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WILKES V. SPRINGSIDE NURSING HOME, INC.: THE BACKSTORY

ERIC J. GOUVIN*

INTRODUCTION

L.P. Hartley's famous novel, *The Go-Between*, begins with a memorable line: "[t]he past is a foreign country: they do things differently there."¹ As I researched the people and events involved in the lawsuit resolved by the opinion in *Wilkes v. Springside Nursing Home, Inc.*,² I was reminded of that famous line many times. While learning about Pittsfield, Massachusetts in the mid-twentieth century I often felt like a stranger in a strange land.

Among other things, in that strange country of forty-to-sixty years ago people behaved differently and followed a different set of unwritten rules. The technology and terminology of medical care were surprisingly different from what they are today. The details of legal life were different, too. For example, law and equity still existed in separate spheres—they were not merged in the Commonwealth until the adoption of the Massachusetts Rules of Civil

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A note on the sources: The Berkshire Eagle is the major newspaper in Pittsfield and it is cited extensively in this article. The citations to the Eagle can be confusing because the paper started in 1892 as a weekly called the "Berkshire County Eagle." In 1895, it started publishing daily (except Sunday) and changed its name to the "Berkshire Evening Eagle," with the odd exception that, up until 1953, the Wednesday edition of the paper was still called the "Berkshire County Eagle." After 1956, all editions of the paper were known simply as the "Berkshire Eagle." See LIBRARY OF CONGRESS, CHRONICLING OF AMERICA, <http://chroniclingamerica.loc.gov/lccn/sn85033227/>.

1. L.P. HARTLEY, *THE GO-BETWEEN* 17 (2002).
2. *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657 (Mass. 1976).

Procedure in 1974.³ The ways in which lawyers and judges mixed were odd by modern standards. For instance, judges were permitted to have a legal practice on the side even while they sat on the bench.⁴ The way the courts worked was quaint. As I sat in the Clerk's office of the Berkshire County Probate Court reviewing the file in the *Wilkes* case, a flurry of little cards spilled out on to the floor. Those cards, filled out in pencil, were the official record of the appearances of attorneys and the filing of documents at key points in the proceedings. I also found sheets and sheets of notations in elegant long-hand writing recording the docket on this matter. Later, in the Clerk's office of the Supreme Judicial Court, I handled a photocopy of that docket made on the special smooth shiny photocopier paper that people used in that foreign country of 1975.⁵

That tactile sensation, in turn, brought back olfactory memories of the acrid chemical smell—familiar to people of a certain age—that emanated from copies made in those old-fashioned copy machines. While evocative sensory memories have prompted others to write great novels,⁶ I am moved to tell the story behind the case of *Wilkes v. Springside Nursing Home, Inc.* The narrative, if not quite a novel, does feel vaguely dramatic, so I will provide this backstory in the form of a “study aid” to a play, which describes the cast of characters, the setting, the plot, and the conclusion.

As it appears in most casebooks, the *Wilkes* case tells the story of a falling-out among the shareholders in a closely-held corporation and the resulting freeze-out of one of the owners, Mr. Stanley Wilkes. The opinion indicates that the heart of the dispute arose out of Mr. Wilkes's refusal to allow the sale of a piece of corporate property (the “Annex” at 793 North Street) to one of the other shareholders, Dr. Quinn, at a discount.⁷ In real life, that transac-

3. See MASS. R. CIV. P. § 2, Reporter's Notes 1973 (2006) (the Rules of Civil Procedure became effective on July 1, 1974).

4. *Judge Dwyer is Making the Tour*, BERKSHIRE EAGLE, July 26, 1976, at 1.

5. In researching this article I viewed the archival files on the *Wilkes* case at the Berkshire County Probate Court and the Massachusetts Supreme Judicial Court. I was able to read almost all of the important documents produced in connection with the litigation except the depositions. I could not find transcripts of them in either file.

6. Marcel Proust found such involuntary sensory memories to be so evocative he wrote 3,200 pages as a result of a chance encounter between a cup of tea and a little madeleine cake. See MARCEL PROUST, REMEMBRANCE OF THINGS PAST (C.K. Scott Moncrieff et al. trans., Random House, Inc., 1st ed. 1981).

7. See *Wilkes*, 353 N.E.2d at 660 (describing the conflict). The property at 793 North Street was “known as the Annex.” See *Springside Nursing Homes Plans New \$560,000 Unit*, BERKSHIRE EAGLE, May 11, 1964, at 17.

tion did indeed cause a significant rift in the shareholders' relationship, but, as the story below shows, it was really more like the straw that broke the camel's back than the primary cause of their altercation. The seeds of the dispute were planted well before the Annex was sold to Dr. Quinn.

The unhealthy dynamic that had developed among the shareholders and which eventually resulted in Stanley Wilkes being frozen out of the business had been festering for a long time. The complicated relationship among the shareholders was informed by the somewhat unsavory reputation of Dr. Quinn, the country club "get along" attitude of Messrs. Riche and Connor, and the moral rectitude of Mr. Wilkes. To appreciate how it all came about, it is useful to know more about the players in this drama.

I. THE CAST OF CHARACTERS

A. *Stanley John Wilkes*

The protagonist in this play is Stanley J. Wilkes, a classic American entrepreneur. During the span of his business career he participated in several business ventures, but he was primarily engaged as a roofing contractor.⁸ He was also a real estate investor of some note. The Berkshire Eagle carried stories about him buying land at auction,⁹ buying "tenements" from the Berkshire Woolen Company,¹⁰ buying a farm on which he planned to raise cows and chickens,¹¹ and buying an estate in Lenox.¹² Of course, he was also a principal in the Springside Nursing Home, Inc. and, later, the Willow Manor Rest Home.¹³

Mr. Wilkes was, however, far more than a man of business, he was also very active in his church. He was a communicant at the

8. See Obituary, *Stanley J. Wilkes, Ex-President of Berkshire Roofing*, BERKSHIRE EAGLE, Apr. 30, 1981, at 17 (on file with author) [hereinafter *Wilkes Obituary*]. Mr. Wilkes engaged in the roofing business from 1939-1972. *Id.* He was well-regarded as a roofer and was elected President of the Western Massachusetts Roofing Association in 1955. See *Stanley Wilkes to be Installed by Roofers Association*, BERKSHIRE EVENING EAGLE, June 11, 1955, at 8 (on file with author).

9. See *Wilkes Buys City Land at Auction*, BERKSHIRE EAGLE, Aug. 13, 1965, at 15 (on file with author).

10. See *Berkshire Woolen Sells Tenements to S. J. Wilkes*, BERKSHIRE COUNTY EAGLE, June 6, 1951, at 12.

11. See *Auchmuty Property in Lenox Sold*, BERKSHIRE EVENING EAGLE, Oct. 14, 1943, at 6.

12. See *Stanley Wilkes Buys Estate in Lenox*, BERKSHIRE EVENING EAGLE, Aug. 1, 1944, at 5.

13. *Wilkes Obituary*, *supra* note 8, at 17.

Holy Family Roman Catholic Church.¹⁴ He was also on the board of directors of the Catholic Youth Center and was a fourth-degree member of the Knights of Columbus.¹⁵ His obituary requested that, in lieu of flowers, gifts be made in his name to the Holy Family Church.¹⁶ He was remembered by his nephew, Attorney David Martel (who would later represent Mr. Wilkes in the lawsuit against the other shareholders), as a very religious man.¹⁷ As evidence of his moral fiber and personal ethics, some testimony Mr. Wilkes provided before the Master is instructive. According to Mr. Wilkes, Dr. Quinn had proposed that the principals in Springside Nursing Home pay some of the proceeds from the sale of the Annex building at 793 North Street “under the table” so as to avoid taxes, but Wilkes refused.¹⁸

Mr. Wilkes was also a family man. A devoted husband, at the time of his death, Mr. Wilkes and his wife, the former Jennie Hermanski, had been married for forty-eight years.¹⁹ He was the oldest of ten children and stayed in touch with his brothers and sisters.²⁰ His parents had immigrated to the United States from Poland shortly before his birth. He was born in Bridgeport, Connecticut, but his family moved to Hatfield, Massachusetts when he was a child.²¹ Mr. Wilkes did not move to Pittsfield until 1928, when he

14. *See id.*

15. *Id.*

16. *Id.*

17. *See* Interview with David J. Martel, Esquire, in Springfield, MA (July 28, 2010).

18. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 35, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976) (“And I [Wilkes] said no, that would be wrong, and I want mine on top of the table.”).

19. *See Wilkes Obituary*, *supra* note 8, at 17. Jennie’s cousin, Gene Hermanski, played major league baseball for the Brooklyn Dodgers during the 1940s and 50s. *See* Personal Reflections, David J. Martel, Esquire (Oct. 15, 2010) [hereinafter Personal Reflections] (on file with author) (detailing personal reflections on the case). He was a supportive teammate as Jackie Robinson broke the color barrier. In 1951, Jackie received a death threat in Cincinnati. According to Carl Erskine, a Dodger pitcher, our manager, Charlie Dressen, got up and read the letter to us about how if Jackie took the field, he’ll be shot, There was complete silence. . . . But then Gene Hermanski piped up: “Hey, Skip, I’ve got an idea. If we all wore 42 out there, they won’t know who to shoot.”

