

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 10-50494
)
FAIR FINANCE COMPANY,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **INITIAL MEMORANDUM OF**
) **OPINION RE CLAIM #5024 (JANET**
) **PALMER LASATER, TRUSTEE)**
) **AND ORDER**

This is a dispute among the four adult children of the late Daniel Palmer, Sr. over who should receive the bankruptcy dividend attributable to Fair Finance certificates owned in the names of Mr. Palmer and his daughter Lena Vidahl without joint and survivorship language. Three of the children—Janet Palmer Lasater, Daniel Palmer, Jr., and George Palmer—are on one side and Vidahl is on the other.

After Lasater filed a proof of claim, Vidahl filed a form stating the claim had been transferred to her, as a result of which she seeks to substitute herself for Lasater on the claim. Lasater objects. The chapter 7 trustee allowed the claim as a general unsecured claim in the amount of \$256,638.56¹ and awaits instructions on how to handle the dividend.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 12-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (O), and it is within the court's constitutional

¹ Docket 2035.

authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011) and its progeny.

TRIAL

At the January 19, 2016 trial, Lasater presented her case through her testimony and that of her brother George Palmer, together with cross-examination of Vidahl, and exhibits. Vidahl presented her case through her testimony, cross-examination of Lasater and George Palmer, and exhibits. The parties also stipulated to certain joint exhibits.

THE POSITIONS OF THE PARTIES

Vidahl asserts she is the appropriate claimant because she owned the certificates with her father in a joint and survivorship account, as a result of which she became the sole owner at her father's death by operation of law. Lasater claims the opposite is true: the certificates were not survivorship accounts and, moreover, her sister exercised undue influence over their father so as to cause him to name Vidahl on the certificates in the first place. Vidahl denies the undue influence charge. Although Lasater acknowledges she is not a creditor, she argues the money should be paid to her for distribution to the four siblings, as her father would have wanted.

Additional facts and arguments are set out below.

FACTS AND DISCUSSION

Proof of Claim #5024

In October 2010, when Mr. Palmer² was legally incompetent and under a state court guardianship, Lasater filed a proof of claim with this information:

² All references to Mr. Palmer are to Mr. Palmer, Sr.

Name of Creditor: “Palmer, Dan and [sic].”

Name and address where notices should be sent: “Palmer, Dan and Lena Vidahl, 231 Para Avenue, Akron, Ohio”

Name and address where payment should be sent (if different from above): “Janet Palmer Lasater, Trustee (see attached), 7115 Market Ave. N. Canton, Ohio”

According to the documents attached to the claim and the testimony, Mr. Palmer had a living trust over which he originally served as trustee, with Lasater named as the successor trustee. A September 2010 letter from the attorney who drafted the trust supported Lasater’s assertion that she had become the trustee. Because the Fair Finance certificates were not part of the trust, however, Lasater did not have any legal interest in the certificates in her role as trustee.

When Mr. Palmer died a month later, Lasater distributed the trust assets equally among the four siblings as called for by the trust and closed it. At trial, Lasater disclaimed any intent to have been acting on behalf of that trust when she filed the claim. She testified that time was running out to file the claim and she did so without benefit of counsel to try to preserve her father’s interest. She did not, however, file an amended claim.

Vidahl, on the other hand, did not file *any* proof of claim. After Mr. Palmer’s death, Vidahl filed a form to transfer Lasater’s claim to herself, a move opposed by Lasater.³ The administrator of Mr. Palmer’s estate filed a statement with this court saying that based upon the state court settlement discussed below, “I cannot make any claim of this asset for the Estate and

³ Docket 1156.

the Agreement further provides that the Trustee⁴ must consider the claims and arguments of the two parties before the Court.”⁵

THE STATE COURT SETTLEMENT

The siblings engaged in an extended will contest in state court that eventually resulted in a 2012 settlement agreement containing this provision:

Currently there is a pending claim filed by Janet Lasater, as trustee of decedent’s trust, with the bankruptcy trustee of Fair Financial. The decedent had deposits with Fair Financial at the time of his death of \$300,000.00. The deposits were “Dan Palmer and Lena Vidahl.” Counsel for Lena Vidahl plans to file with the Bankruptcy Court whatever he believes is necessary to transfer the beneficiary of the bankruptcy proceeds, if any, from the trust to Lena Vidahl. If the trustee receives the proceeds, then they shall be distributed to the trust beneficiaries. If Lena Vidahl receives the proceeds, they shall be hers. The parties are aware the Administrator will make no claim on this Fair Financial Account. Further, the Administrator will make no claim on the estate tax return for this asset and either the trust or Ms. Vidahl will accept all tax liability.”⁶

The three aligned siblings then dismissed with prejudice their lawsuit against Vidahl⁷ and Vidahl withdrew her claims against the estate.

