

MCJ

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-2016-333

SEAL COVE AUTO MUSEUM,)
)
Plaintiff,)

v.)

SPINNAKER TRUST, JOHN)
HIGGINS, and JOHN SANFORD)
)
Defendants,)

and)

RICHARD C. PAINE, JR.)
AUTOMOBILE COLLECTION)
CHARITABLE TRUST)
)
Party-in-Interest,)

and)

JANET T. MILLS, in her capacity)
as ATTORNEY GENERAL)
)
*Party-in-Interest and)
Cross Claimant.*)

**AMENDED ORDER ON
DEFENDANTS'**

**AND PARTY-IN-
INTEREST RICHARD C. PAINE,
JR. AUTOMOBILE
CHARITABLE TRUST'S
MOTION TO DISMISS**

STATE OF MAINE
Cumberland ss. Clerk's Office

MAY 09 2017

RECEIVED

The matter before the court is a Motion to Dismiss filed by Defendants' and Party-In-Interest Richard Paine, Jr. Automobile Charitable Trust. For the following reasons, the Motion to Dismiss is granted.

I. Background

¹ Defendant Spinnaker Trust jointly moved to dismiss based on Plaintiff's lack of standing. The motion to dismiss is granted in toto.

Richard Paine, Jr. ("Paine") collected antique cars. In 1963, Paine established the Seal Cove Auto Museum (the "Museum"). In 1986, Paine established the Richard C. Paine, Jr. Automobile Charitable Trust (the "Trust") in order to maintain and control his automobile collection (the "Collection"). It remained unfunded until Paine's death in 2007, when Paine left almost all of his collection of antique automobiles to the Trust. The Trust's automobile collection is currently worth \$24 million and the endowment for the maintenance of the automobile collection as held by the Trust is approximately \$6 million.

The Trust states that:

(a) All or part of the net income and principal may be paid for the charitable purposes of 1) providing educational and scientific study of antique automobiles, whether owned by the trust or any other charitable organization, and other methods of transportation, 2) providing for the display to the public of antique automobiles, whether owned by the trust or by any other charitable organization, and 3) maintaining in suitable condition for public display and study any antique automobiles owned by the trust or any other charitable organization.

In furtherance of the foregoing purposes, the Trustee may, without limitation, sell such automobiles as he from time to time deems necessary or advisable, whether to provide a suitable endowment to maintain the Collection or to permit the continued display of antique automobiles by Seal Cove Auto Museum or by any other museum (provided in either case that that such organization is then an organization described in Section 501(c)(3) of the Code); acquire additional antique automobiles in order to upgrade the Collection; insure and otherwise maintain the Collection; loan all or any part of the Collection to museums, including without limitation Seal Cove Auto Museum, or any other charitable organizations (in either case provided such organization is an organization described in Section 501(c)(3) of the Code) for public display or study; permit access to the Collection for educational purposes by scholars or students; and generally do all such acts as may be necessary or appropriate to educate the public with respect to antique automobiles and to make the Collection available for public viewing.

The Trust, ¶2. Notably, the only mentions of the Museum in the Trust document are found in the section transcribed above.

In 2008, the Attorney General filed a complaint that led to a consent decree requiring that a Co-Trustee be appointed to serve with John Sanford, who has acted as Trustee since the creation of the Trust. Spinnaker Trust served as Co-Trustee before resigning. John Higgins now serves as a Co-Trustee.

In 2008 and 2014, the Trustees entered into agreements (the "Agreements") with the Museum. Pursuant to the Agreements, the Collection is currently being housed at the Museum and the Trust agreed to provide at least \$200,000 in support to the Museum on an annual basis. There is no contention that there have been any breaches to the Agreements.

Plaintiffs bring this action seeking declaratory judgment that the Museum is a beneficiary of the Trust under 18-B M.R.S § 802 and a qualified beneficiary under §§ 103(12) and 110(1), declaratory judgment that the Trustees paid themselves excessive fees and engaged in other conduct detrimental to the interests of the Trust in violation of 18-B M.R.S. §§ 708(1) and 802(1) and the common law of fiduciary duty; injunction barring further excessive payments to the Trustees; injunction requiring Trustees to repay excessive fees and attorney fees; injunction requiring the Trustees to correct IRS 990 forms; injunction barring Trustees from paying investment companies they own to invest funds; and injunction requiring Trust to respond to requests for information.

