

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

**CHARLES LOGAN LYNCH, and
DAVID NOEL LYNCH,**

Plaintiffs,

**THE ESTATE OF CHARLES LYNCH,
III, MARY ANN KARETAS LYNCH,
Individually and in her capacity as
Executor of the Estate of Charles Joseph
Lynch, III, And JOHN DOES 1
THROUGH 3,**

Defendants.

CIVIL ACTION FILE

NO. 2020CV334996

**ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON LIABILITY**

The above-styled case came before the Court on Plaintiffs Charles Logan Lynch's and David Noel Lynch's ("Plaintiffs") Motion for Partial Summary Judgment as to Liability and Memorandum in Support of the Motion (Mem. In Supp.). In this action, Plaintiffs allege that they are owed a debt by the Estate of Charles Lynch, III, as a result of a breach of contract by Charles Lynch, III ("Decedent"). In their Complaint for Breach of Contract, Debt, and Equitable Relief ("Complaint"), Plaintiffs allege that: (1) Decedent breached the terms of his divorce settlement agreement (the "Agreement"); (2) the breach of the Agreement gave rise to a debt owed to Plaintiffs by Decedent's Estate; and (3) they are entitled to equitable relief in the form of an accounting from Decedent's Estate to account for said debt.

On January 3, 2022, in response to the Motion, Defendant Mary Ann Karetas Lynch, individually and as Executrix of the Estate of Charles Logan Lynch, III ("Defendant") timely filed

her Response in Opposition to Plaintiffs’ Motion (“Response”). On January 14, 2022, Plaintiffs filed a Reply to Defendant’s Response (“Reply”). In consideration of Plaintiffs’ Motion and applicable authority, Plaintiffs’ Motion is hereby **GRANTED** for the reasons set forth below.

I. FACTUAL ALLEGATIONS

On or about April 22, 1971, Charles Lynch, III and Patricia Jeanne O’Hern Lynch entered a Divorce Settlement Agreement (the “Agreement”). (Mem. in Supp. at 2). That Agreement was incorporated into the Final Judgment and Decree of the Fulton County Superior Court that finalized the divorce on April 26, 1971 (“Divorce Judgment”). Id. The Agreement contained a provision that required Decedent to execute a will devising Plaintiffs and Lawrence S. Lynch his interest in Shepard Decorating Company (“Shepard Decorating”) and Shepard Drayage Service, Inc. (“Shepard Drayage”). Id. The Agreement continued by providing that “[Decedent] shall bequeath one-half interest in Shepard Decorating Company and his entire interest in Shepard Drayage Service, Inc., which are to be acquired from [Patricia Jeanne O’Hern Lynch], and any successor thereto. . . .” Id. Additionally, the Agreement provides that, if Shepard Decorating and Shepard Drayage are sold prior to Decedent’s death, Plaintiffs or their lineal descendants “shall receive in cash at the time of [Decedent’s] death an amount equal to one-half the proceeds of sale of Shepard Decorating Company and the entire proceeds of the sale of Shepard Drayage Service, Inc.” Id. Lastly, the Agreement provides that “If the husband’s last will and testament as probated fails to comply with the provisions of this agreement, husband binds his estate, his heirs, assigns”

At the time the Divorce Judgment was entered, Shepard Decorating and Shepard Drayage were jointly held by Decedent’s then wife, Patricia Jeanne O’Hern Lynch, and her sister. (Complaint ¶ 11). Subsequently, in 1972, Decedent acquired title to Shepard Decorating and

Shepard Drayage. (Mem. in Supp. at 2). In 1978, Decedent formed Shepard Convention Service Contractors, Inc. (“Convention Contractors”) and is purported to have then merged Shepard Decorating and Shepard Drayage into Convention Contractors. Id. at 3-4 n.1. On or about February 17, 1982, Mitchell Wade, Inc., Sherman Wade and Carl Mitchell bought Shepard Convention Service Contractors, Inc., and Shepard Drayage Service, Inc. Id. at 4. Defendant on the other hand contends that the Companies were never merged and that they were administratively dissolved. In her Affidavit attached in opposition to the Motion, Defendant Mary Ann Lynch contends that Decedent dissolved the businesses in 1978.

However it is undisputed that Decedent executed a series of wills that satisfied the terms of the Agreement but the final will submitted for probate did not contain the provisions that the Agreement required. (Mem. in Supp. at 2; Response at 2).

II. LEGAL STANDARD

Summary judgment is appropriate if the movant can show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56(c). An issue is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the non-moving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it “might affect the outcome of the suit under the governing law.” Id.

If the movant is able to make a prima facie showing that it is entitled to judgment as a matter of law, then the burden of proof shifts to the non-moving party who must come forward with rebuttal evidence or suffer judgment against him. Tr. Co. Bank of Middle Georgia v. Stubbs, 203 Ga. App. 557, 560 (1992). The non-moving party may not rely upon mere allegations or denials of the movant’s pleadings, but his response, by affidavit or otherwise, must set forth specific facts showing that there is a genuine issue for trial. Skinner v. Humble Oil & Ref. Co.,

145 Ga. App. 372, 374 (1978). On motions for summary judgment, all inferences that can be drawn from the pleadings and evidence are construed against the movant. Lansky v. Goldstein, 136 Ga. App. 607, 608 (1975).

III. LEGAL ANALYSIS

In their Memorandum in Support of Motion for Partial Summary Judgment on Liability, Plaintiffs contend that they are entitled to summary judgment for three reasons. First, the Agreement is to be analyzed using the usual rules governing the construction of contracts, and by its terms, the Agreement is clear and unambiguous. Second, as third-party beneficiaries of the Agreement, Plaintiffs have standing to enforce the contract under Georgia law. Finally, the Agreement declared the Plaintiffs are entitled to the benefit of any sale of Shepard Decorating and Shepard Drayage, and that is a benefit they never received.

In her Response, Defendant Mary Ann Karetas Lynch contends that Plaintiffs' motion should be denied for three reasons. First, because genuine issues of material fact still exist as to whether the Agreement is enforceable against Defendant. Second, because Plaintiffs' motion fails to comply with Uniform Superior Court Rule ("USCR") 6.5. Finally, Defendant asserts the equitable defense of laches alleging the Plaintiffs delayed bringing this suit and her ability to defend this suit has been prejudiced by their delay.

A. Breach of Contract

"The elements for a breach of contract claim in Georgia are the (1) breach and the (2) resultant damages (3) to the party who has the right to complain about the contract being broken." (Punctuation omitted.) Duke Galish, LLC v. Manton, 308 Ga. App. 316, 320 (2011) (citing Kuritzky v. Emory Univ., 294 Ga. app. 370, 371 (2008)). Under Georgia law, "[t]he beneficiary of a contract made between other parties for his benefit may maintain an action against the

promisor on the contract.” O.C.G.A. § 9-2-20. “In order for a third party to have standing to enforce a contract under [O.C.G.A. § 9-2-20] it must clearly appear from the contract that it was intended for his benefit. The mere fact that he would benefit from performance of the agreement is not alone sufficient.” Bartley v. Augusta Country Club, Inc., 172 Ga. App. 289 (1984) (quoting Backus v. Chilivis, 236 Ga. 500, 502 (1976)). “A contract is intended to benefit a third person when the promisor engages to the promisee to render some performance to a third person.” Southern Trust Ins. Co. v. Cravey, 345 Ga. App. 697, 699 (2018) (quoting Scott v. Mamari Corp., 242 Ga. App. 455, 457 (2000)).

Here, it is undisputed that Decedent entered the Agreement, and it was incorporated into the Final Judgment and Decree of the Fulton County Superior Court concerning Decedent’s divorce. Additionally, it is undisputed that under the terms of the Agreement, Decedent was required to complete a will that granted Plaintiffs one-half of his interest in Shepard Decorating and his entire interest in Shepard Drayage, or the proceeds of the sale of said companies. Finally, it is undisputed that Decedent’s final will submitted for probate did not contain the provisions that the Agreement required.

Accordingly, Plaintiffs have established the elements of breach of contract with undisputed facts. Decedent’s will, offered for probate, does not contain the provision devising the Plaintiffs Decedent’s interests in Shepard Decorating and Shepard Drayage as required by the Agreement thus breaching the Agreement. Plaintiffs have not received the payment prescribed by the Agreement. Finally, as Plaintiffs are intended third-party beneficiaries of the Agreement, it is clear that they have the right to complain about the Agreement being breached. Thus, relying on undisputed facts and no inferences favorable to Plaintiffs, Plaintiffs have established each element

of their breach of contract claim. Thus, Plaintiffs have shown that they are entitled to summary judgment as a matter of law with respect to their liability for breach of contract claim.

Considering the facts in the light most favorable to the nonmovant, Defendant contends that Shepard Decorating and Shepard Drayage were dissolved and were not merged, that the proceeds from the sale were from a separate company and that the profits from the sale are now depleted. However, as Plaintiffs argued, Defendant has not shown whether the companies were simply administratively dissolved after the merger because their business identities were no longer needed. More importantly, Defendant has not demonstrated to what extent the dissolution would impact the estate's obligations under the Agreement. If the dissolution or the timing of the dissolution does not impact the Defendants' responsibilities under the Agreement, then this fact is not material.

Lastly, although Defendant Mary Ann Lynch does not dispute that the Decedent failed to comply with the Settlement Agreement, the Defendant contends that the Agreement was unenforceable because Decedent did not own an interest in Shepard Decorating and Shepard Drayage when he agreed to convey an interest in the companies. However, Defendant failed to cite any authority showing that the Decedent's agreement to devise property that he did not presently own would make the agreement unenforceable. Under Georgia law, "a shadowy semblance of an issue is not enough to defeat the motion for summary judgment." Anglin v. Harris, 244 Ga. App. 140, 142 (2000). Considering the facts in the light most favorable to the Defendant, the Court is not convinced that the contentions raised by Defendant go beyond "a shadowy semblance of an issue" and Defendant has not demonstrated that "a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

B. Failure to Comply with USCR 6.5

A trial court in Georgia is not required to deny a motion for summary judgment on the sole ground that the movant violated USCR 6.5 by failing to submit a statement of material undisputed facts with their motion. Ahmad v. Excell Petroleum, Inc., 276 Ga. App. 167, 169 (2005) (citing Johnston v. Conasauga Radiology, P.C., 249 Ga. App. 791, 792-793 (2001)). “Instead, a trial court is vested with discretion in ruling on such motion.” Johnston, at 793 (citing Edwards v. Atlantic Ins. Co., 203 Ga. App. 608, 609-610 (1992)). “In exercising this discretion, a trial court may consider ... whether the violation resulted in any ‘confusion or disadvantage to [the non-movant] in defending the motion.’” Id. (citing Balke v. Red Roof College Park Co., 190 Ga. App. 779, 781 (1989)).

Here, Defendant asserts that she was disadvantaged by Plaintiffs’ failure to comply with USCR 6.5 because “she cannot be certain what alleged facts Plaintiffs are relying upon to support summary judgment in their favor.” (Response at 4). However, immediately after asserting this defense, Defendant argues there is a genuine issue of material fact as to whether the Agreement is enforceable against Decedent’s Estate, thus identifying the heart of Plaintiffs’ Motion. Additionally, Defendant provides a robust recitation of facts in her Response to dispute the factual allegations Plaintiffs make in support of their Motion. While Plaintiffs did fail to comply with USCR 6.5, Defendant’s recitation of the rule and the standard for evaluating such a claim does not lead this Court to find Defendant was disadvantaged by Plaintiffs’ omission.

C. The Defense of Laches

“Equity gives no relief to one whose long delay renders the ascertainment of the truth difficult, even when no legal limitation bars the right.” O.C.G.A. § 23-1-25. “Laches requires more than the passage of time; laches also requires prejudice arising from that passage of time.”

Cross v. Wilmington Trust, Nat'l Assoc., 360 Ga. App. 747, 753 (2021) (quoting Fontaine v. Home Depot, 250 Ga. App. 123, 126 (2001)). “In determining whether there has been laches, various things are to be considered, notably the duration of the delay in asserting the claim, ... whether during the delay the evidence of the matters in dispute has been lost or become obscure ... whether the party charged with laches had an opportunity to have acted sooner, and whether the party charged with laches acted at the first possible opportunity.” Haddon v. Dep’t of Human Resources, 220 Ga. App. 338, 340 (1996) (quoting Erhart v. Brooks, 231 Ga. App. 272, 275-276 (1973)).

Here, Plaintiffs acted once their claim was ripe. Decedent passed away on September 29, 2016, and thus was no longer able to amend his will. Plaintiffs’ claim centers on a breach of the Agreement arising from Decedent’s failure to comply with its terms. Until he passed and his will was submitted for probate, Decedent could have amended his will to comply with the Agreement and Plaintiffs’ claim would not have been ripe. While some of the facts involved in this litigation concern events and circumstances from a few decades in the past, that does not support Defendant’s defense of laches. Thus, Plaintiffs’ Complaint is not barred under the doctrine of laches.

IV. CONCLUSION

The Court finds Plaintiffs have shown that there are no genuine issues of material fact as to the issue of liability for their claim of breach of contract and are thus entitled to partial summary judgment on the issue of liability. Accordingly, Plaintiffs’ Motion for Partial Summary Judgment as to liability is hereby **GRANTED**.

SO ORDERED This 31st day of May, 2022.


HONORABLE KIMBERLY M. ESMOND ADAMS
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT