

Expose Bk467p191

Percentages

History suggests that when the accountants start talking about percentages, it means they plan to use those percentages to create conflict in the family, set one family member against another, and leave a paper trail to that effect, so that no one will try to see behind the confusion and conflict and find out where the money actually went.

There should not be any reason to bring up the issue of percentages because the term "Assignment" in the two "Assignment and Receipt" documents means "transfer of the whole."

Why is the deed not mentioned? Would the accountants show exactly what the the gaps or defects or what ever they are referring to in item 5 through 10 of the summons are? Can the accountants be held to this degree of accountability?

Submitted in response to
summons case 2012-13064,
on September 24, 2012, by
Anthony Miner O'Connell,
Trustee

If we could look at the evidence, follow the trails, and judge using common sense, it would show that the accountants want innocent Jean Nader to replace Anthony O'Connell because they could continue to use innocent Jean Nader to make money disappear whereas Anthony O'Connell would try to stop them.

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
4110 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030
703-691-7320
(Press 3, Press 1)

IN RE: Harold A Oconnell

CL-20120013064

TO: Anthony Miner OConnell
439 S Vista Del Rio
Green Valley Arizona 85614

SUMMONS - CIVIL ACTION

The party, upon whom this summons and the attached complaint are served, is hereby notified that unless within 21 days after such service, response is made by filing in the Clerk's office of this Court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment or decree against such party either by default or after hearing evidence.

APPEARANCE IN PERSON IS NOT REQUIRED BY THIS SUMMONS.

Done in the name of the Commonwealth of Virginia, on Tuesday, September 04, 2012.

JOHN T. FREY, CLERK
By: Betty B Whieden
Deputy Clerk

Plaintiff's Attorney Elizabeth Chichester Morrogh

SERVED: 9-8-12 3:00 P.M.
Paul Nye (seal)

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

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JEAN MARY O'CONNELL NADER,

Plaintiff,

Case No. 2012-13064

v.

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.

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. 0904-0 1-00 17 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,

Please see the two Exceptions to the Commissioner's report filed in the Court on June 16, 1994 (Estate) and on August 23, 2000 (Trust).

For details on the August 23, 2000 Exceptions please see <http://www.canweconnectthedots.com> and click "blueprint"

The land Trust Agreement is a contract and contract law applies. A contract cannot be changed unless all the parties to the contract agree to the change, and then it is a new contract. Only a party to a contract can change a contract; a Court cannot change a contract..

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:

The Trustee will pay the shortfall and shall be reimbursed the principal plus 10% interest per annum. Trustee shall be reimbursed for any outstanding real estate tax shares or other Beneficiary shared expense still owed by any Beneficiary at settlement on the eventual sale of the property.

14. For many years, Jean sent payment to Anthony for her share of the real estate taxes on the Property. Beginning in or about 1999, Anthony refused to accept her checks because they were made payable to "County of Fairfax." Anthony insisted that any checks for the real estate taxes be made payable to him individually, and he has returned or refused to forward Jean's checks to Fairfax County. Under the circumstances, Jean is unwilling to comply with Anthony's demands regarding the tax payments.

15. Anthony is not willing or has determined he is unable to sell the Property due to a mistaken interpretation of events and transactions concerning the Property and, upon information and belief, the administration of his mother's estate. Anthony's position remains intractable, despite court rulings against him, professional advice, and independent evidence. As a result, Anthony is unable to effectively deal with third parties and the other beneficiaries of the Land Trust.

16. In 2007, Anthony received a reasonable offer from a potential buyer to purchase the Property. Upon information and belief, Anthony became convinced of a title defect with the Property that, in his opinion, was an impediment to the sale of the Property. A title commitment issued by Stewart Title and Escrow on April 24, 2007, attached hereto as Exhibit C, did not persuade Anthony that he, as the trustee of the Land Trust, had the power to convey the Property. Because of this and other difficulties created by Anthony, the Property was not sold.

17. Since 2007, it appears the only effort put forth by Anthony to sell the Property has been to post it for sale on a website he created, www.alexandriavirginial5acres.com.

