Confidential Facts – Ronald Strong

Although the 2010 transfer between Ronald Strong and his father was essentially a gift, to avoid estate and gift taxes Ronald's father suggested that he and Ronald should enter into a promissory note, which they did, although no mortgage was ever taken back by William on the property. Ronald hired a young lawyer friend who was just starting out, Norman Patsy, to prepare the deed and the note, but Ronald and his father never asked Norman for any advice about the transaction itself – especially environmental advice – and Norman never volunteered any such advice. Norman only charged $500 for his full services in the transaction. Although Norman represented both William and Ronald in the same transaction, he never revealed to either that he might have a conflict of interest, nor did he obtain a waiver for that conflict from either the father or the son. Norman never prepared a contract of sale, but he did prepare the promissory note. Also, no title company was involved in the transaction. Instead, Norman handled the deed preparation and recording by himself. Despite the above, at Norman's advice, an LLC was formed by Ronald at the last minute to take title to the property. But when Ronald asked Norman if it would not be better to take title in his own name as his father had done before for tax depreciation reasons, Norman acquiesced and merely told Ronald, "Just do what you want. I never was very good in tax in law school anyway." Therefore, even though the LLC had been formed, it did not immediately take title to the property. However, six months later, Ronald talked with his accountant who advised him that, due to changes in the tax code, it was no longer as advantageous as it once was to hold title to property individually for depreciation purposes. The accountant also told Ronald that, for liability reasons, it might be better to hold title to the property through an LLC because, he said, "It was, after all, a gas station and you never know." Acting on the accountant's advice, Ronald contacted Norman shortly thereafter and Norman prepared for Ronald a quitclaim deed from Ronald to his LLC, which was duly recorded a few days later. Ronald named the company Hope Springs Eternal, LLC. Over time, Ronald only made two payments on the note after which he ceased making any further payments to his father, and William never pressed him for more payments. Ronald's LLC was never added to the note as an additional party.

At the time of the transfer, Ronald never performed, and no one ever advised him to perform, any environmental testing or other analysis or review of the property for the potential for environmental concerns or issues before accepting title to the property. Ronald reasoned that, because he already knew everything there is to know about the property through his father's prior ownership and his own working on the site in the past, it would just be a wasted expense to carry out any due diligence.

Various insurance companies who issued comprehensive general liability insurance policies on a claims made basis to William Strong personally from between 1970 and 1985, following which the policies added the so-called absolute pollution exclusion to all such policies starting in 1986. In addition to denying that Ronald Strong or Hope Springs Eternal LLC have standing to sue under those policies, the carriers also allege

that neither plaintiff is, in fact, an “insured” under the policies, nor are the plaintiffs proper third party claimants within the contemplation of the policies. Further, even if the plaintiffs were to prevail against these carriers, William Strong was never willing to pay for much coverage and, thus, the policies were each limited to the face amount of $30,000, with a $3,000 deductible (or self-insured retention) per policy.