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4th DCA — Acting Somewhere Between God And Judge — Reverses Ruling Made Without Evidentiary Hearing

Noreen Marcus, Daily Business Review

August 25, 2014

A perfect storm of the great real estate recession and a developer who guaranteed loans worth \$140 million is roiling Broward Circuit Court seven years after his sudden death.

Richard R. Vazza's two sons, the estate's former personal representatives, are under siege by creditor banks for allegedly squandering more than \$6 million. They made the money untraceable by moving it through a holding company to an entity they controlled, Donald Tescher, the Boca Raton lawyer who became the personal representative, argues in his surcharge action.

Richard W. and Stephen Vazza assert they liquidated fat assets on behalf of the creditors and should be praised, not sued, for their efforts. They say the banks approved all expenditures.

Broward Circuit Judge Mark Speiser seemed to side with the creditors when he said the court registry would retain \$855,253 in disputed salaries and fees to the Vazzas. He issued his Dec. 18, 2013, ruling without first holding an evidentiary hearing.

According to a transcript quoted by the sons' lawyers, Speiser stated, "regardless of whether the creditors gave approval or not, there is a higher power that they're accountable to and, short of God, that's me."

On Aug. 20 the Fourth District Court of Appeal inserted itself into this pantheon somewhere between God and Speiser. In a three-paragraph decision, the court reversed

RICHARD W. VAZZA AND STEPHEN F. VAZZA, APPELLANTS, V. ESTATE OF RICHARD R. VAZZA, APPELLEE

Case no.: 4D14-320

Date: Aug. 20, 2014

Case type: Probate

Court: Fourth District Court of Appeal

Author of opinion: Palm Beach Circuit Judge Rosemarie Scher, sitting be designation

Lawyers for petitioners: Gerald F. Richman and Michael J. Napoleone, Richman Greer, West Palm Beach

Lawyers for respondent: Steven A. Lessne and Jeffrey T. Kuntz, GrayRobinson, Fort Lauderdale, and Lawrence P. Heffernan, Robinson + Cole,

him and ordered a full-dress inquiry to determine whether the Vazzas' compensation was reasonable.

Boston

Panel: Scher and Judges Robert M. Gross and Melanie G. May

Originating court: Broward Circuit Court

"What they did was for the benefit of the creditors," said the Vazzas' lawyer Gerald Richman of Richman Greer in West Palm Beach.

"They knew it, they welcomed it, and now they're just trying to get money they shouldn't be entitled to."

Who's entitled to the money is less transparent than the history of the estate's \$140 million debt.

Richard R. Vazza was a Boston-based developer of commercial real estate in several states including Arizona and Florida. On some projects he worked with his sons, described by Richman as successful Boston-area homebuilders.

On July 10, 2007, the developer, 66, was found dead of a heart attack aboard his 68-foot yacht, the Shogun, docked in Falmouth Harbor. His Vazza Co. had just started work on a \$150 million office and retail development in Gilbert, Ariz., the Cape Cod Times reported.

His will designated all five of his children as personal representatives, but Richard W. and Stephen took the lead. The \$140 million their father personally guaranteed had to be dealt with.

"The banks went to them and said, 'You'd better step up to the plate,' " Richman said. They helped formulate a global workout plan and sold the yacht and other assets to accumulate about \$41 million before the recession hit.

"Then it's like, what have you done for me lately?" their lawyer recalled. "All of a sudden the creditors turned on them and said, 'We're going after you personally.' "

The late Mr. Vazza had a condo in Deerfield Beach. The probate proceeding that started in Massachusetts wound up in Broward County in April 2008.

A look back

While the Vazzas' initial brief to the Fourth District focuses on the Speiser/God quote and the judge's ruling of Dec. 18, the estate's answer brief provides a longer look back.

In an order dated April 3, 2008, the Florida probate court required that "no personal representatives' fees or attorneys' fees can be paid without prior court approval."

The Vazzas violated this requirement, the brief states. Responding to a motion by creditor Century Bank and Trust Co., the probate court froze the estate's assets on March 19, 2009.

In Century's subsequent petition for surcharge and to hold the Vazzas liable for mismanagement, the bank accused them of diverting estate funds to an entity they controlled.

They allegedly transferred more than \$6 million to a holding company named Vazza Properties,

and from there to a company they owned, Crown Construction.

Crown provided management and accounting services exclusively to Vazza Properties, which had no employees, according to Century. The deceased Mr. Vazza was not an owner of Crown or Vazza.

None of this has been proven and Richman offered an explanation. Acknowledging an "unusual situation," he said the father and sons had a company they used as a "pass through" merely to record transactions.

"The father would put money in, take money out, but it was an accounting vehicle and it was for the father's convenience," Richman said. He said the father had started doing things this way after splitting with a partner.

Speiser explains

The answer brief gives some context to the remark Speiser probably regrets making, the one about accountability to God and judge.

When he required the Vazzas to turn over the \$855,253 to the court registry, Speiser explained:

"But, again, I'm probably being redundant and repetitious, but I want to do so to overemphasize, I am not ruling today that they're not necessarily entitled to any or all of that money.

"They may very well be entitled to all of it, but the proper process and procedure is that that has to get prior court approval."

Richman characterizes what Speiser did as granting a mandatory injunction or prejudgment writ of attachment, both of which require a lot of record support.

"You don't go ahead and say put this back when there's no evidence that it wasn't justified," he said. "The important thing is that there's a reason why you have to have an evidentiary hearing rather than just assuming that what was done is wrong."

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