

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
UNFUNDED INSURANCE TRUST §
AGREEMENT OF EMILIO M. §
CAPALDI, DECEASED. §

LAWRENCE J. CAPALDI and §
JOSEPH M. CAPALDI, § No. 394, 2005
§
Petitioners Below, § Court Below – Court of Chancery
Appellants, § of the State of Delaware,
§ in and for New Castle County
v. § C.M. No. 6735-NC
§
ROSEANNA RICHARDS, JOSEPH §
L. CAPANO, SR. and JOSEPH L. §
CAPANO, SR., Executor of the §
Estate of Rose M. Capaldi, deceased, §
§
Respondents Below, §
Appellees. §

Submitted: February 1, 2006

Decided: February 7, 2006

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 7th of February 2006, it appears to the Court that:

(1) The petitioners-appellants, Lawrence J. Capaldi and Joseph M. Capaldi, appeal the decision of the Court of Chancery awarding \$7,500 in attorneys' fees rather than the amount of \$109,438.76 that was requested. The appellants have limited this appeal to the issue of attorneys' fees. They

claim the Court of Chancery's award of attorneys' fees was too low because its analysis was arbitrary, capricious or clearly wrong. They further ask this Court, in the interest of judicial economy, to calculate attorneys' fees before remanding this matter to the Court of Chancery.

(2) This is the appellants' second appeal. The pertinent facts, as stated in this Court's first decision, are as follows:

In January 1959, Emilio M. Capaldi, the sole shareholder of Independence Mall Inc., established a trust to care posthumously for his wife, Rose, and their three children: Roseanna Capaldi Richards, Lawrence Capaldi, and Joseph Capaldi. Funded by 100 percent of Independence Mall's issued and outstanding stock, the Capaldi Trust provides income to Rose for life, with the remainder to the children. By its terms, the Capaldi Trust is subdivided into a marital trust, holding 48 percent of Independence Mall stock, and a residual trust, holding the remaining 52 percent. The marital trust exclusively permits Rose to invade its principal.

The Bank of Delaware, now PNC Bank, originally served as trustee. In 1992, Capano and Albert Vietri, replaced PNC. Seeking to pay off debts Rose had incurred over the years and to fund various capital improvements, Capano and Vietri refinanced the mall in 1995 and invested \$650,000 in a certificate of deposit for Rose. Later that year, Capano assisted Lawrence in obtaining a \$100,000 loan from the mall by using Rose's certificate as collateral.

By 1999, five trustees were managing the trust: Lawrence, Joseph, Richards, Capano, and Rose. Despite the siblings' new presence as trustees, Capano unilaterally modified the refinancing and converted Independence Mall into an S Corporation. Two years later, with Rose's health deteriorating, Lawrence and Joseph petitioned the Court of Chancery to

appoint a guardian for Rose. Although initially opposed by Richards and Capano, all parties eventually agreed to a stipulated guardianship order. A Vice Chancellor approved the stipulation and appointed Richards guardian of Rose's person and another, Laurie Mason, guardian of Rose's property.

Lawrence and Joseph filed a second petition in the Court of Chancery in December 2003. In their petition, they sought relief from the guardianship order on four grounds. Specifically, the brothers sought to: (1) invade the trust principal to pay all attorneys' fees associated with the guardianship proceeding; (2) appoint an independent trustee to serve in Richards' place or to serve as sole trustee; (3) deny Richards' request for compensation associated with Rose's care; and (4) remove Richards as Rose's guardian. In response, Richards filed a cross-petition to remove Lawrence as trustee, based in part on his failure to repay the earlier loan in full.

In April 2004, a Vice Chancellor entered a consent order removing Lawrence, Joseph, and Richards as trustees. He declined to remove Capano, however, noting Capano's extensive experience in operating the mall. The Vice Chancellor also appointed two independent trustees, directing them to prepare a comprehensive report detailing the future operation of the trust. He also reduced Richards' compensation for expenses related to Rose's care.

Finally, finding that the Capaldi children acted solely out of self-interest during the litigation, the Vice Chancellor ordered Lawrence, Joseph, and Richards to pay their own attorneys' fees and costs. However, because of Capano's years of uncompensated service, the Vice Chancellor directed that Capano's fees and costs be paid out of the trust. Lawrence and Joseph now appeal, contending that the Vice Chancellor erred when he declined to remove Capano as trustee, by awarding Capano attorneys' fees and costs, and by failing to award the brothers' own fees and costs.¹

¹ *In re Unfunded Ins. Trust Agreement of Capaldi*, 870 A.2d 493, 495-96 (Del. 2005).

(3) In the first appeal, this Court affirmed the retention of Capano as trustee, and remanded the matter to the Court of Chancery to award legal fees. We noted that:

In trust litigation, the Vice Chancellor has the discretion to award attorneys' fees to any party. The award of fees is proper where the attorney's services are necessary for the proper administration of the trust or the services benefited the trust. The usual rule provides that trustees who defend litigation against the trust are entitled to look to the trust for reimbursement of that expense. We review a decision to award attorneys' fees for abuse of discretion.²

(4) On remand, the Court of Chancery awarded a total of \$7,500 in attorneys' fees to be paid from the trust, leaving the division to the attorneys involved in the matter, including the appellants' attorneys. The Vice Chancellor issued an oral ruling, explaining that "a written opinion in the case would have been highly embarrassing" to the parties.

(5) There were several reasons the Court of Chancery concluded that the appellants were entitled to less attorneys' fees than they had requested. First, the Vice Chancellor found the costs of the litigation to the trust outweighed the benefits.³ Second, the Vice Chancellor further reduced attorneys fees because only a prevailing party is entitled to attorneys fees,

² *Id.* at 496 (quotations and citations omitted).

³ The Vice Chancellor stated: "I believe these brothers cost much more harm to the trust and to the legitimate objectives of the trust and beneficiary of the trust than the settlor intended. They caused much more harm than they achieved – and any benefit they achieved."

and the Vice Chancellor concluded the appellants had only prevailed on a small portion of their goals at trial. Third, the Vice Chancellor criticized the attorneys for submitting invoices for their fees that were not allocated between work on which they prevailed and work on which they were unsuccessful.⁴

(6) This Court, having considered this matter on the briefs, has determined that it is manifest on the face that the appeal is without merit because: to the extent the issues raised on appeal are factual, the record evidence supports the trial judge's factual findings; to the extent the errors alleged on appeal are attributed to an abuse of discretion, the record does not support those assertions; and to the extent that the issues raised on appeal are legal, they are controlled by settled Delaware law, which was properly applied. Therefore, this Court has concluded that the final judgment of the Court of Chancery should be affirmed on the basis of and for the reasons assigned by the Court of Chancery in its bench ruling dated July 22, 2005.

⁴ The Vice Chancellor stated: "There's been a total default in providing any rational allocation for the work and saying, 'Here's the proportion of the work that is attributable to what we were successful on. Here's the proportion of the work that was attributable to things that we clearly did not win on, and we only get the time we concede that we spent for what we were successful on.'"

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Court of Chancery be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice