

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RONNIE VANDINE, PHYLLIS WEIKEL, DIO	:	
VANDINE, NORMA CHARLES, JANET	:	DOCKET NO. 09-02771
SHANNON, AND KATHY FOUST, et al,	:	
Heirs of Bruce L. Vandine, Sr.,	:	CIVIL ACTION – LAW
Plaintiffs	:	AND EQUITY
	:	
vs.	:	
	:	
BRUCE VANDINE, JR. as Power of Attorney and/or	:	
Executor of the Estate of Bruce L. Vandine, Sr.,	:	
MANUFACTURERS AND TRADERS TRUST	:	
COMPANY, M & T SECURITIES, INC., ALLSTATE	:	
LIFE INSURANCE COMPANY, GLENBROOK LIFE	:	
AND ANNUITY COMPANY, GEORGE STAUFFER,	:	
JAMES A. PARKS AND TARA M. REICHARD, M & T	:	
BANK,	:	
Defendants	:	

ORDER

AND NOW, this 31st day of May, 2012, following oral argument on Defendant Bruce Vandine, Jr.'s Preliminary Objections and Petition for Rule to Show Cause, it is hereby ORDERED and DIRECTED that Defendant's objections are OVERRULED and Defendant's petition is DISMISSED.

I. Procedural and Factual Background

This matter has a long history in Lycoming County and revolves around a sibling dispute pertaining to the distribution of the estate of their deceased father, Bruce L. Vandine, Sr. Bruce Vandine, Sr., died on May 24, 2006. Throughout the course of his life, Bruce Vandine, Sr., had seven (7) children: Phyllis I. Weikel, Dio M. Vandine, Bruce L. Vandine, Jr., Shirley Vandine Foust, Norma J. Charles, Ronald E. Vandine, and Janet M. Shannon. *See* Auditor's Report, 2. Shirley Vandine Foust predeceased Bruce Vandine, Sr., but was survived by four (4) children: Kimberly Foust, Stanley Foust, Jr., Kathy Foust, and Steven Foust. *Id.*

On April 26, 2007, Plaintiffs Dio Vandine, Phyllis Weikel, Ronnie Vandine, Normal J. Charles, and Kathy Foust, along with Janet M. Shannon, filed a petition in the Orphan's Court Division of the Court of Common Pleas of Lycoming County, Pennsylvania. Plaintiffs requested that the Orphan's Court remove Bruce L. Vandine, Jr., as the personal representative of the Estate of Bruce L. Vandine, Sr. This petition filed at Docket No. 41-06-0405 (In Re: Estate of Bruce L. Vandine, Sr., Deceased), on April 26, 2007. This matter will be hereinafter referred to as the Orphan's Court matter.

On November 16, 2009, Plaintiffs filed the original complaint in the above-captioned matter. In the original complaint, Plaintiffs alleged that Bruce Vandine, Jr. breached his fiduciary duty to Bruce Vandine, Sr. based upon Bruce Vandine, Jr.'s power of attorney. Additionally, Plaintiffs alleged that Bruce Vandine, Jr., participated in fraud, fraudulent concealment, and rescission based upon a 2006 Glenbrook/Allstate Annuity contract.

On November 23, 2011, Defendant Bruce Vandine, Jr., filed a Petition for Rule to Show Cause why Complaint as to Bruce L. Vandine, Jr. should not be Dismissed.

By order dated January 8, 2012, this Court granted Plaintiffs leave to file an amended complaint within sixty (60) days.

On January 25, 2012, Defendant Bruce Vandine, Jr., filed Supplemental Preliminary Objection to Plaintiffs' Complaint.

Plaintiffs filed the amended complaint on May 9, 2012. In the amended complaint, Plaintiffs brought four (4) counts against Bruce L. Vandine, Jr.: breach of fiduciary responsibility, fraud, including fraudulent concealment, rescission, and unjust enrichment. Amended Complaint, 34-80.

Also on May 9, 2012, this Court heard oral argument on Defendant Bruce Vandine, Jr.'s petition for rule to show cause and outstanding preliminary objections.

II. Discussion

Defendant Bruce Vandine, Jr.'s objections are based upon the doctrine of *lis pendens* pursuant to Pa. R.C.P. 1028(a)(6). Generally, Pa. R.C.P. 1028(a)(6) provides that preliminary objections may be filed based upon the pendency of a prior action. In particular, Defendant Bruce Vandine, Jr., alleges that the pendency of a companion case in the Orphans' Court of Lycoming County compels the dismissal of the above-captioned matter. This Court does not agree.

The doctrine of *lis pendens* protects defendants from defending the same cause of action, in more than one suit, at the same time. *Swift v. Radnor Twp.*, 983 A.2d 227, 234 (Pa. Cmwlth. Ct. 2009); *Hillgartner v. Port Auth. of Allegheny County*, 936 A.2d 131, 137 (Pa. Cmwlth. Ct. 2007). In order for the doctrine to apply, a defendant must satisfy a three prong test; in particular, the prior case must be the same as the pending litigation, the parties to the cases must be the same, and the rights asserted and relief requested in the cases must be the same. *Id.* See also *Hessenbruch v. Markle*, 45 A. 669, 671 (Pa. 1900). The Court must strictly apply the three-pronged identity test when a party seeks dismissal of a suit under the doctrine of *lis pendens*. *Hillgartner*, 936 A.2d at 137-38.

In this instance, this Court has had the opportunity to review both the instant matter and the Orphan's Court matter. After a thorough review of the dockets, this Court concludes that requirements for the application of *lis pendens* have not been met. The Court will address each of the three-prongs in turn.

Initially, the two cases are not the same. The Orphan's Court matter involves the Estate of Bruce L. Vandine, Sr. The Orphan's Court matter involves that estate and the distribution of the estate assets among Bruce L. Vandine, Sr.'s heirs. The instant matter involves allegations of breach of fiduciary duty, fraud, rescission, and unjust enrichment against multiple individuals and entities, pertaining to an annuity initially acquired by the decedent. This Court holds that the instant action is a new claim for relief, independent from the Orphan's Court action.

Secondly, the two actions do not involve substantially the same parties. The Orphan's Court case involves the Vandine siblings or heirs thereof. Although the instant case involves a majority of the Vandine siblings or heirs, the case also includes Manufactures and Traders Trust Company, M & T Securities, Inc., Allstate Life Insurance Company, Glenbrook Life and Annuity Company, George Stuafter, James A Parks, Tara M. Reichard, and M & T Bank, as named defendants. Additionally, this Court notes that Bruce L. Vandine, Jr., cannot be held to be in privity with the remaining defendants in the instant matter. *See Hillgartner*, 936 A.2d at 140 (stating that generally privity applies when one party may be held vicariously responsible for another party's conduct, e.g. principal-agent or master-servant relationships). Clearly, the second prong of the *lis pendens* three-prong identity test cannot be applied to dismiss the instant action.

Lastly, the two actions do not seek the same relief. Plaintiffs in the Orphan's Court matter request that Bruce L. Vandine, Jr., be removed as the personal representative of the Estate of Bruce L. Vandine, Sr. However, in the instant matter, Plaintiffs request multiple areas of relief, including, but not limited to: rescission, reformation, disgorgement, and compensatory damages.

Therefore, in view of the above discussion, the requirements for the application of *lis pendens* have not been met. Any preliminary objections to Plaintiffs' amended complaint shall be filed pursuant to the Pennsylvania Rules of Civil Procedure.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

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