

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JEAN MARY O'CONNELL NADER,)
)
Plaintiff,)

v.)

Case No. 2012 - 13064

ANTHONY MINER O'CONNELL,)
Individually and in his capacity as)
Trustee under a Land Trust Agreement)
Dated October 16, 1992 and as)
Trustee under the Last Will and)
Testament of Harold A. O'Connell)
439 S. Vista Del Rio)
Green Valley, Arizona 85614)

and)

SHEILA ANN O'CONNELL)
663 Granite Street)
Freeport, ME 04032)

Defendants.)

FILED
CIVIL INTAKE
2012 AUG 30 PM 3:22
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

COMPLAINT

COMES NOW the Plaintiff, Jean Mary O'Connell Nader, by counsel, and brings this action pursuant to §§ 26-48 and 55-547.06 of the Code of Virginia (1950, as amended) for the removal and appointment of a trustee, and in support thereof states the following.

Parties and Jurisdiction

1. Plaintiff Jean Mary O'Connell Nader ("Jean") and Defendants Anthony Miner O'Connell ("Anthony") and Sheila Ann O'Connell ("Sheila") are the children of Harold A. O'Connell ("Mr. O'Connell"), who died in 1975, and Jean M. O'Connell ("Mrs. O'Connell"), who died on September 15, 1991.

2. The trusts that are the subject of this action are: (a) the trust created under the Last Will and Testament of Harold A. O'Connell dated April 11, 1974, and admitted to probate in this Court on June 18, 1975; and (b) a Land Trust Agreement dated October 16, 1992, which was recorded among the land records of this Court in Deed Book 8845 at Page 1449.

3. Jean, Sheila, and Anthony are the beneficiaries of both of the trusts and, therefore, are the parties interested in this proceeding.

Facts

4. During their lifetimes, Mr. and Mrs. O'Connell owned as tenants in common a parcel of unimproved real estate identified by Tax Map No. 0904-01-0017 and located near the Franconia area of Fairfax County, Virginia and consisting of approximately 15 acres (the "Property").

5. After his death in 1975, a 46.0994% interest in the Property deriving from Mr. O'Connell's original 50% share was transferred to a trust created under his Last Will and Testament (the "Harold Trust"), of which Anthony serves as trustee. A copy of the Last Will and Testament of Harold A. O'Connell is attached hereto as Exhibit A.

6. Mrs. O'Connell held a life interest in the Harold Trust and, upon her death in 1991, the trust assets were to be distributed in equal shares to Jean, Sheila, and Anthony as remainder beneficiaries. Although other assets of the Harold Trust were distributed to the remainder beneficiaries, the trust's 46.0994% interest in the Property has never been distributed to Jean, Sheila, and Anthony in accordance with the terms of the Harold Trust.

7. After Mrs. O'Connell's death, her 53.9006% interest in the Property passed to Jean, Sheila, and Anthony in equal shares, pursuant to the terms of her Last Will and Testament and Codicil thereto, which was admitted to probate in this Court on December 10, 1991.

8. Thus, after Mrs. O'Connell's death, Jean, Sheila, and Anthony each owned a 17.96687% interest in the Property, and the Harold Trust continued to own a 49.0994% interest in the Property.

9. By a Land Trust Agreement dated October 16, 1992, Jean, Sheila, and Anthony, individually and in his capacity as trustee of the Harold Trust, created a Land Trust (the "Land Trust"), naming Anthony as initial trustee. A copy of the Land Trust Agreement is attached hereto as Exhibit B and incorporated by reference herein. The Harold Trust, Jean, Sheila, and Anthony (individually) are the beneficiaries of the Land Trust.

10. The Property was thereafter conveyed by Jean, Sheila, and Anthony, individually and as trustee of the Harold Trust, to Anthony, as trustee of the Land Trust, by a Deed dated October 16, 1992 and recorded on October 23, 1992 in Deed Book 8307 at Page 1446 among the land records for Fairfax County.

11. As trustee under the Land Trust, Anthony was granted broad powers and responsibilities in connection with the Property, including the authority and obligation to sell the Property. Paragraph 4.04 of the Land Trust Agreement states, in part, as follows:

If the Property or any part thereof remains in this trust at the expiration of twenty (20) years from date hereof, the Trustee shall promptly sell the Property at a public sale after a reasonable public advertisement and reasonable notice thereof to the Beneficiaries.

12. To date, the Property has not been sold, and the Land Trust is due to expire on October 16, 2012.

13. According to Paragraph 9.03 of the Land Trust Agreement, the responsibility for payment of all real estate taxes on the Property is to be shared proportionately by the beneficiaries. However, if a beneficiary does not pay his or her share, the Land Trust Agreement provides: