

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

Bristol Division

DOCKET NO. BR15E0006QC ✓
BR13P2422EA

**PATRICIA A. GIROUX, Personal Representative of the Estate of Joseph A. Peixoto
and Trustee of the Oakland Peixoto Realty Trust u/d/t Dated May 19, 2006,**
Plaintiff/Defendant-in-Counterclaim

v.

**ARTHUR LARANJO, STEPHEN LARANJO, ELIZABETH REIS,
JOHN REIS, and SUSAN TOOLIN,**
Defendants/Plaintiffs-in-Counterclaim

and

**MARIA BERNADETTE LARANJO, MARIA ANTOINETTE REIS,
and MARIA LOURDES AMARAL,**
Interested Persons/Plaintiffs-in-Counterclaim

and

**PARTICIA A. GIROUX, JOSEPH H. ROSE,
and NORTH EASTON SAVINGS BANK,**
Interested Persons

MEMORANDUM OF DECISION and ORDER

(On Plaintiff/Defendant-In-Counterclaim's Motion for Fees and Costs,
filed August 15, 2016)

The above matter was before the Court (Field, J.) for hearing on August 30, 2016. The plaintiff/defendant-in-counterclaim Patricia A. Giroux (hereinafter "the Plaintiff") was represented at the hearing in her capacity as Personal Representative of the Estate of Joseph A. Peixoto and as Trustee of the Oakland Peixoto Realty Trust by Attorney David J. Correia and Attorney Eric D. Correia. The Plaintiff was represented in her individual capacity by Attorney Joseph F. DeMello. The defendants/plaintiffs-in-counterclaim, Arthur Laranjo, Stephen Laranjo, Elizabeth Reis, John

Reis, and Susan Toolin (hereinafter "the Defendants"), were represented by Attorney Sean Michael Murphy.

After hearing and upon review of the pleadings, the Court hereby enters the following **ORDER**:

The Motion for Fees and Costs filed by the plaintiff/defendant-in-counterclaim is **ALLOWED** as follows:

1. The Attorney's Fees and Costs are shifted to the Estate of Joseph A. Peixoto from the shares of Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral in the Realty Trust. Their interests in the Realty Trust are terminated.
2. The Attorney's Fees and Costs are shifted to the Estate of Joseph A. Peixoto from the shares of Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral in the Estate. Their interests in the Estate are terminated.
3. There is no further award of attorney's fees and costs from Arthur Laranjo, Stephen Laranjo, Elizabeth Reis, John Reis, Susan Toolin, Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral, individually.

MEMORANDUM OF DECISION

The Plaintiff serves as the Personal Representative of the Estate of Joseph A. Peixoto (hereinafter "the Estate") and Trustee of the Oakland Peixoto Realty Trust u/d/t dated May 19, 2006 (hereinafter "the Trust"). The Trust was the subject of litigation regarding the validity of the Third Schedule of Beneficiaries and the 2013 Amendment to the Trust.

The Defendants challenged the validity of the Third Schedule of Beneficiaries and the 2013 Amendment, arguing that the Plaintiff breached her fiduciary duty by executing certain documents since she personally benefitted from those documents. On June 18, 2015, the plaintiff/defendant-in-counterclaim Patricia Giroux (hereinafter "the Plaintiff") filed a Motion for Summary Judgment. The Court (Field, J.) allowed the Motion for Summary Judgment finding that the Defendants failed to offer any evidence to support their position other than a conclusory statement that the Plaintiff benefitted by the transaction and entered Judgment in favor of the Plaintiff on March 4, 2016. On August 15, 2016, the Plaintiff filed a Motion for Fees and Costs pursuant to M. G. L. c. 215, § 45.

The Plaintiff requests the Court award attorney's fees and costs to the Estate of Joseph A. Peixoto from the shares of Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral in the Oakland Peixoto Realty Trust and in the Estate of Joseph A. Peixoto. The Plaintiff also requests an award of attorney's fees and costs from Arthur Laranjo, Stephen Laranjo, Elizabeth Reis, John Reis, Susan Toolin, Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral, individually.

"In contested cases before a probate court . . . costs and expenses in the discretion of the court may be awarded to either party, to be paid by the other, or may be awarded to either or both parties to be paid out of the estate, which is the subject of the controversy, as justice and equity may require." M. G. L. c. 215, § 45.

The "American rule" provides that parties will bear the expenses of their own legal fees and costs. Notwithstanding same, pursuant to G.L. c.215, § 45, the Probate and Family Court has broad discretion to award, or to shift, attorney's fees and costs in the context of the administration of trusts and estates. M. G. L. c. 215, § 45. The Court must determine whether fees should be awarded against the unsuccessful party as a matter of equity. "The statute expressly vests 'discretion' [in] the court to award, or shift, costs and fees 'as justice and equity may require.'" See Estate of King, 455 Mass. 796, 802-03 (2010). The Court need not find bad faith to make an award under § 45 and a party whose conduct has triggered litigation may be ordered to pay the expenses resulting from that litigation.

Chapter 215, § 45, may be used to rectify situations whether one party was subjected to ongoing litigation to the detriment of the beneficiaries of the estate plan. Additionally, in a will contest, the Court may consider whether a "refusal to shift attorney's fees and costs of the prevailing party to the other side would end up distorting a valid estate plan of the decedent." Strand v. Hubbard, 31 Mass. App. Ct. 914, 915 (1991).

Here, if attorney's fees and costs are not shifted, the shares of the Estate and the Trust to the beneficiaries Patricia A. Giroux and Joseph H. Rose will be significantly diminished, while the shares of the Defendants (Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral) will only be affected slightly. If no litigation had occurred, the Defendants' combined inheritance would have totaled \$144,087.01. Since litigation did occur, and if the fees are not shifted, the Defendants will still receive a combined total inheritance of \$95,912.61, which is less \$48,174.40, shared equally amongst eight individuals. Conversely, the Plaintiff's share in the Estate and Trust will decrease from \$288,174.03 without litigation to \$191,825.20 if no fee shifting occurs. Therefore, the Plaintiff would suffer a personal loss of \$96,348.83 as a result of litigation required to defend the actions against the Estate and Trust.

The Plaintiff's legal fees and costs stemming from her representation by Correia & Correia, LLP total \$137,431.37. By shifting the 10% beneficiary shares of Maria Bernadette Laranjo, Maria Antoinette Reis and Maria Lourdes Amaral, for a total of \$95,912.61, the Plaintiff and Joseph H. Rose, may receive beneficiary shares of \$274,035.99 and \$45,672.69, respectively. These amounts reflect figures closer to the shares the beneficiaries would have received if not for litigation.

In deciding to award attorney's fees and costs, the Court must determine whether the record supports the award by finding it is fair and reasonable after taking a number of factors into account.¹ A reasonable award of attorney's fees may also be dependent upon the conduct of the party seeking the award. See Estate of King 455 Mass. at 807. The Court does not find that these fees are excessive or that the hourly rate charged by Plaintiff's counsel is excessive. There was no credible evidence to support Defendant's assertion that the fees and the hourly rate were excessive. This Court routinely considers attorney's fees and finds that the hourly rate of \$375.00 is within the typical range for attorneys with counsel's length of practice and expertise.

An evidentiary hearing as to fees is not required where award of fees being considered by judge who presided over the trial

October 26, 2016



Katherine A. Field, First Justice
Bristol Probate and Family Court

¹ "In determining what is a fair and reasonable charge to be made by an attorney for his services many considerations are pertinent, including the ability and reputation of the attorney, the demand for his services by others, the amount and importance of the matter involved, the time spent, the prices usually charged for similar services by other attorneys in the same neighborhood, the amount of money or the value of the property affected by controversy, and the results secured. Neither the time spent nor any other single factor is necessarily decisive of what is to be considered as a fair and reasonable charge for such services." Cummings v. National Shawmut Bank, 284 Mass. 563, 569 (1933).