

DOCKET NO.: FST-CV-14-6023952-S : SUPERIOR COURT
 CONNIE L. GRANT : JUDICIAL DISTRICT
 v. : OF STAMFORD/NORWALK
 THOMAS J. DREW, ESQ. : AT STAMFORD
 : JUNE 14, 2017

SUPERIOR COURT
 STAMFORD-NORWALK
 JUDICIAL DISTRICT
 2017 JUN 14 A 11:51

MEMORANDUM OF DECISION

The plaintiff Connie L. Grant (Ms. Grant) commenced this action, returnable December 30, 2014, against the defendant Thomas J. Drew, Esq. (Attorney Drew) for monetary damages arising from his alleged breach of his fiduciary duties while he was serving as the executor of the estate of Ms. Grant's late mother Julia Grant. In her two-count revised complaint (#114.00), filed on June 18, 2015, Ms. Grant alleges that Attorney Drew breached the fiduciary duty that he owed to Ms. Grant as a beneficiary of Julia Grant's estate when he erroneously determined that he was required to sell the real property that belonged to Julia Grant at the time of her death (the Oakland Terrace property, described more fully below) in order to pay estate expenses rather than distribute it to Ms. Grant and her three siblings as tenants in common. Ms. Grant further alleges that Attorney Drew, as a result of his alleged misreading of Julia Grant's will, improperly favored the interests of her brother and co-beneficiary Jordan Grant (Mr. Grant) over her interests; wrongfully caused Ms. Grant to be evicted from the Oakland Terrace property; and refused to advance estate funds to her to cover her living expenses and to prevent the loss of her personal property. She also contends that Attorney Drew breached his fiduciary duty to conserve the assets of Julia Grant's estate by wasting the estate's funds on unnecessary legal fees, eviction costs, contractors' charges, and other expenses, thus diminishing her inheritance. Ms. Grant blames Attorney Drew for the estate's illiquidity and charges that the

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sale of the Oakland Terrace property was a distress sale under adverse conditions. With respect to the first count of the revised complaint, Ms. Grant seeks monetary damages for (i) the living expenses that she incurred as a result of the eviction; (ii) the loss of and/or damage to her personal property; (iii) emotional distress; (iv) the loss of income from a home-based business; and (v) punitive damages. As to the second count of the revised complaint, Ms. Grant seeks monetary damages for her share of (i) the unnecessary expenses that were incurred by the estate of Julia Grant, and (ii) the amount that the estate would have received had the Oakland Terrace property not been sold at less than fair market value.

On May 9, 2016, Attorney Drew filed an answer with special defenses to the revised complaint (#130.00), in which he denies that he breached any fiduciary duties that he owed to Ms. Grant and asserts the following special defenses to both counts: Ms. Grant's claims are barred by the applicable statute of limitations set forth in General Statutes §52-577 (first special defense); the actions that Attorney Drew took as executor were approved by the Court of Probate for the district of Darien/New Canaan (the Probate Court) and the Superior Court for the judicial district of Stamford/Norwalk, Housing Session (the Housing Court) after consideration of Ms. Grant's objections and arguments (second special defense); any damages that Ms. Grant sustained were the result of her own conduct and/or the conduct of other persons over whom Attorney Drew had no control (third special defense); any proximal link between any damages that Ms. Grant sustained and Attorney Drew's conduct was broken by intervening actions for which Attorney Drew had no control or responsibility (fourth special defense); punitive damages are not available in respect of the causes of action that Ms. Grant purports to assert (fifth special defense); the damages that Ms. Grant seeks to recover are based on a foundation that is too speculative and uncertain to be granted (sixth special defense); and Ms.

Grant's claims are barred by the principles of collateral estoppel, inasmuch as the actions that Attorney Drew took were approved by courts of competent jurisdiction (seventh special defense). Ms. Grant replied to the special defenses on May 12, 2016 (#134.00).

Ms. Grant sought a prejudgment remedy pursuant to General Statutes §52-278d on December 4, 2015 (#117.00). The court (*Genuario, J.*) granted a prejudgment attachment in the amount of \$18,000 on May 11, 2016 (#119.00). The court found probable cause that Ms. Grant would prevail at trial on her claim that Attorney Drew breached his fiduciary duty in evicting Ms. Grant from the Oakland Terrace property, and that Ms. Grant had incurred damages as a result of the eviction to the extent that she lost some of her personal property and had to secure alternative living arrangements.

This action was tried to the court on August 30, August 31, November 2, and 15, 2016. Ms. Grant represented herself, and Attorney Drew was represented by counsel. The court heard testimony from the following witnesses: Matthew Caputo, Esq., the successor administrator of the estate of Julia Grant; Jordan Grant (Mr. Grant), Ms. Grant's brother; Stephanie Evers (Ms. Evers), Ms. Grant's friend; Ms. Grant; and Attorney Drew. Counsel for Attorney Drew moved for dismissal of the action at the conclusion of Ms. Grant's case in chief. After the court reserved decision on the oral motion to dismiss, Attorney Drew rested.

The court set a briefing schedule at the close of evidence. Attorney Drew filed a post-trial memorandum on January 31, 2017 (#164.00). Ms. Grant filed a post-trial memorandum on February 1, 2017 (#165.00). Attorney Drew submitted a reply memorandum on February 15, 2017 (#167.00).

I

After considering all of the testimony and documentary evidence admitted and the contents of the court file judicially noticed, and having had the opportunity to observe the witnesses, the court makes the following findings of fact.

Julia Grant died on January 31, 2011. She was survived by her four adult children: Victoria Grant, Michael Grant, Mr. Grant, and Ms. Grant. Her husband Lyle Grant predeceased her.

Attorney Drew was Julia Grant's trusts and estates attorney. He prepared her will and related documents in 1997¹ and a codicil to her will in 2010. Lyle Grant was appointed the executor and Ms. Grant was named the successor executrix in the will that Julia Grant signed on June 10, 1997. Several years thereafter, Julia Grant called Attorney Drew and asked him to serve as the executor of her estate. She signed a codicil on November 18, 2010 in which she appointed Attorney Drew the executor of her estate.² She did not name anyone as a successor executor to Attorney Drew in the codicil.

The will³ was admitted to probate in the Probate Court on April 25, 2011. The court (*Murray, J.*) confirmed the appointment of Attorney Drew as the executor of the estate of Julia Grant at that time. Ms. Grant opposed Attorney Drew's appointment, and she subsequently sought to have him removed as executor. On November 28, 2011, the Probate Court denied Ms. Grant's application to remove Attorney Drew as executor.⁴

¹ Attorney Drew also prepared a will for Lyle Grant and powers of attorney, health care proxies, and advance directives for both Julia Grant and Lyle Grant.

² This was the only substantive change from Julia Grant's will in the codicil.

³ All references to the will herein shall include the codicil unless otherwise specified.

⁴ This was one of several applications that Ms. Grant filed to remove Attorney Drew as executor. Ms. Grant stated that she filed seventy-five different pleadings in the Probate Court proceeding and the related Superior Court matters, including at least three probate appeals.

Ms. Grant appealed the decision of the Probate Court to the Superior Court for this judicial district. Following a trial de novo in the Superior Court, Ms. Grant's application was again denied. *In re Grant Appeal from Probate*, Superior Court, judicial district of Stamford/Norwalk, Docket No. FST-CV-12-5013807-S (Nov. 20, 2012, *Tobin, J.T.R.*).

At the time of her death, Julia Grant owned the Oakland Terrace property, located at 5 Oakland Terrace in Darien, Connecticut. Ms. Grant and her sister Victoria Grant were residing with their mother in the Oakland Terrace property⁵ when she died. Ms. Grant had moved into the Oakland Terrace property a few years earlier, after living in Florida and in her own condominium in Norwalk for several years.

In addition to the Oakland Terrace property, Julia Grant's estate included a 2005 Volvo, a People's Bank checking account, a small securities account, and household furnishings and other personal property. Her estate had an estimated value of approximately \$715,000. The Oakland Terrace property was the principal asset of the estate, with a fair market value of \$695,000 as of the date of Julia Grant's death. The Oakland Terrace property was encumbered by a small home equity line of credit when Julia Grant died.

Attorney Drew determined that the Oakland Terrace property had to be sold because the estate did not have sufficient liquidity to pay claims and expenses.⁶ In his view, the will specifically authorized him to sell the Oakland Terrace property, and the liquidity needs of the estate mandated that he do so. Ms. Grant opposed the proposed sale of the Oakland Terrace property because she believed that the Oakland Terrace property was supposed to be distributed

⁵ Ms. Grant testified that she considered the Oakland Terrace property to be the family home. Her brother Mr. Grant testified that he also viewed the property as the family home.

⁶ The court does not credit Ms. Grant's argument that Attorney Drew decided that he was required to sell the Oakland Terrace property because he misinterpreted the provisions of Article III and IV of the will, relating to the creation of a family trust. The trust never came into existence. Those provisions of the will have no bearing on the issues before the court.

to the beneficiaries of Julia Grant's estate as tenants in common rather than sold to a third party, although no provision of the will mandated that the Oakland Terrace property be so distributed.

Article I of the will directed the executor to pay all of Julia Grant's enforceable debts, other than the claims of any mortgage, as soon as practicable after her death.⁷ Under Article II, Section A of the will, all of Julia Grant's tangible personal property was to be distributed to her surviving children in equal shares, per stirpes. Article II, Section C of the will provided that the residuary estate was to be distributed to Julia Grant's children in equal shares, per stirpes. There was no specific devise or bequest relating to the Oakland Terrace property in the will.

Article VIII of the will set forth the powers of the executor. Article VIII, Section A, paragraph 2 provided that the executor was authorized "[t]o sell at public or private sale . . . any real or personal property of the estate . . . on such terms and conditions as any individual might do as outright owner of the property." Under paragraph 14 of Article VIII, Section A, the executor was authorized "[t]o perform all other acts necessary for the property management, investment and distribution" of estate property." Section B of Article VIII expressly provided that the powers specified in Article VIII were "in addition to those granted by law."

As an alternative to selling the Oakland Terrace property, Attorney Drew advised Ms. Grant and her siblings that, subject to Probate Court approval, they could agree among themselves on some arrangement to own the Oakland Terrace property together, such as through a limited liability company that was owned equally by the four beneficiaries. Such an arrangement would also have to provide for the beneficiaries to make a financial contribution to

⁷ Attorney Drew determined that it was in the estate's interest to make the minimum monthly payment on the home equity line of credit on the Oakland Terrace property because it avoided the cost of a foreclosure action.

the estate to cover expenses and claims. Mr. Grant also proposed, through his attorney, a different limited liability company arrangement. Ultimately, all of these discussions proved fruitless.⁸

Attorney Drew believed that Ms. Grant would obstruct the sale of the Oakland Terrace property if she remained there. Mr. Grant shared Attorney Drew's view that Ms. Grant would sabotage any sales efforts, citing Ms. Grant's behavior while she was living in the Oakland Terrace property, the deteriorated condition of the house, and the fact that Ms. Grant prohibited her brothers from entering the house after Julia Grant's death.

On July 8, 2011, Attorney Drew commenced a summary process action, returnable July 18, 2011, in the Housing Court to evict Ms. Grant and her sister Victoria Grant from the Oakland Terrace property. *Thomas Drew, Executor of the Estate of Julia Grant v. Connie Grant and Victoria Grant*, Superior Court, judicial district of Stamford/Norwalk, Housing Session, Docket No. SNSP-039049 (the eviction action). On September 20, 2011, the Housing Court (*Maronich, J.*) found in favor of Attorney Drew in the eviction action and entered a judgment for immediate possession after trial. On October 11, 2011, the Housing Court granted Ms. Grant's application for a stay of execution through March 20, 2012.

On September 18, 2011, the eve of the eviction hearing, Ms. Grant sought the permission of the Probate Court to remain in the Oakland Terrace property until it was distributed or sold. Attorney Drew opposed her request. Following a hearing on November 18, 2011, the Probate Court found that the Housing Court had already decided the issue in the

⁸ Ms. Grant contends that Attorney Drew's presentation of the limited liability company option was part of a scheme to further the interests of her brother Mr. Grant and address his federal income tax issues at the expense of Ms. Grant and the other beneficiaries. The court credits Attorney Drew's testimony, in which he explained that there were two different limited liability company proposals.

eviction action, and it denied Ms. Grant's motion to remain in the property by decree dated November 28, 2011. The Probate Court also denied Ms. Grant's motion to revoke the prior decree regarding the removal of the executor at that time.

On March 16, 2012, Ms. Grant sought an injunction in the Housing Court to enjoin the execution. The injunction was denied, and an execution was issued on March 22, 2012. On April 13, 2012, after the execution was issued, Ms. Grant filed an application for a writ of audita querela and a temporary injunction in the Housing Court. The court (*Tierney, J.T.R.*) denied the injunction on April 16, 2012.

Ms. Grant was evicted from the Oakland Terrace property on April 17, 2012. She moved into Ms. Evers's apartment that night.

Prior to the eviction, Attorney Drew had attempted to reach an agreement with Ms. Grant. The proposed agreement provided that he would distribute a \$3,300 advance to her from the estate so that she could rent an apartment, provided that she withdrew all court proceedings and other actions in which she sought to remain in the Oakland Terrace property. On April 11, 2012, Ms. Grant refused to proceed with the agreement.⁹ After the court (*Tierney, J.T.R.*) denied her injunctive relief, she demanded the advance. Attorney Drew declined to advance the funds to Ms. Grant at that time.¹⁰

⁹ Attorney Drew testified that he and Ms. Grant had agreed on the terms in advance and then met at Starbucks to finalize the agreement. He said that Ms. Grant became very upset and angry and physically violent during their meeting and refused to go forward with the agreement. Ms. Grant testified that Attorney Drew ripped the papers out from under her pen and stormed out of Starbucks. The court credits the testimony of Attorney Drew.

¹⁰ Victoria Grant received an advance of \$2,200 to assist her in obtaining new housing. Attorney Drew testified that he advanced funds from the estate to Ms. Grant's sister Victoria Grant because he thought it would avoid some of the problems and expenses associated with the eviction action. He offered an advance to Ms. Grant for the same reason.

After Ms. Grant was removed from the Oakland Terrace property, Attorney Drew engaged the services of Mr. Grant and his construction and landscaping company, Jordan P. Grant, Inc., to clean and repair the property so that it could be listed for sale. Mr. Grant was willing to do the work that was necessary and wait for payment from the estate until a later date.

On September 6, 2012, the Probate Court (*Murray, J.*) heard Ms. Grant's motion to halt the work on the Oakland Terrace property. By decree dated October 3, 2012, the Probate Court ordered that all work on the property cease except in an emergency. The court pointed out that at a status conference in April 2012 it had discussed the need to list and market the Oakland Terrace property in a timely manner, but Attorney Drew reported at the September 6, 2012 hearing that he had not spoken with a real estate agent about recommendations for marketing the property, and the property was not listed for sale. The court directed that Attorney Drew file a detailed interim accounting for the estate.

Attorney Drew filed an interim accounting on October 12, 2012, which reflected, inter alia, the following unpaid estate expenses: fiduciary fees for Attorney Drew in the amount of \$23,491; attorney's fees for Attorney Drew in the amount of \$52,038; and payment to Mr. Grant for his work on the Oakland Terrace property in the amount of \$31,427. Ms. Grant objected to the fees in the interim accounting.

The Probate Court held a hearing on its own motion to remove Attorney Drew as executor on November 14, 2012. By decree dated November 27, 2012, the Probate Court removed Attorney Drew as executor of the estate of Julia Grant due to his "persistent failure to administer the estate effectively." The court directed Attorney Drew to file an updated interim accounting through that date.

The Probate Court appointed Attorney Caputo to serve as administrator, c.t.a., d.b.n. of the estate of Julia Grant in the November 27, 2012 decree. Attorney Caputo entered into a contract to sell the Oakland Terrace property on April 1, 2013 for \$600,000. The property was ultimately sold for a gross sales price of \$603,000.

By decree dated July 3, 2013, the Probate Court approved the interim accountings filed by Attorney Drew, as modified by the court. The court acknowledged that Attorney Drew had “worked diligently to advance the decedent’s estate through probate,” but it found that the fiduciary fee sought was “simply too large relative to the size of the estate and the work performed.” The proposed attorney’s fees were reduced on the same grounds. The Probate Court awarded a fiduciary fee of \$7,800 and legal fees of \$17,200 to Attorney Drew, and \$10,400 to Mr. Grant for the repairs to the Oakland Terrace property.

On January 29, 2014, Attorney Caputo filed a final financial report in the Probate Court. Ms. Grant and her brothers each received a cash distribution pursuant to Article II, Section C of the will in the amount of \$107,333. Victoria Grant received a slightly smaller distribution that took into account the \$2,200 advance she received previously.

