

NO. PB1-0053-2016

**MARILYN DALTON SYKES
Plaintiff,**

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IN THE PROBATE COURT

v.

NUMBER ONE

**BARBARA DALTON BELL, JOAN
DALTON CAIN
Defendants.**

COLLIN COUNTY, TEXAS

**ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

On September 19, 2016, the Court considered Plaintiff's Motion for Summary Judgment and requests that the Court enter Summary Judgment in favor of Movant on the claim set forth therein, and against Defendants Barbara Dalton Bell and Joan Dalton Cain.

After due consideration of the summary judgment evidence, including affidavits and documentary evidence, and the argument of counsel, this Court finds that Plaintiff's Motion is due to be **GRANTED** and makes the following findings:

The Court finds there is no genuine issue of material fact as to Plaintiff's claim for Declaratory Judgment and Plaintiff is entitled to summary judgment thereon.

The Court finds Defendants have not pled any counterclaim that will preclude summary judgment in this case. The Court finds that Defendants have not pled any affirmative defense that would preclude summary judgment in this cause.

IT IS THEREFORE ORDERED that judgment is entered in favor of Plaintiff and against Defendants on the claim of Declaratory Judgment, and the Court find as follows:

1. This Court's Declaratory Judgment is necessary to allow the parties to proceed without placing themselves in jeopardy of being sued, and Court renders this Declaratory Judgment to terminate the uncertainty or controversy giving rise to this proceeding, and determine the parties' rights, status, or other legal relations under the LPOA. Plaintiff

Marilyn Dalton Sykes is hereby awarded court costs as a prevailing party, to be paid out of the proceeds of the sale of 11878 pursuant to Exhibit "E," the Limited Power of Attorney (hereafter "LPOA").

2. Exhibit "D" to Plaintiff's Motion for Summary Judgment constitutes a valid agreement, enforceable against the parties thereto pursuant to Texas Rule of Civil Procedure 11.
3. Exhibit "E" to Plaintiff's Motion for Summary Judgment constitutes a valid Limited Power of Attorney (LPOA), which was executed by a competent Audrey Dalton freely and voluntarily, and is enforceable according to its express terms. The LPOA fairly describes the terms of the Rule 11 agreement, Exhibit "D."
4. Exhibit "D" and Exhibit "E" are hereby incorporated by reference, and made part of this Court's Judgment.
5. Exhibit "G" to Plaintiff's Motion for Summary Judgment constitute reasonable, necessary, equitable, and just expenses incurred in Marilyn Dalton Sykes' appropriate discharge of her obligations under Paragraph (A)(5) of Exhibit "E," for which she is entitled to reimbursement in the amount of \$6,596.06.
6. Exhibit "H" to Plaintiff's Motion for Summary Judgment constitute reasonable, necessary, equitable, and just attorney's fees and expenses incurred in Marilyn Dalton Sykes' appropriate discharge of her obligations under Paragraph (A)(5) of Exhibit "E," for which she is entitled to award from the proceeds of the sale of 11878 Yoakum.
7. Marilyn Sykes, following payment of the reasonable, necessary, equitable, and just expenses pursuant to Paragraph (A)(5) of the LPOA, and reasonable, necessary, equitable, and just attorney's fees and expenses described above, is entitled to

distribute the proceeds of the sale of 11878 Yoakum in accordance with the terms of the LPOA. Each of Audrey Dalton's daughter's shall establish a bank account in accordance therewith, and shall provide such information as is needed by Marilyn Dalton Sykes, or her authorized agent (The Law Office of Bill Pedersen, III, PLLC), to facilitate the transfer of each daughter's one-third (1/3) share of the proceeds, less the reasonable, necessary, equitable, and just expenses and attorney's fees and expenses described above.

IT IS FURTHER ORDERED that Plaintiff recovers judgment against Defendants in the sum of \$ 9,940.00 as attorney fees for the benefit of the Law Office of Bill Pedersen, III, PLLC. Such Judgment, for which execution shall issue, shall bear interest at the rate of 7% per annum, compounded annually from the date of this judgment, until paid. The Law Office of Bill Pedersen, II, PLLC, is hereby authorized to pay itself this amount out of Joan Dalton Cain's share of the proceeds of the sale of 11878 Yoakum prior to distributing her share to an appropriate bank account as required by the LPOA.

IT IS FURTHER ORDERED that Plaintiff recovers judgment against Defendants in the sum of \$5,000.00, (Five Thousand and No/100 Dollars), as attorney fees for the benefit of Bill Pedersen, III on intermediate appeal, with costs and expenses. Such Judgment, for which execution shall issue, shall bear interest at the rate of 7% per annum, compounded annually from the date of this judgment, until paid. This judgment of attorney fees on appeal is conditioned on the pursuit by Defendants of an ultimately unsuccessful appeal.

IT IS FURTHER ORDERED that Plaintiff recovers judgment against Defendants in the sum of \$2,500.00, (Two Thousand Five Hundred and No/100 Dollars), as attorney fees for the benefit of Bill Pedersen, III on appeal to the Texas Supreme Court, with costs and expenses.

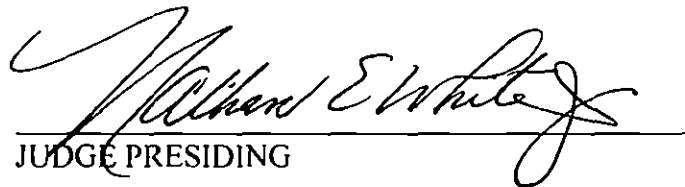
Such Judgment, for which execution shall issue, shall bear interest at the rate of 7% per annum, compounded annually from the date of this judgment, until paid. This judgment of attorney fees on appeal is conditioned on the pursuit by Defendants of an ultimately unsuccessful appeal.

IT IS FURTHER ORDERED that Plaintiff recovers costs of court incurred in the course of this cause in the sum of \$4.00, (Four and No/100 Dollars). Such judgment, for which let execution issue, shall bear interest at the rate of 7%, compounded annually from the date of this judgment, until paid.

IT IS FURTHER ORDERED that Plaintiff is entitled to enforce this judgment through abstract, execution, and any other process.

This judgment finally disposes of all parties and all claims and is appealable.

Signed on September 22, 2016.


JUDGE PRESIDING

APPROVED AS TO FORM:

Bill Pedersen, III
Attorney for Plaintiff Marilyn Dalton Sykes
and Barbara Dalton Bell

Jack Wilburn, II, attorney for Joan Dalton Cain