc. shall be liquidated and delivered to my son Christopher Erik Barnes.

(B) If my Wife Brenda does not survive me, then the entire value of Bartex, Inc. shall be liquidated and delivered to Kristin [sic] Clegg. Kristin [sic] is the daughter I never had, and for this reason I remember her here. It is my request that she utilize her gift for the education of her children[.]

* * *

SIXTH: Upon and after the death of the survivor of my wife and me, the entire remaining principal and unexpended income of the Trust, or my entire residuary estate, as the case may be, shall be delivered to my son Christopher Erik Barnes, absolutely.

Brenda died in October 2009, and her estate was closed on April 26, 2011. Harry died on September 6, 2013. Harry's will named Christopher as the personal representative of his estate.

On February 18, 2015, Christopher, as personal representative of his father's estate, filed the First and Final Account in the orphans' court. In his First and Final Account, Christopher proposed to distribute the entire estate to himself as the sole beneficiary of Harry's residuary estate. In a footnote in the First and Final Account, Christopher stated:

Article Fourth (B) of the Decedent's Will states: "If my wife Brenda does not survive me then the entire value of Bartex Inc. shall be liquidated and delivered to Kristin [sic] Clegg[.]" Although there is an investment account and an individual security purportedly titled to Bartex, Inc., Bartex, Inc. forfeited its corporate charter in October 2006. Under the law of the State of Maryland, Harry Barnes had a duty to dissolve the corporation at that point

and distribute the remaining assets to its shareholders. Thus, Bartex did not exist at death, the bequest to Kristin [sic] Clegg lapsed and the investment account and individual security are part of the residuary estate.

Kristen filed timely exceptions. She alleged errors in the valuation of the Bartex assets, citing irregularities between the final accounting and the financial records. She also argued that Christopher's failure to distribute the Bartex assets to her was contrary to Harry's intent, as demonstrated in the will. She contended that because the Bartex assets "were Bartex assets before Harry[']s death and are still Bartex assets," they should have been distributed to her pursuant to Article Fourth (B) of Harry's will.

Christopher filed a Memorandum Supporting Abrogation of Bequest to Kristin [sic] Clegg. He argued that Harry and Brenda each owned half of Bartex, and, as director of finance for Bartex, he was under an obligation to distribute the assets to his parents as Bartex's shareholders. He contended that

[b]ecause of Maryland corporate law, the assets that were at one time held by Bartex are actually held by Harry and Brenda . . . [and] [b]ecause Brenda and Harry hold the assets titled to Bartex individually, none of the assets pass to [Kristen] under the fourth item of the Will.

He also asserted that Kristen could not challenge the title of the Bartex assets in the orphans' court because it lacked jurisdiction.

The orphans' court held a hearing on August 18, 2015. At the hearing, Christopher argued that the orphans' court lacked jurisdiction to determine the title to the Bartex assets because they constituted personal property valued at more than \$50,000. Consistent with his written memorandum, Christopher also contended that, under Maryland corporate law, Bartex's shareholders were the owners of the Bartex assets. Kristen disagreed, arguing

that when a charter is forfeited, the directors of the corporation “are the sole individuals who are entitled to actually work with the assets of that corporation. [The assets] don’t revert to the shareholders.” After argument and a brief recess, the orphans’ court initially denied Kristen’s exceptions on the basis that it lacked jurisdiction to determine “the question of title regarding Bartex corporation.” Kristen immediately requested the court to “hold [the exceptions] open” rather than deny them outright. Christopher agreed to Kristen’s request that the court delay its ruling on the exceptions until a determination was made as to the title of Bartex’s assets. Later that day, the court issued a “Decision” stating that “[a]fter careful consideration, the [c]ourt will continue this Hearing, upon the determination by the higher [c]ourt of title of Bartex, Inc. Corporation.” (Emphasis in original).

Although the orphans’ court contemplated that the circuit court would determine title of the Bartex assets, neither party requested the circuit court to make that determination. In fact, the record shows almost no activity until April 24, 2017, when Kristen filed a Petition to Remove Personal Representative and Appoint Successor Personal Representative (“Petition to Remove Personal Representative”). In this petition, Kristen alleged, among other things, that Christopher breached his fiduciary duty when he failed to expediently distribute the Bartex assets to her under Harry’s will.

On September 12, 2017, the orphans’ court held a hearing on Kristen’s Petition to Remove Personal Representative. At the outset of the hearing, the court noted that “[t]here is also the issue of the continued hearing from August 18th of 2015, but we’ll deal with that as we move forward.” The court ultimately determined that it would “consider[]

[Kristen's] exceptions in the context of all of this.”

On November 21, 2017, the orphans' court issued a written decision. The court noted that “no action has been taken with regard to the title of Bartex, Inc. as discussed at [the August 18, 2015] hearing.” Specifically, the court recognized that neither party had filed an action in the circuit court to determine title to Bartex's assets. Nevertheless, the orphans' court ultimately ruled in Kristen's favor:

There have clearly been delays by the Personal Representative with regard to the timely distribution of this estate with an assumption of a conflicting claim with regard to the assets held within Bartex, Inc. No claims were filed with regard to Bartex, Inc. and the Personal Representative has taken no action to liquidate it according to his statements that the Estate of Brenda Barnes and this estate have claim to the Raymond James account within Bartex, Inc. Further, statements and testimony by [Kristen's witnesses] make it clear to this [c]ourt that the Personal Representative treated Bartex, Inc. as an active corporation in his tax filings for the estate and in other documents signed on behalf of Bartex, Inc. As such, the Personal Representative has taken no action to question his claim of title nor has he taken any action to resolve the title question that he brought to light in past filings and hearings on this estate.

Upon careful consideration of all statements, testimony and evidence provided in this hearing, the [j]udges of the [o]rphans' [c]ourt hereby GRANT the Request for Order Directing the Personal Representative to Distribute Bequest to Kristen Clegg for the value of the Raymond James Account assets held by Bartex, Inc. in accordance with Item Fourth (B) of the Last Will and Testament of Harry Haddleton Barnes. The [c]ourt shall grant the Personal Representative a period of sixty (60) days from the date of this decision to swiftly liquidate the Raymond James Account assets within Bartex, Inc. and promptly distribute the estimated cash value of \$430,000 plus any increase in value that has occurred since the filing of the Request for Order. Further, the Personal Representative shall promptly pay the inheritance tax due on this bequest to the Register of Wills.

On December 1, 2017, Kristen filed a Motion to Modify Judgment to include the MetLife stock, which appeared to have been inadvertently omitted from the orphans' court's

decision. Christopher opposed this motion, reiterating that the orphans' court did not have jurisdiction to determine title to the Bartex assets. On January 25, 2018, the orphans' court issued an amended decision that, in relevant part, added the MetLife stock to Kristen's bequest. Christopher filed this timely appeal.

STANDARD OF REVIEW

The orphans' court's purpose is "ascertaining and effectuating the intent of the testator[.]" *Bandy v. Clancy*, 449 Md. 577, 597 (2016). Accordingly, "[w]e review the [o]rphans' [c]ourt's conclusions of law under a *de novo* standard." *Id.* Findings of fact "are entitled to a presumption of correctness." *Pfeufer v. Cyphers*, 397 Md. 643, 648 (2007) (quoting *N.Y. St. Libr. Sch. Ass'n v. Atwater*, 227 Md. 155, 157 (1961)).

DISCUSSION

I. ORPHANS' COURT JURISDICTION

On appeal, Christopher first argues that the orphans' court lacked jurisdiction to determine title to the Bartex assets. He argues that the orphans' court "is a court of special limited jurisdiction and may only exercise the authority and power expressly provided to [it] by law" and that Md. Code (1974, 2017 Repl. Vol.), § 1-301(b) of the Estates and Trusts Article ("ET") limits its jurisdiction to determining title to personal property valued at less than \$50,000. Christopher argues that "although not explicit, the [o]rphans' [c]ourt implicitly determined title to the [Bartex assets] by ordering the personal representative to liquidate and distribute them." He claims that, because the Bartex assets are valued at more than \$50,000, the orphans' court exceeded its jurisdiction.

Christopher's argument rests entirely on his interpretation of the legal consequences

resulting from the forfeiture of Bartex’s charter in 2006. We begin with the applicable statute, Md. Code (1975, 2014 Repl. Vol., 2018 Suppl.), § 3-515 of the Corporations and Associations Article (“CA”), which establishes the duties of a corporation’s directors upon forfeiture.⁴ It reads:

- (a) *Directors to manage assets.* — When the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation shall manage its assets for purposes of liquidation.
- (b) *General powers.* — Unless and until articles of revival are filed, the directors shall:
 - (1) Collect and distribute the assets, applying them to the payment, satisfaction, and discharge of existing debts and obligations of the corporation, including necessary expenses of liquidation; and
 - (2) Distribute the remaining assets among the stockholders.
- (c) *Specific powers.* — The directors may:
 - (1) Carry out the contracts of the corporation;
 - (2) Sell all or any part of the assets of the corporation at public or private sale;
 - (3) Sue or be sued in the name of the corporation; and
 - (4) Do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs.
- (d) *Standard of conduct.* — Forfeiture of the charter of a corporation does not subject a director of the corporation to a standard of conduct other than the standard of conduct set forth in § 2-405.1^[5] of this article.

CA § 3-515. The statute makes clear that the directors are to manage the forfeited corporation’s “assets for purposes of liquidation” and take other actions essential to “wind up [the corporation’s] affairs.” CA § 3-515.

⁴ The statute that was in effect in 2006, in relevant part, is not materially different from the present statute. The prior version provides that “The director-trustees are vested *in their capacity as trustees* with full title to all the assets of the corporation” and have duties identical to those under current law. CA § 3-515(a) (emphasis added).

⁵ CA § 2-405.1 defines the standard of care for directors.

According to Christopher, upon forfeiture of a corporation's charter, the corporate assets automatically transfer to the corporation's directors who serve as trustees of the assets for purposes of liquidation. Christopher contends that the corporation's directors hold the defunct corporation's assets in trust to first satisfy the corporation's debts and then to distribute any remaining balance to the shareholders. He further asserts that a defunct corporation, as a matter of corporate law, cannot hold title to assets. Instead, Christopher posits that "[t]itle is seen as vesting in the shareholders upon the moment of forfeiture" of the company's charter. Relying on these principles, Christopher argues that, upon forfeiture of Bartex's charter in 2006, title to the Bartex assets automatically transferred to the corporation's directors as trustees for Bartex's shareholders, the "vested" title owners of the corporate assets. Thus, Christopher contends that he generated an issue concerning the title and ownership of the Bartex assets.

We disagree with Christopher's argument. First, we reject Christopher's contention that a defunct corporation, as a matter of law, cannot hold title to assets. In that regard, we need to look no further than the language of the statute. There is no indication in CA § 3-515 that a corporation with a forfeited charter cannot hold title to assets. To the contrary, the express statutory language contemplates that the defunct corporation may own assets. Specifically, CA § 3-515(a) provides that "When the charter of a Maryland corporation has been forfeited . . . the directors of the corporation shall manage *its assets* for the purposes of liquidation." (Emphasis added). Subsection (b) provides that the directors shall "distribute the *assets*," and subsection (c)(2) provides that the directors may "[s]ell all or any part of the *assets of the corporation* at public or private sale[.]" (Emphasis added). In

our view, the legislative intent is clear — a lapsed Maryland corporation may hold and own assets until those assets are liquidated as provided by the statute.

Second, even if we were to accept Christopher’s argument that “[t]itle is seen as vesting in the shareholders upon the moment of forfeiture,” that theory would vest Harry, Bartex’s sole stockholder,⁶ with title to the Bartex assets. Accordingly, it makes no difference whether legal title of the Bartex assets is vested in Bartex, Inc. or Harry as Bartex’s sole shareholder. Under either scenario, Harry owned the Bartex assets at the time of his death. Indeed, Christopher, as personal representative, properly reported the Bartex assets in the First and Final Account filed in his father’s estate. In short, the orphans’ court did not improperly determine title to personal property with a value in excess of \$50,000 because there was no real dispute that Harry owned all of the Bartex assets at his death.

II. ADEMPMENT

Christopher next argues that, even if the orphans’ court had jurisdiction to determine that Harry owned the Bartex assets at his death, the bequest to Kristen was adeemed by extinction. He argues that because Bartex no longer exists and therefore is “valueless,” its assets no longer exist in any form. Kristen argues that the bequest of “the

⁶ Although Christopher asserted below that Harry and Brenda each owned fifty percent of Bartex, in his reply brief and at oral argument, Christopher acknowledged that Brenda’s estate had not made a claim to the Bartex assets. In his reply brief, Christopher admits that the Bartex assets should be “distributed entirely under the residuary clause” of Harry’s will. We note that it would be difficult for Christopher to argue that anyone other than Harry was a stockholder of Bartex since Harry’s 2006, 2007, and 2008 tax returns identify him as the 100% shareholder of the corporation. Furthermore, Christopher, under penalty of perjury, claimed on Harry’s 2013 tax returns that Harry was the 100% shareholder of Bartex.

entire value of Bartex, Inc.” constituted identifiable property owned by Harry at his death and, accordingly, the bequest was not adeemed by extinction. We agree with Kristen.

Maryland courts define ademption as a “revocation, recalling, or cancellation, of a legacy, according to the apparent intention of the testator, implied by law from the acts done by him in his life, though such acts do not amount to an express revocation of it.” *YIVO Inst. for Jewish Res. v. Zaleski*, 386 Md. 654, 663 (2005) (quoting *Von Steinner v. Sorrell*, 259 Md. 228, 230 (1970)). Put another way, ademption is “the extinction, alienation, withdrawal, or satisfaction of the legacy by some act of the testator by which an intention to revoke is indicated: the doing of some act with regard to the subject-matter which interferes with the operation of the will.” *Id.* (quoting *In re Estate of Hume*, 984 S.W.2d 602, 604 (Tenn. 1999), *superseded by statute*, Tenn. Code. Ann. § 32-3-111, *as recognized in In re Estate of Greenamyre*, 219 S.W.3d 877, 883 (Tenn. Ct. App. 2005)). Ademption by extinction “occurs when ‘the unique property that is the subject of the specific bequest has been sold, given away, or destroyed, or is not otherwise in existence at the time of the testator’s death.’” *YIVO Inst. for Jewish Res.*, 386 Md. at 663-64 (quoting *Black’s Law Dictionary* 42 (8th ed. 2004)).

In our view, *Seifert v. Kepner*, 227 Md. 517 (1962) is controlling. There, Seifert directed his “executors to dispose of all of the stock of the Harrisburg Automobile Company, Inc., that [Seifert] may own at the time of [his] death and to distribute the proceeds thereof” to appellants. 227 Md. at 518. Shortly before Seifert’s death, the corporation held a special meeting of stockholders at which the stockholders approved a resolution recommending “complete liquidation and dissolution of [the] Corporation as

soon as possible.” *Id.* at 519. That same day, a second meeting of the corporate directors resulted in the declaration of a cash dividend of \$140 per share. *Id.* A check payable to Seifert in the amount of \$14,000 and dated six days before Seifert’s death was found among his papers. *Id.* The executors of the estate took the position that the \$14,000 dividend check was not part of the bequest of the corporation’s stock to appellants, nor did it constitute “proceeds thereof.” *Id.* Appellants filed exceptions, which the orphans’ court denied. *Id.*

The Court of Appeals succinctly framed the appellate issue: “This appeal presents the question whether there was an ademption of a legacy of the proceeds of stock owned by a testator, where the corporation had distributed a liquidating dividend shortly prior to the testator’s death.” *Id.* at 518. The Court began its analysis by citing *Elwyn v. De Garmendia*, 148 Md. 109, 111 (1925), for the proposition that

a specific legacy may be adeemed or nullified if the thing given does not continue in existence until the time of a testator’s decease. The ademption may result not only from a complete loss or destruction of the subject of the gift, but also from changes which “involve a loss of its identity as specified.”

Id. at 519-20. Under the facts of *Seifert*, the Court of Appeals held that the bequest was not adeemed by extinction. *Id.* at 521. It explained:

In the instant case the testator still owned the stock bequeathed at the time of his death, and the executors admit their obligation to sell and distribute the proceeds of it. The question concerns cash, liquidated and distributed to the testator by corporate action as a return of capital. In a broad sense this was merely a change in form, effecting the conversion which the will directed. To hold that this change, not due to the action of the testator, effected a reallocation of the testator’s careful plan of distribution among the natural objects of his bounty, would seem to defeat his manifest intention. We think the liquidating dividend in the hands of the testator at the time of his death is fairly within the description of the word ‘proceeds’ in the

language of the bequest, and that the distribution did not work an ademption.

Id. at 520-21.

In the instant case, the orphans' court expressly found that

Ademption does not apply where the property which is the subject of the bequest remains in the estate of the testator. Here the testator did not leave "Bartex, Inc." to [Kristen]. Instead, he left the "value" of the assets of Bartex, Inc. These assets were well known to the testator, and it is clear that he intended to leave these assets, the Raymond James Account and the MetLife Security Account to [Kristen].

The subsequent action of [Christopher] in allowing the Bartex charter to lapse did not change the existence of these assets as part of the estate of Harry H. Barnes.^[7]

The orphans' court correctly concluded that Kristen's bequest was not adeemed. Here, Harry opened the new account at Raymond James on February 27, 2009 and designated "Bartex, Inc." as the title owner of the account. Title and ownership of that account remained unchanged until Harry's death in September 2013. Similarly, the individual shares of MetLife stock – titled to and owned by Bartex for many years prior to Harry's death – remained in that form at Harry's death. Christopher corroborated that the Bartex assets were known and identified for a substantial period of time when he stated "that most of [the Bartex assets] originated in 1999 from the sale of the corporation and then additional balances accrued over time." Moreover, Harry's financial advisor's notes confirmed that Harry intended that Kristen receive the Bartex assets.

Comparing the facts of this case to *Seifert*, the evidence here compels the conclusion

⁷ It is not relevant to our analysis whether Christopher or Harry allowed the charter to lapse.

that Kristen's bequest was not adeemed by extinction. In short, if the cash dividend in *Seifert* did not constitute an ademption of a bequest of corporate stock and its "proceeds," we fail to see how Harry's bequest to Kristen of the "entire value of Bartex, Inc." could be construed as an ademption where the Bartex assets – the Raymond James account and the MetLife stock – were titled to Bartex years before Harry's death and remained so titled at his death.

**JUDGMENT OF THE ORPHANS' COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**