

STATE OF MICHIGAN
IN THE MACOMB COUNTY CIRCUIT COURT

**FRANK PALAZZOLO as Personal Representative
of the Estate of Mary Palazzolo, Deceased,**

Case No. 2021-000920-CH

Hon. Richard Caretti

Plaintiff,

v.

**ROSEMARIE CORZILIUS,
Individually and as Trustee of the Revocable Living
Trust of Mary Palazzolo,
NICHOLAS E. CORZILIUS, an individual,
KENNETH T. CORZILIUS, an individual, and
ANGEL OJEDA, an individual**

Defendants.

Bruce R. Redman (P46958)
Attorney for Plaintiff
P.O. Box 599
Lake Orion, MI 48361
248-508-4333

KIRK HUTH LANGE & BADALAMENTI
Michael C. Taylor (P71933)
Attorneys for Rosemarie Corzilius
19500 Hall Road, Suite 100
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PLAINTIFF'S FRIST AMENDED COMPLAINT

NOW COMES the Plaintiff, Frank Palazzolo solely in his capacity as the Personal Representative of the Estate of Mary Palazzolo, by his attorney, Bruce R. Redman, and states the following as his First Amended Complaint pursuant to MCR 2.118(A)(1) against the above-named Defendants:

COMMON ALLEGATIONS

1. Plaintiff, Frank Palazzolo, has been appointed as the personal representative of the Estate of Mary Palazzolo, deceased, in Macomb County Probate Court Case Number 2019-229810-DE.

2. Plaintiff is the decedent's nephew and heir.

3. Defendant, Rosemarie Corzilius ("Corzilius") is the decedent's niece and heir and is a resident of Macomb County, Michigan. Defendant Corzilius claims also to be the Contingent Trustee of the Revocable Living Trust of Mary Palazzolo (sometimes the "Trust").

4. Defendant Angel Ojeda is an individual who claims an ownership interest in one of the properties which is the subject of this suit.

5. Defendants Nicholas E. Corzilius and Kenneth T. Corzilius are the children of Defendant Corzilius and may claim an interest in the subject properties by virtue of deeds recorded in the Wayne County and Macomb County Registers of Deeds offices.

6. This Court has jurisdiction over this matter pursuant to MCL §600.605 because two of the subject properties are located in Wayne County Michigan and equitable relief is requested herein.

7. Venue is proper in this court pursuant to MCL §600.1605.

8. There are three properties which are the subject of this suit and which are assets of the Probate Estate: 15921 – 15925 Eight Mile Rd. and 19368 E. Ten Mild Rd. both in Eastpointe, and 830-832 Harcourt, Grosse Pointe, Wayne County Michigan and Decedent was a resident of Macomb County so venue is proper in this Court.

9. As the personal representative, Plaintiff is charged with the responsibility of collecting the assets, paying the allowed debts of the decedent, paying the administrative expenses, and distributing the remaining assets of the Mary Palazzolo Probate Estate to the appropriate heirs.

10. Decedent Mary Palazzolo passed away on May 17, 2018.

11. Mary Palazzolo signed the Revocable Living Trust of Mary Palazzolo (the “Trust”) on or about February 11, 2005.

12. Mary Palazzolo as an individual did not sign any deeds conveying any of the Properties into the Trust.

13. The Trust was recorded in Macomb County but upon information and belief was never recorded in Wayne County .

ALLEGATIONS SPECIFIC TO THE EIGHT MILE RD. PROPERTY

14. The first property that is subject to this suit is the real property located at 15921 – 15925 Eight Mile Rd., Eastpointe, Michigan (“the Eight Mile Rd. Property”).

15. The legal description of the Eight Mile Rd. Property is property located in the City of Eastpointe, Macomb County, Michigan more particularly described as:

North part of Lots 7 through 12, both inclusive, being 55.23 feet on the West Line of Lot 7 and 55.08 feet on the East Line of Lot 12, UNIVERSAL HEIGHTS SUBDIVISION, according to the plat thereof as recorded in Liber 12, Page 23 of Plats, Macomb County Records.

16. Decedent Mary Palazzolo held title to the Eight Mile Rd. Property by virtue of a deed dated December 10, 1976 and recorded on December 14, 1976 in Liber 2754 Page 615 Macomb County Records.

17. Decedent Mary Palazzolo, by Defendant Corzilius her attorney in fact, sold the Eight Mile Rd. Property on land contract to Angel Ojeda on or about March 26, 2015.

18. Decedent Mary Palazzolo, by Defendant Corzilius her attorney in fact, executed a Corrective Memorandum of Land Contract as to the Eight Mile Rd. Property as vendor and Angel Ojeda executed as vendee on April 3, 2015, and it was recorded on February 8, 2016 in Liber 23855 Page 820, Macomb County Records.

19. Upon information and belief, Defendant Corzilius has been collecting land contract payments from the vendee since the decedent's death on May 17, 2018 even though she does not own the Eight Mile Rd. Property.

20. Upon information and belief, there is currently owed approximately \$250,000 on the land contract by Angel Ojeda.

21. Prior to Decedent's death, Defendant Corzilius executed a deed purportedly from Decedent (by a power of attorney) and Corzilius individually as joint tenants, to Decedent and Corzilius as joint tenants with a remainder to Defendants Nicholas E. Corzilius and Kenneth T. Corzilius upon the death of both Decedent and Defendant Corzilius ("the Eight Mile Rd. Ladybird Deed").

22. The Eight Mile Rd., Ladybird Deed was dated February 20, 2018, and recorded on March 12, 2018 in Liber 25251, Page 334, Macomb County Records.

23. Prior to the execution of the Eight Mile Rd. Ladybird Deed, Defendant Corzilius had no recorded interest in the Eight Mile Rd. Property.

24. The Eight Mile Rd. Ladybird Deed is void and of no effect because at the time of the deed, Defendant Corzilius held no ownership interest in the Eight Mile Rd. Property, and the power of attorney upon which she was purportedly acting did not allow for Defendant Corzilius as attorney in fact to make gifts of Decedent's property.

25. Until September 2020, Defendant Corzilius claimed to hold an unrecorded quit claim deed to herself and Decedent as joint tenants to the Eight Mile Rd. Property, however, such deed was invalidated by an order of the Macomb County Probate Court dated February 17, 2021.

26. Nowhere in the chain of title of the Macomb County Records does a deed exist from Mary Palazzolo to the Revocable Trust of Mary Palazzolo as to the Eight Mile Rd. Property.

27. The Trust did not convey title to the Trust, and therefore the Trust does not hold title to the Eight Mile Rd. Property.

ALLEGATIONS SPECIFIC TO THE TEN MILE RD. PROPERTY

28. The second property that is the subject of this suit is the real property located at 19368 E. Ten Mile Rd., Eastpointe, Michigan (“the Ten Mile Rd. Property”).

29. The legal description of the Ten Mile Rd. Property is property located in the City of Eastpointe, Macomb County, Michigan more particularly described as:

Lots 10, 11 and 12 PINCKET’S SUBDIVISION, according to the plat thereof as recorded in Liber 37, Page 10 of Plats, Macomb County Records.

30. Decedent Mary Palazzolo held title to the Ten Mile Rd. Property by virtue of a deed dated February 8, 2005 and recorded on April 7, 2005 in Liber 16568 Page 41, Macomb County Records.

31. Defendant Corzilius, as attorney in fact for Decedent Mary Palazzolo, executed a Memorandum of Land Contract as to the Ten Mile Rd. Property as vendor and Sabanis and Zedan as vendee on September 1, 2015 and recorded on September 15, 2015 in Liber 23620 Page 589, Macomb County Records.

32. Upon information and belief, Defendant Corzilius has been collecting land contract payments from the vendee since the decedent’s death even though she does not own the Ten Mile Rd. Property.