18. Since 2009, Anthony has failed to pay the real estate taxes for the Property as required by the Lhd Trust Agreement. Currently, the amount of real estate tax owed, including interest and penalties, is approximately \$27,738.00.

19. Anthony has stated that he purposely did not pay the real estate taxes in order to force a sale of the Property and clear up the alleged title defects.

20. Since the real estate taxes are more than two years delinquent, Anthony's failure to pay may result in a tax sale of the Property. Anthony was notified of this possibility by a notice dated October 26, 2011, attached hereto as Exhibit D. In addition to the threatened tax sale, the Land Trust is incurring additional costs, including penalties, interest, and fees, that would not be owed if Anthony had paid the real estate taxes in a timely manner.

21. In May 2012, Jean, through her counsel, wrote a letter to Anthony requesting that he cooperate with a plan to sell the Property or resign as trustee. To date, Anthony has not expressed a willingness to do either, and still maintains that the alleged title defect and other "entanglements" must be resolved before any action can be taken towards a sale of the Property.

Count I: Removal of Anthony O'Connell as Trustee of Land Trust

22: The allegations of paragraphs 1 through 21 are incorporated by reference as if fully stated herein.

23. As trustee of the Land Trust, Anthony has a fiduciary duty to comply with the terms of the trust agreement, to preserve and protect the trust assets, and to exercise reasonable care, skill, and caution in the administration of the trust assets.

24. Anthony has breached his fiduciary duties by his unreasonable, misguided, and imprudent actions, including but not limited to, his failure to sell the Property and non-payment of the real estate taxes on the Property.

25. The breaches of duty by Anthony constitute good cause for his removal as trustee of the Land Trust.

WHEREFORE, Plaintiff Jean Mary O'Connell Nader prays for the following relief:

A. That the Court remove Anthony Minor O'Connell as trustee under the Land Trust Agreement dated October 16, 1992, pursuant to 26-48 of the Code of Virginia (1950, as amended);

B. That all fees payable to Anthony Minor O'Connell under the terms of the aforesaid Land Trust Agreement, including but not limited to, the trustee's compensation under paragraph 9.01, and all interest on advancements by the trustee to the trust for payment of real estate taxes pursuant to paragraph 9.03, be disallowed and deemed forfeited;

C. That all costs incurred by Plaintiff Jean Mary O'Connell Nader in this action, including reasonable attorneys' fees, be paid by the Land Trust; and

D. For all such further relief as this Court deems reasonable and proper.

Count 11: Removal of Anthony O'Connell as Trustee of the Trust under the Will of Harold A. O'Connell

26. The allegations of paragraphs 1 through 25 are incorporated by reference as if fully stated herein.

27. The terms of the Harold Trust provide that, upon the death of Mrs. O'Connell, the assets are to be distributed to Jean, Sheila, and Anthony in equal shares. Notwithstanding the terms of the Harold Trust and the provisions for its termination, Anthony entered into the Land Trust Agreement in his capacity as trustee of the Harold Trust. As a result, upon the sale of the Property, Anthony can exercise greater control over the Harold Trust's share of the sale proceeds than if the parties held their beneficial interests in their individual capacities.

28, Other than its status as beneficiary of the Land Trust, there is no reason for the continuation of the Harold Trust.

29. On August 8, 2000, an Eleventh Account for the Harold Trust was approved by the Commissioner of Accounts for the Circuit Court of Fairfax County and determined to be a final account.

30. Anthony repeatedly and unsuccessfully challenged the Commissioner's determination and requested, *inter alia*, that the Court and the Commissioner of Accounts investigate a debt of \$659.97 that he alleged was owed to the Harold Trust by Mrs. O'Connell's estate. In these proceedings, the Commissioner stated, and the court agreed, that there was no evidence to support Anthony's claims that a debt existed and, if so, that it was an asset of the Harold Trust.

31. Anthony's repeated and unsuccessful challenges to the rulings of the Commissioner of Accounts and the Circuit Court in connection with the Eleventh Account, and his persistence in pursuing his unfounded claims to the present day, demonstrate that he is unable to administer the Harold Trust effectively and reliably.

32. It is in the best interests of the beneficiaries of the Harold Trust that, upon the sale of the Property, the net sale proceeds be distributed in an orderly and expedient manner. Based on Anthony's actions, he is not the proper individual to fulfill the trustee's duties in administering the Harold Trust.

33. The removal of Anthony as trustee best serves the interests of the beneficiaries of the Harold Trust.

WHEREFORE, Plaintiff Jean Mary O'Connell Nader prays for the following relief:

A. That the Court remove Anthony Minor O'Connell as trustee under the Last Will and Testament of Harold A. O'Connell, pursuant to § 55-547.06 of the Code of Virginia (1950, as amended);

B. That all costs incurred by Plaintiff Jean Mary O'Connell Nader in this action, including reasonable attorneys' fees, be awarded to her in accordance with § 55-550.04 of the Code of Virginia (1950, as amended); and

C. For all such further relief as this Court deems reasonable and proper.

Count 111: Appointment of Successor Trustee

34. The allegations of paragraphs 1 through 33 are incorporated by reference as if fully stated herein.

35. Jean is a proper person to serve as trustee of the Land Trust in order to sell the Property on behalf of the beneficiaries of the Land Trust, and she is willing and able to serve in such capacity.

36. The best interests of the beneficiaries would be served if the Land Trust is continued for a sufficient period of time to allow the successor trustee to sell the Property, rather than allowing the Land Trust to terminate on the date specified in the Land Trust

Agreement. Each of the individual beneficiaries of the Land Trust is age 70 or above, and it would be prudent to sell the Property during their lifetimes, if possible, rather than leaving the matter for the next generation to resolve.

37. Jean is a proper person to serve as trustee of the trust created under the Last Will and Testament of Harold A. O'Connell, and she is willing and able to serve in such capacity.

WHEREFORE, Plaintiff Jean Mary O'Connell Nader prays for the following relief:

A. That Plaintiff Jean Mary O'Connell Nader be appointed as successor trustee under the aforesaid Land Trust Agreement, with the direction to sell the Property upon such terms and conditions as this Court deems reasonable and appropriate, including, but not limited to, fixing a reasonable amount as compensation of the successor trustee for her services;

B. That the term of the Land Trust be continued for a reasonable time in order to allow for the sale of the Property;

C. That Plaintiff Jean Mary O'Connell Nader be appointed as successor trustee under the Last Will and Testament of Harold A. O'Connell for all purposes, including distribution of the net proceeds of the sale of the Property that are payable to such trust;

D. That all costs incurred by Plaintiff Jean Mary O'Connell Nader in this action, including reasonable attorneys' fees, be paid by the Land Trust; and

E. For all such further relief as this Court deems reasonable and proper.

JEAN MARY O'CONNELL NADER
By Counsel

BLANKINGSHIP & KEITH, P. C.
4020 University Drive
Suite 300
Fairfax, VA 22030
(703) 691-1235
FAX: (703) 691-3913

By:
Elizabeth Chichester Morrogh
VSB No. 251112
Counsel for Plaintiff

ASSIGNMENT AND RECEIPT

I, Anthony Miner O'Connell, Trustee under the last will and testament of Harold A. O'Connell, of Fairfax County, Virginia, do hereby assign, set over, and transfer unto Anthony Miner O'Connell, Trustee under a DEED IN TRUST UNDER LAND TRUST AGREEMENT dated October 16, 1992, and recorded in Deed Book 8307 at Page 1446 of the Land Records of Fairfax County, Virginia, attached hereto and made a part hereof, a 46.0994% interest in a certain tract or parcel of land containing, be the same more or less, 15.0 acres of ground, located in Fairfax County, Virginia, more particularly described in Exhibit A attached to the said DEED IN TRUST UNDER LAND TRUST AGREEMENT.

I, Anthony Miner O'Connell, Trustee under a DEED IN TRUST UNDER LAND TRUST AGREEMENT dated October 16, 1992, recorded as aforesaid in Deed Book 8307 at Page 1446 hereby acknowledge receipt of a 46.0994% interest in the certain tract or parcel of land containing 15.0 acres of land, more or less, described in Exhibit A attached to the said DEED IN TRUST UNDER LAND TRUST AGREEMENT attached hereto, which I agree to hold in trust for Jean Mary O'Connell Nader, Sheila Ann O'Connell and myself, Anthony Miner O'Connell.

Witness the following signatures and seals the 11TH day of ~~February~~ MARCH, 1993.

Jean Mary O'Connell Nader SEAL *Nader*
Jean Mary O'Connell Nader

Sheila Ann O'Connell SEAL
Sheila Ann O'Connell

Anthony M. O'Connell SEAL
Anthony Miner O'Connell

Anthony Miner O'Connell SEAL *Trustee*
Anthony Miner O'Connell,
Trustee under the last will
and testament of Harold A. O'Connell

Anthony Miner O'Connell SEAL *Trustee*
Anthony Miner O'Connell,
Trustee under DEED IN TRUST UNDER
LAND TRUST AGREEMENT recorded in Deed Book
8307 at page 1446

TAX MAP 90-4-001-17
CODE OF VIRGINIA 55-17.1

ANTHONY O'CONNELL
6541 FRANCONIA ROAD
SPRINGFIELD, VIRGINIA 22150

Trustee Not Individually Liable

ASSIGNMENT AND RECEIPT

I, Anthony Miner O'Connell, Trustee under the last will and testament of Harold A. O'Connell, of Fairfax County, Virginia, do hereby assign, set over, and transfer unto Anthony Miner O'Connell, Trustee under a DEED IN TRUST UNDER LAND TRUST AGREEMENT dated October 16, 1992, and recorded in Deed Book 8307 at Page 1446 of the Land Records of Fairfax County, Virginia, attached hereto and made a part hereof, a 46.0994% interest in a certain tract or parcel of land containing, be the same more or less, 15.0 acres of ground, located in Fairfax County, Virginia, more particularly described in Exhibit A attached to the said DEED IN TRUST UNDER LAND TRUST AGREEMENT.

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Witness the following signatures and seals the 15th day of January, 2001

Jean Mary O'Connell SEAL Nader
Jean Mary O'Connell Nader

Sheila Ann O'Connell SEAL
Sheila Ann O'Connell

Anthony Miner O'Connell SEAL
Anthony Miner O'Connell

Anthony Miner O'Connell SEAL Trustee
Anthony Miner O'Connell,
Trustee under the last will
and testament of Harold Anthony O'Connell

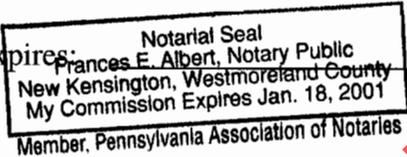
Anthony Miner O'Connell SEAL Trustee
Anthony Miner O'Connell,
Trustee under DEED IN TRUST UNDER
LAND TRUST AGREEMENT recorded in Deed Book
8307 at page 1446

Trustee Not Individually Liable

State of Pennsylvania
County of Westmoreland, to wit:

The foregoing instrument was acknowledged before me this 15th day of January 2001, by Jean Mary O'Connell Nader.

Frances E. Albert
Notary Public

My commission expires: 

State of Maine
County of Cumberland, to wit:

The foregoing instrument was acknowledged before me this 24th day of July 2001, by Sheila Ann O'Connell.

Ruth E. Martin
Notary Public

My commission expires: **RUTH E. MARTIN**
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES MAY 3, 2005

State of Virginia
City Harrisonburg County of Harrisonburg, to wit:

The foregoing instrument was acknowledged before me this 29th day of December 2000 by Anthony Miner O'Connell.

Angela H. Maats
Notary Public

My commission expires: May 31, 2002

Trustee Not Individually Liable

City State of Virginia
County of Harrisonburg, to wit:

The foregoing instrument was acknowledged before me this 29th day of December 2000, by Anthony Miner O'Connell, Trustee under the last will and testament of Harold Anthony O'Connell.

Angela H. Maats
Notary Public

My commission expires: May 31, 2002

State of Virginia
County of Harrisonburg, to wit:

The foregoing instrument was acknowledged before me this 29th day of December 2000, by Anthony Miner O'Connell, Trustee under DEED IN TRUST UNDER LAND TRUST AGREEMENT recorded in Deed Book 803 at page 1446

Angela H. Maats
Notary Public

My commission expires: May 31, 2002

Trustee Not Individually Liable