

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WILLIAM RUFFNER CHILTON, and
CYNTHIA CHILTON WILSON,

Plaintiffs,

v.

Civil Action No. 14-C-377
Honorable James C. Stucky

ROBERT MAXWELL CHILTON and
ALICE CHILTON ZUBER, et al.

Defendants.

2017 MAY 24 AM 10:59

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

ORDER REMOVING TRUSTEES AND APPOINTING SUCCESSOR TRUSTEES

On the 24th day of April, 2017, Plaintiffs, William Ruffner Chilton and Cynthia Chilton Wilson, by and through counsel, William V. DePaulo, Esq., and Defendants, Robert Maxwell Chilton and Alice Chilton Zuber, by and through counsel, Stephanie Ojeda, Esq, came before this Court on the Plaintiffs' motion requesting interim relief, inter alia, removing Defendants as co-trustees of various trusts created by the parties' parents for the benefit of Plaintiffs, and other trusts.

Institutional co-trustees have filed pleadings indicating that they do not oppose the Plaintiffs' motion to remove Defendants Robert Chilton and Alice Zuber. After extensively reviewing the briefs filed herein and considering the oral argument of all parties involved, this Court **FINDS** as follows:

FINDINGS OF FACTS

1. The Plaintiffs' Complaint alleges breaches of corporate fiduciary duties based, in large part, on the same factual matters asserted in connection with the allegations of breach of trust,

and seeks removal of Defendants Robert Chilton and Alice Zuber as corporate directors, officers and employees of the closely-held family corporations.

2. Plaintiffs' allegations include broad assertions of acts of self-dealing by Robert Chilton and, to a lesser extent, by Defendant Alice Zuber.

3. The facts underlying the charges of self-dealing include the assertion that Robert Chilton has for fifteen years lived rent-free in the long-time family residence, which is titled in Twelve Sixty-Six Corporation.

4. Additionally, Plaintiffs have alleged that Robert Chilton, with Alice Zuber's acquiescence, has converted to his own use approximately \$30,000 per year in purported rent paid to Twelve Sixty-Six Corporation by a second closely-held family corporation, Kanawha Village Apartments, Inc.

5. Defendant Robert Chilton has acknowledged, in response to written discovery requests and in his sworn deposition, that the trust-owned residence was occupied rent-free.

6. Additionally, Plaintiffs assert, and internal documentation from United Bank, Inc. produced in discovery confirms, that the bank repeatedly requested that co-trustees Robert Chilton and Alice Zuber, diversify the trust assets. Defendants explicitly rejected the bank co-trustees repeated recommendation to diversify.

7. Defendants, Robert Chilton and Alice Zuber, have asserted that a one-year statute of limitations, embedded in the Uniform Trust Code, bars recovery by Plaintiffs.

CONCLUSIONS OF LAW

1. The primary duty the Uniform Trust Code, W. Va. Code §44D-8-801, imposes on trustees is straightforward: the duty of loyalty. As stated in W. Va. Code § 44D-8-802 (a), "A trustee shall administer the trust solely in the interest of the beneficiaries."

2. The Uniform Trust Code, codified at Chapter 44D of the W. Va. Code explicitly authorizes the award of interim relief for breaches of trust. W. Va. Code § 44D-7-706 provides the statutory authority for the removal of trustees, and provides in § 44D-7-706 (b) that a Court may remove a trustee upon a finding that the trustee has committed a serious breach of trust.

3. W. Va. Code § 44D-7-706 (c) provides that -- pending a final decision on the request to remove a trustee -- a court may order any relief authorized by W. Va. Code §44D-10-1001 "as may be necessary to protect the property or the interests of the beneficiaries."

4. Under W. Va. Code §44D-10-1005(a), the statute of limitations on actions against trustees invoked by Defendants in their Response to the Motion for Interim Relief, provides that:

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

W. Va. Code § 44D-10-1005(a).

5. Defendants did not comply with the minimal requirements needed to invoke the one-year statute of limitations at W. Va. Code § 44D-10-1005(a).

DISCUSSION

Having considered the parties' pleading and arguments, the exhibits submitted with Plaintiffs' motion, and the sworn discovery responses of Defendant Robert Chilton, this Court hereby **GRANTS** the motion of interim relief in the form of this order removing, effective immediately, Robert Chilton and Alice Zuber as co-trustees of trusts enumerated below.

Additionally, this Court has determined that it is appropriate to appoint Michael Devan and John Barrett as successor co-trustees of the trusts enumerated herein, with the express charge to take all actions, reasonable, necessary and proper to diversify the investment assets held by the trusts which are the subject of this Order, as promptly as market circumstances permit.

RULING

WHEREFORE, for the foregoing reasons, this Court hereby **ORDERS** that Robert Maxwell Chilton be, and hereby is, enjoined, effective immediately, from continued occupation of the residence at 1266 Loudon Heights Road, Charleston, WV on terms resulting from self-dealing with trust assets, and he is further enjoined from any action with respect to the residence at 1266 Loudon Heights Road, Charleston, WV which will obstruct the diversification of trust assets.

IT IS FURTHER ORDERED that Robert Maxwell Chilton be, and hereby is, enjoined from self-dealing with respect to income of Kanawha Village Apartments, Inc., Twelve Sixty Six Corporation and the real property owned directly by the trusts enumerated herein, known as MacCorkle Gardens, and he is further enjoined from any action with respect to Kanawha Village Apartments, Inc., Twelve Sixty-Six Corporation or MacCorkle Gardens, which will obstruct the diversification of trust assets by the successor trustees named herein.

IT IS FURTHER ORDERED that Robert Maxwell Chilton and Alice Chilton Zuber be, and hereby are, removed as co-trustees of the following trusts:

A. The William E. Chilton, II Trust No. 1, dated July 28, 1976, as amended on July 21, 1982, as further amended on November 6, 1989, and as further amended on July 13, 1990, for the benefit of Cynthia Noyes Chilton (now known as Cynthia Chilton Wilson);

B. The William E. Chilton, II Trust No. 2, dated July 28, 1976, as amended on July 21, 1982, as further amended on November 6, 1989, and as further amended on July 13, 1990, for the benefit of William Ruffner Chilton;

C. The Nancy M. Ruffner Chilton Trust No. 1, dated July 19, 1979, as amended July 26, 1979, as further amended June 20, 1980, as further amended July 21, 1982, and as further amended November 6, 1989, and as further amended on July 13, 1990, for the benefit of Cynthia Chilton Wilson;

D. The Nancy M. Ruffner Chilton Trust No. 2, dated July 19, 1979, as amended July 26, 1979, as further amended June 20, 1980, as further amended July 21, 1982, and as further amended November 6, 1989, and as further amended on July 13, 1990, for the benefit of William R. Chilton also known as William Ruffner Chilton).

IT IS FURTHER ORDERED that Michael Devan and John Barrett be, and hereby are, appointed as co-trustees of the following trusts:

A. The William E. Chilton, II Trust No. 1, dated July 28, 1976, as amended on July 21, 1982, as further amended on November 6, 1989, and as further amended on July 13, 1990, for the benefit of Cynthia Noyes Chilton (now known as Cynthia Chilton Wilson);

B. The William E. Chilton, II Trust No. 2, dated July 28, 1976, as amended on July 21, 1982, as further amended on November 6, 1989, and as further amended on July 13, 1990, for the benefit of William Ruffner Chilton;

C. The Nancy M. Ruffner Chilton Trust No. 1, dated July 19, 1979, as amended July 26, 1979, as further amended June 20, 1980, as further amended July 21, 1982, and as further amended November 6, 1989, and as further amended on July 13, 1990, for the benefit of Cynthia Chilton Wilson;

D. The Nancy M. Ruffner Chilton Trust No. 2, dated July 19, 1979, as amended July 26, 1979, as further amended June 20, 1980, as further amended July 21, 1982, and as further amended November 6, 1989, and as further amended on July 13, 1990, for the benefit of William R. Chilton also known as William Ruffner Chilton).

IT IS FURTHER ORDERED that Robert Chilton be, and hereby is, removed as trustee of, and Michael Devan and John Barrett be, and hereby are, appointed as successor co-trustees of, the Cynthia Chilton Park Trust 12-31-69 trust for the benefit of Cynthia Chilton Park (now known as Cynthia Chilton Wilson), dated December 31, 1969.

IT IS FURTHER ORDERED that Robert Chilton be, and hereby is, removed as trustee of, and Michael Devan and John Barrett be, and hereby are, appointed as successor co-trustees of, The Nancy M. Ruffner Chilton Trust for Cynthia Noyes Chilton, dated July 21, 1982.

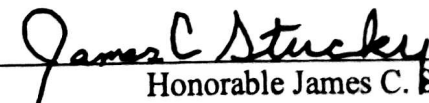
IT IS FURTHER ORDERED that Robert Chilton be, and hereby is, removed as trustee of, and Michael Devan and John Barrett be, and hereby are, appointed as successor co-trustees of, the self-settled trust for the benefit of William Ruffner Chilton dated 1976.

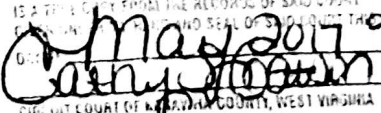
IT IS FURTHER ORDERED that Robert Chilton be, and hereby is, removed as trustee of, and Michael Devan be, and hereby is, appointed as successor co-trustee, to act with current co-trustee John Barrett, of The Nancy M. Ruffner Chilton Trust for William R. Chilton (also known as William Ruffner Chilton), dated June 30, 1983.

IT IS FURTHER ORDERED the authority of Defendants Robert Chilton and Alice Zuber to write checks out of the current account shall be limited to such payments to third parties as are required for the day-to-day, ordinary, reasonable and necessary business expenses of MacCorkle Gardens, to the exclusion of any payment for management or as distribution of income or otherwise. Additionally, Robert Chilton and Alice Zuber are hereby enjoined from making any payments to themselves, as compensation for management of MacCorkle Gardens, the rental real estate owned directly, in undivided equal interests, by trusts created for the benefit of the parties to this litigation.

The Court hereby notes the Defendants' objections and exceptions to this Order. The Circuit Clerk is hereby directed to send a certified copy of this ORDER to all interested parties, and counsel of record.

ENTERED 23 day of May, 2017.


Honorable James C. Stucky
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF MORGAN
I, CLARENCE M. MOORE, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
CLARENCE M. MOORE, CLERK OF SAID COURT

CLERK
CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA