

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of
PHILLIP A. TOUMA Trust:

EMIL TOUMA, ALFRED TOUMA and GEORGE
TOUMA,

UNPUBLISHED
September 13, 1996

Petitioners–Appellees/Cross-Appellants,

v

No. 182123
LC No. 92-92375-TI

MICHIGAN NATIONAL BANK, Trustee of the
PHILIP A. TOUMA Trust,

Respondent–Appellant/Cross-Appellee.

Before: Jansen, P. J., and Reilly, and M.E. Kobza,* JJ.

PER CURIAM.

Respondent appeals as of right from an order removing it as a trustee and holding that it breached its fiduciary duty by failing to prepare for the likelihood that, upon default of the purchasers on a land contract, the trust would receive a bowling alley as an asset and by failing to investigate and evaluate its options for the business after repossession. Petitioner cross-appeals. We affirm.

Petitioners are the vested income beneficiaries of the Philip A. Touma Trust. They filed a petition seeking the removal of respondent as trustee for alleged breaches of fiduciary duties in respondent’s handling of a trust asset, a bowling alley. Petitioners also sought damages for the alleged breaches. The court held that respondent breached its fiduciary duty to petitioners by making an “uninformed decision to close the doors of a going business.” The court ordered that respondent be removed and replaced as trustee. The court further ordered that the petitioners shall be allowed to present the issue of damages to the court in further proceedings.

* Circuit judge, sitting on the Court of Appeals by Assignment.

Respondent argues that the probate court's finding that respondent breached its fiduciary duty to the trust beneficiaries by failing to make an informed decision to concerning the operation of the bowling alley after repossession was clearly erroneous. We disagree. Respondent argues that the unavailability of a liquor license, evidence that the business was not operating profitably and concern over potential liability of the trust under the liquor laws were considerations in the decision whether to reopen the business. However, the court found that respondent "made no investigation as to the value of continuing the business, even at a loss during the summer months, to protect the value of the on-going business", was not aware that by allowing the bowling alley to be closed for longer than six months, the building would have to be renovated to comply with building codes, and "did not consult with experts in the bowling alley business prior to deciding to close the business." Furthermore, the court noted that although it was understandable that respondent would not want to operate the business, with that reluctance in mind, respondent "should have been taking great care in preparing for the possibility of repossession." The evidence supports the probate court's findings and its conclusion that respondent breached its fiduciary duty by failing to make an informed decision in its handling of the bowling alley after repossession.

In its cross-appeal, petitioners argue that the probate court's findings that respondent had not breached its fiduciary duties in other instances cited by petitioners in the petition were clearly erroneous. We disagree. Having considered petitioners' arguments, the evidence and the court's opinion we are not left with a definite and firm conviction that a mistake has been made. *In re Green Charitable Trust*, 172 Mich App 298, 313; 431 NW2d 492 (1988).

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Michael E. Kobza