**Order**

**Michigan Supreme Court**
**Lansing, Michigan**

December 4, 2018

157876-78

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement
Justices

ELAINE STEELE and ROSA & RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,
Plaintiffs-Appellants,

v

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY, and WILLIAM McCAULEY,
Defendants-Appellees. /

SC: 157876
COA: 332305
Wayne Probate Court:
13-791382-CZ

Wayne CC:
13-002255-CK

ELAINE STEELE and ROSA & RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,
Plaintiffs-Appellants,

and

STEVEN G. COHEN
Appellant,

v

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY, and WILLIAM McCAULEY,
Defendants-Appellees. /

SC: 157877
COA: 334192
Wayne Probate Court: 13-791382-CZ

Wayne CC: 13-002255-CK

*In re* ESTATE OF ROSA LOUISE PARKS. /

ELAINE STEELE and ROSA & RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,
Petitioners-Appellants,

v

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY, and WILLIAM McCAULEY,
Respondents-Appellees. /

SC: 157878
COA: 339192
Wayne Probate Court:
2005-698046-DE;
2006-707697-TV

On order of the Court, the application for leave to appeal the March 20, 2018 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[SEAL] I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 4, 2018 /s/ Larry S. Royster
Clerk

**STATE OF MICHIGAN**

**COURT OF APPEALS**

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|---|---|
| ELAINE STEELE and ROSA & RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,<br><br>Plaintiffs-Appellants,<br><br>v<br><br>SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY, and WILLIAM McCAULEY,<br><br>Defendants-Appellees. | UNPUBLISHED<br>March 20, 2018<br><br>No. 332305<br>Wayne Probate Court<br>LC No. 13-791382-CZ<br><br>Wayne Circuit Court<br>LC No. 13-002255-CK |

ELAINE STEELE and ROSA & RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,

Plaintiffs-Appellants,

and

STEVEN G. COHEN

Appellant,

v

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY, and WILLIAM McCAULEY,

Defendants-Appellees.

*In re* ESTATE OF ROSA LOUISE PARKS.

No. 334192
Wayne Probate Court
LC No. 13-791382-CZ

Wayne Circuit Court
LC No. 13-002255-CK

ELAINE STEELE and ROSA & RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,

Petitioners-Appellants,

v

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY, and WILLIAM McCAULEY,

Respondents-Appellees.

No. 339192
Wayne Probate Court
LC Nos.
2005-698046-DE
and
2006-707697-TV

Before: K. F. KELLY, P.J., and MURPHY and RIORDAN, JJ.

PER CURIAM.

These consolidated appeals involve a dispute between plaintiffs, Elaine Steele and the Rosa & Raymond Parks Institute for Self-Development ("plaintiffs", "Steele" and "the Institute"), and defendants, the nieces and nephews of the iconic civil rights pioneer Rosa Parks ("defendants"), over a coat that Parks allegedly wore when she was arrested for

refusing to give up her seat to a white woman on a city bus. Plaintiffs originally filed suit in Wayne Circuit Court for breach of contract and fraud based on defendants' failure to turn over the coat as agreed to in the underlying probate court dispute. The circuit court concluded that it lacked subject-matter jurisdiction over the controversy and transferred the matter to the probate court. Following a number of hearings, the probate court concluded that plaintiffs' claims were barred by res judicata and imposed sanctions against plaintiffs for bringing a frivolous lawsuit.

Docket Nos. 332305 and 334192 arise from these circuit court and probate orders. There are two docket numbers because plaintiffs' attorney filed a brief in his individual capacity, not knowing whether the sanctions imposed were to be paid by plaintiffs for the attorney.

Docket No. 339192 relates to proceedings that occurred after the probate court dismissed plaintiffs' claims on the basis of res judicata. In that same order, the probate court invited plaintiffs to file a petition regarding the value of the coat to determine the amount, if any, sanctions were due plaintiffs for defendants' failure to abide by the previous settlement agreement. The probate court ultimately concluded that it could not properly determine the coat's separate value and declined to sanction defendants.

Finding no errors warranting reversal, we affirm the circuit court and probate court orders.

## I. BASIC FACTS AND PROCEDURAL HISTORY

### A. CIRCUIT COURT PROCEEDINGS

In 2013, plaintiffs filed suit in the circuit court alleging breach of contract and fraud. Although plaintiffs argued that their claims arose out of a March 2007 settlement agreement in the probate court, they claimed that the action was not within the jurisdiction of the probate court because the claims did not relate to the settlement of the estate or property of the estate.

Plaintiffs alleged that, in exchange for agreeing not to challenge Park's will, defendants entered into the 2007 settlement agreement in which plaintiffs agreed to pay defendants 20% of the net proceeds generated from the licensing of intellectual property rights that were owned by the Institute. In paragraph 5(a) of the settlement agreement, the Institute agreed to turn over control of its artifact collection to a Marketing Committee that would arrange for the sale or license of the artifacts. Defendants agreed to turn over the coat worn by Parks on the date of her arrest. The paragraph provided:

> a. Marketable Property. "Marketable Property" shall mean all tangible personal property identified on Exhibit A to this agreement, which will be attached as a supplement to this Agreement within 21 days, following a physical inspection by Mrs. Steele and a representative of the Institute of the property held by the personal representatives. The Heirs [defendants] shall have a corresponding opportunity to conduct a physical inspection of

> said property within 21 days. *The Heirs claim to possess the coat worn by Rosa Parks on the date of her arrest on the bus (the "Coat"), and the Heirs acknowledge and agree that the Coat shall be included in Marketable Property.* The parties agree to work cooperatively toward the purchase of an insurance policy to cover the property in the possession of the personal representatives against casualty or other loss, the premium of which shall be paid by the Estate. [Emphasis added.]

However, in an affidavit dated August 27, 2008, Susan McCauley, the niece to whom the coat was given when McCauley was a student at Michigan State University, averred that she did not have the coat. She believed that the coat was donated to the Martin Luther King Center, but she had no evidence of such a donation.

Plaintiffs alleged that "[i]t is apparent that the representation was made to induce the Institute to place control of its artifacts in the Marketing Committee and pay Defendants a portion of proceeds from the sale or license of the artifacts." Count I of the complaint alleged that defendants entered into a joint venture to breach the settlement agreement by failing to deliver the coat. Count II of the complaint alleged that defendants entered into a joint venture to breach the settlement agreement by violating their "obligation of good faith in the performance of the settlement agreement." Count III of plaintiffs' complaint alleged that defendants entered into a joint venture to fraudulently induce the settlement agreement by indicating that they possessed the coat.

In lieu of filing an answer to plaintiffs' complaint, defendants filed a motion for summary disposition or transfer of the matter to the probate court. Defendants argued that the probate court had exclusive jurisdiction of plaintiffs' claims because the claims clearly arose from and were related to the administration of Parks's estate. Defendants' motion referenced the contentious history between the probate court and plaintiffs' attorney and suggested that plaintiffs brought this action in the circuit court to avoid litigating the matter in the probate court. Defendants also argued that the probate court addressed the coat matter on two prior occasions and that plaintiffs were "attempting to obtain a 'second bite of the apple.' "

The two instances when the probate court addressed the missing coat was an August 10, 2009 order denying plaintiffs' motion for arbitration, and a January 13, 2010 order granting enforcement of court orders. The 2009 opinion provided:

> As to the Heirs' failure to locate and deliver the Coat worn by Mrs. Parks, this Court finds a breach of the Settlement Agreement. The proper remedy, however, for the Heirs' apparent breach of ¶ 5 of the Settlement Agreement is not arbitration. The Court finds no fraud or intentional wrongdoing on the part of the Heirs on the basis of the Affidavit of Susan D. McCauley, a niece of the Decedent. The Heirs' failure to comply, however, does warrant a sanction to be determined by the Court. Attorney Cohen is entitled to his reasonable costs and attorney fees associated specifically with

> the Institute and Steele's efforts to retrieve this coat from the Heirs as promised. In this regard, Attorney Cohen may submit such a request for approval of such fees within fourteen (14) days of the date of this Opinion.

The January 13, 2010 order provided:

> **IT IS ALSO HEREBY ORDERED THAT** the Rosa & Raymond Parks Institute shall file an Accounting of all monies received by CMG according to the information provided by CMG within thirty (30) days of the date of his Opinion. Upon its filing, a hearing will be set by the Court to reconcile the Account and determine the amount of any setoffs, including but not limited to any setoffs owed to Steele and the Institute for the Heirs' failure to turn over Mrs. Park's Coat according to the Settlement Agreement.

Plaintiffs responded that although the claims had a connection to the estate through the settlement agreement, the claims did not involve the internal affairs or administration of the estate. The circuit court disagreed, granted defendants' motion for summary disposition, and transferred the matter to Wayne County Probate Court.

## B. PROBATE COURT PROCEEDINGS

Upon receiving the case from the circuit court, the probate court ordered plaintiffs to file a new complaint. Plaintiffs' amended complaint mirrored the circuit

court complaint except for the captioning and except for the fact that plaintiffs protested jurisdiction.

Defendants filed a motion for summary disposition on February 26, 2014. Defendants argued that plaintiffs' action was barred by res judicata and collateral estoppel because the probate court had already addressed the issue of the missing coat on two prior occasions. Defendants requested sanctions under MCR 2.114(E), claiming that plaintiffs' action was frivolous.

Plaintiffs responded that they were not estoppel from bringing their complaint because no prior action for breach of contract was ever brought. Plaintiffs claimed that they were entitled to summary disposition under MCR 2.116(I)(2) because there was no genuine issue of material fact that defendants breached the settlement agreement.

The probate court determined that plaintiffs' claims were barred by res judicata and collateral estoppel but invited plaintiffs to file a petition regarding the valuation of the coat and a setoff in case number 2006-707697-TV and 2005-698046-DE. The probate court further concluded that plaintiffs' complaint was frivolous. Defendants were awarded a total of $19,456.08 – $14,083.08 in fees and costs for Attorney Lawrence Pepper and $5,373 in fees for Howard Gurwin. Further facts regarding the probate court's penalty award will be discussed in Section IV of this opinion.

### C. 2005-698046-DE AND 2006-707697-TV

Plaintiffs[1] filed an action for the valuation of the coat on April 18, 2016. The facts surrounding this opinion will be discussed in Section V of this opinion at length. The probate court ultimately concluded that plaintiffs were not entitled to a jury trial on the amount of sanctions and that, even with plaintiffs' 84-page appraisal, it was impossible to determine the coat's value on the record. The probate court, therefore, declined to sanction defendants for their failure to turn over the coat as agreed to in the settlement agreement.

## II. SUBJECT MATTER JURISDICTION

Plaintiffs argue that the circuit court erred when it determined that it did not have subject matter jurisdiction over plaintiffs' claims. We disagree.

> This Court reviews de novo a trial court's decision to grant or deny summary disposition. Jurisdictional questions under MCR 2.116(C)(4) are questions of law that are also reviewed de novo. Similarly, issues of statutory interpretation are questions of law that are reviewed de novo on appeal. A trial court is duty-bound to recognize the limits of its subject-matter jurisdiction and must dismiss an action when subject-matter jurisdiction is not present.

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[1] We continue to refer to the parties as "plaintiffs" and "defendants" in lieu of "petitioners" and "respondents" for the sake of continuity.

> MCR 2.116(C)(4) permits a trial court to dismiss a complaint when "[t]he court lacks jurisdiction of the subject matter." . . . So, when reviewing a motion for summary disposition brought under MCR 2.116(C)(4) that asserts the court lacks subject-matter jurisdiction, the court must determine whether the pleadings demonstrate that the defendant is entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. [*Meisner Law Group PC v Weston Downs Condo Assn*, ___ Mich App ___; ___ NW2d ___ (October 24, 2017), slip op, p 5 (some citations and quotation marks omitted.)]

Probate courts are vested with exclusive jurisdiction in a number of situations. MCL 700.1302(a) provides:

> The court has exclusive legal and equitable jurisdiction of all of the following:
>
> (a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:
>
> *(i)* The internal affairs of the estate.
>
> *(ii)* Estate administration, settlement, and distribution.

> *(iii)* Declaration of rights that involve an estate, devisee, heir, or fiduciary.
>
> *(iv)* Construction of a will.
>
> *(v)* Determination of heirs.
>
> *(vi)* Determination of death of an accident or disaster victim under section 1208.

On appeal, plaintiffs argue that their claims for breach of contract and fraud may have been "connected to" the probate case, but that the claims had nothing to do with the actual administration of the estate. Plaintiffs' argument is meritless, at best. "[A] court is not bound by a party's choice of labels." *Attorney Gen v Merck Sharp & Dohme Corp*, 292 Mich App 1, 9–10; 807 NW2d 343 (2011). Instead, a court must "determine the gravamen of a party's claim by reviewing the entire claim, and a party cannot avoid dismissal of a cause of action by artful pleading." *Id.* This Court need only look at plaintiffs' own complaint to discern that their claims involve the internal affairs of the state and the estate's administration, settlement and distribution.

For example, plaintiffs' circuit court complaint alleged that "[s]ince entering into the settlement agreement, Defendants have, through their support of forfeiture proceedings undertaken by court-appointed estate fiduciaries, repeatedly undermined the interests of Plaintiffs under the settlement agreement in breach of their obligation to exercise good faith in the performance of the settlement agreement."

Count I of plaintiffs' complaint alleged that defendants entered into a joint venture to breach the settlement agreement by failing to deliver the coat. As to that count, plaintiffs made the following request:

> Therefore, Plaintiffs request an order disbanding the Marketing Committee established under the settlement agreement and declaring the Institute the owner of all right, title and interest in the civil rights artifact collection referenced in the settlement agreement, free from any and all claims of the Defendants. In the alternative, Plaintiffs seek an award of money damages.

Count II of plaintiffs' complaint alleged that defendants entered into a joint venture to breach the settlement agreement by violating their "obligation of good faith in the performance of the settlement agreement." As to Count II, plaintiffs requested the following relief:

> Therefore, Plaintiffs request an order stating that all further performance by the Plaintiffs under the settlement agreement is excused due to the material breach and/or failure of consideration caused by Defendants and providing, more specifically, that Plaintiffs are excused from the obligation to pay 20% of net intellectual property royalties to Defendants and that Plaintiffs are excused from the obligation to pay Defendants 20% of net proceeds from the sale or license of the Institute's civil rights artifact collection. In the

> alternative, Plaintiffs seek an award of money damages. [Circuit Court Complaint, ¶ 43.)

Finally, Count III of plaintiffs' complaint alleged that defendants entered into a joint venture to fraudulently induce the settlement agreement by indicating that they possessed the coat. Plaintiffs alleged that defendants' misrepresentation comprised a fraud that resulted in the rescission of ¶ 5(a) of the settlement agreement. As to Count III, plaintiffs requested the following relief:

> Therefore, Plaintiffs request an order disbanding the Marketing Committee established under the settlement agreement and declaring the Institute the owner of all right, title and interest in the civil rights artifact collection referenced in the settlement agreement, free from any and all claims of the Defendants. In the alternative, Plaintiffs seek an award of money damages.

Clearly, plaintiffs' claims and the relief they sought would have impacted the administration of the estate.[2] The case at bar involves the settlement agreement that settled formal probate court challenges to Parks's will, the trust and assignment of publicity. The settlement was entered into as part of the administration of the estate and trust. Plaintiffs' claims, which sought to impact the settlement agreement and

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[2] Defendant [sic] cites an unpublished case in support of its [sic] position. Because it is unpublished, the case is unavailing lacks precedential value. MCR 7.215(C)(1). Although defendant [sic] cites the case as persuasive authority, it is not.

thereby impact the estate itself, were within the exclusive jurisdiction of the probate court.

## III. RES JUDICATA AND COLLATERAL ESTOPPEL

Plaintiffs argue that the probate court erred in dismissing plaintiffs' complaint on the basis of res judicata and collateral estoppel. We disagree.

Summary disposition is appropriate under MCR 2.116(C)(7) if a claim is barred by a prior judgment. *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008).

> Under MCR 2.116(C)(7) (claim barred by prior judgment, i.e., res judicata), this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [*RDM Holdings*, 281 Mich App at 687 (citations omitted).]

"The doctrine of res judicata is intended to relieve parties of the cost and vexation of multiple lawsuits,

conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation." *Begin v Mich Bell Tel Co,* 284 Mich App 581, 598; 773 NW2d 271 (2009), overruled on other grounds 494 Mich 10; 831 NW2d 849 (2013).

> Consequently, res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.
>
> Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [*Dart v Dart,* 460 Mich 573, 586; 597 NW2d 82 (1999) (internal citations omitted).]

Similarly,

> Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. The doctrine bars relitigation of issues when the parties had a full and fair opportunity to litigate those issues in an earlier

> action. A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. [*Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006) (internal citations omitted).]

The coat issue was raised and addressed by the probate court on two separate occasions. First, in its August 10, 2009 opinion denying plaintiffs' motion for arbitration and then in its January 13, 2010 opinion granting enforcement of its previous orders. Plaintiffs are precluded from bringing another action regarding the same issue. Once again, plaintiffs' own words are the best evidence of their motives. On this particular issue, plaintiffs' arguments are frivolous. For example, in their appellate brief as it relates to the probate court's August 10, 2009 order denying plaintiffs' motion for arbitration, plaintiffs write:

> The procedure for settling disputes arising under the [settlement] agreement is somewhat murky. The settlement agreement requires the parties to tender all disputes (including matters within the probate court's jurisdiction and those outside its jurisdiction) to the probate court for informal resolution prior to invoking arbitration. Plaintiffs believed at the time that a motion in the probate court to compel arbitration was a proper vehicle for tendering the dispute to the probate court and invoking arbitration. In retrospect, Plaintiffs believe they were in error. The probate court clearly did not have jurisdiction to adjudicate controversies unconnected with Estate administration, such as the coat controversy.

> Accordingly, the probate court did not have jurisdiction to order arbitration of the coat controversy. The Plaintiffs' motion to compel arbitration was proper except to the extent it sought to compel arbitration of the coat controversy.
>
> * * *
>
> As discussed above, the probate court did not have jurisdiction to compel arbitration of the coat controversy because it does not involve Estate property. The probate court's denial of the motion was, therefore, harmless.
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> * * *
>
> The probate court's findings that Defendants committed a breach of contract and were liable for costs and attorney fees, while not adverse to Plaintiffs' interests, are nonetheless troubling on several levels. As previously discussed, the probate court did not have jurisdiction to enter these extra rulings because the coat controversy did not involve Estate property.

In this argument, plaintiffs acknowledge that the probate court specifically found that defendants breached the settlement agreement. Plaintiffs explain that they did not file an appeal because it was not a final order and because the order did not contain any "relief adverse to Plaintiffs' interests." Plaintiffs further explained that they did not do as the court requested and file a request for attorney fees "because

they realized that the probate [court] did not have jurisdiction in the matter."

Plaintiffs brought the coat issue to the probate court's attention, resulting in the 2009 and 2010 orders. To the extent plaintiffs attempt to collaterally attack the probate court's ability to dispose of the issue, "[a]n appellant cannot contribute to error by plan or design and then argue error on appeal." *Munson Med Ctr v Auto Club Ins Ass'n*, 218 Mich App 375, 388; 554 NW2d 49 (1996).

## IV. SANCTIONS

Plaintiffs argue that their complaint was not frivolous and that the probate court erred in assessing sanctions against them. They further argue that the probate court erred in determining the amount of the sanction. We disagree.

"A trial court's finding that an action is frivolous is reviewed for clear error." *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002). A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.* at 661-662. A trial court's determination of the amount of the sanctions imposed is reviewed for an abuse of discretion. *Vittiglio v Vittiglio*, 297 Mich App 391, 408; 824 NW2d 591 (2012), lv den 493 Mich 936 (2013). "A trial court abuses its discretion when its decision results in an outcome falling outside the range of

principled outcomes." *Dep't of Transp v American Motorists Ins Co*, 305 Mich App 250, 254; 852 NW2d 645 (2014).

MCR 2.114(E) and (F) provide:

> (E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
>
> (F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCL 600.2591 further provides:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (*iii*) The party's legal position was devoid of arguable legal merit.

"Sanctions for bringing a frivolous action are warranted where the plaintiff, on the basis of a ruling in another case, has reason to believe that an action against the defendant lacks merit." *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 423; 668 NW2d 199 (2003).

In determining reasonable attorney fees, a court must consider: (1) the professional standing and experience of the lawyer; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. *John J Fannon Co*

*v Fannon Products, LLC*, 269 Mich App 162, 171-172; 712 NW2d 731 (2005).

The probate court did not err in finding that plaintiffs' claim was frivolous. Our analyses on the two preceding issues demonstrate just how void of merit plaintiffs' claims were. As to the amount of sanctions, plaintiffs do not dispute the hourly rate and instead insist that the number of hours were unreasonable. Specifically, plaintiffs argue that many of the fees were incurred in 2015 and 2016 while the parties awaited the probate court's decision on defendants' motion for summary disposition. However, the probate court explained:

> [T]his court notes that any delay in rendering a decision on the motion for summary disposition is attributable to the plaintiffs and plaintiffs' counsel. The long-contested history of the related Parks trust and estate proceedings is well outlined in the March 2016 opinion that is currently on appeal.
>
> * * *
>
> Before this court could rule upon the defendants' motion for summary disposition or plaintiffs' request for partial summary disposition, the proceeding was stayed pending plaintiffs' application for leave to appeal to the Michigan Supreme Court in the estate matter. After the application was denied, plaintiffs filed a motion to compel discovery and for judicial disqualification and other relief on August 7, 2015, requesting that

> Judge Burton disqualify himself from the case.
>
> After a hearing on the motion, the court, on October 30, 2015, denied the motion to disqualify. The motion to disqualify was then referred to the State Court Administrator's Office ("SCAO") for a review of Judge Burton's denial. The matter was assigned to the Chief Judge of the Oakland County Probate Court, the Honorable Elizabeth Pezzetti. On December 21, 2015, Judge Pezzetti denied plaintiffs' motion and transferred the proceedings back to the Wayne County Probate Court. A hearing on the motion for summary disposition occurred on February 23, 2016.

The delay in deciding the substantive motion for summary disposition was brought about primarily by plaintiff. Therefore, the probate court did not abuse its discretion in determining the number of hours expended on this case.

## V. VALUATION OF THE COAT

Plaintiffs argue that the probate court erred in treating plaintiffs' petition for valuation as a sanction and in striking plaintiffs' jury demand. Plaintiffs further argue that the probate court erred in refusing to sanction defendants for failing to turn over the coat as previously agreed. We disagree.

At the time plaintiffs filed their petition for valuation, plaintiffs also filed a petition for instructions on

"how to proceed" with the valuation petition. Plaintiffs requested the following:

> 12. The court is requested to issue instructions on whether the valuation placed on the coat will result in a damages award against the Heirs for their breach of contract/fraud and in favor of Steele and the Institute. Steele and the Institute believe that an award of damages is appropriate due to the clear breach of contract and fraud committed by the Heirs.
>
> 13. The court is also requested to issue instructions on whether there are any other issues for determination in connection with the Valuation Action, other than a valuation of the coat.
>
> 14. The court is also requested to issue instructions on whether the Valuation Action will be heard by a jury or by the court. Steele and the Institute believe that the valuation should be made by a jury because Steele and the Institute timely requested a jury trial in their Valuation Action and paid the jury fee. Moreover, Steele and the Institute believe that the Valuation Action can only be for the purpose of determining damages for the Heirs' breach of contract and fraud, and the determination of damages is an issue clearly triable to a jury.

In an opinion dated February 28, 2017, the probate court addressed plaintiffs' request for instructions, as well as defendants' motions for summary disposition

and to strike plaintiffs' jury demand. The probate court found plaintiffs' allegations regarding the court's jurisdiction "without merit." It rejected plaintiffs' argument that their claim of appeal from the probate court's March 2016 order was subject to an automatic stay and "to the extent that Steel [sic] and the Institute challenge this court's dismissal of the 2013 action, such a challenge is improper in the present proceedings." The probate court added:

> The court first discussed the issue of a setoff in the August 10, 2009 opinion and found that by failing to locate and deliver the coat, the heirs breached ¶ 5 of the settlement agreement. *It determined that the proper remedy for the failure to comply with the terms of the agreement was a* ***sanction*** *to be determined by the court and that award would be set off against the heirs' share of the estate. The court denied Steele and the Institute's request for damages and clarified that the setoff was a* ***sanction*** *as a result of the heirs' breach of the agreement and* ***not an award of damages***. There was no discussion of account. Thus, summary disposition based on the failure to file an account is not proper. However, under MCL 700.3415, the heirs have a right to seek an accounting from the personal representative.
>
> Furthermore, genuine issues of material fact exist as to the value of the coat. The heirs contend that Steele and the Institute are required to establish that the coat existed. The court disagrees. In 2007, as part of the

> settlement agreement, the heirs represented that they were in possession of the coat and agreed to deliver it for inclusion as part of the marketable property. *It has already been determined that the heirs failed to produce the coat as agreed upon. What remains to be determined is the value of the coat.* The heirs contend that the coat has no independent value while Steele and the Institute assert that it has been appraised at $1.35 million. Because genuine issues exist as to the value of the coat, summary disposition will be denied and the parties will have an opportunity to address the issue at trial. [Emphasis added.]

The probate court concluded that plaintiffs were *not* entitled to a jury trial on their petition:

> MCL 600.857(1) provides as follows:
>
> > If a party to a proceeding in the probate court would have had a right before January 1, 1971 to demand a jury to determine a particular issue of act in the circuit court upon a de novo appeal from that proceeding to the circuit court, that party shall on and after January 1, 1971 have the right to demand a jury to determine that issue of fact in the probate court proceeding.
>
> To determine whether the right to a jury trial existed prior to 1971, this court must look to the "nature of the action." Under the nature-of the action approach, whether an action is classified as legal or equitable determines if a right to a jury exists. This court

> must "consider not only the nature of the underlying claim, but also the relief that the claimant seeks." If the nature of the controversy is equitable, "then it must be heard before a court of equity."
>
> The value that should be assigned to the coat is an equitable matter. In the August 10, 2009 opinion, the court, in the exercise of its equitable powers, determined that the heirs' failure to locate and deliver the coat warranted the imposition of ***sanctions***, which would be offset against the heirs [sic] share of the estate. The petition for valuation and the relief of a setoff are not legal in nature but are based in equity. Thus, Steele and the Institute have no right to a trial by jury. The motion to strike jury demand will be granted and the request for a jury trial shall be stricken. [Emphasis added.]

The probate court rejected plaintiffs' continued attempt to assail prior orders and made the following observation:

> Additionally, to the extent that Steele and the Institute seek to rehash the court's prior decisions, these matters have been adjudicated by the court and will not be reconsidered. Moreover, Steele and the Institute appealed the orders of August 10, 2009, and January 13, 2010. See *Chase v Raymond & Rosa Parks Institute for Self-Dev*, unpublished per curiam opinion of the Court of Appeals, issued April 19, 2011 (Docket Nos. 293897, 293899, 296294, 296295). The Court of

> Appeals affirmed this court's rulings. *Id.* However, the Michigan Supreme Court reversed the Court of Appeals judgment in lieu of granting the application for leave to appeal on the issue of breach of the settlement agreement's confidentiality provision. *Chase v Raymond & Rosa Parks Institute for Self-Dev*, 490 Mich 975; 806 NW2d 528 (2011). Although this court was instructed to implement paragraph 1 of the settlement agreement, the remaining portions of the 2009 and 2010 opinions and orders on appeal remained intact, particularly the provisions relating to the heirs' failure to provide the coat and a setoff. *Id.*; *Chase v Raymond & Rosa Parks Institute for Self-Dev*, ___ Mich ___; 807 NW2d 306 (2012) ("Despite the concerns of the probate court, that court's prior rulings resolving past disagreements between the court and Elaine Steel [sic], the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they are inconsistent with this Court's Order, and thus pose no obstacle to implementing Paragraph I of the Settlement Agreement.").

The probate court summarized its rulings as follows:

> Accordingly, the motion for summary disposition filed by the heirs-at-law is DENIED. The petition for valuation filed by Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development shall proceed to trial. Steel [sic] and the Institute's request for stay is DENIED. The heirs' motion to strike jury demand is GRANTED and the jury

> demand is STRICKEN. The petition for valuation shall proceed to trial before the court. The petition for instructions filed by Steele and the Institute is GRANTED. ***A determination as to the value of the coat will not result in damages but will be a sanction due to the heirs' failure to locate and deliver the coat.*** The only issue to be heard and determined by the court, not a jury, at trial is the value of the coat. [Emphasis added.]

Plaintiffs were not entitled to a jury trial. Plaintiffs' claim that they had a jury right stems from their persistent belief that the breach of contract claim is still alive. "'Actual damages is also a term of art. Actual damages is a legal, rather than an equitable, remedy, and legal issues are traditionally tried to a jury." *Anzaldua v Band*, 457 Mich 530, 541; 578 NW2d 306 (1998). Plaintiffs' fixation on damages runs with their continuing fixation on the already-dismissed breach of contract claims. Because the coat valuation was related to *sanctions* and was a matter of equity, plaintiffs were not entitled to a jury trial. The sole issue for the probate court's consideration was the *amount of sanctions* as a result of defendants' failure to produce the coat.

The parties agreed to conduct a trial on written documents only. On March 24, 2017, plaintiffs submitted its [sic] trial brief, which consisted primarily of an appraisal report by Brian Kathenes of National Appraisal Consultants, L.L.C. The 84-page appraisal concludes that the coat had a market value of $1,350,000. The appraisal explains that there are generally three

approaches to determine value – the income approach, the comparable sales approach, and the cost approach. Kathenes believed that the second of the three approaches was the most appropriate. He explained: "There are many examples of historical clothing, artifacts, and personal items related to famous people, social reformers, celebrities, and historic events. The provenance of this coat, along with its documented history and social significance make the comparable sales approach appropriate." Some of the comparable items included Jesse Owens's 1936 Olympic Gold Medal, the Nobel Prize Medal and Nobel Diploma for Francis H.C. Crick, Marilyn Monroe's "Happy Birthday, Mr. President" and "Seven Year Itch" dresses, and the U.S. Hockey Olympic Gold Medal for the 1980 "Miracle on Ice."

Defendants offered no appraisal, deciding instead to argue that the coat's very existence was only legend and that the marketable property as a whole without the coat had no impact on the value and, therefore, there could be no setoff. Specifically, defendants pointed to the fact that paragraph 5(e) of the settlement agreement required the broker to retain the marketable property intact as a single unit. The marketing agreement likewise required that the marketable property be sold intact. The marketable property was sold in 2014 as a single collection. Defendants pointed to a letter that was part of Kathenes's records from Alan Ettinger of Guernsey Auction House to defendants' attorney wherein Ettinger indicated that the coat had no separate, standalone value. Kathenes admitted

that he valued the coat as a stand-alone item and not as part of the marketable property. Defendants maintained that Kathenes failed to use the proper valuation method, which was the difference between what the marketable property was worth with the coat from what it was worth without it. Defendants again argued that plaintiffs were improperly seeking damages instead of providing a basis for awarding sanctions.

The probate court issued an opinion on July 6, 2017. It first rejected defendants' argument that a finding that the coat did not increase the value of the marketable property was dispositive of the issue:

> [A]s explained in this court's prior opinion and orders, a determination as to the value of the coat is to be made in order to establish the amount of the sanctions to be imposed against the heirs for their breach of the settlement agreement by failing to locate and deliver the coat. This is the equitable remedy that was fashioned by the court. During the negotiations of the agreement, the heirs represented that they were in possession of the coat and agreed to deliver it for inclusion as part of the marketable property. They are now barred from claiming mistake or inadvertence for their failure to deliver the coat in accordance with the agreement. The value of the coat in this valuation proceeding is independent of the value of the entire archive of Mrs. Parks' marketable property. Petitioners Steele and the Institute now have the opportunity to present arguments and proofs to establish the value of the coat in order to determine the

> amount of the sanctions to be offset against the heirs' share of the estate.

Over the next 10 pages, the probate court described plaintiffs' appraisal in great detail. The probate court ultimately concluded that it could not determine the value of the coat based on the appraisal:

> More important than [the] International Association's definition of comparative sales approach, is an explanation of the basic steps for this approach. They are as follows:
>
> 1) Collecting and analyzing data,
>
> 2) Selecting appropriate units of comparison,
>
> 3) Making reasonable adjustments based on the market, and
>
> 4) Applying the data to the subject of appraisal.
>
> In the appraisal offered by Steele and the Institute, data on purportedly comparable items were provided. The appraiser presented background information and the same prices of the items. Reasons as to why a listed item was not considered to be comparable, i.e. spurious provenances and questions of authenticity, were also stated. Otherwise, no basic steps demonstrating the critical four steps referenced in the property assessment valuation were explained in the appraisal. No values were presented showing the adjustments for the differences between the 54 listed comparables and the Parks coat. The only time it

appears an adjustment was considered was in the analysis of the Montgomery bus sale for $427,919 in 2001.

Without adjustments, the court is left to guess as to how the appraiser arrived at a value of $1,350,000. It is particularly difficult to follow this estimate of value in light of the range of sales included in the comparables. For example, the first nine comparables identified as "Comparable Sales Data" have a sales range of $4.6 million to $11,250. While the items listed in the "Parallel Markets – Pop Culture, Motion Picture History" section, which include 27 Oscars and 3 JFK relate[d] items, have a sale range of $861,542 to $1. Also included as parallel market data was a DNA letter that sold for $6,059,750 and a George Washington wine cooler that sold for $782,500. The balance of comparables include 2 sports artifacts and 10 movie costumes with a sales range of $5.5 million, which had been previously cited as $4.6 million, to $330,000.

Each of the aforementioned sales categories provide no assistance in understanding how the appraiser arrived at a value of the coat. Consequently, the court is unable to make a determination as to the value of the coat. As the parties have chosen to rely on filed materials – including the petition, response, reply to the response, briefs, attachments, and exhibits while waiving an evidentiary hearing – the court concludes that any determination of value based on these submissions would be pure speculation. The

> court declines to "guesstimate" as the evidence does not support a definitive value. Therefore, the relief sought by Petitioners Steele and the Institute must be denied.
>
> Accordingly, Steele and the Institute's petition for valuation is DENIED. Sanctions will not be imposed against the heirs.

Importantly, plaintiffs do not take issue with any of the probate court's findings. Instead, plaintiffs argue that their evidence was unassailable. However, the mere fact that defendants failed to offer their own appraisal is not dispositive. Plaintiffs had the burden of establishing the coat's worth. "The burden of proof, which may also be generally referred to as a party's evidentiary burden, refers both to a party's burden to provide actual evidence of alleged facts and a party's burden to persuade the trier of fact as to the veracity of those facts." *People v Hartwick*, 498 Mich 192, 216; 870 NW2d 37 (2015). It is clear that the probate court went to great lengths to evaluate plaintiffs' appraisal and simply concluded that it was unable to accept the appraisal as a true estimate of the coat's worth for purposes of assessing sanctions for defendants' failure to turn over the coat.

Affirmed. Having prevailed in full, defendants may tax costs. MCR 7.219.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ Michael J. Riordan

STATE OF MICHIGAN

IN THE PROBATE COURT FOR
THE COUNTY OF WAYNE

| | |
|---|---|
| In the Matter of:<br>Rosa Louise Parks Trust<br>u/a/d July 22, 1998 | File No. 2006-707697-TV<br>Hon. Freddie G. Burton, Jr. |
| In The Matter of:<br>Rosa Louise Parks,<br>Deceased<br>/ | File No. 2005-698046-DE<br>Hon. Freddie G. Burton, Jr. |

ORDER DENYING PETITION FOR VALUATION

At a session of the above Court held
in the City of Detroit,
County of Wayne, State of Michigan, on

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

WHEREAS, this matter comes before the court on petition for valuation filed by Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development (the Institute);

IT IS HEREBY ORDERED THAT the petition for valuation is DENIED. Sanctions will not be imposed against the heirs-at-law (collectively known as the heirs).

JUL 06 2017 /s/ Freddie G. Burton Jr.
Date Judge of Probate

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF WAYNE

| | |
|---|---|
| In the Matter of:<br>Rosa Louise Parks Trust<br>u/a/d July 22, 1998 | File No. 2006-707697-TV<br>Hon. Freddie G. Burton, Jr. |
| In The Matter of:<br>Rosa Louise Parks,<br>Deceased<br>/ | File No. 2005-698046-DE<br>Hon. Freddie G. Burton, Jr. |

OPINION

Before the court is a petition for valuation filed by Petitioners Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development (the Institute).

STATEMENT OF FACTS

The proceedings began as a will and trust dispute over the distribution and control of legendary civil rights activist Rosa Parks' estate and trust. The dispute ultimately resulted in the entry of a settlement agreement, which among other things, resolved issues as to the ownership and control of artifacts and items belonging to Mrs. Parks, referred to as the marketable property. As part of the settlement agreement, Respondents, the heirs-at-law (collectively known as the heirs), were to produce and provide the coat that Mrs. Parks was wearing when she was arrested in Birmingham, Alabama in 1955 for refusing to give up her seat.

This provision was captured in ¶ 5 of the settlement agreement.

In 2009, Steele and the Institute filed a motion to compel arbitration in Mrs. Parks' estate proceeding based on the heirs' breach of the settlement agreement for failing to locate and deliver the coat. On August 10, 2009, the court addressed the coat issue and denied the motion to compel. The court ordered that if the heirs were unable to produce the coat at the time of final distribution, then they would be responsible for paying the reasonable value of the coat to the plaintiffs. On January 13, 2010, the court entered an order granting a petition for enforcement of court order and for entry of judgment, noting the possibility of a setoff owed to Steele and the Institute for the heirs' failure to turn over the coat.

After numerous proceedings, on April 18, 2016, Steele and the Institute filed the current petition for valuation of the coat, requesting a jury trial. Oh September 2, 2016, the heirs filed an answer to the petition for valuation, denying Steele and the Institute's allegations. They also raised affirmative defenses of laches and failure to state a claim upon which relief can be granted. They further objected to the jury demand and contended that the petition does not comport with this court's prior orders. On November 9, 2016, Steele and the Institute filed a petition for instructions as to the petition for valuation, requesting clarification on how to proceed before the court.

On December 15, 2016, the heirs moved for summary disposition of the petition for valuation of the coat pursuant to MCR 2.116(C)(8) and (10), asserting that the petition failed to state a claim upon which relief can be granted. They maintained that petitioners failed to allege that monies have been received against which a setoff for the value of the coat can be taken. They further asserted that there are no genuine issues of material fact as petitioners have failed to establish that the coat had any value under the marketing and settlement agreements. They also contended that they have not produced the coat because there was an innocent mistake, they never had the coat, and that the petitioners have failed to establish that the coat ever existed. The heirs also filed a motion to strike the jury demand.

On January 9, 2017, Steele and the Institute filed a combined response to the heirs' motion to strike and motion for summary disposition. They contended that if the court determines that it has jurisdiction, then it must clarify the nature of the proceedings and find that because the heirs breached their duty to deliver the coat they are liable for damages in the amount of the value of the coat.

Subsequently, the heirs filed a reply to the combined response, asserting that it is an impermissible collateral attack on the court's prior orders of August 10, 2009, January 13, 2010, and March 22, 2016. They also contended that the petition for valuation is devoid of an accounting of the monies received by the marketing company who handled the sale of the marketable

property, CMG, and there is nothing before the court showing the monies received by CMG for the heirs to which any possible setoff can be assessed. They further asserted that the petitioners' expert did not utilize the proper standard in determining their alleged damages and the only evidence is from Guernsey's Auctioneers, which stated that had the coat been included in the marketable property, the collection would not have increased in value. Last, they contended that there is no evidence that a coat was actually worn by Mrs. Parks when she was arrested.

The heirs also filed a response to the petition for instructions, asserting that the pictures of Mrs. Parks wearing a coat that were provided by the petitioners were not taken on the day of her arrest in 1955 but were taken when the Montgomery bus system was desegregated in 1956 and that actual pictures from her arrest show her wearing a suit. They further maintained that any issue as to the value of the coat was addressed in the court's prior orders of August 10, 2009, January 13, 2010, and March 22, 2016.

On February 28, 2017, the court denied the heirs' motion for summary disposition and ordered the parties to proceed to trial as to the petition for valuation. The court also denied Steele and the Institute's request for stay, granted the heirs' motion to strike jury demand, struck the jury demand, and granted Steele and the Institute's petition for instruction. The court further explained that a determination as to the value of the coat will not result in damages but will be a sanction due to the heirs' failure to locate and deliver the

coat. The only issue left to be heard and determined by the court, not a jury, at trial was the value of the coat. Trial was scheduled to commence on March 22, 2017.

Thereafter, the parties informed the court that they had agreed to dispense with a formal trial and instead submit their proofs in writing for a determination by the court. The parties also agreed to admit as admissible evidence the appraisal report prepared by Steele and the Institute's expert, Brian Kathenes of National Appraisal Consultants, LLC (NAC); Kathenes' deposition testimony; and the marked exhibits presented in connection with the deposition. On March 23, 2017, the court approved the parties' stipulated order concerning trial of the coat valuation.

On March 27, 2017, petitioners filed a brief seeking a determination by the court that the coat is valued at $1,350,000. Petitioners contend that the value is based on the appraisal report. Attached to the brief was the 84 page appraisal report.

On April 10, 2017, the heirs filed a brief in response to petitioners' brief. They assert that petitioners have failed to establish the coat's value in accordance with the settlement and marketing agreements. They maintain that the appraiser never asked to value the coat as part of a collection and instead valued it as a stand-alone item, in violation of the agreements. They contend that petitioners have failed to submit an appraisal, evidence, or testimony that is consistent with the standards set forth in the marketing and settlement agreements. They allege that

because petitioners have failed to present a factual basis for the court to make a determination as to the value of the coat as part of the marketable property, the coat must be valued at zero. They also maintain that petitioners have failed to provide any evidence for the court to make a determination as to the amount of sanctions to be setoff against their share of the estate. The heirs further contend that petitioners are unable to establish that a coat was worn on the date of Mrs. Parks' arrest on December 1, 1955, or that the coat ever existed.

On April 13, 2017, petitioners filed a reply to the heirs' answer brief. They contend that despite the respondents' assertion that the coat has no value, the only evidence admitted—the appraisal—shows that the coat has great value. They also maintain that respondents' arguments are without merit and were previously rejected by the court in the February 28, 2017 opinion.

## ANALYSIS AND CONCLUSIONS OF LAW

As an initial matter, the court takes judicial notice of the filings in case numbers 2006-707697-TV and 2005-698046-DE, including previously submitted communications.

The heirs contend that the value of the coat has to be determined by taking the difference between the value of the marketable property with the coat and the value of the marketable property without the coat. They assert that there is nothing to support a finding

that the coat would have increased the overall value of the marketable property. The court agrees. In a letter to the court, dated April 30, 2014—a copy of which was sent to the attorneys for the parties and the then-successor co-personal representative of Mrs. Parks' estate—Arlan Ettinger of Guernsey's explained that he had received a $4.5 million offer to purchase Mrs. Parks' archive, which he stated was better than the previous $1.25 million offer from The Henry Ford Museum and the $700,000 offer from the Smithsonian. Subsequently, in a June 11, 2014 letter to Lawrence Pepper, attorney for the heirs, Ettinger states that the coat may be worth $1 million but notes that it would not have any individual value because it would have to be merged into Mrs. Parks' archive and sold as part of the marketable property. He asserts that "[n]o institution would suddenly come up with the funds and make an offer to acquire the Archive, simply because of the inclusion of 'the coat.'" The marketable property not including the coat, was sold for $4.5 million dollar [sic]. Thus, even if the coat, with a proposed value of $1.35 million, were included in the prior best offer of $1.25 million, it would only increase the value of the marketable property to $2.6 million, which is well below the actual sale price of $4.5 million.

However, as explained in this court's prior opinions and orders, a determination as to the value of the coat is to be made in order to establish the amount of the sanctions to be imposed against the heirs for their breach of the settlement agreement by failing to locate and deliver the coat. This is the equitable remedy that

was fashioned by the court. During the negotiations of the agreement, the heirs represented that they were in possession of the coat and agreed to deliver it for inclusion as part of the marketable property. They are now barred from claiming mistake or inadvertence for their failure to deliver the coat in accordance with the agreement. The value of the coat in this valuation proceeding is independent of the value of the entire archive of Mrs. Parks' marketable property. Petitioners Steele and the Institute now have the opportunity to present arguments and proofs to establish the value of the coat in order to determine the amount of the sanctions to be offset against the heirs' share of the estate.

The appraisal report submitted by the petitioners was prepared by Brian Kathenes of National Appraisal Consultants, LLC (NAC). According to the appraiser, the report is compliant with the Uniform Standards of Professional Appraisal Practice (USPAP). The report uses market value as the basis for the appraisal and defined it as set forth by the International Society of Appraisers Core Course in Appraisal Studies as "the most probable price that a buyer will have to pay, and that a seller is most likely to receive, for an item of property within the defined marketplace at a particular point in time." According to the appraiser, there are three common and accepted approaches to appraising and valuating personal property, the income approach, the cost approach, and the comparable sales or market data approach.

The income approach is defined as comparing the income producing record of similar property and

applying the present worth formula to calculate present worth. The appraiser determined that although an analysis under this approach could be used to determine the coat's value based on a projected income stream, it was not the best approach particularly because the coat's display or ownership would not constitute a substantial potential income stream for a museum or venue that promotes historically significant items.

The cost approach is explained as comparing the item being appraised with the estimated cost to replace it, either by reproduction, production, or purchase. The appraiser determined that this approach was insufficient because reproducing the coat failed to consider the historic significance, provenance or documented history, and its ownership.

The comparable sales approach is defined as the process of analyzing sales of similar sold properties in order to derive an indication of the most probable value of the property being appraised. This methodology was determined to be the most appropriate approach because there is market data to support its use including historical clothing, artifacts, and personal items related to celebrities, social reformers, and historic events. The comparable sales approach was also deemed appropriate because of the provenance, historical, and social significance of the coat.

The appraiser determined that the auction market was the most appropriate market because it provides sellers and buyers with an open market for the sale

and purchase of the coat at arms-length. The appraiser concluded that the individual-to-individual market is not the most common market for the coat because collectors and private owners would not normally have access to the individual buyers that the auction houses and firms do.

The court finds that the three approaches provided and their respective definitions are in accordance with USPAP standards. The court also agrees that the comparable sales approach is the most fitting of the three for establishing the coat's value. In using the comparable sales approach, the appraiser correctly considered the following: supply and demand, subject matter, content, quality, condition, ownership, provenance, photo documentation, identification, and documented use. The appraiser also made additional considerations for the coat's historic significance. He noted that a variety of sources were used to report value and that the final value conclusion is based on the mode of the data collected. In determining the appropriate market, the appraiser failed to consider that the marketable property was not sold at auction. Although Guernsey's Auctioneers managed the marketable property, it was not sold via an auction but on an individual basis. He does not explain why the sale of the coat is different from the previous sale and why it should be sold via auction.

The report also included biographical and historical information on Ms. Parks' life along with various pictures of her. One of the pictures is of a bronze statute that is in the National Statutory Hall in the U.S.

Capitol. In reporting the value of the coat, the appraiser assumed that the coat is authentic and that the descriptions provided are accurate and complete.

Next, the appraiser presented sales data on the items he reviewed in determining the value of the coat. The items were divided into two categories, comparable sales and parallel markets. Descriptions of the items and their value along with the appraiser's comments and justifications were included with most of the items.

## COMPARABLE SALES DATA

### Jesse Owens' 1936 Olympic Gold Medal

One of the four Olympic Gold medals Jesse Owens won at the 1936 Olympic Games sold in 2013 at auction for $1,466,574. According to the appraiser, verifiable records existed only for the one medal that was auctioned, not the others. The verified medal was given by Owens to legendary dancer and movie star Bill "Bojangles" Robinson. The appraiser explained that Owens' Olympic gold medal represents the highest end of collectability in any field and its association with Bill "Bojangles" Robinson is a value-added factor. He considers the coat to have a comparable value to the medal.

The court finds that many similarities exist between Jesse Owens and Ms. Parks. Both individuals are African Americans whose actions had monumental impact on African Americans and the nation. Although

the appraiser provides a price of $1,466,574 as the auction price of the medal, he notes that the sales data was not confirmed even though it was well-documented.

**Francis H.C. Crick Nobel Price Medal and Nobel Diploma**

Dr. Francis H.C. Crick's Nobel Prize and Noble [sic] Diploma in physiology or medicine in 1962 for his discovery of the molecular structure of DNA were sold in 2013 at auction for $2,270,500. The appraiser noted that reports have indicated that the items were subsequently sold for $4.7 million but he admitted that he had not formally researched this claim and therefore, could not substantiate it. He maintained that the items are of great interest within the scientific market and to potential collectors, investors, institutions, and museums. He explained that this sale was included as an indicator of interest in artifacts of well-known and historic figures and establishes the overall market collectability of historical artifacts—both scientific and the civil rights movement.

The court finds that while Dr. Crick's discovery allowed him to become well known and altered the scope of science, it is hard to compare the effects of his scientific work to that of Mrs. Parks. The appraiser provided no basis for the comparison and did not present any similarities to support why this sale should be included in determining the value of the coat.

**Marilyn Monroe Dress - President's Dinner**

The dress worn by Actress Marilyn Monroe at the birthday tribute to President John F. Kennedy at Madison Square Garden in 1962 when she sang happy birthday Mr. President sold at auction for $1,267,000 in 1999. The dress was a part of a lot of more than 575 items, which the appraiser stated sold for a total of $13,400,000. The appraiser asserted that this dress is comparable to the coat because both are classic iconic artifacts and Monroe is one of the most well-known celebrities in the world with a global reach.

The court finds that the dress and the coat are similar in that they are both items of clothing. But the appraiser failed to establish that the event at which the dress was worn was of a significant nature like when the coat was worn during Mrs. Parks' refusal to give up her seat, thereby sparking the civil rights movement. This entry suggests that the appraiser's valuation process is entirely subjective.

**Marilyn Monroe Dress – Seven Year Itch**

The dress Marilyn Monroe wore in the 1955 movie THE SEVEN YEAR ITCH (K Feldman Group Productions 1955) sold for $4.6 million in 2011 at auction. It was part of a collection of items held by actress Debbie Reynolds. The appraiser averred that this dress is an iconic Marilyn Monroe dress and is the most expensive. Like before, the appraiser asserted that this dress is comparable to the coat because both are classic iconic artifacts and Monroe is one of the most well-known

celebrities in the world with a global reach. He also stated that the sale of this dress shows the passion that fans and collectors have for iconic artifacts. He noted that the coat is valued less than the price of this Monroe dress. However, he failed to explain why this purportedly comparable item has considerably more market value than the coat. Like the other Monroe dress, this item is similar to the coat in that they are both garments of clothing. But this dress, despite its alleged popularity, did not impact action in redefining how African Americans are treated in this country.

**Montgomery Bus**

The bus Mrs. Parks rode when she refused to give up her seat sold at auction for $427,919 to The Henry Ford Museum after it was authenticated. Prior to being authenticated, the bus was listed for sale online on eBay for $100,000 by the heirs of the man who had purchased it. The appraiser stated that the bus is one of the most recognizable icons of the Montgomery bus boycott and is comparable to the coat as an artifact related to the American civil rights movement. He maintained that the bus is not comparable to the coat as far as its size, mobility, and original condition. He contended that The Henry Ford Museum had to spend more than $300,000 to restore the bus and expend considerable funds in shipping it to Michigan. He asserted that adjustments had to be made for the size of the bus, its condition, storage and housing costs, shipping costs, restoration costs, and display costs.

The Montgomery bus is similar to the bus where Mrs. Parks was arrested, which sparked the boycott of the Montgomery bus line. Although the appraiser stated that adjustments were made, no values were provided as to what adjustments were made and how the appraiser arrived at those values.

### 1980 U.S. Hockey Olympic Medal

The 1980 U.S. hockey "Miracle on Ice" Olympic gold medal that was presented to Mark Wells sold at auction for $310,700. According to the appraiser, the medal represents an interest in collectible medals and achievement. He maintained that although it is a sports medal, its iconic status is similar to that of the coat. He alleged, however, that the coat is substantially more historic and far exceeds the value of the medal since there is only one coat in existence while there are far more Olympic medals available. The appraiser failed to account for and explain why the Jesse Owens Olympic gold medal sold for $1.4 million and was valued so highly despite being one of many Olympic gold medals.

### Assorted Medals and Commemorative Awards

The appraiser next included medals and commemorative awards in primarily military service and science. He contended that while they are not directly comparable to the coat, they represent an interest in medals and items that are related to American history. The following items were listed:

- General Nathanael Greene's 1784 enameled gold Order of The Cincinnati, which sold at auction for $242,500 in 2011. The appraiser noted that this medal is provided as an example of how name recognition, historical significance, or celebrity stature affects value.
- The Order of the Cincinnati attributed to Tiffany & Co., New York sold at auction in 2011 for $11,250.
- The Edward Strong Moseley gold and enamel Order of the Cincinnati circa. 1867, which was sold at auction for $26,200 in 2008.

The appraiser failed to demonstrate how the medals compare to the coat. He provided no explanation as to why the Order of the Cincinnati medal was awarded, to whom it was awarded, or its historical significance.

## PARALLEL MARKETS – POP CULTURE, MOTION PICTURE HISTORY

### Oscars

The appraiser listed sales of 25 Academy of Motion Picture Oscar Awards that were sold between 1993 through 2012 for a range of $861,542 (Orson Wells' Oscar for best screenplay CITIZEN KANE (RKO Pictures, Mercury Productions 1941)) to $7,636 (unknown sci-tech plaque award with no inscription). According to the appraiser, these items are parallel markets and do not reflect value trends but are an indication of supply and demand. He contended that they are of great interest to a larger population and broader market than

the coat but that the coat is more historically significant. Also included was the sale of an Oscar that was awarded in 1949. The Oscar was sold in 2008 at auction for $65,725. The appraiser provided no explanation as to how the Oscars are comparable to the coat.

**Oscar Related Articles**

A Forbes article was provided, explaining that since 1950, the Academy of Motion Pictures has required Oscar winners to sign an agreement agreeing to first offer to resell the award to the Academy for $1 before selling it to anyone else. The appraiser acknowledged that the markets for the coat and for an Oscar are two distinct and separate markets. He did not explain why this information is included in the report but simply stated that the desire to own a well-known icon can be observed in purchasers of the coat and of an Oscar.

**Other Historical Artifacts**

- ***Jack Ruby's Fedora***

The fedora that was worn by Jack Ruby when he assassinated Lee Harvey Oswald as he was being transported to jail for assassinating President John F. Kennedy sold at auction for $53,775 in 2009. The appraiser noted that although the hat is an iconic artifact that is directly related to President Kennedy's assassination, he considers it to be less significant than the coat because it was not directly owned or used by President Kennedy.

- ***1963 Lincoln Continental***

The white 1963 Lincoln Continental that was used to safely transport President John F. Kennedy and Jacqueline Kennedy from breakfast to Carswell Air Force Base on November 22, 1963, sold at auction in 2013 for $318,000. The appraiser notes that the car was not the limo President Kennedy was riding in when he was later assassinated on November 22 but is ancillary to a historic event. He believes that this item is "somewhat" comparable to the coat.

- ***Black 1960 Continental Mark V 6 passenger limo***

A black 1960 Continental Mark V 6 passenger limo that was used for President Kennedy's personal needs while in Washington D.C. sold at auction for $210,000 in 2013. The appraiser states that while the limo is not the one in which President Kennedy was assassinated, it is comparable to the coat but has a lesser value than the coat. As before, the appraiser fails to explain why the coat is more valuable.

**Additional Autographs, Letters, and Manuscripts as Parallel Market Data**

This section includes the sale of signed letters written by Doctor Francis H.C. Crick. The most expensive item was the letter Crick wrote to his son explaining the structure and function of DNA prior to the public announcement, which sold at auction for $6,059,750. Other letters from Crick sold in a range

from $160.80 to $358.80. The appraiser contended that the sales illustrate that the value of items owned or written by celebrities and historic figures are directly related to the significance of the item. He opined that items are more valuable if they reflect the moment that made them most famous. He maintained that the coat represents Mrs. Parks' most important event of her life and the lives of other Americans. The appraiser provides no explanation as to why the letter is valued at almost five times more than the coat.

**George Washington's Wine Cooler**

The wine cooler that was given to Alexander Hamilton by George Washington in 1797 sold at auction in 2012 for $782,500. The cooler was purchased in November 1790. As the appraiser noted above, items are more valuable if they reflect the moment that made them most famous. But George Washington was most famous when he was elected the country's first president on February 4, 1789—at least nineteen months before the cooler was purchased and well after he had served eight years in office. The appraiser acknowledged that the wine cooler is a different type of artifact but maintained that it is iconic much like the coat without providing an explanation as to why this is so.

**Compilation of Sports Artifacts**

The appraiser goes on to provide an article from BleacherReport.com, listing the 10 most expensive pieces of Major League Baseball items ever sold or

auctioned. The sale prices ranged from $4.4 million for Babe Ruth's jersey to $300,000 for Mark McGwire's 67th, 68th, and 69th home run balls from the 1998 season. The appraiser provides no explanation as to why this article was included and the items were considered.

**The Gloves worn in 1965 by Muhammad Ali and Sonny Liston**

The gloves worn by Mohammad Ali and Sonny Liston at their "Phantom Punch" fight in 1965 sold at auction in 2015 for $965,000. The appraiser maintained that the fight was not as important as the Oscars but asserted that the gloves. are comparable to the coat. The court questions how the gloves are comparable to the coat if the fight is not as important as the Oscars.

**USA Olympic Hockey Jersey Worn by Mike Eruzione**

The Olympic hockey jersey worn by Mike Eruzione at the 1980 Olympics "The Miracle on Ice" game sold at auction in 2013 for $657,250. The appraiser noted that the jersey has many positive attributes, resulting in substantial value, and that it is reported to be the jersey Eruzione wore when he scored the winning goal. He further stated that the coat is more historically significant than the jersey and far exceeds the jersey's value. The appraiser failed to list the jersey's attributes that increased its values to almost twice as much

as the related Olympic gold medals from the same event previously noted above.

**An Article Highlighting the Ten Most Expensive Movie Costumes Ever Sold**

The appraiser provided an article, listing the ten most expensive movie costumes ever sold. The prices ranged from $5.5 million for Marilyn Monroe's dress in the movie THE SEVEN YEAR ITCH to $330,000 for Kate Winslet's "jump" gown in TITANIC (Paramount pictures 1997). The appraiser commented that the article highlights the demand in celebrity clothing and that the values listed are indicative of current market trends. The court finds that the wide range of prices, from $5.5 million to $330,000, demonstrate that the sale prices are primarily subjective. Also, the appraiser previously listed the sale of Marilyn Monroe's dress in the movie THE SEVEN YEAR ITCH to be $4.6 million but in the article, it is listed as $5.5 million. The court is unsure of which figure is correct and the appraiser provides no. explanation as to the difference in prices.

**Not Considered to be Comparable**

The appraiser provides information on a George Washington Gold Fob Seal that sold at auction for $245,000. He asserts that this item is provided to illustrate the importance of solid documented provenance and how provenance and authenticity can impact value. He maintains that although the seal is of great historical interest, the sale price is far below what a

comparable authentic Washington seal would sell for with the appropriate provenance and authentication. He alleges that the seal's association with William Lanier Washington clouded the authenticity of the seal because William Lanier Washington was believed to have acquired items that were not actually owned by George Washington collection. To support this position, he includes a story from a Joslin Hall Company website. The appraiser notes that the coat is assumed to have superb provenance and documented authenticity.

## VALUE CONCLUSION AND REASONED JUSTIFICATION

The appraiser determined that the market value of the coat is $1,350,000. He maintained that he reached this conclusion based on scholarly and scientific research, the comparable sales data previously listed, and his experience and expertise. He noted that the coat has had a visual confirmation and additional levels of ownership and provenance via photographs and scholarly opinion. He also included a summary of his appraisal qualifications.

The appraiser selected the comparable sales (or market) approach to determine the value of the coat reportedly worn by Mrs. Parks when she was arrested on December 1, 1955, for refusing to give her seat on a city of Montgomery bus to a white man. The American Society of Appraisers defines the comparative/comparable sales approach as "[a] procedure to conclude an opinion of value for a property by

comparing it with similar properties that have been sold or are for sale in the relevant marketplace by making adjustments to prices based on marketplace conditions and the properties' characteristics of value' American Society of Appraisers, *Approaches to Value*, <http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value> (accessed April 27, 2017). Similarly, Property Assessment Valuation (International Association of Assessing Offices, 1977) defines the comparative sale approach as one that "rests on the principle of substitution, which is that no commodity has a value greater than that for which a similar commodity can be purchased within the reasonable time limits that the buyer's market demands."

More important than International Association's definition of comparative sales approach, is an explanation of the basic steps for this approach. They are as follows:

1) Collecting and analyzing data,

2) Selecting appropriate units of comparison,

3) Making reasonable adjustments based on the market, and

4) Applying the data to the subject of appraisal.

In the appraisal offered by Steele and the Institute, data on purportedly comparable items were provided. The appraiser presented background information and

the sale prices of the items. Reasons as to why a listed item was not considered to be comparable, i.e. spurious provenances and questions of authenticity, were also stated. Otherwise, no basic steps demonstrating the critical four steps referenced in the property assessment valuation were explained in the appraisal. No values were presented showing the adjustments for the differences between the 54 listed comparables and the Parks coat The only time it appears an adjustment was considered was in the analysis of the Montgomery bus sale for $427,919 in 2001.

Without adjustments, the court is left to guess as to how the appraiser arrived at a value of $1,350,000. It is particularly difficult to follow this estimate of value in light of the range of sales included in the comparables. For example, the first nine comparables identified as "Comparable Sales Data" have a sales range of $4.6 million to $11,250. While the items listed in the "Parallel Markets—Pop Culture, Motion Picture History" section, which include 27 Oscars and 3 JFK relates [sic] items, have a sale range of $861,542 to $1. Also included as parallel market data was a DNA letter that sold for $6,059,750 and a George Washington wine cooler that sold for $782,500. The balance of comparables include 2 sports artifacts and 10 movie costumes with a sales range of $5.5 million, which had been previously cited as $4.6 million, to $330,000.

Each of the aforementioned sales categories provide no assistance in understanding how the appraiser arrived at a value of the coat. Consequently, the court is unable to make a determination as to the value of

the coat. As the parties have chosen to rely on filed materials—including the petition, response, reply to the response, briefs, attachments, and exhibits while waiving an evidentiary hewing—the court concludes that any determination of value based on these submissions would be pure speculation. The court declines to "guesstimate" as the evidence does not support a definitive value. Therefore, the relief sought by Petitioners Steele and the Institute must be denied.

Accordingly, Steele and the Institute's petition for valuation is DENIED. Sanctions will not be imposed against the heirs.

An Order pursuant to MCR 2.602 consistent with this Opinion is attached.

JUL 06 2017 /s/ Freddie G. Burton Jr.
Date Hon. Freddie G. Burton, Jr.
Judge of Probate

STATE OF MICHIGAN

IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

| | |
|---|---|
| In the Matter of:<br>Rosa Louise Parks Trust<br>u/a/d July 22, 1998 | File No. 2006-707697-TV<br>Hon. Freddie G. Burton, Jr. |
| In The Matter of:<br>Rosa Louise Parks,<br>Deceased / | File No. 2005-698046-DE<br>Hon. Freddie G. Burton, Jr. |

ORDER

At a session of the above Court held in the City of Detroit, County of Wayne, State of Michigan, on

_____

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

WHEREAS, this matter comes before the court on petition for valuation and petition for instructions concerning coat valuation filed by Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development (the Institute) and on motion for summary disposition as to the petition for valuation and a motion to strike jury demand filed by the heirs-at-law (collectively known as the heirs);

IT IS HEREBY ORDERED THAT the motion for summary disposition filed by the heirs-at-law is DENIED. The petition for valuation filed by Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development shall proceed to trial.

IT IS FURTHER ORDERED THAT Elaine Steele and the Institute's request for stay is DENIED.

IT IS FURTHER ORDERED THAT the heirs' motion to strike jury demand is GRANTED and the jury demand is STRICKEN.

IT IS FURTHER ORDERED THAT the petition for instruction filed by Steele and the Institute is GRANTED. A determination as to the value of the coat will not result in damages but will be a sanction due to the heirs' failure to locate and deliver the coat. The only issue to be heard and determined by the court, not a jury, at trial is the value of the coat.

IT IS FURTHER ORDERED THAT the trial shall commence on March 22, 2017 at 10:30 a.m. in the Coleman A. Young, Jr. Municipal Center, courtroom 1211. Witness lists must be filed by March 15, 2017 and any proposed exhibits must be marked and filed with the court on the same day. Steele/Institute shall list exhibits in alphabetical order; the Heirs shall list exhibits numerically.

| 2-28-17 | /s/ Freddie G. Burton, Jr. |
|---|---|
| Date | Judge of Probate |

STATE OF MICHIGAN

IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

| | |
|---|---|
| In the Matter of:<br>Rosa Louise Parks Trust<br>u/a/d July 22, 1998 | File No. 2006-707697-TV<br>Hon. Freddie G. Burton, Jr. |
| In The Matter of:<br>Rosa Louise Parks,<br>Deceased / | File No. 2005-698046-DE<br>Hon. Freddie G. Burton, Jr. |

## OPINION

The matters before the court are a petition for valuation and petition for instructions concerning coat valuation filed by Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development (the Institute) and a motion for summary disposition as to the petition for valuation and a motion to strike jury demand filed by the heirs-at-law (collectively known as the heirs).

## FINDINGS OF FACTS

The proceedings began as a will and trust dispute over the distribution and control of legendary civil rights activist Rosa Parks' estate and trust. The dispute ultimately resulted in the entry of a settlement agreement, which among other things, resolved issues as to the ownership and control of Mrs. Park's [sic] marketable property. As part of the settlement agreement, the heirs were to produce and provide the coat

that Mrs. Parks was wearing when she was arrested in Birmingham, Alabama in 1955 for refusing to give up her seat. This provision was captured in ¶ 5 of the settlement agreement.

In 2009, Steele and the Institute filed a motion to compel arbitration in Mrs. Parks' estate proceeding based on the heirs' breach of the settlement agreement for failing to locate and deliver the coat. On August 10, 2009, the court addressed the coat issue and denied the motion to compel. The court ordered that if the heirs were unable to produce the coat at the time of final distribution, then they would be responsible for paying the reasonable value of the coat to the plaintiffs. On January 13, 2010, the court entered an order granting a petition for enforcement of court order and for entry of judgment, noting the possibility of a setoff owed to Steele and the Institute for the heirs' failure to turn over the coat.

In 2013, Steele and the Institute filed a three-count complaint in the Wayne County Circuit Court based on breach of settlement agreement and misrepresentation. In response, the heirs moved for summary disposition under MCR 2.116(C)(4) and (7), alleging that the circuit court lacked subject matter jurisdiction. The circuit court granted summary disposition and transferred the matter to this court.

Upon receipt of the transfer order, the Wayne County Probate Court took jurisdiction of the matter. The file number assigned to the case was 2013-791382-CZ. Thereafter, Steele and the Institute, with court

permission, filed an Amended Complaint on November 22, 2013, raising three counts of relief. The heirs subsequently moved for summary disposition. After numerous proceedings, on March 22, 2016, the court granted the heirs' motion for summary disposition pursuant to MCR 2.116(C)(7) and dismissed Steele and the Institute's amended complaint in case number 2013-791382-CZ with prejudice, finding the claims were barred by res judicata and collateral estoppel. Steele and the Institute filed a claim of appeal of the dismissal, which is currently pending in the Court of Appeals.

On April 18, 2016, Steele and the Institute filed a petition for valuation of the coat, asserting that the court wrongly dismissed the 2013 action. They also maintain that the current proceedings are automatically stayed under MCL 600.867. They request a jury trial should the case proceed on the coat valuation issue. On September 2, 2016, the heirs filed an answer to the petition for valuation, denying Steele and the Institute's allegations. They also raised affirmative defenses of laches and failure to state a claim upon which relief can be granted. They further object to the jury demand and contend that the petition does not comport with this court's prior orders. On November 9, 2016, Steele and the Institute filed a petition for instructions as to the petition for valuation, requesting clarification on how to proceed before the court.

Subsequently, on December 15, 2016, the heirs moved for summary disposition of the petition for valuation of the coat pursuant to MCR 2.116(C)(8) and

(10). They assert that the petition fails to state a claim upon which relief can be granted because petitioners failed to allege that monies have been received against which a setoff for the value of the coat can be taken. They further assert that there are no genuine issues of material fact as petitioners have failed to establish that the coat had any value under the marketing and settlement agreements. They maintain that petitioners failed to abide by the court's January 13, 2010 order and submit and account with their petition for valuation thereby failing to state a claim upon which relief can be granted. They also contend that they have not produced the coat because there was an innocent mistake, they never had the coat, and that the petitioners have failed to establish that the coat ever existed. The heirs also filed a motion to strike the jury demand requested in the petition for valuation.

On January 9, 2017, Steele and the Institute filed a combined response to the heirs' motion to strike and motion for summary disposition. They assert that this court does not have jurisdiction over any proceedings relating to the coat either under MCL 700.1302 or 1303 because it was owned by Heir Susan McCauley and therefore was not an asset subject to estate administration. They contend that if the court determines that it has jurisdiction, then it must clarify the nature of the proceedings and find that because the heirs breached their duty to deliver the coat they are liable for damages in the amount of the value of the coat.

On January 9, 2017, the heirs filed a reply to the combined response, asserting that it is an impermissible collateral attack on the court's prior orders of August 10, 2009, January 13, 2010, and March 22, 2016. It also contends that the petition for valuation is devoid of an accounting of the monies received by the marketing company who handled the sale of the marketable property, CMG, and there is nothing before the court showing the monies received by CMG for the heirs to which any possible set off can be assessed. They further assert that the petitioners' expert did not utilize the proper standard in determining their alleged damages and the only evidence is from Guernsey Auction house, which stated that had the coat been included in the marketable property, the collection would not have increased in value. Last, they contend that there is no evidence that a coat was actually worn by Mrs. Parks when she was arrested.

The heirs also filed a response to the petition for instructions, asserting that the pictures of Mrs. Parks wearing a coat were not taken on the day of her arrest in 1955 but were from when the Montgomery bus system was desegregated in 1956 and that actual pictures from her arrest show her wearing a suit. They further maintain that any issue as to the value of the coat was addressed in the court's prior orders of August 10, 2009, January 13, 2010, and March 22, 2016. They also assert that the automatic stay provision of MCL 600.867 does not apply to these proceedings.

On January 11, 2017, after conducting multiple hearings on the petitions and motions, the court took

these matters under advisement to render a decision. Each petition or motion will be addressed separately in the following opinion.

ANALYSIS AND CONCLUSIONS OF LAW

As an initial matter, the court will address Steele and the Institute's challenge of this court's jurisdiction. This court has continuing exclusive jurisdiction over the settlement of the decedent's estate or trust pursuant to MCL 700.1302 and MCL 700.7201. In *In re Estate of Rosa Louise Parks*, unpublished per curiam opinion of the Court of Appeals, issued February 20, 2014 (Docket Nos. 310948, 311647, 312822), the court explained as follows:

> MCL 700.1302 provides for exclusive subject-matter jurisdiction for the probate court and states that the probate court has exclusive jurisdiction over matters related to the settlement of a decedent's estate or trust. . . . Additionally, MCL 700.1303 provides for concurrent legal and equitable jurisdiction of the probate court, including claims by or against a fiduciary or trustee, MCL 700.1303(h).

Thus, Steele and the Institute's assertion is without merit.

Motion for Summary Disposition

In moving for summary disposition, the heirs contend that Steele and the Institute have failed to state a claim on which relief can be granted and that they

are entitled to judgment as a matter of law. They assert that in the January 13, 2010 order, this court ordered the Institute to file an accounting of all monies received by CMG within 30 days and that upon its filing, a hearing would be held to reconcile the account and determine any setoffs. They maintain that petitioners failed to abide by the order and submit an account with their petition for valuation. They assert that by failing to provide an accounting of all monies received by CMG, Steele and the Institute have failed to state a claim upon which relief can be granted and summary disposition is proper.

Additionally, the heirs contend that no genuine issue of material fact exists because Steele and the Institute failed to establish that the coat's value is in accordance with the settlement agreement. They maintain that under the terms of the settlement and marketing agreement, all of Mrs. Parks' items were to be sold as a single unit and that the coat was to be included as part of the marketable property and not as an individual item. They assert that it has no independent value and must be valued as a part of the entire marketable property. They argue that Steele and the Institute have no factual basis for this court to make a determination as to the value of the coat under the terms of the agreement because their expert valued the coat as a stand-alone item rather than as part of the entire inventory. They maintain that the only evidence as to the coat's value is from Guernsey's auctioneer and brokers who stated that the coat would

have to be a part of the single archival collection and would not have any individual value.

They also maintain that the petitioners are unable to establish that a coat was worn by Mrs. Parks when she was arrested on December 1, 1955, and that a coat ever existed. They contend that the photographs of Mrs. Parks contained in petitioner's expert's appraisal report were not taken on the day of her arrest. They assert that one of the heirs, Susan McCauley, testified at her deposition that she believed an error was made and that she did not know if Mrs. Parks was wearing a coat when she was arrested. They allege that if the petitioners are unable to establish the existence of the coat, then the only value that can be assigned to it is zero. They aver that the existence of the coat is a mere innocent mistake of fact by both parties.

In response to the heirs' motion for summary disposition, Steele and the Institute maintain that the account referred to in the court's January 13, 2010 order relates to their obligation to pay the heirs 20% of the net income from the Rosa Parks right of publicity, which was not an estate asset and is not related to the coat issue. They argue that the motion for summary disposition should be denied because all of the elements for fraud and breach of contract are present and the heirs cannot avoid liability. They allege that the agreement upon which the heirs rely was modified by a subsequent agreement that specifically allowed the marketable property collection to be sold without the coat. They contend that the heirs created the circumstances necessitating the need for the valuation.

Steele and the Institute further maintain that it is not their burden to demonstrate the amount of damages to a legal certainty. They assert that they obtained a detailed appraisal of the coat from a certified appraiser who valued the coat at $1.35 million and that the appraisal provides a reasonable basis for computing damages. They request that the court stay all proceedings pending the appeal of the coat controversy or alternatively, deny the heirs' motion in its entirety and order a jury trial on the issue of damages.

A party may move under MCR 2.116(C)(8) for summary disposition if "[t]he opposing party has failed to state a claim on which relief can be granted." "The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted." *Beaudrie v Henderson*, 465 Mich 124, 129-30; 631 NW2d 308, 311 (2001). Because a motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint, this court must determine whether relief is warranted on the basis of the pleadings alone. *Id.* at 129. This court accepts all factual allegations as true and construes them in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817, 823 (1999). The motion will be granted if "no factual development could possibly justify recovery." *Beaudrie*, 465 Mich at 129.

A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10), when, except with regard to damages, there is no genuine issue of material fact and the moving party is entitled to judgment

as a matter of law. *Pinckney Community Schs. v Continental Casualty Ins. Co.*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

> A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. [The] court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). [The] court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [*Pioneer State Mut. Ins. Co. v. Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013) (citations and quotation marks omitted).]

Viewing the facts in the light most favorable to Steele and the Institute as the nonmoving parties, they have stated a claim upon which relief can be granted. The petition for valuation requests a determination to be made as to the value of the coat and a setoff in accordance with this court's March 22, 2016 order. The

March 2016 order did not require Steele and the Institute to contemporaneously file an accounting with the petition and neither did the 2010 order. In the 2016 order, the court simply stated that "Steele and the Institute may file a petition regarding the valuation of the coat and a setoff in case numbers 2006-707697-TV and 2005-698046-DE. . . ." Prior to that, in the 2010 order, the court ordered the Institute to file an account of all monies received by CMG so that the account could be reconciled and a determination made as to any setoffs, including any setoffs owed to Steele and the Institute based on the heirs' failure to provide the coat. The court ordered an account to be filed based on the former co-fiduciaries' questions as to Steele, the Institute, and CMG's actions under the settlement agreement. See *In re Estate of Rosa Louise Parks*, unpublished opinion of the Wayne County Probate Court, issued January 13, 2010 (Docket Nos. 2006-707697-TV, 2005-698046-DE), p 4. Although the 2010 order referenced the setoff, the granting of the setoff was not conditioned upon the filing of an account and the issues necessitating the need of an account were not directly related to the coat issue.

The court first discussed the issue of a setoff in the August 10, 2009 opinion and found that by failing to locate and deliver the coat, the heirs breached ¶ 5 of the settlement agreement. It determined that the proper remedy for the failure to comply with the terms of the agreement was a sanction to be determined by the court and that award would be set off against the heirs' share of the estate. The court denied Steele and

the Institute's request for damages and clarified that the setoff was a sanction as a result of the heirs' breach of the agreement and not an award of damages. There was no discussion of an account. Thus, summary disposition based on the failure to file an account is not proper. However, under MCL 700.3415, the heirs have a right to seek an accounting from the personal representative.

Furthermore, genuine issues of material fact exist as to the value of the coat. The heirs contend that Steele and the Institute are required to establish that the coat existed. The court disagrees. In 2007, as part of the settlement agreement, the heirs represented that they were in possession of the coat and agreed to deliver it for inclusion as part of the marketable property. It has already been determined that the heirs failed to produce the coat as agreed upon. What remains to be determined is the value of the coat. The heirs contend that the coat has no independent value while Steele and the Institute assert that it has been appraised at $1.35 million. Because genuine issues exist as to the value of the coat, summary disposition will be denied and the parties will have an opportunity to address the issue at trial. Therefore, the motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) is DENIED.

Petition for Valuation

In the petition for valuation, Steele and the Institute assert that this court incorrectly dismissed the

2013 action on the basis of res judicata because they have not previously been raised and this court has not rendered a final judgment on the issues of breach of contract or fraud. They maintain that this court's dismissal order is automatically stayed under MCL 600.867 pending the outcome of their appeal and that this court should not conduct proceedings on the current petition until the stay is lifted. Steele and the Institute request a jury trial should the court proceed on the petition for valuation. The heirs, however, contend that MCL 600.867 is inapplicable to the current proceeding and that the matter should not be stayed. They also allege that per this court's previous orders, Steele and the Institute are only entitled to a setoff and not damages.

MCL 600.867 provides that once an appeal has been filed "and notice of the appeal is filed with the probate court, all further proceedings in pursuance of the judgment, order, or sentence, appealed from are stayed . . . until the appeal is determined. . . ." The trial court lacks jurisdiction to set aside or amend the order appealed from except by order of the Court of Appeals, by stipulation of the parties, or as otherwise provided by law. MCR 7.208(A); MCR 5.802(A). However, "[a]n appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders." MCR 7.209(A)(1). Thus, while this court may not alter or amend a judgment or order on appeal, it may act to enforce it while the appeal is pending, unless stayed pending appeal. *Id.*; *Bass v Combs*, 238 Mich App 16,

24; 604 NW2d 727, 732 (1999), overruled in part on other grounds in *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618; 752 NW2d 37 (2008).

In the instant case, Steele and the Institute's claim of appeal from the March 2016 order in case number 2013-791382-CZ—which granted summary disposition in favor of the heirs and dismissed Steele and the Institute's amended complaint—did not stay the enforceability or the effect of the order. The court also afforded Steele and the Institute an opportunity to file a petition regarding the valuation of the coat and a setoff in the underlying decedent's estate and trust proceedings. The Court of Appeals has not ordered a stay. Consequently, this court has the authority to oversee further proceedings to enforce the order being appealed and proceed as to the issue of the value of the coat and setoff. Moreover, to the extent that Steele and the Institute challenge this court's dismissal of the 2013 action, such a challenge is improper in the present proceedings. Thus, the matter is not stayed and will proceed. The request for jury trial will be addressed below.

Petition for Instructions and
Motion to Strike Jury Demand

In the petition for instructions, Steele and the Institute request instructions as to the following: whether the value placed on the court will result in damages against the heirs for breach of contract and

fraud; whether there are any other issues to be determined, other than valuation of the coat; and whether the valuation issue will be heard by a jury or by the court. They maintain that valuation can only be for the purpose of determining damages due to the heirs' breach of contract and fraud, which are triable to the jury. They request a stay of the valuation action under MCL 600.867 and because the court should not take any action that is inconsistent until the conclusion of the appeal. They also state that the heirs alluded to the coat being nonexistent but assert that the heirs already agreed to its existence in the 2007 agreement.

In the motion to strike jury demand, the heirs assert that allowing and reconciling an account, including any setoffs, are equitable matters for which there is no entitlement to a jury trial. They maintain that under MCL 600.857(1), a setoff to an account is not an issue from which petitioners would be entitled to a de novo appeal and as such, a jury trial is not available.

MCL 600.857(1) provides as follows:

> If a party to a proceeding in the probate court would have had a right before January 1, 1971 to demand a jury to determine a particular issue of fact in the circuit court upon a de novo appeal from that proceeding to the circuit court, that party shall on and after January 1, 1971 have the right to demand a jury to determine that issue of fact in the probate court proceeding.

To determine whether the right to a jury trial existed prior to 1971, this court must look to the "nature of the action." *Anzaldua v Band*, 216 Mich App 561, 566; 550 NW2d 544, 547 (1996), aff'd on other grounds 457 Mich 530; 578 NW2d 306 (1998). Under the nature-of-action approach, whether an action is classified as legal or equitable determines if a right to a jury exists. *Id.* at 547. This court must "consider not only the nature of the underlying claim, but also the relief that the claimant seeks." *Madugula v Taub*, 496 Mich 685, 706; 853 NW2d 75, 86 (2014). If the nature of the controversy is equitable, "then it must be heard before a court of equity." *Id.*; *Robair v Dahl*, 80 Mich App 458, 462; 264 NW2d 27, 29 (1978).

The value that should be assigned to the coat is an equitable matter. In the August 10, 2009 opinion, the court, in the exercise of its equitable powers, determined that the heirs' failure to locate and deliver the coat warranted the imposition of sanctions, which would be offset against the heirs [sic] share of the estate. The petition for valuation and the relief of a setoff are not legal in nature but are based in equity. Thus, Steele and the Institute have no right to a trial by jury. The motion to strike jury demand will be granted and the request for a jury trial shall be stricken.

Additionally, to the extent that Steele and the Institute seek to rehash the court's prior decisions, these matters have been adjudicated by the court and will not be reconsidered. Moreover, Steele and the Institute appealed the orders of August 10, 2009, and January 13, 2010. See *Chase v. Raymond & Rosa Parks Institute*

*for Self–Dev*, unpublished per curiam opinion of the Court of Appeals, issued April 19, 2011 (Docket Nos. 293897, 293899, 296294, 296295). The Court of Appeals affirmed this court's rulings. *Id.* However, the Michigan Supreme Court reversed the Court of Appeals judgment in lieu of granting the application for leave to appeal on the issue of breach of the settlement agreement's confidentiality provision. *Chase v. Raymond & Rosa Parks Institute for Self–Dev*, 490 Mich 975, 806 NW2d 528 (2011). Although this court was instructed to implement paragraph 1 of the settlement agreement, the remaining portions of the 2009 and 2010 opinions and orders on appeal remained intact, particularly the provisions relating to the heirs' failure to provide the coat and a setoff. *Id.*; *Chase v. Raymond & Rosa Parks Institute for Self–Dev*, ___ Mich ___, 807 NW2d 306 (2012) ("Despite the concerns of the probate court, that court's prior rulings resolving past disagreements between the court and Elaine Steele, the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they are inconsistent with this Court's Order, and thus pose no obstacle to implementing Paragraph 1 of the Settlement Agreement.").

Accordingly, the motion for summary disposition filed by the heirs-at-law is DENIED. The petition for valuation filed by Elaine Steele and the Raymond and Rosa Parks Institute for Self-Development shall proceed to trial. Steele and the Institute's request for stay is DENIED. The heirs' motion to strike jury demand is GRANTED and the jury demand is STRICKEN. The

petition for valuation shall proceed to trial before the court. The petition for instructions filed by Steele and the Institute is GRANTED. A determination as to the value of the coat will not result in damages but will be a sanction due to the heirs' failure to locate and deliver the coat. The only issue to be heard and determined by the court, not a jury, at trial is the value of the coat.

The trial shall commence on March 22, 2017 at 10:30 a.m. in the Coleman A. Young, Jr. Municipal Center, courtroom 1211. Witness lists must be filed by March 15, 2017 and any proposed exhibits must be marked and filed with the court on the same day. Steele/Institute shall list exhibits in alphabetical order; the Heirs shall list exhibits numerically.

An Order pursuant to MCR 2.602 consistent with this Opinion is attached.

| FEB 28 2017 | /s/ Freddie G. Burton, Jr. |
|---|---|
| Date | Hon. Freddie G. Burton, Jr.<br>Judge of Probate |

STATE OF MICHIGAN

IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ELAINE STEELE and ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT

Plaintiffs,

v.

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY and WILLIAM McCAULEY, as individuals and as joint venturers,

Defendants. /

File No.
2013-791382-CZ
Hon.
Freddie G. Burton, Jr.

ORDER AWARDING SANCTIONS AND COSTS

At a session of the above Court held in the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan, on

_____

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

WHEREAS, this matter, having come to be heard upon Defendants', collectively known as the heirs, motion to determine amount of sanctions and costs;

IT IS HEREBY ORDERED that sanctions and costs are awarded to the defendants as follows: $13,986 in fees and $97.08 in costs to Mr. Pepper and $5,373 in fees to Mr. Gurwin for a total of $19.456.08 [sic].

July 26, 2016 /s/ Freddie G. Burton, Jr.
Dated Judge of Probate

STATE OF MICHIGAN

IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ELAINE STEELE and ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT

Plaintiffs,

v.

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY and WILLIAM McCAULEY, as individuals and as joint venturers,

Defendants. /

File No.
2013-791382-CZ
Hon.
Freddie G. Burton, Jr.

* * *

ORDER

At a session of the above Court held in the City of Detroit, County of Wayne, State of Michigan, on

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

* * *

IT IS HEREBY ORDERED THAT in case number 2013-791382-CZ, the defendants/heirs' Motion for Summary Disposition (re: coat) pursuant to MCR 2.116(C)(7) is GRANTED, and Steele and the Institute's Amended Complaint is hereby DISMISSED with prejudice.

IT IS ALSO HEREBY ORDERED THAT based on the dismissal of the Amended Complaint in case number 2013-791382-CZ, this matter is closed except as to sanctions issued pursuant to MCR 2.114(E). As to the heirs' failure to locate and deliver the coat that Mrs. Parks wore during her arrest on the bus, Steele and the Institute may file a petition regarding the valuation of the coat and a setoff in case numbers 2006-707697-TV and 2005-698046-DE within 30 days of this Opinion.

* * *

IT IS ALSO HEREBY ORDERED THAT in case number 2013-791382-CZ, the heirs' request for sanctions is GRANTED. The heirs' are to file any Motion or Stipulation and Order within 21 days of the date of this Opinion and Order as to the proper amount of reasonable expenses incurred.

* * *

3-22-16 /s/ Freddie G. Burton, Jr.
Date Judge of Probate

STATE OF MICHIGAN

IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ELAINE STEELE and ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT

Plaintiffs,

v.

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY and WILLIAM McCAULEY, as individuals and as joint venturers,

Defendants. /

File No.
2013-791382-CZ
Hon.
Freddie G. Burton, Jr.

* * *

OPINION

* * *

The matters before the Court in case number 2013-791382-CZ are a Motion for Summary

Disposition under MCR 2.116(C)(7) by the heirs and a Motion to Compel Discovery by Steele and the Institute.

In 2007, a settlement agreement was reached between Steele, the Institute, and the heirs in the Parks Will and Trust proceedings. As part of the settlement agreement, the heirs were to produce and provide the coat that Mrs. Parks was wearing when she was arrested in Birmingham, Alabama in 1955 for refusing to give up her seat. This provision was captured in ¶ 5 of the settlement agreement.

In 2009, Steele and the Institute filed a Motion to Compel Arbitration in Mrs. Parks' Estate proceeding based on the heirs' breach of the settlement agreement in failing to locate and deliver the coat. On August 10, 2009, the Court addressed the coat issue and denied Steele and the Institute's Motion to Compel. This Court ordered that if the heirs were unable to produce the coat at the time of final distribution, then they would be responsible for paying the reasonable value of the coat to the Plaintiffs. On January 13, 2010, the Court entered an order granting Petition for Enforcement of Court Order and for Entry of Judgment, noting the possibility of a setoff owed to Steele and the Institute for the heirs' failure to turn over the coat.

In 2013, Steele and the Institute filed a three-count complaint in the Wayne County Circuit Court based on breach of settlement agreement and misrepresentation. In response, the heirs moved for summary disposition under MCR 2.116(C)(4) and (7), alleging

that the circuit court lacked subject matter jurisdiction. The circuit court granted summary disposition and transferred the matter to this Court.

Upon receipt of the transfer Order, the Wayne County Probate Court took jurisdiction of the matter. Thereafter, Steele and the Institute, with court permission, filed an Amended Complaint on November 22, 2013, raising three counts of relief. In Count 1, Steele and the Institute alleged that by entering into the settlement agreement, the heirs evidenced an intention to undertake a joint venture. They maintained that as joint ventures, the heirs have substantially breached ¶ 5 of the settlement agreement by failing to deliver the coat. Steele and the Institute asserted that they have performed their obligations under the agreement. They requested that the Court declare them owner of all right, title, and interest to the artifact collection referenced in the agreement free from any claims by the heirs or, in the alternative, award money damages.

In Count 2 of the Amended Complaint, Steele and the Institute realleged their claim of breach of joint venture or, alternatively, the settlement agreement. Steele and the Institute requested that all further performance under the settlement agreement be excused due to a material breach; specifically, the obligations to pay twenty percent of net intellectual property royalties and net proceeds from the sale or license of the artifact collection to the heirs.

In Count 3, Steele and the Institute contended that the heirs intentionally misrepresented that they

possessed the coat in order to induce them to place the Institute's memorabilia collection under the control of a marketing committee and to pay a percentage of the proceeds from sale or license of the collection. Steele and the Institute requested that the Court disband the marketing committee and declare the Institute owner of all the artifacts in the collection or award damages.

The heirs subsequently moved for summary disposition, which is the motion currently before the Court. They maintained that Steele and the Institute's allegations in the Amended Complaint arise from the settlement agreement and relate solely to the coat. The heirs argued that the coat issue was raised by Steele and the Institute and ruled upon by the Court on at least two prior occasions, in 2009 and 2010. They asserted that the fact that Steele and the Institute initiated a new case number is irrelevant because the parties and the issues are the same as those in the 2009 and 2010 proceedings. The heirs contended that as such the claims are barred by res judicata and collateral estoppel and should be dismissed under MCR 2.116(C)(7). The heirs also argued that a joint venture was not established and that the negotiations resulted in a settlement agreement.

The heirs further maintained that summary disposition is also proper under MCR 2.116(C)(8) as to Count 2 because Steele and the Institute failed to state a claim on which relief can be granted. The heirs claimed that the plaintiffs' allegation in Count 2 merely takes a position in the probate proceedings and does not give rise to a cause of action. The heirs

requested that sanctions be imposed under MCR 2.114(E) because the action is frivolous.

In response, Steele and the Institute contended that summary disposition is not proper because no party has filed an action for the heirs' breach of contract and fraud concerning the coat. They maintained that the 2009 and 2010 orders were not final judgments and did not constitute a decision on the merits thereby barring dismissal on the basis of res judicata or collateral estoppel. Steele and the Institute also argued that a joint venture was undertaken by the parties but maintained that ultimately, the classification of the agreement has no effect on the outcome of the action. Steele and the Institute acknowledged that they previously agreed to dismiss Count 2 of the Amended Complaint with prejudice. Thus, claimed Steele and the Institute, summary disposition under MCR 2.116(C)(7) is inappropriate and they requested that the Court deny the motion.

Steele and the Institute also requested that the Court grant partial summary disposition in their favor as to Counts 1 and 3 under MCR 2.116(I)(2). They contended that summary disposition in their favor is appropriate as to Count 1 because there is no factual dispute as to the heirs' contractual obligation to deliver the coat and the heirs' failure to perform. Steele and the Institute maintained that partial summary disposition should be granted in their favor as to Count 3 because at the time of the settlement agreement, the heirs stated they possessed the coat and were ready to deliver it for inclusion in the marketable property

collection knowing that this was false. Steele and the Institute contended that the heirs knowingly misrepresented material facts and committed fraud. They asserted that if their relief is granted, then the only issue that would remain would be to determine the appropriate remedy. They argued that their claims do not involve a discussion of Mrs. Parks' documents or probate law.

Before this Court could rule upon the heirs' Motion for Summary Disposition or Steele and the Institute's request for partial summary disposition, the proceeding was stayed pending Steele and the Institute's Application for Leave to appeal to the Michigan Supreme Court in the estate matter. After the Application was denied, Steele and the Institute filed a Motion to Compel Discovery and for Judicial Disqualification and Other Relief on August 7, 2015. They requested that Judge Burton disqualify himself from the case. Relying on the deposition testimony of some of the heirs, Steele and the Institute maintained that Judge Burton and the heirs' attorneys improperly orchestrated the settlement negotiations and that Judge Burton coerced them into entering the 2007 settlement agreement. Steele and the Institute also requested an order from the Court compelling the deposition of the heirs' attorneys. Steele and the Institute argued that they are entitled to question the heirs' attorney concerning the event that occurred during the settlement discussions to determine whether the heirs' defenses have merit. The heirs subsequently filed a response to the Motion to Compel and for Disqualification.

After a hearing on the motion, the Court, on October 30, 2015, denied the Motion to Disqualify. The Motion to Compel Discovery remained outstanding and will be addressed in this Opinion. In denying the Motion to Disqualify, the Court noted that Steele and the Institute's allegations in the Amended Complaint, specifically the issue of the coat, were barred by res judicata and collateral estoppel. Pursuant to MCR 2.003(D)(3)(a)(ii), the Motion to Disqualify was referred to the State Court Administrator's Office ("SCAO") for a review of Judge Burton's denial. The matter was assigned to the Chief Judge of the Oakland County Probate Court, the Honorable Elizabeth Pezzetti. On December 21, 2015, Judge Pezzetti denied Steele and the Institute's Motion, finding that the procedural defects in the Motion to Disqualify alone provide sufficient grounds for denial but that additionally, Steele and the Institute failed to demonstrate substantive grounds for disqualification. The court found no error in Judge Burton's decision to deny the Motion. The proceedings were transferred back to the Wayne County Probate Court.

Summary disposition may be granted pursuant to MCR 2.116(C)(7) when a "claim is barred because of . . . prior judgment . . . or other disposition of the claim before commencement of the action." When reviewing a motion for summary disposition under MCR2.116(C)(7), the court must accept as true the plaintiff's well-pleaded allegation and construe them most favorably to the plaintiff. *Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121, 123 (1997). The

court must consider all affidavits, pleadings, depositions, admissions, and any documentary evidence filed or submitted by the parties. *Id.* The motion should only be granted if no factual development could provide a basis for recovery. *Id.*

> Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.
>
> Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.
>
> Similarly, [c]ollateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. The doctrine bars relitigation of issues when the parties had a full and fair opportunity to litigate those issues in an earlier action. A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. [*Bryan v JPMorgan Chase Bank*, 304 Mich. App 708,

715-16; 848 NW2d 482, 486 (2014) (citations omitted).]

Here, Steele and the Institute's 2009 Motion to Compel Arbitration in the Parks Estate proceeding was decided on the merits and a valid final judgment was entered on August 10, 2009. The allegation in the 2009 Motion, that the heirs' breached the settlement agreement by failing to locate and deliver the coat, is identical to the claims raised in the 2013 Amended Complaint. The 2009 action involved the same parties as the current one—Steele, the Institute, and the heirs—and are based on the same issue, the heir's failure to deliver the coat. This Court also addressed the coat issue in 2010 and provided that "[u]pon its filing, a hearing will be set by the Court to reconcile the Account and determine the amount of any setoffs, including but not limited to any setoffs owed to Steele and the Institute for the Heir's failure to turn over Mrs. Parks' coat according to the Settlement Agreement." Such filing having not been received by the Court, no hearing has been set.

Accordingly, Steele and the Institute's breach of settlement agreement and misrepresentation claims are barred by res judicata and collateral estoppel. Summary disposition and dismissal of the action with prejudice is therefore proper. MCR 2.116(C)(7) ("Entry of judgment, dismissal of the action or other relief is appropriate because of . . . prior judgment . . . or other disposition of the claim before commencement of the action."). As to the heirs' failure to locate and deliver the coat that Mrs. Parks wore during her arrest on the

bus, Steele and the Institute may file a petition regarding the valuation of the coat and a setoff in case numbers 2006-707697-TV and 2005-698046-DE within 30 days of this Opinion. Also, because summary disposition is granted and the underlying action is dismissed, the Motion to Compel Discovery and Other Relief with Integrated Brief in Support as filed by Steele and the Institute is denied as moot.

Moreover, having carefully assessed Steele and the Institute's claims, the Court finds that sanctions pursuant to MCR 2.114(E) are warranted. MCR 2.114(E) provides that

> [i]f a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the document including reasonable attorney fees. The court may not assess punitive damages.

Subrule (F) states, "[i]n addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages." Under MCL 600.2591(3)(a), an action is frivolous if one of the following conditions is met:

> (i) The party's primary purpose in initiating the action or asserting the defense was to

> harass, embarrass, or injure the prevailing party.
>
> (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (iii) The party's legal position was devoid of arguable legal merit.

As explained above, Steele and the Institute's allegations in the Amended Complaint of breach of settlement agreement and misrepresentation are barred by res judicata and collateral estoppel. The claims relate to the heirs' failure to deliver the coat worn by Mrs. Parks when she was arrested in 1955. The issue of the coat was addressed by the Court in 2009 and 2010. Specifically, the breach of settlement agreement argument was raised by Steele and the Institute in their Motion to Compel Arbitration filed in 2009 and was rejected by the Court. Steele and the Institute's claims in the Amended Complaint are devoid of arguable legal merit and are frivolous. Thus, the Court grants the heirs' request for sanctions pursuant to MCR 2.114(E). The heirs' are to file any Motion or Stipulation and Order within 21 days of the date of this Opinion and Order as to the proper amount of reasonable expenses incurred.

For the reasons and grounds stated above, the heirs' Motion for Summary Disposition (re: coat) pursuant to MCR 2.116(C)(7) is GRANTED, the Motion to Compel Discovery and Other Relief filed by Steele and

the Institute is DENIED, and the heirs' request for sanctions is GRANTED.

* * *

JUDGE

MAR 22 2016 /s/ FREDDIE G. BURTON, JR.

Date Hon. Freddie G. Burton, Jr.
Judge of Probate

**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT**
**FOR THE COUNTY OF WAYNE**

ELAINE STEELE and ROSA and RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,

Plaintiffs,

v.

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, As individuals and as joint ventures,

Defendants.

Case No: 13-002255-CK
Hon. Patricia S. Perez Fresard

13-00225-CK
FILED IN MY OFFICE
WAYNE COUNTY CLERK
CATHY M. GARRETT
/s/ Clara Rector
8/8/2013

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**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND TRANSFER/REMAND TO THE WAYNE COUNTY PROBATE COURT**

At a session of said Court held in the City of Detroit, County of Wayne State of Michigan, on: July 16, 2013

PRESENT: Hon. Patricia Fresard
CIRCUIT COURT JUDGE

This matter having come to be heard on Defendants Motion for Summary Disposition or, alternatively for Dismissal or Transfer/Remand to the Wayne County Probate Court and this Court being fully advised in the premises:

The Court after having reviewed the motion pleadings submitted as well as the relevant case law and considered the oral arguments of the parties in open court, will GRANT Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(4) and MCR 2.115(C)(7) and Transfer/Remand to the Wayne County Probate Court.

IT IS SO ORDERED.

This Order resolves the last pending claim and closes this case.

/s/ Patricia Fresard
HONORABLE PATRICIA S. PEREZ FRESARD

**STATE OF MICHIGAN**

**IN THE PROBATE COURT**
**FOR THE COUNTY OF WAYNE**

| | |
|---|---|
| In the Matter of the Estate of | Case No. 2005-698,046-DE<br>Case No. 2006-707,697-TV |

ROSA LOUISE PARKS,
Deceased
_____/

**ORDER GRANTING PETITION FOR ENFORCEMENT OF COURT ORDERS AND FOR ENTRY OF JUDGMENT**

At a session of the above Court held in the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan, on

_____

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

This matter comes to be heard on the Petitioners/ Successor Co-Fiduciaries John M. Chase Jr and Melvin D. Jefferson Jr.'s, Petition for Enforcement of Court Orders of October, 2008 and August of 2009, and the Court being otherwise advised in the premises;

**IT IS HEREBY ORDERED THAT** the Successor-Co-Fiduciaries request for the return of disbursed proceeds emanating from the licensing of Rights of Publicity is GRANTED and converted into a judgment against the Institute and Ms. Steele in the amount of $120,075.86 as delineated in the Petitioners'

previously allowed Accounts for the reasons and grounds stated in the Court's Opinion of this date.

**IT IS ALSO HEREBY ORDERED THAT** the previously apportioned legal fees assessed according to *In re Hammond* in the amount of $17,227.93 be immediately debited against Elaine Steele and the Institute's share of the proceeds and be immediately turned over to the Estate as previously Ordered for the reasons and grounds stated in the Court's Opinion of this date.

**IT IS ALSO HEREBY ORDERED THAT** the Rosa & Raymond Parks Institute shall file an Accounting of all monies received by CMG according to the information provided by CMG within thirty (30) days of the date of this Opinion. Upon its filing, a hearing will be set by the Court to reconcile the Account and determine the amount of any setoffs, including but not limited to any setoffs owed to Steele and the Institute for the Heirs' failure to turn over Mrs. Park's Coat according to the Settlement Agreement.

**IT IS ALSO HEREBY ORDERED THAT** Elaine Steele and the Institute shall disclose immediately all licensing agreements with any other entity and refrain from entering into any such future agreements in light of the Court's previous Opinion and Order of August 10, 2009. The current licensing contracts are not rescinded at this time until the parties to these contracts have been given proper notice and an opportunity to be heard. Any money currently in the possession of the Institute or Ms. Steele or money in the future that

should come into their possession relative to these licensing agreements is placed in a constructive trust and to be deposited with the Successor Co-Trustees until a Successor Charity is named to take the place of the Institute. The Petitioners are further directed to proceed with all duties regarding the Marketing and Licensing of the property of the Estate until a Successor Charity is named.

IT IS ALSO HEREBY ORDERED THAT the forfeiture of assets in this case as Ordered August 10, 2009, pertains to all forms of property or compensation received by the Institute or Elaine Steele, including intellectual and/or non-intellectual property.

IT IS LASTLY HEREBY ORDERED THAT pursuant to MCL 700.1205 Elaine Steele and the Institute shall be examined under oath in Court by the Successor Co-Fiduciaries as to any amount received for Estate property on Tuesday, February 9, 2010 @10:30 A.M.

| 1-13-10 | /s/ Freddie G. Burton, Jr. |
|---|---|
| Dated | Judge of Probate |

**STATE OF MICHIGAN**

**IN THE PROBATE COURT**
**FOR THE COUNTY OF WAYNE**

| | |
|---|---|
| In the Matter of the Estate of | Case No. 2005-698,046-DE<br>Case No. 2006-707,697-TV |

ROSA LOUISE PARKS,
Deceased
/

**ORDER DENYING MOTION TO COMPEL ARBITRATION, ALLOWING ATTORNEY FEES AND APPORTIONMENT OF LEGAL FEES AGAINST ELAINE STEELE AND THE ROSA PARKS INSTITUTE AND FOR OTHER RELIEF**

At a session of the above Court held in the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan, on

_____

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

This matter comes to be heard on the Rosa & Raymond Parks Institute, and Elaine Steele's Motion to Compel Arbitration, and the Co-Fiduciaries John M. Chase Jr and Melvin D. Jefferson Jr.'s, remaining four (4) Motions/ Petitions entitled: Motion for Sanctions and Apportionment pursuant to *In re Hammond*; Petition for Legal Fees and Costs; Petition to Compel CMG to Turn over Monies to the Estate from Income Generated by the Sale or License of Marketable Property and to Compel Elaine Steele and the Institute to Pay the

Estate for Expenses Apportioned pursuant to Prior Court Order; and Motion to Show Cause Why Elaine Steele and the Institute Should not be held in Contempt for Breach of the Settlement Agreement, and Petition to Cy Pres Elaine Steele and the Institute's Share of the Proceeds, and the Court being otherwise advised in the premises;

**IT IS HEREBY ORDERED THAT** the Rosa & Raymond Parks Institute and the Elaine Steele's Motion to Compel Arbitration is DENIED for the reasons and grounds stated in the Court's Opinion of this date. As to the Heirs' failure to locate and deliver the Coat worn by Mrs. Parks during her arrest on the bus, this Court finds the proper remedy for this apparent breach of ¶ 5 of the Settlement Agreement is not arbitration. Attorney Cohen is entitled to his reasonable costs and attorney fees associated specifically with the Institute and Steele's efforts to retrieve this coat from the Heirs as promised. In this regard, Attorney Cohen may submit such a request for approval of such fees within fourteen (14) days of the date of this Opinion.

**IT IS ALSO HEREBY ORDERED THAT** the Petition for Attorney Fees and for Apportionment of those Fees according to *In re Hammond* is GRANTED for the reasons and grounds stated in the Court's Opinion of this date.

**IT IS ALSO HEREBY ORDERED THAT** not as a sanction, but in the interest of justice and equity, the immediate payment of attorney fees and costs from the Estate, and the apportionment of these fees and costs

from Estate beneficiaries Elaine Steele and the Rosa Parks Institute in the amount of $11,246.93 to Kemp Klein law firm from Elaine Steele and the Rosa Parks Institute's portion of the Trust, and;

**IT IS ALSO HEREBY ORDERED THAT** the Court shall grant in part, the Co-Fiduciaries Petition to Compel CMG to Turnover Monies to the Estate from Income Generated from the Sale and License of Marketable Property and to Compel Steele and the Institute to pay the Estate for Expenses Apportioned Pursuant to the Prior Court Order. The Institute and Steele's shares of the Estate may be immediately debited the amount of the fees previously ordered apportioned in this case in October, 2008. Furthermore, CMG is ordered to turn over funds from the marketing and licensing of Mrs. Parks to the Co-Fiduciaries for distribution according to the Settlement Agreement. The amount of money to be returned to the Estate wrongfully paid to the Institute and Steele is yet to be determined pending the review and approval by this Court of the Account recently filed by CMG Worldwide. At that time, any setoffs for which the Institute and Ms Steele may be entitled to or sanctions that may be awarded by the Court against the Heirs for their breach of ¶ 5 of the Settlement Agreement, relative to the return of Mrs. Park's coat, will be determined.

**IT IS ALSO HEREBY ORDERED THAT** the Motion to Show Cause Why Steele and the Institute Should Not Be Held in Contempt of Court for Breach of the Settlement Agreement is DISMISSED, as withdrawn.

**IT IS LASTLY HEREBY ORDERED THAT** for the reasons and grounds stated in the Court's Opinion of this date Elaine Steele and the Institutes share of the Trust proceeds in this case are forfeited by virtue of their breach of the confidentiality clause of the Settlement Agreement. Furthermore, pursuant to the clear intent and language of Article Nine and Article Ten of the Trust, such forfeited property, shall now be distributed to such charitable organization or organizations which most closely parallel the purposes of the Institute. The Co-Fiduciaries shall compile a list of substitute organizations for consideration by the Court. The list shall be filed within sixty (60) days of the date of the Opinion.

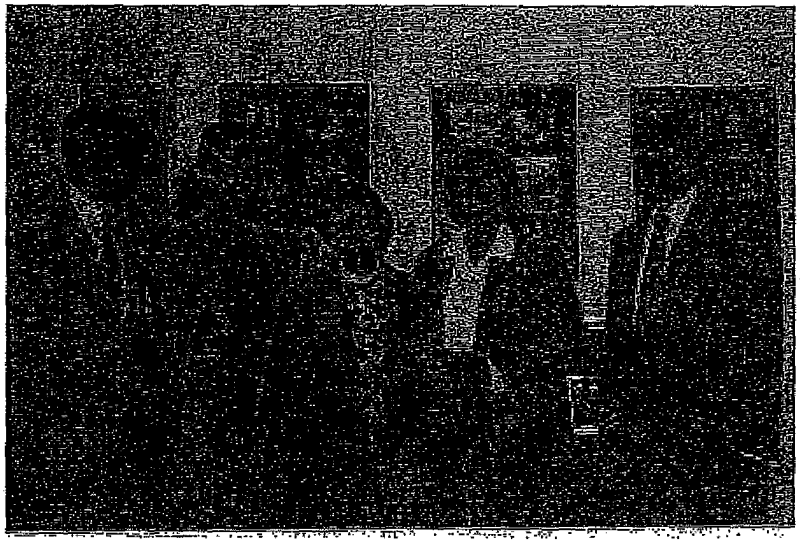
AUG 10 2009
Dated

/s/ Freddie G. Burton, Jr.
Judge of Probate
Freddie G. Burton, Jr.

[Logo] National Appraisal Consultants, LLC

**Appraisal Report**

**A Market Value Determination of**
**The Rosa Parks Coat**



**Prepared for:**

**Mr. Steven G. Cohen**
**Cohen & Associates PC**
**30833 Northwestern Hwy.**
**Suite 205A**
**Farmington Hills MI 48334**

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**P.O. Box 482 Hope, NJ 07844**

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[Logo] National Appraisal Consultants, LLC

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[Logo] National Appraisal Consultants, LLC

November 18, 2015

Mr. Steven G. Cohen
Cohen & Associates PC
30833 Northwestern Hwy.
Suite 205A
Farmington Hills MI 48334

Dear Mr. Cohen:

This Qualified, USPAP-compliant Appraisal Report is provided at your request in order to report the market value of an item of tangible personal property reported to be the coat owned and worn by Rosa Parks, prior to, and upon her arrest on December 1, 1955. This item is understood to have been the personal property of Rosa Parks.

The item was not inspected. The appraiser relied upon photographs provided by the client.

The purpose of this document is to determine the market value of the described personalty, for the intended use in determining value related to an open litigation case involving the Rosa Parks coat.

The report should not and may not be used for any other use or function. The value conclusions provided are developed specifically for the intended use above. Any other use renders this report null and void.

The value conclusion provided is for on or about March 15, 2007, as specified by the client.

This report is prepared for your use. An appraisal for a different purpose or with a different intended use may involve different methodology, other market research, additional critical assumptions, and may result in different value conclusions.

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**Definition of Value**

The basis of the definition used in this appraisal is the Market Value (MV), which is defined by the International Society of Appraisers Core Course in Appraisal Studies as:

"Market Value is the most probable price that a buyer will have to pay, and that a seller is most likely to receive, for an item of property within the defined marketplace at a particular point in time." (International Society of Appraisers Core Course in Appraisal Studies).

Adequate time and an arm's length transaction are assumed. Additional consideration is made for the specific content and historic significance of the item being appraised. The most likely market for this definition and this engagement is the auction market, which will be explained below.

The value conclusion reported does not consider any costs that may be associated with the sale or purchase of this item, such as commissions, fees, advertising, insurance, shipping, buyer's premium, etc.

**Market Analysis and Methodology**

**Appraisal Approaches and Methodologies**

There are essentially three common and accepted approaches to personal property appraising and valuation. Each approach (methodology) is determined by the Scope of Work, and the purpose and intended use of each appraisal engagement.

Appraisers use one or more of three universal approaches of value in any appraisal engagement.

The sales comparison approach is a process of analyzing sales of similar sold properties in order to derive an indication of the most probable value of the property being appraised.

The cost approach compares the item being appraised with the estimated cost to replace it, either by reproduction, production, or purchase. This could be through replacement cost new, the cost necessary to replace an item with a new item of like kind, quality, and utility; or replacement cost used (comparable), the estimated cost to replace an item with an equivalent of the same kind, quality, utility, and age. (This is used for items where age is a significant value characteristic, i.e. antique.)

The income approach involves the comparison with the income producing record of similar property and the application of the present worth formula to calculate present worth. This is based on investment property or personal tangible property that would generate a stream of future income.

These methodologies are briefly described in this illustrative scenario.

Income Approach: The income approach is based upon the concept that there is a potential income or revenue stream produced by the personal property. The classic example is described in the 'moon rock scenario.' If a person owned a moon rock (assuming it was legal to do so) and kept it hidden away, the owner could offer a 'peek' for a fee. – "Hey, give me a dime and let you see my moon rock." The moon rock's value could be determined by the amount of expected income over a defined period of time. The size of the market interested in the moon rock and the life of the moon rock would also be considered in this approach.

*In the case of the subject personalty and the purpose and intended use of the appraisal, the Income Approach could be an appropriate approach in some circumstances. There are iconic items in museums and venues that create a 'draw' by a single item. Items of historic interest can create or enhance 'gate fees,' admission fees, or membership fees.*

*In this instance, although an analysis could determine the item's value based on a projected income stream, it is not necessarily the best approach. Certainly, there*

*will be patrons and visitors who would visit an institution just to see this historic coat. Special events and fundraisers may be created using the Rosa Parks Coat as the focal point, but the coat would be a part of the entire 'historical experience."*

*To be sure, the addition of this item to a museum's, or institution's collection enhances the experience, but it alone does not necessarily increase revenue. Although it may be a part of the museum's marketing plan to promote this historically significant item, it does not appear to constitute a substantial potential income stream from its display or ownership.*

Comparable Sales Approach: The Comparable Sales Approach, also known as the Market Data Approach, is based upon the actual sale of comparable items, or in the absence of documented sales, offers to purchase or sell (with appropriate consideration). This approach considers the market's performance and the items offered and/or sold within a specific market.

In the 'moon rock scenario,' the value of the moon rock would be based upon the sales and/or offers of other moon rocks that are available in the moon rock marketplace, assuming moon rocks could be openly sold in the marketplace.

*In the case of the subject personalty and the intended use of the appraisal, this approach is a reasonable methodology. There is adequate market data to support this approach. There are many examples of historical clothing, artifacts, and personal items related to famous people, social reformers, celebrities, and historic events.*

*The provenance of this coat, along with its documented history and social significance makes the comparable sales approach appropriate.*

Cost Approach: The Cost Approach considers the cost of reproducing an item to create a comparable or similar item. It is based upon the labor, materials, and special equipment required to create a reproduction or obtain another original.

In the 'moon rock scenario,' the value of the moon rock would be based upon the cost of building a Saturn V rocket, training and paying astronauts, then launching a mission to the moon to select a moon rock similar to the subject moon rock.

Typically, this approach is used in appraisals related to custom-made, contemporary furniture, or to recreate custom art frames. It is also applicable to the reproduction of copies of microfilm, video, paper contents, or audio.

*In the case of the subject personalty and the purpose and intended use of the appraisal, the reproduction of this item is not an appropriate methodology. There is American historical significance and documented provenance of this coat directly related to Rosa Parks.*

*Reproducing this coat, does not consider the historic significance, the provenance, or the ownership of this historically significant artifact.*

---

**Appropriate Approach**

Therefore, the methodology used to determine market value is the Comparable Sales Approach. The item cannot be replaced with an exact duplicate, that encompasses the same historical significance and provenance.

The provenance and history of this Rosa Parks coat makes a comparable value determination appropriate in this instance. The considerations that were made in the specific determination of the dollar amount of value can be summarized as: supply and demand, subject matter, content, quality, and condition. Ownership, provenance, photo documentation, identification, and documented use are also major valiant factors.

Acknowledgement of the actions of Rosa Parks, and the significance of this specific coat by leaders and elected officials, provides additional support that a comparable sales data approach is the appropriate methodology.

Comparable property that has recently sold in these noted markets, as well as markets in 2007 were researched in the appropriate marketplaces.

Additional consideration is made for the specific historic significance of the item being appraised. Documented sales of items owned and used by noted public figures, reformers, and celebrities are also included in the research and analysis.

Comparable values researched are based on the above considerations taking into account property of similar

use, utility, and significance. The value stated is substantiated by actual sales of comparable property through auction sales, retail store sales, mail order catalog sales, and trade show sales. The appraiser also relied upon his expertise and experience in the marketplace as an appraiser, and as a former dealer of historically-significant artifacts, autographs, manuscripts, and collectibles.

Both European and United States markets are also considered, since comparable material is available on both continents. Although this is an American artifact, the implications and impact of Rose Parks' action had a profound effect on civil rights throughout the world.

All comparable items and data collected are from the most common market for similar property. Past history of sales, prices, and offers were researched as well as current sales and comparable catalog listings. Adjustments in size, condition, subject matter, and quality have been taken into account in reporting value.

A variety of research sources were used to report value. United States and international auction sales including well-established and recognized auction houses including: Christie's, Sotheby's, Heritage Auction, and other national and international auctions. Some records were accessed via the National Appraisal Consultants proprietary database and hardcopy catalogs.

Final value conclusion is based on the mode of data collected. Price guides were not considered due to the possible improper methodology used in arriving at the prices listed in these guides.

**The Market**

The most common market for the personalty covered in this appraisal engagement is the auction market. The auction market provides both sellers and buyers with an open market for the sale and purchase of the type of personalty identified in this appraisal. The auction market provides both willing buyers and willing sellers with an open market of arms-length transactions and with adequate time to purchase and sell. Individual items as well as some better quality "lots" (accumulated batches of items) are most commonly bought and sold via the auction method. Data is reliable and generally available to the public.

The retail market for historical collectibles, artifacts, and memorabilia is also a reliable market, assuming that accurate and reliable data can be obtained, and the dealers are reputable, knowledgeable, and properly serving the appropriate market.

In most cases, an individual sale by an individual seller to an individual buyer is not the most common market for similar artifacts. Collectors and private owners do not normally or commonly have access to the individual buyers that auction houses and experienced dealers and auction firms have. Therefore, the individual-to-individual selling market for the personalty being appraised would not be the most common market to be considered – Nor would the liquidation or forced sale market be an appropriate market for this personalty.

The value definition assumes adequate time and both willing buyers and willing sellers. The forced sale market does not allow for adequate time or consider willing sellers. Therefore, the forced liquidation sale market is not an appropriate market to consider in this appraisal engagement.

The availability of items personally owned and used by social reformers of note, celebrities, historical figures, and iconic people are extremely limited in the market. The market is made up of private collectors, investors, museums, and institutions.

The economic state of the historic American artifacts, Americana, celebrity artifacts and memorabilia, and historic items owned and/or used by well-known figures is currently stable, strong, and growing. This historic artifacts and collectibles market was also very strong in the spring of 2007. The stock market crash and the following economic downturn that followed had negative impact on most artifacts, collectibles, and memorabilia, with the exception of the most desirable, rare, and significant items. This coat is considered to be one of those rare, desirable, and historically significant items.

The present and pre-2008 crash economic situations have created a strong interest in many types of high-quality, hard assets. This trend is consistent in many areas of personal property. High quality artifacts, fine art, exotic cars, rare books, historical manuscripts, and autographs are all areas of interest to collectors and investors. These hard assets are considered by many to

be more stable and secure than many stocks, bonds, and mutual funds, recently bolstering the art, and historical collectibles and artifacts markets.

This coat is identified as being directly related to Rosa Parks and the Montgomery Bus Boycott, and a critical point in the civil rights movement. It is documented to have been used during the most significant period of American civil rights history.

**Scope of the Appraisal Process**

The scope of this appraisal process includes:

- The appropriate identification and documentation of the coat.
- Research conducted using the available information and data from reliable sources.
- Biographical, bibliographic, historic, and background research to identify the quality, rarity, and desirability of the subject personalty.
- Adequate market research utilizing on-line sources, hardcopy references, and consultation with other specialists. These data were used in conjunction with known appraisal report writing standards to develop a qualified appraisal report.
- Inclusion of selected comparable sales in the appraisal report. Additional data and information is contained in the appraiser's work file.

**Additional Notes:**

Court appearances and testimony, if requested, would need to be arranged separately and are subject to the appraiser's availability and professional fees in effect at that time.

This report may not be reproduced, altered or published in part, or its entirety. It is to be used for the specific function stated. The appraiser claims no responsibility for its unauthorized use. This report has been copyrighted and is the work product of National Appraisal Consultants, LLC. The names or organization to which this report is written has use of the report, its contents, and the copy provided for the function and purpose stated above.

A copy of this report as well as my original notes and valuations will be retained in the NAC files. These records are maintained in the strictest confidence. National Appraisal Consultants will not permit access to them without your prior written authorization, unless legally compelled to provide access, in which case you will be notified.

The appraiser's workfile will be retained for a period of five years after preparation or for two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment; whichever period expires last. Records will be destroyed at that time.

This report and the associated engagement are considered to be complete.

**Pension Protection Act of 2006**

I am a "qualified appraiser" with the ISA CAPP designation from the International Society of Appraisers, and current in my Uniform Standards of Professional Appraisal Practice. I regularly perform appraisals for which I receive compensation. My education and experience demonstrating the valuation of the type of property in this appraisal can be found in the qualifications section of this report. Because of my background, experience, education, and membership in professional associations, I am qualified to make appraisals of the type of property that is the subject of this appraisal. I have not been prohibited from practicing before the IRS.

**Certification Statement**

I certify that, to the best of my knowledge and belief that:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.

- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the current version of the International Society of Appraisers *Appraisal Report Writing Standard* and *Code of Ethics*. Moreover, my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, edition 2014-2015.
- The appraiser has not conducted a physical inspection of the property.
- No one provided professional assistance to the person signing this report.
- I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.

Respectfully submitted,

/s/ Brian Kathenes
Brian Kathenes, ISA, CAPP
Managing Partner
National Appraisal Consultants, LLC

[Logo] National Appraisal Consultants, LLC

**Value Conclusion and Reasoned Justification**

The Rosa Parks coat is a truly unique and historically-significant iconic item; owned, worn, and used by the woman who has been immortalized in a statue in the US Capitol, recognized by US Presidents, and is known worldwide as "The Mother of the Civil Rights Movement."

The Rosa Parks coat has a visual confirmation, and additional levels of provenance and ownership via photo-documentation and scholarly opinion.

Based on scholarly and scientific research, the comparable sales data noted above, and the experience and expertise of the appraiser, the market value of the Rosa Parks coat is:

**Market Value Determination:**
**$1,350,000.00**

**STATE OF MICHIGAN**

**WAYNE COUNTY PROBATE COURT**

| | |
|---|---|
| In the Matter of the | No. 2006-707697-TV |
| ROSA LOUISE PARKS TRUST u/d/a July 22, 1998 / | HON. FREDDIE G. BURTON, JR. |

| | |
|---|---|
| In the Matter of the | No. 2005-698046-DE |
| ROSA LOUISE PARKS, deceased / | HON. FREDDIE G. BURTON, JR. |

**TRIAL BRIEF OF PETITIONERS ELAINE STEELE AND THE ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT FOR VALUATION OF COAT IDENTIFIED IN THE 2007 SETTLEMENT AGREEMENT BETWEEN THE PARTIES**

On April 18, 2016 Petitioners Elaine Steele and the Rosa and Raymond Parks Institute for Self-Development filed a petition for valuation of the coat identified in the 2007 settlement agreement between the parties. Several motions were filed by the parties which resulted in an opinion and order issued by the Court on February 28, 2017. The order scheduled trial on the petition for March 22, 2017 for the sole purpose of determining the value of the coat.

Counsel for Respondents, Lawrence Pepper, advised counsel for the Petitioners that he had a scheduling conflict preventing his appearance at the March 22nd trial date. Petitioners' counsel wrote back indicating that he would try to accommodate Mr. Pepper's adjournment request. Exhibit 1. Counsel conducted a number of follow up telephone conversations discussing the adjournment of trial and other logistical issues. Before the parties reached a formal stipulation on these issues, however, Mr. Pepper contacted the Court and obtained an adjournment of the trial to April 12, 2017. Ultimately, counsel agreed to a stipulation that dispensed with a formal trial in favor of a submission of the proofs in writing. A copy of the stipulation was mailed to the Court on March 17, 2017. Exhibit 2. Although the undersigned has not yet received a copy of the order, the court docket reflects that it was entered on March 24, 2017.

Attached hereto as Exhibit 3 is the appraisal report prepared by Brian Kathenes (ISA CAPP) of National Appraisal Consultants, LLC. The appraisal report, which is 84 pages long, contains a detailed listing of the appraiser's qualifications at pages 74-84 as well as his extensive discussion and analysis concerning the value of the coat at pages 23-72. The appraisal report concludes on page 73 that the market value of the coat is $1,350,000.00.

On the basis of the appraisal report, Petitioners seek a determination by the Court that the value of the coat is $1,350,000.00.

Respectfully Submitted,

Dated: March 24, 2017

Steve Cohen
COHEN & ASSOCIATES PC
Steven G. Cohen (P48895)
30833 Northwestern Highway
Suite 205A
Farmington Hills, MI 48334
248-626-3615
Attorney for Elaine Steele
and the Institute

**STATE OF MICHIGAN**
**WAYNE COUNTY PROBATE COURT**

| | |
|---|---|
| In the Matter of<br>ROSA LOUISE PARKS TRUST<br>u/a/d July 22, 1998 | No. 2006-707697-TV<br>HON.<br>FREDDIE G. BURTON, JR.<br>**JURY TRIAL DEMANDED** / |

| | |
|---|---|
| In the Matter of<br>ROSA LOUISE PARKS, deceased | No. 2005-698046-DE<br>HON.<br>FREDDIE G. BURTON, JR.<br>**JURY TRIAL DEMANDED** / |

**PETITION BY ELAINE STEELE AND THE ROSA AND RAYMOND PARKS INSTITUTE FOR SELF-DEVELOPMENT FOR VALUATION OF COAT IDENTIFIED IN THE 2007 SETTLEMENT AGREEMENT BETWEEN THE PARTIES**

Elaine Steele and the Rosa and Raymond Parks Institute for Self-Development petition this Court for a valuation of the coat identified in the 2007 Settlement Agreement between the parties. In support of this petition, Steele and the Institute state as follows:

1. Elaine Steele and the Rosa and Raymond Parks Institute for Self-Development filed a civil action in the Wayne County Circuit Court (Case No. 2013-002255-CK) on February 14, 2013 asserting breach of contract and fraud by the heirs at law of civil rights icon Rosa Parks.

2. More specifically, the action sought damages for the heirs' failure to deliver the coat Mrs. Parks was wearing when she was arrested in 1955 as required under a 2007 settlement agreement executed by the parties. The heirs have admitted their failure to deliver the coat.

3. The action was filed in circuit court because it was the only court having subject matter jurisdiction. The action did not involve any assets of Mrs. Parks' probate or trust estate and there was no basis for probate court jurisdiction.

4. Unfortunately, the circuit court disagreed and ultimately transferred the matter to the probate court when it was given docket No. 2013-791382-CZ.

5. The heirs filed a motion for dismissal of the action on or about February 26, 2014. For reasons that have never been explained, the probate court indefinitely adjourned the hearing on the motion.

6. On March 22, 2016 the probate court entered an order granting the motion and dismissed the action, finding that it was barred under the doctrine of *res judicata*.

7. Steele and the Institute respectfully assert that the probate court is incorrect, as they had never previously asserted claims of breach of contract and/or fraud for decision by the probate court. Nor has the probate court ever conducted any proceedings concerning such claims or rendered a final judgment concerning such claims.

8. In the March 22, 2016, order Judge Burton gave Steele and the Institute 30 days to file a petition "regarding the valuation of the coat."

9. This petition is being filed solely to protect the rights of Steele and the Institute by meeting the 30 day deadline established by the probate court. However, Steele and the Institute respectfully disagree with the Court's dismissal of the 2013 action and have filed an appeal of same. The March 22, 2016 order is automatically stayed under MCLA 600.867 during appeal, and the Court should not conduct proceedings on this petition until the stay is lifted.

10. Upon information and belief, the interested parties to this petition are Steele, the Institute and the heirs at law, whose names are: Sylvester McCauley, Deborah Ross, Asheber Macharia, Robert D. McCauley, Yvonne Trussel, Rosalind Bridgeforth, Susan McCauley, Shirley McCauley, Sheila McCauley Keys, Richard McCauley, Cheryl McCauley, Rhea McCauley, and William McCauley.

11. Steele and the Institute request that in the event this petition goes forward a jury trial be conducted concerning the valuation of the coat and that said valuation be assessed as damages against the heirs jointly and severally.

**JURY TRIAL DEMAND**

Steele and the Institute demand a trial by jury.

Respectfully submitted,

/s/ _____

Steven G. Cohen (P48895)
Cohen & Associates PC
30833 Northwestern Highway
Suite 205A
Farmington Hills, MI 48334
(248) 626-3615
Attorney for Elaine Steele
and the Institute

**STATE OF MICHIGAN**
**IN THE CIRCUIT COURT**
**FOR WAYNE COUNTY**

ELAINE STEELE and ROSA AND RAYMOND PARKS INSTITUTE FOR SELF DEVELOPMENT,

Plaintiffs,

v.

SYLVESTER McCAULEY, DEBORAH ROSS, ASHEBER MACHARIA, ROBERT D. McCAULEY, YVONNE TRUSSEL, ROSALIND BRIDGEFORTH, SUSAN McCAULEY, SHIRLEY McCAULEY, SHEILA McCAULEY KEYS, RICHARD McCAULEY, CHERYL McCAULEY, RHEA McCAULEY and WILLIAM McCAULEY, as individuals and as joint ventures,

Defendants. /

Case No. 2013-002255-CK

Hon. Patricia S. Fresard

**JURY TRIAL DEMANDED**

COHEN & ASSOCIATES PC
Steven G. Cohen (P48895)
30833 Northwestern Highway
Suite 205A
Farmington Hills, MI 48334

248-626-3615
Attorney for Plaintiffs

/

## COMPLAINT

Elaine Steele and the Rosa and Raymond Parks Institute for Self Development, for their Complaint, state as follows:

## IDENTIFICATION OF THE PARTIES

1. Plaintiff Elaine Steele is an individual residing in the state of Michigan.

2. Plaintiff Rosa and Raymond Parks Institute for Self Development (the "Institute") is a corporation having a place of business in Michigan.

3. Defendant Sylvester McCauley is a resident of Michigan residing at 41480 Archwood Apt # 248, Belleville, Michigan 48111.

4. Defendant Deborah Ross is a resident of Michigan residing at 1904 Harmon Drive, Ypsilanti, Michigan 48198.

5. Defendant Asheber Macharia is a resident of Michigan residing at 4504 Bangor, Detroit, Michigan 48210.

6. Defendant Robert D McCauley is a resident of Michigan residing at 15360 Heyden Street, Detroit, Michigan 48223.

7. Defendant Mary Yvonne Trusel is a resident of Michigan residing at 3869 Washington, Inkster, Michigan 48141.

8. Defendant Rosalind Bridgeforth is a resident of Michigan residing at 18031 Teppert Street, Detroit, Michigan 48234.

9. Defendant Susan McCauley is a resident of Georgia residing at 1810 Survey Hill Circle, Lawrenceville, Georgia 30044. Upon information and belief, Ms. McCauley conducts business in Michigan.

10. Defendant Shirley McCauley is a resident of Ohio residing at 569 West Liberty #103, Cincinatti, Ohio 45214. Upon information and belief, Ms. McCauley conducts business in Michigan.

11. Defendant Sheila McCauley Keys is a resident of Michigan residing at 14541 Greenview, Detroit, Michigan 48223.

12. Defendant Richard McCauley is a resident of Michigan residing at 14711 West Chicago, Detroit, Michigan 48227.

13. Defendant Cheryl McCauley is a resident of Michigan residing at 11704 Plainview, Detroit, Michigan 48227.

14. Defendant William McCauley is a resident of Michigan residing at 912 Chicago Blvd., Detroit, Michigan 48202.

15. Defendant Rhea McCauley is a resident of Michigan residing at 623 Glenwood, Ypsilanti, MI 48198.

## JURISDICTIONAL ALLEGATIONS

16. This complaint contains claims for breach of contract and fraud arising out of a settlement agreement signed by Plaintiffs and Defendants in the estate of civil rights icon Rosa Louise Parks.

17. These claims are not within the exclusive jurisdiction of the probate court under MCLA 700.1302 because they do not relate to the settlement of the estate.

18. These claims are not within the concurrent jurisdiction of the probate court under MCLA 700.1303 because they do not involve property of the estate.

19. The amount in controversy exceeds $25,000.00, exclusive of interest, costs and attorney fees.

## COMMON ALLEGATIONS

20. Rosa Louise Parks died on October 24, 2005.

21. The Defendants herein filed an action in the Wayne County Probate Court contesting Mrs. Parks' will and trust.

22. The litigation was resolved by a settlement agreement executed on or after February 16, 2007. Exhibit 1.

23. In the settlement agreement, the Defendants confirmed the validity of the will and the trust and withdrew the contest.

24. In return for this consideration, the Institute agreed to pay Defendants 20% of the net proceeds generated from the licensing of intellectual property rights owned at all times by the Institute (and not by the estate of Mrs. Parks).

25. In a separate section of the agreement, the Institute agreed to turn over control of its vast civil rights artifact collection to a Marketing Committee charged with arranging for the sale or license of the artifacts to an appropriate institution. Defendants promised to contribute one valuable article to the collection, the coat worn by Mrs. Parks on the date of her arrest in Montgomery Alabama in 1955. In return, Plaintiffs agreed to pay Defendants 20% of the net licensing proceeds.

26. Defendants have refused to deliver the coat for inclusion in the civil rights artifact collection.

27. The settlement agreement contains an express representation by the Defendants that they had possession of the coat.

28. Defendants have recently acknowledged through counsel that this representation was knowingly false. Exhibit 2. It is apparent that the

representation was made to induce the Institute to place control of its artifacts in the Marketing Committee and pay Defendants a portion of proceeds from the sale or license of the artifacts.

29. Since entering into the settlement agreement, Defendants have, through their support of forfeiture proceedings undertaken by court-appointed estate fiduciaries, repeatedly undermined the interests of Plaintiffs under the settlement agreement in breach of their obligation to exercise good faith in the performance of the settlement agreement.

30. The foregoing breaches of contract and violations of law have caused damages to the Plaintiffs that should result in the award of relief.

**COUNT I**

31. The foregoing paragraphs of this complaint are incorporated herein by reference.

32. The execution of the settlement agreement by the Defendants indicates an intention to undertake a joint venture among them concerning a single project for profit which involves a sharing of profits, a contribution of property and a community of interest and control over the subject matter of the enterprise.

33. The joint venture has breached the settlement agreement by failing to deliver the coat in violation of paragraph 5 of the agreement.

34. The Plaintiffs have performed the obligations required of them under paragraph 5 of the settlement agreement.

35. The joint venture's breach of the agreement is so substantial that it comprises a material breach and/or a failure of consideration that excuses performance of Plaintiffs' obligation to place control of the civil rights artifacts under the control of the Marketing Committee and pay 20% of proceeds to Defendants under the settlement agreement.

36. In the event that the actions of the Defendants are deemed not to comprise a joint venture, then the Defendants are liable, jointly and severally, for breach of the settlement agreement as set forth herein.

37. Therefore, Plaintiffs request an order disbanding the Marketing Committee established under the settlement agreement and declaring the Institute the owner of all right, title and interest in the civil rights artifact collection referenced in the settlement agreement, free from any and all claims of the Defendants. In the alternative, Plaintiffs seek an award of money damages.

**COUNT II**

38. The foregoing paragraphs of this complaint are incorporated herein by reference.

39. The Defendants' joint venture has breached the settlement agreement by repeatedly supporting the efforts of court-appointed fiduciaries to cause a

forfeiture of the Institute's intellectual property rights and civil rights artifacts in violation of the Defendants' obligation of good faith in the performance of the settlement agreement.

40. The Plaintiffs have performed the obligations required of them under the agreement.

41. The joint venture's breach of the agreement is so substantial that it comprises a material breach and/or a failure of consideration that excuses performance of all of Plaintiffs' obligations under the settlement agreement.

42. In the event that the actions of the Defendants are deemed not to comprise a joint venture, then the Defendants are liable, jointly and severally, for breach of good faith performance as set forth herein.

43. Therefore, Plaintiffs request an order stating that all further performance by the Plaintiffs under the settlement agreement is excused due to the material breach and/or failure of consideration caused by Defendants and providing, more specifically, that Plaintiffs are excused from the obligation to pay 20% of net intellectual property royalties to Defendants and that Plaintiffs are excused from the obligation to pay Defendants 20% of net proceeds from the sale or license of the Institute's civil rights artifact collection. In the alternative, Plaintiffs seek an award of money damages.

**COUNT III**

44. The foregoing paragraphs of this complaint are incorporated herein by reference.

45. The Defendants' joint venture expressly represented that it possessed the coat worn by Rosa Parks on the date of her arrest in 1955.

46. This representation was knowingly false at the time it was made, as acknowledged by Susan McCauley and her counsel (Exhibit 2).

47. The Institute reasonably relied on this representation in agreeing to place the Institute's memorabilia collection under the control of a Marketing Committee as set forth in paragraph 5 of the settlement agreement and to pay Defendants a percentage of the proceeds from sale or license of the collection.

48. The misrepresentation was made by the joint venture in a deliberate and knowing effort to induce such reliance.

49. Defendants' misrepresentation comprises a fraud that should result in the rescission of Plaintiffs' obligations contained in paragraph 5.

50. In the event that the actions of the Defendants are deemed not to comprise a joint venture, then the Defendants are liable, jointly and severally, for fraud as set forth herein.

51. Therefore, Plaintiffs request an order disbanding the Marketing Committee established under the settlement agreement and declaring the Institute

the owner of all right, title and interest in the civil rights artifact collection referenced in the settlement agreement, free from any and all claims of the Defendants. In the alternative, Plaintiffs seek an award of money damages.

**REQUEST FOR RELIEF**

Plaintiffs request the relief stated in the above counts as well as interest, costs and attorney fees as allowed by law and such other relief as is justly awardable in equity or in law to Plaintiffs.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

Respectfully Submitted,

/s/ Steven G. Cohen
COHEN & ASSOCIATES PC
Steven G. Cohen (P48895)
30833 Northwestern Highway
Suite 205A
Farmington Hills, MI 48334
248-626-3615
Attorney for Plaintiffs

**STATE OF MICHIGAN**

**THE PROBATE COURT FOR THE COUNTY OF WAYNE**

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|---|---|
| In the Matter of the Estate of<br>ROSA LOUISE PARKS,<br>Deceased | Case No. 2005-698046-DE |
| In the Matter of the<br>ROSA LOUSE PARKS TRUST,<br>u/a/d 7/22/98 / | Case No. 2006-707697-TV |

**ORDER**

At a session of the above Court held in the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan, on March 21, 2012

PRESENT: HONORABLE Freddie G. Burton, Jr.
Judge of Probate

The matter before the Court is a Motion by the Rosa and Raymond Parks Institute for Self Development and Elaine Steele to Implement Supreme Court Order Dated December 29, 2011 and Unseal Opinion/ Orders. Objections to the Motion specifically pertaining to the set aside of $120,075.86 judgment issued by this Court on January 13, 2010 was submitted by Administrative Creditor, the Kemp Klein Law Firm, through Attorney Alan A May; and this Court being otherwise advised in the premises;

**IT IS HEREBY ORDERED** that the entire Rosa Louise Parks Decedent's Estate file and the entire Rosa Louise Parks Trust are opened to the public consistent with Michigan Court Rule (MCR) 8.119(E);

**IT IS FURTHER ORDERED** that the Order to Seal Court Records Pursuant to MCR 8.119(F) as entered by this Court on August 11, 2008 is hereby VACATED.

**IT IS FURTHER ORDERED** that the Objection to the Motion regarding the $120,075.86 Judgment entered by this Court on January 13, 2010, is hereby taken under advisement for Opinion and Order.

MAR 28 2012
Date

/s/ Freddie G. Burton Jr.
Freddie G. Burton, Jr.
Judge of Probate

**Secrets outed in Parks legal saga**

Detroit Free Press – Detroit, Mich.
Author: David Ashenfelter
Date: Feb 5, 2012
Start Page: A.8
Section: Metro
Text Word Count: 1529

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**Document Text**

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Free Press Staff Writer

The secret legal agreement designed to settle the brawl over the estate of civil rights leader Rosa Parks is a secret no more.

The confidential seven-page document – signed by Parks' 15 nieces and nephews, Parks' longtime friend and caregiver Elaine Steele and an official of the institute Parks and Steele founded – turned up in a Jan. 18 filing with the Michigan Supreme Court.

The agreement – struck during a late-night bargaining session in February 2007 in order to avert a trial in Wayne County Probate Court spells out how the parties are to divvy up the proceeds from the sale of Parks' belongings, said to be worth up to $8 million because of their historic value.

Under the agreement, Steele and the Rosa and Raymond Parks Institute for Self Development will get 80% of the net proceeds from the sale of Parks' possessions, as well as the royalties from licensing her name,

image and likeness. The nieces and nephews are to get 20%.

The deal also requires:

* The parties to refrain from publicly criticizing one another.

* Parties that divulge the contents of the agreement must forfeit their share.

* Disputes under the agreement were to be resolved informally by Probate Judge Freddie Burton Jr. and, if that failed were to go through binding arbitration.

The document was filed by a most unlikely person, Alan May the same lawyer whose complaint about an alleged prior breach of confidentially of the agreement caused Burton to strip Steele and the Institute of their Share of Parks estate.

May attached the agreement to a legal brief that urged the high court to reconsider its Dec. 29 decision ordering Burton to put Steele and retired 36th District Judge Adam Shakoor back in charge of the estate, in keeping with Parks' wishes.

"The Supreme Court released the settlement agreement, I didn't," May said last week, adding that the court's staff had assured him his filing would be kept under wraps. "I believed I was filing a sealed document".

The Supreme Court rejected his request to seal the entire file.

Steven Cohen, the Farmington Hills lawyer whom May had accused of publicly divulging part of the document, causing Steele and the Institute to lose their share of the estate, said May was careless.

"Alan May and his clients used a phony breach of confidentiality to torture my clients," Cohen said. "I wonder whether Judge Burton will assess any sanctions against Mr. May for doing precisely what he falsely accused me of doing."

It's unclear what, if anything, Burton will do about the foul-up.

The relatives' lawyer, Lawrence Pepper of Farmington Hills, doubted whether it would affect the handling of the estate.

Cohen, May and Pepper would not discuss details of the agreement.

The filing flap is the latest twist in a six-year legal saga that began when Parks' relatives challenged the validity of her will and trust shortly after her death in 2005.

Parks sparked the modern civil rights movement in 1955 by refusing to give up her seat to a white man on an Alabama bus.

Parks picked Steele and Shakoor to handle her estate. But her relatives accused Steele of manipulating their aunt to cut them out of a share. Steele and Shakoor stepped aside, and Burton replaced them with Detroit lawyers John Chase Jr. and Melvin Jefferson Jr.

They hired Guernsey's Auctioneers of New York City to collect Parks papers, photographs and other belongings. Guernsey's has been trying, in a down economy, to find an institution to buy and display the collection. It hopes to fetch $8 million.

Although the settlement agreement required Burton to reinstate Steele and Shakoor, the judge left Chase and Jefferson in place.

Cohen later accused Chase and Jefferson, with Burton's approval, of draining the estate of $243,000. Cohen also accused Chase, Jefferson and their lawyer, May, of concocting the breach of confidentiality charge that caused his clients' forfeiture.

Cohen said Burton also failed to submit the confidentiality dispute to arbitration as the agreement required.

When he didn't get anywhere with his complaints to the Court of Appeals, Cohen urged the Supreme Court last July to intervene.

In late December, the high court ruled that there was no confidentiality breach, voiding the forfeiture. The court also told Burton to put Steele and Shakoor back in charge.

Burton asked the justices to relent, saying among other things that Steele had routinely ignored his orders. But the justices held firm and Burton reappointed the pair last Wednesday.

A probate expert said the high court slapped Burton's hand.

"The No. 1 goal of probate law is to enforce the wishes of the person who died," said Andrew Mayoras, a Troy probate lawyer and coauthor of "Trial & Heirs: Famous Fortune Fights."

"To take away what Rosa Parks intended to happen with her legacy, based on what at most appeared to be a technical violation is pretty Draconian," Mayoras added.

Given all of the bad blood in the case and Burton's concerns about Steele, Mayoras said he expects Burton, a respected judge, will be closely watching how Steele and Shakoor proceed.

"I think he will keep them on a very short leash," Mayoras said.

One of Parks' nieces, Susan McCauley of suburban Atlanta, said she's getting weary of the continuing controversy.

"It's all very frustrating," she said last week.

Contact David Ashenfelter: dashenfelter@freepress.com

* * *

**Abstract** (Document Summary)

The agreement – struck during a late-night bargaining session in February, 2007 in order to avert a trial in Wayne County Probate Court – spells out how the parties are to divvy up the proceeds from the sale of Parks' belongings, said to be worth up to $8 million because of their historic value. Parks sparked the modern civil rights movement in 1955 by refusing to give up her seat to a white man on an Alabama bus.

**Order**

**Michigan Supreme Court**
**Lansing, Michigan**

January 27, 2012

143419-22(104)

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra
Justices

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,
Petitioners-Appellees,

v

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF DEVELOPMENT and ELAINE STEELE
Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHARIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA

SC: 143419-22
COA: 293897;
293899;
296294;
296295
Wayne PC:
2005-698046-DE;
2006-707697-TV

DARCELLE MCCAULEY,
SUSAN DIANE MCCAULEY,
SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS,
RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY,
SYLVESTER MCCAULEY III,
LONNIE, MCCAULEY, and
URANA MCCAULEY
Respondents-Appellees. /

On order of the Chief Justice, the motion to seal the record is DENIED as untimely, but this order does not affect any prior orders of the lower courts with respect to the sealing of their respective files.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2012 /s/ Corbin R. Davis
Clerk

**Order**

**Michigan Supreme Court**
**Lansing, Michigan**

January 27, 2012

143419-22(103)

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra
Justices

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,
Petitioners-Appellees,

v

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF DEVELOPMENT and ELAINE STEELE
Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHARIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA

SC: 143419-22
COA: 293897; 293899; 296294; 296295
Wayne PC: 2005-698046-DE; 2006-707697-TV

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SYLVESTER MCCAULEY III,
LONNIE, MCCAULEY, and
URANA MCCAULEY
Respondents-Appellees /

By order of December 29, 2011, the Wayne County Probate Court was instructed to implement Paragraph 1 of the Settlement Agreement within thirty days of the date of the order, or report to this Court within that time why it was not "practicable" to do so. By letter dated January 13, 2012, the probate court responded, stating that the reinstatement of Elaine Steele and Adam Shakoor as co-personal representatives and co-trustees of the will and trust, respectively, was not practicable. The court based its conclusion on past disagreements between the court and Elaine Steele, the Rosa Parks Institute, and their counsel; the decision in *In re Estate of Rosa Louise Parks*, unpublished opinion per curiam of the Court of Appeals, issued March 19, 2009 (Docket Nos. 281203, 281438, 281204, 281437), which affirmed the 2007 reappointment of the fiduciaries selected by the court to replace Elaine Steele and Adam Shakoor; and certain issues concerning the propriety of the conduct of counsel for Elaine Steele and

the Institute and his dealings with clients and in reporting to the court.

Despite the concerns of the probate court, that court's prior rulings resolving past disagreements between the court and Elaine Steele, the Institute, and their counsel, are undisturbed by this Court's December 29, 2011 Order, except insofar as they are inconsistent with this Court's Order, and thus pose no obstacle to implementing Paragraph 1 of the Settlement Agreement. The prior decision of the Court of Appeals affirming the court's 2007 decision to overrule the objections of Elaine Steele and the Institute to the fee requests of the fiduciaries then serving, and the renewal of their letters of authority, likewise poses no obstacle to implementation of this Court's Order. Finally, this Court's Order in no way hinders the probate court's ability to address, on its own motion or the motion of any party, as appropriate, any matters other than those specifically addressed and disposed of in that Order, including those cited by the court in its letter.

Therefore, on order of the Court, we DIRECT the Wayne County Probate Court to proceed within 28 days of the date of this order with implementing Paragraph 1 of the Settlement Agreement, as directed in this Court's December 29, 2011 Order, by reinstating Elaine Steele and Adam Shakoor as co-personal representatives and co-trustees of the Will and Trust, respectively.

We further ORDER that the motion for reconsideration of this Court's December 29, 2011 Order is DENIED, because it does not appear that the order was entered erroneously.

MARILYN KELLY, J., would grant reconsideration.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 27, 2012 /s/ Corbin R. Davis
Clerk

**THE PROBATE COURT**

**COUNTY OF WAYNE** [SEAL] **STATE OF MICHIGAN**

MARTIN T. MAKER
FREDDIE G. BURTON, JR.
MILTON MACK, JR.
JUNE E. BLACKWELL-HATCHER
CATHIE B. MAHER
JUDY A. HARTSFIELD
FRANK S. SZYMANSKI
TERRANCE A. KEITH
JUDGES OF PROBATE

**MILTON L MACK, JR.**
CHIEF JUDGE OF PROBATE

**FREDDIE G. BURTON, JR.**
CHIEF JUDGE PRO TEMPORE

---

**APRIL K. MAYCOCK**
PROBATE REGISTER

*JEANNE S. TAKENAGA*
*PROBATE REGISTER*
*EMERITUS*

January 13, 2012

Mr. Corbin R. Davis, Clerk
Michigan Supreme Court
Michigan Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Re: Matter of Rosa Parks
SC:143419-22
COA: 293897; 293899; 296294; 296295
Wayne PC: 2005-698046-DE; 2006-707697-TV

Dear Mr. Davis:

This letter is submitted for clarification and instructions pursuant to the December 29, 2011, Order of the Michigan Supreme Court (the Court), wherein the Wayne County Probate Court (Probate Court) was

instructed to "implement Paragraph 1 of the Settlement Agreement within thirty days of the date of this order, or report to this Court within that time why it does not deem it "practicable" to do so."

The Settlement Agreement, Paragraph 1 states the following:

> All parties agree that the Will, Trust and Assignment are validated and affirmed. All objections to the Will Trust and Assignment are withdrawn. The parties agree that Elaine Steele and Adam Shakoor are to be reinstated as co-personal representatives and co-Trustees of the Will and/or the Trust as soon as the Court deems practicable.

Mrs. Rosa Parks died on October 24, 2005. On November 10, 2005, and November 11, 2005, Petitions for Probate were filed by the heirs and Mr. Shakoor, respectively. These petitions signaled the beginning of intense litigation. In fact, Mr. Shakoor while acting as Special Co-Personal Representative became convinced it was unlikely the parties would reach a settlement. The Probate Court ultimately granted his request to withdraw on June 21, 2006, before any settlement was reached.

The parties without Mr. Shakoor continued to fight over control of the Estate and Trust of Mrs. Parks. On the eve of a scheduled trial to determine the validity of her Last Will and Testament, the parties reached the aforementioned Settlement Agreement on February 16, 2007. Subsequently, the Probate Court

ultimately entered the Order of Settlement on March 12, 2007. Little did I know that buyer's remorse would show that the intense litigation preceding settlement would pale in comparison to what would follow.

Since entry of the Order of Settlement the parties have filed over 100 pleadings, petitions and motions. The only time frames during this period that did not generate additional litigation can be attributed to the fact that this case was pending before the Michigan Supreme Court or the Court of Appeals.

It is certainly my intent to comply with the Order of the Court. However, I seek guidance regarding my ability to do so in light of my earlier denial of the request by Mrs. Steele and Mr. Shakoor to be reinstated. This Order was entered on September 19, 2007 by Probate Court. It was appealed and affirmed by the Court of Appeals, but no appeal of this decision was taken to the Michigan Supreme Court. The December 29, 2011 Order of the Supreme Court seems to require the Probate Court to disregard the decision of the Court of Appeals. How am I to vitiate an unappealed ruling of the Court of Appeals? I would be grateful for specific instructions.

Upon receiving these instructions I will implement immediately. However, should the instructions include the reappointment of Mrs. Steele I submit it is not practicable to do so. This position is based upon the following concerns with four basic issues: 1) Marketing Agreement 2) Inventory of Assets 3) Accounting of

Assets 4) Attorney representing Mrs. Steele has become Marketing Agent.

Throughout these proceedings, Mrs. Steele has regularly ignored the Orders of the Court. Rather than comply with the Order Approving the Marketing Agreement Mrs. Steele elected to file an untimely Motion for Arbitration. Later she would file a Motion for Reconsideration. Each Motion was denied. The Court of Appeals upheld the Court's decision regarding the Marketing Agreement and reiterated that the request for arbitration was untimely.

The original Inventory of Assets was filed with the Court on September 5, 2006 listing only bank accounts. Clearly, there were many other items that had not been inventoried. Consequently, the Successor Co-Fiduciaries John Chase, Jr. and Melvin D. Jefferson, Jr. brought in Guernsey's, a New York auction house, to get control of all of the assets so they could be readied for cataloging. On August 30, 2007, the Successor Co-Fiduciaries filed an Amended Inventory with a 69 page list of cataloged items. In a March 19, 2009 Opinion affirming the Probate Court, the Court of Appeals noted the efforts of Guernsey's increased the value of the estate ten fold.

Accounting of Assets beyond the Inventory and Amended Inventory has remained very difficult, especially where the Court has ordered Mrs. Steele to account for funds she and the Institute received from CMG, an Indiana firm acting as the original licensing agent. The accountings were incomplete and didn't

reflect funds turned over to Mrs. Steele and the Institute. It was necessary to issue Orders to Show Cause, a citation for contempt, even on one occasion the Court found it necessary to issue a bench warrant for Mrs. Steele.

The successor licensing agent to CMG is now Attorney Stephen Cohen, who as you are well aware, represents Mrs. Steele and the Institute. This development was not openly shared with the Probate Court, Successor Co-Fiduciaries or the heirs. When this relationship was discovered accountings were ordered. Mrs. Steele and her attorney simply filed accounts that showed no money received. Subsequently, the Probate Court would learn through amended accounts that some funds had been received. This matter raises the question of conflict of interest under MRPC 1.8(a) as it impacts the heirs. While the heirs are not clients to Atty. Cohen, they are affected by his role as licensing agent. Further, it has been revealed that Atty. Cohen receives 30% of the proceeds from the licensing agent contract. This provision may also violate MRPC 1.5 as to the amount of fees received by a lawyer from the Estate and/or Trust. In the overall context of Estate and Trust administration it is questionable such an arrangement is anything more than fees for legal services. If so, the fees would need to be determined as reasonable, necessary and beneficial for administration of the Estate and Trust.

I trust the aforementioned reasons provide this Court with an adequate explanation for my conclusion that it is not practicable to reappoint Mrs. Steele at

this time. If more detail is required than has been offered in this summary, please advise me as to what further information is necessary.

Lastly, I humbly request this Honorable Court consider the information in this report and provide guidance as to how you wish the Probate Court to proceed. In conjunction with the Court's Order to implement Paragraph 1 of the Settlement Agreement within thirty days, I have scheduled a hearing for January 25, 2012, to do as instructed. It would be helpful if the Court could share with the Probate Court if it wishes to modify the original timetable for implementation, given this report.

Thank you in advance for your time and consideration and for the opportunity to offer this report. If you have any further questions or concerns, please feel free to contact me.

Sincerely,

/s/ Freddie G. Burton, Jr.
Freddie G. Burton, Jr.
Judge of Probate

**Order**

**Michigan Supreme Court**
**Lansing, Michigan**

December 29, 2011

143419-22(97) (98)

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra
Justices

JOHN M. CHASE, JR. and MELVIN D. JEFFERSON as Personal Representatives for the Estate of ROSA LOUISE PARKS,
Petitioners-Appellees,

v

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF DEVELOPMENT and ELAINE STEELE
Respondents-Appellants,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHARIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA

SC: 143419-22
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SYLVESTER MCCAULEY III,
LONNIE, MCCAULEY, and
URANA MCCAULEY
Respondents-Appellees. /

On order of the Court, the motion for miscellaneous relief is GRANTED. The application for leave to appeal the April 19, 2011 judgment of the Court of Appeals is considered and, pursuant to MCR 7302(H)(1); in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. The reference by counsel for the Raymond and Rosa Parks Institute for Self-Development and Elaine Steele, during the course of oral argument in the Court of Appeals, to the respective percentages of the fees charged by the court-appointed fiduciaries for which he believed the parties to the appeal would be liable, without referring to the terms of the Settlement Agreement, did not constitute a breach of the Settlement Agreement's confidentiality provision, and the finding below that it did is clearly erroneous. The Settlement Agreement contains no provision allocating litigation costs between the parties.

We REMAND this case to the Wayne County Probate Court for further proceedings not inconsistent with this order. We FURTHER INSTRUCT the court

to implement Paragraph 1 of the Settlement Agreement within thirty days of the date of this order, or report to this Court within that time why it does not deem it "practicable" to do so.

The motion to dismiss is DENIED.

We do not retain jurisdiction.

MARILYN KELLY, J., would grant leave to appeal.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 29, 2011 /s/ Corbin R. Davis
Clerk

**STATE OF MICHIGAN**
**WAYNE COUNTY PROBATE COURT**

| | |
|---|---|
| In the Matter of<br>ROSA LOUISE PARKS TRUST<br>u/d/a July 22, 1998 | No. 2006-707697-TV<br>HON. FREDDIE G. BURTON, JR.<br>***FILED UNDER SEAL*** / |
| In the Matter of<br>ROSA LOUISE PARKS, deceased | No. 2005-698046-DE<br>HON. FREDDIE G. BURTON, JR.<br>***FILED UNDER SEAL*** / |
| STEVEN G. COHEN (P48895)<br>Cohen & Associates PC<br>40900 Woodward Avenue, Suite 111<br>Bloomfield Hills, MI 48304<br>(248) 723-1221;<br>(248) 723-9339 Fax<br>Attorney for Rosa Parks Institute and Elaine Steele | ALAN A. MAY (P17230)<br>201 W. Big Beaver Road, Suite 600<br>Troy, MI 48084<br>(248) 528-1111;<br>(248) 528-5129 Fax<br>Attorney for John M. Chase, Jr.; and Melvin D. Jefferson, Jr.<br>Successor Co-Trustees and Successor Co-Personal Representatives<br><br>LAWRENCE S. PEPPER (P24759)<br>30500 Northwestern Hwy., Suite 500<br>Farmington Hills, MI 48334<br>(248) 932-7600;<br>(248) 851-9421 Fax<br>Attorney for heirs-at-law / |

**MOTION TO COMPEL ARBITRATION**

Movants, Rosa and Raymond Parks Institute for Self Development and Elaine Steele, represent that they are interested in this matter as trust beneficiaries and state as follows:

1. The parties entered into a Settlement Agreement on or about February 16, 2007. The Settlement Agreement is part of the court file and is designated as "confidential".

2. Paragraph 14 of the Settlement Agreement requires that all disputes under the Agreement "shall be referred to binding arbitration, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. . . ."

3. A dispute has arisen concerning Paragraph 7 of the Agreement. Paragraph 7 requires the parties to keep the terms of the settlement in confidence and not release it to third parties. The heirs of the decedent have breached paragraph 7 by revealing certain terms of the settlement to a third party called CMG Worldwide in connection with a motion for an accounting. The motion for accounting with related correspondence and a notice of hearing are attached hereto as Exhibit 1. Movants seek damages and/or other relief for this breach. The heirs have refused to acknowledge their breach or stipulate to a remedy for same or agree to arbitration of the dispute. Exhibit 2. Therefore, movants seek an order of this court compelling arbitration of this dispute.

4. A controversy has arisen concerning paragraph 5 of the agreement. Paragraph 5 contains a representation from the heirs that they are in possession of the coat worn by Rosa Parks on the date of her arrest on the bus and requires the heirs to deliver the coat for inclusion in certain "marketable property" designated in the agreement. The heirs have so far refused to make such delivery in breach of the agreement. There is also evidence that the heirs' representation of possession was false and fraudulent. Letter from heirs' counsel and related affidavit of Susan McCauley attached hereto as Exhibit 3. Movants seek damages and/or other relief for this breach of agreement and possible fraud. The heirs have refused to acknowledge their breach/fraud or stipulate to a remedy for same or agree to arbitration. Exhibit 2. Therefore, movants seek an order of this court compelling arbitration of this dispute.

5. Because this dispute clearly falls within the arbitration clause of Paragraph 14, the Court should enter an order compelling binding arbitration.[1]

[1] This Motion is being served on counsel for the fiduciaries pursuant to Court instructions that the fiduciaries be served with any motions concerning the Settlement Agreement. However, Movants respectfully assert that the fiduciaries are not an interested party to this Motion because they are not signatories to the Settlement Agreement.

THEREFORE, Movants respectfully request entry of an Order compelling binding arbitration of the disputes identified in this Motion.[2]

Respectfully submitted,

_____

Steven G. Cohen (P48895)
Cohen & Associates PC
40900 Woodward Avenue, Suite 111
Bloomfield Hills, MI 48304
(248) 723-1221
Attorney for Rosa Parks Institute
and Elaine Steele

[2] Paragraph 14 requires the parties to tender disputes under the Settlement Agreement for non-binding informal resolution by the Court prior to binding arbitration. This Motion constitutes said tender.

**LAWRENCE S. PEPPER**
Attorney at Law
30500 Northwestern Highway, Suite 500
Farmington Hills, Michigan 48334

Of Counsel:
Fred H. Freeman

Telephone: (248) 932-7600
Fax: (248) 851-9421
Email:lpepper@voyager.net

August 27, 2008

Mr. Steven G. Cohen
Attorney at Law
40900 Woodward Avenue, Suite 111
Bloomfield Hills, ME 48304

Re: **Estate of Rosa Parks**

Dear Steve:

I have had the opportunity to meet with Susan McCauley, one of the heirs of the Estate of Rosa Parks. She is the niece who, it was believed, had knowledge of the history of the coat.

In response to your letter of August 8, 2008, I have had Susan sign the enclosed Affidavit. I have carefully reviewed it with her, and she is adamant that every statement therein is true to the best of her recollection.

I hope that this Affidavit can resolve that issue.

Yours very truly,

/s/ Lawrence Pepper
LAWRENCE S. PEPPER

LSP:lp
cc: Alan A. May

## AFFIDAVIT OF SUSAN D. McCAULEY

State of Michigan )

County of Oakland )ss.

SUSAN D. McCAULEY, being first duly sworn, deposes and says:

1. I am a niece of the late Rosa Louise Parks, and one of the heirs at law and trust beneficiaries of the Last Will and Testament and Living Trust of Rosa Louise Parks, both of which have been the subject of proceedings in the Wayne County Probate Court.

2. While I was a student at Michigan State University (between 1974-1979), my aunt, Rosa Parks, to the best of my recollection, offered me a coat that she had personally sewn. She was a seamstress by occupation, and she often sewed her own clothes.

3. I believe that the coat that was given to me was originally made for her mother. This coat was worn by my aunt when she went to court in Alabama for proceedings arising out of her arrest for refusing to give up her seat on a bus in a well known incident occurring in Montgomery, Alabama.

4. I do not know whether she actually was wearing the coat when she was arrested, as all of the photographs that later appeared were reenactments of the actual incident.

5. I moved to Georgia in 1980. I remember that I had the coat in my closet until approximately 1988. In

1988, I learned that the Martin Luther King Center in Atlanta, Georgia had a Rosa Parks room, commemorating her role in the civil rights movement. I intended to donate the coat there, but cannot remember if I actually did so.

6. In 1989, due to personal issues involving a relationship, I moved to California at my Aunt Rosa's invitation. At that time, I put most of my personal effects in storage.

7. It was, and remains, my belief that I had donated the coat to the Martin Luther King Center, but I cannot state with certainty that I did so.

8. I have had numerous communications with the Martin Luther King Center. They have no record of having received the coat, and I have no documents verifying that I donated it.

9. I wore the coat for several winters prior to my move to California. Eventually, the lining wore out and I had to replace it. I always viewed the coat as a practical article of clothing, and never considered it to have historical importance.

10. I have been in communication with my former partner who may have had access to the coat after I moved out of the house that we shared, and he informed me that he has no recollection of what happened to the coat.

11. I can state affirmatively that I never sold the coat or gave it to any place other than, possibly, the Martin Luther King Center.

12. I do not have the coat in my possession or under my control as of the date hereof, nor do I know where the coat is presently located.

13. Each and every statement herein is true to the best of my knowledge, information, and belief, and I am fully prepared to testify as to the foregoing facts.

Further deponent sayeth not.

/s/ Susan D. McCauley
Susan D. McCauley

Subscribed and sworn to before me this 27th day of August, 2008.

/s/ Lawrence S. Pepper
Notary Public
Oakland County, Michigan
Acting in Oakland County
My Commission Expires: July 19, 2010

Lawrence S Pepper, Notary Public
State of Michigan, County of Oakland
My Commission Expires 7/19/2010
Acting in the County of OAKLAND

**SETTLEMENT AGREEMENT**

WHEREAS, there exists present and pending litigation (the "Litigation") among Sylvester James McCauley, Mary Yvonne Trusel, Asheber Macharia, Deborah Ann Ross, Rosalind Elaine Bridgeforth, Rhea Darcelle McCauley, Robert Duane McCauley, Susan Diane McCauley, Shirley McCauley, William McCauley, Cheryl M. McCauley, Sheila G. Keys, and Richard McCauley (collectively, the "heirs"), on the one hand, and Elaine Steele ("Steele") and the Rosa and Raymond Parks Institute for Self-Development (the "Institute"), on the other hand; and

WHEREAS, the Litigation is presently pending in the form of a will contest and a trust dispute before the Wayne County Probate Court, State of Michigan; and

WHEREAS, at issue in the Litigation is the validity of that certain Will executed in 1998 by Rosa Parks (the "Will"), that certain Trust Agreement executed in 1998 by Rosa Parks (the "Trust,") and that certain Assignment of the right of publicity executed in 2000 by Rosa Parks for the benefit of the Institute (the "Assignment"); and

WHEREAS, the Heirs have challenged the Will, the Trust and the Assignment, on various grounds, and Steele and the Institute have denied those allegations and asserted that the Will, Trust and Assignment were valid and enforceable under law; and

WHEREAS, the parties are united in their belief that amicable resolution of the Litigation is in the best interest of the continuing legacy of Rosa Parks;

WHEREAS, the parties, after discussion and conferences having acknowledged the time, expense and uncertainty of litigation, and in an effort to reconcile their differences, have agreed to resolve their differences without any admission of fault, liability or error; and the parties hereto wish to enter into an agreement whereby all issues relating to the Will, beneficiaries thereof, and the Trust are now and forever defined; and in pursuance thereof the parties do stipulate and agree as follows:

IT IS THEREFORE AGREED, that:

1. All parties agree that the Will, Trust and Assignment are validated and affirmed. All objections to the Will, Trust and Assignment are withdrawn. The parties agree that Elaine Steele and Adam Shakoor are to be reinstated as co-personal representatives and co-Trustees of the Will and/or the Trust as soon as the Court deems practicable.

2. All Marketable Property (as defined below) taken by Guernsey's and in the possession of the Personal Representatives shall remain in the physical possession of the personal repesentatives until further instruction by the Marketing Committee (as defined below).

3. Right of Publicity.

a. The parties agree that the Institute is the sole owner of the Rosa Parks right of publicity. The Institute shall never sell or transfer any of its final rights or dispose of its interest in the Rosa Parks right of publicity.

b. With respect to income that has already been generated by virtue of the exploitation by CMG of the Rosa Parks right of publicity, including monies currently held by the personal representatives in Escrow and monies imminently forthcoming from CMG shall immediately be paid by the Trustees to the Sommer Barnard PC trust account, to then be apportioned and distributed in the following percentages:

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| To All Heirs: | 20% of net; and |
| To Steele and/or the Institute: | 80% of net |

This payment to All Heirs shall be made by delivery of a check issued in the name of Frederick M. Toca, Sabrina L. Johnson, and Lawrence Pepper, to be deposited in the law firm trust account.

c. In the event that the assets in the Estate of Rosa L. Parks are insufficient to pay all allowed claims and tax obligations, then the Estate shall have a lien on proceeds from income generated by the sale or license of the Marketable Property, as defined below, up to the amount of monies held in Escrow and currently expected to be received that are distributed pursuant to Section 3(a) above.

d. All monies generated through, CMG (or its successor) in the future shall be apportioned between All Heirs (as defined below), on the one hand, and the Institute and/or Steele, on the other hand, in the following percentages:

| | |
|---|---|
| To All Heirs: | 20% of net: and |
| To Steele and/or the Institute: | 80% of net |

e. All monies generated using the Rosa Parks right of publicity in the future, with the exception of *de minim* tax deductible donations to the Institute for license and/or consent of the Rosa Parks right of publicity, shall be distributed in the same manner set forth above. In no way shall operating grants or other donations to the Institute be included in the 80/20 split, as that money shall be the exclusive property of the Institute.

4. The Preliminary Injunction against the Institute and CMG shall be immediately dissolved.

5. The parties are committed to the appropriate commercial exploitation of the Rosa Parks intellectual property (the "RP IP") and all tangible personal property of the Rosa Parks Estate, consistent with the legacy of Rosa Parks and her role in history. It is the intent of the parties that they, collectively, will work together to identify certain personal effects and historically significant items for license and/or sale to a licensee/purchaser of those items.

a. Marketable Property. "Marketable Property" shall mean all tangible personal property identified on

Exhibit A to this agreement, which will be attached as a supplement to this Agreement within 21 days, following a physical inspection by Mrs. Steele and a representative of the Institute of the property held by the personal representatives. The Heirs shall have a corresponding opportunity to conduct a physical inspection of said property within 21 days. The Heirs claim to possess the coat worn by Rosa Parks on the date of her arrest on the bus (the "Coat"), and the Heirs acknowledge and agree that the Coat shall be included in Marketable Property. The parties agree to work cooperatively toward the purchase of an insurance policy to cover the property in the possession of the personal representatives against casualty or other loss, the premium of which shall be paid by the Estate.

b. Retention of Title. Unless and until a sale of the Marketable Property occurs, the parties agree that title to all Marketable Property shall remain in those that own it. All parties hereto agree to execute such documents reasonably necessary to transfer title of the Marketable Property in the event of a sale thereof.

c. Creation of Marketing Committee. The Heirs, the Institute and Steele shall jointly create a Marketing Committee to market the Marketable Property. The Committee shall be constituted of the following: (1) a representative of the Institute and Steele; (2) a representative of the Heirs; and (3) a person to be identified by the Court.

d. Selection of Broker. The Marketing Committee by majority vote shall select a broker to market the

Marketable Property (the "Broker") within 60 days after execution of this agreement.

e. Role of Broker. After all devised property under the terms of the Will and the Trust are transferred, the Marketable Property shall be marketed by the Broker. The parties hereto agree to cooperate in good faith and take such steps as are reasonably necessary for the effective marketing of the Marketable Property. The Broker stall be responsible for assembling, protecting and marketing for license and/or sale the Marketable Property. It will be expected that the Broker will seek out as many license and/or sale opportunities for the Marketable Property as are reasonably available. The Broker shall report to the Marketing Committee any such commercial opportunities generated through that process within 90 days after the Broker is retained. The Broker shall be prohibited from soliciting any commercial opportunities that do not allow for: (1) maintaining the Marketable Property intact and as a single unit; (2) the possibility of a loan of items to the institute; and (3) consistency with the legacy of Rosa Parks, as determined by the Marketing Committee.

f. Ability to Copy. Regardless of any license or sale, the Institute shall be entitled to obtain copies at its own expense of any written instrument, document, electronic data, video, sound recording and/or photo included in the Marketable Property, and shall be free to use such copies in the Institute's business. The Heirs may obtain copies at their own expense of the photographs and/or other documents that are identified on

Exhibit 13 to this agreement, which will be attached as a supplement to this Agreement within 21 days, following a physical inspection by the Heirs of the property held by the personal representatives.

g. Distribution of Proceeds. In the event that the Marketable Property is either licensed or sold, the proceeds arising from such license or sale shall be distributed within 30 days after receipt amongst all those that qualify. To qualify for distribution a person must be no less than once removed in consanguinity to Rosa Parks ("All Heirs"). It is expected that All Heirs will establish an entity of some type, formed under the laws of a state of their choice, to receive and accept the distributed funds. The funds shall be distributed by the Marketing Committee or its agent, in the following percentages:

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|---|---|
| To All | 20% of net; and |
| To Steele and/or the Institute: | 80% of net. |

6. Non-Competition. In no way should this Agreement be construed as a license, either express or implied, of any intellectual property rights to the Heirs.

7. Confidentiality. Aside from a joint statement and press release to be mutually agreed to by and between the parties, the terms of this settlement shall be kept in confidence by the parties and not released or disclosed to any third-party hereto. It is expressly agreed that the Institute may inform its Board of the terms and conditions of this Agreement, and that the Heirs may inform other heirs at law and spouses, provided

that all such persons agree to be bound by this confidentiality provision. In the event that any party hereto shall violate the terms of this provision, and in addition to and without waiver of all other remedies that might be available at law or equity, including the person(s) violating this provision, shall forfeit all compensation provided herein.

8. Non-Disparagement. The parties hereto agree on behalf of themselves and their employees to refrain from disparaging or saying anything negative about one another to any public third party, especially any member of the news media, at any time in the future. In the event that any party hereto shall violate the terms of this provision, and in addition to and without waiver of all other remedies that might be available at law or equity, the person(s) violating this provision shall forfeit all compensation provided herein. This agreement does not apply to statements made in connection with the enforcement of this agreement and/or the Rosa Parks right of publicity.

9. Binding on heirs, successors and assigns. This Agreement shall be binding on all heirs, successors and assigns of the parties hereto.

10. The attorneys who currently represent the parties and their respective law firms shall not file any claim with the Estate for payment for services rendered or expenses incurred in connection with the Litigation.

11. The parties, by counsel and by their designated representatives signing below, agree to be bound by

this Agreement. Those signing below represent that they harm the authority to bind all others they purport to represent.

12. Steele and the Institute hereby release any and all claims they have against the Heirs arising out of the Litigation or the event leading up to the filing of the Litigation.

13. The Heirs hereby release any and all claims they have against Steele and the Institute, including the employees, representatives, agents of the Institute, now or in the future, arising out of the Litigation or the events leading up to the filing of the Litigation.

14. Arbitration. The parties agree to tender any dispute under this Agreement for non-binding informal resolution by the Wayne County Probate Court. In the event that no agreed resolution can be reached, then such controversy shall be referred to binding arbitration, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, before a panel of three arbitrators chosen as follows: each side shall designate an arbitrator and the two party-designated arbitrators shall designate a third arbitrator, who shall be the panel chair. The arbitration shall be expedited and the parties waive any discovery or dispositive motions practice in advance after arbitration hearing.

15. Court Approval. The parties' agreements memorialized herein are subject to and contingent upon approval by the Probate Court of Wayne County, Michigan.

16. The parties agree to make a joint press announcement regarding the amicable resolution of their disputes.

All of which is agreed to and submitted to the Court for approval, this 16th day of February, 2007:

/s/ Sylvester McCauley
Sylvester James McCauley

/s/ Anita Peek
The Rosa and Raymond Parks Institute for Self Development
By: Anita Peek, Executive Director

/s/ Mary Y. Trusel
Mary Yvonne Trusel

/s/ Asheber Macharia
Asheber Macharia

/s/ Elaine E. Steele
Elaine E. Steele

/s/ Deborah Ross
Deborah Ann Ross

/s/
Jonathan G. Polk
Counsel for the Institute

/s/ Rosalind E. Bridgeforth
Rosalind Elaine Bridgeforth

/s/
F. Anthony Paganelli
Counsel for the Institute

/s/ Rhea McCauley
Rhea Darcelle McCauley

/s/ Tonya Myers Phillips
Tonya Myers Phillips
Counsel for the Institute

/s/ Robert D. McCauley
Robert Duane McCauley

/s/

/s/ Susan D. McCauley
Susan Diane McCauley

/s/ _____
Jock M. Smith
Counsel for the Institute

/s/ Shirley McCauley
Shirley McCauley

/s/ _____
Kenneth Hylton
Counsel for Mrs. Steele

/s/ William McCauley
William McCauley

/s/ _____
Cornelius Pitts
Counsel for Mrs. Steele

/s/ Cheryl M. McCauley
Cheryl M. McCauley

/s/ Sheila G. Keys
Sheila G. Keys

/s/ Richard McCauley
Richard McCauley

/s/ Frederick Toca
Frederick M. Toca
Counsel for the Heirs

/s/ Sabrina L. Johnson
Sabrina L. Johnson
Counsel for the Heirs

/s/ Lawrence Pepper
Lawrence Pepper
Counsel for the Heirs