

2005-0753

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.
NORTHERN DISTRICT

DOCKET NO. 04-E-251

EDWARD J. BURKE

v.

BUNNY'S SUPERETTE, INC.,
THOMAS M. BURKE, MARIE I. BURKE,
AND BERNADINE P. DONELSON

ORDER

The Petitioner, Edward J. Burke ("Edward"), brings this action against his mother, Marie I. Burke ("Marie"), his two siblings, Thomas M. Burke ("Thomas") and Bernadine P. Donelson ("Bernadine"), and Bunny's Superette, Inc. ("Bunny's"), seeking broad relief in connection with rights and interests he claims under a purported oral agreement. Edward avers that many years ago, when he and his siblings still lived with their parents, a verbal agreement or understanding was reached among all concerned family members that all family members would equally own the family business and other accumulated property. In this regard, Edward asserts that, under this agreement, with the death of the two parents, the siblings would come to equally own said assets. Edward further avers that this original oral agreement or understanding was reaffirmed by the individual respondents upon the death of his father, Bernard Burke ("Bernard"), in

1971, that he fulfilled his obligations under the agreement and fully relied on it, and that the individual respondents have taken actions since about 1999 to wrongfully deprive him of his contract-based rights. In this regard, Edward particularly challenges: (1) Marie's creation of a will and revocable trust in 1999 and her conveyance of certain property into the trust; (2) Marie's later trust-related actions in 2004 to further limit his claimed property entitlements, including her conveyance, through the trust, of both stock in Bunny's and certain real properties to Thomas; and (3) Bernadine's conveyance of her stock in Bunny's to Thomas in 2004 at about the same time her mother conveyed hers through the trust. Edward also asserts that Thomas has been guilty of exerting undue influence over Marie to have her take action against him, that he has violated a claimed "fiduciary duty of a de facto attorney," and that he has violated the Uniform Fraudulent Transfer Act, RSA Chapter 545-A. Finally, he claims that Thomas is proceeding, or has proceeded, particularly through corporate special meetings relative to Bunny's, in ways which are contrary to, and violative of, his contract-based rights.

The individual respondents vigorously oppose Edward's contentions. They assert that no oral agreement, as suggested by Edward, was ever in place, and they contend, among other things, that they have acted properly and within their rights relative to pertinent inheritance and property interests herein.

The Respondent, Bunny's, also opposes Edward's case, and has also interposed a counterclaim, contending that Edward has failed to repay certain indebtedness due the corporation.

A trial occurred over two days - - June 15 and June 16, 2005. During the trial, the Court received testimony from several witnesses, either live or through videotaped deposition, and also received a number of exhibits into evidence. The Court, thereafter, was also provided post-trial memoranda.

Upon consideration of the pertinent evidence, and the arguments presented, the Court finds and rules as follows.

I Background

Bernard, with his wife Marie, established a food business in the early 1950's. The principal food market, known as Bunny's Superette, came to be located on Webster Street, Manchester, New Hampshire. When the food business began, the three children, Bernadine, Edward and Thomas were, respectively, about 12, 10 and 6 years of age. The business was unquestionably considered a family business, and the Burke siblings worked in it throughout their childhood without pay. Nonetheless, their parents retained full control (legal and otherwise) of the business. They made all pertinent decisions, and retained full control of business finances and operations. The children were provided with all necessities and were given spending money and use of the family vehicle or vehicles. They had friends, engaged in sports and extracurricular activities, and were encouraged by their parents to go to college after high school.

After graduation from high school, all of the siblings continued, at least for a time, to work in the family food business, either part time or full time. However, only Edward continued without interruption to work in the business.