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Trusts and Estates

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TRUSTS AND ESTATES

I. RENUNCIATION OF LIFE ESTATE CLOSES CLASS OF REMAINDERMEN AND ACCELERATES POSSESSION OF REMAINDER INTEREST

In *Pate v. Ford*¹ the South Carolina Supreme Court held that the South Carolina disclaimer statute² requires a testator to provide expressly for an alternative disposition of his bequeaths if the testator desires to avoid acceleration of a remainder interest following a disclaimed life estate.³ Thus, the court rescued the substantive effect of the state legislation governing disclaimers of property interests. The result under the statute remains the same even if the remainder would have been subject to partial divestment during the life estate.⁴

Alethea Pate died on October 21, 1983, leaving an estate valued at roughly 6.78 million dollars. Mrs. Pate's husband, William Pate, Sr. died in 1979. Mrs. Pate had two children, William Pate, Jr. (Billy) and Wallace Pate (Wallace), both of whom survived her. Billy had no children at the time of Mrs. Pate's death, and Wallace had five children, all adults.⁵

The dispute in *Pate* arose out of the distribution of a one-third share of the estate.⁶ Mrs. Pate's will directed the administrator to place the share in trust with Wallace as the life beneficiary. "On Wallace's death," the share was to be distributed "in equal shares *per stirpes*" to Mrs. Pate's natural born grandchildren.⁷ Wallace subsequently

1. 297 S.C. 294, 376 S.E.2d 775 (1989).

2. At the time the *Pate* controversy arose, South Carolina Code section 21-37-50 controlled the passage of disclaimed property interests. See S.C. CODE ANN. § 21-37-50 (Law. Co-op. Supp. 1986) (repealed 1987). The new Probate Code repealed and superseded this section in 1987. See *id.* §§ 62-1-100 to -603 (Law Co-op. 1987 & Supp. 1989). A Probate Code provision similar to old section 21-37-50 is found in section 62-2-801. See *id.* § 62-2-801. Because the wording of the two statutes is comparable, the *Pate* decision also applies to the new statute. See *infra* notes 28-33 and accompanying text.

3. 297 S.C. at 298, 376 S.E.2d at 777.

4. See *id.*

5. *Pate v. Ford*, 293 S.C. 268, 272-73, 360 S.E.2d 145, 148 (Ct. App. 1987), *rev'd*, 297 S.C. 294, 376 S.E.2d 775 (1989).

6. *Id.* at 274, 280, 360 S.E.2d at 149, 152.

7. *Pate*, 297 S.C. at 296, 376 S.E.2d at 776. The court of appeals determined that the term "in equal shares *per stirpes*" meant that grandchildren from all branches of the family would take equally, with the predeceased grandchild taking his ancestor's share by representation. *Pate*, 293 S.C. at 276-78, 360 S.E.2d at 150-52. The supreme court did not review this issue.

disclaimed all of his interest in the estate.⁸ He assumed that South Carolina Code section 21-37-50(a) of the disclaimer statute would accelerate his children's remainder interest.⁹ In this way, Wallace hoped to pass a gift to his children without the imposition of a large gift tax.¹⁰ Billy Pate and several guardians ad litem challenged the validity of the disclaimer.¹¹

The South Carolina Court of Appeals reversed the Master in Equity's ruling and held that the disclaimer would not accelerate possession of the remainder in this case.¹² The court of appeals stated that when the remaindermen are known at the time of the disclaimer, acceleration will occur. If, however, the remaindermen are to be determined on the death of the life beneficiary, acceleration will result in "the rights of unborn remaindermen [that are] injuriously affected."¹³

Because Mrs. Pate's will granted the remainder to grandchildren generally, and not to Wallace's children as individuals, the court of appeals reasoned that Mrs. Pate intended to include after-born grandchildren.¹⁴ The court, therefore, ruled that allowing acceleration

8. *Pate*, 297 S.C. at 296, 376 S.E.2d at 776 (supreme court opinion).

9. *Id.* Section 21-37-50(a) provided:

If a person becomes entitled to an interest in property because of the death of a decedent including, but not limited to, a testator, an intestate, an insured, the grantor of a trust, the holder of a power of appointment, a joint owner with right of survivorship, and a participant in a retirement plan and the person disclaims the interest, *the interest devolves or passes as if the person predeceased the decedent, unless the instrument governing the devolution or passing of the interest contains another disposition thereof in the event of a disclaimer*; provided, that in no event may § 21-7-470 govern the devolution or passing of any interest in property disclaimed herein. *Any future interest that takes effect in possession or enjoyment after the termination of the estate disclaimed takes effect as if the person disclaiming had died before the event determining that the taker of the property or interest had become finally ascertained and his interest indefeasibly vested.* A disclaimer relates back for all purposes to the date of death of the decedent or donee of the power, or insured, or qualified plan participant, or the determinative event, as the case may be.

S.C. CODE ANN. § 21-37-50(a) (Law. Co-op. Supp. 1986) (repealed 1987) (emphasis added).

10. The gift tax would have been "no less than \$116,713.00." Brief of Petitioner to the Court of Appeals at 20-21.

11. Billy, also an executor of the estate, attacked the disclaimer in only an individual capacity. See Record at 365-66. Four guardians ad litem, who represented the interests of various minors and classes of unborn potential beneficiaries, challenged the disclaimer. *Id.* at 378, 386, 395, 397.

12. *Pate v. Ford*, 293 S.C. 268, 281, 360 S.E.2d 145, 153 (Ct. App. 1987), *rev'd*, 297 S.C. 294, 376 S.E.2d 775 (1989).

13. *Id.*

14. *Id.* at 275, 282, 360 S.E.2d at 150, 153.

in this case would permit Wallace "to defeat the intent of the testatrix by the unilateral act of disclaiming his life interest."¹⁵

The disclaimer statute at issue in *Pate* stated that a disclaimer causes the renounced interest to pass as if the disclaimant predeceased the testator "unless the instrument governing the devolution or passing of the interest contains another disposition thereof in the event of a disclaimer"¹⁶ The appellate court held that the statute did not require acceleration.¹⁷ Because the assets of the life estate were to be distributed on Wallace's death, the court of appeals reasoned that the will "prevent[ed] the remainder interest from being distributed until Wallace die[d], even if he disclaim[ed] his life interest."¹⁸ Therefore, the court of appeals found that "in the language of the statute, the instrument governing devolution contains 'another disposition' of the remainder interest in the event of a disclaimer. For this reason, the statute, by its own terms, does not accelerate the remainder."¹⁹

The South Carolina Supreme Court reversed the court of appeals. The supreme court held that the will did not contain "another disposition" within the meaning of the statute.²⁰ The court stated that the term "[o]n Wallace's death" simply indicated that the will granted Wallace a life estate. The court further explained that "another disposition" means an alternate disposition. In other words, "Mrs. Pate would have had to provide for something else to happen to the interest between the time Wallace disclaimed and the time the interest devolved to [the grandchildren]."²¹ Because the will did not contain this type of alternate disposition, the remainder accelerated possession of the life estate for Wallace's children.²²

South Carolina common law historically has recognized disclaimers of testamentary gifts, when made properly and in a timely fashion.²³ Furthermore, South Carolina courts would accelerate possession of vested future interests if the interests followed the failure of a prior

15. *Id.* at 281-82, 360 S.E.2d at 153.

16. S.C. CODE ANN. § 21-37-50(a) (Law. Co-op. Supp. 1986) (repealed 1987).

17. *Pate v. Ford*, 293 S.C. 268, 283, 360 S.E.2d 145, 154 (Ct. App. 1987), *rev'd*, 297 S.C. 294, 376 S.E.2d 775 (1989).

18. *Id.* at 282-83, 360 S.E.2d at 154.

19. *Id.* at 283, 360 S.E.2d at 154.

20. *Pate*, 297 S.C. at 298, 376 S.E.2d at 777. A second issue addressed by the supreme court was a provision in the will granting Wallace's children an option to purchase the estate homeplace at the "appraised value." The court held that "appraised value" is the value at the time of Mrs. Pate's death, not the value at the time of purchase. *See id.* at 298-300, 376 S.E.2d at 777-78.

21. *Id.* at 298, 376 S.E.2d at 777.

22. *Id.*

23. *See, e.g.,* *Bahan v. Citizens & S. Nat'l Bank*, 267 S.C. 303, 308-10, 227 S.E.2d 671, 673-74 (1976); *Watson v. Wall*, 229 S.C. 500, 515, 93 S.E.2d 918, 925-26 (1956).

estate.²⁴ When future interests were granted to a class, however, as in *Pate*, the law has not been as clear. The Restatement of Property states that acceleration should occur absent other facts to indicate the testator's contrary intent.²⁵ Some courts, however, have presumed that the testator would not have intended acceleration.²⁶

