

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

Norfolk Division

Docket No.: 21P0606

In re.: Ronald P. Labadini Living Trust

MEMORANDUM OF DECISION AND ORDER

(On Petitioners Motion for Preliminary Injunction Against Respondent/Trustee Richard D. Vitale
and for Appointment of Independent Temporary Co-Trustees, on Petition for
Resignation/Removal/Appointment of Successor Trustee filed 3/19/21)

Memorandum of Decision

This matter came before the Court, Moses, J., presiding, for hearing on April 7, 2021 on Petitioner's Motion for Preliminary Injunction Against Respondent/Trustee Richard D. Vitale and for Appointment of Independent Temporary Co-Trustees. The hearing was conducted by Zoom pursuant to Probate and Family Court Standing Order 2-20. The Petitioners appeared and were represented by Attorney Adam Ponte. The Respondent was represented by Attorney Robert Beruti.

The Petitioners' underlying Petition seeks the removal of Richard D. Vitale ("Vitale"), trustee of the Ronald P. Labadini Living Trust, and to appoint as successor trustee the beneficiaries' nominee rather than the settlor's nominated successor trustee. The Petitioners represented that they were not seeking the permanent removal of Vitale at the time of the hearing, but instead the appointment of their nominee as co-trustee to observe Vitale's oversight of the subject trust.

In determining whether to grant a preliminary injunction, the Court must first evaluate the moving party's claim of injury and its likelihood of success on the merits. *Packaging Industries Group, Inc. v Cheney v. Cheney*, 380 Mass. 609, 617 (1980). Second, it must determine whether failing to issue a preliminary injunction would subject the moving party to irreparable injury, i.e. losses that cannot be repaired or adequately compensated upon final judgment. *Id.* at 617, n.11. Third, "[i]f the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party". *Id.* at 617. In balancing these factors, "[w]hat matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but the rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction property issue". *Id.* The Court must find that in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. *Tri-Nel Mgmt. v. Bd. Of Health*, 433 Mass. 217, 219 (2001).

In support of their Motion, the Petitioner's rely upon the provisions of G.L. c. 203E, sec. 706 (a)(4) which states "[A] beneficiary may request the Court to remove a trustee if...removal has been requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all the of the beneficiaries and is not inconsistent with a material purpose of the trust and a suitable co-trustee or successor trustee is available."

The Court finds that the Petitioners have demonstrated, in part, a reasonable likelihood of success on the merits. All of the qualified beneficiaries request the removal of the trustee. Further, it is undisputed that a material purpose of the trust is to provide for the support of Jennifer Labadini, the widow of the decedent. Notwithstanding, the Petitioners have not proven that the removal of Vitale as trustee is not inconsistent with a material purpose of the trust. Both parties acknowledge that Vitale had a long-standing relationship with the settlor. The settlor was a client of Vitale for several years and the two were business partners in the past. The settlor and his brother, each then 50% owners of One Hollis Street LLC, named Vitale as its successor manager. The trust is currently a 50% owner of this LLC and Vitale remains its current manager. Based upon all of the credible evidence presented, it would appear that the decedent felt that Vitale was uniquely suited to serve as trustee.

The Court further finds that the Petitioners have not established that failing to issue the preliminary injunction will subject the Petitioners to irreparable harm. At the request of the primary beneficiary, Jennifer Labadini, Vitale has maintained her in her primary residence, in fact selling trust assets to do so. Further, the Petitioners have not presented evidence that the fees charged by Vitale are outside of industry standards. The Petitioners cite in general the monies distributed by the trustee to date, however said monies include significant improvements to One Hollis Street (the office rental property owned by One Hollis Street, LLC), resulting in positive cash flow for the trust. In sum, the Petitioners have not established that failing to grant the Preliminary Injunction will subject the Petitioners to irreparable harm.

Of note, the Petitioners did not seek the removal of Vitale at the initial motion hearing, but instead the appointment of co-trustee to observe Vitale's oversight of the trust. The underlying dispute appears to stem from disparate views of the parties regarding the sufficiency of disclosure of information relative to the trust. Going forward, the beneficiaries should have reasonable access to all information relative to the trust, including LLC account information, as the trust is 50% owner of the LLC.

Order


In consideration of the foregoing, Petitioner's Motion for Preliminary Injunction Against Respondent/Trustee for Preliminary Injunction Against Respondent/Trustee Richard D. Vitale and for Appointment of Independent Temporary Co-Trustees is hereby DENIED.

The current trustee, Richard D. Vitale, shall immediately provide reasonable access to all information relative to the trust, including One Hollis Street LLC account information.

All discovery shall be completed by 5 pm on the later of October 22, 2021 or 7 days prior to the pretrial conference.

Pretrial Conference is scheduled at 2:30 pm on October 28, 2021.

Date: 1/6/21



Kimberly Moses, Associate Justice
Norfolk Probate and Family Court