STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: January 7, 2014]

ESTATE OF EDYTHE L. DONATELLI and CRAIG E. DONATELLI, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF EDYTHE L. DONATELLI	:	
	:	**C.A. No. PC-2011-3423**
vs.	:	
BERKSHIRE PLACE, LTD. and BERKSHIRE PLACE ASSOCIATES, LP	:	

DECISION

SILVERSTEIN, J. Before the Court is a Motion for Summary Judgment filed by Defendants Berkshire Place, Ltd. (Berkshire Place or the Corporation) and Berkshire Place Associates, LP (BPA or the Limited Partnership) (collectively, the Defendants or the Berkshire Entities) in connection with their counterclaim against Plaintiffs Estate of Edythe L. Donatelli and Craig E. Donatelli, Individually and as Executor of the Estate of Edythe L. Donatelli (collectively, the Estate). The Defendants seek an order requiring the Estate to offer its ownership interests in Berkshire Place and BPA back to those respective entities or the other owners of those entities.

I

Facts and Travel

At the center of this dispute are Edythe L. Donatelli's (Donatelli) ownership interests in two closely related business entities. At the time of her death on December 10, 2005, Donatelli owned 19.8% of the shares of Berkshire Place, a Rhode Island corporation that manages and operates a nursing home facility in Providence. (Aff. of J. Rotella, ¶¶ 2, 3, 5.) In addition, at the

time of her death, Donatelli held a 39% limited partnership interest in BPA, a Rhode Island limited partnership that owns the realty at which the Berkshire Place facility is located. Id. at 3. Donatelli's estate was opened in the Town of North Providence Probate Court on July 17, 2006, and remains open to this day. Id., Ex. C. The Berkshire Place By-laws (the By-laws) contain a section dealing with "preemptive rights," which requires any shareholder to offer to sell his or her shares to the corporation or the corporation's other shareholders before transferring the shares in question to a third party. In addition, the BPA Agreement and Certificate of Limited Partnership (the Partnership Agreement) contains a section requiring that no interest of a general or limited partner may be assigned or devised until first offered to the other partners at current market value.

On June 16, 2011, the Estate filed its Complaint in this civil action, seeking access to various books and records withheld by the Berkshire Entities, claiming that those records are necessary for purposes related to the administration of Donatelli's estate. On July 11, 2011, the Berkshire Entities filed an Answer and Counterclaim. The Berkshire Entities' Counterclaim alleges that the Estate is in breach of the By-laws and the Partnership Agreement because the Estate has not offered to sell its interests in Berkshire Place or BPA back to the corporation, shareholders, or other partners, respectively. The parties agree that the 19.8% interest in shares of Berkshire Place, held by the Estate, has a fair market value of $337,000. In addition, the parties do not agree as to the value of Donatelli's 39% partnership interest in BPA held by the Estate.

In the time period since the Estate's opening, it is undisputed that the Estate has not attempted to sell or transfer Donatelli's interests in the Berkshire Entities to a third party. However, the Berkshire Entities contend that "the Estate's intention is to pass [its interests] to

other Donatelli family members without consideration through the probate process." In addition, the parties disagree about whether the Estate has made any offer to sell its interests back to the Berkshire Entities that would satisfy the relevant provisions of the By-laws or the Partnership Agreement. The Berkshire Entities contend that the Estate has made no offer to sell back Donatelli's interests in Berkshire Place or BPA that would subsequently permit the Estate to sell or transfer Donatelli's interests to a third party. The Estate claims that it made an offer to sell back Donatelli's interests in Berkshire Place and BPA on at least two occasions. First, the Estate claims that its offer to sell back Donatelli's combined interest in Berkshire Place and BPA for $2,000,000 was memorialized in a letter dated October 28, 2008 between counsel for the Estate and counsel for the Berkshire Entities. The Estate also claims that it made a subsequent offer to sell its combined interests back to the Berkshire Entities for $800,000, via a letter dated May 21, 2009. The Estate claims the Berkshire Entities rejected both of these offers, instead making a counteroffer to the Estate for $225,000. In their memoranda, the Berkshire Entities describe these communications not as "offers" or "counteroffers," but as part of settlement negotiations. In addition, the Berkshire Entities argue that the Estate's purported offers do not satisfy the preemptive rights section of the By-laws or the corresponding section of the Partnership Agreement because they do not distinguish between the Berkshire Entities, but instead offer both of the entities for sale as a single package.

In their instant motion, the Berkshire Entities request an order from this Court directing the Estate to offer to sell Donatelli's interest in Berkshire Place, back to Berkshire Place, for $337,000. In addition, the Berkshire Entities request an order directing the Estate to transfer Donatelli's partnership shares in BPA to BPA's surviving partners.

II

Standard of Review

When considering a motion for summary judgment, the Court "does not pass upon the weight and credibility of the evidence, but must consider the affidavits and other pleadings in a light most favorable to the party opposing the motion." Weaver v. Am. Power Conversion Corp., 863 A.2d 193, 200 (R.I. 2004). "[T]he trial justice must look for factual issues, not determine them." Steinberg v. State, 427 A.2d 338, 340 (R.I. 1981). Summary judgment is proper when "no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Rule 56(c)). Conversely, "if the record evinces a genuine issue of material fact, summary judgment is improper." Shelter Harbor Conservation Soc'y, Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (citations omitted). "'Summary judgment is an extreme remedy that should be applied cautiously.'" Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011) (quoting Plainfield Pike Gas & Convenience, LLC v. 1889 Plainfield Pike Realty Corp., 994 A.2d 54, 57 (R.I. 2010)).

This Court must also tread cautiously when entertaining disputes over property still subject to the jurisdiction of the Probate Court. See, e.g., Dugdale v. Chase, 52 R.I. 63, 64, 157 A. 430, 431 (1931) ("The probate court has exclusive original jurisdiction in matters relating to the probating of wills."); Donato v. BankBoston, N.A., 110 F. Supp. 2d. 42, 45 (D.R.I. 2000) (citations omitted) (finding that under Rhode Island law, "claims regarding the handling of a will and/or estate . . . were subject to the exclusive jurisdiction of the Probate Court"). "Rhode Island courts of general jurisdiction–such as this Court–have been largely precluded from adjudicating

cases even tangentially concerning the administration of a probate estate." Burt v. Rhode Island Hosp. Trust Nat'l Bank, 2006 WL 2089254, at *5 (R.I. Super. Ct. July 26, 2006) (Savage, J.). The analogous "probate exception" to federal jurisdiction states that a federal court lacks jurisdiction over cases involving probate matters even when the requirements of federal diversity jurisdiction have been met. Lepard v. NBD Bank, 384 F.3d 232, 237 (6th Cir. 2004). The United States Supreme Court has held that "the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; [and] precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." Marshall v. Marshall, 547 U.S. 293, 311-12 (2006). On the other hand, "cases with factual circumstances that are more tenuously connected with the direct probate of a will or administration of an estate . . . will not be barred by the probate exception." Burt, 2006 WL 2089254, at *7.

III

Analysis

A

The Estate's Interest in Berkshire Place

The Berkshire Entities argue that before the Estate may transfer Donatelli's shares in Berkshire Place to a third party, the By-laws require the Estate to offer Donatelli's shares for sale to the Corporation and its shareholders. The Berkshire Entities claim that the Estate intends to transfer Donatelli's shares to certain of Donatelli's heirs. As a result, the Berkshire Entities request an order from this Court requiring the Estate to offer to sell Donatelli's shares back to the Corporation or its shareholders for the agreed-upon fair market value of those shares, or $337,000.

Section 6.02 of the By-laws, titled "Preemptive Right," states:

> "A. No Shareholder, including the executor or administrator of a deceased Shareholder, shall have the right to sell, transfer (by gift or otherwise), pledge or encumber his or her stock in this corporation unless he or she shall first have offered in writing to sell such stock to the corporation (or if the corporation fails to purchase the same, then to all of the other shareholders, on a pro rata basis) at the lowest price at which he or she is willing to sell the same, and the corporation and/or the other Shareholders have either refused to purchase said stock or have neglected to exercise their option to purchase within twenty days after receipt of such notice as hereinafter set forth.
>
> (. . . .)
>
> "D. If the other Shareholders shall either notify the selling Shareholders that they do not desire to purchase his stock or fail, within twenty days after receipt of his offer to sell, to notify him of their intention to purchase as aforesaid, the selling Shareholder shall be entitled to sell his stock to any person at not less, however, than the amount at which he offered it to the corporation and all of the other Shareholders.
>
> "E. The corporation shall be entitled to refuse to register the name of any transferee of stock as an owner thereof on its records if he or she shall have paid less than the amount at which it was offered to the corporation and all of the other Shareholders, and may require a statement from him or her under oath as to the amount paid for said stock." (Emphasis added.)

It is a "fundamental principle[] of corporate law" that the by-laws of a corporation "have all the force of contracts as between the corporation and its members and as between the members themselves." Adams v. Christie's, Inc., 880 A.2d 774, 783 (R.I. 2005). In addition, "'[t]he bylaws of a corporation are presumed to be valid, and the courts will construe . . . bylaws in a manner consistent with the law.'" Id. (quoting Frantz Mfg. Co. v. EAC Indus., 501 A.2d 401, 407 (Del. 1985)). Because corporate by-laws are contracts among a corporation's shareholders, rules of contract interpretation apply. Airgas, Inc. v. Air Products and Chemicals, Inc., 8 A.3d 1182, 1188 (Del. 2010). "When contract language is clear and unambiguous, words

contained therein will be given their usual and ordinary meaning and the parties will be bound by such meaning." Singer v. Singer, 692 A.2d 691, 692 (R.I. 1997). However, "[a]n ambiguity in a contract cannot be resolved on summary judgment." Rotelli v. Catanzaro, 686 A.2d 91, 95 (R.I. 1996). "When a contract is ambiguous, and the pleadings, discovery materials, and affidavits indicate a dispute in respect to the parties' intent, there exists a genuine issue of material fact that must be resolved by the trier of fact." Id. (citing Lennon v. MacGregor, 423 A.2d 820, 822 (R.I. 1980)).

The Berkshire Entities are correct that the By-laws unambiguously require the "executor or administrator of a deceased shareholder" to make a written offer to sell the deceased shareholder's shares back to Berkshire Place (and/or the shareholders of Berkshire Place) before he or she may transfer the shares to a third party. It is equally unambiguous that, under the By-laws, such an executor or administrator's offer of sale need not be tied to any "fair-market value" of the shares. Instead, § 6.02 merely requires an executor to offer the deceased shareholder's shares "at the lowest price at which he or she is willing to sell the same." Therefore, the By-laws clearly require the Estate to offer to sell Donatelli's shares back to the Corporation and/or its shareholders prior to attempting any transfer of the shares to a third party. However, the price at which the Estate offers Donatelli's shares to the Corporation, prior to attempting any transfer, is a unilateral decision for the Estate to make in its own discretion. The "lowest price" at which the Estate is willing to sell Donatelli's interest in the Corporation may therefore be above the agreed-upon fair market value of $337,000, or it may be below that amount. As a result, the Court is unwilling to compel the Estate to make an offer of sale back to the Corporation or its shareholders at any particular price, notwithstanding the fact that the parties agree that Donatelli's interest in Berkshire Place has a fair market value of $337,000.

In addition, § 6.02(E) of the By-laws unambiguously gives the Corporation a remedy should an executor or administrator of a deceased shareholder attempt to transfer the shareholder's shares to a third party without satisfying the basic preemption requirements of § 6.02. Section 6.02(E) states that "[t]he corporation shall be entitled to refuse to register the name of any transferee of stock as an owner thereof on its records if he or she shall have paid less than the amount at which it was offered to the corporation and all of the other Shareholders." Therefore, if the Estate, at some point in the future, attempts to transfer Donatelli's interest in the Corporation at a value lower than that which it offers to the Corporation and/or the shareholders of Berkshire Place, Berkshire Place may attempt to challenge the validity of the transfer by invoking § 6.02(E). Subsection (E) of the "Preemptive Right" portion of the By-laws clearly gives Berkshire Place the right to challenge a transferee's legitimacy as a shareholder when the transferee's shares are transferred at a value lower than what was offered to the Corporation and/or its existing shareholders.

As the matter stands, the Court is highly skeptical that any offer of sale has been made by the Estate that would satisfy § 6.02 of the By-laws, thereby permitting the Estate to transfer Donatelli's interest in the Corporation to a third party after expiration of the time period set forth in the By-laws. There is no evidence that the Estate gave Berkshire Place an opportunity to separately buy back Donatelli's interest in the Corporation outside the context of a package deal. Moreover, even if the Estate's purported offers to sell back Donatelli's interests in the combined Berkshire Entities (which are themselves the subject of a factual dispute between the parties) satisfied the "Preemptive Right" portion of the By-laws, it is beyond dispute that the Estate has not yet attempted any transfer of Donatelli's interest in Berkshire Place to a third party, which could potentially disrupt the management of the Corporation. This Court agrees that the Probate

Court does not have jurisdiction "to intrude upon the management of [a] corporation which was partially owned by [a] decedent." Giacobbi v. Cardosi, 2003 WL 1233228, at *3 (R.I. Super. Ct. Feb. 23, 2005). However, any dispute as to the management of Berkshire Place is, at this point in time, entirely speculative, resting decidedly on the Berkshire Entities' predictions about what the Executor of the Estate intends to do in the future. Whether or not the Estate may hold Donatelli's interest in Berkshire Place indefinitely, or whether there must come a point in time when proceedings in Probate Court must come to a close, is a matter tied more closely to the administration of an estate, and, therefore, one for the Probate Court to decide. See Burt, 2006 WL 2089254, at *7. A court-ordered offer to sell the Estate's shares in Berkshire Place at $337,000 would be completely arbitrary under the By-laws, and the Court sees no other reason to order a sale. No arguments have been made that the Rhode Island Business Corporation Act, G.L. 1956 §§ 7-1.2-101, et seq. (the BCA), requires a sale by an executor under these circumstances, and no relevant provisions of the BCA are otherwise apparent.

B

The Estate's Interest in BPA

The Berkshire Entities also argue that before the Estate may transfer Donatelli's limited partnership interest in BPA to a third party, the Partnership Agreement requires the Estate to first offer Donatelli's interest to the other partners at its current market value. The Berkshire Entities again claim that the Estate intends to transfer Donatelli's interest in BPA to certain of Donatelli's heirs. Because the Berkshire Entities assert that the relevant "current market value" of Donatelli's 39% limited partnership interest in BPA is zero, they request an order from this Court requiring the Estate to transfer Donatelli's limited partnership interest to BPA's remaining partners.

Article IX of the Partnership Agreement sets forth provisions related to "Assignability." Section 9.02 therein states that, subject to certain prerequisites, "[a] Limited Partner, without the consent or approval of any other Limited Partners, may assign all or any part of his interest in the Partnership." Additionally, § 9.03 states, in relevant part:

> "The Partners agree that no General or Limited Partner interest shall be assigned and no bequest or devise of a Partner's interest shall be completed until the Partner's interest is first offered to the other Partners for purchase at the then current market value, said value to be determined as the Partners may agree."

Courts interpret partnership agreements according to ordinary principles of contract interpretation. See Greenwald v. Selya & Iannuccillo, Inc., 491 A.2d 988, 989 (R.I. 1985). When a partnership agreement is plain and unambiguous, "its meaning should be determined without reference to extrinsic facts or aids." Id. (citing Chem. Constr. Corp. v. Cont'l Eng'g, Ltd., 407 F.2d 989 (5th Cir. 1969)). "When contract language is clear and unambiguous, words contained therein will be given their usual and ordinary meaning and the parties will be bound by such meaning." Singer, 692 A.2d at 692.

As an initial matter, the Court agrees with the Berkshire Entities that before the Estate may transfer Donatelli's limited partnership interest through "bequest or devise," the unambiguous language of § 9.03 of the Partnership Agreement requires the Estate to first offer that interest to BPA's other partners at current market value. The Berkshire Entities also argue, however, that under the principles of Rhode Island limited partnership law, "[t]he Estate may not . . . act as [a] full participant in Berkshire Place Associates." In this respect, the Court disagrees with the Berkshire Entities' characterization of the law for the following reasons.

The Berkshire Entities contend that under Rhode Island limited partnership law, an executor of the estate of a deceased partner has extremely limited ability to exercise the limited

partnership rights of the deceased partner. To support this contention, the Berkshire Entities cite first to the version of the Uniform Limited Partnership Act (ULPA) adopted by the State of Rhode Island, §§ 7-13-1, et seq. In particular, the Berkshire Entities point to § 7-13-40, titled "Assignment of partnership interest," which states in relevant part:

> "An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled."

The Berkshire Entities then point to a comment appearing under § 704 of the general ULPA, titled "Power of Estate of Deceased Partners" (the Unadopted Provision), which section differs significantly from the analogous portion of the law adopted by the Rhode Island Legislature.[1] The comment to § 704, which was not adopted in this State, provides that a deceased partner's personal representative "has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights." In drawing on these authorities, the Berkshire Entities essentially contend that, under Rhode Island limited partnership law, an estate of a deceased partner receives an ordinary "assignment" of the deceased partner's interest, and that executors of deceased partners are generally not entitled to step into the shoes of the deceased partner on partnership matters. Therefore, argue the Berkshire Entities, Rhode Island limited partnership law requires the Estate to relinquish any interest it has in BPA.

The Berkshire Entities' contention that an executor is permitted only a very limited role in administering a deceased partner's partnership interest is belied by § 7-13-43, which is the section of the ULPA adopted by the State of Rhode Island that is analogous to the Unadopted Provision. Section 7-13-43, titled "Power of estate of deceased or incompetent persons," states:

[1] The analogous provision under the ULPA, as adopted by the State of Rhode Island, is § 7-13-43, and is titled "Power of estate of deceased or incompetent persons."

> "If a partner who is an individual dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the partner's executor, administrator guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his or her estate or administering his or her property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor." (Emphasis added.)

Section 7-13-43 clearly contemplates a more robust role for an executor of a deceased partner's estate than a mere "assignee" under §§ 7-13-40 or 7-13-42.[2] For example, § 7-13-40 states in relevant part that "[a]n assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner." (Emphasis added.) This language is clearly at odds with the rights of a deceased partner's executor to "exercise all the partner's rights for the purpose of settling his or her estate or administering his or her property" under § 7-13-43. Moreover, the Berkshire Entities' references to the Unadopted Provision, § 704, are inapposite because that provision clearly contemplates a more limited role for an estate's executor as a "transferee," a term which does not appear at all in the analogous § 7-13-43.[3] The "comment" to the Unadopted Provision states that "a transferee has no right to

[2] Section 7-13-42(a) states:

> "An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:
>
> (1) The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or
>
> (2) All other partners consent."

[3] The Unadopted Provision, § 704, states:

> "If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in Section 702 and, for the purposes of settling the estate,

participate in management in any way [and] no voting rights." This is also clearly contrary to what an executor of a deceased partner's estate is permitted to do under § 7-13-43. As a result, it is far from clear that Rhode Island limited partnership law requires the Estate to quickly dispose of Donatelli's limited partnership interest. Nor is it settled under Rhode Island partnership law that the Estate is prohibited from stepping into Donatelli's shoes in order to administer her property interests.

The Court also finds that the Berkshire Entities' request for an order requiring the Estate to transfer Donatelli's limited partnership interest to the remaining BPA partners is, at best, premature. There is no evidence that the Estate gave the remaining BPA partners an opportunity to separately buy back Donatelli's limited partnership interest outside the context of a deal that included Donatelli's shares in Berkshire Place. It is beyond dispute that the Estate has not yet attempted to transfer Donatelli's limited partnership interest to a third party. Any potential intended transfer suggested by the Berkshire Entities is, at this point, entirely speculative. At present, the Court sees no reason, under the terms of the Partnership Agreement or the ULPA, as adopted in the State of Rhode Island, to compel the Estate to transfer Donatelli's limited partnership interest to the remaining partners of BPA. In regard to Donatelli's interest in Berkshire Place, whether the Estate may administer Donatelli's limited partnership interest indefinitely is a matter more appropriate for the Probate Court to decide. See Burt, 2006 WL 2089254, at *7.

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may exercise the rights of a current limited partner under Section 304."

IV

Conclusion

The Defendants' Motion for Summary Judgment on their counterclaim, seeking an order requiring the Estate to offer Donatelli's ownership interests in Berkshire Place and BPA back to those respective entities, or to the other owners of those entities, is denied. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Estate of Edythe L. Donatelli, et al. v. Berkshire Place, Ltd., et al.
CASE NO:	PC 11-3423
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 7, 2014
JUSTICE/MAGISTRATE:	Silverstein, J.
ATTORNEYS:	
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