

NO. D-000298C

EUNICE R. BENCKENSTEIN, WALTER §
G. RIEDEL III, AND ROY WINGATE, §
INDEPENDENT CO-EXECUTORS OF §
THE ESTATE OF NELDA C. STARK, §
DECEASED, EUNICE R. §
BENCKENSTEIN, INDEPENDENT §
EXECUTRIX OF THE ESTATE OF H.J. §
LUTCHER STARK, DECEASED, AND §
WALTER G. RIEDEL III, GENERAL §
MANAGER OF THE NELDA C. AND §
H.J. LUTCHER STARK FOUNDATION §

V. §

IDA MARIE STARK, INDIVIDUALLY §
AND AS INDEPENDENT EXECUTOR §
OF THE ESTATE OF W.H. STARK II, §
DECEASED, ET AL. §

IN THE DISTRICT COURT

FILED
VICKIE EDGERLY
DIST. CLERK, ORANGE CO., TX

JUL 10 2002

2:18 P M
Vickie Edgerly

OF ORANGE COUNTY, TEXAS

260th JUDICIAL DISTRICT

ORDER

On December 7, 2001, came on to be heard and considered the Plaintiffs' Motion for Summary Judgment, Plaintiffs' Amended Motion for Summary Judgment, Plaintiffs' Supplemental Motion for Summary Judgment, Plaintiffs' Replies to Defendants' Responses to Plaintiffs' Motion for Summary Judgment, and Plaintiffs' Supplemental Memorandum in Support of Motion for Summary Judgment (collectively the "Motion for Summary Judgment") of Eunice R. Benckenstein, Walter G. Riedel, III, and Roy Wingate, as Independent Co-Executors of the Estate of Nelda C. Stark, Deceased, Eunice R. Benckenstein, as Successor Independent Executor of the Estate of H. J. Lutchter Stark, Deceased, and the Nelda C. and H. J. Lutchter Stark Foundation (the "Foundation"), a Texas non-profit corporation, Plaintiffs, and the Attorney General's Motion for Summary

Judgment, by and through Intervenor, John Cornyn, Attorney General of the State of Texas, on behalf of the State of Texas and the general public interest in charity, and the Court, having reviewed the Plaintiffs' Motion for Summary Judgment, the Attorney General's Motion for Summary Judgment, the Responses made by Ida Marie Stark, Individually and as Independent Executor of the Estate of William H. Stark, II, Deceased, William H. Stark, III, Randall Hill Stark, and Lynn Marie Stark Barras, Defendants, and all of the summary judgment evidence and other documents submitted by the parties for the Court's consideration with Plaintiffs' Motion for Summary Judgment and the Attorney General's Motion for Summary Judgment, and having heard and considered the arguments of all counsel, is of the opinion that, pursuant to Rules 166a(a) and 166a(c) of the Texas Rules of Civil Procedure, there is no genuine issue as to any material fact and that the motion is meritorious and summary judgment should be GRANTED as to the declarations sought by Plaintiffs in their Original Petition for Declaratory Relief and in their First Amended Petition for Declaratory Relief, and that the Full, Final and Complete Release instrument ("the Release") executed by Defendants in the prior litigation styled *Ida Marie Stark, Individually and as Independent Executor of the Estate of W.H. Stark II, et al. v. Nelda C. Stark, et al.*, being Cause No. D880162-C in the 260th Judicial District Court of Orange County, Texas ("the Prior Litigation"), is valid and binding on all parties, that there exists no basis on which to vitiate the Release, and that the Release precludes, as a matter of law, any and all contrary allegations, demands and claims that may be made by Defendants herein in any way related to the Estate of Nelda C. Stark, the Estate of H.J. Lucher Stark, or the Foundation or any other matters at issue in the Prior Litigation, including but not limited to any claim of fraudulent inducement, which claims are precluded by Defendants' express disclaimer of reliance in the Release, that no fiduciary relationship exists or has existed between any of the Plaintiffs and

any of the Defendants during any period of time relevant to this litigation, that Defendants have ratified the Release by the failure to return the consideration received under the Release and lack equitable standing to appear before the Court, that Defendants are estopped from seeking cancellation of the Release due to their noncompliance with the doctrine of restitution, that the doctrine of res judicata bars relitigation of all claims and remedies sought in connection with the Estate of Nita Hill Stark, the Estate of H. J. Lutcher Stark, the Estate of Nelda C. Stark, and the Nelda C. and H. J. Lutcher Stark Foundation, and that all of the Counter-Plaintiffs' claims are barred by limitations. Moreover, pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, this Court finds that Plaintiffs are entitled to recover from Defendants all taxable court costs incurred in this Cause, together with reasonable attorneys' fees in an amount to be determined by this Court upon hearing subsequent this Order, which determination of attorneys' fees constitutes the only remaining issue in this Cause.

Pursuant to the Rule 11 Agreement Concerning Summary Judgment Motions signed by Kevin M. Jordan, on behalf of Eunice R. Benckenstein, Individually; Tommy Gunn, on behalf of Walter G. Riedel, III, Individually; Larry C. Hunter, on behalf of Clyde V. McKee, Jr., Third-Party Defendant; Tom L. Hanna, on behalf of Roy Wingate, Individually (collectively the "Counter-Defendants"); and Kevin A. Isern, on behalf of Ida Marie Stark, Individually and as Independent Executor of the Estate of William H. Stark, II, Deceased, William H. Stark, III, Randall Hill Stark, and Lynn Marie Stark Barras, Defendants and Counter-Plaintiffs, and on file with the Court, the Court's granting of the Plaintiffs' and Attorney General's Motions for Summary Judgment is binding on Defendants and Counter-Plaintiffs, and thus Eunice R. Benckenstein's Motion for Summary Judgment Related to Claims Made Against Her in Her Individual Capacity and in Her Capacity as

the Successor Independent Executor of the Estate of H. J. Lucher Stark, Walter G. Riedel III's Motion for Summary Judgment Related to Claims Made Against Him in His Individual Capacity, Roy Wingate's Motion for Summary Judgment Related to Claims Made Against Him in His Individual Capacity, As Attorney for Nelda C. Stark and As Attorney for the Nelda C. and H. J. Lucher Stark Foundation, and Clyde V. McKee, Jr.'s Motion for Summary Judgment are in all things GRANTED.

Accordingly, summary judgment IS RENDERED in favor of Plaintiffs, Eunice R. Benckenstein, Walter G. Riedel III and Roy Wingate, as Independent Co-Executors of the Estate of Nelda C. Stark, Deceased, Eunice R. Benckenstein, as Successor Independent Executor of the Estate of H. J. Lucher Stark, Deceased, Walter G. Riedel III, as General Manager of the Nelda C. and H.J. Lucher Stark Foundation, a Texas non-profit corporation; Intervenor, John Cornyn, Attorney General of the State of Texas, on behalf of the State of Texas and the general public interest in charity; and Counter-Defendants, Eunice R. Benckenstein, Individually, Walter G. Riedel, III, Individually, Roy Wingate, Individually, and Clyde V. McKee, Jr., Third-Party Defendant, all of whom are entitled thereto as a matter of law to the declarations sought by Plaintiffs and Intervenor against all Defendants. IT IS THEREFORE

ORDERED, ADJUDGED, AND DECREED that the Release is valid and binding on all parties thereto and Plaintiffs are hereby granted summary judgment with respect to all declarations sought by Plaintiffs in their declaratory judgment action;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the counterclaims asserted by Defendants herein are disposed of by summary judgment in favor of the Plaintiffs,

Intervenor, and Counter-Defendants, and those counterclaims are hereby DISMISSED, with prejudice.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, that Plaintiffs are entitled to recover from Defendants all of their taxable court costs incurred in this Cause, together with reasonable attorneys' fees in an amount to be determined by this Court upon further hearing.

This judgment finally disposes of all parties and all claims, with the exception of the amount of Plaintiffs' attorneys' fees, which is the sole remaining issue herein. Until such issue has been resolved, this judgment is not appealable.

All other relief requested by the parties and not expressly granted herein is DENIED.

SIGNED this 8TH day of JULY, 2002.

Lee Duggan, Jr.
JUDGE PRESIDING