

15273

Vol. 152 Page 11726

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That ENVER BOZGOZ, Trustee for Phoebe Chavez, hereinafter called Grantor, conveys to RICHARD FAIRCLO, Successor-Trustee for PHOEBE CHAVEZ, an undivided one-half interest in all that real property, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Klamath, State of Oregon, described as follows, to-wit:

PARCEL I: Lots 1, 2, 3, 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 18, 19, 20 in Block 19; and Lots 10, 11 and 13 in Block 20, SPRAGUE RIVER, OREGON, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPTING that portion lying within the right of way of the Sprague River Highway.

All of Lots 9, 10, 11, 12, 21, 22, 23, 24 in Block 19, and Lots 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, and 21, in Block 20, SPRAGUE RIVER, OREGON, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL II: Government Lot 1 and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 4, Township 36 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL III: The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 33, Township 35 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL IV: The N $\frac{1}{2}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 32, Township 35 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL V: As to an undivided 14/56 interest: The S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 28 and the E $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 33, Township 35 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon.

TO HAVE AND TO HOLD The same unto the said Grantee, successors in interest and assigns, to be administered under the Testamentary Trust of Lois Zehe, executed on January 19, 1977, and in accordance with the findings in the Decree made and entered on the 9th day of October, 1979, signed by the Honorable Circuit Judge Pro Tem, Wayne H. Blair, a copy of said Decree and Testamentary Trust are attached hereto as Exhibit "A" and by this reference made a part hereof.

The true and actual consideration paid for this transfer, stated in terms of dollars, is None.

IN WITNESS WHEREOF, The Grantor has executed this

Ret

SEP 7 1977 11 35

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instrument this 8 day of June, 1982. 11727

Enver Bozgoz
ENVER BOZGOZ, Trustee for Phoebe Chavez.

STATE OF OREGON,
County of Klamath.

)
(ss.
)

June 8, 1982,
Personally appeared the above-named ENVER BOZGOZ, Trustee
for PHOEBE CHAVEZ, and acknowledged the foregoing instrument to
be his voluntary act and deed.

Before me:

Jill Spore
Notary Public for Oregon.
My Commission Expires: 3-6-83

Grantor's Name and Address:
Enver Bozgoz, Trustee for
Phoebe Chavez, 260 Main St.
Klamath Falls, Oregon 97601

Grantee's Name and Address:
Richard Fairclo, Successor
Trustee for Phoebe Chavez,
280 Main Street, Klamath
Falls, Oregon 97601

AFTER RECORDING RETURN TO:
Richard Fairclo, Successor
Trustee for Phoebe Chavez,
280 Main Street, Klamath Falls,
Oregon 97601

UNTIL A CHANGE IS REQUESTED ALL
TAX STATEMENTS SHALL BE SENT TO
THE FOLLOWING ADDRESS:
RICHARD FAIRCLO, Trustee for
Phoebe Chavez,
280 Main Street
Klamath Falls, Oregon 97601.

STATE OF OREGON)

County of Klamath : ss

I CERTIFY That the within
instrument was received for
record on the _____ day of
_____, 1981, at

o'clock _____ .M., and recorded
in Book _____ on page _____
or as file/reel number _____
Record of Deeds of said
County.

WITNESS My hand and seal of
County affixed.

Recording Officer

By

Deputy.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

FILED

at 11:10 o'clock A.M.

OCT 11 1979

NO. 77-83P

DECREE

19 Wm. D. Milne, Clerk
By Louise M. Sackett Deputy

In the Matter of the Estate of
LOIS ZEHE, Deceased,
JOSIE FOSTER, LAVERN WILSON,
and HAROLD R. CHESTER,
Contestants,

vs.

ENVER BOZGOZ as Personal Rep-
resentative of the Estate of
Lois Zehe, GERALD F. CHESTER,
MARCIA LEE SWITZLER, PASCULITA
J. CHESTER, LINDA VAN ATTER
BROWN, NICHOLAS VERNON HOOD,
PHOEBE CHAVEZ and FLORENCE
McKEE,

Proponents,

THE ABOVE ENTITLED MATTER having come on regularly for trial on
March 12, 1979, before the Honorable Judge Pro Tem, Wayne H. Blair,
Judge of the above entitled Court. Contestant, Josie Foster appearing
in person and by and through her attorney, Glenn D. Ramirez. Prop-
onent, Enver Bozgoz, Personal Representative of the Estate appearing
personally and by and through his attorney, Robert Briggs. Proponent
Phoebe Chavez appearing in person and by and through her attorney,
Ort Goakey. Proponent Florence McKee appearing in person and by her
attorney, Neal G. Buchanan. Louise Jayne, attorney for Proponent,
Gerald R. Chester, submitted the matter on the record and not appear-
ing in person.

DECREE- Page 1

Exhibit "A"

1 The matter was tried to the Court with opening statements by
2 respective counsel, oral, written and physical evidence having been
3 received by the Court, and the Court being fully advised in the
4 premises, makes the following Findings of Fact and Conclusions of
5 Law:

6 (1) PROCEDURE: The parties and the Court have treated 77-75P and
7 77-83P as merged or consolidated. Consideration of the Will on its
8 merits should not be frustrated by the Contestant Josie Foster's
9 filing for Probate. 77-75P is ordered dismissed.

10 (II) EXECUTION: Formal execution of the Will of January 19, 1977.
11 has been established by the evidence. The Will is sufficient under
12 Oregon Statute even though the first page was probably signed at a
13 different time and place than the rest of the document. The hand-
14 writing expert so testified but also established that the same person
15 signed all pages of the Will. ORS 112.238 has been met and the Court
16 finds the Will to be properly executed.

17 (III) UNDUE INFLUENCE AND COMPETENCY: This Court finds from the
18 evidence that Mrs. Zehe knew what property she owned and the natural
19 objects of her bounty. She was competent to make the Will of January
20 10, 1977. There is also no substantial evidence that the Will was the
21 result of any undue influence. The disposition was in fact a reason-
22 able one, considering the age of Mrs. Zehe's only surviving sister and
23 the fact that Phoebe Chavez and Florence McKee supplied almost all of
24 the care and transportation for Mrs. Zehe during her declining years
following her husband's death.

(IV) FAILURE OF TRUST TO "CLOSE": The Will is valid, but failed to provide for final disposition of any remainder on death of both Phoebe Chavez and Florence^{McKee}. The Will is also not clear whether the remaining trust assets of the first primary beneficiary to die go outright to the surviving beneficiary or into her trust.

On the latter point, Mr. Bozgoz testified the assets would go directly to the survivor, but in his deposition stated it was Mrs. Zehe's intention to retain those assets in trust. ~~In the absence of a clear legislative history, we are forced to look directly to the words of The Will reads:~~

"In the event of the death of a primary beneficiary under this trust, my trustee shall distribute the corpus of their trust and the accumulated interest, if any, to the surviving primary beneficiary." Pg. 4e.

Even though there would be good reason to continue the property in trust, to me this language plainly demands distribution directly to the survivor, not to her trust.

There is no provision for disposing of any assets remaining in trust upon death of the last primary beneficiary. Therefore such remainder will pass to Mrs. Zehe's heirs at law.

In my opinion, the Zehe heirs at law, determined as of the date of her death, have a vested future interest in the remainder of the trust assets of the last primary beneficiary to die. Such ruling should be made now, not be delayed until both Florence and Phoebe are dead. I will not attempt to spell out the exact consequences of such a ruling, but assume the heirs at law will have a right to insist

1 that any invasion of corpus be limited to the amount necessary to
2 provide "adequate maintenance or support" to the beneficiary after
3 trust income has been distributed.

4 NOW THEREFORE, IT IS HEREBY ORDERED AND DECREED that the Petition
5 to revoke of Will filed by Contestants is hereby dismissed.

6 IT IS FURTHER ORDERED AND DECREED that the Will admitted into
7 evidence as decedent's Will dated January 10, 1977, is hereby
8 admitted to probate in solemn form.

