THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

ROCKINGHAM COUNTY

10th CIRCUIT - PROBATE DIVISION - BRENTWOOD

Alyssa Tay and Sabrina Tay
v.
Kevin F. Grondin

Case No. 318-2013-EQ-00232

ORDER

This matter came to trial over six days before this Court. All parties appeared with counsel. The issue before the Court was whether respondent's operation and sale of the manufactured housing park known as Paradise Estates, and certain related property, violated his fiduciary duties as the trustee of the Trust that owned the assets, and whether the breaches of fiduciary duty, if any were found to exist, caused the park to sell at a price lower than it otherwise would have sold had he not breached those duties. After a consideration of the credibility and demeanor of the witnesses, a review of the record and the exhibits, the Court finds in favor of the respondent, Kevin Grondin. The specific findings of the Court are set forth below.

This case involves a revocable trust established by Carylyn Grondin (fka Carylyn Tay). Ms. Grondin was married to Mark Tay. They had three daughters. One of the daughters, Sabrina, was a minor at the time this lawsuit was filed and Mr. Tay initiated the litigation as her parent, with Alyssa Tay as the other petitioner. The third daughter was not a party to this suit, although shortly before trial she sought to intervene in support of the respondent, and her attorney was allowed limited participation in the proceeding. Sabrina Tay has since become an adult.

The petitioners' father, Mark Tay, is an attorney with a family history associated with manufactured housing parks. Attorney Tay divides his law practice such that about one half of his time is spent on manufactured housing park issues. At the time of trial, he owned, directly or indirectly, five manufactured housing parks with a total of approximately

343 sites. The respondent, Kevin Grondin is Carylyn Grondin's brother. He also has a history of owning and managing manufactured housing parks. He is being sued in this action due to his action as the successor trustee of a trust created by his sister at the time of her divorce from Mark Tay.

Background and Formation of Trust

The manufactured housing park at issue is known as Paradise Estates, and was owned by a corporation, Hansonville Estates, Inc. There was a related property with a home on it owned by a second company known as 92 Gear Road, LLC. Over a period of about twenty years, Hansonville had been owned by Mark Tay and his father, and then by Mark Tay alone. It was transferred to Carylyn Grondin as a part of her divorce from Mark Tay in 2007.[1]

In 2006, when she knew that she was getting divorced from Mark Tay, Carylyn retained Attorney Fred Forman to advise her regarding the formation of a trust and certain estate planning issues. After meeting with his client, Attorney Forman subsequently drafted two trusts for her. The first trust was under her married name prior to the divorce. The second used her maiden name and was created to hold the assets she received from the divorce, including the stock of Hansonville Estates, Inc., which owned Paradise Estates, as well as ownership of 92 Gear Road, LLC. That trust was the Carylyn Grondin Revocable Trust (the "Trust"). Attorney Forman also drafted wills and other estate planning documents for Carylyn.

Based upon all of his meetings with Carylyn, Attorney Forman credibly testified that Carylyn told him that she wanted to make sure her brother Kevin would be the one identified in the documents to take over her affairs should she die, and that he should manage her assets for her children. In her initial meeting with Attorney Forman, Carylyn said that she expected money from the divorce, but she also mentioned that she may obtain ownership of a manufactured housing park as a part of the divorce.

[1] Carylyn's father, Frank Grondin, originally owned Paradise Estates with a partner. Kevin Grondin and a partner purchased Paradise in the early 1980s and Mark Tay and his father subsequently purchased Paradise.

During her discussions with Attorney Forman, Carylyn told him that Mark Tay was controlling and manipulative, and that after the divorce she did not want Mark to have any influence over the assets she obtained through the divorce. She told Attorney Forman that she was concerned about Mark manipulating the children both financially and emotionally. Attorney Forman recalls that she told him to do whatever he could in the documents to "lock Mark out".

Attorney Forman also testified that Carylyn did not want to use a professional trustee for her trust. Forman said that she knew her brother, and she felt he was strong and could withstand anything Mark would do. As a result of his discussions with Carylyn, Attorney Forman understood that having Kevin as the successor trustee after Carylyn's death was a material purpose of her trust.

As for a successor trustee, should Kevin be unable to serve, Carylyn picked her sister Marilyn, who is a physician, as she believed her sister could handle Mark as well. She trusted her family – Kevin and Marilyn – most. Other testimony confirmed that Carylyn was very close to her brother Kevin.

Carylyn knew that Kevin was experienced with managing and owning manufactured housing parks. Kevin had managed up to 5 parks in the past, including owning several through his businesses. However, Attorney Forman testified that Kevin's manufactured housing park experience was not the primary reason for his selection as Carylyn's successor trustee. He understood from Carylyn that it was most important to her that members of her family, her brother and sister, be the ones to manage her assets for the benefit of her children. Attorney Forman testified that the material purpose of appointing Kevin was that he was Carylyn's brother and she trusted Kevin to use his good faith judgment in operating the Trust.

As a result, Attorney Forman drafted language for the Trust that was meant to address these concerns. Thus, Article 8 of the Trust contained provisions outlining the selection criteria for successor trustees beyond Kevin and Marilyn. That Article provided if neither Kevin nor Marilyn could serve, then the beneficiaries could choose a trustee by majority vote. "However, in no event shall any spouse or former spouse of any issue of Carylyn Grondin or parent of any issue of Carylyn Grondin or Mark H. Tay, or any person related by blood or marriage to any such person (with the exception of the named Trustees and with the further exception of the issue of Carylyn Grondin who have reached the age

of thirty-five (35) years and with the further exception of a sibling of Carylyn Grondin) serve as Trustee." This language made it very clear that Carylyn wanted to ensure that even if her daughters, who were the beneficiaries, were choosing a trustee, they could not choose their father.

Attorney Forman also told the Court that he discussed with Carylyn the standard of care that any trustee would be held to once she died. He stated that Carylyn asked that the standard of care be as easy as possible on Kevin, who was the first named successor trustee. She told Attorney Forman that she feared that her ex-husband would be "nit-picking" every move of the trustee. Therefore, when drafting the language used in the Trust relating to the liability of the fiduciary (Article 9), Attorney Forman's purpose was to relieve Kevin of liability as long as he used good faith, consistent with Carylyn's stated intentions.

Attorney Forman further credibly testified that he understood that Carylyn intended that even if Kevin Grondin was wrong in making a decision, as long as he did his best then he would be relieved of liability. Attorney Forman testified that his understanding of this standard was that it would be less than what would be applied to a bank or trust company managing the Trust. He told the Court that the idea was for Kevin to do the best he could and not be liable as long as he acted in good faith.

As noted earlier in this Order, the Trust was executed on December 10, 2007. It was signed at a time when Carylyn knew she would own the mobile home park as a part of the divorce. The operative terms of that Trust, as they relate to this case, are contained in Articles 4, 5 and 9. The Trust was created with Carylyn as both the settlor and the trustee.

Article 4 of the Trust deals with the powers of the trustee during Carylyn's lifetime. It is broadly written to give the trustee powers to act as she saw fit with respect to the Trust assets. Her powers were to be those under common law, as well as under the Uniform Trust Code and the Uniform Trustees' Powers Act. Article 4 also provided that the trustee must consult with Carylyn prior to purchasing, selling, leasing or altering any investment. This provided Carylyn with some control while she was alive, even if she was no longer the trustee.

Article 5 contained the provisions describing the trustee's powers after Carylyn became incapacitated or died. The powers were essentially the same as under Article 4, but without the limitations imposed by Article 4 regarding consultations with Carylyn.

Article 9 specifically dealt with the fiduciaries under the Trust. In the second paragraph of that Article, the Trust provides:

> The Trustee shall not at any time be held liable for any action taken or not taken, including any action intended to lessen or eliminate the impact of estate or generation-skipping transfer taxes with respect to any generation or beneficiary, whether or not such action is successful in achieving the results sought and without regard to its effect on other beneficiaries in the same or different generations, or for any loss or depreciation in the value of any property in any trust created herein, whether due to an error of judgment or otherwise, where the Trustee has exercised good faith and ordinary diligence in the exercise of its duties.

Therefore, while Carylyn was alive, there was a good faith standard under the terms of the Trust. Once she died, the standard remained a good faith standard, but also required "ordinary diligence". That term is not defined in the Trust.

After the formation of the Trust, Carylyn acted as trustee and hired her brother Kevin's company Lilac Property Management, Inc. to manage Paradise Estates. She did not consult with her ex-husband, Mark Tay, regarding how to operate and manage the park.

When Lilac was originally hired, Carylyn paid it a 7-8% management fee. She later agreed to increase that fee to 10% of the collected rents. Kevin Grondin testified that Lilac's management fee was the same for Paradise Estates as for other parks that it managed. Carylyn agreed to the management fee, and Kevin did not change it after her death when Lilac continued to manage the property.

Kevin Grondin as Successor Trustee

Kevin testified that when Carylyn was operating Paradise Estates, she wanted to put money into the park to improve it. Kevin generally agreed with her decisions as a whole, but not with all of them. Kevin understood that his sister wanted to improve the quality of the park overall and to retain the park for a period of time for her daughters to finish college, and then possibly the three daughters, or maybe one of them, might want to get involved in the business. Prior to her death, Carylyn had Kevin start a number of improvements that were not completed at the time of her death.

Carylyn passed in October, 2012. Shortly after her death, Kevin Grondin accepted his appointment as trustee of the Trust. He admitted at trial that at the time he did not fully understand trust law. He credibly testified that his first thoughts were to keep the park in the Trust as that is what he believed Carylyn wanted to do with it. She had told him when she asked him to be the successor trustee that when she died he should run the park as if she were alive. He told the Court that when Carylyn was in charge of the park, she tried to have a compassionate approach to the business, and that he tried to have a similar approach to the extent his duties as a trustee allowed him when he became trustee.

In addition, due to the projects Carylyn had started prior to her death, much of the profit from the park had been used to start improvements with the long term view of owning the park until Carylyn's daughters finished college. Therefore, when Kevin became the trustee, he had to take an asset that was in the process of projects that Carylyn had started, and try to finish those projects and operate the park for the Trust and its beneficiaries.

Grondin credibly testified that after he became trustee on October 15, 2012, he read the trust document ten times and spoke to many friends and lawyers. He said he learned from those conversations that a trustee has a variety of duties to diversify and manage trust property. He also understood that a part of his duties included earning income, and making sure the Trust did not lose money. Grondin further understood that he had a duty to the beneficiaries not to waste the asset, and not to throw "money into a sinking ship".

He spoke with Mark Tay, and at first told him that he expected to keep and operate Paradise Estates as Carylyn had told him she hoped would happen. However, he also consulted with his business partner, Harold Oulton, and his CPA, Michael Stillings. Both Oulton and Stillings told him that the park was too large a portion of the Trust to retain, and that due to potential litigation from this kind of business it would not be a fair and safe investment for the girls. Mark Tay had recommended a sale of the park as well. With this input, after about 4-5 months as trustee, Grondin decided that he should sell the park, making the decision in February or March, 2013.

Grondin became trustee in mid-October, and throughout his initial months as trustee he was contacted by Mark Tay seeking information about the operation of Paradise Estates and the Trust. As early as November 30, 2012, six weeks into his tenure as trustee, Mark Tay sent Kevin Grondin a letter on behalf of Tay's daughters seeking rent

rolls for the park. He also sought cash flow, income and expense statements and bank account information from Grondin. Tay sent additional letters in December, and received some documents on January 11, 2013, but was not satisfied with the documents he received. The within lawsuit was filed on February 22, 2013, just over four months after Mr. Grondin became trustee. During this time, Grondin was dealing with the death of his sister, obtaining appraisals of the trust property, and continuing to operate his own businesses and manage Paradise Estates.

Once he decided to sell the park, Grondin understood that his main job was to finish up the pending projects left by Carylyn, clean up the aesthetics without spending too much money and get the park on the market with lowered expenses and increased rent. He testified that the expenses from 2013 reflected that he was finishing up projects that Carylyn had started (these included road and septic work, as well as work on the apartments, and some loaming and seeding). The only improvement he started on his own was to re-side and re-paint the mail house, which cost somewhere between $5,000.00 and $10,000.00.

When he took over as Trustee in late 2012, the park was an older park with a high percentage of older homes. The infrastructure, including water lines and sewer systems, was older excepting some repairs and replacements dating to the late 1980s. The first three park roads had almost all older homes from the 1970s, many of them prior to HUD certification, which was required starting in the mid-1970s. Much of the park was as it had been when Grondin and a partner had owned the park prior to it being purchased by the Tays. The newer homes in the back of the park were installed through the 1980s. Overall, the park tenants were not very well off economically.

After he decided that the park had to be sold, Grondin contacted some local buyer-brokers that he knew were involved with purchasing manufactured housing parks. He had between 15 and 20 communications with them. After speaking with those brokers, Grondin concluded that he would need a broker with more of a national exposure to try and maximize the value of the park.

As a result he communicated with Apartment Realty Advisors ("ARA") and CBRE Manufactured Housing Group. Both CBRE and ARA provided proposals to him for the sale of the park in late 2013. As for CBRE, he spoke with them by telephone, but they did not seem interested in seeing the park or making any concessions on the rate of their

commission. Regarding ARA, he met with them both in his office and at the park. He got them to lower their normal commission rate, and selected them to market the property signing a listing agreement for the period from December 9, 2013 through June 9, 2014.

Grondin told the Court that ARA's only business was marketing parks like Paradise Estates. He said he liked the way they blanketed the market and groomed and rated speculative buyers so that he would know how many park sites the buyers owned and what prior purchases they had made of parks. One of the buyers, Ryan Hotchkiss of Horizon Land Co., Inc., testified that ARA was nationally known for its marketing of manufactured home parks, and that it was a good firm to list with if you wanted to sell your park.

The property initially was offered at $4.95 million, which was the upper end of the estimated value ARA had provided to Kevin. That price was also at the very top end of the range of value estimated by CBRE. CBRE had told Kevin that its opinion of value for the property was between $3,899,381 and $4,911,002.[2] At first, there were several prospective buyers. Real Estate Seekers, LLC made some initial inquiries and offered a contract dated April 25, 2014 to purchase the park for $4.575 million. That offer was subject to due diligence and financing. ARA met with them, after which they withdrew in May, 2014.

They were followed by Horizon Land Co., LLC, managed by Ryan Hotchkiss. At first, Hotchkiss had indicated that he would make an offer of $4.2 million based upon only a preliminary review of the information in the marketing materials, subject to later due diligence and other contractual negotiations. However, ARA at the time was considering Real Estate Seekers, LLC and other buyers. In May, 2014, after Real Estate Seekers withdrew, ARA approached Hotchkiss and asked him to increase his prior offer by $50,000.00. Hotchkiss agreed and signed a letter of intent to purchase the park.

As a part of his due diligence, Hotchkiss came to Paradise Estates in late May, 2014 to see the park. Grondin met with Hotchkiss, but believed that ARA had caused Hotchkiss to believe that the community was younger than it was, and that it had newer homes than what was actually on site. Grondin testified that Hotchkiss quickly determined

[2] The exhibits submitted also show an opinion of value by James A. Devine, a licensed real estate broker located in Rhode Island who specialized in mobile home communities and had brokered the sale of four New Hampshire manufactured home communities. His opinion of value for the park was $2,900,000.00 to $3,300,000.00 as of September 25, 2013.

that Horizon was not interested in purchasing the park. Hotchkiss confirmed this and told the Court that based on his visit he was no longer interested in the park. He said it was older than he thought, although he recognized that work was being done there as he saw improvements were being made.

Hotchkiss was the only potential buyer of Paradise Estates who testified at trial (through his videotaped deposition). In his testimony, he was asked where "cash flow" fits into the equation for a buyer looking at purchasing a manufactured housing community. He responded that, in general, cash flow is not part of the equation in determining whether to purchase, but it may affect the price paid. He said that he does not necessarily look at the seller's cash flow since his company may manage the property quite differently than the seller. Moreover, in looking at rent rolls, his company will assume that those with high past due balances are not likely to be there in 3-4 months as they are likely to be evicted. He said his company also looks at the seller's numbers to determine if – in their experience – they make sense or not.

Hotchkiss also ignored the discounts that were being given for the timely payment of rent – his numbers were based on the elimination of the discount program. Historically, tenants making on time rent payments at Paradise Estates received a discount on their rent. After looking at the more current rent rolls at the time of his visit – and reducing for residents with a certain amount of delinquency – Hotchkiss determined there were 120 "viable rent-paying residents on the rent roll." He noted that some buyers would not have cared about the delinquencies and would have cut deals with those tenants as a fresh start. His opinion was that tenants who consistently pay late and have large delinquencies are not likely to change, and therefore he does not count them as viable economic units to determine a price to pay for a park. Hotchkiss had no criticisms of Kevin's assistance when he met with him to tour the park and provide additional information for due diligence.

Hotchkiss said that his January offer of $4.2 million was just based on "some pieces of paper." He said that they were much more educated in May when he looked at it more closely. His initial offer was based on his understanding that there were 139 occupied pads without any independent investigation. After seeing the property and asking questions of Kevin, he determined that there were more likely 120 occupied pads for his economic purposes. Hotchkiss noted that when looking at marketing materials he sometimes only gets a profit and loss statement, and other times the broker does a pro

forma showing different numbers from the historical numbers. However, he also said that those numbers are "bullshit". To him, those numbers do not matter – it is his own numbers that matter. Initially all he cares about is the rent roll and some of the P&L numbers.

After he looked at the park and had his additional information, he determined that Horizon was not interested in the purchase. Rather than just tell ARA that he was not interested, Hotchkiss wrote what he called a "kiss off letter" to ARA to more or less end the negotiations. He testified that he made the letter as harsh as he could since he wanted ARS to believe that he was justified in walking away as he was hoping to do business with them at some time in the future. He did not want to look like he was wasting ARA's time. Overall, he said that Horizon had decided that the park was "too far for us, too much work, too small."

ARA responded to the Hotchkiss letter with some additional income information attempting to keep him interested and to justify the price in the contract. However, the negotiations stopped and ARA's broker's contract ended on June 9, 2014.

Others whom Grondin consulted included a Mr.Hines, who had recently purchased a park from Grondin's company. However, Hines was not interested in Hansonville as it was not the kind of park he was interested in at the time.[3]

Later in 2014, Grondin put the park back on the market with ARA at the lower price of $4.2 million. It was shortly after that when several buyers became interested in the park, including Kevin Lacasse, the Manager of New England Family Housing Management Organization, LLC, the company Grondin had hired to operate the park in early 2014. Grondin did not negotiate with Lacasse directly, instead he told him to deal with ARA as Grondin felt it was the appropriate way to handle it. Communications were also directed through Attorney Christopher Paul, whom Grondin had retained to help with any legal issues regarding the sale and operation of the park and his duties as a trustee. Attorney Paul's law firm was also retained to defend this lawsuit brought in February, 2013.

When Lacasse submitted his bid, the negotiations were between Attorney Paul and his firm and the law firm Lacasse had retained to negotiate the purchase. By early December, there were three bids to purchase the property. Initially, the Lacasse bid was

[3] Several witnesses commented that Paradise Estates was unusual in that it had apartments, park owned units and pads. This unusual mix meant that some buyers would not be interested in the park since they might only want a park with pads rented so that they were not responsible for maintaining apartments and park owned units.

not the highest bid. However, using one of the other bids, he was convinced to increase his offer to $3.8 million. The other offers were from Ravinia Communities in the amount of $3.4 million, and from Cocke, Finkelstein, Inc. in the initial amount of $3.8 million. Ultimately, a contract with Lacasse was completed in December for the $3.8 million.

The sale included not only the manufactured housing park, but also several mortgages held by the corporation, a management termination fee of $5,000.00 and a remediation fee of $25,000.00. It also included the house and lot known as Gear Road, which was a separate lot from the park. However, the Trust retained the right to any past due rents that were collected after the closing of the sale.

Communications with Tara Reardon

Just prior to the start of the sale process in 2014, Grondin testified that he met Tara Reardon of the New Hampshire Community Loan Fund and ROC-NH regarding the Fund working with the tenants who could organize to possibly purchase the park. Ms. Reardon was the director of ROC-NH, which dealt with resident-owned communities as a part of the New Hampshire Loan Fund. She testified that ROC-NH has 114 resident-owned communities representing 20 to 25% of the manufactured housing parks in New Hampshire.

Ms. Reardon was familiar with Paradise Estates, having driven through it in the past. She testified that the Loan Fund was interested in having the tenants purchase the park, but that she did not tell Grondin that the Loan Fund was interested in purchasing it.

When Ms. Reardon met with Grondin, he never understood from that conversation that the Loan Fund itself might make an offer for the park. Instead, he understood that once he had a contract to purchase, he would send it to ROC-NH for its review as part of the requirements of New Hampshire law regarding the tenants of manufactured housing parks having an opportunity to purchase parks that were being offered for sale.

Grondin testified that he would have been willing to sell it to the Loan Fund, but he believed he should talk to them after getting a purchase and sale agreement in place. Grondin credibly testified that he never knew that the Loan Fund would offer to purchase a park prior to it even going on the market. Ms. Reardon testified that although she knew

Grondin may be selling the park, she did not tell him that the Loan Fund would make an offer to purchase it.

Ms. Reardon told the Court that around February 6 or 7, 2014 she downloaded the ARA listing for the park as well as the applicable tax cards. She testified that she was interested, but that she thought the listing price ($4.9 million) was high for what she knew about the park at the time. Still, she called the broker Todd Fletcher, trading calls with him until February 25th when they finally spoke. She asked him if he wanted to speak with residents about organizing and buying the park. He said he would check with the owner.

Within a day or so, Reardon again spoke with Fletcher who reported that the owner and its attorney were not interested in speaking with the residents at that time. She offered to put together a pro forma for what the tenants would do, but Fletcher responded that they had bids out at the time, and that he would chat with her after things developed on those bids.

Several weeks later, on March 18, 2014, Ms. Reardon called Fletcher and exchanged e-mails with him. He reported that they were assessing bids. Given this, Ms. Reardon continued to gather information so that when an offer was accepted for the park, starting the sixty day statutory process for the tenants to act, she would be able to meet with the tenants. It was during this period that ARA and Grondin were attempting to negotiate with Real Estate Seekers, resulting in the first purchase agreement in April, 2013.

Ms. Reardon testified that the procedure followed by the Loan Fund was to prepare an estimate of value and a rent survey for a park that it may purchase or that it may work with tenants to purchase. It would then use that information with additional facts that it could gather to determine the amount of an offer it believed the tenants could make for the park. Using this process, the initial value number the Loan Fund came up with was $4,200,000.00. They used a cap rate of 9%.

Ms. Reardon testified that she did not disclose this number to either Grondin or to the broker. She said that her number was based on an expected rent increase of $25.00 per month for the tenants, and was based on public information she had about the park. She also admitted that if the Loan Fund or the tenants made an offer in that amount, it would have been subject to a due diligence review of the park's financial records and other information.

Ms. Reardon told the Court that when tenants are interested in moving forward with an offer, they usually hire engineers to look at infrastructure, hire an attorney to examine the title, and they send letters to banks to see what their financing options are going to be for a purchase. She could not testify as to what that due diligence would have shown for Paradise Estates. She told the Court that lenders often provide 80 to 90% financing. When asked by Grondin's counsel, she could not tell the Court if after the due diligence she would have still recommended an offer of $4,200,000.00 for the park or whether that number would have changed.

Ms. Reardon admitted that the $4,200,000.00 number she had come up with included a $25.00 per month rent increase, which would be a big rent increase for some tenants. She also agreed that when the tenants take control of a park, they are taking the risks of ownership as opposed to a third party buyer. She admitted that these factors were economic disincentives to the tenants when they consider purchasing their park, but they would be weighed against the tenants owning the park themselves.

Ms. Reardon explained that the Loan Fund will not talk to the residents of a park unless an owner agrees, or until there is a notice of intent to sell by the owner with a purchase and sale agreement in hand. State law then gives the tenants the opportunity to negotiate with the owner, who must act in good faith. As a part of that process, she works with the tenants to check the rent rolls, income information and other financial information about the park to come up with a pro forma value which is shared with the owner.

Prior to that, the tenants may act on their own to investigate the property and make an offer if they wish. However, Ms. Reardon felt that the broker discouraged any offers by the tenants early in the process as he responded on several occasions that they were discussing a sale of the park with a third party.

In this case, the first notice Ms. Reardon had of a sale was in December, 2014 when Grondin gave notice that a purchase agreement had been signed to start the statutory process for the tenants. She had previously reached out to Grondin in August, but he said they were talking with a buyer at the time. The sale agreement with Lacasse was dated December 8, 2014.

Once the Loan Fund received the 60 day notice of a sale, Ms. Reardon worked with the interested tenants. The offer was the one made by Mr. Lacasse for $3,800,000.00. The interested residents formed the Ballpark Cooperative Inc. to work on the possible

purchase. She testified that there were lots of organizational meetings, with a meeting of all of the interested tenants on January 31, 2015.

At that meeting, Leslie Wright, who was working for Mr. Lacasse who was the buyer and manager of the park, appeared with a number of Paradise Park tenants who prior to the meeting had not been a part of the cooperative. The meeting was later described by an attorney for the cooperative as "contentious". Ms. Wright did not describe it that way, and said that she had limited involvement with the meeting. The vote of the owner/members was 32 to 25 against the purchase of the park.

As there was no vote to purchase the park, the tenant group tried to enjoin the sale. However, that request was ultimately denied. At the time of the sale, Ms. Reardon was not aware of any suits brought by the tenants regarding the sale, but other witnesses testified that Ballpark Cooperative had filed suit seeking the statutory penalty of 10% of the purchase price of the park alleging that the owner did not deal in good faith with the tenants. At the time of trial, Ms. Reardon was aware that the litigation was pending against the Trust and Mr. Grondin.

Management of the Park

After Kevin Grondin had continued to manage the park, and to act as a trustee, he was aware that there were concerns being raised by Mark Tay about a conflict of interest whereby Grondin was benefitting by continuing to manage the park while he was trustee and controlling whether it should be sold and how it should be sold. By late 2013, when he was completing the process to get a broker to market the property, Grondin had Attorney Christopher Paul looking for a professional manager for the park. This was in spite of the fact that ARA had told Attorney Paul that they did not recommend bringing in new management as it could create problems for the marketing and sale of the property.

Kevin Lacasse was contacted by Attorney Paul in December, 2013 or January 2014 about providing management services to Paradise Estates. Attorney Paul mentioned to him that a third party manager was needed because of litigation that claimed a possible conflict of interest for Grondin's company to be managing the park. Before contracting to manage the park, he met with Kevin Grondin, got a brief history of the last 3 to 4 years of improvements, and took a tour of the park. He noticed that there were a number of vacant

home sites, and that there did not seem to be a lot of marketing being done to fill those sites. Overall, he thought the park was in good shape, including the apartments.

Lacasse testified that he was interested in managing the park because the mixed use of the property with apartments and manufactured homes fit nicely with his experience, which was different from many other owners who do not prefer mixed use parks. One of his companies, New England Family Housing, managed approximately 600 units of housing with three employees and subcontracted labor for projects. Lacasse told the Court that he had owned a park in Tilton that had both manufactured homes and RV rentals so that he was experienced with mixed use properties.

Based on his experience, Lacasse negotiated a fee of 10% of gross income, plus a percentage of any work done by outside contractors that he would have to manage. The fee also included a lease up fee for any apartments that were rented. This was his standard fee for other parks that he managed. Overall he was charged with running the park – evictions, collections and all operations. He admitted that when he signed the contract, he had in the back of his mind that he may want to purchase the park at some point in the future, however he did not know it was on the market, although he understood it could be sold.

Due to the potential for a sale, Lacasse also negotiated a management termination fee into his contract. At trial he acknowledged that the cancellation fee, calling for a payment of $5,000 should the contract be cancelled due to a sale of the park, was put in right before signing. He intended the fee to cover the costs he incurred to get the management services going just in case the park was sold.

While he was managing the park, Lacasse would discuss things like evictions with his employee and on site manager, Leslie Wright, and with Kevin Grondin. However, the ultimate decision on evictions fell to him with the advice of the owner. As for rent increases, those were discussed with Grondin. They agreed that the rents on the apartments were believed to be too low and therefore the apartment rents were increased.

Overall, Lacasse found that Kevin was available to discuss any issues. Mr. Lacasse also dealt with Cecile Paradis – manager of Lilac City Parks and Sales, LLC, the management company that previously managed the property – who was available when he needed her. When asked to review records reflecting the amounts of rent due from tenants who were evicted in 2014 after he started managing the park, Lacasse testified

that the amounts of rent for a number of them reflected delinquencies that had gone on much longer than was his usual practice.

In addition, he noted that some of the delinquencies could have been from lots that were vacated, but rent was continuing to accrue, and he also recognized that some of the large delinquencies were paid in full over time. Grondin testified that some were the result of the death of an owner with delays related to the opening and settling of an estate, among other things. The exhibits showed a significant number of evictions started by Grondin prior to Lacasse taking over as manager, and then a significant number of evictions brought by Lacasse thereafter through November, 2014.

Lacasse found out the park was for sale after he began managing it. When he learned of the price, he felt the price was too high. Therefore, he put any thought of purchasing it out of his mind. He later understood that the park went under contract to someone else.

Subsequently, late in the summer, 2014, he discovered that the property was back on the market at a lower price. He then started to negotiate for a purchase of the park. He used an attorney to negotiate the agreement with the Trust's attorneys. As a part of the purchase agreement, he refused to waive the $5,000.00 termination fee for the management contract. He told the Court that he believed his company was entitled to that money. Also, there was a $25,000.00 remediation fee added because of things he found and negotiated regarding water lines and paving that needed to be done. He testified that he had wanted the purchase price reduced by more than this for the remediation work, but ultimately agreed to a lower number, which was the $25,000.00. His agreement to accept this money as a credit toward the purchase removed the responsibility of the Trust to do the remediation work.

Of the $3,800,000.00 purchase price, there were a number of deductions due at closing. These included the broker's fee of $152,000.00, as well as the $25,000.00 remediation fee and the $5,000.00 management termination fee. Also, he received the two mortgages with a face amount of $119,000.00, although he did not know how much those may be worth as he did not know if they were collectible. Also, the property on Gear Road was included in the purchase.

After he had his purchase and sale agreement in place, he contacted the tenants in an attempt to convince them that they should not try to purchase the park. His letter,

Exhibit M.18, was dated January 7, 2015 and was sent to the residents of Paradise Estates indicating that his company was "working with Kevin Grondin on the purchase of the community." It invited the residents to meet with he and his company, New England Family Housing, on January 9, 2015 to answer any questions the residents may have about he and his company. Lacasse felt that the tenants were pretty happy about the efforts Grondin had made to restore the park, and wanted to meet with them as he had been managing a lot of the recent work. At that point, Lacasse had been managing the park for about ten months.

The letter to the residents went on to acknowledge that some tenants could not afford a rent increase and that his company was looking into cost savings, and that its financing may even restrict rent increases. The letter spoke of continuing with improvements and filling vacant home sites with new homes. Lacasse also mentioned that his company could capably manage the park given his company's size and experience. The letter concluded by mentioning the risks of owning a park, and the ultimate responsibilities of the owner, implying that the tenants would have to take those risks if they purchased the park.

There was no evidence that Grondin participated in drafting the letter. In addition, Lacasse later testified that he told the tenants that he would not increase park rents, and as of his testimony in September, 2015 he stated that he had not done so.

During this time, Lacasse was aware of a small group that wanted to form a co-op to purchase the property. He did not attend the co-op meeting in January, although Leslie Wright, who worked for him for on-site management, did attend.

After the tenant group had met, and there was a vote to not purchase the park, Lacasse testified that he was told that the tenant group had asked for an extension of the statutory 60 day period to negotiate a sale. Lacasse refused to agree to the extension. Moreover, he credibly testified that he would have sued to enforce the contract had Mr. Grondin, as the trustee of the owner, granted the extension. Lacasse stated that the head of the tenants group knew of the contract to purchase well before the sixty day notice was given, and that Lacasse did not want to grant any extensions to the sixty days as he felt they had plenty of time to vote to purchase the property.

When Lacasse financed the purchase, he obtained a loan of $4,612,000.00 based on improvements that he was going to make to the park to increase the number of rental

units. He expected to put in 14 additional units at a cost of approximately $58,000.00 per unit for the pad fit up and a new manufactured home per pad. He was willing to take the risk of the increased debt to get the extra units developed.

Appraisals of the Park

The petitioners presented the testimony of two appraisers to establish the value of the park and to support their allegation that the respondent's operation of the park was a violation of his fiduciary duties that caused the park to sell at a price lower than it otherwise would have sold had he not breached those duties.

The first appraiser to testify was Jeffrey Leidinger, who appraised the park for the purposes of Lacasse's bank financing. Mr. Leidinger was retained by the Bank and did not know the amount of financing that Mr. Lacasse was seeking, or how much he obtained. Leidinger testified that his appraisal estimated the value of the park to be $5,000,000.00 "as is" on March 4, 2015. Further, he estimated the value of the park completed with 16 new manufactured housing units to be $6,4000,000.00.

Mr. Leidinger told the Court that although demand for manufactured housing parks is high, the kind of parks owned by Mr. Lacasse, including Paradise Estates, are unique in that they have a number of units owned by the park owners (here both apartments and manufactured homes). Most manufactured housing parks own only the land and do not deal with the upkeep of any units. Paradise Estates, on the other hand, included a number of apartments and park owned homes. In addition, his improved estimated value was based on the addition of 16 more park owned homes.

Mr. Leidinger also testified about the manner by which he reached his estimated value of the park. He told the Court that he determined the value based upon research establishing that a cap rate of 9.0% was appropriate using a blend of three approaches to setting cap rates. His research included a survey of national and local investors that yielded a range of cap rates from 7.0 to 10% - with 7% producing the highest value for a park and 10% producing the lowest value. He opined that he was very comfortable with the 9.0% cap rate that he used in his report given the condition and history of Paradise Estates.

Mr. Leidinger further explained that he came to his estimate of value by assuming that the park rents could be increased to what he believed would be the market value, with only a 3% vacancy rate, and using his estimate of operating costs to produce net operating income of $448,820.00. He testified that he relied on this income approach to valuation as the best measure for his estimated value of the park.

Peter Knight also testified about his appraisal of Paradise Park. He was retained by the petitioners to value the park and issued his appraisal with the conclusion that "the most probable" "as is" market value for the park was $4,050,000.00 as of December 22, 2014. This valuation date was just over two months prior to Leidinger's appraisal, and neither appraiser could cite any changes to the park that would explain the difference between their two valuations.

Mr. Knight also told the Court that the property was unique because it is a mobile home park with an apartment complex included. He testified that people who want to buy a mobile home park do not want to own an apartment complex because tenants in apartment rentals are different from those renting a pad in a park, and require different management expertise. So, with a multiple component property like Paradise Estates he felt he must be very careful in that the value of the components may not give the best overall value. In other words, he noted, a mobile home investor may discount the apartment part of the property because he or she may not be comfortable with it.

As Mr. Leidinger did, Knight testified that he believed the most appropriate capitalization rate for this property was 9.0%, although he stated that it could be between 8.5% and 9.5%. To determine the net operating income, Mr. Knight testified that he reviewed the rental rates in the market. He narrowed the rates down to the ones that were most similar to Paradise Estates, and also looked at the physical condition of those parks. The best comparison parks he could find had rents that were "dead on" for what Paradise Park was receiving for rents. He felt that the current rental rates at Paradise Park were the market rates.

He further supported this conclusion with his opinion that if the rents are below market, there should be no vacancies. However, if they are too high, then there would be lots of vacancies. At the time of his appraisal, the vacancies were actually over what he would expect telling him that the current rents could be above market. However, he also

found that the vacancies were not so high as to cause him to believe that was the case. He concluded that the rents were proper at the current rates.

Knight was asked to comment on a comparison of his net operating income to that used by Mr. Leidinger. He agreed that if Leidinger had used Knight's rental rates, instead of using an increase in rent, as well as his vacancy and collection costs numbers, Leidinger's estimated value would have dropped to $4,160,000.00. He admitted that a small change in the monthly rent can have a dramatic effect on the appraised value of the property – particularly for something of this scale.

The evidence established that if the two appraisers had used the existing rents, as determined by Knight, and the actual vacancy and collection rates, their valuations would have been nearly the same. The Court finds that Mr. Knight's rental rate and expense, vacancy and collection rate testimony to be the more credible of the two appraisers, and therefore finds that the estimated value of the property just before the sale to Lacasse was approximately $4,050,000.00. As noted in Knight's appraisal, this was his determination of the "most probable" price at which Paradise Estates might sell.

As already noted in this Order, the evidence also established that the sale to Lacasse included the Gear Road property. The most credible evidence of the value of that property as of the time of the sale was an appraisal by Jeffrey Wood estimating the value of the Gear Road property to be $84,000.00 as of December 22, 2014.

As for the other assets included in the sale, the two promissory notes secured by mortgages on older manufactured homes in the park, there was insufficient credible evidence to determine if any value could be attributed to those assets. Therefore, the Court finds that they added no value to the sale.

Although the sales price also included a $25,000.00 holdback given to the buyer, the sale did not include the existing uncollected rents. Mr. Grondin testified that the amount he subsequently received from those rents exceeded the $25,000.00 holdback, and that he expected additional income from them. The Court finds that the credible testimony at trial established that those rents more than offset the holdback. Therefore, the Court finds that the price received by the trust for Paradise Estates was $3,800,000.00, with a reduction for the value of the Gear Road property. This left a price of $3,716,000.00, or $334,000.00 less than the "most probable" value as determined by Peter Knight – the expert retained by the petitioners.

The only other evidence of the possible sale price of the park produced at trial was the testimony of Ms. Reardon that her pro forma valued the park at $4,200,000.00. However, that value was based on a rent increase of $25.00 per month, and was without any due diligence. There was no evidence that the tenants or the New Hampshire Community Loan Fund would have actually paid that amount or anything close to it if they had gone forward to try to purchase the park.

Expert Testimony

The parties each offered expert testimony as to whether Kevin Grondin had breached his fiduciary duties such that the price obtained for the park was less than otherwise would have been obtained. The petitioner filed a motion to admit the reports of both experts in redacted form, which was initially objected to by the respondent, and then agreed to subject to certain clarifications regarding exhibits that were included as a part of the reports. The Court has granted that motion subject to those clarifications.

As for the testimony of the experts, the respondent offered the testimony and report of Joseph McDonald, Esq. In essence, Attorney McDonald reviewed the trust agreements executed by the settlor, Carylyn Grondin, and the facts provided to him by counsel based on the record of the case, and opined that the business judgment rule was the applicable standard to apply in this case, and that all standards of care were met by the respondent. Attorney McDonald's report finds that the New Hampshire Supreme Court case of *Bartlett v Dumaine* calls for the business judgment rule to apply because the circumstances preceding the death of Carylyn Grondin showed her intent to name Kevin Grondin as trustee, and that was so even if there was a potential conflict of interest due to his company managing the park.

Mark Tay, the father of the petitioners and ex-husband of Carylyn Grondin, testified as the petitioners' expert. Mark Tay's testimony was focused more on park operation than on the legal standard applicable in this case. However, he did opine on whether he believed Mr. Grondin met the applicable legal standard as a trustee. His opinion was given with little discussion as to the nature and history of the creation of the trust, and was based on only the prudent investor rule set forth in the Uniform Trust Code.

As for his opinion on the operation of the park, Tay opined that Grondin made a large number of mistakes when he operated the park. Starting with an examination of the economic picture that Grondin and ARA provided for buyers, Tay opined that a potential buyer would look not at the rent rolls alone as provided, but would look at what is actually on site to estimate actual rent receipts and to account for the costs of removing older park homes where tenants are evicted and their manufactured home must be foreclosed upon.

He stated that "if delinquencies are high and rents neglected, the natural conclusion to be drawn is that so also with everything else in the park related to infrastructure, rules enforcement, etc." The implication is that Grondin did not tend to the collection of park rents. Tay notes that when Lacasse took over, "[c]ollections and tenant performance appears to have markedly improved".

He also says that "[T]he picture painted by these ledgers and rents rolls, and the conclusion to be drawn, is that the rental operation was profoundly neglected for years." The Court notes that Grondin only managed the property for approximately 16 months prior to Lacasse taking over. Indeed, the contract to sell the park to Lacasse was signed just over two years after Carylyn's death. Tay concludes that "[b]y accepting a low sale number for the park, the beneficiaries are now asked to pay the piper for the Respondent's years of neglect financially, and lost opportunity." Tay's report, however, fails to show what neglect and lost opportunities occurred after Grondin became the trustee. Therefore, the Court cannot give much weight to his statements.

In addition, much of Tay's report deals with the failure of the trustee to make payments into the Trust from the operation of the park. However, nowhere is there an opinion that this affected the sale price of the park except to the extent that Tay asserts that it affected the net operating Income and the cap rate. He cites a high operating expense ratio as decreasing the net operating income and increasing the cap rate thereby lowering the price. He cites a failure to have a budget and the lack of return of monies to the Trust for approximately 17 months as evidence of mismanagement – but he does not provide evidence that if affected the price of sale. The Court also notes that neither appraiser cited this factor in setting the cap rate that they used to value the park.

The Tay report also addresses the "belated sale" of the park. He testified that Kevin at first indicated that he was going to keep the park in the Trust. He asserts that the quick sale of the park would not be in Grondin's interest as it would cut off his income stream for

management fees. Tay also reduces the sales price Grondin obtained by the broker's commission, and then compares it to the various appraised values. This ignores the fact the appraisals do not address this issue and are designed to show the estimated sale price, but not the net price after any commissions. Contrary to the testimony of Mr. Hotchkiss, an actual buyer, Tay says that a park's net operating income "can normally be determined from the figures presented." Hotchkiss, on the other hand, credibly testified that the expected net operating income from a park is something that buyers like himself determine based on their own calculations.

Tay also opines that because rent rolls were in a state of flux, "this flux understandably prompted reservation by potential buyers." This opinion is not supported by any facts before the Court and therefore can be given no weight. Again, the credible testimony by Mr. Hotchkiss was that his analysis was based on his own determination of the numbers and what they most likely would be if he purchased the park.

Tay further found a "meager response" was generated by the marketing efforts, but fails to cite any facts before the Court to support that finding. Further unsupported opinions in his report include his finding on page 30 of his report that "[t]he amount of claimed expenditures, the exorbitant management fees, the historically high OER all contributed to the damage to the reputation and marketability of the property." As noted above, many of Tay's opinions are not supported by anything in the record other than his own thoughts about how the park was operated and what that could have meant to buyers. He cites no potential buyers that testified to such conclusions.

Although many of Tay's opinions and statements lack support in the record, he also opines that Grondin should have "contacted the New Hampshire Community Loan Fund directly at the outset." He states on page 30 of his report that "[i]n my personal experience, the loan fund, on behalf of the tenants, will pay a fair price and certainly were very sophisticated in acquiring and assisting in the operating of the parks, and does so without a real estate commission." He cites Grondin's failure to contact the loan fund as a "gross omission" since, in his opinion, it would have saved on both the broker's commission and on attorneys' fees from dealing with numerous interested buyers who did not move forward to purchase the park.

Tay finds that Grondin's failure to do so from the beginning was "an inexcusably costly error in judgment to the beneficiaries because of his own financial interest." The

report does not cite any evidence of how Grondin's delay served his own financial interests other than his company continuing to manage the park as it had prior to Carylyn's death.

As for dealing with the statutory process – Tay says that Grondin "inexplicably refused to begin the process with the tenants to see if they would be willing to make an offer to purchase the park." He also mentions the ability to negotiate with the tenants and then "renegotiate" with Mr. Lacasse. Tay cites the December 2014 Stanhope appraisal as the basis for Grondin to negotiate with the tenants and with Lacasse for a higher price. He also states that Grondin allowed Lacasse as the buyer to "allegedly interfere" with the prospect of negotiating with the loan fund for a better deal. He cites the potential damages of $380,000.00 from the lawsuit brought by the tenants as money that could have been saved if Mr. Grondin had simply gone to the tenants first.

The Court notes that Attorney Tay's report does not state an opinion as to the damages incurred by the Trust. Instead, it asserts things Grondin "failed to do, but should have done", things he "did...but should not have done", and things he "did, and did poorly". The latter category deals with the sale of the park. At best, Tay's report could be read to assert $380,000 in possible damages from the cooperative's lawsuit – but otherwise does not cite a price at which park should have sold absent Grondin's alleged mistakes other than to rely on the appraisals.

Applicable Law

The issue before the Court is whether the respondent mismanaged the Trust property so as to diminish the value of the manufactured housing park such that the sale to Mr. Lacasse could have been accomplished at a higher price. The resolution of this issue requires the court to determine the standard of fiduciary care applicable to Mr. Grondin according to the terms of the trust and statutory and common law. The court begins its analysis with the general rules of trust interpretation and construction, and, to the extent necessary, a fiduciary's duties as set forth in the New Hampshire Trust Code ("UTC"). As a preliminary matter, the court observes that:

> [a] trustee has both (i) a duty generally to comply with the terms of the trust and (ii) a duty to comply with the mandates of trust law except as permissibly modified by the terms of the trust. Because of this combination of duties, the fiduciary

> duties of trusteeship sometimes override or limit the effect of a trustee's duty to comply with trust provisions; conversely, the normal standards of trustee conduct prescribed by trust fiduciary law may, at least to some extent, be modified by the terms of the trust.

RESTATEMENT (THIRD) OF TRUSTS § 76, cmt. b(1) (2007).

New Hampshire has well-established rules governing construction of the terms of a trust. See, e.g., In re Trust by Dumaine, 146 N.H. 679, 681 (2001); Indian Head Nat. Bank of Nashua v. Brown, 123 N.H. 87, 91-92 (1983); cf. Shelton v. Tamposi, 164 N.H. 490, 495 (2013)("[t]he rules of construction that apply to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of trust property"). In addition, the UTC identifies the limits placed on a settlor's discretion to modify a trustee's duty to comply with the statutory limits of care. See RSA 564-B:1-105(a)-(b).

Rules of Construction

New Hampshire law is clear that the intent of the settlor is of the upmost importance when a court is interpreting a trust. See, e.g., Shelton, 164 N.H. at 495 (intent of settlor is "paramount") King v. Onthank, 152 N.H. 16, 18 (2005)(intent of testator is the "sovereign guide"). "Similarly, it is the settlor's intent, as ascertained from the language of the entire instrument, which governs the distribution of assets under a trust." King, 152 N.H. at 18. Courts "determine that intent, whenever possible, from the express terms of the [instrument] itself." Shelton, 164 N.H. at 495. "[I]f no contrary intent appears in the [trust], the words within the [trust] are to be given their common meaning . . . . [C]lauses in a [trust] are not read in isolation; rather, their meaning is determined from the language of the [trust] as a whole." In re Clayton J. Richardson Trust, 138 N.H. 1, 3 (1993); see In re Trust by Dumaine, 146 N.H. at 681. Finally, settlors are presumed to understand the import of the words used in the instrument, see, e.g., Blue Ridge Bank & Trust, Co. v. McFall, 207 S.W.3d 149, 157 (Mo. App. W.D. 2006); and similarly, have been found to understand how to include limiting language as well. See Amoskeag Trust Co. v. Haskell, 96 N.H. 89, 92 (1950).

