FORREST DUNN : NUMBER: 514,201-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

RACHEL WILLIAMSON : CADDO PARISH, LOUISIANA

 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Trial was held on March 10, 2011. The Court heard testimony from Forrest Dunn (plaintiff and defendant in reconvention), Rachel Dunn Williamson (defendant and plaintiff in reconvention), and Gary McCollister and received into evidence numerous exhibits, notably the Community Property Settlement (Exhibit 1), the Amendment and Supplement to Community Property (Exhibit 2), the conveyance to Gomie Investments, Inc.(Exhibit 4) , and Trust Agreement for the Rachel Nelson Dunn Williamson Trust (Exhibit 5). After reviewing the entire record, evidence, applicable law and arguments of counsel, particularly the post trial memoranda filed March 15 and 16, 2011, the Court makes the following findings of fact and conclusions of law:

Forrest Dunn (Forrest) and Rachel Dunn Williamson (Rachel) were married for 40 years, divorcing in the late 1980s. On June 8, 1987 Forrest and Rachel signed a Community Property Settlement, the pertinent provision of which is as follows:

RACHEL NELSON DUNN receives and GEORGE FORREST DUNN grants, bargains, sells and conveys unto her with full guarantee of title and with complete transfer and subrogation of all rights of actions of warranty against all former proprietors of the property herein conveyed, unto RACHEL NELSON DUNN, all of the rights, title and interest of GEORGE FORREST DUNN, in and to the following described property, to-wit:

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14. Dunn Furniture. Lots 22, 23, 24, 25, Ina Thompson Courts Subdivision, 171410-091-0022-00. 171410-091-0025-00 will be placed in trust for Amanda Gordon Dunn with all income and rental to be equally divided between RACHEL NELSON DUNN and GEORGE FORREST DUNN. All income and rental will go to the remaining party until the death of both RACHEL NELSON DUNN and GEORGE FORREST DUNN, at which time Amanda Gordon Dunn will receive all properties and income.

In August of 1988, Forrest and Rachel signed an Amendment and Supplement to Community Property Settlement which, in pertinent part, provides:

Item 14 of the property received by RACHEL NELSON DUNN in the agreement of June 8, 1987 is amended to read as follows:

14. The following described property, known as the Dunn Furniture Property, will be placed in trust for Amanda Gordon Dunn and Linda Dunn with all income and rental to be equally divided between RACHEL NELSON DUNN and GEORGE FORREST DUNN. All income and rental will go to the remaining party until the death of both RACHEL NELSON DUNN and GEORGE FORREST DUNN, at which time Robby Jack Dunn shall receive the income for his lifetime. Upon his death, Amanda Gordon Dunn and Linda Dunn will receive all properties and income.

It is from these contractual provisions, agreed upon by Forrest and Rachel more than two decades ago concerning this certain community property of this forty year marriage, that any analysis must begin.

**I. SHOULD RACHEL DUNN WILLIAMSON BE RECOGNIZED**

**AS A DE FACTO TRUSTEE OR AS AN AGENT?**

In the 1988 property settlement each party contractually agreed that the Dunn Furniture property would be placed in trust; however, no formal trust was ever created. Notwithstanding, between 1988 and 2002, Rachel handled the property as a trust as she (1) acted as trustee under right or title; and (2) exercised duties as a trustee. Even though Louisiana law does not technically recognize the concept of a “de facto trust”, it is recognized in other states and the unique and somewhat peculiar circumstances of this case warrant a finding by this court that a de facto trust was in effect with all of the fiduciary duties incumbent on Rachel to act in a prudent, reasonable manner in her position as trustee under La. R.S. 9:2089. Alternatively, this arrangement qualifies as an agency; and as agent to the principal, Forrest, Rachel had a fiduciary duty of loyalty, diligence and prudence under Louisiana Civil Code Arts. 3001 and 3003. Whether as a trustee or as an agent, the fiduciary obligations owed by Rachel to Forrest are applicable.

**II. SHOULD THE SALE OF THE DUNN FURNITURE PROPERTY**

**TO GOMIE INVESTMENTS, INC. BE RESCINDED?**

Without permission of or notice to Forrest, on February 22, 2002, Rachel conveyed the Dunn Furniture property to what appears to be her family corporation, Gomie Investments, Inc., in exchange for 100 shares of common stock of the corporation. For the past 10 years, Forrest has not received any stock or other legal consideration for the conveyance and, in fact, first learned of the conveyance during the discovery phase of this case. Obviously, either as trustee or as agent, Rachel did not have the legal authority to enter into this sale. Accordingly, Forrest’s request that the sale be rescinded and that the property be placed in a properly constituted trust is granted.

