

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW) CASE NO: 2017-CP-28-831

IN THE MATTER OF:)
LEMUEL WHITAKER BOYKIN, II,)
deceased)

Rigdon H. Boykin, as sole disinterested Co-)
Trustee of the Lemuel Whitaker Boykin, II)
Residuary Trusts A and B,)

Petitioner,)

v.)

Mary Deas Wortley, individually, as Co-)
Trustee of the Lemuel Whitaker Boykin, II)
Residuary Trusts A and B, Co-Trustee of the)
Lemuel Whitaker Boykin Marital Deduction)
Trusts A and B, and as Co-Personal)
Representative of the Estate of Alice S.)
Boykin; Alice B. Belger, individually, as Co-)
Trustee of the Lemuel Whitaker Boykin, II)
Residuary Trusts A and B, and as Co-Personal)
Representative of the Estate of Alice S.)
Boykin; Lemuel Whitaker Boykin, III; and)
May Cantey Boykin)

Respondents.)

ORDER

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SC Court of Appeals

MOTION FOR ATTORNEY'S FEES

- The applicable statutes and the testamentary document authorize lawyers to be hired by the Co-Trustees and to be compensated from trust principal or income or both.
 - S.C. Code Ann. § 62-7-709 (“Reimbursement of expenses”)
 - S.C. Code Ann. § 62-7-816 (“Specific powers of trustee”)
 - S.C. Code Ann. § 62-7-1004 (“Attorney’s fees and costs”)
 - [Item XIV, Paragraph J of the L.W. Boykin, II Last Will and Testament] – Co-Trustees are authorized to employ and compensate, out of the principal or income of the Residuary Trust, agents, accountants, brokers, attorneys, tax specialists, and their assistants, advisors deemed needful for the proper management, handling and

administration of the Residuary Trust, provided such professional representatives are selected and retained with reasonable care.

- **[Item XIV, Paragraph N]** – Co-Trustees have “the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management” of the Residuary Trust.
- The attorney’s and consultant’s fees incurred by Petitioner have been occasioned by his attempt to manage and operate the Trust, and therefore those are valid fees chargeable to the Trust.
- While the Court finds that the fees of Petitioner’s counsel should be paid by the Trust, the Court makes no determination at this time regarding the amount or reasonableness of such fees.
- Responsive pleadings have yet to be filed by the Co-Trustee Respondents, and the Court shall defer making a ruling as to the reasonableness of any fees incurred until Respondents’ pleadings are filed, so that the Court may consider any allegations that the fees incurred to date have been improper.
- However, nothing in the record indicates that Petitioner has done anything to benefit himself, or that the efforts resulting in attorney’s and consultant’s fees have been for any purpose other than to benefit the Trust.
- The Court furthermore understands that the pleadings allege that certain technical information or materials relating to the Trust have not been made available to Petitioner, and hereby orders that Petitioner is entitled to any and all materials related to the Trust. It is fundamental that these materials shall be freely exchanged by and amongst the Co-Trustees in order to assist with carrying out their duties.
- Therefore, the Court **GRANTS** Petitioner’s Motion for Attorney’s Fees, in an amount to be determined at a later time.

MOTION FOR APPOINTMENT OF TRUST COUNSEL

- The Court allows the appointment of independent counsel whose role will be to impartially advise all three Co-Trustees of their responsibilities and duties, represent the Trust as an entity in any matters requiring legal representation and assist in administering the Trust.
- The fees of this independent counsel should be paid by the Trust.
- Within 15 days of the date hereof, the parties shall attempt to agree on the selection of independent counsel. In the event the parties cannot reach an agreement within the 15 day

time frame, the parties shall each submit one (1) candidate to the Court within 10 days. The Court will then appoint independent counsel taking into consideration, but not being bound by, the recommendations of counsel.

MOTION TO STRIKE

- Rule 12(f) of the South Carolina Rules of Civil Procedure sets forth the standard for a Motion to Strike.
- Rule 12(f) provides:
 - Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.
- “Disinterested Trustee” is a statutory term of art, much like “Personal Representative.” It is neither redundant, immaterial, impertinent, nor scandalous. And in this case, Petitioner is the “sole” disinterested trustee.
- The corollary of “disinterested” is “non-beneficiary.”
- S.C. Code 62-7-904B(6) provides that an “interested trustee” means any of the following:
 - (a) an individual trustee who is a qualified beneficiary;
 - (b) a trustee who may be removed and replaced by an interested distributee;
 - (c) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.
- Petitioner is not an “interested trustee” under any of the definitions above.
- For the reasons stated above, the Co-Trustee Respondents’ Motion to Strike is **DENIED.**

AND IT IS SO ORDERED.

Columbia, SC
February _____, 2018

The Honorable Jean H. Toal
Acting Circuit Court Judge

Charleston, South Carolina



Kershaw Common Pleas

Case Caption: Rigdon Boykin Co-Trustee , plaintiff, et al VS Mary Deas Wortley ,
defendant, et al
Case Number: 2017CP2800831
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758