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IN THE SUPREME COURT

STATE OF GEORGIA

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DEC 06 2007

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CLERK COURT OF APPEALS OF GA

PIERCE E. MIZE, AS ADMINISTRATOR)
OF THE ESTATE OF JAMES KENNETH)
WOODALL, SR., DECEASED,)

Appellant,)

v.)

JAMES KENNETH WOODALL, JR.)
AND VERONICA WOODALL,)

Appellees,)

A08A0720

CASE NO. S08A0368

BRIEF OF APPELLEES

Respectfully submitted,

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IN THE SUPREME COURT

STATE OF GEORGIA

PIERCE E. MIZE, AS ADMINISTRATOR)
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Appellant,)

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AND VERONICA WOODALL)

Appellees,)

BRIEF OF APPELLEES

The Appellees, JAMES KENNETH WOODALL, JR. and VERONICA WOODALL, by their counsel, Richard D. Campbell, submit this brief as follows:

STATEMENT OF JURISDICTION

The Appellee contends that jurisdiction is properly before the Court of Appeals. The Appellant seeks to invoke the jurisdiction of this Court on appeal for the reason that it involves title to land pursuant to the Constitution of Georgia (Ga. Const. 1983, Art. VI § VI, ¶ III. However, in its brief, the Appellant contends that the determinative issue in this case is one of gift *causa mortis*. The Appellees contend that the determinative issue is the interpretation of the terms of a promissory note. Neither of these issues involve the title to land and fall within the jurisdiction of the Court of Appeals. Furthermore, there is no question that the Appellees have title to the land by virtue of an undisputed Warranty Deed recorded in Deed Book 366, at Pages 389-390, Elbert County, Georgia. If the Appellant were to prevail, then such title would be subject to a security deed which is a title

to land. Therefore, jurisdiction is an open questions in this case. The Appellees contend that jurisdiction is proper in the Court of Appeals.

STATEMENT OF THE CASE

On August 19, 2005, Pierce E. Mize was appointed the Administrator of the Estate of James Kenneth Woodall, Sr., by Letters of Administrations issued in the Probate Court of Elbert County, Georgia. On May 17, 2007, the Administrator filed a Complaint for Declaratory Judgment. On June 18, 2007, the Appellees filed a Responsive Pleading and a Motion for Judgment on the Pleadings. The Appellees' motion came before the Superior Court for oral argument on October 16, 2007. On October 25, 2007, the Elbert Superior Court entered an Order granting the Appellees' motion for judgment on the pleadings. The Appellant filed notice of appeal on October 26, 2007.

ISSUES PRESENTED

1. If a note and security deed contain conflicting provisions, then the issue is whether the terms of the note govern.
2. Whether the doctrine of gift *causa mortis* has an application in this case.
3. Whether the granting of the Appellees' motion for judgment on the pleadings renders the necessity for a cancellation in the real estate records as moot.
4. Whether the Appellant's appeal is frivolous.

STATEMENT OF FACTS

The following facts are taken from the pleadings and the public record. On April 19, 2004, James K. Woodall, Sr. executed and delivered to James Kenneth Woodall, Jr. and Veronica Woodall

There is an obvious contradiction in the payment term between the note and security deed. The security deed fails to specifically state that on the death of the holder that the indebtedness will be forgiven.

James Kenneth Woodall, Sr. died on May 14, 2005. The qualified Administrator of the decedent's estate, the Appellant, has demanded payment of the note and security deed. The makers / grantors of the note and security deed, the Appellees, have demanded that the security deed be canceled of record.

ARGUMENT AND CITATION OF AUTHORITY

I. WHERE A NOTE AND SECURITY DEED CONTAIN CONFLICTING PROVISIONS, THE LAW REQUIRES THAT THE TERMS OF THE NOTE GOVERN.

The law is that if a note and security deed contain conflicting provisions, then the note will govern as being the principal obligation. Icard v. Harbuck, 137 Ga. App. 570 (224 SE2d 532)(1976); Finlay v. Oxford Construction Co., 139 Ga. App. 801 (1976). The note provides that at the death of the holder the indebtedness is to be forgiven. This is a specific term of the note that relates to the debt and its payment. The security deed in this case does not contain the forgiveness provision, but a security deed must secure some legal indebtedness. Hinkel, Daniel R., Pindar's Ga. Real Est. Law, (6th ed.) § 21-28, p. 611. When the holder died the debt was forgiven and there was no longer an indebtedness or obligation to be secured.

The residual question then is whether this is a valid promissory note. The Appellant never questions its validity, and in fact, he states that it was an enforceable promissory note and security deed. (Plaintiffs Brief in Support of Motion for Judgment on the Pleadings, P. 5) The trial court states, "the language of the note shows clearly it was to be forgiven upon the death of James Kenneth

Woodall, Sr.," without questioning the validity of this provision. The Appellant cites no authority that any provision in this note is illegal, improper, or unenforceable.

The Appellant does argue that the future forgiveness of the indebtedness on the contingency of the holder's death is testamentary in character and improper. There is no law that prohibits such a provision in a promissory note. There are also numerous examples of legal transactions that are contingent upon death that do not comply with testamentary formalities and occur outside a decedent's estate. Consider these examples: 1) a life insurance policy does not comply with testamentary requirements or formalities, there is no requirement that a life insurance policy or contract be witnessed or notarized, its benefit is contingent on death, and is outside the decedent's estate; 2) a joint checking account is presumed to be survivorable on the death of one of the account holders, does not meet testamentary formalities, is not witnessed or notarized, and the funds in the account are transferred outside of the decedent's estate; 3) a jointly held stock, bond, or other security with right of survivorship does not meet testamentary compliance, is not witnessed or notarized, and is transferred outside the decedent's estate on the death of one of holders; 4) the death benefit of an ERISA qualified retirement plan does not comply with testamentary formalities, is not required to be witnessed or notarized, transfers on the event of death, and passes outside the decedent's estate; and 5) an *inter vivos* trust does not have to meet testamentary requirements, and it can pass property in the event of death outside an estate. These examples of legal, death contingent, transactions show that there is no prohibition of the provision in a promissory note that provides for the future forgiveness of the indebtedness on the contingency of the holder's death.

The promissory note was valid and enforceable. The provision for the forgiveness of the indebtedness on the death of the holder is valid and enforceable. Where a note and security deed

contain conflicting provisions, then the note will govern as being the principal obligation. Therefore, the trial court correctly granted the Appellees' Motion for Judgment on the Pleadings.

II. THE DOCTRINE OF GIFT *CAUSA MORTIS* HAS NO APPLICATION IN THIS CASE.

Enumeration of Error No. 1 in the Appellant's brief contends that the trial court erred in granting the Appellees' motion for judgment on the pleadings. Appellant's Enumeration of Error No. 3 contends that the trial court erred in denying its cross-motion for judgment on the pleadings. The argument and citation of authority in Enumeration No. 3, is an exact and *verbatim* recitation of the arguments propounded in Enumeration No. 1. The Appellee will address both enumerations of error in one argument.

The Appellant argues that the law of gift *causa mortis* applies and controls in this case and that the provision in the promissory note for the forgiveness of the indebtedness on the contingent event of the holder's death is a failed attempt at such a gift. The Appellees admitted in the Superior Court that there was no gift *causa mortis* in this case. The Appellees admit before this Court that there was no gift *causa mortis* in this case. The Appellees admit that none of the elements of gift *causa mortis* are met in this case. Likewise, the Appellees show to the Court that none of the principals of the law of gift *causa mortis* have any relevance to this case. Although the promissory note referenced a contingent event which might occur prior to payment in full, the rights, duties, and obligations of each party irrevocably vested in each party at the execution and delivery of the warranty deed transferring the vested remainder interest, and the note and security deed securing the acquisition of the interest. As the consideration was bargained for and paid to the decedent until his death, this was not a gift. The Superior Court considered the admissions of the Appellees, the

principals of this area of the law, and correctly recognized that gift *causa mortis* has no application in this case. The Appellant's insistence on this legal position is perplexing, and it has placed an onerous burden on the Appellees.

