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Trustees can't face individual liability for alleged breach

Failed to make good on unpaid guardianship fees

Eric T. Berkman (mailto:?subject=Trustees can't face individual liability for alleged breach&body=In brief District Court Appellate Division upholds contract claims against family trust over unpaid guardianship fees; Court-ordered fees were supposed to be paid from \$1.6 million sale of real estate;... You can read the content in details following link https%3A%2F%2Fmasslawyersweekly.com%2F2026%2F05%2F09%2Ftrustees-no-personal-liability-guardianship-fees%2F)

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In brief

- District Court Appellate Division upholds contract claims against family trust over unpaid guardianship fees;
Court-ordered fees were supposed to be paid from \$1.6 million sale of real estate;
Panel finds Massachusetts Uniform Trust Code (https://masslawyersweekly.com/tag/massachusetts-uniform-trust-code/?taxo-tag-body) shielded trustees from personal liability;
Chapter 93A (https://masslawyersweekly.com/tag/chapter-93a/?taxo-tag-body) claims fail because sale was not "trade or commerce."

The trustees of a family trust who breached an agreement to use proceeds from the sale of real estate to make good on unpaid guardianship fees could not face individual liability, the District Court Appellate Division has found.

A New Hampshire court appointed plaintiff Dawn Whiting, a legal and tax professional, to serve as guardian for the estate of Alden Fox, owner of valuable real estate in Dracut and the father of the individual trustees of defendant Elm Street Terrace Family Trust.

Whiting was represented by a New Hampshire law firm, plaintiff Ransmeier & Spellman.

When the guardianship concluded, the New Hampshire court ordered that Fox's estate pay Whiting \$29,808 in guardianship fees and the law firm \$39,331 in legal fees.

After the fees went unpaid, Whiting filed affidavits at the Registry of Deeds asserting claims connected with her services, encumbering Fox's real estate.

By that point, Fox's estate was under management of the defendant trust.

Seeking to clear title so Fox's real estate could be sold, the trust's attorney apparently agreed that the outstanding fees would be paid out of sale proceeds in exchange for Whiting and the firm signing a new affidavit - to be held in escrow pending payment - acknowledging the fees had

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been paid.

When the trust sold the property in 2021 for \$1.61 million without notifying the plaintiffs or paying the fees, the plaintiffs brought suit.

Following a bench trial, a Lowell District Court judge found the defendants liable for [breach of contract](https://masslawyersweekly.com/tag/breach-of-contract/?taxo-tag-body) (<https://masslawyersweekly.com/tag/breach-of-contract/?taxo-tag-body>) and Chapter 93A violations and ruled that the trustees were liable personally.

But the Appellate Division, while affirming the breach of contract judgment, found that the Massachusetts Uniform Trust Code shielded the trustees from individual liability.

"[P]laintiffs' breach of contract and breach of the implied covenant of good faith and fair dealing claims sound in contract," [Judge Sarah M. Joss](https://masslawyersweekly.com/tag/judge-sarah-m-joss/?taxo-tag-body) (<https://masslawyersweekly.com/tag/judge-sarah-m-joss/?taxo-tag-body>) wrote for the three-judge panel. "Accordingly, G.L.c. 203E, §1010(a) [which bars individual contract liability of a trustee] – not §1010(b) [which allows for individual tort liability of a trustee] – governs individual liability here."

The panel also found that the defendants could not face Chapter 93A liability because they were not engaged in "trade or commerce" when they sold the real estate.

The 12-page decision is *Ransmeier & Spellman Professional Corporation, et al. v. The Elm Street Terrace Family Trust, et al.*, [Lawyers Weekly No. 13-016-26](https://masslawyersweekly.com/2026/04/25/contract-trustees-chapter-93a/) (<https://masslawyersweekly.com/2026/04/25/contract-trustees-chapter-93a/>).

Well-established doctrine

Boston trusts and estates attorney Eric D. Correia, who was not involved in the case, said that while the plaintiffs were smart to record notice affidavits and put a cloud on the title of the real estate in question in order to protect their interests, it might have been a good idea if they had held onto the revised affidavit until the closing, or at least had it released to the buyer's attorney, instead of letting the defendants' attorney hold it in escrow.

"Unfortunately, this fact pattern illustrates that, as lawyers, we must always assume the worst about others," Correia said. "I am sure the defendants' attorney was acting in good faith when he made the representation that the plaintiffs would be paid at closing, but clearly someone decided to renege on that deal once they had the revised affidavit in their hands."

Jenna R. Wolinetz of Waltham said the panel made the right call regarding the 93A claim. According to Wolinetz, allowing a 93A claim to proceed in this instance, subjecting a family trustee to double or treble damages and mandatory attorneys' fees for the act of selling a single piece of property to pay off the debts of the trusts to which they held a fiduciary responsibility, would have a "devastating chilling effect" on anyone considering stepping into that role.

"Family members agree to manage a trust not because they're in the real estate business but because it's their family," Wolinetz said. "Exposing those individuals to personal liability and consumer protection claims for carrying out a single property sale would make it far harder to find people willing to serve."

In short, the case is a blueprint for strategic enforcement. Control the asset and you control the outcome. Without that leverage, even a valid judgment risks remaining aspirational.

– Harry M. Haytayan, Waltham



Federal judge tosses SOX whistleblower

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What began as an unpaid guardianship fee award only became meaningful once the plaintiffs identified and leveraged the family real estate, which was the one asset that could satisfy the obligation, he explained.

By creating a cloud on the title, Haytayan added, the plaintiffs shifted the dispute from abstract entitlement to transactional necessity.

"At that point, the case effectively became a contract matter driven by the practical need to clear title," Haytayan said. "In short, the case is a blueprint for strategic enforcement. Control the asset and you control the outcome. Without that leverage, even a valid judgment risks remaining aspirational.

Peter M. Malaguti of the Massachusetts School of Law in Andover represented the plaintiffs. Boston's Nicholas P. Shapiro, Alexandria K. Castaldo and Joseph F. Konopka were counsel for the defendants. None of the lawyers responded to requests for comment.

Unpaid fees

Whiting was appointed guardian for Fox's estate on Feb. 1, 2011. Ransmeier & Spellman represented her in her guardianship work.

A New Hampshire court terminated the guardianship in June 2012 and ordered Whiting to file an accounting for services rendered.

The court subsequently awarded Whiting \$29,804 in fees and \$39,331 to the firm.

In July 2011, while Fox was still under guardianship, he executed a warranty deed related to his Dracut property.

The deed was signed by him and his daughter, defendant Gail Fox, under durable power of attorney for Fox's wife, which purported to create a tenancy by the entirety.

On Oct. 7, 2011, Whiting filed an affidavit and notice with the Middlesex Registry of Deeds that, at the time the deed was executed, Fox was under a guardianship order. The affidavit further explained that Whiting was entitled to compensation for her services and would have a lien on Fox's estate.

On July 19, 2012, Whiting filed a second affidavit noting the termination of the guardianship and requiring establishment of a trust to hold Fox's assets.

Gail Fox and her siblings, defendants Wayne and Eugene Fox, created the Elm Street Terrace Family Trust in October 2012 and, as trustees, purchased the Dracut property from Fox.

On June 20, 2015, the trust's attorney, Jeffrey Angley, wrote to the plaintiffs disputing the validity of the affidavits but explaining that in order to satisfy Fox's debts, including the unpaid fees, the defendants needed to sell the property.

To resolve the "cloud on title," he included a draft revised affidavit for Whiting to sign detailing the guardianship history, including the court order, and anticipatorily acknowledging payment of the fees.

Ransmeier & Spellman Professional Corporation, et al. v. The Elm Street Terrace Family Trust, et al. (<https://masslawyersweekly.com/2026/04/25/contract-trustees-chapter-93a/>)

THE ISSUE: Could trustees of a family trust who breached an agreement to use proceeds from the sale of real estate to make good on unpaid guardianship fees face individual liability?

DECISION: No (District Court Appellate Division, Northern District)

LAWYERS: Peter M. Malaguti of the Massachusetts School of Law, Andover (plaintiffs)

Nicholas P. Shapiro, Alexandria K. Castaldo and Joseph F. Konopka, of Phillips & Angley, Boston (defense)

Angley requested that the plaintiffs sign the revised affidavit and return it to his office to hold in escrow pending the sale of development and agricultural use rights to the town of Dracut. He also emphasized that the only way the fees could be paid was through the sale of the property.

After some back and forth with a Ransmeier & Spellman attorney, including assurances that if the sale of agricultural and development rights to the town did not pan out, they would sell the property to a private developer, the plaintiffs signed the affidavit and returned it by mail to Angley on Aug. 17, 2015.

On Aug. 21, 2021, the trust sold the property to a developer for \$1.6 million. The defendants did not notify the plaintiffs of the sale and did not use any proceeds to pay the court-ordered fees.

The plaintiffs' suit followed, which resulted in a bench verdict from District Court Judge Stephen B. Geary in favor of the plaintiffs on their contract and 93A claims.

Geary ordered the individual defendants, whom he found liable both as trustees and individually, to pay double damages and attorneys' fees.

The defendants appealed.

Sounding in contract

While upholding the breach-of-contract verdict, the Appellate Division found that the trustees could not be held liable individually.

While §1010(b) allows for individual liability to be imposed on a trustee for torts committed in the course of administering a trust, §1010(b) states that trustees cannot be held personally liable for a contract entered into in the trustee's fiduciary capacity, the panel noted.

Here, the plaintiffs' claims sounded in contract, rather than tort, it found.

"As such, the precondition for the limiting of personal liability is satisfied and the individual defendants cannot be held personally liable on the breach of contract or breach of the implied covenant claim," Joss wrote.

The panel also found the defendants could not be subjected to Chapter 93A liability because they were not in the business of buying or selling real estate, even if they had a profit motive in selling the Dracut property.

"Hoping to make a profit by selling a property that one has lived in for many years ... is simply a typical process that many homeowners undertake," Joss wrote, quoting the Supreme Judicial Court's 2021 *Sullivan v. Five Acres Realty Trust* (<https://masslawyersweekly.com/2021/03/15/real-property-sale-habitability-g-l-c-93a/>) decision. "Nor can the nature of the buyer convert defendants' actions from private to commercial. The nature of the transaction cannot turn on the nature of the buyer when it is the seller's actions at issue."

Lawyers Weekly No. 13-016-26

Massachusetts Lawyers Weekly

- [Contract – Trustees – Chapter 93A](https://masslawyersweekly.com/?p=553387) (<https://masslawyersweekly.com/?p=553387>)