COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

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No. 1693 DE of 2009

Estate of MARGARET MARY BOGLE, Deceased

Sur account entitled First And Final Account Of Phyllis S. Tyrrell And Barbara C. Szczech, Administrators D.B.N.C.T.A.

Before O'KEEFE, ADM. J.

This account was called for audit **January 4, 2010 & October 8, 2010**

Counsel appeared as follows:

MARK T. CARLIDGE, ESQ., of SCHNADER HARRISON SEGAL & LEWIS LLP - for the Accountants

ROBERTA A. BARSOTTI, ESQ., of ARCHER & GREINER, P.C. - for Clara Bogle, Individually and as Administrator of the Estate of James A. Bogle, Jr., Deceased, Objectant

Margaret Mary Bogle died on September 23, 2004 at age 65, leaving a Will dated November 10, 1993, which was duly probated. The testatrix was unmarried at the time of her death, left no issue, and was survived by two sisters, Phyllis S. Tyrrell and Barbara C. Szczech, and a brother, James A. Bogle, Jr., along with several nieces and

nephews.

Letters Testamentary were granted to James A. Bogle, Jr., in 2004. Upon his death on March 24, 2008, James' surviving spouse, Clara Bogle, renounced her right to serve as Administratrix D.B.N.C.T.A of Margaret's Estate in favor of Phyllis Tyrrell and Barbara Szczech, Margaret's two sisters. Letters of Administration D.B.N.C.T.A for Margaret's Estate were granted to Phyllis Tyrrell and Barbara Szczech on September 5, 2008. Letters of Administration for the Estate of James A. Bogle, Jr., Deceased, were granted to his surviving spouse, Clara A. Bogle, on April 24, 2008.

By Item 5 of her Will, a copy of which is annexed to the audit papers in this matter, Margaret made the following provisions with regard to certain real estate, to wit,

> In the event of my brother, JAMES A. BOGLE, JR., shall survive me, I devise and bequeath my homestead at 370 Fairway Terrace, Philadelphia, PA, together with all household goods and furnishings therein, and all policies of insurance on said real and personal property to my brother, JAMES A. BOGLE, JR., without liability for waste, for his life so long as he desires to use such premises as a home and pays all costs of maintenance thereof, including taxes, assessments, insurance and ordinary repairs, said property to be insured in a reasonable amount insuring the interest of the remaindermen as well as himself.
>
> Upon the death of my brother, or at such prior time as he no longer uses said premises as a home for himself, I direct my personal representatives hereinafter named to sell said real personal property and distribute the net proceeds as follows:
>
> (A) One thousand dollars ($1,000.00) unto each of my then living nieces and nephews.
>
> (B) The remaining net proceeds to be divided among my brother, JAMES A BOGLE, JR., my sister, PHYLLIS TYRRELL, and my sister, CHRISTINE SZCYECH, in equal shares.

By Item 5 of the Will, Margaret gave the residue of her estate to her brother, James.

The First and Final Account of Phyllis S. Tyrrell and Barbara Szczech, Administrators D.B.N.C.T.A of the Estate of Margaret Mary Bogle, Deceased, is now before this Court for audit. The Account is stated for the period September 4, 2008 to October 13, 2009.

In their Account, Phyllis and Barbara charge themselves with receipts of principal assets with a total value of $178,506.41, consisting of $178,335.90 from the sale of the house at 370 Fairway Terrace, and $170.51 in an estate checking account established by James for Margaret's Estate, during the time he served as Executor. The Co-Administratrices claim credit for payments of principal totaling $44,004.66 which includes payment of $1,789.42 for administration expenses related to maintaining and preparing the real estate for sale, $18,074.00 for payment of federal and state taxes, $2,682.00 in payment to Phyllis as Administrator's Commission, $2,682.00 in payment to Barbara as Administrator's Commission, $881.50 in payment to Roxborough Law Offices for legal fees, $7,411.00 in payment to Schnader Harrison Segal & Lewis LLP for legal fees and costs paid, and $10,484.74 to Schnader Harrison Segal & Lewis LLP for legal fees and costs billed and unpaid. The Account also claims credit for ten distributions of $1,000 each to Margaret's ten surviving nieces and nephews. The Account shows a total combined balance remaining for distribution to the beneficiaries in the amount of $125,089.94.