III. A CANCELLATION IN THE REAL ESTATE RECORDS IS NECESSARY TO CLEAR THE TITLE IN THE PUBLIC RECORDS AND MOOTNESS HAS NOTHING TO DO WITH THAT ISSUE.

The Appellant argues that if the trial court's order granting the Appellees' Motion for Judgment on the Pleadings is upheld, then such ruling renders the necessity of a cancellation in the real estate records as moot. This argument shows a lack of understanding of the record notice system of land registration. It is also this argument that discloses the true spirit of the Appellant's appeal.

The legal issue of "mootness" is whether a party has a case that is justiciable. A case is not justiciable if it is moot. A court case is "moot" if it raised a justiciable dispute / claim at the time the complaint was filed, but events or resolution of legal questions occurring after the filing have deprived the litigant of an ongoing stake in the case. "Mootness" has nothing to do with matters outside of the court preceding or whether a recorded deed in the real estate records should be canceled.

As long as there is a sovereign State of Georgia, and Elbert County is a political subdivision of it, then there will be a record of the security deed in this case recorded in Deed Book 366, at Pages 391-395, Elbert County, Georgia Records. This is the purpose of our record notice system of land registration. When this obligation is extinguished, then there needs to be some evidence of its cancellation in that record. Litigation resulting in an order in a court case alone does not give such notice. The law imposes a duty on the grantee of a security deed to cancel the deed of record when the obligation is satisfied. OCGA §§ 44-14-3, 44-14-60. In this case the grantee is deceased;

therefore, his qualified representative has the duty to cancel the deed of record. To hold otherwise obviates the system of record notice land registration.

The Appellant's argument spirals further into absurdity when he states, "Appellees are not purchasers." (Appellant's Brief, P. 11). *Pindar's* use of the word "purchaser" is a term of art. A "purchaser" is, "one who acquires real property by means other than descent or inheritance." *Black's Law Dictionary, 7th Ed.* This term includes the recipient of real property by gift. However, here there is a warranty deed conveying the property and a purchase money security interest filed of record and attached to the Appellant's pleadings.

IV. MOTION FOR SANCTIONS FOR A FRIVOLOUS APPEAL PURSUANT TO RULE 6 OF THE RULES OF THE SUPREME COURT OF GEORGIA.

The Appellees move the Court to consider sanctions for a frivolous appeal pursuant to Rule 6 of the Rules of the Supreme Court of Georgia. "An appeal is frivolous if it is filed only to delay the enforcement of the trial court's judgment. 'Delay can be assumed where an appeal lacks merit.' If an appellant knew or should have known that an appeal was ill-founded, sanctions should issue." Vaughn v. Roberts, 282 Ga. App. 840 (640 SE2d 293) (2006).

Sanctions will be imposed in cases where the appellant had no reasonable basis upon which to anticipate that the appellate court would reverse the trial court's judgment. Griffiths v. Rowe Properties, 271 Ga. App. 344, 345 (609 SE2d 690)(2005). The factors to determine whether an appeal is frivolous are delay and merit.

The Appellee, James Kenneth Woodall, Jr. is the heir-at-law of the Decedent, James Kenneth Woodall, Sr. The promissory note that is the subject of this case is secured by property that is the Appellees' home. The Appellees are highly motivated to have their home free and clear of the

security deed that clouds its title. The Appellant is the administrator of the Appellee's deceased father. The Appellant has no personal liability for the expenses of this litigation or of the estate. Hypothetically thinking, if the Appellant were to prevail in this case, then the Appellee would be entitled to a 1/3 interest in the security deed. This is one of the reasons for the trial court's discussion of the doctrine of merger. However, to delay the resolution of this case only depletes the assets of the decedent's estate, and transfers the *corpus* of the estate from the beneficiaries to the Administrator and its counsel. A further showing of the Appellant's intention to delay the enforcement of the trial court's judgment is its argument propounded in Enumeration of Error No. 2. Its whole premise is predicated on the assumption that the trial court's decision will be affirmed, but seeks to delay the cancellation of the security deed.

"The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case." Commentary to Code of Professional Responsibility Rule 3.3(a)(3). The proper legal premises applicable to this case are the validity of the promissory note, the conflict between the note and the security deed, and the merger issue raised by the trial court. The Appellant addresses none of those issues. While it is not contended that the Appellant violated Rule 3.3(a)(3) of the Code of Professional Responsibility in any way, it is contended that it violated the spirit of Rule 3.3.

Instead of the proper applicable legal arguments, the Appellant forces unrelated and irrelevant arguments. Even in the face of the opposing party admitting there was no gift *causa mortis*, the Appellant stubbornly insists that the law of gift *causa mortis* applies, but it was a failed gift *causa mortis*. The Appellant's argument that the Appellees are not "purchasers" when it has attached a copy of a purchase money note and security deed to its pleadings. The Appellant makes an argument

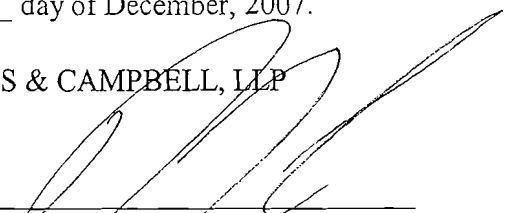
concerning "mootness" in connection with the real estate records instead of the doctrine's proper application as to whether an issue is justiciable before a court. To support its "mootness" argument, the Appellant cites, Tavakolian v. Scott, _____ Ga. _____ S07A0703 (2007 Ga. Lexis 775)(2007). This case holds that a ruling on a third party complaint is rendered moot because of a prior holding of the court. It states absolutely nothing about "mootness" affecting the real estate records. The Appellant argues that Matthews v. Crowder, 281 Ga. 842, 843 (642 SE2d 852)(2007) controls because it involves a purported deed / document that would not take effect until the death of the grantor. Whereas, in this case, the warranty deed conveyed an immediate vested remainder interest and the security deed conveyed an immediate security interest. The suggestion that the promissory note and security deed fail because they do not comply with testamentary formalities is unfounded. The cumulative affect of the Appellant's unreasonable arguments provides no basis upon which to anticipate that the appellate court would reverse the trial court's judgment. Therefore, the appeal is frivolous and sanctions should be imposed.

CONCLUSION AND CLAIM FOR RELIEF

The Appellees contend that it was not necessary for the trial court to address the issue of merger to resolve this case. However, a judgment right for any reason is to be affirmed and the Appellees request such a ruling. The Appellees specifically request the following: 1) that the Court rule pursuant to Supreme Court Rule Number 59; 2) that the Court issue an unpublished order holding that the Appellant has filed a frivolous appeal pursuant to Rule 6 and levy an appropriate sanction; and 3) that the Court further order that the case be remanded to the Superior Court to conduct a hearing to determine penalty and attorney fees as provided in OCGA § 44-14-3(c).

RESPECTFULLY SUBMITTED, this 3 day of December, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within and foregoing APPELLEE'S BRIEF,

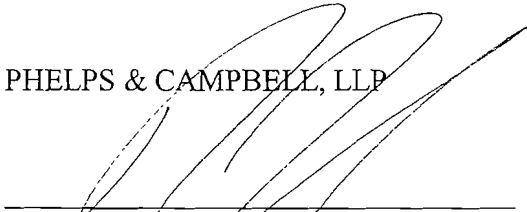
upon:

Truett Smith
P. O. Box 520
Elberton, Georgia 30635
Attorney for Appellant

by placing a copy of same in United States Mail in a properly addressed envelope with sufficient postage thereon. delivery.

This 3 day of December, 2007.

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