

Sibling sues co-trustees for withholding his share of proceeds

Verdicts & Settlements

By Mass. Lawyers Weekly staff

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\$722,890.38 verdict

The plaintiff was a one-seventh shareholder of a Massachusetts business trust owned equally by seven siblings. He sued his two sisters who were co-trustees of the trust for conspiring with one another, the trust's lawyer and another sibling, alleging that they wrongfully withheld his one-seventh share of the sale proceeds of the trust's only asset, which was a prime piece of commercial real estate in Winchester. The property had fallen into disuse and had been vacant for several years.

The plaintiff sought to persuade his siblings to sell the property on the open market to anyone offering the highest price. Over his objection, the defendants and siblings entered an agreement to sell the property for \$4 million. The plaintiff believed the property was worth at least \$1 million more and filed suit against his sisters, the co-trustees, for breach of fiduciary duty.

The defendants then agreed to sell the property to a buyer who offered \$5.16 million. However, as a result of the pandemic, that buyer was unable to obtain financing and defaulted.

Over the plaintiff's objection, the defendants then sold the property for \$4 million to the first buyer, after giving him a \$387,000 credit for the second buyer's deposit. The plaintiff believed that the \$4 million was too low and that the property was worth more.

Following the sale, the defendant co-trustees, based on the advice of their lawyer (who was also their trial counsel), withheld the plaintiff's one-seventh share of the sale proceeds on the pretext that the trust had various claims against the plaintiff.

Unbeknownst to the plaintiff, the purchaser of the trust property was actually a one-third partner with another sibling who was a two-thirds partner. The two-thirds interest of this other sibling was never disclosed to the plaintiff; the secret ownership — and the fact that the trust's lawyer knew of it — only came to light during discovery.

At trial, all parties testified that the wishes of the siblings' parents, who originally set up the trust, were that all siblings should be treated equally and that no sibling would benefit from the trust property at the expense of any other siblings.

The plaintiff presented claims for breach of fiduciary duty, civil conspiracy and unjust enrichment. During jury empanelment, the plaintiff objected to the defendants' attorney consistently using peremptory strikes to eliminate all men from the jury. The judge sustained the objection and seated the final juror, who was the only male among eight jurors.

Both defendants were represented by the same counsel, but only one of them attended the trial.

The jury found the trust and defendants personally liable on all claims. The



amount the jury awarded was the exact number the plaintiff requested in closing argument. The final judgment entered by the court topped \$1 million.

Action: Wills and trusts

Injuries alleged: Breach of fiduciary duty, civil conspiracy, unjust enrichment

Case name: Gattineri v. Ferazzi et al.

Court/case no.: Middlesex Superior Court/No. 2081-cv-00126

Jury and/or judge: Jury/Judge Camille Sarrouf, Jr.

Demand: \$451,000

Highest offer: \$0

Amount: \$722,890.38

High-low agreement: no

Date: March 21, 2023

Attorney: Leonard A. Frisoli, Zaheer A. Samee, Charles J. Frisoli, Frisoli Associates, P.C. (for the plaintiff)