

SUCCESSION OF

NO. 15,405

H. J. LUTCHER STARK

FILED: OCT 28 2003

14TH JUDICIAL DISTRICT COURT

PARISH OF CALCASIEU

STATE OF LOUISIANA

Carol Spivey
DEPUTY CLERK OF COURT

FINAL JUDGMENT

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This matter came to be heard on April 16, 2003 pursuant to Exceptions of Res Judicata, Prescription and No Right/No Cause of Action filed on behalf of the Succession of H.J. Lutcher Stark through its universal legatee, the Nelda C. and H. J. Lutcher Stark Foundation. Present in Court were the Defendants, the SUCCESSION OF H. J. LUTCHER STARK THROUGH ITS UNIVERSAL LEGATEE, THE NELDA C. AND H. J. LUTCHER STARK FOUNDATION (the "Defendants"), through their attorneys, Allen L. Smith, Jr., J. Michael Veron and Russell J. Stutes, Jr. and HOMER STARK AND REBECCA STARK NUGENT, through their attorney H. Aubrey White, III and IDA MARIE STARK, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF WILLIAM H. STARK, II, RANDALL STARK, LYNN STARK BARRAS AND WILLIAM STARK, III, through their attorney, L. Clayton Burgess. Upon due consideration of the pleadings, evidence, briefs, argument of counsel, and the law,

HTL

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants Exception of Res Judicata is denied.

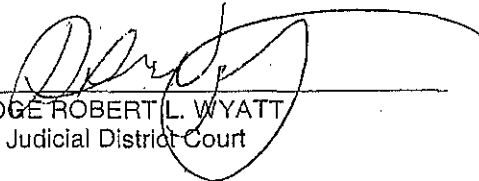
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Exceptions of Prescription and No Right/No Cause of Action are granted and, therefore, any and all claims filed herein on behalf of IDA MARIE STARK, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF WILLIAM H. STARK, II, RANDALL STARK, LYNN STARK BARRAS AND WILLIAM STARK, III, HOMER STARK AND REBECCA STARK NUGENT are barred and are hereby dismissed.

All costs of the proceedings are taxed to Plaintiffs, IDA MARIE STARK, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF WILLIAM H. STARK, II, RANDALL STARK, LYNN STARK BARRAS AND WILLIAM H. STARK, III, HOMER

STARK AND REBECCA STARK NUGENT.

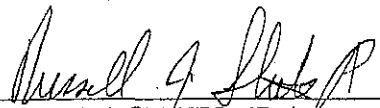
Pursuant to La. Code Civ. P. art. 1918, this is a final judgment.

JUDGMENT RENDERED, READ AND SIGNED in Chambers on this 28th day of
October, 2003, in Lake Charles, Louisiana.



JUDGE ROBERT L. WYATT
14th Judicial District Court

Approved as to form:



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A TRUE COPY
LAKE CHARLES, LOUISIANA

OCT 28 2003



DEPUTY CLERK OF COURT
CALCASIEU PARISH, LOUISIANA

SUCCESSION OF
NO. 15,405
H. J. LUTCHER STARK

FILED: OCT 28 2003

14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

Carol Speer
DEPUTY CLERK OF COURT

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RULE 9.5 CERTIFICATE

On October 14, 2003, pursuant to Uniform Local Dist. Ct. Rule 9.5, the undersigned delivered the attached judgment to counsel for HOMER STARK AND REBECCA STARK NUGENT, H. Aubrey White, III, and counsel for IDA MARIE STARK, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF WILLIAM H. STARK, II, RANDALL STARK, LYNN STARK BARRAS AND WILLIAM STARK, III, L. Clayton Burgess, by telecopier and by first class U. S. Mail. No opposition or approval has been received.

Russell J. Stutes, Jr.
RUSSELL J. STUTES, JR.

SUCCESSION OF : 14TH JUDICIAL DISTRICT COURT
VS. NO. 15,405 : PARISH OF CALCASIEU
H. J. LUTCHER STARK : STATE OF LOUISIANA

WYATT, J.

This matter came for hearing April 16, 2003, on exceptions of res judicata, prescription, and no right of action/no cause of action. The court has read and reviewed the submissions, including briefs, affidavits, business records, and other related litigations,

EXCEPTION OF RES JUDICATA

As to the claim of res judicata, that exception is rejected by the court at this time. The mere identity of issues is not sufficient to support an exception of res judicata, as the object of each must be the same. While all actions subsequent to the probates, both in Texas and in Louisiana, allege fraudulent concealment and involve

heirs and legatees of H. J. Lucher Stark, the Louisiana suit(s) delve into the matter of forced heirship, a consideration long before eliminated in Texas.

EXCEPTION OF PRESCRIPTION

This court finds that the prescriptive period applicable is that in relation to a claim for reduction, which is the liberative prescription of five (5) years. Louisiana Civil Code Article 3497. If the heirs of H. J. Lucher Stark were to exercise same, it would have had to have been commenced within five years of May, 1977. Additionally, a suit was brought by the heirs in 1988 regarding the supposed action/inactions of the executrix, Nelda Stark. Not every additional revelation of an impropriety subsequent to the "learning of the fraud" or identification of additional "properties" should allow a new prescriptive period to commence. Accordingly, the ability of the heirs to claim a reduction has long prescribed.

EXCEPTION OF NO RIGHT OF ACTION EXCEPTION OF NO CAUSE OF ACTION

It is well documented and acknowledged that in Louisiana law, fraud destroys consent for contract, including receipt and release. However, when the "contract" and "receipt and release" are entered into as the result and resolution of purported fraud conducted by Nelda Stark and/or others, the heirs cannot continue to time and time again claim continued or new revelations of fraud. The receipt and the release executed pursuant to the 1988 lawsuit was to resolve the matter of admitted fraud. Just as with the matter of prescription, can the heirs continue to be permitted to make additional claims each time they find additional discrepancies? I think not.

Accordingly, the receipt and release is inclusive of the purported fraud, and controls. And, while this court does not agree that the matters under litigation here have already been litigated in Texas, see res judicata discussion above, the release executed in association with the Texas litigation meets the requirements of a like situation in Louisiana, and should stand for resolving the Louisiana matters.

In summation, at this time this court denies the exception of res judicata, but grants all other exceptions. Costs are assessed to the heirs of Lutchter Stark.

A formal judgement reflecting the views expressed herein will be signed when presented in accordance with the Uniform Rules for Louisiana District Courts.


ROBERT L. WYATT, DISTRICT JUDGE

Lake Charles, Louisiana

October 3, 2003

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S.G.V.S.P.