Moreover, the technical rules of construction are intended to aid in the discovery of the settlor's intention. See In re Frolich's Estate, 112 N.H. 320, 326 (1972)("canons of construction always give way in this jurisdiction to a single broad rule of construction favoring the maximum validity of the [settlor's] dispositive plan" (quotations omitted)). "When interpreting an *inter vivos* trust evidenced by a written instrument, the terms of the trust are determined by the provisions of the instrument as interpreted in the light of all the circumstances and other competent evidence of the intention of the settlor with respect to the trust." In re Trust by Dumaine, 146 N.H. at 681 (quotations and ellipses omitted). "The relationship of the settlor to the beneficiaries and the duties toward them are among the facts to be considered by a court trying to place itself in the shoes of the creator of the trust in order to ascertain what was intended by the trust instrument." Bartlett v. Dumaine, 128 N.H. 497, 505 (1986)(quotations and brackets omitted).

The New Hampshire Supreme Court has directed that in any effort to discern a settlor's intent, "[a]lthough extrinsic parol evidence is inadmissible to vary or contradict the express terms of a trust, such evidence may be received to determine the settlor's intent where the language used in the trust instrument is ambiguous."[4] Bartlett, 128 N.H. at 505; see, e.g., Simpson v. Calivas, 139 N.H. 1, 8 (1994) ("where the terms of the [trust] are ambiguous, . . . extrinsic evidence may be admitted to the extent that it does not contradict the express terms of the will" (citations omitted)). Thus, "[e]xternal facts may be received to explain or resolve doubts, but not to create them." White v. Weed, 87 N.H. 153, 156 (1934); 7 C. DeGrandpre *New Hampshire Practice, Wills, Trusts, and Gifts*, § 13.07, at 144 (4th ed. 2003) (quotations omitted).

For example, the New Hampshire Supreme Court, while observing that courts "examine extrinsic evidence of the settlor's intent only if the language used in the trust is ambiguous," In re Trust by Dumaine, 146 N.H. at 681, noted that extrinsic evidence offered support for its construction of "unambiguous" trust terms. See id. at 683. Therefore, a settlor's comments before or after execution of a trust is not permitted to contradict the express language in the instrument, but where appropriate may serve as a helpful tool in discerning intent. See, e.g., Merrow v. Merrow, 105 N.H. 103, 106 (1963); accord Simpson, 139 N.H. at 8.

[4] Lack of precision does not make a term "ambiguous," rather, ambiguity exists where there is reasonable disagreement as to a term's meaning. Cf. Anna H. Cardone Revocable Trust v. Cardone, 160 N.H. 521, 531 (2010)(interpretation of deed).

Limits on Fiduciary Liability

The UTC sets forth certain standards of care governing a trustee's duties when managing trust assets. See, e.g., RSA 564-B:8-801 (duty to administer and manage generally); B:8-804 (prudent administration); B;8-806(duties of trustee with special skills); B:8-809 (control and protection of assets);B:9-901-902 (prudent investor). It recognizes, however, that a settlor may modify the trustee's duties set forth in the UTC, thus diminishing or relieving him or her of certain fiducial burdens. See RSA 564-B:1-105(a)("[e]xcept as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary"); RSA 564-B:9-901(b)("prudent investor rule may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust"); RSA 564-B:10-1008 ("Exculpation of Trustee"); cf. Bartlett, 128 N.H. at 507-51. Further, a trustee "who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument" is not liable to a beneficiary for a breach resulting from that reliance. RSA 564-B:10-1006.

The power of a settlor to insulate a trustee from liability, however, is not unlimited. The UTC directs that "[a] term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it: (1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries . . . ." RSA 564-B:10-1008; see also RSA 564-B:9-901(b). In addition, the UTC mandates that terms of a trust do not prevail over, inter alia, "the duty of a trustee to act in good faith and in accordance with the terms of the trust, the purposes of the trust, and the interests of the beneficiaries." RSA 564-B:1-105(b)(2). Under the common law, "provisions enlarging the powers to invest are strictly construed," Miller v. Pender, 93 N.H. 1, 4 (1943); see RESTATEMENT (THIRD) OF TRUSTS § 77(d) (2007). In sum, "trust terms may not altogether dispense with the fundamental requirement that trustees not behave recklessly, but in good faith, with some suitable degree of care, and in a manner consistent with the terms and purposes of the trust and the interests of the beneficiaries." RESTATEMENT (THIRD) OF TRUSTS § 77 cmt. (d) (2007).

UTC Duties and the Business Judgment Rule

The terms of the trust in this matter limit the liability of the trustee where he "has "exercised good faith and ordinary diligence." See *The Carylyn Grondin Revocable Trust* art. 9, at 16. The parties dispute both the meaning and scope of the limitation. On the one hand, the petitioners[5] assert that the applicable duties of care are set forth in the UTC.[6] In particular, the petitioners assert that he was required to act "as prudent person" and "exercise reasonable care, skill, and caution." *Petitioners' Memorandum of Law re: 'Standard of Care" to be Applied"* at 5-6 (Index #80); see RSA 564-B:8-804; see also RSA 564-B:9-902(a)(a "prudent investor" exercises "reasonable care, skill, and caution"). They further contend that if Article 9 of the trust, limiting the Trustee's fiduciary liability, applies where he acted with "good faith" and "ordinary diligence," the Trustee still has "failed to meet the standard of care." *Petitioners' Memorandum of Law re: 'Standard of Care" to be Applied"* at 5-6 (Index #80).

The respondent, however, asserts that some form of the "business judgment rule" should apply. He argues that given the ambiguous terms set forth in Article 9 of the trust, the extrinsic evidence presented at trial established "that Carylyn desired for a more relaxed, less stringent standard of care than the default standards under RSA 564-B:8-804, RSA 564-B:8-806, and 9-902." *Respondent's Memorandum of Law on the Standard of Care* at 5 (Index #77).

In weighing these arguments, the Court must review the distinctions, to the extent they exist,[7] between the duty of prudent administration in RSA 564-B:8-804, and the so-called "business judgment rule."

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[5] The petitioners concede that Article 5 of the trust, governing powers of the trustee, see *The Carylyn Grondin Revocable Trust* art. 5 at 10-11, "does not contain any specific language establishing a standard of care." *Petitioners' Memorandum of Law re: 'Standard of Care" to be Applied"* at 4 (Index #80). They assert, however, that because this article makes reference to the Uniform Trust Code and Uniform Trustee Powers Act, it "incorporates the New Hampshire statutes that establish a trustee's standard of care." Id. The Court construes this argument as asserting that by adopting the powers set forth in the UTC, the trustee also assumes the *duties* set forth therein.

[6] See RSA 564-B:8-801; B:8-804; B;8-806; B:8-809;B:9-901-902.

[7] A recent reported case from the New Hampshire bankruptcy court indicates that court's belief that there is no relevant distinction between the standard of care as set forth in the UTC and the business judgment rule. See In re Felt Manufacturing, 371 B.R. 589, 614-15 (Bankr. D.N.H. 2007) ("Under New Hampshire law, the duty of officers and directors to a corporation and its shareholders is viewed as essentially the same as the

Briefly, the duty of prudent administration under RSA 564-B:8-804 requires a trustee to act "as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." Id. The test looks at the conduct and not the performance of the trustee, RESTATEMENT (THIRD) OF TRUSTS § 77 (2007), and therefore "whether a breach of trust has occurred depends on the prudence or imprudence of a trustee's conduct, not the eventual results . . . ." Id. Actual performance of a trustee is relevant to damages after a breach is found. Id.

This statutory duty has three elements, namely: (1) care; (2) skill; and (3) caution. Id. Due care "ordinarily involve[s] investigation appropriate to the particular action, and also obtaining relevant information." Id. Skill is that of "an individual of ordinary intelligence" id., unless the trustee possesses special skills. See RSA 564-B:8-806. Finally, caution does not "mean the avoidance of all risk, but refers to a degree of caution that is reasonably appropriate or suitable to the particular trust, its purposes and circumstances, the beneficiaries' interests, and the trustee's plan for administering the trust and achieving its objectives." RESTATEMENT (THIRD) OF TRUSTS § 77 (2007).

In New Hampshire, the business judgment rule "establishes a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company." Appeal of the Local Gov't Ctr., Inc., 165 N.H. 790, 805, n.5 (2014). In corporate law, it is the lowest level of scrutiny applied to corporate decision making. See Reis v. Hazelett Strip-Casting Corp., 28 A.3d 442, 457-449 (Del. Ch. 2011). It has been found to "operate[] as both a procedural guide for litigants and a substantive rule of law." Balotti and Finkelstein's Delaware Law of Corporations and Business Organizations, § 4.19 The Business Judgment Rule (3rd ed. 2016). A decision evaluated under the business judgment rule "will be upheld unless it cannot be attributed to any rational purpose." Reis, 28 A.3d at 457.

Finally, the court observes the New Hampshire Supreme Court held over a century ago that: "[c]ommon or ordinary diligence is defined . . . as that degree of diligence which men in general exert in respect to their own concerns; which men of common prudence

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duty of a trustee to a trust and its beneficiaries."). This view, however, assumes that the duties are static, and does not consider a settlor's power to modify the burdens placed upon a trustee.

generally exercise about their own affairs in the age and country in which they live." Tucker v. Henniker, 41 N.H. 317, 321 (1860). This definition is remarkably similar to the duty of prudence set forth before adoption of the UTC. See RESTATEMENT (SECOND) OF TRUSTS § 174 (1959); cf. RESTATEMENT (THIRD) OF TRUSTS § 77(d) (2007)(noting that the "modern standard" looks to the "terms, purposes, and other circumstances of the particular trust"). Indeed, the comments to the Uniform Code note that "[t]he prior Restatement can be read as applying the same standard . . . . regardless of the type or purposes of the trust." National Conference of Commissioners on Uniform State Laws, UNIFORM TRUST CODE at 141 (2010).

Findings

The evidence in this case establishes that Carylyn Grondin drafted both of her trusts as a result of her divorce from Mark Tay. When the second trust was executed, she knew the divorce was being completed and she knew that there were substantial assets that would be included in that trust, including a manufactured housing park. Throughout the drafting process she communicated with her attorney, Fred Forman. Attorney Forman credibly testified that it was a material purpose of the Trust that her relatives be her successor trustees, starting with her brother Kevin Grondin. Although Kevin's experience with manufactured housing parks was a factor, it was not the primary factor for Carylyn. Instead, the material factor for Carylyn selecting Kevin, as well as in selecting her sister Marilyn, was that they were her siblings and that she felt they could deal with Mark Tay regarding the Trust, including Paradise Estates.

The language of the Trust reflects this material intent and her worries about her ex-husband. Attorney Forman's credible testimony was that Carylyn wanted to "lock Mark out" of having anything to do with the assets. Indeed, in Article 9 of the Trust where she addressed successor trustees if her siblings could not or would not serve, she specifically provided that certain individuals could not serve as a trustee. The parameters she set excluded Mark Tay from ever serving as trustee.

Carylyn told Attorney Forman that she was worried that her ex-husband would nit pick the Trustee, and manipulate their daughters to create problems for the trustee. Her worries were borne out since less than six months after Mr. Grondin became trustee, Mark

Tay had filed a lawsuit against him for breaches of fiduciary duty on behalf Sabrina, who was a minor, with Alyssa, one of the other daughters of he and Carylyn. The third daughter, who was an adult at the time, did not join in the suit and has appeared before this Court in support of Mr. Grondin seeking to separate herself from her siblings.

By way of further dealing with her expectation of interference from her former husband, and his possible manipulation of their children, Carylyn provided for a fiduciary standard of good faith and ordinary diligence for the trustee in Article 9 of the Trust. The language used in the trust, referring to "ordinary diligence", is different from the UTC standard of duty, since that statute refers to a prudent person standard. This ambiguity creates the necessity for the consideration of extrinsic evidence concerning the intentions of Carylyn Grondin when she formed the Trust.

Based upon a consideration of that extrinsic evidence, this Court finds that Carylyn Grondin intended to limit the liability of her brother, or any other successor trustee, through the application of a fiduciary duty standard that was less than the prudent person standard in the UTC. In short, she was looking for her successor trustees to use good faith and their "honest belief" that what they were doing was in the best interests of the beneficiaries. This is essentially the business judgment rule as noted earlier in this order.

Having established the level of fiduciary duty applicable to the respondent, the Court must next determine if Mr. Grondin violated that duty. The Court's inquiry is limited to the issue before it, namely actions taken by Mr. Grondin that may have caused the sale of Paradise Estates (together with the Gear Road property and the two promissory notes) to happen at a lower price than he otherwise could have obtained had he not violated his duties. The Court must consider, then, not the optimum price that could have been obtained for these assets, but instead whether Kevin Grondin acted in good faith and in the honest belief that what he was doing was in the best interest of the beneficiaries.

The petitioners alleged that the respondent breached his fiduciary duties in a number of ways as follows:

1. He failed to take prompt action to sell Paradise Park and the related Gear Road properties;
2. He managed, administered and invested the assets of the trust in his own interest, and not in interest of the beneficiaries;

3. He managed and administered the trust assets of Paradise Park and the Gear Road properties by carrying on certain "policies" or "philosophies" of the settlor instead of acting solely in the interests of the beneficiaries;
4. He failed to invest the trust property with the purpose to return the value of the investment to the beneficiaries in the form of increased value at the time of the sale (or to pay current dividends);
5. He failed to keep adequate records and to provide the beneficiaries with the information necessary for them to protect their interests;
6. He failed to make financial disclosures to the beneficiaries that comply with Probate Court Rule 108A;
7. He failed to prudently administer the assets, and failed to exercise the care, skill and caution required by his special skills in deciding to retain Hansonville Estates, Inc., and then mismanaged it;
8. His mismanagement of Hansonville Estates, Inc. resulted in a failure to appreciate in value, a failure to generate a reasonable rate of return and reasonable stream of income, and created liabilities for Federal income taxes at the highest possible rate;
9. He failed to diversify investments;
10. He incurred unreasonable legal fees in relation to the Trust property; and
11. He failed to offer to and negotiate in good faith with the residents of Paradise Estates regarding the sale of the Park and thereby breached his duty to maximize the value of the park.

As noted above, the only issue before the Court at this time is whether the respondent breached his fiduciary duties, and whether that breach resulted in the trust receiving a lower price for the sale of Paradise Park, the Gear Road property, and the two promissory notes sold to Mr. Lacasse. Therefore, the only claims of liability that will be addressed in this Order are those relating to alleged breaches that may have affected the sale price of the Hansonville Estates and Gear Road properties. Issues relating to claims of failing to invest trust assets, failing to keep adequate records for the beneficiaries, failing to make financial disclosures to the beneficiaries, failing to generate a return to the

beneficiaries, failing to diversify, and incurring unreasonable attorneys' fees are not at issue here.[8]

As for the claimed breaches that remain before the Court, there are several actions or inactions claimed by the petitioners that they assert are breaches of Mr. Grondins' duties. First, they allege that he breached his fiduciary duties by not moving to sell Paradise Estates, and presumably Gear Road, immediately after Carylyn's death. Initially, the Court notes that there was no direct evidence of how any delay in the sale affected the ultimate sale price for the properties. Regardless, the Court finds that there was no breach of Mr. Grondin's duties arising from the timing of the sale of the properties.

This Court finds that the credible testimony established that after accepting the position of Trustee, Mr. Grondin spoke with Mr. Tay and told him that he planned to carry out the wishes of Carylyn and to hold on to Paradise Park since Carylyn had said that she hoped that one of the girls might be interested in the business after they finished college. However, Mr. Grondin also credibly testified that he spoke with a number of individuals and concluded by February or March, 2013, within 4-5 months of becoming trustee, that the park should be sold.

During those four to five months, Mr. Grondin was dealing with many issues. He was addressing his sister's estate, obtaining appraisals of the property in the Trust, continuing to manage his own businesses, continuing to manage Paradise Park, and determining what needed to be done with the assets in the Trust. Beyond the myriad of issues that Mr. Grondin was dealing with at the time, Mr. Tay started to request documents and information about the park just over a month after Grondin became trustee. Mr. Tay's many requests for information created yet another issue for Mr. Grondin as he was working toward dealing with the Trust and its assets. This history shows that Carylyn was correct in her expectation that Mark Tay would attempt to get involved with Grondin acting as trustee.

Given that Mr. Grondin made the decision to market the properties in the spring of 2013, this Court cannot find that he violated his fiduciary duties. Under the circumstances,

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[8] The Court recognizes that these issues were originally raised in the petitioners' lawsuit. However, the Court determined that those issues had been waived by the petitioners so that the Court would proceed on the issue related to the sale price of the park. Since that time, the petitioners filed a second suit raising the issues waived in this litigation. Therefore, the other claims for alleged breaches of fiduciary duties will be addressed in that second proceeding.

his actions were reasonable and in good faith based upon the information he had at the time. Moreover, once he decided to sell the property, he began interviewing local brokers, eventually expanding his search to nationally known brokers. He obtained a number of opinions of value and negotiated with the brokers regarding the commission to be charged.

The Court recognizes that the marketing contract with ARA was not signed until the end of 2013, but starting in February of that year, Grondin was being sued by Mark Tay as the parent of Sabrina, and Alyssa Tay. Therefore, in addition to the normal search for a broker, Grondin had to work with lawyers in the context of the litigation and deal with existing and potential claims against him.

This Court also finds that the petitioners failed to produce sufficient credible evidence that Grondin delayed selling the park simply to maintain his management contract, or otherwise acted to enrich himself at the cost of the Trust through any delay in marketing the properties. The Court notes that even if Grondin had breached his fiduciary duty by delaying a decision to sell the park, the petitioners failed to establish that any damages resulted from such a delay. There was no evidence that if a contract to sell the park had been obtained in 2013, it would have been for more money than was obtained in the December 2014 contract with Lacasse.[9] Indeed, there was evidence that the management by Mr. Lacasse may have favorably affected the financial status of the park and made it more attractive to a buyer in 2014.

The next issue for the Court is whether the way the property was marketed was a breach of Mr. Grondin's fiduciary duties. The credible evidence on this issue was that Mr. Grondin started with inquiries of several local or regional buyer brokers, and eventually expanded his search for a broker to national firms. The firm selected, ARA, was a nationally recognized broker for manufactured housing parks. One of the potential buyers of the park, Mr. Hotchkiss, went so far as to say that as a buyer of manufactured housing parks he wanted to keep a good relationship with ARA because it is a major broker for those kinds of properties. The Court finds that there were no breaches of the trustee's

[9] There was a date of death appraisal performed by Brian White setting the value at $3,630,000.00. The petitioners' assert that a number of upward adjustments needed to be made to that appraisal to properly compare it with what was sold. There was insufficient credible evidence presented to show how that appraisal would establish a selling price that would have been higher than what was obtained had Mr. Grondin put the property on the market at some point in 2013 shortly after he became trustee.

duties in the way Mr. Grondin researched and selected the broker to sell the property. He acted in good faith and selected a nationally recognized broker to market the property.

In addition, the petitioners do not allege that the way ARA marketed the property created any liability for Mr. Grondin. Indeed, the evidence shows that ARA's marketing methods are well thought of in the industry. Instead, the petitioners asserted through Mr. Tay that potential buyers were somehow dissuaded from making offers on the park due to the poor financial information provided by Mr. Grondin to the brokers, the use of the accrual form of accounting for profit and loss statements and other financial documents, and the large number of delinquent rents in excess of $1,000.00 that they claim Mr. Grondin failed to address in his management of the park while he was trustee.

In considering those allegations, the Court notes that there was no credible evidence before the Court that the use of the accrual form of accounting to present the financial information for the park was a breach of Grondin's fiduciary duties. The respondent presented the credible testimony of the accountant who prepared the financial information for Mr. Grondin and the Trust. The CPA testified that he represented a number of clients who owned manufactured housing parks and they regularly used the accrual method of accounting in presenting their records. Although Mr. Tay testified that he did not use the accrual method for the parks that he owned, he produced no testimony from any accountants or financial professionals regarding the issue. Again, the Court cannot find any breach of fiduciary duty here as Mr. Grondin acted in good faith in following the advice of a CPA knowledgeable in the way manufactured housing parks keep their records.

As for the way Mr. Grondin presented information to ARA, and the way they presented it to the buyers, the evidence was that the buyers who were looking at the park relied on their own analysis of the numbers to determine how much they would pay and whether they would go forward with a sale. The Court cannot find a breach of duty where the petitioners have not established what should have been done, and if the trustee had provided the financial information as the petitioners allege it should have been provided, how that would have affected buyers looking to purchase the park.

The one potential buyer who testified about the financial information provided by ARA credibly said that he really did not rely much on the information from the brokers other than to make an initial offer subject to due diligence and other contingencies.

Several witnesses testified that the kinds of buyers looking at this property were sophisticated business people who would make their own analysis of the financial information for the park, and would use their own business experience to determine operating costs and likely income from which a purchase price could be negotiated. Therefore, given the level of fiduciary duty held by Mr. Grondin, the Court does not find that there was any breach of his duties.

The next issue is whether Mr. Grondin breached his fiduciary duties by allowing a number of tenants to remain in the park when they had become seriously behind in paying their rent. Mr. Grondin testified that Carylyn had a policy of working with people, and that at first he continued that policy. The evidence was that there were significant past due rents as of the time of Carylyn's death. The evidence also shows that in 2013, Grondin had started a number of evictions and was incurring legal fees to address a number of the delinquent tenant issues. Those efforts continued when Mr. Lacasse was managing the park.

Although there was testimony about how the existence of severely delinquent tenants could negatively affect the possible purchase price offered for the park, there was no evidence that if Mr. Grondin had more aggressively evicted and removed tenants, that the financial situation of the park would have resulted in offers at a higher purchase price than what was actually received. In any event, there was insufficient evidence to establish that by not pursuing the delinquent tenants more aggressively, Mr. Grondin breached his fiduciary duties.

The final issue, and the one that is most directly related to how the park was ultimately sold, is whether Mr. Grondin violated his fiduciary duties by failing to initially attempt to negotiate with the tenants at the park instead of marketing the park to other purchasers. A part of this issue is the question of whether Grondin breached his duties by interfering with the tenant meeting to vote on whether the tenants were going to make their own offer to purchase the park after receiving notice of Mr. Lacasse's contract to purchase the property pursuant to RSA 205-A: 21.

On this issue, the Court finds that this Order cannot address the issue of the alleged interference with the tenants' attempts to respond to the Lacasse offer to purchase the park. That matter is currently in litigation, and the outcome of that litigation is not known. Once a decision has been reached in that case, then the petitioners may have an

additional cause of action or it may produce findings of fact that show there was no breach of fiduciary duties by Mr. Grondin.

As for the failure to negotiate with the tenants until after Grondin had a purchase and sale agreement for the park in hand, the evidence was that the New Hampshire Community Loan Fund, through NH-ROC, had an interest in seeing the tenants purchase the park. In addition, Ms. Reardon, the executive director of NH-ROC, communicated with ARA and Mr. Grondin on several occasions asking about the sale and whether they wanted to speak with the tenants. The testimony established that each time she called, either ARA or Mr. Grondin indicated that they were in the process of negotiating with a buyer and that they did not want to speak with the tenants at the time. Consistent with those statements, the evidence also shows that ARA and Grondin were assessing offers for the purchase of the park when Ms. Reardon called. There was no evidence that Grondin was doing anything other than acting in good faith and with the honest belief that his actions were in the best interests of the beneficiaries when he attempted to get offers in place through ARAs marketing efforts.

Grondin did not engage the tenants until December, 2014, when he had the LaCasse contract in hand. Grondin testified that he did not know that he could go directly to the New Hampshire Community Loan Fund to see if it wanted to purchase the property. He testified that he believed that he needed to get an offer first, and then the Loan Fund would work with the tenants. Mr. Tay and Ms. Reardon both testified that Mr. Grondin could have gone directly to the Loan Fund. Curiously, however, there is no credible evidence that Mr. Tay ever told Mr. Grondin that fact. Also, there is no evidence that Ms. Reardon ever told Mr. Grondin that the Loan Fund would like to make an offer to purchase the property.

Mr. Grondin credibly testified that he believed he needed a contract with a buyer in place before he could try to negotiate with the tenants or directly with the New Hampshire Community Loan Fund through Ms. Reardon. Ms. Reardon never told him that the Loan Fund was prepared to make an offer, or that she was prepared to have the tenants make an offer without going through the statutory process. Given this, the Court cannot find that Mr. Grondin did not act in good faith or that he did not act with honest belief of the best interests of the beneficiaries in mind when he delayed speaking with the tenants until after he had a signed contract with Lacasse.

Grondin was clearly trying to get the best price that he could for the property by engaging a nationally recognized broker to market it. Certainly, obtaining an offer through that marketing process could have led to a higher price than what the tenants may have ultimately agreed to pay, assuming the tenants agreed to form a cooperative and purchase the property. Moreover, it is possible that if Mr. Grondin had first gone to the tenants and/or the Loan Fund, that he might have been sued by the petitioners for not marketing the property first to achieve a wider exposure and a higher sale price.

There was no evidence at trial that Grondin had a duty to negotiate first with the tenants, and that not doing so was a violation of the duty of care applicable to him. Mr. Tay did testify that the Loan Fund was interested in buying parks, and that by negotiating first with the tenants, Mr. Grondin would have avoided engaging a broker and incurring a broker's fee. However, there was no evidence that the failure to do so was in bad faith or did not have a rational purpose.

Moreover, Mr. Tay also testified about using the tenants to negotiate a higher price with Mr. Lacasse, playing the two buyers off of one another. The Court notes that the affidavit of the broker marketing the property admitted as an exhibit at trial shows that the broker got Mr. Lacasse to increase his offer by using the offer of another, potentially less qualified buyer. There is nothing in the record indicating that any higher number could have been negotiated by first going to the tenants.

Although Ms. Reardon testified that the initial offer she considered for the tenants was $4.2 million, that offer required a rent increase and was conditioned on performing due diligence. She could not say what the offer would have been had the due diligence been completed. Also there was no evidence that the tenants would have agreed to any increase in rent. In addition, the statute only requires Mr. Grondin to negotiate in good faith with the tenants. The applicable statute, RSA 205-A: 21, does not call for prolonged negotiations that could cause the seller to lose a willing and able buyer.

Here, Mr. Grondin acted in good faith, attempting to obtain an advantageous price for the property. The Court cannot find that he violated his fiduciary duties by not going about the sale as Mr. Tay claims he should have done.

RULINGS ON PARTIES' REQUESTS FOR FINDINGS AND RULINGS:

The Court has reviewed the requests for findings and rulings submitted by the parties. In ruling on the requests, the Court notes that the requests that were not granted were denied either because:

1. there was insufficient or contrary credible evidence for the finding; or
2. if evidence was presented related to the requested finding or ruling, that the request was already covered by the findings or rulings in this Order; or
3. the request could only could be partially granted or denied due to the wording used; or
4. the requested facts or findings were not necessary for the rulings made by the Court and therefore no finding was required.

Petitioners' Requests: Granted – 1-7, 11-12, 14-24, 29, 31-36, 39-40, 42-51, 53-55, 57, 59, 61, 68, 70, 75-76, 80, 82-83, 85, 89, 92-93, 95, 97-100, 102-105, 108, 111, 113-115, 118, 122-124, 133-139. No Requests for Rulings of Law are granted as the Court believes that it has adequately addressed the legal issues in its order.

Respondent's Requests: Granted – 1-17, 19-24, 27-38, 44-50, 53, 55, 57-61, 66-68, 71-82, 84, 87-90, 95-101, 104-105, 107-108.

Based on these findings the Court finds in favor of the respondent.

SO ORDERED.

2/18/16
Date

Mark F. Weaver, Judge