

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

KIM E. AYVAZIAN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19980-3734

May 14, 2013

Robert E. Taglialatela, Jr.
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Re: Taglialatela v. Galvin, C.A. No. 5841-MA

Dear Counsel and Mr. Taglialatela:

Pending before me is a petition filed on September 22, 2010, to remove the current trustee and to appoint a successor trustee of the Irrevocable Trust Agreement of Robert E. Taglialatela dated February 14, 1998 (hereinafter "Irrevocable Trust"). *Pro se* petitioner Robert E. Taglialatela, Jr. is seeking to have his sister, respondent Phyllis Galvin-Moore, removed as trustee for self-dealing and mismanagement, and he requests an accounting of Galvin-Moore's handling of the Irrevocable Trust since 1998. After a trial that took place on January 10, 2013, I reserved decision for 30 days because the parties had expressed a willingness to try to settle their dispute. Thirty days have passed without a formal settlement being reached and, therefore, I am issuing my final report recommending the removal of Galvin-Moore as Trustee of the Irrevocable Trust because

hostility between the beneficiaries of the Irrevocable Trust and Galvin-Moore has interfered with the proper administration of the Irrevocable Trust to the detriment of its beneficiaries.

Robert E. Taglialeta, Sr. and his wife had six children who are the beneficiaries of the Irrevocable Trust. Galvin-Moore is one of their five daughters and Taglialatela, Jr. is their son. Around 1976, Mr. and Mrs. Taglialatela, Sr. purchased real property located at 10 High Street, Oxford, Maryland (hereinafter the "Property"). The Property apparently was to be their retirement home, because Mr. and Mrs. Taglialatela, Sr. resided in Landsdale, Pennsylvania. In 1988, their oldest daughter, Beatrice Juliano, and her family moved into the Property after Juliano's husband lost his job. Juliano's husband subsequently abandoned his wife and two young daughters. Mr. and Mrs. Taglialatela, Sr. allowed Juliano to continue living in the Property rent-free while they paid all the expenses of the Property. Another daughter, Elizabeth Gorman, lived nearby with her own family in Oxford, Maryland.

Galvin-Moore resides in Wilmington, Delaware. In 1998, her mother suffered a stroke. Mr. and Mrs. Taglialatela, Sr. met with a Delaware attorney, who at the time was romantically involved with Galvin-Moore, to discuss protecting their assets in the event Mrs. Taglialatela needed to qualify for Medicaid assistance. The attorney drafted an irrevocable trust agreement between Mr. Taglialatela, Sr. as settlor and Galvin-Moore as trustee. The parties executed the agreement on February 14, 1998. On the same date, Mr. and Mrs. Taglialatela, Sr. executed a deed conveying the Property for nominal consideration to Galvin-Moore as Trustee of the Irrevocable Trust. The deed was

recorded in Talbot County, Maryland. Mr. and Mrs. Taglialatela, Sr. later informed Juliano that the Property had been placed in the trust, but Juliano was allowed to remain in the Property with her daughters while her parents continued to pay the bills related to the Property.¹

In 2002, Mrs. Taglialatela passed away. Mr. Taglialatela, Sr. continued to reside in his Pennsylvania home, and Taglialatela, Jr. apparently lived with his father during this time. On December 21, 2007, Galvin-Moore, as Trustee of the Irrevocable Trust, executed a deed conveying the Property for zero consideration back to her father. According to her testimony, Galvin-Smith conveyed the Property back to her father because she did not believe the Irrevocable Trust was still in existence and, after seeking legal advice, had been told that if there was no trust then the Property should be in her father's name. A few months later, Galvin-Moore testified, she learned that the Irrevocable Trust was still in existence after the Delaware drafting attorney provided her with a copy of the irrevocable trust agreement. Thereafter, on June 30, 2008, Galvin-Moore, as agent for her father under a durable power of attorney executed on November 29, 2007, reconveyed the Property to herself as Trustee of the Irrevocable Trust.

In 2009, Galvin-Moore filed for guardianship of her father in Pennsylvania. After a court hearing, a professional guardian, Supportive Care Services, Inc., was appointed guardian of Mr. Taglialatela, Sr. In November 2009, Mr. Taglialatela, Sr. was moved from his Landsdale home into a Pennsylvania assisted living facility. He died in July

¹ At some point, Juliano started to pay the utilities for the Property, but she never paid property taxes or insurance on the Property.

2010, shortly after being diagnosed with cancer. A Pennsylvania attorney was appointed as personal representative of his estate. The Landsdale home and its contents were sold at auction to pay the debts of the estate. One of those debts was a claim submitted by Galvin-Moore to be reimbursed for the costs of her father's stay at the assisted living facility, which Galvin-Moore had paid with her own funds. The estate was subsequently closed.

During the final years of Mr. Taglialatela, Sr.'s life, disputes arose among his children that appeared centered on Galvin-Moore's control over his person and his property. The relationship between Juliano and Galvin-Moore became hostile in 2008 when Juliano learned that Galvin-Moore had told Juliano's daughter that Juliano would have to move out of the Property and get a job. After inviting her father to spend Thanksgiving with her family in 2009, Gorman became upset when Galvin-Moore contacted various state and local police agencies and the Maryland Department of Social Services, accusing her and another sister, Francine Schmitt, of kidnapping their father and leaving him alone and uncared for in a cold house. In December 2009, Juliano received an eviction notice and lease agreement whereby she would have to pay \$1000 per month in rent to Galvin-Moore to continue living in the Property. Juliano refused to execute the lease agreement or move out of the Property. When Mr. Taglialatela, Sr. became ill and was hospitalized in June 2010, Juliano's two daughters drove to the Pennsylvania hospital to visit their grandfather, but they and other family members were forcibly removed from his hospital room at Galvin-Moore's direction. Around this time, Galvin-Moore sued Gorman for the unpaid balance of a loan Galvin-Moore had made her

sister in 1993 when Gorman's husband had lost his job. Galvin-Moore's relationship with Taglialatela, Jr. became strained when her brother moved out of his father's Landsdale home in 2008.²

In his petition, Taglialatela, Jr. requests that Galvin be removed as Trustee because of concerns that she might be engaged in self-dealing, because she has refused to explain her actions as Trustee, and because of her creation of unnecessary expense for the beneficiaries of the trust. Galvin-Moore denies these allegations. Based on the evidence presented at trial, I find that the only asset held in the Irrevocable Trust was the Property. From 1998 until late 2010 when the Property was sold, the Property generated no income and all expenses of the Property were paid by Mr. and Mrs. Taglialatela, Sr. or Galvin-Moore, who was later reimbursed by her father out of his personal funds. After Mr. Taglialatela, Sr.'s death, the Trustee sold the Property and the net proceeds from the sale of the Property have been held in trust ever since. The record shows that these proceeds are being depleted as Galvin-Moore's fiduciary commissions and her legal fees

² There was little testimony at trial concerning the relationship between the parties, but the proceedings in this Court have been highly contested and have taken place against a backdrop of claims of harassment and frivolous lawsuits. According to Galvin-Moore's counterclaim that was withdrawn from consideration by the Court shortly before trial, Taglialatela, Jr.: (1) had filed an appeal from the Pennsylvania order appointing a guardian of Mr. Taglialatela, Sr. that delayed the sale of the Pennsylvania house and its contents; (2) had harassed Galvin-Moore and her employer to such an extent that Galvin-Moore had obtained a temporary *ex parte* Order of Protection from Abuse from the Family Court and, after a full hearing, a one-year Order of Protection from Abuse against her brother; and (3) Taglialatela, Jr. had filed an appeal of that order that was ultimately dismissed by Family court after he failed to pay for a transcript, and Galvin-Moore was awarded attorney fees in the amount of \$4,829.50. Galvin-Moore also alleged in her counterclaim that in January 2011, Taglialatela, Jr. filed a request for an accounting of their father's estate, making several false and defamatory allegations against her, and in February 2011, Taglialatela, Jr. filed a petition for protection from abuse against Galvin-Moore that was stricken by the court in Montgomery County, Pennsylvania, and Galvin-Moore was awarded attorney fees in the amount of \$3,602. According to the counterclaim, in February 2011, Taglialatela, Jr. and Gorman filed an action against Galvin-Moore in Talbot County, Maryland, seeking monetary damages that is still pending.

associated with this and other litigation are being paid out of these proceeds. The remaining beneficiaries have yet to receive a distribution from the Irrevocable Trust.

It is clear from the evidence at trial that Mr. Taglialatela, Sr. had wanted his six children to receive an inheritance after his death. His probate estate, however, was exhausted to pay his creditors. The ongoing hostility and lack of communication and trust between the Trustee and three of her siblings have prevented the trust funds from being distributed to the six beneficiaries in a reasonable time after the settlor's death. It is not necessary for a court to establish that a trustee has committed a breach of trust if:

the court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that ... there exists ... hostility between the trustees and the beneficiaries that threatens the efficient administration of the trust.

12 *Del. C.* § 3327(3)(c). I conclude that it is in the best interest of the beneficiaries here to remove Galvin-Moore as trustee and to appoint a successor trustee to wind up the Irrevocable Trust as soon as possible. In his Irrevocable Trust agreement, Mr. Taglialatela, Sr. named another daughter, Diane T. Green, as successor trustee in the event that Galvin-Moore ceased to act as trustee. Mrs. Green has thirty (30) days after a Final Order is entered in this action to notify the Court whether she wishes to accept her appointment as successor trustee. If Mrs. Green does not wish to accept the appointment or if she fails to respond within the prescribed time, the Court may select another person to serve as successor trustee.

At the conclusion of Petitioner's case-in-chief, I granted Respondent's motion for a directed verdict as to any alleged self-dealing. After reviewing the trial transcript, I am

withdrawing my ruling in light of Gorman's testimony that Galvin-Moore put a lien on her share of the trust funds to pay the amount she and her sister had agreed to settle Galvin-Moore's debt collection action, and Tagliatalata Jr.'s testimony that trust funds were used to pay Galvin-Moore's attorney fees in an unrelated personal dispute between the parties. I have decided that, rather than reconvene the trial for further testimony on this issue, it would be in the best interest of the beneficiaries to order Galvin-Moore to provide an accounting of her management of the Irrevocable Trust from the date of the sale of the Property through the date of the issuance of the Final Order in this action. The accounting shall be filed no later than sixty (60) days after the date of the Final Order, and shall be supported by documentation, including the HUD settlement sheet from the sale of the Property, deposit tickets, cancelled checks, bank statements, receipts, affidavits of attorney fees and costs, and any other relevant documents. The other beneficiaries shall be served copies of the accounting and shall have thirty (30) days after service to file any exceptions thereto with the Court.

Very truly yours,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

KEA/kekz