In 1983 the South Carolina General Assembly enacted the disclaimer statute at issue in *Pate* "to clarify the laws of this State with respect to [disclaimers] in order to ensure the ability of persons to disclaim interests in property without the imposition of federal and state estate, inheritance, gift, and transfer taxes."²⁷ The language of the statute mandates acceleration of any future interest without regard for the testator's intent, unless the testator provides "another disposition" of the disclaimed interest.²⁸ In finding "another disposition," the court of appeals was able to ignore the statute.²⁹ In spite of the disclaimer statute, the court of appeals presumed Mrs. Pate's intent and rendered an equitable decision. If the supreme court had allowed the court of appeals' decision to stand, however, the passage of the statute would have had little effect on the law of disclaimers in South Carolina. No evidence discloses that the legislature contemplated such an interpretation.³⁰

The disclaimer statute debated in *Pate* is no longer the law because section 62-2-801 of the South Carolina Probate Code has super-

24. See, e.g., *Key v. Weathersbee*, 43 S.C. 414, 423-25, 21 S.E. 324, 327-28 (1895).

25. RESTATEMENT OF PROPERTY § 231 comment i (1936).

26. See, e.g., *Walsh v. Hulse*, 23 N.J. Super. 573, 578, 93 A.2d 230, 233 (1952). The "testator will be presumed to have intended to give the property in remainder from and after the termination of the preceding estate in the absence of some controlling equity or express or clearly implied provision in the will to the contrary . . ." *Id.* (emphasis added); *Keesler v. North Carolina Nat'l Bank*, 256 N.C. 12, 18-20, 122 S.E.2d 807, 813 (1961); *Neill v. Bach*, 231 N.C. 391, 394-95, 57 S.E.2d 385, 387-88 (1950).

27. S.C. CODE ANN. § 21-37-10 (Law. Co-op. Supp. 1986) (repealed 1987).

28. See *id.* § 21-37-50(a). See *supra* note 9 and accompanying text.

29. The court of appeals stated, "The statute was enacted solely to alter the tax consequences of disclaimers of interest and is clearly subject to the qualifications that if the testator intends a different disposition, the testator's intent, not the statute, governs devolution." *Pate v. Ford*, 293 S.C. 268, 282 n.1, 360 S.E.2d 145, 154 n.1 (Ct. App. 1987), *rev'd*, 297 S.C. 294, 376 S.E.2d 775 (1989). This footnote indicates that the court of appeals was prepared to go to substantial lengths to circumvent the statutory language. See also *Stewart v. Johnson*, 88 N.C. App. 277, 278-79, 362 S.E.2d 849 (1987) (disclaimer statute did not require acceleration of future interest), *cert. denied*, 323 N.C. 179, 373 S.E.2d 124 (1988).

30. The legislature's statement about taxes in section 21-37-10 arguably is nothing more than a truism: Most people disclaim property interest because of taxes. See UNIFORM DISCLAIMER OF TRANSFERS BY WILL, INTESTACY OR APPOINTMENT ACT § 3, 8A U.L.A. 102 (1983) and the comments following.

seded it.³¹ Because the language is similar,³² however, the legal effect of the new statute should be the same as the one it replaced. In fact, the issue in *Pate* may not have arisen under the new statute because acceleration is required “[u]nless the transferor has provided otherwise”³³ The legislature’s intent now is seemingly less obscure.

In *Pate v. Ford* the supreme court restored the substantive effect of the state’s disclaimer legislation. The decision leaves drafters with a clear message: if acceleration of a future interest in the event of a disclaimer is not desired, the will must state explicitly what is to happen to the interest in the meantime.

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31. S.C. CODE ANN. § 62-2-801 (Law. Co-op. 1987 & Supp. 1989).

32. Section 62-2-801(d) provides:

Unless the transferor has provided otherwise in the event of a disclaimer, the disclaimed interest shall be transferred (or fail to be transferred, as the case may be) as if the disclaimant had predeceased the date of effectiveness of the transfer of the interest; the disclaimer shall relate back to that date of effectiveness for all purposes; and any future interest which is provided to take effect in possession or enjoyment after the termination of the disclaimed interest shall take effect as if the disclaimant had predeceased the date on which he or she as the taker of the disclaimed interest became finally ascertained and the disclaimed interest became indefeasibly vested; provided, that an interest disclaimed by a disclaimant who is the spouse of a decedent, the transferor of the interest, may pass by any further process of transfer to such spouse, notwithstanding the treatment of the transfer of the disclaimed interest as if the disclaimant had predeceased.

Id. § 62-2-801(d).

33. *Id.*

