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JUDGE: M. A. Mahoney

PARTIES: Coy Albert Lambert, Jr., W. C. Coats, as Trustee of Coats Farm Trust

CHAPTER: 7

ATTORNEYS:

DATE: 1/12/98

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

COY ALBERT LAMBERT, JR.

Case No. 96-13691-MAM-7

Debtor.

W. C. COATS, as Trustee of
COATS FARM TRUST

Plaintiff,

v.

Adv. No. 97-1038

COY ALBERT LAMBERT, JR.

Defendant.

**ORDER DENYING DEFENDANT'S
SUMMARY JUDGMENT MOTION**

This case is before the Court on the defendant's summary judgment motion. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to issue a final order. For the reasons indicated below, the motion is denied.

FACTS

The plaintiff, W. C. Coats, is one of the trustees of the W. C. Coats Farm Trust. It owns various parcels of land in Autauga, Chilton, Elmore and Marengo Counties in Alabama. There were three trustees of the trust—W. C. Coats, Raymond R. Coats and John R. Matthews, Jr. at

the times relevant to this suit. It appears W. C. Coats and Raymond R. Coats were more involved or active trustees than John R. Matthews.

The summary judgment material—W. C. Coats deposition—reveals that he entered into a timber contract with the defendant after "running it by Red" (Raymond R. Coats) and may not have discussed it with John R. Matthews first. (Deposition, p. 20, lines 18-19 and p. 72, lines 4-5.) The deposition indicates that the lawsuit was discussed with his co-trustees before commencement. (Deposition, p. 31, lines 13-18.) Neither trustee has questioned or challenged the William Coats actions since he did them.

The trust empowers all three trustees with the same authority. It does not provide for delegation of authority.

LAW

A court shall grant summary judgment to a party when the movant shows that "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law. Fed. R. Bankr. P. 7056(c). The facts are to be looked upon in the light most favorable to the nonmoving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the facts in this case are viewed in the plaintiff's favor, the cites to Coats' deposition listed above establish a dispute as to the trustees' actions under the trust. Coats discussed his actions with Raymond Coats both when the timber contract with defendant was made and prior to commencement of the lawsuit. He spoke with Matthews before the suit.

There is an Alabama case which held that co-trustees may not delegate their authority and must act in concert. *Birmingham Trust Nat'l Bank v. Henley*, 371 So. 2d 883, 894-95 (1979). In the case, there was no issue of acquiescence or ratification. Significantly, the case cites to the

RESTATEMENT (SECOND) OF TRUSTS, § 194, as the basis for its holding. The

RESTATEMENT (SECOND) OF TRUSTS also indicated in the commentary to § 194:

If one or more of several trustees acts without the consent of the others, the others can properly ratify his action if such ratification is for the best interest of the trust.

RESTATEMENT (SECOND) OF TRUSTS, § 194, cmt. c (1959).

There is no Alabama case law as to the what constitutes a ratification. The actions of the co-trustees may or may not be sufficient to be ratification, but a genuine issue exists. This analysis is true for both situations—the entry into the contract and the commencement of the suit.

THEREFORE, IT IS ORDERED that the defendant's motion for summary judgment is DENIED.

Dated: January 12, 1998

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE