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Blankenship v. Washington Trust Bank Appellant's Reply Brief Dckt. 38426

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TERESA R. BLANKENSHIP)	
)	
Petitioner,)	Supreme Court Docket No. 38426-2011
)	Bonner County Case No. 2007-572
v.)	
)	
WASHINGTON TRUST BANK,)	
)	
Respondent-Respondent on Appeal.)	
_____)	
)	
WILLIAM MICHAEL BOWMAN and)	
ERIC BOWMAN,)	
)	
Intervenors-Appellants.)	
_____)	

APPELLANTS' REPLY BRIEF

Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Bonner

HONORABLE JOHN T. MITCHELL, District Judge presiding.

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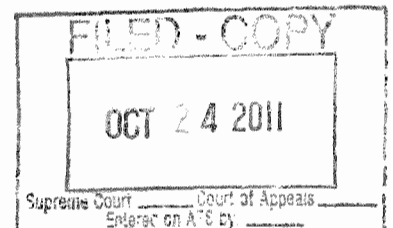


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ARGUMENT

A.

QUESTIONS OF FACT REMAIN REGARDING WHETHER WASHINGTON TRUST BANK BREACHED ITS FIDUCIARY OBLIGATIONS.

As indicated in Appellants' Brief, there is no question but that a fiduciary duty was owed by Washington Trust Bank (WTB) to each of the four beneficiaries of the Trust. The only question is whether the fiduciary duty has been breached as it relates to Michael and Eric. Whether a fiduciary duty has been breached is a question of fact that precludes entry of summary judgment. Bushi v. Sage Healthcare, PLC, 146 Idaho 764, 203 P.3d 694 (2009). Numerous questions of fact remain as to whether WTB breached its duty of loyalty and impartiality. What factors were considered by WTB when it made the decision to sell real property belonging to the Trust; what factors were considered by WTB when it made the decision, six (6) months after litigation was implemented, to prepare and sign a promissory note; what factors did WTB consider when it made the decision to encumber the property belonging to the Trust. Michael and Eric are given the benefit of reasonable inferences which reasonably could be drawn from the evidence. One reasonably likely inference, as previously indicated, is that WTB was ignoring its fiduciary obligations to the remaining beneficiaries and was simply trying to protect its own interest. That alone should have precluded the entry of summary judgment on the issue of breach of fiduciary duty.

B.

MICHAEL AND ERIC HAVE STANDING TO BRING A CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY.

Central to the objections of Michael and Eric regarding the actions taken by Washington Trust Bank (WTB) in its role as Trustee, was the excessive advances of funds to Ryan and the ultimate impact that would have on the underlying trust asset. Allegations of the initial Petition filed by Teresa Blankenship, as well as the Complaint of Intervenors was that these advances resulted in a breach of fiduciary duty owing to the beneficiaries other than Ryan.¹ These allegations were lodged not because funds were advanced to Ryan's Trust, but because the amount that was advanced exceeded Ryan's share of income and potentially would, and finally did, result in an effort by WTB to sell the underlying real estate in order to satisfy the excessive advances. The underlying real estate is commercial real estate that was generating lease income which provided a steady source of income to the beneficiaries. Only the filing of the Petition by Teresa Blankenship prevented WTB from selling the underlying property.

As this is an appeal of a summary judgment ruling, Michael and Eric are entitled to be given the benefit of all favorable inferences which might reasonably be drawn from the evidence and all doubts are to be resolved against Washington Trust Bank. Farm Credit Bank of Spokane v. Stevenson, 125 Idaho 270, 272, 869 P.2d 1365 (1994).

¹R. Vol. 1, p. 158-162; Vol. 2, p. 296-300

The resulting inference on behalf of Michael and Eric is that the only reason WTB was attempting to sell the property was to reimburse themselves for excessive advances made to Ryan. When it became clear that the other beneficiaries were not going to allow the sale of the real property, WTB ignores its fiduciary duties to all of the beneficiaries and executes a promissory note and secures it with a deed of trust encumbering the trust property. These actions were self-dealing, self-serving actions which were undertaken without considering the interests of Michael and Eric, or quite frankly, any of the beneficiaries.

In order to have standing to raise the issue of a breach of fiduciary duty, Michael and Eric “generally must allege or demonstrate an injury in fact and substantial likelihood that the judicial relief requested will present or redress the claimed injury.” Miles v. Idaho Power Company, 116 Idaho 635, 641, 778 P.d 757, 763 (1989). From the specific holding of the language in Miles, Id., the requirement of standing is a two part test: first, a litigant must generally allege or demonstrate an injury in fact and; second, must show a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. *Id.* at p. 641. Appellants have alleged an injury in fact, that being the breach of fiduciary duty in the recording of a deed of trust encumbering trust assets. Appellants have demonstrated the injury by arguing that WTB has the right to foreclose the deed of trust and to seek partition and ultimately force sale of a trust asset which would be against the interest of the remaining beneficiaries. That is clearly demonstrating an injury in fact. Other potential injuries in addition to exposing the property to a forced sale would be that it limits the

flexibility of existing trustees to use the real property for purposes of refinancing or encumbering the underlying asset for the benefit of all the beneficiaries.

The second prong of the standing requirement is the “substantial likelihood that the judicial relief requested will prevent or redress the claimed injury.” In the case at bar, the Appellants in their Complaint for Intervention are seeking an injunction preventing WTB from selling the real property as well as an order quieting title to the deed of trust. Either or both of those remedies would prevent or redress the injury complained of.

Accordingly, based upon the foregoing analysis, both prongs of the Miles test have been met and Michael and Eric have standing to raise the issue of breach of fiduciary duty.

C.

I.C. §68-502 IS PROPERLY BEFORE THE COURT ON APPEAL.

Respondents claim that Appellants are precluded from raising an argument under I. C. §68-502. Idaho law is clear on what is available as an issue on appeal and Idaho Courts have held: “to properly raise an issue on appeal, there must either be an adverse ruling by the court below or the issue must have been raised in the court below, . . . an issue cannot be raised for the first time on appeal.” Johannsen v. Utterbeck, 146 Idaho 423, 429, 196 P.3d 341, 347 (2008).

In the present case, not only did Appellants in their Complaint allege a breach of fiduciary duty, they also set forth several statutory provisions in their briefing in opposition to summary

judgment, as well as at oral argument, by directing the Court to both the Uniform Trustees Powers Act codified at I. C. §68-104 et seq. and the Uniform Prudent Investors Act at I. C. §68-501 et seq.² By In addition to Appellant raising the issue of a breach of fiduciary duty under those specified Acts, the Court entered an adverse ruling by finding that “the advance of funds to Ryan Bowman’s Trust and the recording of a deed of trust against the undivided one-quarter interest in the real property held by Ryan Bowman’s Trust is dismissed because such action is authorized by the Last Will and Testament and Idaho law.”³

The breach of fiduciary duty was clearly argued by the parties at the time of the summary judgment hearing and an adverse ruling has been entered that the actions being complained of were authorized by Idaho law. The Court in its ruling referred to several different provisions of the Uniform Trustees Powers Act, as well as the Uniform Prudent Investor Act. I. C. §68-502 is simply one of the statutory provisions of the Uniform Prudent Investor Act. There were numerous allegations and arguments in the Complaint that Washington Trust Bank, having a special trust department was held to a higher standard than that of a normal trustee and, in fact, was required to use “special skills or expertise”. That language and standard also comes from I. C. §68-502 as well as other provisions of the Idaho Code.

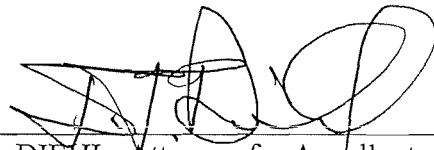
²Complaint (R. Vol.2, p. 296-300); Memorandum in Opposition to Summary Judgment (R. Vol. 2, p. 290, 291); also refer to (Tr. p. 53 and 54)

³R. Vol. 3, p. 428

CONCLUSION

Appellants have standing to allege a breach of fiduciary duty by WTB and there remain questions of fact which preclude entry of summary judgment. The District Court committed error and should be reversed.

Respectfully submitted this 13 day of October, 2011.



J. T. DIEHL, Attorney for Appellants

CERTIFICATE OF DELIVERY

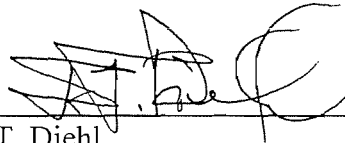
I hereby certify that a true and correct copy of the foregoing document was served this 18th day of October, 2011, by:

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addressed to:

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