

CIVIL PRACTICE

No Abuse Of Discretion In

Denying Request To Amend

CASE: Beckenstein v. Reid and Reige, P.C.

COURT: Connecticut Appellate Court

DOC. NO.: AC 28313 COURT OPINION BY: Beach, J.

DATE: March 31, 2009 PAGES: 14

The trial court did not abuse its discretion in denying a request to amend a complaint to allege that the defendant attorney serving on a trust committee had a duty to monitor the condition of the trustee who, shortly before his death, directed the execution of contracts for the sale of commercial property for approximately \$100 million. The jury reasonably could have found the following facts. Robert Beckenstein was diagnosed with pancreatic cancer. He executed a trust into which he ultimately transferred commercial real estate. Beckenstein served as trustee. The trust named a successor trustee and a business advisory committee to facilitate the sale of Beckenstein's business interests after his death or permanent disability. The committee included Andrew Howat, an attorney and partner at Reid & Riege, P.C. The trust provided that committee members would not be liable for any loss or depreciation unless it resulted directly from gross negligence or willful misconduct. In late May 2000, Beckenstein approved contracts to sell four shopping centers for \$40.2 million and other properties for \$58 million. He died on June 6, 2000. On the committee's advice, the sales were closed with one adjustment. Beckenstein's daughter, Julie Beckenstein, his wife, Roz-Lynn Beckenstein, individually, as executrix of the estate of her husband and as successor co-trustee of the trust with Kathleen Bornhorst, successor co-trustee, brought this action against Andrew Howat and Reid & Riege, P.C. alleging breach of various obligations under the trust essentially in failing to maximize the value received for the properties. Following a jury trial, judgment entered in favor of the defendants. The Appellate Court affirmed. The trial court did not abuse its discretion in denying a request to amend the complaint to include a proposed allegation of a duty to monitor Robert Beckenstein's condition. The trial court sustained the defendant's objection to the amendments filed on June 21, 2006 finding that they were not in accordance with the scheduling order, would prejudice the defendants and delay the trial scheduled to start on Sept. 19, 2006. The decision was not based solely on the fact that the pleadings had closed as contended. The trial court reasonably could have concluded that the proposed amendment would delay the trial and prejudice the defendants by not allowing them sufficient time to conduct discovery or to file and have heard pleadings challenging the legal sufficiency of the proposed amendment. Additionally, the trial court properly instructed the jury as to Howat's liability. It was not reasonably probable that the jury was misled into thinking that a finding of gross negligence by Howat would not suffice to establish liability, that willful or intentional misconduct was required.