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IN THE
Supreme Court of Virginia

RECORD NO. 080599

LINDA BELL, et al.,

Appellants,

v.

N. LESLIE SAUNDERS, JR., ESQ., PERSONAL REPRESENTATIVE, EXECUTOR, AND TRUSTEE OF THE ESTATE OF EDWARD J. BELL, SR.,

Appellee.

BRIEF OF APPELLEE

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IN THE
SUPREME COURT OF VIRGINIA

LINDA BELL,	)	
and	)	
DAVID W. BELL,	)	
Appellants,	)	
	)	
v.	)	RECORD NO. 080599
	)	
N. LESLIE SAUNDERS, JR., ESQ.,	)	
PERSONAL REPRESENTATIVE,	)	
EXECUTOR, AND TRUSTEE OF THE	)	
ESTATE OF EDWARD J. BELL, SR.,	)	
	)	
Appellee.	)	

BRIEF OF APPELLEE

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF VIRGINIA:

STATEMENT OF THE NATURE OF THE CASE AND MATERIAL PROCEEDINGS

N. Leslie Saunders, Jr., Executor and Trustee of the Estate of Edward J. Bell, Sr., the Appellee (hereinafter referred to as "Appellee"), adopts the Appellants' Statement of the Nature of the Case and Material Proceedings except the following:

1. In paragraph 3. Appellants allege that the suit alleged that the Estate was worth $17,000,000.00 when Mr. Bell died. The suit actually alleges that the Executor posted a bond of $17,000,000.00 (App. 3).

2. The facts in paragraph 6. appear only in the “wherefore” paragraph asking for relief (App. 5).

3. The suit does not allege any impropriety of the Executor’s action.

4. The Statement of Facts simply alleges most of the allegations set forth under the Statement of the Nature of the Case and Material Proceedings. However, the Statement of Facts consist of allegations of the Appellants which were not found in the Statement of Facts signed by the Trial Court.

5. A review of the Last Will and Testament of Edward J. Bell, Sr. clearly shows that David W. Bell is a contingent beneficiary and not entitled to any payments from the Trust during the lifetime of his mother, Linda Bell (App. 10).

6. It is difficult to understand why any of the allegations concerning Edward J. Bell, Jr. are stated in the Complaint. There has been no qualification on that estate, nor does that will affect the Trust

established in the Last Will and Testament of Edward J. Bell, Sr. Furthermore, the proper parties are not before the Court to make any determination concerning Edward J. Bell, Jr.'s estate.

7. The Complaint requests that the Court require an accounting of all assets and disbursements under both wills. Since there has been no qualification on the Estate of Edward J. Bell, Jr., certainly the Executor/Trustee of the Estate of Edward J. Bell, Sr. has no obligation to make accountings for that estate. All accountings for the Executor/Trustee of Edward J. Bell, Sr. Estate have been timely filed, approved by the Commissioner of Accounts of Powhatan County, Virginia, and confirmed by the Judge of that Court (App. 6).

8. Lastly, the request of Appellant that the Court require the Executor/Trustee to "wind up the Estate of Edward J. Bell, Sr. and to disburse in accord with Mr. Bell's wishes in his will ... ." is contrary to the provisions in the Last Will and Testament of Edward J. Bell, Sr. It would not be proper for any court to require this of the Executor/Trustee, because it would be contrary to the wishes set forth in the will of Edward J. Bell, Sr. (App. 7-24).

STATEMENT OF FACTS

Since the Statement of Facts in Appellants' Opening Brief follows the Statement of the Nature of the Case and Material Proceedings mostly, Appellee will adopt his response to Appellants' Statement of the Nature of the Case and Material Proceedings and adopt Appellants' Statement of Facts with the exceptions set forth in Appellee's response to the Statement of the Nature of the Case and Material Proceedings of Appellants and the following:

1. In paragraph 3 of the Statement of Facts the allegation in the Statement of Facts is incorrect in that the Complaint simply alleges that the Executor posted a bond of $17,000,000.00 (App. 3).

2. Appellants acknowledge that the estate was valued at $9,439,699.90. Appellants mistakenly state that they were liquid assets knowing by looking at the Inventory filed in Court that 90% of the assets were non-liquid (App. 6).

3. Appellant, Linda Bell, also knows that she has received since the death of her husband over $2,000.00 per month from the estate, plus other disbursements when the estate had the funds to pay it to her. All of this information was available to the Judge since he had reviewed the Inventory and approved all of the accountings.

4. There is no allegation set forth in the pleadings that Appellee is depleting the estate improperly for his own use, as stated in paragraph 9 of Appellants' Statement of Facts.

5. Appellants have misstated in paragraph 14 of their Statement of Facts in that an accounting of all the assets and disbursements of the will of Edward J. Bell, Sr. have been properly filed with the Commissioner of Accounts, approved by him and approved by the Powhatan Circuit Court (App. 48). There is no requirement that the Appellee file accountings for the Estate of Edward J. Bell, Jr.

ASSIGNMENT OF ERROR

THE COURT ERRED IN SUSTAINING THE DEFENDANT'S DEMURRER.

QUESTION PRESENTED

DID THE COURT ERR IN SUSTAINING THE DEFENDANT'S DEMURRER?

ARGUMENT

The Court did not err in sustaining the Demurrer. The Court properly sustained the Appellee's Demurrer for the reasons set forth in the Court's Order.

It is perfectly clear in Virginia that the only way to attack accountings of a fiduciary, which have been confirmed by an Order of the Court, is by exceptions filed or by a suit to surcharge or falsify the accounting. Accountings confirmed by the Court, "shall be taken to be correct." § 26-34 of the Code of Virginia, 1950, as amended.

Accountings regularly settled, followed by confirmation, are *prima facie* correct. These accountings can be questioned only by a suit to surcharge and falsify. Harrison on Wills and Administration, 4th ed., § 27.01 and § 26-34 of the Code of Virginia, 1950, as amended. The author states further that a suit to surcharge and falsify is "a difficult procedure."

In § 27.04, Harrison on Wills and Administration, 4th ed., the author states that,

> The bill should specifically point out the errors complained of in the *ex parte* account. Thus, a bill with general allegations of fraud and misconduct on the part of the fiduciary and error in the *ex parte* settlement will be held bad on demurrer.

Appellants' Complaint refers to no specific items in the accountings filed by the Executor/Trustee which should be surcharged or falsified. This failure of Appellants' Complaint alone is sufficient reason for the Court to sustain Appellee's Demurrer.

Harrison on Wills and Administration, 4th ed. § 27.04. Corbin v. Mills, 60 Va. (19 Gratt.) 438 (1869), Grandy v. Grandy, 177 Va. 601, 604, 15 S.E.2d 66, 68 (1941) and Lister v. Virginia Nat'l Bank, 209 Va. 739, 741-742, 167 S.E.2d 346, 348-349 (1969).

CONCLUSION

When considering the allegations of the Complaint, the Court properly ignored the factual allegations contradicted by the Last Will and Testament of Edward J. Bell, Sr. Dodge v. Randolph-Macon Woman's College, 276 Va. 1, 5, 661 S.E.2d 801, 804 (2008).

All of the factual allegations in the Complaint, except those that clearly are contradicted by the Last Will and Testament of Edward J. Bell, Sr. clearly are not sufficient factual allegations to state a cause of action or upon which the relief demanded in the Complaint may be granted. Schmidt v. Household Finance Corp., 276 Va. 108, 116, 661 S.E.2d 834, 841 (2008).

The decision of the Trial Court to sustain Appellee's Demurrer was clearly correct under the statutes and the case law of this Commonwealth. The Complaint filed by Appellants neither states a cause of action as required, nor does the Complaint state facts upon

which the relief demanded could be granted. The Court's decision should be affirmed.

Respectfully submitted,

N. LESLIE SAUNDERS, JR., ESQ.,
PERSONAL REPRESENTATIVE,
EXECUTOR, AND TRUSTEE OF THE
ESTATE OF EDWARD J. BELL, SR.

By _____
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CERTIFICATE OF SERVICE

I certify that twelve copies of the Brief of Appellee were delivered by hand to the Clerk of this Court and an electronic copy has also been filed with the Clerk of this Court contemporaneous with the brief by e-mail to the e-mail address provided in Rule 5:26(d) of the Rules of the Supreme Court of Virginia.

I further certify that three copies of the foregoing Brief of Appellee were mailed, postage fully prepaid, this 25th day of February, 2009, to:

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_____
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