

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PATRICIA LAYLAND ARMSTRONG,

Plaintiff,

vs.

ELIZABETH ANNE ARMSTRONG, individually,
as trustee of the EDA Trust and as natural guardian
of Charlotte Halk, ROBERT W. ARMSTRONG,
individually, as trustee of the Armstrong Family
Trust and as natural guardian of Gabrielle
Armstrong, Zachary Armstrong and Russell
Armstrong, DOUGLAS ARMSTRONG,
individually, as trustee of the DLA/PLA Trust and as
natural guardian of Dillon Armstrong, Megan
Armstrong and Kate Armstrong, JUDITH
ARMSTRONG LORDI, LAUREN BEAR, FRED
BEAR, HENRY BEAR, and JOHN BEAR

Defendants.

SX - 14 - CV - *280*

ACTION FOR:

DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

14 JL - 8 P124

SUPERIOR COURT
THE VIRGIN ISLANDS
ST. CROIX, VI

COMPLAINT

COMES NOW Plaintiff, by her undersigned counsel, and for her Complaint against the

Defendants alleges:

JURISDICTION AND PARTIES

1. This Court has jurisdiction pursuant to 4 V.I.C. §76.
2. Plaintiff Patricia Leyland Armstrong ("Patricia") is a resident of St. Croix, United States Virgin Islands.

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3. Defendant, Elizabeth Anne Armstrong ("Elizabeth"), is a resident of St. Croix, United States Virgin Islands, is the daughter of Patricia and is the mother of minor defendant, Charlotte Halk.

4. Defendant, Robert W. Armstrong ("Rob"), is a resident of St. Croix, United States Virgin Islands, is the son of Patricia and is the father of minor defendants, Gabrielle Armstrong, Zachary Armstrong and Russell Armstrong.

5. Defendant, Douglas Armstrong ("Doug"), is a resident of St. Croix, United States Virgin Islands, is the son of Patricia and is the father of minor defendants, Dillon Armstrong, Megan Armstrong and Kate Armstrong.

6. Defendant, Judith Armstrong Lordi ("Judith"), is a resident of St. Croix, United States Virgin Islands and is the mother of adult defendants, Lauren Bear, Fred Bear, Henry Bear and John Bear.

7. Defendant, Armstrong Family Charitable Foundation, Inc., is a Virgin Islands non profit corporation.

THE ROBERT D. ARMSTRONG TRUST

8. On May 16, 2005, Patricia's husband, Robert D. Armstrong, executed an agreement (the "Original Trust Agreement") which established an inter-vivos, revocable trust known as the Robert D. Armstrong Trust (the "Original Trust"). A copy of the Original Trust Agreement is attached to this Complaint as Exhibit A.

9. The Original Trust Agreement provided that, upon the death of Robert D. Armstrong, the Original Trust would continue in existence for certain administrative

purposes, after which all of the assets of the trust would be divided and administered as two separate trusts, one for the sole benefit of Patricia, referred to in the Original Trust Agreement as the Patty Armstrong Trust (the "PLA Trust"), and one for the benefit of Patricia and all of the defendants herein, referred to in the Original Trust Agreement as the Armstrong Family Trust (the "AFT"). All of the defendants, other than Elizabeth, Rob and Doug, have been named as defendants herein solely because they are beneficiaries of the AFT and, therefore, may have an interest in the subject matter of this litigation.

10. The Original Trust Agreement provided that, upon the death of Robert D. Armstrong, Elizabeth, Rob and Doug would become the successor Co-Trustees of the trust.

11. Robert D. Armstrong died on May 21, 2005. Upon his death, the Original Trust Agreement became irrevocable and Doug, Rob and Elizabeth became the successor Trustees of all trusts created by the Original Trust Agreement.

12. The Original Trust Agreement provided, in Section 3.03(a), that, in case either Elizabeth, Rob or Doug should no longer be a Trustee, then the replacement Trustee would be a person designated in writing by the one of them that ceased being a Trustee. In the absence of such written designation, a majority of the children of such Trustee, who had attained the age of 21 years of age, would name the replacement Trustee. If none of the children of the Trustee had attained the age of 21, then the Original Trust Agreement provided that the individual named as the Trust Advisor would name the replacement Trustee. Finally, Section 3.03(d) of the Original Trust Agreement

provided that if the office of a Trustee is vacant and the Trust Advisor has failed or is unwilling to act, then Patricia shall appoint the replacement Trustee.

13. The Original Trust Agreement named Joel Holt as Trust Advisor.

14. The Original Trust Agreement provided that the Trust Advisor could amend the Original Trust Agreement after the death of Robert D. Armstrong, but only to:

- (a) Alter the administrative and investment powers of the Trustees
- (b) Reflect tax or other legal changes that affect trust administration
- (c) Correct ambiguities, including scrivener errors that might otherwise require court construction or reformation.

15. The Original Trust Agreement provided that it would be governed, construed and administered according to the laws of the United States Virgin Islands, with certain exceptions not applicable to this case.

ELIZABETH, ROB AND DOUG IGNORE THE ORIGINAL TRUST AGREEMENT

16. At the time of his death, Robert D. Armstrong and Patricia, his wife, resided in a historic great house located on 30.4 Acres of land lying within Estates Hafensicht and Bullows Minde (the "Residence").

17. The Original Trust Agreement specifically provided that the Residence would be allocated to the AFT.

18. Pursuant to a deed dated January 1, 2006, Elizabeth, Rob and Doug, acting as Trustees of the Original Trust, conveyed the Residence, and other property not relevant here, to the AFT.

19. The Original Trust Agreement provided that Patricia would have the right to use and occupy the Residence for the rest of her life, unless she provided the Trustees with a written statement of her intent to live elsewhere. Patricia has not provided the Trustees of the AFT with a notice that she intended to reside anywhere other than the Residence.

20. The Original Trust Agreement provided that during the period that Patricia occupied the Residence, the AFT would pay all property taxes assessed against the Residence, maintain the Residence in good repair, and pay the premiums of all insurance on the Residence.

21. On or about November 18, 2007, Joel Holt, as Trust Advisor, purported to amend the Original Trust Agreement by executing a document (the "Trust Amendment") which inserted a new provision giving the Trustees the power to change the governing law of the Original Trust Agreement.

22. The change to the Original Trust Agreement that was attempted by the Trust Amendment was void because it exceeded the power to amend the Original Trust Agreement granted to the Trust Advisor.

23. The change to the Original Trust Agreement attempted by the Trust Amendment was void because the Original Trust Agreement required that the Trust Advisor give each of the income beneficiaries of any trust created under the Original

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Trust Agreement notice of any amendment attempted by the Trust Advisor, and Patricia, who was one of the income beneficiaries, did not receive notice of this purported amendment.

24. On November 18, 2008, the Trust Advisor appointed Bruce P. Bennett, Thomas Alkon and Joshua S. Rubenstein as Independent Special Trustees of the AFT (the "Independent Special Trustees").

25. In reliance upon the authority purportedly, but invalidly, given to them by the Trust Amendment, Elizabeth, Rob and Doug executed a document on or about December 23, 2008, that purportedly changed the governing law of the AFT from the law of the United States Virgin Islands to the law of the State of New York.

26. Elizabeth, Rob and Doug had no authority to change the governing law of the AFT.

27. In reliance upon the purported, but invalid, change in the governing law of the Original Trust, the Independent Special Trustees attempted to invoke the jurisdiction of the Surrogate Court of New York by executing and causing to be filed with that court a pleading entitled "Notice of Exercise of Power of Invasion of Principal Pursuant to EPTL Section 10-6.6(b)" (the "Decanting Notice"), a copy of which is attached to this Complaint as Exhibit B.

28. Pursuant to the Decanting Notice, the Independent Special Trustees attempted to appoint, effective as of the date of the Decanting Notice, approximately one third (1/3rd) of the principal of the AFT to a separate trust established for the benefit of Rob and approximately two thirds (2/3^{rds}) of the principal of the AFT to a separate trust

established for the primary benefit of Elizabeth and Doug (the “EDA Trust”). Certain real property owned by the AFT was left in the AFT.

29. The Decanting Notice was executed on or before January 7, 2009, because the signatures of two of the Independent Special Trustees were acknowledged on that date.

30. The attempt to invoke the jurisdiction of the Surrogate Court of New York with respect to so much of the AFT assets as comprised the Residence was invalid under New York law, assuming that it applied, because only one of the Independent Special Trustees of the AFT was a New York resident, while the other two Independent Special Trustees, and the other three Trustees, Elizabeth, Rob and Doug were United States Virgin Islands residents.

31. The attempt to invoke the jurisdiction of the Surrogate Court of New York with respect to so much of the AFT assets as comprised the Residence was invalid under New York law, assuming that it applied, because the Residence constituted real property located in the United States Virgin Islands as of the date of the Decanting Notice.

32. The Original Trust Agreement provided that the Residence was to be allocated to the AFT and neither the successor Trustees, Elizabeth, Rob and Doug, nor the Independent Special Trustees were granted any authority under the Original Trust Agreement to distribute the Residence from the AFT.

33. By deed dated January 9, 2009, Elizabeth, Rob and Doug, as Trustees of the AFT, conveyed certain property, including the Residence, to Legacy Holdings, Inc., a Virgin Islands corporation.

34. On information and belief, following this conveyance, Elizabeth and Doug ceased being Trustees of the AFT, leaving Rob as the sole Trustee, with no replacement Trustees being appointed as required under the Original Trust Agreement.

35. On information and belief, following this conveyance, Rob ceased to be a Trustee under the Original Trust, with no replacement being appointed as required under the Original Trust Agreement.

36. The conveyance of the Residence violated the terms of the Original Trust Agreement, which required the Residence to remain in the AFT, and constituted a breach of the Trustees' fiduciary duties to Patricia.

37. Legacy Holdings, Inc. was subsequently merged into Legacy Holdings, LLC, a Virgin Islands limited liability company and the surviving entity from the merger.

38. On information and belief, the membership interests in Legacy Holdings, LLC were transferred to the EDA Trust. On information and belief, at the time of this transfer, Elizabeth and Doug were the only Trustees of the EDA Trust.

ELIZABETH'S BREACH OF HER FIDUCIARY DUTIES

39. On information and belief, beginning sometime in 2011, Doug ceased being a Trustee of the EDA Trust and Elizabeth remained as the sole Trustee.

40. On information and belief, in addition to being the sole Trustee of the EDA Trust, Elizabeth is the current remainder beneficiary of the EDA Trust and, assuming she survives Patricia, will have the sole use and benefit of the Residence after Patricia's death.

41. Patricia is harmed by the conflict of interest inherent in the fact that the sole Trustee of the EDA Trust that, purportedly, now owns the Residence is also the primary remainder beneficiary, particularly when compared to the direction of Robert D. Armstrong in the Original Trust Agreement which specifically required that there should always be three trustees of the AFT to avoid this kind of situation.

42. As Trustee of the EDA Trust that, purportedly, now owns the Residence, Elizabeth has a fiduciary duty to Patricia to ensure Patricia's use and enjoyment of the Residence.

43. Under the terms of the Original Trust Agreement, and applicable law, Patricia has the right to the free and unfettered use of the Residence so long as her actions do not unreasonably diminish the value of the Residence.

44. Elizabeth has breached her fiduciary duties to Patricia in at least the following respects:

- a. Elizabeth has placed locks on portions of the Residence thereby denying Patricia access to some of the improvements on the Residence, including portions of the Residence containing personal property belonging to Patricia;
- b. Elizabeth has converted portions of the Residence to her own use by storing her personal property, as well as property belonging to the Buccaneer Hotel, in the Residence;

- c. Elizabeth has failed to maintain the Residence as required by the Original Trust Agreement;
- d. Elizabeth has repeatedly, and in front of third parties, told Patricia that she, Elizabeth, is the real owner of the Residence;
- e. Elizabeth has begun to make alterations to the Residence without the consent of Patricia, and without required building permits;
- f. Elizabeth has interfered with Patricia's continued landscaping of the Residence in the same manner as had existed for the four decades prior to the death of Robert D. Armstrong;
- g. Elizabeth has interfered with Patricia's use of the Residence by prominently posting signs warning workmen that they cannot take directions from anyone other than representatives of Legacy Management, LLC;
- h. Elizabeth has refused to provide Patricia with prior warning before sending third parties onto the Residence to perform work for Elizabeth's benefit; and
- i. In general, Elizabeth has ignored her fiduciary duties to Patricia and failed to permit Patricia to enjoy the use of the Residence for her remaining days.

WHEREFORE, Patricia prays that this Court grant the following relief:

- A. Declare that under the terms of the Original Trust Agreement, the Residence must remain as part of the corpus of the AFT;

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- B. Declare that under the terms of the Original Trust Agreement, the Trust Advisor did not have the authority to amend the agreement to give the Trustees the right to change the governing law of the trusts established under the Original Trust Agreement;
- C. Declare that the attempted transfer of the Residence to a trust other than the AFT was invalid and require the Defendants to re-convey the Residence to the AFT;
- D. Declare that Patricia is entitled to the free and unfettered use of the Residence so long as she does not unreasonably diminish the value of the Residence;
- E. Declare that Elizabeth does not have the right to prevent access by Patricia to any part of the Residence and require that Elizabeth remove all locks preventing such access;
- F. Declare that Elizabeth does not have the right to use any part of the Residence for her own purposes;
- G. Declare that Elizabeth does not have the right to make alterations to the Residence without the consent of Patricia;
- H. Enjoin Elizabeth from further violations of her fiduciary duties;
- I. Replace Elizabeth with an independent Trustee insofar as the administration of the Residence is concerned if, for any reason, the Residence is permitted to remain in the EDA Trust; and

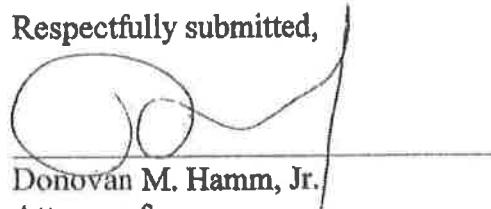
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J. Declare that Patricia has the right to name two additional trustees for the EDA Trust if the Residence remains in the EDA Trust and the right to name two additional Trustees for the AFT if the Residence is returned to the AFT.

Date:

7/8/14

Respectfully submitted,



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