Ms. Grant blames Attorney Drew for the loss of her family home, her Galaxy Cookies business, and her relationship with her brothers. She also holds him responsible for the living expenses that she incurred and the emotional distress that she suffered as a result of being evicted from the Oakland Terrace property.

Ms. Grant claims that the eviction destroyed her home-based cookie business, which she was operating under the trade name “Galaxy Cookies.” Ms. Grant started the Galaxy Cookies business in 2004. Ms. Grant was operating the Galaxy Cookies business from the

Oakland Terrace property because she had previously been evicted from commercial space in Westport and Norwalk.

Galaxy Cookies was originally a trade name belonging to Administrative Ninja, LLC (Administrative Ninja), a limited liability company solely owned by Ms. Grant. In order to avoid the debts of Administrative Ninja, Ms. Grant transferred ownership of Galaxy Cookies to a different limited liability company – 12 Knight Street, LLC – without consideration. Ms. Grant has no ownership interest in 12 Knight Street, LLC. 12 Knight Street, LLC is a Connecticut limited liability company that was formed in 2009. Ms. Grant’s friend Ms. Evers is the sole manager member of 12 Knight Street, LLC.¹¹

Ms. Grant also claims that she incurred living expenses after she was evicted from the Oakland Terrace property. Ms. Evers testified, however, that Ms. Grant did not pay rent during the time that she lived with her. She said that Ms. Grant gave her \$10,000 from her inheritance to reimburse her for expenses that she had paid on her behalf, including automobile insurance. The court credits Ms. Evers’s testimony.

Ms. Grant described the emotional distress that she claimed the eviction caused her. She sought outpatient mental health treatment. She testified that her treatment was covered by Medicaid and HUSKY, so that she did not incur any costs.

II

“The essential elements to pleading a cause of action for breach of fiduciary duty under Connecticut case law are: (1) That a fiduciary relationship existed which gave rise to (a) a duty of loyalty on the part of the defendant to the plaintiff, (b) an obligation on the part of the

¹¹ Ms. Evers said during her testimony that 12 Knight Street, LLC had been dissolved about a year and a half ago. She said that the company had never filed income tax returns, but she had received a notice to do so.

defendant to act in the best interests of the plaintiff, and (c) an obligation on the part of the defendant to act in good faith in any matter relating to the plaintiff; (2)[T]hat the defendant advances his own interests to the detriment of the plaintiff; (3) That the plaintiff sustained damages; (4) That the damages were proximately caused by the fiduciary's breach of his or her fiduciary duty.” (Internal quotation marks omitted.) *Ochieke v. Turbine Controls, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-10-5035041-S (October 8, 2014, *Elgo, J.*). An executor of an estate has a fiduciary responsibility “to maintain an undivided loyalty to the estate . . . and must diligently represent the rights of the heirs and distributees and also those of creditors.” (Internal quotation marks omitted.) *Hall v. Schoenwetter*, 239 Conn. 553, 559, 686 A.2d 980 (1996). Once the Probate Court appointed Attorney Drew the executor of Julia Grant’s estate, Attorney Drew had a fiduciary duty obligating him to act in the best interests of the estate, the distributees under Julia Grant’s will – Ms. Grant and her three adult siblings – and the creditors of the estate.

Attorney Drew contends that Ms. Grant has failed to meet her burden of proof, and, therefore, her complaint should be dismissed, and judgment should enter in his favor. While “[u]nder the traditional principles of fiduciary duty, [o]nce a fiduciary relationship is found to exist, the burden of providing fair dealing properly shift to the fiduciary”; *Lugo v. Rapuano*, Superior Court, judicial district of New Haven, Docket No. CV-05-4016918-S (Jan. 23, 2007, *Holden, J.*); our Supreme Court “has limited the application of the burden-shifting rule to the cases involving allegations of fraud, self-dealing, and the conflict of interest.” *Id.* (citing *Murphy v. Wakelee*, 247 Conn. 396, 400, 721 A.2d 1181 (1998), and *Cadle Co. v. D’Addario*, 268 Conn. 441, 456-57, 844 A.2d 836 (2004) (“[I]t is only when the confidential relationship is shown together with suspicious circumstances, or where there is a transaction,

contract, or transfer between parties in a confidential or fiduciary relationship, and where the dominant party is the beneficiary of the transaction, contract, or transfer, that the burden shifts to the fiduciary to prove fair dealing”). Therefore, despite the existence of a fiduciary relationship, the burden-shifting rule does not apply where – as here – a beneficiary has alleged that an executor misconstrued the terms of a will, failed to distribute assets, and mismanaged an estate. It remained Ms. Grant’s burden to show that Attorney Drew breached his fiduciary duty to her as she has alleged.

III

Pursuant to General Statutes §45a-321(a), “the executor of an estate will have possession, care and control of the decedent's real property during the settlement of the estate unless one of three conditions exists: (1) the property has been specifically devised in the decedent's will; (2) directions are given in the decedent's will that are inconsistent with the statute; or (3) the court has ordered the executor to surrender possession, care and control of the property in favor of the heirs, or the court has ordered distribution of the property.” *LaFlamme v. Dallessio*, 261 Conn. 247, 253, 802 A.2d 63 (2002). Julia Grant’s will did not specifically devise the Oakland Terrace property, and she did not leave any directions that were inconsistent with the terms of General Statutes §45a-321(a). The Oakland Terrace property fell within the residuary clause of the will, set forth in Article II, Section C, which left the remainder of Julia Grant’s estate to Ms. Grant and her siblings, in equal shares. The residuary estate was to be distributed to Julia Grant’s beneficiaries in equal shares, after payment of the debts of the estate and the expenses of administration, without regard to any particular property or fund.

“[T]he executor of an estate does not take title to real property of the estate. . . . Upon death of the owner of real property, legal title to real property immediately passes to the decedent's heirs, *subject to* the right of the executor to administer the estate.” (Emphasis added; internal quotation marks omitted.) *LaFlamme v. Dallessio*, supra, 261 Conn. at 251. As our Appellate Court explained, “[a]lthough [i]t is fundamental jurisprudence that title to real property vests immediately at death in a deceased's heirs, or in devisees upon the admission of the will to probate . . . such title is not absolute. . . . General Statutes §45a-321 governs the custody of real property following an owner's death. Our Supreme Court has held, pursuant to this statutory framework, that the title of an heir or specific devisee is defeated should it be necessary for the administration of the estate that [the real property] be sold by order of the court, and subject to the right of the [executor] to have possession, care and control of it during the settlement of the estate, unless the probate court shall otherwise order. . . . Thus, the fiduciary of a decedent's estate possesses a limited statutory right to interfere with the passage of title to a devisee. Upon the death of a testator, the title to the real property devised in his will vests in the devisees, subject to the control of the court and possession of the executor during administration. . . . [U]nder the conditions and for the purposes prescribed by statute, as where the personal property is insufficient to pay the debts of the decedent's estate, his real property and interests therein may be regarded as assets to which his personal representatives may resort.” (Footnote omitted; internal quotation marks omitted.) *Scott v. Heinonen*, 118 Conn. App. 577, 583-84, 985 A.2d 358 (2009), cert. denied, 295 Conn. 909, 989 A.2d 603 (2010). Thus, even if the Oakland Terrace property had been specifically devised to the plaintiff and her siblings, Attorney Drew had the authority to interfere with the passage of title if it was

necessary for the payment of the estate's debts and the expenses of administration that the property be sold.

All of Ms. Grant's claims against Attorney Drew have their genesis in Attorney Drew's decision to sell the Oakland Terrace property. Attorney Drew contends that he was expressly authorized under Article VIII of the will and General Statutes §45a-234(2) to sell the Oakland Terrace property, and that it was necessary to do so to meet the liquidity needs of the estate.

As discussed above, Article VIII, Section A, paragraph 2 of the will authorized the executor to sell any real property of the estate. The Fiduciary Powers Act, General Statutes §45a-233, et seq., also provides in pertinent part that a fiduciary has the power "[t]o sell, exchange, alter, assign, transfer, grant options to buy, sign real estate listing agreements; to convey, pledge, hypothecate; and to mortgage, lease and sublease, even beyond the period of the estate or any trust; to partition or otherwise dispose of any property or interest therein; to do any of such acts without an order of any court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary shall deem advisable; to transfer and convey the property or any interest therein, in fee simple absolute or otherwise free of all trusts." General Statutes §45a-234(2).

Ms. Grant is fundamentally mistaken in her contention that Attorney Drew was required to distribute the Oakland Terrace property to her and her three siblings as tenants in common. Attorney Drew had the statutory authority to distribute the assets of Julia Grant's residuary estate in cash or in kind. As provided in General Statutes §45a-234(21), a fiduciary has the power "[t]o make distribution of assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, provided shares may be composed

differently and specific assets may be allocated to particular distributions” General Statutes §45a-234(21).

As Attorney Drew had the power and authority to sell the Oakland Terrace property, he was also authorized to take the steps necessary to effectuate the sale – including evicting Ms. Grant and her sister Victoria Grant from the property. Under Article VIII, Section A, paragraph 14 of the will, Attorney Drew was authorized to do what was necessary to manage and distribute property of the estate. Attorney Drew also had the statutory power to do so. General Statutes §45a-234(18) provides in pertinent part that a fiduciary may “compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary shall deem advisable” General Statutes §45a-234(18).

Attorney Drew also had the power, as executor, to take steps to preserve, repair, and renovate the Oakland Terrace property before listing it for sale. Under subsection (25) of General Statutes §45a-234, a fiduciary has the power, inter alia, “[t]o improve, manage, protect, develop, acquire and make additions to, exchange, and abandon any real property or any interest therein; . . . to erect, make repairs, replacements or improvements, structural or otherwise, or to renovate any building or other improvement on real property, and to alter, raze, remove or demolish any building or other improvement in whole or part; . . . and . . . to deal with any such property and every part thereof in all other ways and for such other purposes or considerations as would be lawful for any person owning the same.” General Statutes §45a-234(25). Subsection (6) of §45a-234 further provides that a fiduciary’s powers include the authority “[t]o pay for repairs and other expenses incurred in the management, collection, care,

administration and protection of the trust or estate including fiduciary compensation and attorneys' fees." General Statutes §45a-234(6).

None of the actions that Attorney Drew took as the executor of the estate of Julia Grant exceeded the authority granted to him under the will or by statute. When the Probate Court removed him as executor in November 2012, it did so because Attorney Drew did not list for sale and sell the Oakland Terrace property on a timely basis – not because he determined that the property had to be sold in the first instance. When the Probate Court significantly reduced the fees that it awarded to Attorney Drew in July 2013, it acknowledged in doing so that Attorney Drew had worked diligently to administer the estate.

There is simply no evidence to support Ms. Grant's claim that Attorney Drew breached his fiduciary duties while he was serving as the executor of the estate of Julia Grant. Judgment shall enter in favor of Attorney Drew on the first count of the revised complaint.

IV

Ms. Grant contends in the second count of the revised complaint that Attorney Drew also breached his fiduciary duties by wasting estate assets on legal fees, eviction costs, contractors' charges, and other unwarranted expenses, and by causing the Oakland Terrace property to be sold at a distress sale. Both of these claims are without merit.

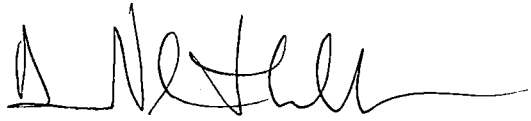
As to the alleged unnecessary expenses incurred by the estate, all of the fees and expenses that were paid with estate assets were approved by the Probate Court. With respect to the sale of the Oakland Terrace property, Attorney Caputo, as the administrator, c.t.a., d.b.n., of the estate of Julia Grant, listed and sold the Oakland Terrace property months after Attorney Drew was removed as executor. Attorney Drew had nothing to do with the sale. Judgment shall enter in favor of Attorney Drew on the second count of the revised complaint.

V

For the reasons set forth above, judgment shall enter as follows:

1. With respect to the first count of the revised complaint, in favor of the defendant Thomas J. Drew, Esq. and against the plaintiff Connie L. Grant.
2. With respect to the second count of the revised complaint, in favor of the defendant Thomas J. Drew, Esq. and against the plaintiff Connie L. Grant.

BY THE COURT:



HELLER, J.

*Decision entered in
accordance with the
foregoing. 6/14/17
Copies mailed to all
counsel and prose
parties. 6/14/17
S. Condon, Asst. Clerk*