**III. SHOULD RACHEL PROVIDE AN ACCOUNTING AND BE**

**REQUIRED TO RECONCILE THE BOOKS?**

La. R.S. 9:2088 provides that a trustee is required to “keep and render clear and accurate accounts of the administration of the trust”, and R.S. 9:2089 provides that complete and accurate information must be provided to a beneficiary upon request. In post-trial brief, counsel for Rachel Williamson has written, “Rachel is willing to provide an accounting for the revenues derived from and expenses incurred in managing the Dunn Furniture property...” Accordingly, as there is an agreement on this issue and, in any event, required by statute, the Court orders that Rachel render an accounting within 60 days of this ruling.

**IV. SHOULD THERE BE A FORMAL TRUST ESTABLISHED**

**WITH** **RACHEL DUNN WILLIAMSON AS TRUSTEE**

**TO SERVE WITH COMPENSATION?**

Clearly, there was a trust agreed upon by Forrest and Rachel, though not formally established. Therefore, counsel shall prepare the formal document in accordance with the June 8, 1987 Community Property Settlement and the August 1988 amendment.

In his Second Amended and Supplemental Petition, Forrest has requested an order from this Court “removing Rachel Williamson as the manager of the Trust Property and appointing a qualified person or entity to serve as trustee...” In support of that request, Forrest has alleged that Rachel violated her fiduciary duty by the following acts: (1) transferring the property to Gomie (previously addressed by the Court); (2) using Trust Property, plaintiff purchased an automobile for her own use; (3) making donations of Trust Property to charitable organizations; (4) making payments of Trust Property to her children; (5) paying from Trust Property the travel expenses of some of her children; (6) payment personal telephone and cell phone bills from Trust Property; and (7) not making annual accountings.

Having carefully evaluated both Forrest and Rachel, the Court concludes that they are both good people. While the Gomie transfer was a violation, the Court does not believe that Rachel had any sinister motive in conveying the property. Nor does the Court believe that she was in bad faith in using trust money to purchase her automobile, noting that the vehicle was used to go back and forth to the property and, when questioned about it, Rachel reimbursed the amount at issue. As for the other alleged violations, with the exception of funds used for the beneficiaries, the Court concludes that they were “technical violations” as argued by Rachel’s counsel. The Court concludes that with the exception of the travel expenses the money should be reimbursed; however, it is noted that Rachel used $10,000 of her money for trust purposes. Rachel should be credited for that amount, and any reimbursement owed should be offset accordingly.

Finally, after having examined Rachel and found her to be credible (although mistaken on a few of her decisions), the Court believes she should be designated as trustee of this formal trust to serve with reasonable compensation from this point forward, which amount should be a percentage of the rent paid each month by the current tenant. In the event counsel cannot agree on a percentage management/trustee fee, the Court will set it. Any claimed trustee fee by Rachel prior to this ruling is denied as there was no agreement on that issue between the parties nor was a trustee fee requested until this litigation. Now that there is judicial intervention, the Court has the legal authority to set reasonable compensation.

**V. SHOULD RACHEL DUNN WILLIAMSON BE AWARDED**

**RENT FROM THE “3M SIGN”?**

In paragraph 3 of Amendment and Supplement to Community Property Settlement, signed by Rachel and Forrest on August 11 and 15, 1988 respectively, the parties contracted that Rachel conveyed and Forrest received the “lease of the sign to 3M and all rentals paid therefor by 3M”. The evidence at trial was that the 3M lease remains in force and effect although 3M has assigned it to Lamar Outdoor Advertising. There is no provision in the 1988 agreement that prohibits assignment of the lease. Accordingly, Rachel’s reconventional demand request for “all income derived from rent of the sign...from the date of termination of the lease to 3M...” is denied.

**VI. REMAINING ISSUES**

Any remaining issues may be addressed, if necessary, by letter to the Court or by phone conference with counsel.

**VII. FINAL OBSERVATIONS**

It is significant that these two good people were married for forty years. It is also noteworthy that the arrangement between the two ran smoothly while Southern Office Furniture remained as tenant, paying each party the amount of $2,500.00 per month. From Southern’s departure in 1992, there was some discord between the parties but Rachel has done a good job for almost two decades acquiring tenants, notwithstanding a deteriorating building in a troubled part of this city – and despite minimal assistance from Forrest. The Court is hopeful that following an accounting and financial reconciliation, preparation of the trust documents and related matters that the parties can co-exist in their legal capacities as trustee and beneficiary for the good of the trust property, their children and grandchildren.

Counsel shall submit a formal judgment in accordance with La. Dist. Ct. R. 9.5.

Signed this 23rd day of March, 2011, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

DISTRIBUTION:

John M. Madison, Jr., Counsel for Forrest Dunn

John S. Stephens, Counsel for Rachel Dunn Williamson