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**William C. Lankford Jr. Order on Petitioner Bennett L. Knight's
Motion for Judgment on the Pleadings**

Melvin K. Westmoreland
Fulton County Superior Court Judge

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM C. LANKFORD, JR. as Trustee and)
Committee Member of the Trust for Walter H.)
Bunzl and his Lineal Descendants and their)
Respective Spouses under Item Four of the Last)
Will and Testament of Nellie Margaret Bunzl,)
dated May 8, 1963,)

Civil Action File No.
2013CV227193

-and-)

BENNETT L. KIGHT, as Committee Member)
of the Trust for Walter H. Bunzl and his Lineal)
Descendants and their Respective Spouses)
under Item Four of the Last Will and)
Testament of Nellie Margaret Bunzl, dated May)
8, 1963,)

Petitioners,)

v.)

FRANCES B. BUNZL, SUZANNE BUNZL)
WILNER, PATRICIA HUEY BUNZL and)
ANNA WILNER, as Beneficiaries of the Trust)
for Walter H. Bunzl and his Lineal Descendants)
and their Respective Spouses Under Item Four)
of the Last Will and Testament of Nellie)
Margaret Bunzl, dated May 8, 1963,)

Respondents.)

**ORDER ON PETITIONER BENNETT L. KIGHT'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

Before the Court is Petitioner Bennett L. Kight's Motion for Judgment on the Pleadings. The Motion is unopposed. Petitioners William C Lankford, Jr., as Trustee and Committee Member of the Trust for Walter H. Bunzl and his Lineal Descendants and their Respective

Spouses under Item Four of the Last Will and Testament of Nellie Margaret Bunzl,¹ dated May 8, 1963 (the “Nellie Trust”) and Bennett L. Kight, as a Committee Member of the Trust filed their Petition for Approval of Final Distribution of Assets and Discharge from Liability on February 12, 2013.² The Petition requested approval of the statutory accountings which were attached to the Petition and approval of the final distribution of Nellie Trust assets and discharge from liability. According to the Petition, the only remaining Nellie Trust asset is a vacation property in North Carolina referred to as the Upper Divide Property. The instant Motion seeks judgment on the narrow issue of declaratory relief sought, specifically that the Upper Divide Property be distributed out of the Nellie Trust and transferred to Respondent Patricia Bunzl in fee simple.

According to the Petition, the Nellie Trust acquired the Upper Divide Property in 1999 for the use of Richard Bunzl and his wife, Patricia. In December of 2004, the trustees of the Nellie Trust made cash distributions to Richard and Suzanne and their spouses, Patricia and David. However, the Upper Divide Property was overlooked and is the only remaining asset of the Nellie Trust. Petitioners claim that the Trust cannot pay expenses related to the Upper Divide Property, including property taxes and homeowner association fees. The Petition states that the three other current beneficiaries of the Trust—Anna Wilner, Frances Bunzl, and Suzanne Bunzl Wilner—all agree that the Upper Divide Property should be distributed to Patricia as it was purchased with the intent that it would be used for life by her and her husband, Richard, who died in 2010. In their response to the Petition, Respondents admitted that Frances, Suzanne, and

¹ Nellie Bunzl was the wife of Robert Bunzl and mother of Walter Bunzl. Walter and his wife, Frances, had two children, Richard C. Bunzl and Suzanne Bunzl Wilner, who married Patricia Bunzl and David Wilner, respectively. This case concerns the trust Nellie established through her will for the benefit of her son Walter, his lineal descendants, and their spouses.

² The Petition was subsequently amended on February 12 to correct a typographical error.

Anna have agreed among themselves that the Upper Divide Property should be distributed to Patricia. However, Respondents asserted that it was unclear if their consent was even necessary given that “Petitioners have created such a confused history of the [Upper Divide] Property.”

Currently, Lankford is the sole trustee of the Nellie Trust. There is also a Nellie Trust committee (the “Committee”) that was established pursuant to Item Eight of Nellie’s will. The current Committee members are Kight and Lankford. The Committee members may compel the trustee to do or refrain from any discretionary act which the trustee is authorized to do and may also remove a trustee and appoint a new one. All powers of the Committee are to be exercised by a majority of the members. Item Nine of Nellie’s will authorizes the trustee to determine the disposition of real or personal property in his discretion.

Although the Motion is unopposed, the Court has several issues with granting the motion and distributing the Upper Divide Property based on the current pleadings alone. First, the Court notes that the only movant is Kight. Lankford, the sole Trustee and the only other Committee member, has not joined in the Motion. His consent would be necessary as either Trustee or as Committee member to establish majority support of the Committee. Lankford withdrew as trustee from three other Bunzl family trusts on May 11, 2015, but there is no record in this case that he intended to withdraw as trustee of the Nellie Trust or that the Committee has replaced him as trustee. As such, the Court questions whether Kight alone is the proper party to seek the requested relief.

Further, the Motion seeks declaratory relief in the absence of any actual controversy. “[U]nder the Declaratory Judgment Act, a superior court can enter a declaratory judgment in cases of actual controversy, and to determine and settle by declaration any justiciable controversy of a civil nature.” *Pinnacle Benning LLC v. Clark Realty Capital, LLC*, 314 Ga.

App. 609, 612 (2012) (citation omitted). “But a declaratory judgment may not be merely advisory in nature.” *Id.* at 613. A party seeking declaratory judgment must show it is in a position of uncertainty as to an alleged right. Although the Motion claims that there is an actual controversy regarding the ownership of the Upper Divide Property, the Motion also claims that everyone is in agreement that the Upper Divide Property should be transferred to Patricia. Kight asserts in his Motion that he potentially faces competing claims concerning the ownership of the Upper Divide Property but he does not state who else could potentially claim an ownership interest in the Upper Divide Property other than the Nellie Trust. The Court cannot reconcile the idea that declaratory relief is appropriate in a case where there is no disagreement.

Even assuming that the ownership of the Upper Divide Property is an actual controversy, the parties have not provided any documentation that supports their allegations the Nellie Trust is the owner of the Upper Divide Property. The Court is reluctant to declare Patricia’s fee simple ownership of the Upper Divide Property without a shred of evidence in the record that the Nellie Trust holds title outright. Indeed, based on allegations in a petition in a related case brought by Patricia in Hall County (and attached as an exhibit to the Motion), the Nellie Trust’s ownership of the Upper Divide Property is less than clear. In that petition, Patricia made factual assertions that Kight failed to properly distribute the Upper Divide Property from the Nellie Trust although the issue in that case involves Kight’s performance as executor of her husband’s will and as co-trustee of the Richard C. Bunzl Revocable Trust (the “Richard Trust”). Hall County transferred the claims related to Kight’s actions as trustee of the Richard Trust to this Court. *See Patricia Bunzl v. Bennett Lexon Kight*, CAFN 2014cv251300 (Fulton Sup. Ct.). In this action, Patricia claims that Kight purchased the Upper Divide Property as trustee of the Nellie Trust for Richard and Patricia’s use for the rest of their lives, or the life of the surviving spouse. She alleges that

Kight distributed all the assets of the Nellie Trust in 2004 except for the Upper Divide Property. In June of 2011, Kight demanded that Patricia vacate the Upper Divide Property and stated she had no rights to the Property. Kight and other attorneys authored several contradictory theories of ownership for the Upper Divide Property but at one point offered to sell the property to Patricia. Patricia also alleges that she had her attorneys evaluate the true ownership of Upper Divide Property and investigate the extent of her interest in it.

The Petition in the Richard Trust case included an affidavit by Clark Cunningham, a legal expert, who summarizes the documents he received from the Bunzl family, including documents relevant to the purported ownership of the Upper Divide Property. From his review of the documents provided to him (which are not attached to his deposition), Cunningham asserts that the Nellie Trust was to purchase the Upper Divide Property using a limited liability company to hold title. Following purchase, the Property would be distributed to a new trust of the lifetime benefit of Richard and Patricia. At purchase, SunTrust, who was then the trustee, was directed to wire \$657,000 to the closing attorney for the purchase of the Upper Divide Property. Title was conveyed to Upper Divide Limited Company, but no new trust was ever formed to hold the Property. In 2004, when Kight directed SunTrust to distribute all assets of the Nellie Trust, SunTrust failed to recognize that the Nellie Trust owned the membership interest in Upper Divide Limited Company. Cunningham noted that the Nellie Trust committee members offered to sell the Property at the original sale price to either Patricia or the Richard Trust. Shortly thereafter, in February of 2012, the Committee members at the time, Frances and Kight, removed SunTrust as trustee and appointed Lankford, and replaced Frances with Lankford as a committee member. Then in April of 2012, Kight and Lankford presented documents to the Bunzl family showing that Upper Divide Limited Co. was the personal property of Frances and was

contributed to an entity created by Kight called Park Place Investment Company LLC in 2005. The materials reviewed by Cunningham also purportedly showed Upper Divide Limited Co. as subsequently owned by “CPIC I” in 2005 and then by “CP Carolina” in 2012. According to Cunningham, neither of these entities are owned by the Nellie Trust but there is no information in the record naming the true owners of these entities. Again, the documents relied on by Cunningham have not been made a part of the pleadings.

In conclusion, it not clear from the face of the pleadings as a matter of law that Nellie Trust owns the Upper Divide Property or owns whatever company may hold title to the Property or that the transfer of the Property in fee simple to Patricia has been approved by the Nellie Trust trustee or a majority of the committee. As such, the Motion is **DENIED**.

SO ORDERED this 7th day of January, 2016.


Senior Judge Melvin K. Westmoreland
Superior Court of Fulton County

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