In their Petition for Adjudication and Statement of Proposed Distribution, as Administrators D.B.N.C.T.A, Phyllis and Barbara take the position that certain claims against the estate are denied, namely, that Clara and the Estate of James Bogle, Jr. are not entitled to reimbursement for certain improvements made to the house at 370

Fairway Terrace. They take the position that Clara is liable for rent for the period in which she resided there between the death of her husband and the date she vacated the property, and that Clara should be ordered to return certain tangible personal property that belonged to Margaret, that Clara allegedly took with her when she moved out of the house.

Clara Bogle, surviving spouse of James Bogle, Deceased, has filed Objections to the Account. Clara's Objections are brought on behalf of herself individually and as Administratrix of the Estate of James A. Bogle, Jr.

In her Objections, Clara takes the position that the Estate of Margaret Mary Bogle owes Clara $13,493.85 for improvements to the house at 370 Fairway Terrace that Clara paid for, and owes the Estate of James Bogle $14,851.94 for improvements that James paid for. Clara further objects to the request that she pay rent to the Co-Administratrices for the period of her occupancy of the house following the death of her husband, and to the request that she turn over certain personal property left in the house that allegedly belonged to Margaret. Clara further objects to the amount of legal fees charged to the Estate in the Account.

A Hearing was scheduled to receive evidence on all issues which are raised in the aforementioned Objections. Before the Hearing, Clara Bogle filed a Motion in Limine, seeking to have Phyllis and Barbara declared incompetent to testify with respect to any matters that occurred prior to the death of James Bogle, Jr., pursuant to Pennsylvania's Dead Man's Rule. Upon consideration of the Motion, and the Accountant's Answer thereto, the Court denied said Motion without prejudice to the right of Objectant to make timely objections to testimony at the Hearing.

At the Hearing, Clara offered the testimony of herself and her sister-in-law, Phyllis, and, thirty-two Exhibits which were marked “P-1” through “P-32.” Phyllis and Barbara offered the testimony of themselves and their attorney, Mark T. Carlidge, Esq., and two Exhibits, which were marked “A-1” through “A-2.”

I. IMPROVEMENTS

In considering the matter of improvements to property made by a life tenant, the following has long applied:

> A life tenant is entitled to possession and enjoyment of the property so long as the estate endures. The life tenant may convey, lease or otherwise alienate the life estate interest, but may not disregard the rights of those who take when the life estate ends. Therefore, the life tenant is responsible for ordinary repairs and maintenance. . . . Improvements of a permanent nature, without the acquiescence of the remainderman, are at the expense of the life tenant even though the property is thereby made more valuable.

Ronald M. Friedman, *Ladner Pennsylvania Real Estate Law* § 2.03(b) at 2-5 (5th ed. 2006)(citations omitted). The law in this state has long held that entitlement to reimbursement for improvements by a life tenant depends on whether the remaindermen have consented to those improvements. See Appeal of Datesman, 127 Pa. 348 (1889); In re Paxson Trust I, 893 A.2d 99 (Super. 2006).

Presented with various scenarios in this context, Pennsylvania courts have allowed reimbursement according to terms of equity, rather than strictly terms of consent. See Hoyt’s Estate, 236 Pa. 433 (1912) (permitting reimbursement where improvements increased the value of the estate and where failure to do so would leave a life tenant “without income at the close of her life when helpless and most in need of

income" even without the consent of remaindermen). Further, "[f]or permanent improvements, adding to the value of inheritance, a life tenant is only rateably liable, *especially if* assented to or acquiesced in by the remaindermen. To determine the apportionments of the expenses between the life tenant and remaindermen, the equities must govern…" Farber's Estate, 70 Pa, Super 81, 86 (1918) (italics added). It appears, therefore, that a life tenant may be entitled to recover for improvements when they increase the value of the property. It also must be shown which items "show an increase in the value and extension of the useful life of the property and are therefore capital improvements which enhance the value of the estate and redound to the benefit of the remaindermen." Bracken Estate, 13 Pa. D. C.2d 37, O.C. Mont. 1957)

Clara and James moved into the property at 370 Fairway Terrace at some point in 2006. They were later married on December 28, 2006. Marked as "P-1" through "P-15" are receipts and invoices for items purchased for the house by James and Clara. The receipts submitted and accepted into evidence indicate that James began purchasing items for the house in October of 2004, up until October of 2005. During this time, James bought new basement doors, a dishwasher, range hood, windows, kitchen floors and doors, carpet, toilet, and storm door. Clara seeks to recover $14,851.94 on behalf of James' Estate.

Beginning in June 2007, Clara paid for new walls, tub and floor in the bathroom, new window, awning and shutters, and claims to have paid for a new roof. Clara testified that James had run out of money by June of 2007, so she paid for these items. Submitted and accepted into evidence were receipts for each improvement with the exception of the roof. Clara stated that she paid for the roof in cash, but had no receipts

evidencing payment.[1] With the exception of the roof, each improvement was carefully documented, and submitted to the Co-Administrators for repayment. Clara seeks to recover $13,493.85 as an individual.

After all Exhibits and testimony were received, I find that there was insufficient evidence presented in this case that demonstrates that the remaindermen, Phyllis and Barbara, consented to the improvements made to the property. Without such consent, Clara and James proceeded at their own risk, investing money in a property without assurance that they would realize a return on that investment.

According to the relevant terms of the Will, James was responsible for "all costs of maintenance" and "ordinary repairs" to the property. Even under the line of cases allowing apportionment of the expense of improvements between life tenant and remainderman, notwithstanding the lack of consent of remaindermen, the burden is on Clara to establish which expenditures were necessary repairs and which for general improvements to the property. The Court would also have to be satisfied that the improvements in fact increased the value of the property.

The interests of the remaindermen may have been advanced to some extent due to these improvements. To what amount, the evidence does not conclusively show. First, the evidence presented was insufficient to permit a conclusion as to whether a given item was a necessary repair or a general improvement. There was some testimony that many items were replaced due to decay, deterioration and general disrepair. There was no evidence that a particular item extended the useful life of the property.

[1] "P-15" is a work order from Weathertight Roofing, Inc., dated 9/13/2007. "P-16" is a letter dated 8/11/2008 from Weather Tight Roofing stating that Clara Bogle had paid cash for work performed.

Second, Clara failed to establish the amount by which the improvements may have increased the value of the property. Marked as "P-17" is the Inheritance Tax Return for the Estate of Margaret Mary Bogle, dated April 23, 2005. This document indicates that the 370 Fairway Terrace property had a date of death value of $54,000.00. Marked as "P-19" is the advertisement listing the house for sale, with an asking price of $197,900.00. Phyllis testified that the house was listed for sale around September 15, 2008, and an offer was accepted a few weeks later. The Account lists a principal receipt of $178,506.41, representing the net proceeds of the sale of the property.[2] There was no evidence that the higher sales price was attributable to the $28,345.79 invested by James and Clara, as opposed to the host of other factors that contribute to the fluctuation of market values for real estate. It would be mere speculation to conclusively state that the items Clara and James acquired for the house were the reason the house sold for $197,900.00, as opposed to $54,000.00, which may have been grossly undervalued.

In her Objections and Brief, Clara appeals to the equitable doctrine of quantum meruit as a basis for recovering for improvements. One seeking to recover on a theory of quantum meruit has the burden of proving the performance of services, the acceptance of such services, and their value. Lach v. Fleth, 361 Pa. 340, 348, 64 A.2d 821 (1949). To prevail on a claim of unjust enrichment, Clara must show that the Decedent's estate "received a benefit that it would be unconscionable" for it to retain. Mitchell v. Moore, 729 A.2d 1200 (Pa. Super. 1999). All claims against the estate of a decedent must be proven by evidence that is clear, precise, and convincing. Estate of

[2] On direct examination, Phyllis testified that the settlement costs were deducted from the sales price to reach $178,506.41. N.T. 102. Thus, the house sold for more than the reported $178,506.41.

Dart, 426 Pa. 296 (1967).

Clara received the benefit of living in the property during the time she and James made it their home. There was testimony that the house was in fairly bad condition, and the couple invested their funds in order to make it habitable. It can hardly be said that to permit Margaret's Estate to benefit by whatever increase in value may have inured to it by virtue of James and Clara's home repairs would be unconscionable. Further, if the improvements did increase the value, the sales price is ultimately split three ways among Phyllis, Barbara, and Clara as Administratrix of the Estate of James Bogle. Denying Clara's requests under quantum meruit is far from unconscionable.

Ultimately, Clara's claims for reimbursement both on behalf of herself, and on behalf of the Estate of James Bogle, Deceased, are denied for the reasons set forth above.

II. RENT

The Co-administratrices argue that the Estate of Margaret Bogle is entitled to rent from Clara for the period of time in which she occupied the property after James died, namely, March 24, 2008 to August 19, 2008.

This Court will not hold Clara liable for rent. Although she testified that she understood she had no interest in the property after James died, Clara continued to make payments for real estate taxes and homeowner's insurance premiums. Marked as "P-24" are checks from Clara Bogle to the City of Philadelphia, for real estate taxes each in the amount of $127.82, for the months of April, May, June, July, and August. Marked as Exhibit "P-25" is a letter from an insurance agent which includes the billing and payment history for the homeowner's insurance policy on 370 Fairway Terrace.

This document indicates that Clara paid between $216.37 and $301.74 for the months of March, April, May, June and July. The evidence submitted demonstrates that Clara paid between $344.19 and $429.56 per month during the time she lived there after James died, for insurance and real estate taxes. These payments conferred a benefit on Margaret's estate, protecting the property from liability, and maintaining the status quo.

Additionally, marked as Exhibit "P-23" is a letter from Mark Carlidge, Esquire, to Roberta Barsotti, Esquire, dated March 26, 2009, which states as follows: "Finally, your client was allowed to remain in the property without paying rent for over five months following Jim's death. Again, this provided significant economic benefit to your client." The Co-Administratrices' request for payment of rent is denied.

III. PERSONAL PROPERTY

The Co-Administratrices argue that Clara should return certain personal property consisting mainly of furniture, that belonged to Margaret, which she removed from the house after she moved out. At the hearing, Clara testified as follows:

> BY MR. CARLIDGE, ESQUIRE:
>
> Q: … Am I correct in saying that when you moved out of the house and I think you testified that it was approximately the third week of August, 2008 –
> A: Correct.
> Q: – that you took certain property of Margaret that belonged to Margaret Bogle with you?
> A: Yes.
> …
> Q: Okay. Prior to today have you ever offered to return that property?
> A: No.
> Q: And are you offering to return that property to the

estate, Margaret Bogle?
A: Sure.
N.T. 80.

Upon consideration of the record made in this matter, it is impossible to ascertain precisely what personal property belonging to Margaret Bogle was salvageable from a house that was in such disrepair when James and Clara assumed occupancy thereof. In light of this difficulty, I find that whatever property Clara agreed to return to the Estate while under oath will satisfy the requests of the Co-Administratrices in this regard.

IV. DEAD MAN'S RULE

Multiple objections were levied by counsel for Clara Bogle during the hearing on the grounds of the Dead Man's Rule, seeking to induce the Court to find Phyllis Tyrrell and Clara Bogle incompetent to testify as to events that occurred before James Bogle's death. Upon consideration of the record made in this matter, I find it unnecessary to address these objections. As claimant against the estate, Clara Bogle had the burden in this case to prove her claims by clear and convincing evidence. Estate of Dart, 426 Pa. 296 (1967). As discussed above, she failed to do so.

V. ATTORNEY FEES

In her Objections to the Account, as Administratrix of the Estate of James A. Bogle, Jr., Deceased, Clara takes the position that the legal fees incurred by Phyllis and Barbara to administer the estate are excessive. The Account states that $7,411.00 was paid to Phyllis to reimburse her for legal fees and costs that she paid to Shnader Harrison Segal & Lewis LLP, and that $10,484.74 remained unpaid and due to Shnader

Harrison. Additionally, the Petition for Adjudication requests a reserve of $20,000.00 “to cover counsel fees and costs of counsel for the Administrators, Schnader Harrison Segal & Lewis LLP’s, associated with the filing of the Account and any proceedings related to the claims against the estate.” The Co-Administratrices are thus seeking $37,895.74 in total as attorney’s fees.

When determining the reasonableness of attorney’s fees, the following factors are to be evaluated: “the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was ‘created’ by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question.” LaRocca Estate, 431 Pa. 542, 546 (1968).

Since their appointment in September of 2008, the Co-Administratrices oversaw the sale of the house, distributed $1,000.00 to the nieces and nephews who were entitled to distribution, and, filed this Account. Phyllis testified that after she was appointed co-administratrix in September, she did not have to locate, gather or retitle any assets. She testified that she signed the Account now before this Court. She testified that she and Barbara managed the money from the time of the sale of the house, which was maintained in a regular checking account. Phyllis testified that but for the claims against Margaret’s estate levied by Clara, the counsel fees incurred would have been lower. When asked what she had done in connection with the estate,

Barbara testified that she had "been very patient and waiting to settle this estate with Clara." N.T 138. She could not articulate anything she had done to earn her administrator's commission other than be "very patient in the settlement of taking care of my sister's will the way she had directed it to be done." N.T. 139.

Presented by the Accountants and marked as Exhibit "A-2" are invoices and detailed time sheets from Schnader Harrison Segal & Lewis LLP for professional services provided to Phyllils S. Tyrrell from May 21, 2008 through July 30, 2010. From the invoices, it appears that Schnader Harrison provided 112.20 hours of legal services, at rates varying from $180.00 to $435.00 per hour. Mark Carlidge, Esquire, took the witness stand and testified that "all the services were reasonable and ordinary expenses necessary in the administration of this estate." N.T. 141. The total amount billed in "A-2" is $34,930.44. Attorneys billed for work surrounding the following: getting Phyllis and Barbara appointed as Co-Administratrices D.B.N.C.T.A., filing an Account and Petition for Adjudication, filing tax returns, the audit, and various conferences. Filing an Account and tax returns hardly justifies such a high bill for legal services; rather, it was the battle between Clara and her sisters-in-law over Clara's entitlement to reimbursement that held up the closing of this estate, and led to such high legal fees.

The Account indicates that the combined balance to be divided among Phyllis, Barbara and the Estate of James A Bogle is $125,089.94. However, this amount was reduced by the $17,895.74 billed by Schnader Harrison Segal & Lewis LLP, and by the $2,682.00 each to Phyllis and Barbara as "Administrator's Commission," along with a $881.50 fee paid to Roxborough Law Office. If the legal fees billed by Schnader Harrison in the account were to be added back onto the combined balance, this would

leave a balance available for distribution in the amount of $142,985.68. The Co-Administratrices are seeking an award of $34,930.44[3] in attorneys fees, which is 24.4% of the amount available for distribution. In light of the work done on the estate by James Bogle, and the short amount of time between the appointment of Phyllis and Barbara and the sale of the house, this amount is short of reasonable.

Upon consideration of the record made in this matter and the responsibilities of the Co-Administratrices in administering this simple estate, made complicated only by the claims of Clara Bogle, I find that legal fees in the total amount of $10,000.00 is fair and reasonable.

The First and Final Account of Phyllis S. Tyrrell and Barbara C. Szczech, as Administrators D.B.N.C.T.A. of the Estate of Margaret Mary Bogle, Deceased, shows a

combined balance of principal and income, after distributions, of	$125,089.94
to which add a surcharge[4] of	$7,895.74
leaving for distribution	**$132,985.68**

which is awarded as follows, to wit: one third each to Phyllis S. Tyrrell, Barbara C. Szczech and Clara W. Bogle, as Administratrix of the Estate of James Bogle, Deceased.

The above awards are made subject to all payments heretofore properly made on account of distribution.

Leave is hereby granted to the accountants to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

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[3] Initially, the Co-Administratrices requested $17,895.74 plus a reserve of $20,000.00 resulting in a $37,895.74 allotment for legal fees. As of the time of the hearing, bills were submitted justifying a fee of $34,930.44.

[4] This reflects the amount by which counsel fees in the Account exceeded the reasonable fee of $10,000.00.

AND NOW, , 2011, the First and Final Account of Phyllis S. Tyrrell and Barbara C. Szczech, Administrators D.B.N.C.T.A., as modified by the Rulings in this Adjudication, is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of issuance of the Adjudication. An Appeal from this Adjudication may be taken, to the appropriate Appellate Court, within thirty (30) days from the date of issuance of the Adjudication. See Phila. O.C. Div. Rule 7.1.A and Pa. O.C. Rule 7.1, as amended, and Pa. R.A.P 902 and 903.

ADM. J.