⁴ This term is not defined, but presumably refers to the chapter 7 trustee.

⁵ Vidahl exh. 5.

⁶ Vidahl exh. 1.

⁷ The court ruled earlier that Lasater’s claim is not barred by the doctrines of claim preclusion or issue preclusion. *See* docket 2134.

THE CERTIFICATES

These are the four certificates in dispute:

V60-88997

Issued August 28, 2006 \$50,000.00⁸

Titled to “Dan Palmer and Lena Vidahl”

V24-101778

Issued November 12, 2007 \$100,000.00⁹

Titled to “Dan Palmer and Lena Vidahl”

V24-112857

Issued November 18, 2008 \$50,000.00¹⁰

Titled to “Dan Palmer and Lena Vidahl”

V24-116987

Issued April 13, 2009 \$50,000.00¹¹

Titled to “Dan Palmer and Lena Vidahl”

None of these certificates includes the words “joint or survivor.” And there was no evidence to show an intent on Mr. Palmer’s part to create a right to survivorship in Vidahl.

⁸ Vidahl exh. 14.

⁹ Vidahl exh. 7.

¹⁰ Vidahl exh. 11.

¹¹ Vidahl exh. 13.

LASATER'S STANDING

Whether a party is the proper party to file a proof of claim raises the issue of standing. *See In re Wells*, 407 B.R. 873, 882 (Bankr. N.D. Ohio 2009). Only a real party in interest may file a proof of claim in a debtor's bankruptcy case and under the Bankruptcy Rules that is the creditor entitled to payment on a claim (or the creditor's authorized agent). *Id.* (discussing FED. R. BANKR. P. 3001). If a claim is transferred (other than for security) before a proof of claim has been filed, the transferee must file the proof of claim. FED. R. BANKR. P. 3001(e)(1). On the other hand, if a claim (other than one based on a publicly traded note, bond or debenture) is transferred other than for security after a proof of claim has been filed, evidence of the transfer is to be filed by the transferee. If the alleged transferor does not object, the transferee will be substituted for the transferor on the claim. FED. R. BANKR. P. 3001(e)(2).

Lasater acknowledged in her testimony that she is not a creditor, the four certificates were never part of the trust, and the trust is closed. Her brothers never filed a claim and she never amended her claim to assert an interest different from that in the proof of claim. As a result, Lasater does not have standing to assert this claim and it is subject to disallowance for that reason.

Vidahl argued, without legal analysis, that this would automatically result in the dividend going to her by transfer. As Lasater's counsel pointed out in closing argument, however, such is not the case. If a claim is disallowed, there is nothing to transfer. Because Vidahl never filed her own claim, disallowing Lasater's does not have the result Vidahl desires. The court will, however, proceed to analyze Vidahl's argument that she owned the certificates at Mr. Palmer's death because they were held with rights of survivorship.

THE FORM OF OWNERSHIP

Under Ohio law, there is no such thing as a joint tenancy with an incidental right of survivorship. *In re Hutchinson's Estate*, 166 N.E. 687 (Ohio 1929) (paragraph two of the syllabus).¹² Parties may, however, contract for joint ownership with rights of survivorship. The nature of a joint account is governed by these rules:

The opening of a joint and survivorship account in the absence of fraud, duress, undue influence or lack of capacity on the part of the decedent is conclusive evidence of his or her intention to transfer to the surviving party or parties a survivorship interest in the balance remaining in the account at his or her death

The opening of a joint or alternative account without a provision for survivorship shall be conclusive evidence, in the absence of fraud or mistake, of the depositor's intention not to transfer a survivorship interest to the joint or alternative party or parties in the balance of funds contributed by such depositor remaining in the account at his or her death. Such funds shall belong in such case exclusively to the depositor's estate, subject only to claims arising under other rules of law

Wright v. Bloom, 635 N.E.2d 31 (Ohio 1994) (paragraphs two and three of the syllabus). Vidahl cites the first holding as support for her claim that the funds transferred to her upon her father's death. Lasater argues that Vidahl is not entitled to the funds based on the second holding. It is necessary, therefore, to determine whether the certificates are held in joint and survivorship form or in joint or alternative form.

Vidahl acknowledged at trial that Mr. Palmer contributed all of the money used to purchase the certificates and he did not intend any of it to be a *present* gift to Vidahl. Oddly, she did not acknowledge that the certificates at issue do not bear the legend "joint and survivorship,"

¹² The law stated in an Ohio Supreme Court opinion is found in its syllabus (if one is provided) as well as its text and footnotes. *See* OHIO REP. OP. R. 2.2.

although plainly they do not. Instead, she argues that she has a joint and survivorship interest in three of the certificates under this theory:

Starting in 2002, Mr. Palmer purchased certificates that listed the owners as “Ann Palmer¹³ or Dan L. Palmer Payable to Either or Survivor.”¹⁴ When those certificates matured, Mr. Palmer chose to leave the money at Fair Finance, reinvesting the funds into new certificates more than once.¹⁵ Although the four remaining certificates list Mr. Palmer and Vidahl as owners without joint and survivorship language, Vidahl argues (as to three of the certificates)¹⁶ they still are held as survivorship accounts because the 2002 designation carries through from one certificate to the next so long as Mr. Palmer bought the later certificates using the original funds.

Vidahl does not cite any law to support her theory that after an individual purchases a certificate in the joint and survivor form, every certificate purchased after that is also joint and survivor even when the certificate matures and the money is invested in new certificates with different account numbers, owners, maturity dates, and terms, and without the joint and survivor designation. The law is, in fact, to the contrary.¹⁷ The certificates are either joint and survivor

¹³ Ann Palmer, Mr. Palmer’s second wife, died on March 7, 2009.

¹⁴ Vidahl exhs. 8, 9, 10

¹⁵ *See* the court’s chart at the end of this opinion for the transactions reflected in the exhibits offered into evidence.

¹⁶ Vidahl did not identify the three certificates.

¹⁷ Additionally, Vidahl relies on handwritten notations by an unidentified person to establish her factual argument that the money can be traced from the 2002 transaction through to the last transactions. There was no competent testimony on this point, only conjecture.

instruments because they are expressly so labeled, or they are not. Here, undeniably, they are not. Vidahl did not, therefore, become the sole owner when Mr. Palmer died.¹⁸

What, then, *did* happen to the ownership of the certificates on Mr. Palmer's death? The facts in this case fall squarely within *Wright v. Bloom*'s rule as to joint or alternative accounts. As there was no provision for survivorship, it is conclusively presumed that Palmer did not intend to transfer an interest in the certificates to Vidahl upon his death. And because it is clear that Mr. Palmer was the sole source of all of the funds invested in the four certificates, the certificates and any right to payment in the chapter 7 case belong to his probate estate.

WHAT HAPPENS NEXT

Based on this discussion, Lasater did not prove she is a creditor with the right to the dividend, either personally or as trustee. Neither did Vidahl. The court can identify only two other possible dispositions of the funds:

- (1) the dividend should be paid to Mr. Palmer's estate; or
- (2) any dividend should be absorbed into the general chapter 7 bankruptcy estate since neither claiming party established the right to receive it.

There are problems with each alternative. As to the first, the state court administrator did not file a proof of claim and moreover expressly stated he would not claim an interest in the funds. Arguably, though, he is not actively claiming the funds—they would instead become assets of the probate estate through the acts of Lasater and Vidahl. With the probate estate reopened, the state court judge will determine how the funds should be distributed. As to the

¹⁸ Lasater's allegation that Vidahl exercised undue influence in acquiring an interest in the certificates is moot because Vidahl failed to prove that she has an interest under state law.

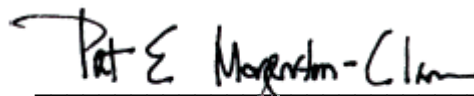
second, while the law would support the result, it seems inequitable that Mr. Palmer's money, presumably acquired through his hard work and fiscal responsibility, should go outside of his family.

The parties did not brief the law applicable to this issue and the court believes they should have the opportunity to do so. IT IS, THEREFORE, ORDERED that on or before **February 16, 2016, the parties and the chapter 7 trustee** are each to file a brief limited to three pages on the issue of whether the funds should go to Mr. Palmer's estate or to the bankruptcy estate. The court is not granting permission for either Lasater or Vidahl to argue the merits of the court's preliminary decision as set out in this opinion, just to address the limited issue stated here. Filing the briefs will not be considered a waiver by any party of the right to appeal from the court's final order.

* * * * *

In closing, the court once again¹⁹ suggests that given the amount of the entire dividend (in the range of \$25,000.00) and the legal fees incurred over the last several years and to be incurred, it would be a good idea for the parties to set aside their long-running disagreement and reach a settlement. Should they decide not to do so, the court will review the briefs and issue a final order.

IT IS SO ORDERED.


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

¹⁹ See docket 2126.

EXHIBIT TO INITIAL MEMORANDUM OF OPINION RE CLAIM #5024

On September 3, 2002, Mr. Palmer purchased these certificates:

- V6²⁰- 60777²¹ Ann Palmer or Dan Palmer
Payable to either or survivor
\$17,000.00
Maturity date March 3, 2003
- V6- 60778²² Ann Palmer or Daniel L. Palmer
Payable to either or survivor
\$39,000.00
Maturity date March 3, 2003
- V6 60779²³ Ann Palmer or Dan Palmer
Payable to either or survivor
\$44,000.00
Maturity date March 3, 2003

On November 16, 2004, Mr. Palmer purchased these certificates:

- V6-73540²⁴ Ann Palmer or Dan Palmer
Payable to either or survivor
\$17,000.00
Maturity date May 16, 2005
- V6-73541²⁵ Ann Palmer or Daniel L. Palmer
Payable to either or survivor
\$39,000.00

²⁰ V6 stands for 6 month variable rate investment certificate

²¹ Vidahl exh. 10D.

²² Vidahl exh. 9D.

²³ Vidahl exh. 8D.

²⁴ Vidahl exh. 10C.

²⁵ Vidahl exh. 9C.

Maturity date May 16, 2005

V6-73542²⁶ Ann Palmer or Dan L. Palmer
Payable to either or survivor
\$44,000.00
Maturity date May 16, 2005

On May 16, 2005, Mr. Palmer purchased these certificates:

V6-77651²⁷ Ann Palmer or Dan L. Palmer
Payable to either or survivor
\$44,000.00
Maturity date November 16, 2005

V6-77652²⁸ Ann Palmer or Dan L. Palmer
Payable to either or survivor
\$39,000.00
Maturity date November 16, 2005

V6-77653²⁹ Ann Palmer or Dan L. Palmer
Payable to either or survivor
\$17,000.00
Maturity date November 16, 2005

On November 16, 2005, Mr. Palmer purchased these certificates:

V24³⁰-81692 Ann Palmer or Dan Palmer and Lena Vidahl
Payable to either or survivor
\$44,000.00
Maturity date November 16, 2007

V24-81693³¹ Ann Palmer or Dan Palmer and Lena Vidahl

²⁶ Vidahl exh. 8C.

²⁷ Vidahl exh. 8B.

²⁸ Vidahl exh. 9B.

²⁹ Vidahl exh. 10B.

³⁰ V24 stands for 24 month variable rate investment certificate. Vidahl exh. 8A.

³¹ Vidahl exh. 9A.

Payable to either or survivor
\$39,000.00
Maturity date November 16, 2007

V24-81694³² Ann Palmer or Dan Palmer and Lena Vidahl
Payable to either or survivor
\$17,000.00
Maturity date November 16, 2007

On November 18, 2005, Mr. Palmer purchased this certificate:

V36-81795³³ Dan Palmer or Ann Palmer Lena Vidahl, POA
Payable to either or survivor
\$50,000.00
Maturity date November 18, 2008

On August 28, 2006, Mr. Palmer purchased this certificate:

V60-88997³⁴ Dan Palmer and Lena Vidahl
\$50,000.00
Maturity date August 28, 2011

On November 12, 2007, Mr. Palmer purchased this certificate:

V24-101778³⁵ Dan Palmer and Lena Vidahl
\$100,000.00
Maturity date November 12, 2009

On November 18, 2008, Mr. Palmer purchased this certificate:

V24-112857³⁶ Dan Palmer and Lena Vidahl
\$50,000.00
Maturity date November 18, 2010

³² Vidahl exh. 10A.

³³ Vidahl exh. 12

³⁴ Vidahl exh. 14

³⁵ Vidahl exh. 7.

³⁶ Vidahl exh. 11

On April 13, 2009, Mr. Palmer purchased this certificate:

V24-116987³⁷ Dan Palmer and Lena Vidahl
\$50,000.00
Maturity date April 13, 2011

In sum, as of the petition date, only the last four certificates had not matured.³⁸

³⁷ Vidahl exh. 13.

³⁸ Vidahl exh. 6