

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
PROBATE DIVISION

U. S. Bank, N.A., as Trustee of the)
Living Trust Agreement of)
Lorenz K. Ayers, Dated June 5, 1962,)
As Amended,)
Plaintiff)
v.) Cause No. 1722-PR00637
Anne Herbst, et al)
Defendants.)

ORDER

The Motions for Attorney fees filed on behalf of US Bank, in its capacity as Trustee, defendant Anne Herbst, and defendant Elizabeth Molk were heard and submitted on November 22, 2019. In addition, the Court considered defendant Molk's Amended Motion for Entry of Judgment Pursuant to Rule 74.01b. The parties appeared by their respective counsel. Upon due consideration of the evidence and argument presented, the Court finds as follows:

On September 28, 2017, US Bank, in its capacity as Trustee of the Anne Herbst Trust, filed a Petition for Declaratory Judgment seeking a declaration by the Court that it was authorized to convert the separate trust share of Anne Herbst into a Unitrust.

On November 13, 2017, defendant Elizabeth Molk filed an answer to the Petition seeking the dismissal of said Petition and a Counterclaim for Declaratory Judgment seeking a declaration by the Court that the Trustee did not have the authority to convert a separate trust into a Unitrust. In addition, Defendant Elizabeth Molk requested a judgment declaring Section 469.411 RSMo. unconstitutional.

On June 28, 2018, Defendant Molk filed a Motion to Withdraw her consent to a previous Unitrust election in regard to the separate trust of defendant Donald Herbst.

On June 28, 2019, the Court entered a Judgment granting the Plaintiff's Motion for Summary Judgment on the Petition for

Declaratory Judgment and denying Defendant Molk's Motion for Partial Summary Judgment on Count I of her Second Amended Counterclaim.

On September 9, 2019, Defendant Molk dismissed Count II of her Second Amended Counterclaim.

The question of attorney fees is the only issue still pending in this matter.

Anne Herbst retained the legal services of Rossiter & Boock. The firm enter their appearance on behalf of Anne Herbst on June 5, 2018, and on behalf of Donald Herbst on August 31, 2018. A review of the invoices provided supports the conclusion that a majority of the firm's time in this matter was spent reviewing documents and talking to the clients and other parties related to the cause of action. Anne Herbst and Donald Herbst supported the effort of the Trustee and were in agreement with the Trustee's interpretation of the Trust. At no time were they required to defend themselves in a manner separate from the actions of the Trustee. Anne and Donald are certainly entitled to the own legal representation. The Court however believes that in this case equity and justice require that they be responsible for their own legal fees.

Elizabeth Molk, along with her children, David, Peter and Rebecca, were the only defendants to file an answer. In addition, they were also the only defendants to file a counterclaim. Elizabeth also added a divisive element to the cause of action when she withdrew her prior consent to the conversion of Donald's separate trust. The court believes that Elizabeth's actions were solely intended to protect her personal interest in her separate trust. The Court believes that equity and justice require that Elizabeth Molk be responsible for her legal fees.

The Trustee was represented by Sandberg Phoenix & Von Gontard, P.C. According to the invoices for legal services provided to the Court, their representation of the Trustee in this matter began on June 21, 2017. The Petition for Declaratory Judgment was filed on September 28, 2017. Elizabeth Molk's Answer and Counterclaim was filed on November 13, 2017. The Court believes that equity and justice in this matter require that Elizabeth Molk be responsible for a portion of the legal fees incurred by the Trustee.

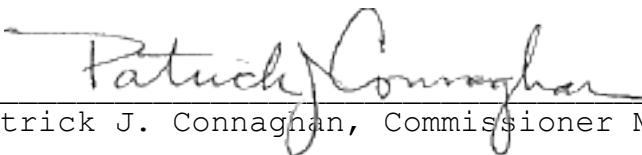
It is therefore the Order and Judgment of the Court that the Petition for fees filed on behalf of Defendant Elizabeth Molk is denied.

The Petition for fees filed on behalf of Defendants Anne Herbst and Donald Herbst is denied.

The Petition to Order Elizabeth Molk to Reimburse the Trusts is granted as follows: Elizabeth Molk is ordered and directed to reimburse the Anne Trust in the amount of \$94,693.26, the Donald Trust in the amount of \$20,291.25, and the Catherine Trust in the amount of \$20,291.25.

All other matters having been resolved, it is not necessary to enter a Judgment in regard to the Motion for Entry of Judgment Pursuant to Rule 74.01b. This Judgment constitutes a final Judgment of the matters pending before the Court in this cause of action.

So Ordered on December 15, 2019.



Patrick J. Connaghan, Commissioner MBE#31003

The above Order entered by the Commissioner is hereby confirmed.

So ordered on December 15, 2019.



Rex Burlison
Judge of the Probate Division