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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF:

GUARDIANSHIP DIVISION

OLIVER BIVINS,

FILE NO: 502011GA000006XXXXSB

Incapacitated.

/

Beys Liston Mobargha & Berland, LLP,

Petitioner,

v.

JULIAN BIVINS, purported ancillary personal representative of the Estate of Oliver Bivins, Sr. by and through his purported appointment as Temporary Administrator of the Estate of Oliver Bivins,

Respondent.

/

ADVERSARY PROCEEDING FOR DECLARATORY JUDGMENT

Beys Liston Mobargha & Berland, LLP (“the Beys Firm”), moves this Court to enter a declaratory judgment finding that neither, Curtis Rogers, as former Guardian of Oliver Bivins, Sr. (“Former Guardian”), Stephen M. Kelly, as Guardian of Oliver Bivins, Sr. (“Guardian”) (collectively “The Guardians”), Keith B. Stein, as counsel for The Guardian and/or former Guardian (“Stein”), nor the Beys Firm breached any fiduciary duty to the Ward, Oliver Bivins, Sr. and in support states as follows:

1. The Ward, Oliver Bivins, is the subject of the above captioned guardianship. The Circuit Civil Court, in and for Palm Beach County, Florida, has, and currently retains, jurisdiction, of the person and property of this guardianship. As it relates to the guardianship of the person, The Ward, died on or about March 2, 2015.

EXHIBIT "1"

2. Julian Bivins (“Julian”) has alleged that he is duly serving as the Temporary Administrator for the Estate of the Ward in Texas and as such purportedly had himself appointed as the ancillary Personal Representative in Florida. Julian Bivins, is a court appointed fiduciary of the Estate of Oliver Bivins which is pending before this Court, Julian Bivins, in his capacity as Temporary Administrator, has consented to, and has appeared in all capacities in the above captioned proceeding. Therefore, personal and subject matter jurisdiction is proper in Palm Beach County, Florida and Julian Bivins, in all capacities, is subject to the jurisdiction of this Court.

3. The Former Guardian is a resident of Palm Beach County, Florida and does business in Palm Beach County, Florida.

4. The Guardian is a resident of Palm Beach County, Florida and does business in Palm Beach County, Florida.

5. Stein is a New York resident.

6. The Beys Firm is a limited liability partnership organized under the law of New York that performed services in New York for the Guardian and/or former Guardian and the Word in New York.

7. Venue is proper in Palm Beach County, Florida as the Guardianship and Ancillary Estate are both pending before this Court.

8. The Former Guardian became aware that Julian had improperly transfers or assisted the Ward in transferring substantial assets from the Ward to Julian at a time when Julian was either acting as a fiduciary, by and through a power of attorney, or when the Ward was incapacitated or Julian was exercising undue influence over the Ward in order to effectuate a transfer of wealth from the Ward to Julian. The Former Guardian sought this Court’s approval to file a lawsuit

against Julian. When Julian received notice of the Former Guardians intention to sue him, Julian “beat him to the punch” and sued him for various torts, including breach of fiduciary duty.

9. The lawsuit resulted in a Court-approved Comprehensive Settlement Agreement, whereby a release was given to the Former Guardian, and his agents, by Julian. The Former Guardian was represented in Florida as it related to the described lawsuit, by O’Connell, Crispin and Ciklin Lubitz & O’Connell. See “A,” attached to the Adversary Proceeding for Declaratory Judgment filed herein by Curtis Rogers and others (hereinafter, “the Rogers Adversary Proceeding.”

10. Later, litigation ensued between the Former Guardian, and Oliver Bivins, Jr, the Ward’s other son, over the assets of the Estate of Lorna Bivins, the “divorced”¹ spouse of the Ward, mother of Oliver Bivins, Jr. and step-mother to the Respondent. The Former Guardian was represented as it related to the described lawsuit, and a related New York partition action, by O’Connell, Crispin, (as it related to Florida) Stein and the Beys Firm (as it related to New York) and Ciklin Lubitz & O’Connell (as it related to Florida).

11. That litigation was also settled in a Court-approved Settlement Agreement. Julian objected to the approval of the Settlement Agreement, however, lost and failed to timely appeal. Julian later, as described below, assented to the agreement and order by moving to enforce it. See Exhibit “B,” attached to the Rogers Adversary Proceeding.

12. Litigation then ensued again between the Guardian and Julian over the sale of real property, 808 Lexington Ave., New York, New York, garnered by the Former Guardian in the Settlement Agreement described in paragraph 11 above.

13. That litigation was also settled in a Court –approved Settlement Agreement. As part of

¹ The Divorce was the issue that was contested by the Former Guardian. The Divorce was procured by Julian as part of his scheme to divest the Ward and Lorna Bivins of their assets.

that Settlement Agreement, a release was given to the Guardian by Julian. The Former Guardian was represented in New York as it related to the described lawsuit, by the Beys Firm. See Exhibit "C," attached to the Rogers Adversary Proceeding.

14. Litigation then ensued between the Guardian and Oliver Bivins, Jr. as it related to the management, allocation of expenses, maintenance, encumbrances, among other things, related to, property previously owned by Oliver Bivins, Jr., as the personal representative of the Estate of Lorna Bivins and the Former Guardian/Guardian and then solely by the Former Guardian/Guardian, 808 Lexington Ave., New York, New York. Julian also participated in that lawsuit as an intervenor.

15. Julian, the Guardian and Oliver Bivins, Jr. then settled that lawsuit(s) in a Court-approved Settlement Agreement/ Agreed Order. See attached as Exhibit "D," attached to the Rogers Adversary Proceeding.

16. Despite the above, Julian has alleged that the Beys Firm and its former partner Stein, have acted in manner contrary to the best interests of the Ward, or have failed to uphold their fiduciary duties to the Ward, to the extent they have any. See Exhibit "E," attached to the Rogers Adversary Proceeding (Objections to the Final Accountings filed by both the Former Guardian and the Guardian).

17. At all times material, the Former Guardian, Guardian and their counsel Stein and the Beys Firm were acting in the best interest of the Ward and his guardianship Estate.

18. The Guardians, Stein, and Beys Firm have not breached any duty to the Ward.

19. The Guardians, Stein, and Beys Firm have not caused damages to the Ward or his estate.

20. The Guardians cannot be discharged absent the remedies sought in this Adversary Proceeding.

REQUEST FOR DECLARATORY RELIEF

1. The Petitioner re-alleges each and every allegation in paragraphs 1 through 20 of this Complaint.

2. This is an action brought pursuant to §86.041, Florida Statutes, and seeks a declaration determining a question(s) relating the administration of the Guardianship- Has the Petitioner, Stein, the Guardian and the former Guardian breached their fiduciary duty, if any, to the Ward? In the unlikely case there is a determined breach, to what extent has Julian released the Petitioner or has become barred by the doctrine(s) of laches, estoppel, waiver, satisfaction, set off, offset, payment, res judicata, collateral estoppel, failure to mitigate damages, unclean hands or lack of authority?

3. Given the allegations of the Respondent as described in paragraph 16 above, there is a bona fide, actual, present, practical need for the declaration.

4. The request for declaratory relief relates to a present controversy as to a state of facts.

5. An immunity, power, privilege, or right of the Petitioner is dependent on the facts or the law applicable to the facts.

6. Respondent has an actual, present, adverse, and antagonistic interest in the subject matter of this Adversary Proceeding, either in fact or law.

7. The antagonistic and adverse interests are all before the Court by proper process or representation.

8. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

9. Petitioner has retained the services of the undersigned law firm to represent it in this matter and have agreed to pay it reasonable attorney's fees and costs.

WHEREFORE, Petitioner requests this Court enter a declaration, by way of judgment, declaring that the Guardian, the former Guardian, Stein, and Petitioner have acted in the best interest of the Ward and his Estateand have not breached any fiduciary duty to the Ward or in the unlikely case there is a determined breach, finding that Julian has released the Guardian, the former Guardian, Stein, and Petitioner or has become barred by the doctrine(s) of laches, estoppel, waiver, satisfaction, set off, offset, payment, res judicata, collateral estoppel, failure to mitigate damages, unclean hands or lack of authority, and to award Petitioner its their reasonable attorneys' fees and costs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service this 22nd day of January, 2016 to J. RONALD DENMAN, ESQ. Registered Agent and Attorney for Julian Bivins, rdenman@bleakleybavol.com chebert@bleakleybavol.com and lsmiler@bleakleybavol.com (15170 North Florida Avenue, Tampa, FL 33613) and by email service to DONNA P. LEVINE, ESQ., Attorney for Oliver Bivins, II, Levine.susaneck@gmail.com (3003 S. Congress Ave., Suite 1A, Palm Springs, FL 33461); and RONDA D. GLUCK, ESQ., Co-Counsel for Curtis Rogers, attorneys@bocaattorney.com (980 N. Federal Highway, Suite 402, Boca Raton, FL 33432), Ashley Crispin, individually and as counsel for Keith Stein, Stein Law, Stephen Kelly, Curtis Rogers, Brian O'Connell, and Ciklin Lubitz & O'Connell.

/s/ Charles L. Pickett, Jr.
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