VIRGINIA LAWYERS WEEKLY

OPINION DIGESTS

Wills & Trusts - Decedent's Business - Widow/Administrator's Operatio - Adult Children

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A Fairfax Circuit Court says a businessman's widow who ran the family gutter business into the gutter gets 100 percent of the stock in the now-worthless business and has to restore nearly $50,000 to the estate, in a dispute with decedent's four grown children.

At his death, William H. Spears Sr. owned 100 percent of the shares of Bill's Seamless Aluminum Gutters Inc and a residence titled solely in his name and encumbered by a lien for a note on which both husband and wife were obligated. The widow has continued to live there. Decedent and wife also owned a warehouse in Lorton as tenants by the entireties, which they rented to Bill's.

Upon qualifying as administrator, the widow, as sole shareholder of Bill's, elected herself as sole director, president, secretary and treasurer of the corporation. She raised the rent on the warehouse, increasing her personal income by $1,469 per month, and increased her annual salary from Bill's from $50,000 to $78,000 Disagreements arose between the widow and decedent's four children from a former marriage, including two of the children who worked at Bill's. The widow fired those two children after they refused to sign written employment agreements. The widow continued to operate Bill's as a going concern, but during her stewardship, the corporation declined substantially in value.

The widow filed a complaint for aid and direction, seeking approval of her sale of another business owned in part by decedent, her operation of Bill's, her continued occupancy of the home, her claim for contribution fro the estate for one-half the debt secured by a deed of trust lien on the warehouse, her claim that she was an accommodation maker of the indebtedness secured by a deed of trust lien on the home, her claim to family and exempt property allowance, her claim to rights in the residence under Va. Code § 64.1-16.4, and her proposed scheme of distribution of the estate. The children filed a cross-bill.

The court referred matters of the parties to a commissioner of accounts. After a three-day hearing, the commissioner determined that the widow must restore $49,078 to the estate, after offsetting all allowances and rights of contribution otherwise granted to her. The commissioner found that the widow mismanaged Bill and breached her fiduciary duties, and ruled that she is not entitled to compensation for her services as administrator. The commissioner also recommended the widow be granted the power to convey real estate f the limited purpose of transferring the residence to the children. Both sides filed exceptions to the commissioner's report.

The court concludes the commissioner correctly determined that the widow was required to account for the post-death rents and profits of the warehouse not in her capacity as a cotenant, but in her capacity as a fiduciary, and the factual finding that the widow was not authorized to operate Bill's for an extended period o time after decedent's death is supported by the evidence.

The finding that the widow engaged in self-dealing amounting to a breach of fiduciary duty also is amply supported by the evidence, and the commissioner correctly quantified Bill's losses. The commissioner also correctly quantified Bill's losses, finding that Bill's was worth $274,285 as of decedent's death, but is now valueless. The commissioner did not err in considering the non-probate assets flowing to the widow and her independent sources of income in denying her request for a family allowance above $18,000.

The court finds the commissioner correctly concluded that the widow was not an accommodation maker of th note secured by the lien of a deed of trust to the resident and not entitled to exoneration of the entire indebtedness. The record also supports the commissioner's finding that the widow's attorney's fees in this litigation are not properly expenses of the estate, and properly denied her a commission for her administration of the estate. The court agrees that the widow be granted only the limited power to convey th residence to the children, and that her recommended distribution of the estate should be rejected as an unjust enrichment to her.

As to the exceptions of the children, the court finds the commissioner correctly found that the questioned expenses for lawn maintenance, pest control and cleaning are in the nature of repairs for which the widow is entitled to reimbursement. She has a right of contribution from the estate for payments made on the warehouse mortgage until it was paid in full by the June 2004 refinancing. She is awarded 100 percent of th stock in Bill's, the now worthless corporation.

Finally, the court accepts the commissioner's recommended distribution of the estate as fair and reasonable

In re Estate of William H. Spears Sr. (Roush, J.) No. FI 2002-68679, Nov. 3, 2008; Fairfax Cir.Ct.; George O Peterson, Travis W. Markley for the parties. VLW 008-8-249, 20 pp.

Click **here** for the full text of the decision.

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