33. Upon information and belief, the land contract may have been paid off.

34. Prior to Decedent's death, Defendant Corzilius executed a deed both individually and as attorney in fact for Decedent purportedly to transfer title from Decedent and Corzilius as joint tenants, to Decedent and Corzilius as joint tenants with a remainder to Defendants Nicholas E. Corzilius and Kenneth T. Corzilius upon the death of both Decedent and Defendant Corzilius ("the Ten Mile Rd. Ladybird Deed").

35. The Ten Mile Rd. Ladybird Deed was dated February 20, 2018, and recorded on March 12, 2018 in Liber 25251, Page 336, Macomb County Records.

36. Prior to the execution of the Ten Mile Rd. Ladybird Deed, Defendant Corzilius had no recorded interest in the Eight Mile Rd. Property.

37. The Ten Mile Rd. Ladybird Deed is void and of no effect because at the time of the deed, Defendant Corzilius held no ownership interest in the Ten Mile Rd. Property and the power of attorney upon which she was purportedly acting did not allow for Defendant Corzilius as attorney in fact to make gifts of Decedent's property.

38. Until September 2020, Defendant Corzilius claimed to hold an unrecorded quit claim deed to herself and Decedent as joint tenants to the Ten Mile Rd. Property, however, that deed was invalidated by an order of the Macomb County Probate Court dated February 17, 2021.

39. Nowhere in the chain of title of the Macomb County Records does a deed exist from Mary Palazzolo to the Revocable Trust of Mary Palazzolo as to the Ten Mile Rd. Property.

40. The Trust did not convey title to the Trust, and therefore the Trust does not hold title to the Eight Mile Rd. Property.

ALLEGATIONS SPECIFIC TO THE HARCOURT PROPERTY

41. The third property that is the subject of this suit is the real property located at 830-832 Harcourt, Grosse Pointe, Michigan ("the Harcourt Property").

42. The legal description of the Harcourt Property is property located in the City of Grosse Pointe, Wayne County, Michigan more particularly described as:

PKW 19, Lot 19, Lakeview Estates Sub PC 379 Liber 55, Page 6, Wayne County Records.

43. Decedent Mary Palazzolo held title to the Harcourt Property by virtue of a Warranty Deed dated May 12, 1975 and recorded on June 2, 1975 in Liber 19111 Page 57, Wayne County Records.

44. Defendant Corzilius claimed to hold title by virtue of a quit claim deed to herself and Decedent as joint tenants to the Harcourt Property, which deed is purportedly dated September 1, 2010 and was recorded on March 13, 2017 in Liber 53568, Page 302, Wayne County Records, however such deed was invalidated by an order of the Macomb County Probate Court dated February 17, 2021 as a forgery.

45. Prior to Decedent's death, Defendant Corzilius executed a deed both individually and as attorney in fact for Decedent purportedly to transfer title from Decedent and Corzilius as joint tenants, to Decedent and Corzilius as joint tenants with a remainder to Defendants Nicholas E. Corzilius and Kenneth T. Corzilius upon the death of both Decedent and Defendant Corzilius ("the Harcourt Ladybird Deed").

46. The Harcourt Ladybird Deed was recorded on March 26, 2018 in Liber 54297, Page 1014, Wayne County Records.

47. The Harcourt Ladybird Deed is void and of no effect because at the time of the deed, Defendant Corzilius held no ownership interest in the Harcourt Property due to the forged deed referenced above, and the power of attorney upon which she was purportedly acting did not allow for Defendant Corzilius as attorney in fact to make gifts of Decedent's property.

48. Nowhere in the chain of title in the Wayne County Records does a deed exist from Mary Palazzolo to the Revocable Trust of Mary Palazzolo as to the Harcourt Property.

49. The Trust did not convey title to the Trust, and therefore the Trust does not hold title to the Eight Mile Rd. Property.

COUNT I – QUIET TITLE TO THE EIGHT MILE RD. PROPERTY

50. Plaintiff repeats and incorporates all prior paragraphs as though set forth fully herein.

51. This count is brought pursuant to MCL 600.2932.

52. The Eight Mile Rd. Ladybird Deed is void and of no effect because at the time of the deed, Defendant Corzilius held no ownership interest in the Eight Mile Rd. Property and the power of attorney upon which she was purportedly acting did not allow for Defendant Corzilius as attorney in fact to make gifts of Decedent's property, therefore Defendant Corzilius, Defendant Nicholas E. Corzilius and Defendant Kenneth T. Corzilius own no interest in the Eight Mile Rd. Property.

53. In September 2020, for the first time, Defendant Corzilius claimed that the Eight Mile Rd. Property was held by the Mary Palazzolo Revocable Trust, however, the Trust does not hold any interest because no deed to it was ever recorded.

54. The deed purporting to convey title to the Eight Mile Rd. Property to Decedent and Defendant Corzilius referenced above did not convey any interest to Defendant Corzilius as it has been invalidated by order of the Macomb County Probate Court as a forgery.

55. Accordingly, the ownership of the Eight Mile Rd. Property reverts to the prior recorded deed referenced above which was to Decedent Mary Palazzolo, individually.

56. Because title was in the name of Mary Palazzolo alone at the time of her death, the Eight Mile Rd. Property now belongs to the Estate of Mary Palazzolo.

57. To the extent that the Eight Mile Rd. Ladybird Deed conveyed any title to the Eight Mile Rd. Property to Defendant Corzilius and Defendants Nicholas E. Corzilius and Kenneth T. Corzilius, they hold such title in constructive trust for the benefit of Plaintiff.

58. If Defendant Corzilius is correct in her assertion made for the first time in September 2020 that the Eight Mile Rd. Property was held by the Revocable Living Trust of Mary Palazzolo since 2010, Defendant Ojeda holds no interest in the property because the land contract upon which he relies, is completely invalid as it was never signed by a trustee of the Revocable Trust of Mary Palazzolo as vendor.

59. Plaintiff seeks to confirm the land contract vendee's interest of Defendant Ojeda, and the only way that will occur is if title to the Eight Mile Rd. Property is determined to be held by the Estate of Mary Palazzolo and not by the Revocable Trust of Mary Palazzolo.

COUNT II – QUIET TITLE TO THE TEN MILE RD. PROPERTY

60. Plaintiff repeats and incorporates all prior paragraphs as though fully set forth herein.

61. This count is brought pursuant to MCL 600.2932.

62. The Ten Mile Rd. Ladybird Deed is void and of no effect because at the time of the deed, Defendant Corzilius held no ownership interest in the Ten Mile Rd. Property and the power of attorney upon which she was purportedly acting did not allow for Defendant Corzilius as attorney in fact to make gifts of Decedent's property, therefore Defendant Corzilius, Defendant Nicholas E. Corzilius and Defendant Kenneth T. Corzilius own no interest in the Ten Mile Rd. Property.

63. The deed purporting to convey title to the Ten Mile Rd. Property to Decedent and Defendant Corzilius referenced above did not convey any interest to Defendant Corzilius as it has been invalidated by order of the Macomb County Probate Court as a forgery.

64. Accordingly, the ownership of the Ten Mile Rd. Property reverts to the prior recorded deed which was in the name of Decedent Mary Palazzolo alone.

65. Because title was in the name of Mary Palazzolo alone at the time of her death, the Ten Mile Rd. Property now belongs to the estate of Mary Palazzolo.

66. To the extent that the Ten Mile Rd. Ladybird Deed conveyed any title to the Ten Mile Rd. Property to Defendant Corzilius, she holds such title in constructive trust for the benefit of Plaintiff.

67. In September 2020, for the first time, Defendant Corzilius claimed that the Ten Mile Rd. Property was held by the Mary Palazzolo Revocable Trust, however, the Trust does not hold any interest because no deed to it was ever recorded.

COUNT III – QUIET TITLE TO THE HARCOURT PROPERTY

68. Plaintiff repeats and incorporates all prior paragraphs as though fully set forth herein.

69. This count is brought pursuant to MCL 600.2932.

70. The deed referenced above which is purportedly dated September 1, 2010 and was recorded on March 13, 2017 in Liber 53568, Page 302, Wayne County Records is void and of no effect because it is a forgery pursuant to order of the Macomb County Probate Court.

71. The Harcourt Ladybird Deed is void and of no effect because at the time of the deed, Defendant Corzilius held no ownership interest in the Harcourt Property and the power of attorney upon which she was purportedly acting did not allow for Defendant Corzilius as attorney

in fact to make gifts of Decedent's property therefore Defendant Corzilius, Defendant Nicholas E. Corzilius and Defendant Kenneth T. Corzilius own no interest in the Harcourt Property.

72. Accordingly, the ownership of the Harcourt Property reverts to the prior recorded deed which was to Decedent Mary Palazzolo, individually.

73. Because title was in the name of Mary Palazzolo alone at the time of her death, the Harcourt Property now belongs to the Estate of Mary Palazzolo.

74. To the extent that the Harcourt Ladybird Deed conveyed any title to the Harcourt Property to Defendant Corzilius, she holds such title in constructive trust for the benefit of Plaintiff.

75. In September 2020, for the first time, Defendant Corzilius claimed that the Harcourt Property was held by the Mary Palazzolo Revocable Trust, however, the Trust does not hold any interest because no deed to it was ever recorded.

COUNT IV – ACCOUNTING

76. Plaintiff repeats and incorporates all prior paragraphs as though fully set forth herein.

77. As the true and rightful owner of the Harcourt, Eight Mile Rd. and Ten Mile Rd. Properties, the Estate of Mary Palazzolo is entitled to the land contract payments and rental payments that have been made on those Properties since the death of Mary Palazzolo.

78. Defendant Corzilius, either individually or on behalf of the Mary Palazzolo Trust has been collecting such payments since the death of Mary Palazzolo on May 17, 2018.

79. Plaintiff is entitled to an accounting from Defendant Corzilius as to the payments Corzilius has received on the land contracts and rental leases for the Properties since May 2018.

COUNT V – CONVERSION

80. Plaintiff repeats and incorporates all prior paragraphs as though fully set forth herein.

81. At all times since the death of Mary Palazzolo, the Estate of Mary Palazzolo was entitled to the land contract payments on the Eight Mile Rd. and Ten Mile Rd. Properties and the rental payments on the Harcourt Property.

82. Upon information and belief, since the death of Mary Palazzolo, Defendant Corzilius, either individually or on behalf of the Trust, has been collecting said land contract payments and rental payments.

83. Plaintiff has demanded that Defendant Corzilius return the land contract and rental payments to the Estate of Mary Palazzolo.

84. Defendant Corzilius has refused to return the land contract and rental payments to the Plaintiff.

85. These acts result in the unlawful conversion of money from the Estate of Mary Palazzolo.

86. Plaintiff has suffered damages in the amount of funds converted and attorney fees incurred in bringing this action.

87. Plaintiff is entitled to recover actual damages, exemplary damages and attorney fees due to Defendant Corzilius's wrongful conversion.

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. Enter an Order that Quiets Title to the Eight Mile Rd. Property to the Estate of Mary Palazzolo subject to the land contract vendee's interest of Angel Ojeda by removing the offending Eight Mile Rd. Ladybird Deed and the claims of the Trust from record title and;

- B. Enter an Order that Quiets Title to the Ten Mile Rd. Property to the Estate of Mary Palazzolo by removing the offending Ten Mile Rd. Ladybird Deed and the claims of the Trust from record title;
- C. Enter an Order that Quiets Title to the Harcourt Property to the Estate of Mary Palazzolo by removing the offending Harcourt Ladybird Deed and the claims of the Trust from record title;
- D. Enter an Order that Defendants Rosemarie Corzililus both individually and as trustee of the Trust, Nicholas E. Corzilius and Kenneth T. Corzilius hold no interest in the Eight Mile Rd., Ten Mile Rd. and Harcourt Properties;
- E. Enter an Order that the Trust holds no interest in the Eight Mile Rd., Ten Mile Rd. and Harcourt Properties
- F. Enter an Order requiring Defendant Corzilius to account for the land contract and rental payments she has received since the death of Mary Palazzolo;
- G. Enter an Order requiring all future land contract and rental payments be made to the Estate of Mary Palazzolo;
- H. Enter a money judgment against Defendant in the amount of land contract and rental payments she has received since May 2018 plus interest, court costs, attorney fees, punitive damages and/or exemplary damages; and
- I. Grant such other and further relief as is just and equitable under the circumstances.

Respectfully submitted,

DATED: July 7, 2021

/s/ Bruce R. Redman
Bruce R. Redman (P46958)
Attorney for Plaintiff

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

FRANK PALAZZOLO, as Personal Representative
of the Estate of Mary Palazzolo, Deceased

Case No. 2021-000920-CH
Hon. Richard L. Caretti

Plaintiff,

-vs-

ROSEMARIE CORZILIUS, Individually and as
Trustee of the Revocable Living Trust of Mary Palazzolo,
NICHOLAS E. CORZILIUS, an individual,
KENNETH T. CORZILIUS, an individual, and
ANGEL OJEDA, an individual.

Defendants.

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Michael C. Taylor (P71933)
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DEFENDANT ROSEMARIE CORZILIUS'S REPLY BRIEF

A. Introduction

The Plaintiff does not dispute that the Trust Instrument can serve as both a deed and a trust. The Plaintiff does not argue that the Trust Instrument fails to comply with any of the statutory deed requirements found in **MCL 565.1** *et seq.* The Plaintiff does not argue that the Trust Instrument fails to meet any of the common law deed requirements either. While Plaintiff is correct that the Trust Instrument lacks a traditional legal description, the Michigan Supreme Court held in **Austin** that a legal description is not a deed requirement as long as the properties are described sufficiently to identify. Here, there is no dispute over what properties Mary owned in 2005 and the Plaintiff has easily identified them in his Complaint. Instead, Plaintiff argues that Mary did not *intend* to

transfer the Properties based on evidence extrinsic to the Trust Instrument. But under Michigan law, extrinsic evidence of Mary's intent is only relevant if the Trust Instrument is ambiguous. Here, the Trust Instrument is not ambiguous. And even if there is a question of fact regarding Mary's intent, this challenge was brought more than 15 years after the claims accrued.

B. This Court lacks subject matter jurisdiction over this dispute.

There is no question that the circuit courts have jurisdiction to hear quiet title disputes. The issue is whether *this* Court has jurisdiction over *this* dispute given the fact that a previous lawsuit involving nearly the same parties and involving the same allegations was litigated to trial at the Probate Court, which retained jurisdiction. If this Court determines it has subject matter jurisdiction, then it should grant judgment in favor of Rosemarie based on the Statute of Limitations and/or because there is no genuine issue as to the material fact that the Properties were transferred to the Trust (see sections C & D below). If the Court lacks subject matter jurisdiction, then this case must be dismissed. Either way, Rosemarie is entitled to Summary Disposition.

C. Rosemarie is Entitled to Summary Disposition Pursuant to MCR 2.116(C)(10)

The Trust Instrument is the deed that transferred the Properties to the Trust. By its plain and unambiguous terms, Mary did "convey, assign and transfer" all her real property to the Trust. Upon execution, the Trust became the owner of the Properties. In her Motion, Rosemarie demonstrated that the Trust Instrument complies with all statutory and common law deed requirements. The Plaintiff does not even argue that the Trust Instrument fails to comply with any of the statutory or common law deed requirements. Instead, Plaintiff argues that Mary must not have intended to transfer her Properties to the Trust based on actions taken by her and others after she signed the Trust. But this extrinsic evidence is only relevant and must only be considered if the Trust Instrument is ambiguous. Here, the Trust Instrument is not ambiguous.

Mary's intentions are determined by examining the Trust Instrument itself, not her (or anyone else's) subsequent actions. If there is no ambiguity in the Trust Instrument, then its plain language is to be given full effect by this Court.

“It is the duty of the court to construe a deed **as it is written**, and **if a deed is clear and unambiguous, it is to be given effect according to its language, for the intention and understanding of the parties must be deemed to be that which the writing declares**. **The meaning of the words used**, and not what the parties may have intended by such language, **is controlling**. **Gawrylak v. Cowie**, 350 Mich 679, 683 (1957). (Emphasis added)

Here, the plain language of the Trust Instrument is clear and unambiguous. Mary created a Trust to provide for Rosemarie upon her death and conveyed all her real property to the Trust on February 11, 2005 by virtue of the Trust Instrument. The meaning of these words is not disputed:

“Said Settlor **being desirous of creating a Revocable Living Trust Agreement** for the benefit of Settlor...**and to provide for...Rosemarie Corzilius...**does by these presents hereby **convey, assign, and transfer to the Trustee...All real and personal property located anywhere owned or titled to Mary A. Palazzolo**.” (Motion Ex. 3) (Emphasis added)

This language is not confusing or ambiguous. It is plain and easy to understand. The four corners of the Trust Instrument leave no doubt that Mary created a trust, “conveyed, assigned, and transferred to the Trustee” all her real property, and did so to provide for Rosemarie after her death. The Plaintiff does not claim anywhere in its pleadings that there is any ambiguity with the Trust Instrument. There is no genuine issue that the Trust Instrument complies with all common law and statutory deed requirements. Plaintiff does not even dispute it. Therefore, the Court must construe the Trust Instrument *as it is written*. Under **Gawrylak**, this Court must give effect to the language in the Trust Instrument and Mary's intentions must be determined as “*that which the writing declares*”, not by extrinsic evidence of actions taken after executing the Trust Instrument.

There is no genuine issue as to the material fact that the Trust Instrument is a valid deed in the state of Michigan and the Properties identified in this lawsuit were transferred to the Trust

pursuant to the Trust Instrument. There is no genuine issue as to the material fact that the Trust Instrument is clear and unambiguous on its face. Accordingly, Rosemarie is entitled to Summary Disposition on Plaintiff's claim for quiet title.

Furthermore, if Plaintiff claims that there is an ambiguity within the Trust Instrument, then what he is really asking for is construction of the Trust, which is within the exclusive jurisdiction of the Probate Court. (MCL 700.1303(b)). Regardless, Plaintiff's right to challenge the conveyance in the Trust Instrument expired on February 11, 2020 and is therefore untimely.

D. The Defendant is Entitled to Summary Disposition Pursuant to MCR 2.116(C)(7) Pursuant to the 15-Year Statute of Limitations.

Even if a question of fact exists as to Mary's intention to "convey, assign, and transfer" all her real property in the Trust Instrument, the Plaintiff's challenge falls outside of the 15-year statute of limitations. In Adams, the Court of Appeals held that a claim for quiet title accrues at the time of disseisin. Mary (the individual) was disseised of the Properties on February 11, 2005, at the time they were "conveyed, assigned and transferred" to the Trust. Plaintiff admits that "seisen is essentially the right to possession". And the right to possession of real property is inherent to ownership. After February 11, 2005, the Trust owned the Properties and had the right to possession, which Mary exercised as Trustee. February 11, 2005 is the accrual date.

Plaintiff ties himself in knots wondering how Mary the individual could be disseised of property by Mary the Trustee when she is the same person. Ultimately, Plaintiff concludes it is not possible, so Mary *must have* been seised until death. But Plaintiff ignores the fact that Mary the individual and Mary the Trustee are separate and distinct legal entities. After February 11, 2005, the Trust had the right to possession, not Mary individually. The Trust acts through its Trustee which, at the time, happened to be Mary. But even if Mary the individual acted inconsistent with the Trust's ownership, it does not change the plain language of the Trust Instrument itself. Mary

the individual (or her Estate) would have been within her rights from February 11, 2005 through February 11, 2020 to challenge the Trust Instrument as an invalid conveyance. After February 11, 2020, however, Mary's right (as an individual) to challenge the conveyance had expired.

Under Gawrylak, the plain language of the Trust Instrument must be given full effect. The Trust Instrument unambiguously declares a transfer of all Mary's property to the Trust for Rosemarie's benefit. Mary's intentions "**must be deemed to be that which the writing declares**", not cherry-picked extrinsic evidence. Mary's intention was to give the Properties to the Trust to hold for Rosemarie's benefit after she died. Under Adams, when a claimant (*Rosemarie*) asserts ownership via deed (*the Trust Instrument*), disseisin occurs at the time of the transfer (*February 11, 2005*). Disseisin occurred upon the execution of the Trust Instrument. From February 11, 2005, Mary – or anyone acting through her – had 15 years to challenge the transfer as invalid.

E. Conclusion

This Court lacks subject matter jurisdiction, and the claims should be dismissed. If this Court determines that it has jurisdiction over this dispute, there is no genuine issue as to the material fact that the Trust Instrument is a valid deed. Plaintiff does not deny it. Instead, Plaintiff claims that Mary never intended to transfer the Properties and asks the Court to consider extrinsic evidence of her intent. But extrinsic evidence is not relevant since the Trust Instrument is not ambiguous. If the Plaintiff claims the Trust Instrument is ambiguous, his challenge sounds in trust construction which is within the *exclusive* jurisdiction of the Probate Court. Finally, since the transfer occurred more than 15 years ago, these claims are barred by the Statute of Limitations.

Respectfully Submitted,

KIRK, HUTH, LANGE & BADALAMENTI, PLC

Dated: July 15, 2021

By: /s/Michael C. Taylor
Michael C. Taylor (P71933)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

FRANK PALAZZOLO, as Personal Representative
of the Estate of Mary Palazzolo, Deceased

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-vs-

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Trustee of the Revocable Living Trust of Mary Palazzolo,
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Defendants.

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**ORDER GRANTING DEFENDANT ROSEMARIE CORZILIUS’S MOTION FOR
SUMMARY DISPOSITION IN PART**

At a session of said Court,
held in the City of Mt. Clemens,
County of Macomb, State of Michigan
on July 19, 2021

PRESENT Richard L. Caretti
HON. RICHARD L. CARETTI

This matter having come before the Court based upon the Defendant Rosemarie Corzilius,
individually and as Trustee of the Revocable Living Trust of Mary Palazzolo (“Rosemarie”)’s
Motion for Summary Disposition Pursuant to MCR 2.116(C)(4), (C)(6), (C)(7), (C)(8), and

KIRK, HUTH, LANGE & BADALAMENTI, P.L.C.

(C)(10), the Court having heard arguments from counsel on Monday, July 19, 2021, and the Court being otherwise fully advised in the premises:

IT IS ORDERED that Rosemarie’s Motion is granted to the extent that this Court hereby removes this case to the Macomb County Probate Court before Judge Harrison for the reasons stated on the record.

IT IS FURTHER ORDERED that this Court has refused to rule on the remaining issues contained in Rosemarie’s Motion for Summary Disposition because the case is being transferred to the Macomb County Probate Court for further proceedings.

IT IS FURTHER ORDERED that this Court shall prepare the necessary paperwork pursuant to MCR 2.226(A).

THIS IS NOT A FINAL ORDER. THIS CASE IS NOT CLOSED.



Richard L. Caretti

HONORABLE RICHARD L. CARETTI

/S/ RICHARD L. CARETTI
CIRCUIT COURT JUDGE, P31357

07/21/2021

Agreed to as to form and content:

/s/ Michael C. Taylor
Michael C. Taylor (P7193)
Attorney for Rosemarie Corzilius

Agreed to as to form only:

/s/ Bruce R. Redman
Bruce R. Redman (P46958)
Attorney for Frank Palazzolo,
Personal Representative of the Estate of
Mary A. Palazzolo