

VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

JOHN H. BIRDSALL et al.,

Plaintiffs,

v.

Case No. CL17000001-00

FOXFIELD RACING ASSOCIATION, INC., et al.,

Defendants.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs, by counsel, pursuant to Rule 3:20 of the Rules of the Supreme Court of Virginia, move for partial summary judgment on the following claims raised in the Second Amended Complaint:

1. With respect to Count I of the Second Amended Complaint, Plaintiffs seek a declaratory judgment, pursuant to Virginia Code § 8.01-184, that (a) the Foxfield Property (as that term is defined in the Second Amended Complaint) and all proceeds derived from the use thereof are held in trust by Defendant Foxfield Racing Association, Inc. ("Foxfield Racing"), and (b) Foxfield Racing may not lawfully sell or use the Foxfield Property, or any portion thereof, or any proceeds derived from the use thereof in a manner inconsistent with the purposes established by the Will.

2. With respect to Count II of the Second Amended Complaint, Plaintiffs ask that the Court find that by, *inter alia*, misusing funds subject to a trust and taking steps to sell the Foxfield Property, Defendants have breached and continue to breach their duties as trustees as set forth in Virginia Code § 64.2-764 (duty of loyalty), Virginia Code § 64.2-766 (prudent administration), and Virginia Code § 64.2-792 (breach of trust).

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3. With respect to Count III of the Second Amended Complaint, Plaintiffs ask that the Court remove the trustee on the following grounds:

(a) Defendants have committed a serious breach of trust, which is grounds for removal pursuant to Virginia Code § 64.2-759(b)(1);

(b) Defendants are unfit to, unwilling to and/or have persistently failed to administer the trust effectively, which is grounds for removal pursuant to § 64.2-759(b)(3);

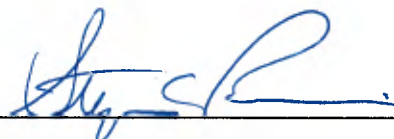
(c) there has been a change of circumstances such that removal of the trustee best serves the interests of the beneficiaries and is consistent with the material purpose of the trust, which is grounds for removal pursuant to § 64.2-759(b)(3); and/or

(d) Defendants have breached the trust, which is grounds for removal pursuant to § 64.2-792(b).

4. As with respect to Count III of the Second Amended Complaint, Plaintiffs request that the Court appoint a special fiduciary and/or replacement trustees to run the Foxfield Races in keeping with the terms of the trust, which is relief available under the Code of Virginia and the common law.

The grounds for this motion will be provided in a forthcoming supporting memorandum, which will be filed in keeping with Rule 4:15 of the Rules of the Supreme Court of Virginia.

JOHN H. BIRDSALL, et al.



William H. Hurd (VSB #16967)
Ashley L. Taylor (VSB #36521)
Stephen C. Piepgrass (VSB #71361)
TROUTMAN SANDERS LLP
1001 Haxall Point, P.O. Box 1122
Richmond, VA 23218-1122
Phone: (804) 697-1274 / Fax: (804) 698-5159
william.hurd@troutman.com
ashley.taylor@troutman.com
stephen.piepgrass@troutman.com
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2018 a true copy of the foregoing was sent

by FedEx and email to the following:

C. James Summers, Esq.
415 Park Street
Charlottesville, VA 22902
sumlaw01@comcast.net
Fax: 434-295-3151

Blair D. Howard, Esq.
John C. Clark, Esquire
T. Brooke Howard II, Esquire
Law Office of Howard, Clark & Howard
7 Hotel Street
Warrenton, VA 20186
BDH@hchlawva.com
JCC@hchlawva.com
TBH@hchlawva.com

Counsel for Thomas Dick

and

F. Douglas Ross, Esq. (VSB No. 23070)
ODIN, FELDMAN & PITTLEMAN, P.C.
1775 Wiehle Avenue, Suite 400
Reston, VA 20190
Douglas.ross@ofplaw.com
Fax: 703-218-2160

Counsel for Foxfield Racing Association, Inc.

