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Court ruling states UMB acted properly in managing Thomas Hart Benton Trust



UMB appears to have resolved a long-running dispute about the Thomas Hart Benton Trust.
ADAM VOGLER | KCBJ



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A Jackson County Circuit Court judge ruled Friday that no evidence suggests UMB Bank committed improprieties during its 40 years managing the Thomas Hart Benton Trust and denied the punitive damage award sought by its beneficiaries.

“The court’s decision is vindicating, not just for our company, but for my father (R. Crosby Kemper Jr.) and his legacy,” UMB Financial Corp. Chairman and CEO Mariner Kemper said in an email statement. “From the beginning of this dispute, the plaintiffs and their lawyers have made a number of baseless allegations which this decision unequivocally disproves. Their attempts to exploit false claims and ruin the reputation of our company, my father and the many upstanding UMB associates who worked on this account did not succeed, and the court’s decision proves that justice does prevail, even if it may take time. I am grateful for the work of our lawyers and the court in arriving at this fair and appropriate decision.”

The dispute started in 2014, with the heirs of the renowned Missouri artist accusing UMB Bank of failing to obtain valid appraisals, obtain proper value for the estate’s assets, properly invest proceeds, properly store assets, and provide complete and accurate accounting of the assets. The heirs – daughter Jessie Benton and her children Anthony Benton Gude, Daria Lyman and Cybele Benton – [filed a lawsuit in December 2019 seeking to remove UMB as trustee.](#)

UMB consistently denied the claims, arguing that Jessie Benton and her children were motivated to remove UMB as trustee so they could liquidate the art and give the money to a commune where they lived.

In February 2021, UMB voluntarily resigned as trustee, ending that part of the heirs’ litigation. However, the heirs still pursued litigation seeking actual and punitive damages against UMB for mishandling the trust’s assets.

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In his ruling, Judge Mark Styles stated that he heavily weighed the testimony of Gude, a professional artist in his own right who has painted murals inside Kansas City's Union Station and Public Library, among other works. Gude was the only heir to appear at the trial and testify.

Gude testified that he had no criticism of the trust administrators in how they communicated with him and kept him apprised of decisions related to the trust, including the sale of three paintings to Barbra Streisand. In their complaint, the heirs alleged that UMB gave Streisand personal access to their vault to select paintings of her choice and that they were sold without appraisal or negotiating a price. But Gude testified that Jessie Benton took part in the transaction and had a big say in which paintings would be shown and the price of those paintings. He also said having a person of Streisand's fame owning Benton paintings would facilitate "greater attention to the possibilities of even more sales or more interest in the art."

UMB also established that it used many of the same galleries and dealers that Gude used to sell his art and that he also relied on highly competent gallerists and dealers to come up with fair valuations for his paintings without independent appraisals. The court ruled this was an established norm for selling art.

The judge also rejected the accusation that UMB didn't properly store the art because there was no evidence of any damage.

In addition, Styles ruled UMB acted prudently in keeping the financial assets of the trust at a ratio of 50% stock and 50% cash. The heirs argued that the cash ratio was too high, reducing the estate's earning potential, and that it should have been around 20% cash and 80% stock. However, Styles found legitimate reasons to keep the cash ratio that high. It was hard to determine whether and when an art piece would be sold, and the value of the art was quite fluid. In addition, the trust faced regular demands for cash to pay for taxes, maintenance costs on real estate holdings and to assist heirs with their needs. The judge found the allocation prudent.

Although the heirs claimed UMB lost more than 100 pieces of artwork during the

past 40 years, the court found no evidence to support that claim. UMB admitted that five pieces of artwork were not accounted for, and evidence showed they were not paintings but probably sketches that may have been in possession of the Benton family, placed on loan with a gallery or sold and not properly referenced. The court ruled the lost art was worth \$35,000 and UMB was required to pay the heirs for that loss.

The court also ruled on a dispute about one of Benton's most famous paintings, "Self Portrait with Rita." The painting has been in possession of the Smithsonian Institution for about 50 years. The heirs argued that UMB had a fiduciary duty to collect all assets of the Benton trust, including "Self Portrait with Rita." UMB argued that Thomas Hart Benton gifted the painting to the museum. The judge ruled that UMB and Benton's attorney, Lyman Field, had "sole and absolute discretion" under the trust to determine whether to pursue reclaiming the painting from the museum, so their decision was valid. Gude testified that he supported his grandfather having a painting displayed in the Smithsonian.

"UMB is thrilled with the judgment," UMB Chief Legal Counsel Amy Harris said in an email statement. "From the beginning, we stood firm in our belief that Crosby Kemper and the UMB associates who worked on this Trust for over 40 years acted with integrity and in the best interests of the Trust. This litigation has proven to be unnecessary and did nothing to diminish the countless hours that UMB committed to managing the Trust and creating wealth for the plaintiffs."