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Order on Motion for Reconsideration, Modification of Order and Other Relief (Bennett L. Knight et al.)

Melvin K. Westmoreland

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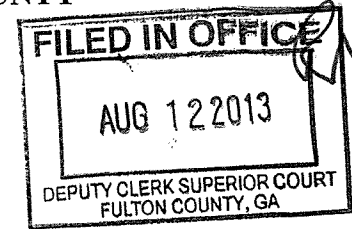
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



**BENNETT L. KIGHT and WILLIAM C.
LANKFORD, JR., as Trustees of the Walter
Bunzl Trusts,**)

**Petitioners/Defendants-in-
Counterclaim,**)

v.)

**SUZANNE BUNZL WILNER and ANNA
WILNER,**)

**Respondents/Plaintiffs-in-
Counterclaim/Third-Party Plaintiffs,**)

-and-)

**FRANCES B. BUNZL, and PATRICIA H.
BUNZL,**)

Third-Party Plaintiffs,)

v.)

**BENNETT L. KIGHT, Individually,
WILLIAM C. LANKFORD, JR., Individually,
JUDITH C. KIGHT, ROBERT F. KIGHT, and
JOHN DOES 1 THROUGH 100,**)

Third-Party Defendants.)

**Civil Action File No.
2013CV227097**

**ORDER ON MOTION FOR RECONSIDERATION, MODIFICATION OF ORDER AND
OTHER RELIEF**

This matter is before the Court on Respondents/ Plaintiffs-in-Counterclaim Suzanne Bunzl Wilner, Anna R. Wilner, Frances B. Bunzl and Patricia H. Bunzl (collectively, "Bunzl's") Motion for Reconsideration and Modification of Order. Upon consideration of the motion, the briefs and the record of this case, the Court finds as follows:

On May 15 and 17, 2013, this Court presided over an evidentiary hearing on the Bunzl's Motion for Immediate Interlocutory Injunction. At the two-day hearing counsel examined both expert and lay witnesses and tendered into evidence thousands of pages of documents.

On June 10, 2013, this Court entered its Order on Motion for Interlocutory Injunction ("June Order"), granting, in part, and denying, in part, the Bunzl's motion. In its June Order, the Court exercised its discretion pursuant to O.C.G.A. § 53-12-221(b) to appoint a receiver, Synovus Trust Company, N.A. (the "Receiver") to investigate the Bunzl Trust assets and to prepare a report. The Court also enjoined the Trustees from transferring or disposing of Bunzl Trust assets except upon written notice to the Receiver and the Bunzl's, both of whom were given the right to object which, if exercised, would prohibit the Trustees from effecting the transfer of such asset. The June Order also compelled the Trustees to turn over to the Receiver any and all documents related to the assets and administration of the Bunzl Trusts as requested by the Receiver.

Finding no evidence of a threat to the Bunzl's that would not be mitigated using less extraordinary means, the Court denied the Bunzl's request to remove the Trustees and to freeze their assets, as well as the assets of family and business associates. Now the Bunzl's ask the Court to reconsider the portion of this ruling denying the request to remove the Trustees and to make findings of fact and conclusions of law pursuant to O.C.G.A. § 9-11-52.

"A trial judge has inherent power during the same term of court in which the judgment was rendered to revise, correct, revoke, modify or vacate such judgment, even upon his own motion, for the purpose of promoting justice and in the exercise of a sound legal discretion." Masters v. Clark, 269 Ga.App. 537, 538 (2004).

In support of their motion, the Bunzl's contend the evidence presented at the two-day hearing demonstrates an "imminent danger of depletion of the Trust assets" and the "pervasive abuse of fiduciary responsibility" by the Trustees and ask this Court to reconsider its ruling and to remove the Trustees and appoint replacement trustees.

The Court has constrained the Trustees' powers by requiring the consent of the Bunzl's or the Receiver prior to any transfer of Bunzl Trust assets or compensation taken by the Trustees, so the Bunzl Trust assets are not in any imminent jeopardy due to these safeguards.

Accordingly, the request to reconsider its ruling and remove the Trustees is **DENIED**.

The Bunzl's also ask the Court to modify the June Order and to make findings of fact and conclusions of law based upon the evidence presented during the hearing.

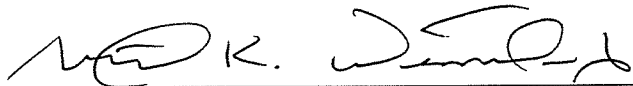
In ruling on interlocutory injunctions and in all nonjury trials in courts of record, the court shall upon request of any party made prior to such ruling find the facts specially and shall state separately its conclusions of law. If an opinion or memorandum of decision is filed, it will be sufficient if the findings and conclusions appear therein. O.C.G.A. § 9-11-52(a).

The Bunzl's did not make a request for specific findings or legal conclusions prior to the filing of the June Order. As a result, the Court is not required to add factual findings to bolster its ruling. See Jerome Road, LLC v. First Citizens Bank & Trust Co., Inc., 312 Ga. App. 583, 584-85 (2011). In considering the Motion for Immediate Interlocutory Injunction, the Court determined findings of fact would not be productive to bolster its ruling because, instead of detailing the precise threat of immediate injury or a disruption of the status quo, the evidence presented largely addressed the ultimate issues of whether or not the Trustees' past conduct in transactions as far back as 2005 amounted to breaches of trust, and/or breaches of professional duties, or otherwise warranted their removal as trustees for good cause. The Court found these

issues premature for emergency consideration and therefore, declined to make specific factual findings based on this record, which, in the Court's view, was not germane to the issue of injunctive relief. See American Management Services East, Inc. v. Fort Benning Family Communities, LLC, 318 Ga. App. 827 (2012) ("There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy.").

The Court is sympathetic to the request to establish base line factual findings, however, because the transcript is not yet ready and is not anticipated to be complete for several more weeks, the Court is of the view it will be more disruptive to withhold its ruling rather than to resolve the instant motion and allow the parties to proceed with litigation. As such, the Court **DENIES** the request to modify the June Order to provide findings of fact and conclusions of law.

SO ORDERED this 12th day of August, 2013.



Melvin K. Westmoreland, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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Barry J. Armstrong
Matthew M. Weiss
McKenna Long & Aldridge, LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308
(404) 527-4000
barmstrong@mckennalong.com
mweiss@mckennalong.com

Craig M. Frankel
LeAnne M. Gilbert
GASLOWITZ FRANKEL LLC
4500 SunTrust Plaza
303 Peachtree Street NE
Atlanta, GA 30308
cfrankel@gadisputes.com
lgilbert@gadisputes.com

Eric S. Fisher
Marc A. Taylor
Michael D. Johnson
TAYLOR ENGLISH DUMA LLP
1600 Parkwood Circle, Suite 400
Atlanta, GA 30339
efisher@taylorenghish.com
mtaylor@taylorenghish.com
mjohnson@taylorenghish.com

F. Edwin Hallman, Jr.
Richard A. Wingate
HALLMAN & WINGATE LLC
166 Anderson Street, S.E.
Suite 210
Marietta, GA 30060
ehallman@hallmanwingate.com
rwingate@hallmanwingate.com

Anthony C. Lake
Craig A. Gillen
GILLEN WITHERS & LAKE, LLC
One Securities Center, Suite 1050
3490 Piedmont Road NE
Atlanta, GA 30305
aclake@gwllawfirm.com
cgillen@gwllawfirm.com