

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MARQUETTE

WELLS FARGO BANK, a National Association,
as Trustee of the Leland R. Anderson Trust,

Interpleader Plaintiff

v

File No. 11-32051-TV

LUTHERAN ASSOCIATION OF MISSIONARIES
AND PILOTS, U.S., a Wisconsin Charity,
and LUTHERAN ASSOCIATION OF MISSIONARIES
AND PILOTS, INC., a Canadian charity,

Interpleader Defendants

OPINION and ORDER

This matter is before the Court as a result of a Motion for Summary Disposition. The Motion was filed June 13, 2012, and was heard July 10, 2012.

This case was initiated by Wells Fargo Bank, the trustee of the Leland R. Anderson Trust. The trust was established in 1994 by Leland Anderson during his lifetime as a revocable living trust. The trust provides that upon the deaths of Leland Anderson and his wife, 10 percent of the trust assets should be distributed to “. . . Lutheran Assoc. of Missionary Pilots (LAMP), 3525 N. 124th Street, Brookfield, WI 53005-2498.” During his lifetime, Leland Anderson made a number of gifts to an organization identified as LAMP. This organization was incorporated in Canada in 1970. In 1985, an American affiliate, identified for purposes of this Opinion as LAMP – U.S., was formed in Wisconsin.

The two organizations operated under a “Statement of Relationship”, adopted in 1986, and amended twice, most recently in 1993. The Statement of Relationship

indicated that the two corporations were “legally independent of each other”. (Exhibit 17, Affidavit of Jeffery Thompson). Each organization solicited donations. A portion of the donations received by LAMP – U.S. was annually transferred to the Canadian corporation, referred to in this Opinion as LAMP – Canada, for purposes of avoiding confusion.

The two corporations formally terminated their relationship in 2000, but each continued to operate and solicit donations.

The Canadian corporation sued the American corporation in federal court in Minnesota in 2003 [Civil case #03-6173 (PAM/RLE)]. On cross-motions for summary judgment, most of the Canadian corporation’s claims were dismissed, with the primary exception of a claim for trademark infringement and unfair competition. Those claims were later settled by agreement of the parties.

Leland Anderson died on May 30, 2010. The trustee essentially initiated this lawsuit in order to obtain the court’s direction about which of the two LAMP organizations should receive the distribution from the trust.

Motions for Summary Disposition are governed by MCR 2.116. Both parties have submitted Affidavits they claim support their positions. In deciding a Motion for Summary Disposition, the Court must consider the facts in the light most favorable to the party opposing the Motion for Summary Disposition. ***Haase v Schaeffer*, 122 Mich App 301; 332 NW²423 (1982).**

The Motion in this case alleges that there is no genuine issue of material fact. The parties generally agree about the factual allegations, but disagree as to their legal

implications. For purposes of deciding this Motion, the Court is relying on the following factual allegations:

Leland Anderson created an Intro Vivos Trust in 1994. As noted above, the trust document provided that upon distribution, 10 percent of the trust corpus would be distributed to an organization identified as "LAMP". At the time the trust document was executed, there were actually two organizations identified as LAMP, one in the United States and one in Canada. In the trust document, Mr. Anderson used the correct address of LAMP – U.S. There is no mention in the document or in extrinsic contemporaneous evidence that Mr. Anderson intended his gift to benefit one organization to the exclusion of the other. Prior to March 30, 1994, Mr. Anderson made 36 gifts to LAMP – U.S. (Affidavit of Paul Flaa, Exhibit 2). Between March 30, 1994, and May 5, 2000, when the two charities dissolved their relationship, Mr. Anderson made an additional 59 gifts to LAMP – U.S. Two of these were designated for a boat ministry in Alaska, which was operated solely by the American organization (Affidavit of Paul Flaa). After the organizations separated, Mr. Anderson made 11 gifts to the American charity and 5 gifts to the Canadian charity.

Prior to 1994, Mr. Anderson was sent a variety of solicitations and informational materials which described some of the Canadian charity's activities in Canada. These materials contained the addresses of both organizations, and the copy of the Lamplighter dated January, 1994, contained a notice of "LAMP Annual Meetings", listing both LAMP – U.S. and LAMP – Canada separately (Exhibit 16, LAMP – Canada). Reverend Lester Stalke was the founder of LAMP and was the Executive Director of LAMP and LAMP – U.S. from 1985 to 1994 (Affidavit of Ron Ludke).

Mr. Anderson modified a different portion of his trust in 2006, but did not change the provision which stated 10 percent of the remaining trust assets would go to “Lutheran Association of Missionary Pilots (LAMP)”.

An affidavit of Ardy Johnson was submitted by the Canadian organization. Mr. Johnson was Leland Anderson’s father’s second cousin and his attorney-in-fact. Mr. Johnson’s affidavit says that he did not believe Mr. Anderson understood that the two LAMP organizations had split in 2000; and stated that he never discussed LAMP with Mr. Anderson.

The Canadian organization filed a cross-claim for tortious interference based on some communications between LAMP – U.S. and Wells Fargo. That claim is also the subject of this Motion for Summary Disposition.

DESIGNATION OF BENEFICIARY

Both parties subscribe to the principle that in construing a testamentary instrument, the Court should carry out the intent of the testor (or grantor, in this case) as nearly as possible. LAMP – Canada argues that, given these circumstances, an ambiguity exists in the trust document, and the Court can and should consider extrinsic evidence to determine the grantor’s true intent. In support of this proposition, LAMP – Canada cites ***In re Kremlick Estate*, 417 Mich 237, 331 NW² 228, (1983).**

The ***Kremlick*** case involved a gift to the “Michigan Cancer Society”. Two organizations, the “Michigan Cancer Society” and the “American Cancer Society, Michigan Division” claimed they were the intended beneficiary. The Michigan Supreme Court reversed the Court of Appeals and remanded the case to the trial court because it determined that, although there was no patent ambiguity, a latent ambiguity might exist.

They held that extrinsic evidence should have been considered to determine whether a latent ambiguity existed. The claim that a latent ambiguity existed was supported by an affidavit from the executrix of Mr. Kremlick's estate. The affiant stated that she had discussed the provisions of the will with Mr. Kremlick, and that he had told her that he "... frequently had mentioned that the American Cancer Society was to be a beneficiary (at p. 241).

In considering the grantor's intent, the Court should focus on his or her intent at the time the instrument was created. *In re Maloney Trust*, 423 Mich 632; 377 NW² 791; (1985) (at p. 639).

At the time Mr. Anderson created his trust, there was an entity in existence that was named the Lutheran Association of Missionary Pilots (LAMP). The United States operation of LAMP used the address Mr. Anderson's trust document specified. The two organizations, LAMP – U.S. and LAMP – Canada had an operating agreement that said they were "legally independent of each other". LAMP – Canada claims that the trust is ambiguous because donors received information about activities in Canada, and because Mr. Anderson was supporting the general purpose of ministering to indigenous people in Canada, rather than of benefiting an individual organization.

Even a latent ambiguity must be supported by more than mere speculation. There is no evidence in this record, other than Ardy Johnson's speculation, 16 years after the fact, about what Leland Anderson might have thought about the two branches of LAMP.

Furthermore, in this court's view, extrinsic evidence should only be admitted in cases where the grantor's own act created the ambiguity. In this case, LAMP – Canada argues that an ambiguity exists primarily because of the actions of the purported

beneficiary in presenting itself to others. Much of the material which is proposed by LAMP – Canada as extrinsic evidence relates to the actions of LAMP. Since the real issue, assuming that an ambiguity does exist, is the intention of the grantor, evidence of LAMP's activities only has probative value by inference. Put another way, LAMP – Canada argues that had Leland Anderson been aware of this or that fact, it is reasonable to assume he would have been motivated to act in a particular way. The evidence LAMP – U.S. has proposed about the tax implications of contributing to a U.S., rather than a foreign corporation, falls into the same category.

This Court is satisfied that there is no ambiguity, patent or latent, created by the language of Leland Anderson's trust document.

The final factor the Court has considered in deciding this Motion is collateral estoppel. LAMP – Canada asserts that in 1994, when this trust was created, any reference to LAMP should be construed as referring to the original corporation. At the time, the two corporations were operating under the "Statement of Relationship" to which both had agreed, and the "Statement of Relationship" specifically states that each corporation was "legally independent" of the other. LAMP – Canada cannot now assert that a gift directed to the American operation in fact belongs to LAMP – Canada simply because the corporations communicated jointly to donors and the public.

An additional factor supporting application of the doctrine of collateral estoppel is found in the Memorandum and Order signed by U.S. District Judge Paul Magnuson on March 15, 2005. In discussing a letter sent by LAMP – U.S. to prospective donors on June 7, 2000, Judge Magnuson stated " . . . LAMP – Canada claims these statements are false and misleading because the two entities always operated on an independent basis . .

.” (at p. 4). The position asserted by LAMP – Canada in this litigation appears to be exactly the opposite of the position it asserted in the federal court action.

TORTIOUS INTERFERENCE

LAMP – Canada has made a cross-claim against LAMP – U.S. for tortious interference with its claim to receive distribution of benefits under Leland Anderson’s trust. In view of the court’s resolution of the dispute in favor of LAMP – U.S., LAMP – Canada had no rightful claim to receive the distribution, and, therefore, the actions LAMP – U.S. took to attempt to secure the distribution for itself did not constitute a wrongful act that interfered with a legitimate claim or business prospect.

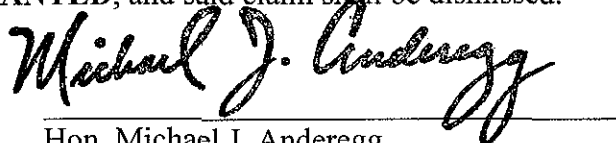
ORDER

For reasons stated in the foregoing Opinion,

IT IS ORDERED that the Motion for Summary Disposition filed by Interpleader Defendant LAMP – U.S. against Interpleader Defendant LAMP – Canada concerning the right to receive a distribution from the Leland Anderson Trust is **HEREBY GRANTED.**

IT IS FURTHER ORDERED that Interpleader Defendant LAMP – U.S.’s Motion for Summary Disposition as to Interpleader Defendant LAMP – Canada’s claim for tortious interference is **HEREBY GRANTED**, and said claim shall be dismissed.

Dated: July 27 2012



Hon. Michael J. Anderegg
Probate Court Judge