The Attorney General has asserted crossclaims against Defendants for violation of order, breach of fiduciary duty – loyalty, breach of fiduciary duty – prudent administration, and ultra vires payments and unjust enrichment.

Defendants John Higgins and John Sanford and Party-in-Interest Richard C. Paine, Jr. Automobile Collection Charitable Trust move the Court to dismiss Plaintiffs' action for lack of standing.

II. Standard of Review

Defendants move the Court to dismiss Plaintiff's action for lack of standing. "Standing to sue means that the party, at the commencement of the litigation, has sufficient personal stake in the controversy to obtain judicial resolution of that controversy. *Halfway House v. City of Portland*, 670 A.2d 1377, 1379 (Me. 1996). "To have standing, a party must show they suffered an injury that is fairly traceable to the challenged action and that is likely to be redressed by the judicial relief sought. Further, the injury must be particularized. Put differently, it must be distinct from the harm suffered by the public-at-large." *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257.

The purpose of such a restriction on standing is to limit access to those "best suited to assert a particular claim." *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 7, 96 A.3d 700. "Just what particular interest or injury is required for standing purposes and the source of that requirement—whether statutory- or common law-based—varies based on the type of claims being alleged." *Id.*

III. Discussion

Plaintiff has asserted standing on two grounds: (1) as a qualified beneficiary of the Trust; or (2) that it has a special interest in the Trust.

The source authority in determining standing to enforce a charitable trust begins with statutory interpretation. According to 5 M.R.S § 194, the Attorney General is tasked with enforcement of charitable trusts. Section 405 of the Maine Uniform Trust Code confers upon the settlor of the trust, "among others," the ability to seek enforcement of a charitable trust. 18-B M.R.S. § 405. In interpreting

what the legislature intended by “among others” the court looks primarily to Section 194 and attendant caselaw.

In the Law Court’s recent decision *Robbins v. Chebeague*, concerning a conservation easement, the Court held that the Attorney General, rather than an owner of the property burdened by the conservation easement, is the proper party to enforce the terms of the conservation easement against other landowners whose property is burdened by the easement. *Robbins v. Chebeague*, 2017 ME 17, ¶¶ 29-31. While distinguishable from the case at hand by the statutory provisions applicable to conservation easements (*See* 33 M.R.S. § 478), the Court views *Robbins* as persuasive of the presumptive first principle that it is the duty and burden of the Attorney General, rather than individual members of the public, to enforce trusts and easements meant to benefit the citizens of Maine.

Kania v. Chatham, as cited by Defendants, states “It is well settled, as a general rule, that no private citizen can sue to enforce a charitable trust merely on the ground that he believes he is within the class to be benefited by the trust.” *Kania v. Chatham*, 254 S.E.2d 528, 530 (N.C. 1979); *citing* G. Bogert, *Trusts & Trustees* sec. 414 (2d ed. 1977); 4 A. Scott, *The Law of Trusts* sec. 391 (3d ed. 1967); 15 Am. Jur. 2d *Charities* sec. 143 (1976); Restatement (Second) of Trusts sec. 391 (1959). It is not enough to be a member of a class to whom the Trustee of a charitable trust may make distributions in order to have standing to enforce that trust. *Id.*

Only those “best suited” to bring a claim have standing. In the case of a charitable trust, those “best suited” would include a party with the rights afforded to a qualified beneficiary pursuant to the Maine Trust Code in its role as a beneficiary, the Attorney General in its role of advocate for the interests of the public, or a third party who can show particularized injury.

The Court looks to each of Plaintiff's arguments concerning standing in turn.

A. Qualified Beneficiary

Plaintiff argues that it is a Qualified Beneficiary of the Trust, and therefore that the Museum has standing to enforce the Trust document and seek information through the current lawsuit. According to the Maine Uniform Trust Act, a "Qualified Beneficiary" is:

a living beneficiary who on the date the beneficiary's qualification is determined:

A. Is a distributee or permissible distributee of trust income or principal;

B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date, but the termination of those interests would not cause the trust to terminate; or

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

"Qualified beneficiary" does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.

18-B M.R.S. § 103(12). The Museum is not a "living beneficiary" and therefore does not meet the requirements of Section 103(12).

According to Section 110, "A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary" in certain cases. 18-B M.R.S. § 110(1). However, the Museum was not "expressly designated to receive distributions" under the Trust. The Museum was merely an example of the type of organization to which

the Trustee could, in his discretion, choose to make distributions, along with an open universe of other museums or charitable organizations.²

The Court finds that Plaintiff is not a qualified beneficiary under the terms of the Trust, nor is it entitled to the rights of a qualified beneficiary according to Maine Trust Code.

B. Specially Interested Party

Plaintiff contends that even if the Court finds that it is not a qualified beneficiary, or owed the same rights as a qualified beneficiary pursuant to the Trust, the Museum has a special interest in the Trust and is thereby conferred standing to bring this enforcement action against the Trustees and the Trust. Plaintiff claims that it is an interested party based upon its contractual relationship³ with the Trust and the fact that much of the Collection is in fact currently housed by the Museum.

Standing to enforce a charitable trust is held by qualified beneficiaries of the charitable trust, the Attorney General, and by parties specifically injured by the charitable trust. *See* 5 M.R.S § 194; 18-B M.R.S. § 405; *Robbins v. Chebeague*, 2017 ME 17. The Agreements confer upon the Museum the garden-variety contractual right to enforce the Agreements. Standing alone, that contractual right does not possess talismanic powers to transmute a contractual relationship

² According to the Comments to the Uniform Trust Code to Section 110, which is identical to Section 110 of the Maine Trust Code, “Because the charitable organization must be expressly named in the terms of the trust and must be designated to receive distributions, excluded are organizations that might receive distributions in the trustee’s discretion but that are not named in the trust’s terms.”

³ Plaintiff also argues that the consent decrees also enhance its status for standing purposes. To the contrary, the consent decrees merely state that Plaintiff is a party to the agreement and further disclaims the ability of Plaintiff to control or manage the Trust.

into standing to enforce beneficiary rights of the Trust. Such an interpretation would violate the general principle that mere membership in a class that might benefit (contractually or otherwise) from the trust does not confer standing to enforce the trust. Moreover, the underlying rationale to this rule avoids the epistemological conundrum that Trustees would face in discharging their duties to a non-specific category of potential parties with beneficiary rights to enforce the trust.

Plaintiff points the court to *Fitzgerald v. Baxter State Park Authority* for the general proposition that sufficiently affected persons may have standing to enforce a charitable trust. See, *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189 (Me. 1978). To the extent that *Fitzgerald* provides any instruction to the present issues, it militates in favor of the court's conclusion to grant Defendants' motion to dismiss.

We note, without deciding, the argument made by all parties before us that these five plaintiffs come within the rule of law that permits specially interested beneficiaries to bring suit to enforce a charitable trust intended for their benefit. See, e.g., 4 A. Scott, *The Law of Trusts* § 391 at 3007 (3d ed. 1967). *Jones v. Grant*, 344 So.2d 1210 (Ala.1977); *Holt v. College of Osteopathic Physicians and Surgeons*, 61 Cal.2d 750, 40 Cal.Rptr. 244, 394 P.2d 932 (1964); *Mary S. Fithian Night School v. College Board of Presbyterian Church*, 88 N.J.Eq. 468, 102 A. 855 (1918). We express no opinion whether these plaintiffs would have any standing if the Attorney General were not disabled from carrying out his statutory duty to enforce the charitable trust *and* if Baxter State Park were merely a charitable trust, and not also a public park required to be operated in accordance with the statute.

Fitzgerald, at p. 196, n.11.


The most modest deductive reasoning leads one to conclude that the Court would have reached a different result on the issue of standing if the Attorney General "were not disabled" from enforcing the trust and if Baxter State Park were only a charitable trust and not also a public park that must be

operated in keeping with a statute. In the present dispute, the Attorney General is not disabled from carrying out its statutory duty to enforce the Trust. Moreover, the Trust is neither a public park nor is it uniquely subject to operation by statute, the combination of which, were it otherwise, may support Plaintiff's argument that it enjoys standing as a specially interested beneficiary.

IV. Conclusion

The Motion to Dismiss filed by Defendants John Higgins and John Sanford and Party-in-Interest Richard C. Paine, Jr. Automobile Collection Charitable Trust is GRANTED.

Dated May 3, 2017



Lance E. Walker
Justice, Superior Court