

FILED
AUG 10 2016

JUDGE DIXIE PARK
STARK COUNTY PROBATE COURT

**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO
PROBATE DIVISION**

BEVERLY S. NICHOLS
5400 Swamp Street N.E.
Hartville, Ohio 44632

and

ANTHONY C. NICHOLS
3832 Smith Kramer Street N.E.
Hartville, Ohio 44632

Plaintiffs

vs.

JEFFREY J. BIXLER
Individually and as Trustee of The J.
L. Bixler Trust
13000 Bixler Avenue N.E.
Hartville, Ohio 44632

Defendant

226829

) CASE NO.

HONORABLE DIXIE PARK

**COMPLAINT FOR DECLARATORY
JUDGMENT, CONSTRUCTION OF
TRUST, FOR AN ACCOUNTING AND
INJUNCTION FROM TRANSFERRING
TRUST ASSETS**

**WITH PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT**

JURY DEMAND

INTRODUCTION

1. Beverly S. Nichols and Anthony C. Nichols are beneficiaries of The Jo L. Bixler Trust (“Trust”). A true and accurate copy of the Trust, as amended and restated on October 10, 2013, is attached as “Exhibit A”.

**COSTS PAID
BY CREDITORS**

125.00
3/335

2. On or about January 30, 2014, Jo Bixler passed away, seized of tangible personal and real property in both Portage County and Stark County. The farm property, owned and operated by Bixler & Son, LLC, is the major asset of the Trust. The real estate consists of two farms of approximately 170.4 acres and 82.5 acres located in Portage and Stark Counties, Ohio, respectively.
3. Pursuant to the Jo L. Bixler Trust, upon the death of Donor and Trustee, Jo L. Bixler, Beneficiary and Defendant, Jeffery J. Bixler, became Trustee.
4. A dispute has arisen between the Plaintiffs and Defendant as to the value of the real estate.

JURISDICTION AND VENUE

5. Jurisdiction of the Complaint for Declaratory Judgment is based on Section 2721.05 of the Ohio Revised Code, The Declaratory Judgment Act, and Section 2101.24 of the Ohio Revised Code, Jurisdiction of the Probate Courts.
6. Venue is proper in the Probate Court of Stark County as personal property assets and real estate assets of the "Trust" are located in Stark County, Ohio.

COUNT ONE – DECLARATORY JUDGMENT

7. On page 6 of the Trust, the Donor made the following disposition of his trust estate which was restated and amended on October 10, 2013, as follows:
 - a. Jeffrey J. Bixler (son) 52%
 - b. Timothy J. Bixler (son) 7%
 - c. Beverly S. Nichols (daughter) 13%
 - d. Pamela S. Rose (daughter) 10%
 - e. Anthony C. Nichols (grandson) 18%
8. The Trust further states the value of the units of Bixler & Son, LLC as follows on Page 5:

"The valuation of said units shall be based upon the agricultural use value of said real estate, and each unit shall have a value of one-one-hundredths (1/100) of the total value of such real estate holdings".
9. The Trust states in part at Section 6.2 -Option to Purchase as follows:

"It is my intention and direction that my trust estate, after payment of all taxes and expenses pursuant to Section 5.2 hereof, be divided among my beneficiaries as set forth in Section 6.3 below. Such division of property may be made in money, units of Bixler & Son, LLC, or other property at my Trustee's sole discretion, and need not be pro-rata distributions of particular types of property. The Trustee shall exercise these powers of distribution in a fiduciary capacity primarily

in the interests of the beneficiaries, subject to the valuation of units of Bixler & Son, LLC, as directed below.

I hereby give and grant to my son, Jeffrey J. Bixler, the first right and option to purchase any or all of the units of Bixler & Son, LLC, owned by me and held in my trust within 18 months after my death at a valuation based upon the underlying value of real estate owned by Bixler & Son, LLC. The valuation of said units shall be based upon the agricultural use value of said real estate, and each unit shall have a value of one-on-hundredth (1/100) of the total value of such real estate holdings. It is my intention and direction that Jeffrey J. Bixler shall have the right and authorization to purchase said units even though he may be serving as Fiduciary and Trustee of my Trust estate at the time of purchase.

Should Jeffrey J. Bixler not exercise his right and option to purchase units of Bixler & Son, LLC, as set forth in the above paragraph totally or in part, then Anthony C. Nichols shall have the second right and option to purchase any remaining units upon the same terms and conditions as granted to Jeffrey J. Bixler in the above paragraph. The option to purchase granted to Anthony C. Nichols shall expire 24 months after my date of death."

10. Jeffery J. Bixler, through Counsel, sent a letter offering to purchase the units of Beverly S. Nichols and Anthony C. Nichols. Using the CAUV values from the tax rolls of Portage County, Ohio, and Stark County, Ohio, where the real estate parcels owned by Bixler & Son, LLC are situated, the Defendant has offered an amount less than the CAUV.
11. Beverly S. Nichols and Anthony C. Nichols, in an exercise of due diligence with respect to the value of the trust estate, which retained an experienced and certified farm real estate appraiser, Jason Kiko; to conduct an appraisal. The report of appraisals are attached hereto as "Exhibit B", a letter dated June 9, 2015, to Counsel for Defendant and Trustee Bixler. The real estate valuation is considerably higher than the offer of March 3, 2015.
12. Counsel for Jeffery J. Bixler replied in correspondence dated June 18, 2015, ("Exhibit C") that the language used in Kiko's appraisal was "farm value", not the phrase "agricultural use value" as used in the Trust and reasserted his right to set the purchase price at CAUV value.
13. Mr. Jason Kiko responded in a letter to Counsel for Beverly S. Nichols and Anthony C. Nichols, a copy of which is attached as "Exhibit D", that the two terms are synonymous, and will testify that he had the Trust language in his possession at the time of his appraisal and followed the Trust language.
14. Mr. Kiko's letter was sent to Counsel for Jeffery J. Bixler.
15. A dispute has arisen between the parties as to the valuation of that portion of the Trust real estate owned by Bixler & Son, LLC. In addition, Defendant has not

conveyed tangible personal property as required by the Trust and Assignment of Personal Property.

COUNT TWO – ACCOUNTING

16. Plaintiff incorporates all of the allegations contained in paragraphs numbered one (1) through fifteen (15) as if fully rewritten and set forth herein.
17. In addition to the averments contained in Paragraph 5 of the Complaint, Jurisdiction of the Complaint for Accounting is found in Section 5808.13 of the Ohio Revised Code, Duty (of a Trustee) to Inform and Report and Section 2109.303 of the Ohio Revised Code, Accounts of Testamentary Trustee or other fiduciary.
18. Section 6.1 of the Trust divides and gives all non-business personal property owned by the Donor to his children, per stirpes, "and in accordance with instructions which may have been communicated to him (my trustee) by me orally or in writing from time to time during my lifetime, by me orally or in writing from time to time during my lifetime."
19. Demand has been made by Plaintiffs to Defendant and Trustee Bixler, for an accounting and distribution of non-business tangible personal property pursuant to the terms of the Trust and communications of the Donor.
20. On June 18, 2015, Counsel for the Defendant Trustee sent a letter to Counsel for Plaintiffs (Exhibit C) which stated in part:

"As for the personal property, I am preparing a trust accounting for same, and the distribution of any bequests thereunder will be shortly forthcoming."
21. Neither an accounting nor a distribution has been received from the Trustee.
22. Plaintiff also seeks an accounting for all trust assets from the time Defendant became Trustee to present. This includes personal property, real property, rental payment from properties, bank accounts, and/or cash assets.

COUNT THREE – SPECIFIC PERFORMANCE

23. Plaintiff incorporates all of the allegations contained in paragraphs numbered one (1) through fifteen (15) as if fully rewritten and set forth herein.
24. In an "Assignment of Personal Property", attached as Exhibit D, Jo L. Bixler made specific requests for distribution of certain tangible property including,
 - a. The first choice of Jo's mother's antique furniture is to be made by my daughter, Beverly, and the balance to be divided among her and her siblings as they may determine.

- b. Diamond rings to be divided between my daughters, Pamela and Beverly, as they may determine.
- c. Jo's mother's dishes to my daughters, Pamela and Beverly, to be divided as they may determine.
- d. My Ljutic single barrel trap gun to my grandson, Anthony C. Nichols.
- e. All reloading equipment and supplies to my grandsons, Anthony C. Nichols and Michael Baum.

25. Plaintiffs have made specific requests for these items but have not received them to date.

26. Plaintiffs have no other remedy other than specific performance as described in the Trust and/or Assignment of Personal Property.

27. Plaintiff are entitled to specific performance of the terms, conditions, and provisions, by court decree, among other things, ordering defendant to complete conveyance of the property described in the Trust and/or Assignment of Personal Property.

28. Plaintiff is entitled to compensation incidental to a decree of specific performance by virtue of the delay of defendant in conveying of the property.

COUNT FOUR – INJUNCTIVE RELIEF

29. Plaintiff incorporates all of the allegations contained in paragraphs numbered one (1) through twenty-seven (27) as if fully rewritten and set forth herein.

30. In a letter from Defendant's counsel dated July 15, 2016, attached as Exhibit E, Defendant stated his intention to transfer/purchase the real estate that is the subject of this dispute at a valuation that is harmful to the trust beneficiaries.

31. Pursuant to R.C. 2727.02, a "temporary order may be granted restraining an act when it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part of it, consists in restraining the commission or continuance of such act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."

32. Plaintiffs request that this Court order that Defendant not purchase, transfer or sell any of the real estate owned by Bixler & Son LLC until these proceedings determining their proper valuation is completed.

WHEREFORE

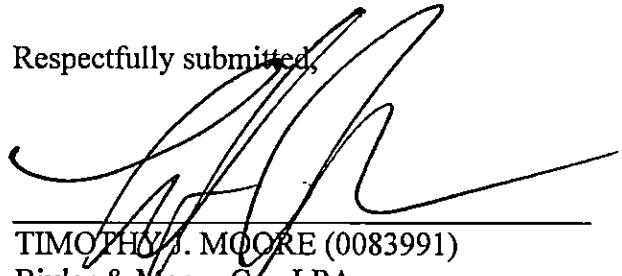
Plaintiffs, Beverly S. Nichols and Anthony C. Nichols pray for orders:

- a. Establishing the value of the real estate in the Trust for purchase by any of the beneficiaries.
- b. That the Defendant and Trustee, Jeffery J. Bixler, shall provide an accounting for the non-business tangible personal property and distribute these assets pursuant to the terms of the "Trust" and the expressed wishes of the Donor, Jo L. Bixler.
- c. That the Defendant and Trustee, Jeffery J. Bixler, shall provide an accounting for all personal property, real property, rental payment from properties, bank accounts, cash assets, ect.
- d. A court order that decrees that Defendant must convey the personal property in accordance with the Trust and/or Assignment of Personal Property.
- e. An injunction preventing Defendant from purchasing, transferring or selling any of the real estate owned by Bixler & Son LLC until these proceedings determining their proper valuation is completed.
- f. Attorney fees, pre-judgment interest and post-judgment interest.
- g. Additionally, Plaintiff demands interest, costs incurred herein and any and all other just and equitable relief to which the Plaintiff is entitled.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims and issues.

Respectfully submitted,



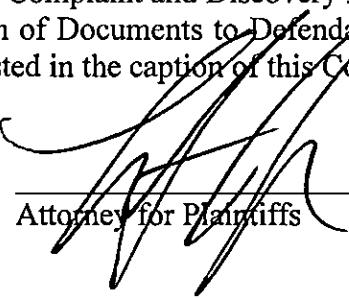
TIMOTHY J. MOORE (0083991)
Bixler & Moore Co., LPA
318 E. Main Street
Louisville, Ohio 44641
T: 330.491.2222
F: 330.871.8207
E: tjmoore@bixlermoore.com

RYAN J. MELEWSKI (0084956)
Amendolara & Rafidi LLC
105 N. Broad St.
Canfield, Ohio 44406
T: 330.536.3529
F: 330.286.9196
E: rmelewski@arlawohio.com

Attorneys for Plaintiffs

INSTRUCTIONS TO THE CLERK

Please serve a copy of the foregoing Complaint and Discovery including First Set of Interrogatories and Requests for Production of Documents to Defendant by U.S. Certified Mail to the Defendant(s) at the addresses listed in the caption of this Complaint.



Attorney for Plaintiffs