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3-5-2014

Order on Motion for Judgment on the Pleadings (Post Properties, Inc. et al.)

John J. Goger
Fulton County Superior Court, Judge

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Recommended Citation
Goger, John J., "Order on Motion for Judgment on the Pleadings (Post Properties, Inc. et al.)" (2014). *Georgia Business Court Opinions.* Paper 292.
http://scholarworks.gsu.edu/col_businesscourt/292

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

POST PROPERTIES, INC., POST GP HOLDINGS, INC., POST APARTMENT HOMES, L.P., and POST SERVICES, INC.	)	
Plaintiffs,	)	**Civil Action File No. 2013CV234637**
v.	)	
B. WILMONT WILLIAMS, solely in his capacity as the trustee of the John A. Williams Irrevocable Trust Dated January 27, 1995, and JOHN A. WILLIAMS,	)	
Defendants.	)	

FILED IN OFFICE
MAR 05 2014
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS

This matter is before the Court on Defendants' Motion for Judgment on the Pleadings. Upon consideration of the briefs on the motion and the record of the case, this Court finds as follows:

This is a declaratory judgment action. Plaintiffs Post Properties, Inc. (the Company), Post GP Holdings, Inc. (Holdings), Post Apartment Homes L.P. (Post Homes), and Post Services, Inc. (Services, together with Company, Holdings, Post Homes and Services, Plaintiffs) dispute the interpretation of a settlement agreement with a former executive and founder of the Company, John Williams (Williams) and a trust established for his benefit, The John A. Williams Irrevocable Trust (Trust).

Williams was a director and key executive of the Company. As an employment incentive, Plaintiffs provided Williams with a split dollar insurance program. Pursuant to that arrangement, Post Homes agreed to pay the bulk of insurance premiums associated with five life

insurance policies that were held by the Trust. In return, the Trustee of the Trust was obligated to repay the premiums associated with the policies upon termination of the 1998 Split Dollar Insurance Agreement ("Insurance Agreement"). Under the Insurance Agreement, Post Homes was given a right of termination at any time. Post Homes was also granted a security interest in the policies to secure repayment.

In 2002, the Insurance Agreement was modified by an Employment Agreement between Williams and the Company, Holdings and Services. Under the Employment Agreement, the Post entities agreed that they could not unilaterally terminate the split dollar arrangement, thereby modifying the terms of the Insurance Agreement. They also agreed that the split dollar life insurance program would reach at least $31 million in value during the term of Williams' employment.

According to Plaintiffs, the employment relationship between Williams and the Company began to sour in 2002-2004, and all parties to this action executed a Settlement and Separation Agreement (Settlement Agreement) in 2004 to resolve their dispute. In addition to terminating Williams' employment, the Settlement Agreement provided that Plaintiffs could only terminate the split dollar arrangement upon the death of Williams, the prior written consent of all parties to the Insurance Agreement, or after May 31, 2013.

On July 31, 2013, Plaintiffs advised Defendants that they were evaluating whether to terminate the Insurance Agreement. In Plaintiffs' view, this would entitle them to approximately $9.3 million that they have paid out in premiums since 1998.

Defendants apparently disagree with this interpretation. Although Defendants have not squarely set out their position, according to Plaintiff, Defendants believe that the Settlement

Agreement supersedes the portion of the Insurance Agreement that requires the Trust to reimburse Post Homes.

Plaintiffs seek declaratory judgment to determine whether they have the right to reimbursement by the Trust if they terminate the Insurance Agreement under which Post Homes agreed to pay certain premiums on five life insurance policies in favor of Williams.[1]

1. Count II

Defendants assert that Plaintiffs' claim for declaratory relief should be dismissed because it seeks an impermissible advisory opinion. See Effingham County Bd. of Commissioners v. Effingham County, 286 Ga. App. 748 (2007).

"[U]nder the Declaratory Judgment Act, a superior court can enter a declaratory judgment in cases of actual controversy, and to determine and settle by declaration any justiciable controversy of a civil nature.... But a declaratory judgment may not be merely advisory in nature. Thus, when a party seeking declaratory judgment does not show it is in a position of uncertainty as to an alleged right, dismissal of the declaratory judgment action is proper." Pinnacle Benning LLC v. Clark Realty Capital, LLC, 314 Ga. App. 609, 612-613 (2012).

Defendants complain that Plaintiffs merely seek advice regarding an optional course of action—whether or not the Trust is obligated to pay back the premiums in the event Plaintiffs choose to terminate the split dollar insurance arrangement. Defendants argue that such an issue is inappropriate for declaratory relief, because Plaintiffs' confusion concerns only an elective choice, rather than a dispute certain, that Plaintiffs may or may not decide to take.

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[1] The parties are in agreement that Court 1 is now moot. Accordingly, it is DISMISSED without prejudice. Should the circumstances warrant a review of the issue raised in Count 1, this ruling will not prevent Plaintiffs from requesting an opportunity to re-plead Count 1.

The Court finds Defendants' position unavailing. "The [Declaratory Judgment Act] is to be liberally construed and administered." O.C.G.A. § 9-4-1. The Court finds that Plaintiffs have appropriately invoked it here, to assess whether or not their interests would be better served by terminating the Insurance Agreement or to continue on under the Insurance Agreement, depending on the correct interpretation of the Trust's repayment obligations. Accordingly, Defendants' motion is **DENIED** as to this issue.

2. Proper Party to this Action

Defendants next contend that Williams is not a proper party to this action because no relief is requested or necessary as to him.

O.C.G.A. § 9-4-7(a) provides that "no declaration shall prejudice the rights of persons not parties to the proceedings." This action concerns the interpretation of provisions contained in the Settlement Agreement to which Williams is a party. Although Defendants point out that the instant matter requests judicial scrutiny of the payment obligations of the Trust under this agreement, the Court is not convinced that this warrants the dismissal of Williams on the grounds that his rights will not be affected.

The Court finds Defendants' argument more relevant to an action seeking damages owed by the Trust, where any judgment would necessarily concern only the Trust's financial liability and have no impact on Williams' rights. In contrast, this is an analysis of a contract provision contained in an agreement to which Williams is bound. Moreover, the Court's ruling has the potential to impact the parties' obligations under the Employment Agreement, which is exclusively signed by Williams. Accordingly, Williams' potential interests are sufficient at the pleading stage to satisfy his involvement in this case. Defendants' motion is **DENIED**.

SO ORDERED this 4th day of March, 2014.

JOHN J. GOGER, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Attorneys for Plaintiffs	Attorneys for Defendants
Elizabeth Vranicar Tanis KING & SPALDING LLP 1180 Peachtree Street Atlanta, GA 30309 etanis@kslaw.com	John A. Christy Debra A. Wilson Schreeder, Wheeler & Flint, LLP 1100 Peachtre Street N.E., Suite 800 Atlanta, GA 30309-4516 jchristy@swfllp.com dwilson@swfllp.com