

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

STEVEN M. CONFAIR and RITA J. :
CONFAIR, Husband and Wife, as :
Beneficiaries of the Steven M. Confair GST :
Trust; BENJAMIN S. CONFAIR, as : NO: 07-01656
Remainder Beneficiary of the Steven M. :
Confair GST Trust; JASON T. CONFAIR, :
as Remainder Beneficiary of the Steven :
M. Confair GST Trust; and, MICHAEL M. :
CONFAIR, as Remainder Beneficiary of the :
Steven M. Confair GST Trust, :
Plaintiffs :
vs. :
REBECCA C. KINGSTON, as Trustee of : CIVIL ACTION
The Steven M. Confair GST Trust, :
Defendant :
And :
CONFAIR COMPANY, INC., :
Additional Defendant :

ORDER

This action was filed on August 6, 2007. Plaintiffs claim that the Defendant, Rebecca Kingston, breached her duties as trustee to the Steven M. Confair Trust, and to the Plaintiffs as the trust's beneficiaries. Specifically, Plaintiffs allege that Defendant Kingston violated her duties by failing to preserve a trust asset, an insurance policy, and converting the value of the policy to Additional Defendant, Confair Company, Inc., a company in which she was a shareholder. The Plaintiffs additionally assert that Defendant Kingston failed to fully inform them of her actions

and failed to provide them with notice of her decision not to renew the insurance policy.

On October 22, 2009 the Defendants filed a Motion for Summary Judgment. The Defendants' assert basically three arguments – that the Defendant, Rebecca Kingston relied upon the clear language of the trust document, cannot be liable pursuant to that reliance as set forth in 20 Pa.C.S. § 7786 and the Trustee was required to make repayment to Confair Company, Inc. for policy premiums made pursuant to a collateral assignment executed by Defendant Kingston prior to the policy's inception.

Defendant Kingston's testimony on the issues surrounding the trust document and the insurance policy was as follows:

Q: Prior to the decision that you made to surrender the request, what did you do to make a determination as to whether or not you were obligated to contact Steve and his family?

A: Well, I think it's a little bit of a mischaracterization to say it was my decision to surrender the policy. I was following directions to surrender the policy **because I felt it was in the best interest of Confair Company** and I trusted Dave's judgment. I didn't really think about whether or not I was obligated to inform – well, let me think for a minute about this. I did ask Dave if I have to notify Steve, and Dave said that he had spoken with Valley Forge, and Valley Forge assured him and he in turn assured me that I was not required to contact Steve. And then later, when Steve sued me, I read the trust document and felt comfort in my impression and understanding of that document to mean that I had no obligation to him.

Q: You did not review the document before the decision was made?

A: No.

Q: You did not seek a professional opinion before the decision was made?

A: No, I did not.

Q: You didn't consult with an attorney before the decision was made?

A: No, I did not.

Q: Did you directly, yourself, contact anyone at Valley Forge Financial before the decision was made?

A: No, I did not.

(Kingston Dep. 59-60, Nov. 4, 2009)(Emphasis added).

20 Pa.C.S.A. § 7772 provides as follows:

Duty of Trustee.—A trustee shall administer the trust solely in the interests of the beneficiaries.

Pursuant to the admissions of Defendant Kingston, and based upon factual issues presented, including but not limited to the validity of the collateral assignment, whether premiums paid by Confair Company, Inc. constituted loan payments or gifts, information relied upon by Defendant Kingston in the surrender of the insurance policy and the subsequent payment of its cash value to Confair Company, Inc., this Court finds that genuine issues of fact exist, and accordingly, Defendants' Motion for Summary Judgment is DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: J. Michael Wiley, Esquire

Marc S. Drier, Esquire

Michael Apfelbaum, Esquire
43 S. 5th Street
Sunbury, PA 17801

Gary Weber, Esquire