9 IT IS FURTHER ORDERED AND DECREED that Mrs. Zehe's heirs at law
10 as of the date of Lois Zehe's death, to-wit: July 12, 1977, have a
11 vested future interest in the remainder of trust assets in the trust
12 at the last primary beneficiary's death.

13 DATED this 9th day of October, 1979.

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19 WAYNE H. BLAIR, Circuit Judge Pro Tem
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1 LAST WILL AND TESTAMENT
2 OF
3 LOIS ZEHLE
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5 I, LOIS ZEHLE, of Klamath Falls, State of Oregon, being of
6 sound mind and disposing memory and not acting under duress, menace
7 fraud or undue influence of any person whomsoever do make, publish
8 and declare this my Last Will and Testament revoking all former
9 or other Wills and Testamentary dispositions by me, at any time
10 heretofore made.

11 FIRST: I direct that my just debts and funeral expenses be
12 promptly paid. I direct my Executor to treat as an obligation of
13 my estate and to pay, without any apportionment thereof other
14 than that hereinafter specified, all estate, inheritance or other
15 death taxes or duties imposed and made payable by reason of my
16 death by the laws of the United States, or of any State.

17 SECOND: I declare that I am a widow and that I have no
18 children.

19 THIRD: I give, devise and bequeath the following legacy to
20 the following persons:

21 My sister, JOSIE FOSTER, the sum of Five Hundred Dollars.

22 My nephew, GERALD CHESTER, the sum of Five Hundred Dollars.

23 My niece, MARCIA LEE SWITZLER, the sum of Five Hundred Dollars.

24 My niece, PASULITA J. CHESTER, the sum of Five Hundred Dollars.

25 My nephew, HERALD R. CHESTER, the sum of Five Hundred Dollars.

26 My second niece, LINDA VAN ATTER BROWN, the sum of Five Hundred
27 Dollars.

28 My second nephew, NICHOLAS VERNON HOOD, the sum of Five Hundred
29 Dollars.

30 If any of these beneficiaries predecease me the legacy of
31 such deceased beneficiary shall become part of my residuary estate.

32 WILL - Pg. 1

L. & J. Zehle
Witnesses

Exhibit "A"

1 FOURTH: I give, devise and bequeath to the Protestant
2 Church of Beatty, Oregon, the sum of One Thousand Dollars
3 (\$1,000.00).

4 FIFTH: I have a dog named "Butch" who has been my most
5 trusted and faithful friend. His health is failing and he needs
6 constant attention. It is my wish and desire to provide for the
7 well-being of my faithful dog "Butch". For that purpose it is
8 my wish and desire to set a trust, therefore;

9 I give devise and bequeath to Enver Bozgoz, as trustee for
10 the benefit of my faithful dog "Butch" the sum of Ten Thousand
11 Dollars (\$10,000.00), for the following purposes;

12 1.) My Trustee shall hold, manage, invest and reinvest the
13 property of the trust, and shall collect income therefrom, and
14 after deducting all necessary expenses incident to the administ-
15 ration of the trust, shall dispose of the corpus and income of
16 the trust as follows:

17 2.) The net income of the trust shall be paid to or applied
18 for the maintenance, medical treatment and support of "Butch" at
19 such time and in such proportions as my trustee shall determine
20 in his sole discretion. In the event the income of the trust shall
21 be insufficient to provide adequate maintenance, medical treatment
22 and support, the trustee shall invade the corpus of the trust for
23 this purpose.

24 3.) In the event "Butch" predeceases or dies during the
25 administration of the trust, the corpus of the trust and the
26 accumulated interest, if any, shall be distributed to the
27 beneficiaries of my residuary estate, to-wit: FLORENCE MCKEE and
28 PIERRE CHAVEZ, in equal shares, to be held in trust.

29 SIXTH: I give devise and bequeath the rest residue and
30 remainder of my estate to Enver Bozgoz, as my trustee for the
31 benefit of FLORENCE MCKEE and PIERRE CHAVEZ for the following
32 purposes;

L. B. Zebe
Initials of Testatrix

1 1.) The trust estate shall be divided into two equal shares;
2 one share shall be held in trust for PHOEBE CHAVEZ and one share
3 shall be held in trust for FLORENCE MCKEE.

4 2.) The share of each beneficiary above named shall be hold
5 as a separate trust.

6 3.) The net income of the trust shall be paid to or applied
7 for the maintenance or support of the beneficiary at such time and
8 in such proportions as my trustee shall determine in his sole
9 discretion. In the event the income shall be insufficient to
10 provide the beneficiary with adequate maintenance or support the
11 trustee shall invade the corpus of the trust for this purpose.

12 4.) In making payments committed to it's discretion, to or
13 for the benefit of the beneficiary the trustee shall take into
14 consideration any other income or support received or property
15 possessed by her and known to the Trustee; but the extent to
16 which such other income, support or property must first be used
17 or liquidated by her shall be in the absolute discretion of the
18 Trustee.

19 5.) The interest of the beneficiary in principal or income
20 shall not be subjected to claims or their creditors or others, not
21 legal process, and may not be voluntarily or involuntarily
22 anticipated, alienated or encumbered.

23 My Trustee shall have power;

24 a.) To manage, sell, convey, exchange, encumber, divide;
25 subdivide, improve, and maintain the trust estate or any part
26 thereof.

27 b.) To realize, by suit or otherwise, upon any insurance
28 policy, promissory note or other chose in action or the trust
29 estate, and in settlement thereof to compromise, discount, adjust,
30 extend or abandon the same; to commence and prosecute to such
31 determination as it shall deem proper such suit, action or other
32 proceeding as it shall consider appropriate to protect, preserve,

1 or recover the trust estate or any part thereof.

2 c.) To invest and reinvest the trust estate in such bonds,
3 mortgages, debentures, preferred and common stocks, and other
4 property, real or personal and to retain as an investment any
5 property in any way received or acquired by it for so long as it
6 shall consider such retention of probable benefit to the trust
7 estate and the beneficiary thereof.

8 d.) To make, execute and deliver such instruments as it may
9 deem proper in connection with the exercise by the Trustor of the
10 rights, privileges and options conferred upon the insured by the
11 terms of the policies.

12 e.) In the event of the death of a primary beneficiary under
13 this trust, my trustee shall distribute the corpus of their
14 trust and the accumulated interest, if any, to the surviving
15 primary beneficiary.

16 f.) My Trustee may resign its trusteeship hereunder at any
17 time, in which event my Trustee or any person interested in the
18 trust may take such steps as may be necessary to secure the
19 appointment of a new trustee by a court of competent jurisdiction.

20 g.) The trustee shall be entitled to compensation for his
21 services under this trust and in accordance with his schedule for
22 like services in effect and applicable at the time such compensa-
23 tion shall become payable.

24 h.) To do all things it might do in the absence of the
25 foregoing specific powers.

26 SEVENTH: I hereby nominate and appoint my attorney, ENVER
27 BOZGOZ, to act as Executor of this Will with all rights and duties
28 herein given to or imposed upon.

29 DATED this 19 day of January, 1977.

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TESTATRIX

Luis B. Zabe

1 We, the undersigned, do hereby certify that LOIS ZENE, the
 2 above named Testatrix, on the day and year above written, signed
 3 the foregoing instrument consisting of five (5) pages, including
 4 this page, and published and declared the same to be her last
 5 Will and Testament; and we, at the same time, at her request
 6 and in her presence, and in the presence of each other, have
 7 hereunto set our hands as subscribing witnesses, and we further
 8 certify that at such time she was of sound and disposing mind
 9 and memory.

10 Susan Boggs . residing in Klamath Falls, Ore.

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 13 Jill Spira . residing in Klamath Falls, Ore.

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 26 STATE OF OREGON; COUNTY OF KLAMATH; ss.

27 Filed for record

28 his 7 day of Sept A.D. 19 82 at 11:36 o'clock A.M.
 29 duly recorded in Vol. M 82 of Deed on a 11726

30 Fee \$44.00

31 By Joyce McQuinn EV LYN BROWN, Court.