Dave Anderson, *Sports of the Times; Honoring Robinson’s Achievement and Carrying on His Legacy*, N.Y. TIMES, Apr. 16, 2007, at D2. “[Jackie Robinson reportedly] laughed and said, ‘Gene, I’m afraid he’ll still be able to pick me out.’” Dave Anderson, *Sports of The Times: A Simple, Silent Moment in Baseball History*, N.Y. TIMES, Apr. 17, 2006, at D1.

20. *See* Personal Reflections, *supra* note 19.

21. *Id.*

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was twenty-one years old.²² In the days before television, cheap telecommunications, and interstate highways, the distance between towns in rural areas was even greater than it is today. Although the distance from Pittsfield to Hatfield is only about forty-five miles, in the early-to-mid twentieth century the residents of Pittsfield would have thought of Hatfield as being “away,” and Stanley Wilkes would not have been considered a “local boy” in Pittsfield.

Stanley Wilkes was proud of his Polish ancestry. He was elected president of the Polish American Citizens’ Club,²³ and he also served as a trustee of the Polish Community Club.²⁴ Like other immigrants who were living the American dream and making some money, Stanley Wilkes sometimes liked to show off a little bit. According to his nephew, David Martel, Mr. Wilkes could be a bit “flamboyant,” and as a young man was notorious for driving around Hatfield in a Stanley Steamer, much to the chagrin of his mother.²⁵

Judging from his successful business dealings, Stanley Wilkes had a lot of “street smarts.” He did not, however, have much formal education, having never finished high school. While many men of his generation did not graduate from high school,²⁶ it was probably unusual for a man of Stanley Wilkes’s modest educational background to be associated with the university-educated men who make up the rest of the cast of characters in this melodrama. His grade-school education, his Polish heritage, his lack of connection to Pittsfield, and his Catholic religious devotion set Stanley Wilkes apart in one way or another from Drs. Quinn and Pipkin, and Messrs, Riche, and Connor. One cannot help but wonder whether those attributes made the group see Wilkes as the “other” and contributed to his isolation and eventual ouster.

22. See *Wilkes Obituary*, *supra* note 8, at 17.

23. See *Wilkes Heads Citizens’ Club*, BERKSHIRE EVENING EAGLE, Sept. 27, 1937, at 11.

24. See *Wilkes Obituary*, *supra* note 8, at 17.

25. See Interview with David J. Martel, *supra* note 17.

26. For example, the high school graduation rate at Philadelphia’s Central High School in 1910 was 34% and in 1920 was 25%, which was consistent with the average graduation rate of 27% between 1838 and 1920. See DAVID F. LABAREE, THE MAKING OF AN AMERICAN HIGH SCHOOL: THE CREDENTIALS MARKET & THE CENTRAL HIGH SCHOOL OF PHILADELPHIA, 1838-1939 195 (1988). Contrast that with modern high school graduation rates, which are reported to be 70.1%. See NCHEMS INFORMATION CENTER FOR HIGHER EDUCATION POLICYMAKING AND ANALYSIS, PUBLIC HIGH SCHOOL GRADUATION RATES, <http://www.higheredinfo.org/dbrowser/index.php?measure=23> (last visited Jan. 30, 2011).

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B. *Thaddeus Edward Quinn*

The antagonist in this drama is Dr. T. Edward (Ted) Quinn. He was a scrappy guy who was not afraid to get involved in political squabbles.²⁷ He served as chairman of the Berkshire Democratic County Committee and the Pittsfield Democratic City Committee.²⁸ He also served on various boards (including the Public Housing Board, Traffic Board, and Licensing Board), often being in the midst of controversy.²⁹

Dr. Quinn was a formidable personality. One newspaper story described him as “gregarious, self-assured, with good looks, clipped speech, a take-over tendency and recognized effectiveness as a political organizer, Quinn is not someone people are indifferent about.”³⁰ In that same story, his own brother said “[y]ou either love the guy or you could kill him.”³¹

Like Stanley Wilkes, Ted Quinn was not born in Pittsfield, but his family moved to Pittsfield when he was five.³² Unlike Stanley Wilkes, however, Ted Quinn was considered a Pittsfield boy.³³ He attended a local high school, St. Joseph’s, and then attended St. Michael’s College in Vermont.³⁴ He eventually enrolled at the Middlesex College of Medicine and Surgery in Waltham, Massachusetts where he learned to be a podiatrist, or, as that profession was known in those days, a chiropodist.³⁵ After opening his podiatry practice in 1931,³⁶ Quinn pursued further study at Temple University to obtain his degree in podiatry.³⁷ Although he was referred to as “Doctor” Quinn, it is fair to say that chiropody was not per-

27. As evidence of this tendency, Dr. Quinn’s service on the Pittsfield Housing Authority was described thusly: “his most valuable service to the mayor [Del Gallo] is serving . . . as Del Gallo’s man on the anti-Del Gallo Housing Authority. The mayor has been pleased with Quinn’s aggressive performance in carrying out the attack against what Dr. Quinn calls the authority’s ‘controlling faction.’” *Politician with No Hat in the Ring*, BERKSHIRE EAGLE, Aug. 26, 1967, at 13 [hereinafter *Politician*].

28. *Id.*

29. Obituary, *Dr. T. Edward Quinn, 71, Politician, Civic Leader*, BERKSHIRE EAGLE, Sept. 3, 1974, at 19 (on file with author) [hereinafter *Quinn Obituary*].

30. *See Politician*, *supra* note 27, at 13.

31. *Id.*

32. *Quinn Obituary*, *supra* note 29, at 19.

33. *Id.*

34. *See Dr. Quinn Opens Office Here for Medicine Practice*, BERKSHIRE EVENING EAGLE, Aug. 6, 1931, at 5 [hereinafter *Dr. Quinn Opens Office*].

35. *Id.*

36. *Id.*

37. *Quinn Obituary*, *supra* note 29, at 19.

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ceived as the most prestigious of the healing arts, and some people may not have held him in high esteem.³⁸

Like Wilkes, Quinn was a Catholic, but one gets the sense that Mr. Quinn was not very devout. Despite having attended a Catholic high school and a Catholic college, there is nothing in his obituary to suggest that religion played an important role in his life. A telling detail is the fact that Quinn was divorced from his first wife,³⁹ an act that contravened Catholic teaching and which in the mid-1950s carried a social stigma.⁴⁰ Importantly, he did not get an annulment for his first marriage, but instead opted to marry outside of the Catholic Church by wedding his second wife in a civil ceremony.⁴¹ Unlike Mr. Wilkes, there is no evidence of Dr. Quinn being involved in church organizations such as the Knights of Columbus.

By all accounts, Quinn was a political operator from a political family. His father had been a leading Democratic Party figure and served as City Clerk of Pittsfield for many years.⁴² Ted Quinn's first important political position came in the mid-1930s when he was appointed to the Pittsfield Licensing Board, which was responsible for, among other things, issuing liquor licenses.⁴³ Shortly after Quinn began his service on the Board, the Western Massachusetts Liquor Dealers questioned the way liquor licenses were being issued in Pittsfield, alleging improprieties on Quinn's part.⁴⁴

In September of 1936, Pittsfield Mayor Allen H. Bagg held a series of hearings to get to the bottom of the matter.⁴⁵ The hearings

38. Stanley Wilkes's wife derisively referred to Dr. Quinn as a "toe picker." David Martel, Esq., Speech at Western New England College School of Law Symposium: Fiduciary Duties in the Closely-Held Firm 35 Years After *Wilkes v. Springside Nursing Home, Inc.* (Oct. 15, 2010) [hereinafter David Martel Speech].

39. *Quinn Obituary*, *supra* note 29, at 19.

40. See Lawrence M. Friedman, *A Dead Language: Divorce Law and Practice Before No-Fault*, 86 VA. L. REV. 1497, 1503 (2000) (noting that "[m]any influential people disapproved of divorce, the Catholic church positively forbade it, the clergy in general were hostile, and divorce carried considerable stigma in society").

41. See *Dr. Quinn, Local Girl Wed in Washington*, BERKSHIRE EAGLE, Mar. 5, 1956, at 13. Perhaps in keeping with the social mores of the time, the second marriage, to Miss Barbara Anne Merchant, an employee of the local Western Union office, was a private affair (apparently only the couple, the bride's parents, her brother and her sister-in-law attended), and it was held out of town—in Washington, D.C.—and was announced in the paper after the fact. *Id.*

42. See *Politician*, *supra* note 27, at 13.

43. *Id.*

44. *Id.*

45. "Push More Ram's Head" *Quinn Told Café Owner Former Bartender Says*, BERKSHIRE EVENING EAGLE, Sept. 5, 1936, at 1 [hereinafter *Ram's Head*].

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made quite an impact in Pittsfield and were front-page news for a week.⁴⁶ The reporting on these hearings literally covered whole pages of a broadsheet newspaper, something that is rarely seen in print reporting today.⁴⁷ The allegations against Dr. Quinn were quite serious.⁴⁸ On the first night of the hearings one of the key witnesses, Mr. T. Edward Donlon, testified that Quinn had interfered with Donlon's attempted purchase of the Melville Café in Lee and Joe Grimm's Café in Pittsfield.⁴⁹ In the case of the sale of the Melville Café, that tavern was eventually purchased by Quinn's own brother-in-law. In the sale of Joe Grimm's Café, Donlon said that Quinn allegedly insisted the purchase price of the bar be \$300 higher than was agreed, apparently in order to give Quinn a kick-back.⁵⁰ Mr. Donlon also testified that after he secured a job as the bartender at the DeLuxe Grill in Pittsfield, Quinn and another commissioner, John T. McDonald, would come into the bar and receive drinks and cigars and never pay "a nickel" for them.⁵¹

According to Donlon, after the DeLuxe Grill's ownership changed hands Quinn convinced the new owner to fire Donlon for not selling enough "Ram's Head" brand beer.⁵² It later emerged in the hearings that a group with which Quinn was associated was allegedly getting a kickback of fifty cents for every half barrel of Ram's Head beer sold in Berkshire County.⁵³ Donlon contended that Quinn was pressuring the bars under his jurisdiction to "push more Ram's Head" so he could maximize his pay-off.⁵⁴ In another situation, Quinn reputedly told a bartender at the Madison Avenue Café to "[k]nock off the Mule's Head and put on Tam O'Shanter"⁵⁵ for similar reasons.

46. *Id.*

47. *Id.*

48. *Quinn to Resume Stand to Battle Charges for License Board Removal*, BERKSHIRE EVENING EAGLE, Sept. 11, 1956, at 4.

49. All of the facts in this paragraph relating to the first night of hearings are based on the account appearing in *Ram's Head*, *supra* note 45, at 1, 7.

50. *Id.* at 7.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* Donlon also suggested that he had been blackballed by Quinn. He noted a conversation with Attorney William L. Whalen, Quinn's lawyer, after the investigation into Quinn had been commenced where Attorney Whalen said to Mr. Donlon that he would bet him \$500 to \$300 that Donlon "could not get a job in town." *Id.*

55. *Alfred C. Daniels Will Face Story He Attempted to Control Sale of Beer*, BERKSHIRE COUNTY EAGLE, Sept. 9, 1936, at 1, 6 [hereinafter *Alfred C. Daniels*].

Two other witnesses talked of Quinn's strong-arm tactics in trying to inappropriately gain control of the Friends Restaurant. The owner, Mrs. Mary Costello, wanted to sell and was asking a price of \$2500.⁵⁶ She stated (and another witness corroborated) that Quinn told her she was asking too much and that if she insisted on that price the Licensing Board would double her license fee in the next year.⁵⁷ She also alleged that Quinn stated that "next year no woman will get a license."⁵⁸ The ulterior motive for this exchange apparently was to set the stage for Quinn himself to make a hard ball offer to Mrs. Costello of either \$1300 or \$1700 (accounts varied) for her business—telling her that she could pick up that amount in cash at the office of the Licensing Board.⁵⁹

As is always the case in matters like this, however, there are two sides to every story. Dr. Quinn eventually took the stand and entered a general denial of all the allegations made against him.⁶⁰ In his defense, Quinn made a plausible case that responded to all of Donlon's allegations and made Donlon look like a blowhard who had a tendency to stretch the truth.⁶¹ On top of that, Quinn made the case that Donlon was a sloppy bartender who was let go from the DeLuxe Grill when business dried up.⁶² As for Mrs. Costello, Quinn admitted that he did not think a liquor sale was a business for women.⁶³ That point aside, he also thought she was taking unfair advantage of the City's announcement that no new liquor licenses would be issued in the next year.⁶⁴ He felt she was asking a very high price for her place by virtue of the fact that she held a grandfathered "lucky license."⁶⁵

On the final night of hearings the lawyers for both sides pulled out all the rhetorical stops to make their closing arguments.⁶⁶ Reading the accounts seventy-five years later, it is difficult to know

56. *Id.* at 10.

57. *Id.*

58. *Ram's Head*, *supra* note 45, at 7.

59. *Id.*

60. *McDonald and Dr. Quinn Enter General Denials as Hearing Nears Close*, BERKSHIRE EVENING EAGLE, Sept. 12, 1936, at 1, 7.

61. *Quinn to Resume Stand to Battle Charges for License Board Removal*, BERKSHIRE EVENING EAGLE, Sept. 11, 1936, at 1, 4 [hereinafter *License Board Removal*].

62. *Daniels Denies Story Told by Butler About Beer Control Attempt*, BERKSHIRE EVENING EAGLE, Sept. 10, 1936, at 1, 18.

63. *License Board Removal*, *supra* note 61, at 4, 6.

64. *Id.* at 6.

65. *Id.*

66. The lawyers' arguments were heavy with classical references. Counsel for petitioners called Quinn "Draco Quinn, the Law Giver," while counsel for respondents

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which side of the controversy made the better case. The mayor, however, had to make a decision, and so—rightly or wrongly—he removed Quinn from the Board under a cloud.⁶⁷ Although he maintained his innocence in the matter, Dr. Quinn declined to appeal his dismissal in Superior Court, saying the process would detract too much from his professional practice.⁶⁸

The allegations raised in the Liquor Licensing Board hearings dogged Dr. Quinn and affected his reputation. Years later, in testimony before the Master, Mr. Wilkes said that some people had asked him “why did you ever go into business with a man like that?”⁶⁹ Wilkes also said that people had a feeling Quinn was a “shady man.”⁷⁰ Wilkes testified that he had personally encountered an example of Quinn’s shady dealings, recounting the following conversation he had with Springside Nursing Home’s laundry service: “I called the General Linen, I asked them, I says, why are our bills so high, and isn’t there some way you could give us a discount or something? He said no, I have an agreement . . . Dr. Quinn gets a kick back on this.”⁷¹

Scattered throughout the testimony before the Master are a number of cryptic, but cutting, references to Mr. Quinn’s integrity. For instance, in a conversation between Wilkes and Riche prior to finalizing the deal to go into business with Quinn, Wilkes raised concerns about Quinn’s reputation to Riche, and, according to Wilkes, Riche responded, “oh don’t worry, we will get along . . . [but don’t let Quinn] get any hands on the money.”⁷² In another account by Wilkes, after he tells his attorney that he has received a check from Quinn for the Annex property at 793 North Street, the lawyer said “considering where the check came from, go cash it right away.”⁷³

Quinn’s casual approach to business ethics may have been on display from the very outset of the nursing home venture, since one

called one of the key witnesses “Cassius.” *Opposing Lawyers Place Principals in Pillory as Targets for Their Jabs*, BERKSHIRE EVENING EAGLE, Sept. 18, 1936, at 1.

67. See *Politician*, *supra* note 27, at 13.

68. *Quinn Gives Up Position as Licensing Board Head; Mayor Makes No Comment*, BERKSHIRE EVENING EAGLE, Oct. 17, 1936, at 1.

69. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 11, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev’d*, 353 N.E.2d 657 (Mass. 1976) (on file with author).

70. *Id.*

71. *Id.* at 34.

72. *Id.* at 11.

73. *Id.* at 37.

of Quinn's important contributions to the deal was the fortuitous, if ethically awkward, fact that Quinn's brother "was Administrator over at the Welfare."⁷⁴ The unspoken understanding being that Quinn's brother would send welfare clients to the Springside Nursing Home despite a potential conflict of interest. Later, when Quinn served on the Pittsfield Housing Authority Board, he was found to be in an actual conflict of interest under state law because of his business dealings with the City and, specifically, with welfare cases.⁷⁵

With all these clouds on Quinn's character, it must be said in his defense that he took care of his family. Although he apparently had no children of his own, he did take in foster children with his first wife.⁷⁶ He also looked out for his younger brother Robert, who took over Quinn's podiatry practice when Quinn's arthritis became so crippling that he could no longer work in that field.⁷⁷ Quinn's mother, Ellen Burke Quinn, spent her final months in the Springside Nursing Home pursuant to an understanding among the original principals that their relatives could stay in the nursing home for free or at a reduced rate.⁷⁸

Dr. Quinn served as the administrator for the Springside Nursing Home.⁷⁹ It should be noted that when the original principals decided to establish a nursing home none of them had any expertise in that business.⁸⁰ Luckily, they hired an exceptionally competent nurse, Ms. Adeline Bourn,⁸¹ who knew the ropes and, one suspects,

74. Transcript of Direct Examination of Defendant Leon Riche by Counsel for Plaintiff Before the Master at Vol. V, 31, *Wilkes*, (Docket No. 251).

75. *Solicitor Rules Dr. Quinn in "Conflict of Interest,"* BERKSHIRE EAGLE, Aug. 3, 1967, at 17 (on file with author).

76. *15-Room Apartment House Heavily Damaged by Flames*, BERKSHIRE EVENING EAGLE, Feb. 24, 1948, at 1.

77. *Id.*

78. Answers to interrogatories propounded to T. Edward Quinn at #4, *Wilkes* (Docket No. 251) (original on file with Berkshire County Probate Court). Apparently the only other relative of the original investors who took advantage of that special arrangement was Leon Riche's wife, Ruth, who lived in the nursing home from November of 1961 through March of 1962. *Id.* at #6; see also Master's Final Report at 11, *Wilkes* (Docket No. 251) ("[P]rovision was made for free care at the nursing home for close relatives of the shareholders.") (on file with author).

79. *Springside Considers New Nursing Home*, BERKSHIRE COUNTY EAGLE, Aug. 8, 1963, at 15 (on file with author).

80. Master's Final Report at 5, *Wilkes* (Docket No. 251) ("At that time none of the parties had had previous experience or been involved in this particular field.") (on file with author).

81. Miss Adeline Bourn was a registered nurse with an impressive resume. She was trained as a nurse at the Hospital Training School for Nurses in Springfield, Massachusetts. *Adeline Bourn to Supervise Nursing Home*, BERKSHIRE COUNTY EAGLE,

really ran the home. Nevertheless, as the official administrator of the facility, Dr. Quinn brought a professional attitude to the task and rose to the occasion of learning the business. In 1966 he was elected to the American College of Nursing Homes, an honor reserved for well-established administrators who meet certain standards.⁸² Toward the end of his career, as the nursing home industry became more professionalized and additional licensing requirements for administrators were put in place, Quinn again stepped up and obtained the required license.⁸³

In short, Ted Quinn was a complicated man. He was educated in Catholic schools, but was not particularly observant of Catholic teachings.⁸⁴ He was public-spirited enough to participate in local government, but selfish enough to find ways to make a profit from that service. He was supportive of his family, but never had a family of his own.⁸⁵ Haunted by rumors of impropriety spread by his many detractors, he always had a reasonable explanation for his behavior and the support of stalwart friends.⁸⁶ Could he have been the selfish conniver who sought to cheat Stanley Wilkes out of his investment, or was he the hard-nosed manager of the nursing home taking the action necessary to remove a disgruntled principal who could have derailed the whole enterprise?

C. *Leon L. Riche*

Everybody loved Leon Riche (rhymes with “itch”). He was an incredible salesman and a consistent top producer for the Berkshire

Sept. 19, 1951, at 5. After earning her nursing credentials she practiced as a nurse and taught nursing at several hospitals. *Id.* During the Second World War she served her country as a member of the Nurse Army Corps, earning the rank of Captain. *Id.* After the war she came to Pittsfield General Hospital as head nurse and assistant superintendent of nurses. *Id.* She left Pittsfield General in 1947 to earn her B.S. in nursing from the Boston University School of Nursing. *Id.* While in Boston she worked in the clinical department at Beth Israel Hospital. Along the way she was also the supervisor of a nursing home in Brooklyn. *Id.*

Ms. Bourn was so integral to the operation of the nursing home she lived in an apartment on the third floor of the building. *See Springside Nursing Home Opens Monday*, BERKSHIRE EVENING EAGLE, Oct. 12, 1951, at 8.

82. *See Dr. Quinn Elected to American College of Nursing Homes*, BERKSHIRE EAGLE, Aug. 22, 1966, at 17.

83. *See Dr. Quinn Passes Nursing Home Test*, BERKSHIRE EAGLE, July 8, 1972, at 11 (on file with author).

84. *Dr. Quinn Opens Office*, *supra* note 34, at 5; *see also Politician*, *supra* note 27, at 13.

85. *Quinn Obituary*, *supra* note 29, at 19.

86. *Id.*

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Life Insurance Company.⁸⁷ He knew everybody and was what one might call “a hale fellow, well met” kind of guy. He was an avid golfer, a fly fisherman, and a Kentucky Colonel.⁸⁸ He was also a devoted artist and served as the President of the Pittsfield Art League.⁸⁹ Some of his original art works (along with some art created by Quinn) graced the halls of the Springside Nursing Home’s West Branch.⁹⁰

Riche’s wife, Ruth, though suffering with severe arthritis that required her to use a wheelchair for much of her adult life, was a successful business owner in her own right.⁹¹ Her store, Ruth Riche Dress Shop, was a fixture in Pittsfield for years.⁹² Decades before the rights of disabled Americans were in the public consciousness, she worked extensively with the handicapped⁹³ and provided an example for others that a wheelchair-bound person could enjoy a full life—even running a store and going to New York for buying trips.⁹⁴ A perennial big fund-raiser for the Arthritis Foundation,⁹⁵ Ruth Savery Riche was an important part of the Riche family’s success.⁹⁶

87. *See id.*

88. Obituary, *Leon Riche, 97; Broker, Sportsman, WWI Veteran*, BERKSHIRE EAGLE, May 12, 1993, at 54 [hereinafter *Riche Obituary*]. Riche’s commission as a Kentucky Colonel was apparently an acknowledgment of his service in WWI. *See Two Pittsfield Men Are Commissioned Kentucky Colonels*, BERKSHIRE EAGLE, July 8, 1961, at 15 (on file with author).

89. *Leon Riche Re-Elected Art League Head*, BERKSHIRE COUNTY EAGLE, June 11, 1952, at 14.

90. *2,000 Visit Nursing Home’s New Branch*, BERKSHIRE EAGLE, Feb. 11, 1957, at 17.

91. *Ruth Riche Set to Open Dress Shop*, BERKSHIRE EVENING EAGLE, Sept. 10, 1955, at 9.

92. *Mrs. Leon Riche Dies: Arthritis Work Leader*, BERKSHIRE EAGLE, Aug. 5, 1968, at 14 [hereinafter *Arthritis Work Leader*].

93. *Ruth Riche Continues Work of Helping the Handicapped*, BERKSHIRE EAGLE, June 26, 1958, at 17.

94. Getting from Pittsfield, Massachusetts to New York City in a wheelchair is challenging even today, twenty years after the Americans with Disabilities Act of 1990, but that trip must have been a monumental task in the 1950s and 1960s when she was running her business. *Arthritis Work Leader*, *supra* note 92.

95. *Arthritis Award Made to Mrs. Riche*, BERKSHIRE EAGLE, Oct. 26, 1966, at 25.

96. Ruth Riche’s contributions to the family’s success went beyond her own business, as confirmed by an account of an audacious selling streak for insurance salesman Leon Riche in the Berkshire Eagle in May 1935. According to the reported story, the headline read: “\$2,000,000 in Insurance Sold in Single Week: Leon Riche Closes Policy Contract with Berkshire Woolen for \$900,000.” *See People Watching*, BERKSHIRE EAGLE, June 22, 1985, at 6. Berkshire Woolen, a big employer at the time, was run by James Savery, who just happened to be the uncle of Ruth Savery Riche. *Id.*

Mr. Riche was born in Glendale, fourteen miles from Pittsfield, and spent most of his life in western Massachusetts.⁹⁷ He started out as a bellboy at the Berkshire Inn in Great Barrington,⁹⁸ attended New York University, enlisted in the 301st Ambulance Corps during World War I, served in France, came home and went into the hospitality industry before finding his calling as an insurance broker.⁹⁹ Along the way he picked up business interests in the Ballou Basket Company¹⁰⁰ and, of course, the Springside Nursing Home.¹⁰¹

Leon Riche lived a long and rewarding life—he was ninety-seven years old at the time of his death. As he got up in years his birthdays were celebrated by his friends with events significant enough to be reported in the paper.¹⁰² He was a congregant at the First Congregational Church and was a 32nd degree Mason.¹⁰³ He spent his last years in one of the modern variants on the nursing home—a congregate care facility—which from the write-up in the paper was much fancier than Springside Nursing Home ever aspired to be.¹⁰⁴ When he passed away, his obituary requested that mourners make donations in his name to the First Congregational Church.¹⁰⁵

Mr. Riche was not the kind of guy who ruffled feathers. As a successful salesman, he knew how to get along with all kinds of people. He could even be friends with two individuals who held each other in contempt and who could only agree that they both liked Mr. Riche. He was the glue that brought the principals in Springside Nursing Home together, but even he could not hold them together when they started to split apart.

D. *Hubert Alexander Pipkin*

Dr. Hubert A. Pipkin practiced medicine in Pittsfield for twenty-seven years and served for a time as the assistant city physi-

97. *Leon Riche, 90, Feted*, BERKSHIRE EAGLE, Sept. 9, 1985, at 28.

98. *See People Watching*, BERKSHIRE EAGLE, Sept. 7, 1985, at 6.

99. *Id.*

100. *See Riche Sells Basket Business to R.E. Ezequelle, Housatonic*, BERKSHIRE EVENING EAGLE, May 13, 1947, at 1 (on file with author).

101. *See Riche Obituary*, *supra* note 88, at 54.

102. *See Leon L. Riche is Honored on 85th Birthday*, BERKSHIRE EAGLE, Sept. 9, 1980, at 6 (on file with author); *Leon Riche, 90, Feted*, *supra* note 97, at 28.

103. *See Riche Obituary*, *supra* note 88, at 54.

104. *Sporty Leon Riche is Farms' Oldest at 93*, BERKSHIRE EAGLE, Dec. 11, 1987, at B4.

105. *See Riche Obituary*, *supra* note 88, at 54.

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cian.¹⁰⁶ He was not a native of Pittsfield, but rather had grown up halfway across the country, in Springfield, Missouri. He graduated from the University of Missouri and obtained his medical degree at the Jefferson Medical School in Philadelphia.

Like Riche, he was a member of the Country Club of Pittsfield, a congregant of the First Congregational Church, and a Mason. Like Dr. Quinn, Dr. Pipkin was a member of the medical establishment in Pittsfield, but unlike Quinn, Pipkin was a medical doctor, not a mere podiatrist. Furthermore, Pipkin had a certain level of professional gravitas and was involved in medical societies. He and his wife, Nell Elizabeth Kittredge Pipkin, were actively engaged in the community.¹⁰⁷

Dr. Pipkin's major contribution to the Springside Nursing Home project stemmed from his medical practice, which focused on geriatric medicine. As Riche assembled investors for the deal, he thought Pipkin would be a good source of referrals to the nursing home.¹⁰⁸ The Master found that "while Pipkin would not devote his time to the operation of the corporation, his potential ability to forward patients and his known connection with the nursing home, which added an aura of professionalism, constituted a definite asset to the corporation."¹⁰⁹

Sadly for Dr. Pipkin, he fell on the ice in front of Hillcrest Hospital in January of 1956 and was in ill health as a result of that spill until his retirement from active practice twenty-two months later when he and his wife moved to Florida.¹¹⁰ After being in Florida for a while, Pipkin's contributions to Springside Nursing Home became negligible and his payments from the business were reduced.¹¹¹ Eventually, Leon Riche went to Florida and told Dr.

106. Obituary, *Dr. Pipkin Dies in Fla.*, BERKSHIRE EAGLE, July 23, 1968, at 10. The facts in this paragraph and the next are drawn from Dr. Pipkin's obituary as it appeared in the Berkshire Eagle.

107. See *Dr. H.A. Pipkin Retiring, Moving to Florida*, BERKSHIRE EAGLE, Nov. 27, 1957, at 6 [hereinafter *Pipkin Retiring*]. Mrs. Pipkin was actively involved in the Women's Auxiliary of the Berkshire Medical Society, the Society of the Prevention of Cruelty to Children, the League of Women Voters, and the Pittsfield General Hospital Auxiliary. *Id.*

108. Interview with Hon. William Simons (Feb. 9, 2010).

109. Master's Final Report at 7, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976) (on file with author).

110. See *Pipkin Retiring*, *supra* note 107, at 6.

111. Asked whether Pipkin was receiving one hundred dollars per week while he was in Florida, Mr. Riche replied, "I don't think it was One Hundred dollars a week, on account of his not contributing to the work." Transcript of Direct Examination of De-

Pipkin that the weekly payments from Springside Nursing Home would end.¹¹²

With his income from Springside curtailed and his income from his practice gone, Pipkin had little choice but to find someone to buy his Springside shares. Dr. Pipkin lined up a buyer, a local lawyer named Jacob Aaronson, who offered to purchase Pipkin's shares for \$30,000.¹¹³ Attorney Aaronson, a prominent member of Pittsfield's Jewish community,¹¹⁴ had represented Springside Nursing Home in its acquisition of the Annex property at 793 North Street.¹¹⁵ Quinn and Riche, however, were adamant that they did not want Aaronson in the business.¹¹⁶

defendant Leon Riche Before the Master at Vol. V, 32, *Wilkes* (Docket No. 251); *see also* Master's Final Report at 13, *Wilkes* (Docket No. 251) ("After he had been in Florida for about one year, with still no indication as to when he would return, the Corporation reduced his weekly stipend from \$100 to \$50 per week. Such payments continued at this level for about another year.") (on file with author).

112. Transcript of Direct Examination of Defendant Leon Riche Before the Master at Vol. V, 32, *Wilkes* (Docket No. 251) ("I went to Florida, and on the way stopped and told him [Pipkin] that that was all over with."); *see also* Master's Final Report at 13, *Wilkes* (Docket No. 251) ("Pipkin was then informed that since he was not going to return to Pittsfield, he should make arrangements to sell his shares since the Corporation could no longer continue to pay him money.") (on file with author).

113. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 28 *Wilkes* (Docket No. 251).

114. *See Atty. Aaronson, 61, Dies; Served City and Synagogue*, BERKSHIRE EAGLE, July 26, 1965, at 17 (on file with author). Jacob Aaronson grew up in Pittsfield and was a star high school athlete. *Id.* He was a 32nd degree Mason and he was also very active in the Jewish community, serving as President of the Ahavath Sholem congregation, President of B'nai B'rith, and serving on the board of the Jewish Community Council. *Id.* Jacob Aaronson's wife, Sally Aaronson, was also deeply involved in the Pittsfield Community generally and the Jewish community in particular, being named "Person of the Year" by her temple in 1983. *See Temple Honors Sally Aaronson*, BERKSHIRE EAGLE, July 20, 1983, at 11.

115. *See Springside Nursing Home to Buy House*, BERKSHIRE EVENING EAGLE, Apr. 28, 1952, at 8; *Nursing Home Expansion Plan Draws Protests*, BERKSHIRE EVENING EAGLE, May 15, 1952, at 10.

116. The refusal to permit a sale to Aaronson seems odd since Riche and Aaronson were both 32nd degree Masons in the Crescent Lodge and one would expect a certain fidelity between them. It seems unlikely that the principals were unhappy with the legal work Attorney Aaronson was performing, as they continued to retain him and his partner, Judge John Dwyer. *See Judge John Dwyer Dies at 60*, BERKSHIRE EAGLE, June 19, 1979, at 17 (noting that in 1953 Dwyer formed a partnership with Aaronson); *Man Who Lost Battles but Won the War*, BERKSHIRE EAGLE, Jan. 7, 1961, at 13 (noting that as of 1961 Dwyer and Aaronson were both sharing an office at 85 East Street). It also seems unlikely that there was concern about going into business with the firm's attorney in light of the fact that Quinn and Judge Dwyer were partners in an apartment building. *See* Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. III, 9, *Wilkes* (Docket No. 251) (noting Quinn's ownership of an apartment house with Judge Dwyer) (on file with author). It is possible Quinn opposed the sale because he pre-

Secretly, Quinn wished to buy back Pipkin's shares for \$10,000 and then increase the draw of the remaining three owners.¹¹⁷ Wilkes did not like that plan and, in his words, he "refused to gang up on Dr. Pipkin."¹¹⁸ Under the terms of a shareholders' agreement among the principals of Springside Nursing Home, however, any shareholder wishing to sell was required to offer his shares to the other shareholders first.¹¹⁹ Because of that agreement Dr. Pipkin was obliged to discuss his proposed sale to Attorney Aaronson with his fellow shareholders.

In the fall of 1959, Pipkin, Quinn, Riche, and Wilkes agreed to meet for lunch to discuss Pipkin's exit.¹²⁰ The conversation among the principals was held at the "Yellow Aster" restaurant and got so heated that Larry Connor, local business leader and President of the Agricultural National Bank, emerged from a nearby dining room and asked what the commotion was about.¹²¹ After being informed of Pipkin's desire to sell his shares to Aaronson and the opposition to that deal from Quinn and Riche, Connor told the parties to come by his house later on and they would settle it.¹²² Later that day it was agreed that Connor would buy Pipkin's shares for about \$21,500.¹²³

Wilkes thought this treatment of Pipkin was pretty shabby. Pipkin had had an offer in the amount of \$30,000, but was forced to accept a price of \$21,500. In those days, the difference, \$7,500, was quite a bit of money.¹²⁴ Pipkin, however, was resigned to making

ferred for the corporation to redeem Pipkin's shares instead, but that could not have been too pressing a concern because eventually the shares were transferred to Connor, not redeemed. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 28, *Wilkes* (Docket No. 251). Why Riche and Quinn did not want to deal with Aaronson as a business associate will never be known, but one cannot help but wonder if something like a personality clash or religious prejudice was somehow involved.

117. As Wilkes testified, "in 1959 . . . I refused to let Dr. Quinn get Dr. Pipkin out for Ten Thousand dollars, and at the same meeting he wanted to take a Thirty Thousand Dollar Administrator's salary and kickback Ten to Leon and Ten to me." Transcript of Direct Examination of Plaintiff Before the Master, Vol. VII, 61, *Wilkes* (Docket No. 251).

118. *Id.*

119. Direct Examination of Plaintiff Before the Master at Vol. VI, 27, *Wilkes* (Docket No. 251).

120. The following details are drawn from the testimony provided by Stanley Wilkes before the Master. *See id.* at 27-29.

121. *Id.* at 28.

122. *Id.*

123. *Id.*

124. Using the CPI inflator, \$7,500 in 1959 dollars would be worth about \$55,200 in 2010 dollars. MEASURING WORTH.COM, <http://www.measuringworth.com/uscompare/> (last visited Jan. 6, 2011).

the transfer to Connor or risk being held hostage by Quinn and Riche. This transaction marked the inauspicious method by which Connor became a co-owner of Springside Nursing Home and appears to have been the beginning of the bad blood between Wilkes and Quinn.¹²⁵

E. *Laurence R. Connor*

In 1931, when Laurence R. Connor was appointed bank president of the Agricultural National Bank, he was the youngest man in Massachusetts ever to hold such a position.¹²⁶ He had a long and successful career at the bank and was an active booster for the City of Pittsfield and its various civic institutions. A stalwart Republican, Mr. Connor learned to be discreet in his political dealings after he made too public a display of raising money for the Republican effort to oppose then-Governor James Michael Curley in his race against Henry Cabot Lodge, Jr. for the open U.S. Senate seat in the 1936 election.¹²⁷ Governor Curley responded by ordering his State Treasurer to withdraw all the Commonwealth's deposits from the Agricultural National Bank.¹²⁸ Eventually Connor made peace with the Governor, but he had learned his lesson.¹²⁹

Connor was born in Liverpool, England, and came to the United States when he was seven years old.¹³⁰ It is unclear what his family life was like, but it appears that his parents were estranged and that he had a rocky relationship with his father.¹³¹ Connor held a law degree from Boston University School of Law although he never actually practiced law.¹³² He found his career in banking, starting out in the trust department and eventually moving into lending.¹³³ When he took over the bank in the midst of the Depression, he had some unpleasant tasks, especially foreclosing on homes, but he did what he needed to do in order to keep the "Ag-

125. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VII, 61, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976).

126. Obituary, *Laurence R. Connor Dies; Prominent Area Banker*, BERKSHIRE EAGLE, Nov. 30, 1970, at 22 [hereinafter *Connor Obituary*].

127. *Id.*

128. *Id.*

129. See *The Quiet Mover and Shaker*, BERKSHIRE EAGLE, Oct. 31, 1959, at 18 [hereinafter *Mover and Shaker*].

130. *Id.*

131. *Brothers Charged with Non-Support*, BERKSHIRE COUNTY EAGLE, Nov. 25, 1936, at 3.

132. See *Mover and Shaker*, *supra* note 129, at 18.

133. *Id.*

gie,” as the Agricultural National Bank was known, on an even keel.¹³⁴ His reputation for aggressively pursuing foreclosures stuck with him into the 1960s, and some folks in Pittsfield held it against him.¹³⁵ For his part, the painful experience with home mortgages caused him to steer the bank clear of that business and to focus instead on commercial loans.¹³⁶

After obtaining his shares from Dr. Pipkin, Connor started receiving the “salary” that had been allocated to those shares, although he had no specific function within the Springside operation. Clearly, he could not step into Dr. Pipkin’s role “to make himself available if and when medical problems arose.”¹³⁷ According to Dr. Quinn, Mr. Connor’s role in the organization was to be available to be called on for financial advice from time to time.¹³⁸ That availability for advice justified the payment of what were eventually designated “directors’ fees” (as opposed to “salary”) during his life.¹³⁹

Toward the end of his life Mr. Connor’s director fees were reduced to reflect his diminished participation in the corporation.¹⁴⁰ He died before Wilkes instituted his lawsuit.¹⁴¹ The funerals for Mr. Connor and his wife, who died less than six months after he passed away,¹⁴² were conducted through St. Stephen’s Episcopal Church.¹⁴³ It is not clear how religious they were, but neither obituary made mention of any other church-related activities for the Connors and both asked friends to make contributions to Berkshire

134. *Id.*

135. *Id.*

136. *Id.*

137. *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 660 n.8 (Mass. 1976).

138. Transcript of Direct Examination of Defendant T. Edward Quinn By Counsel for Plaintiff in Testimony Before the Master at Vol. II, 48-49, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev’d*, 353 N.E.2d 657 (Mass. 1976).

139. *Id.* at 46-47.

140. Transcript of Cross Examination of Defendant T. Edward Quinn By Counsel for Defendants in Testimony Before the Master at Vol. IV, 78, *Wilkes* (Docket No. 251).

141. *See Mrs. Laurence Connor, 70, Widow of Bank President*, BERKSHIRE EAGLE, May 24, 1971, at 14 (noting Laurence Connor died in November 1970).

142. *Id.* This was a surprisingly short and uninformative obituary. It was much more like a death notice. Based on the obituary, it appears that Mrs. Connor was not nearly as involved in the community as her contemporaries were, noting only that she was a sustaining member of the Junior League. *Id.*

143. *Connor Obituary*, *supra* note 126, at 22; *Mrs. Laurence Connor, 70, Widow of Bank President*, *supra* note 141, at 14.

Medical Center.¹⁴⁴ Connor died a relatively wealthy man. When his estate was probated in 1971, the personal property (not counting real estate interests) was appraised at \$547,306,¹⁴⁵ which would be about \$3 million in today's dollars.¹⁴⁶ Connor knew how to make money and profited from acquiring Dr. Pipkin's shares. That profit came about not through any hard work and effort on his own part, but rather by the lucky happenstance of being friends with Mr. Riche and from the toil and managerial skill of Dr. Quinn. Connor, a member of the country club crowd, knew he "owed" those two men for providing him a profitable venture.¹⁴⁷

These five men made up the cast of characters for the drama that became *Wilkes v. Springside Nursing Home, Inc.* That drama was set in the Pittsfield, Massachusetts of the 1950s and 1960s, and, specifically, within the world of geriatric medicine and eldercare as those concepts existed at that time. Understanding that setting will shed light on the conflict.

II. THE SETTING

In 1908, Dr. Charles H. Richardson established the Hillcrest Private Hospital at 800 North Street in Pittsfield.¹⁴⁸ Dr. Richardson was a popular physician and surgeon, so popular, in fact, that his death was noted on the front page of the Berkshire Evening Eagle when he passed away.¹⁴⁹ In those days, doctors occasionally had their own private hospitals. Sometimes it was because the doctor had a devoted following, but often it was because there was *de facto* segregation by religion: i.e., Jewish and Catholic doctors and patients were not really welcome in the majority Protestant institutions.¹⁵⁰ At the time the investors in Springside Nursing Home were getting together in 1949-50, Pittsfield had three hospitals: Hillcrest, St. Luke's, and the House of Mercy.¹⁵¹

144. *Connor Obituary*, *supra* note 126, at 22; *Mrs. Laurence Connor, 70, Widow of Bank President*, *supra* note 141, at 14.

145. *Probate Court*, BERKSHIRE EAGLE, May 1, 1971, at 3.

146. MEASURING WORTH.COM, <http://www.measuringworth.com/uscompare/> (last visited Jan. 6, 2011).

147. Interview with Hon. William Simons, *supra* note 108.

148. See *Hospital History*, BERKSHIRE EAGLE (date unknown) (on file with author) (this article was found in a file at the morgue by the author, but there was limited information). In 1931, the name was changed to "Hillcrest Hospital." *Id.*

149. *Dr. Charles H. Richardson, Noted Pittsfield Surgeon, Dies After Year's Illness*, BERKSHIRE EVENING EAGLE, May 21, 1935, at 1.

150. Interview with Hon. William Simons, *supra* note 108.

151. In 1949, the House of Mercy was renamed Pittsfield General Hospital. See Berkshire Health Systems, *House of Mercy/Pittsfield General Hospital*, <http://>

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In 1948, the Hillcrest Hospital, having outgrown its location at 800 North Street, moved to a spacious summer estate on Lake Onota formerly owned by the Salisbury family of Chicago, and known locally as “Tor Court.”¹⁵² This was the most feasible option to keep the hospital going after a fund drive for the construction of a new hospital building fell short.¹⁵³ After the hospital vacated the property at 800 North Avenue it was listed for sale and Stanley Wilkes picked up an option on the property.¹⁵⁴

Mr. Wilkes knew Leon Riche because they had both served on the Pittsfield Draft Board.¹⁵⁵ Riche had also hired Wilkes to put a new roof on his house.¹⁵⁶ During the course of their interactions Riche became aware of Wilkes’s real estate acumen and made it known that he would be willing to invest in a deal if Wilkes got wind of one.¹⁵⁷ In light of those interactions, after Wilkes secured the option on the Hillcrest Hospital property, he contacted Riche to see if he wanted to invest in it.¹⁵⁸

Once he got the terms of the deal from Wilkes, Riche decided it would be a good investment. Mr. Riche then contacted Dr. Quinn and Dr. Pipkin to bring them in as additional investors.¹⁵⁹

www.berkshirehealthsystems.org/body_bmc.cfm?id=1691 (last visited Feb. 6, 2011). In 1968, it merged with St. Luke’s to become the hospital known today as Berkshire Medical Center. See Berkshire Health Systems, *Pittsfield General/St. Luke’s Merger*, http://www.berkshirehealthsystems.org/body_bmc.cfm?id=1692 (last visited Feb. 6, 2011).

152. Richard V. Happel, *The Patriarch of Tor Court*, BERKSHIRE EAGLE, Feb. 5, 1971, at 13. The Salisbury family was heir to the Kimball Piano and Organ fortune. *Id.* The Salisburys were a bit unusual among Berkshire “summer people” in that they were Chicagoans, while most of the others were New Yorkers or Bostonians. *Id.* Nevertheless, from 1908 through 1945 the Salisbury family visited Tor Court every summer. *Id.* Although the Salisbury family never returned to Tor Court after 1945, the family was warmly remembered in Pittsfield. *Id.* When Kimball Salisbury, who spend his childhood summers at Tor Court, passed away in 1987, a fondly written obituary appeared in the *Berkshire Eagle* noting that he had invented the game of “croquet golf,” which, as the name implies, involved the use of a croquet ball and mallet on a golf course. See *Kimball Salisbury, Croquet Golf Inventor*, BERKSHIRE EAGLE, Feb. 17, 1987, at B2.

153. *Opening of New Hillcrest Expected to Be Next Fall*, BERKSHIRE EVENING EAGLE, Dec. 16, 1948, at 1.

154. *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 659 (Mass. 1976).

155. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 4, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev’d*, 353 N.E.2d 657 (Mass. 1976).

156. *Id.* at 5.

157. *Id.*

158. *Id.* at 5-6.

159. Transcript of Direct Examination of Defendant Leon Riche By Counsel for Plaintiff in Testimony Before the Master, Vol. V, 32, *Wilkes* (Docket No. 251).

According to the testimony before the Master, Riche and Quinn were “old friends” who had known each other a long time.¹⁶⁰ Wilkes had not known Quinn before being introduced to him by Riche.¹⁶¹ Everyone knew Pipkin and he was well-liked.

With the deal committed and the investors lined up, the next question was what to do with the property. Originally, Wilkes thought of the transaction strictly as a real estate deal.¹⁶² He hoped to fix up the property and sell it relatively quickly for a profit. Riche initially had a similar view—he hoped to make a profit from it, but he was not necessarily looking to it as a source of income. He did, after all, have a tremendously successful insurance agency which provided him a good living, and his wife, Ruth, owned her own business in town. As the four investors thought it through, however, Dr. Quinn suggested that the property might be operated profitably as a nursing home.¹⁶³

Quinn’s idea carried the day. The nursing home field was beginning to take off in the 1950s and Pittsfield needed more beds. Located across the street from the main hospital in town, the location was ideal. With Dr. Pipkin as a source of referrals, and with Quinn’s brother in a position to refer public assistance cases, the nursing home idea made sense.

Once the principals had decided to run the property at 800 North Street (the “Hillcrest Property”) as a nursing home they sought the requisite city approvals, which were granted.¹⁶⁴ They also sought legal counsel to figure out the best way to set up the business. Wilkes consulted Attorney Rudolph Lewis¹⁶⁵ for advice on the proper legal entity in which to carry out the nursing home

160. *Id.* at 14.

161. *Id.*

162. The information in the following paragraph is derived from a conversation I had with Judge William Simons in February 2010. Interview with Hon. William Simons, *supra* note 108.

163. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 5, *Wilkes* (Docket No. 251).

164. *City’s Largest Nursing Home at Hillcrest is Approved*, BERKSHIRE EVENING EAGLE, Sept. 1, 1951, at 12.

165. Rudolph Lewis was a well-regarded member of the Berkshire County Bar who started his practice in Pittsfield in 1938, the year he graduated from Harvard Law School. Obituary, *Rudolph A. Lewis, 59, Lawyer, Civic Worker*, BERKSHIRE EAGLE, July 2, 1973, at 17 (on file with author). By the time Mr. Wilkes consulted him in 1951, Lewis had been practicing law for thirteen years, with some time out for service in the Navy during World War II. *Id.*

business. Attorney Lewis, taking the possibility of personal liability for the investors into account, recommended that the investors form a corporation and conduct the business through that corporation.¹⁶⁶ Although the investors decided to follow Attorney Lewis' advice and form a corporation, Stanley Wilkes later maintained that the important decisions about the business and how the parties were going to deal with each other had been made before the corporation was formed and that essentially the principals had created a partnership first which they then incorporated.¹⁶⁷ The nursing home was opened on Monday, October 15, 1951.¹⁶⁸

The new business came along at the right time for Dr. Quinn. He was in the process of looking for a new line of work. Rheumatoid arthritis in his hands had made it increasingly difficult for him to properly conduct his podiatry practice. The arthritis was so severe that his hands were quite gnarled and not very functional.¹⁶⁹ Pushing papers around a desk at a nursing home was more suited to a man in his situation than manipulating, massaging, and examining feet.

Over time, as his arthritis deprived him of his podiatry practice, the Springside Nursing Home would become Dr. Quinn's primary source of income. For the three other investors the nursing home was just an investment. They all had means of support from other endeavors: Riche from his insurance agency, Wilkes from his roofing business, and Pipkin from his medical practice. As Quinn's podiatry practice fell off, however, his salary from the Springside Nursing Home became his main livelihood.

Even though Quinn may have needed the money, initially the investors in Springside Nursing Home did not take any money out of the operation. They did not start drawing salaries until Mr. Wilkes, who was serving as treasurer, suggested it. According to the transcript of the hearing before the Master, in 1952, Wilkes brought up the idea of the owners each taking a salary of \$35 per

166. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 9, *Wilkes* (Docket No. 251).

167. *Id.* at 7-11.

168. *Springside Nursing Home Opens Monday*, BERKSHIRE EVENING EAGLE, Oct. 12, 1951, at 8.

169. Hon. William Simons, Speech at Western New England College School of Law Symposium: Fiduciary Duties in the Closely-Held Firm 35 Years After *Wilkes v. Springside Nursing Home, Inc.* (Oct. 15, 2010).

week.¹⁷⁰ In 1953, the salary was increased to \$50 per week and later the amount was increased to \$100 per week.¹⁷¹

Given that Springside Nursing Home was carrying on its business in the corporate form, the payment of “salaries” to the principals was a tax-advantaged method of getting profits out of the business without declaring a dividend. Shareholders in closely held corporations rarely declare dividends because the distributions made are subject to double tax—once at the corporate level when the income is earned by the entity and again at the individual level when the dividend is realized by the taxpayer. Salaries paid to shareholders, on the other hand, are only taxed at the individual level.

In order to pay “salaries,” however, the recipients of the money needed to have jobs, otherwise the Internal Revenue Service would have seen through the ruse and reclassified the payments as dividends. So, the principals in Springside Nursing Home all had assigned duties. The opinion of the Supreme Judicial Court says that the original shareholders split up the duties of running the nursing home operation as follows:

Wilkes took charge of the repair, upkeep and maintenance of the physical plant and grounds;¹⁷² Riche assumed supervision over the kitchen facilities and dietary and food aspects of the home;¹⁷³ Pipkin was to make himself available if and when medical problems arose; and Quinn dealt with the personnel and administrative aspects of the nursing home, serving informally as a managing director. Quinn further coordinated the activities of the other parties and served as a communication link among them when matters had to be discussed and decisions had to be made without a formal meeting [footnotes added].¹⁷⁴

170. Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. I, 21, *Wilkes* (Docket No. 251).

171. *Id.* In a couple of years the salaries paid to the shareholders were suspended or reduced and in one year they were enhanced. Transcript of Direct Examination of Plaintiff Before the Master at Vol. VI, 16-17, *Wilkes* (Docket No. 251).

172. An odd choice, since the nursing home already had a custodian, Mr. Peter Lynch, who was capable of handling all of those matters. See *Springside Nursing Home Opens Monday*, BERKSHIRE EAGLE, Oct. 12, 1951, at 8.

173. Another odd choice, given that Riche’s experience and professional background as an insurance broker provided no suggestion of expertise in the area of dietary supervision and also given the fact that the nursing home had hired Mrs. Helen Hamilton as cook. *Id.*

174. *Wilkes*, 353 N.E.2d at 660 n.8. The court never noted what, if anything, Mr. Connor was responsible for after taking over for Dr. Pipkin. Clearly, as a banker, he was not suited to play Dr. Pipkin’s role of being available if medical problems arose.

While these work assignments are plausible, it is more likely that these responsibilities were window dressing made to justify the payments that were being made to the investors. In reality, Pipkin, Riche, and, later, Connor,¹⁷⁵ were for all intents and purposes passive investors; they supplied capital and expected a return, but did not plan to be involved in the day-to-day operations. In fact, Riche, Pipkin, and Connor did not actually do very much. In the words of William Simons (who eventually represented Quinn, Riche, and the nursing home in the *Wilkes* litigation), Riche, Pipkin, and Connor “hardly ever set foot in the place.”¹⁷⁶ What they really did was not make waves—they just let Quinn run the operation. Clearly, of the four principals Quinn did most of the work. He, together with Nurse Bourn, in fact, ran the nursing home.

But Stanley Wilkes was not interested in being a passive investor. He wanted to be involved in the business. For example, for a while Wilkes supervised the laundry. He appeared on the premises often and seemed to get along well with the employees. Wilkes’s role, however, was ill-defined and he sometimes may have stuck his nose into areas that Dr. Quinn thought were Quinn’s sole responsibility. Wilkes’s tendency to meddle may have rubbed Quinn the wrong way, but more importantly, Quinn felt like Wilkes treated him as a mere employee instead of with the respect due to a doctor.¹⁷⁷ Wilkes, for his part, probably felt that Quinn was getting a sweet deal by making money on an investment opportunity that Wilkes had arranged.

Nevertheless, at first the business went quite well for the Springside Nursing Home investors. Less than a year after starting Springside they considered expanding the operation by purchasing a building across the street from the nursing home at 793 North Street¹⁷⁸ (that parcel came to be known as the “Annex”).¹⁷⁹ In May of 1952 the Springside Nursing Home sought permission from the city to increase the total number of beds to sixty-two beds by

175. Apparently Connor was supposed to provide financial advice. In Dr. Quinn’s words, Connor “was the backbone of our financial thinking.” Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. II, 49, *Wilkes* (Docket No. 251).

176. Interview with Hon. William Simons, *supra* note 108.

177. *Id.*

178. *Springside Nursing Home to Buy House*, BERKSHIRE EVENING EAGLE, Apr. 28, 1952, at 8.

179. *Springside Nursing Homes Plans New \$560,000 Unit*, *supra* note 7, at 17.

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expanding into the Annex.¹⁸⁰ The expanded nursing home would have been the largest such facility west of Worcester.¹⁸¹ The proposal met some opposition from local residents who feared the new expanded nursing home would lower property values, increase traffic, and interfere with privacy.¹⁸² Springside Nursing Home was represented by Attorney Jacob Aaronson in this acquisition and subsequent permitting process.¹⁸³ Despite the opposition, the nursing home did receive its permit.¹⁸⁴ The future sale of the Annex parcel to Dr. Quinn in 1966 would contribute to the falling out among the shareholders of Springside Nursing Home, but in 1952 the acquisition of the Annex was an encouraging sign that the business was doing well.

During the mid-1950s business went very well for the Springside Nursing Home and in 1956 the shareholders expanded the business again by acquiring the former Berkshire County Anti-Tuberculosis Hospital in West Pittsfield.¹⁸⁵ This facility was called the “West Branch.”¹⁸⁶ With the opening of the West Branch, Springside had 112 beds in three buildings—one on the west side of Pittsfield and two on North Street.

By adding more and more beds, the owners of Springside Nursing Home, Inc. were hoping to capitalize on economies of scale. In contrast to the mind-boggling rates charged for nursing home care today,¹⁸⁷ the rate structure from the late 1950s and early 1960s seems quite modest.¹⁸⁸ In a bid to add even more capacity,

180. *Nursing Home Seeks Permit for Expansion*, BERKSHIRE COUNTY EAGLE, May 7, 1952, at 21.

181. *Future Nursing Home*, BERKSHIRE EVENING EAGLE, May 31, 1952, at 8.

182. *Nursing Home Expansion Plan Draws Protests*, BERKSHIRE EVENING EAGLE, May 15, 1952, at 10.

183. *Id.*

184. *Nursing Home Gets Permit for New Unit*, BERKSHIRE EVENING EAGLE, May 23, 1952, at 17.

185. See *2,000 Visit Nursing Home's New Branch*, BERKSHIRE EAGLE, Feb. 11, 1957, at 17 [hereinafter *2,000 Visit*]. Springside Nursing Home spent a significant amount of money to upgrade the facility to make it appropriate for a nursing home. See *Nursing Home Lists \$33,000 to Convert Old TB Hospital*, BERKSHIRE EAGLE, Oct. 17, 1956, at 8.

186. *2,000 Visit*, *supra* note 185, at 17.

187. In 2008, a leading treatise noted that nursing home care costs range from \$4,000 to \$9,000 per month. See LAWRENCE A. FROLIK, RESIDENCE OPTIONS FOR OLDER AND DISABLED CLIENTS 312 (2008).

188. A newspaper item from 1960 reports on a requested rate increase in Springside Nursing Home's per diem reimbursement for public assistance cases. *Nursing Home Rate Hike to Cost City \$5,000*, BERKSHIRE EAGLE, Apr. 4, 1960, at 4. The nursing home had asked for a rate increase from the existing \$6.50 per day to \$7.00 per day, but their request was denied. *Id.* On appeal they were granted an increase to \$6.70 per

Springside Nursing Homes proposed the development of a new fifty bed nursing home on the site of the original facility—the Hillcrest Property—but it is not clear whether that project ever came to fruition.¹⁸⁹

Given the low reimbursement rates, the business tried making a return by having high volume and low overhead. The facilities were by no means luxurious. In photographs from the files of the Berkshire Eagle newspaper, interior views of the West Branch reveal a very Spartan décor, tile floors, and metal frame beds with a single straight-back chair. Although the homes in general were quite spare, they did offer some amenities, such as a beauty salon and game nights.¹⁹⁰

While the 1950s had produced a very nice return for the Springside investors, as the 1960s dawned, the shareholders in Springside Nursing Home began to go their own ways. Wilkes was left with a bad taste in his mouth over the way Dr. Pipkin's buy-out had been handled, and Quinn reported that Wilkes seemed to be less engaged in the business. Quinn and Riche started a side business by acquiring the Burke's Rest Home in 1960.¹⁹¹ Why this was not problematic as a usurpation of a corporate opportunity is not clear, though perhaps the other principals did not care to pursue the opportunity. Another explanation would be that the nursing home business and the rest home business were sufficiently distinct to allay concerns that Burke's Rest Home would be competing with Springside Nursing Home.

Although the terminology of residence arrangements for elders has changed over the years, the basic functions have not. What used to be called a "rest home" might today be more commonly

day. *Id.* At that rate, the additional fees were going to cost the city of Pittsfield an additional \$5,000 per year for the public assistance cases being handled by the nursing home. *Id.*

189. See *Springside Considers New Nursing Home*, *supra* note 79, at 15; *Springside Nursing Homes Plans New \$560,000 Unit*, *supra* note 7, at 17.

190. See *Springside Nursing Homes Expand Service*, BERKSHIRE EAGLE, Nov. 29, 1963, at 10.

191. *Riche, Dr. Quinn to Buy Rest Home of Mrs. Burke*, BERKSHIRE EAGLE, Aug. 3, 1960, at 19. Eventually, Riche transferred his ownership interest, as by the time of the litigation that gave rise to the *Wilkes* case, the only shareholders in Burke's Rest Home were Dr. Quinn and his wife. See Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. II, 13, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976).

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referred to as an “assisted living facility.”¹⁹² In the half-century plus since Springside Nursing Home was established, the elder care industry has become increasingly sophisticated and professionalized. In 1960 when Dr. Quinn and Mr. Riche bought Burke’s Rest Home, the term “rest home” probably did not have a precise legal definition or a set of specific regulatory requirements that had to be met.¹⁹³ Today, rest homes in Massachusetts, which are also known as residential care facilities, are subject to a regulatory scheme,¹⁹⁴ but the gist of the operation is the provision of assistance with some activities of daily living, but not a fully staffed nursing or medical care operation.¹⁹⁵

Nursing homes, on the other hand, provide skilled nursing care on an ongoing basis to the residents, including such services as meals, medication management, rehabilitation, therapy, and social services.¹⁹⁶ Given the additional requirements of a nursing home, they are more expensive and more complicated to run than a rest home. This is true now and was true in 1960.

With the cast in place and the setting established, the plot in the drama began to thicken. Quinn and Riche had started their own side business and they hoped to add to it. The nursing home industry was becoming increasingly technical and the old building that started the whole business—the Hillcrest Property—was falling behind the times. The West Branch facility was in a prime location for expansion and development. As the mid-1960s approached, the actors were becoming increasingly aware that they were getting into the twilight of their lives.

In 1964, the shareholders explored the possibility of selling the business to a group of doctors. In explaining why they were inter-

192. See FROLIK, *supra* note 187, at 194 (“Although the term ‘assisted living’ is sometimes used in state laws, it is actually a marketing term that replaces such older terms as ‘board-and-care home,’ ‘rest home,’ ‘old-age home,’ and ‘personal-care home.’”).

193. The precise definition of the term “rest home” seems to have been open to interpretation in Massachusetts law. In the case of *Sherman v. Congregational Home Missionary Society*, the Supreme Judicial Court found a “rest home” to be a “place of rest for girls who are working for small wages, where they may go and board in the country at a low price.” *Sherman v. Congregational Home Missionary Soc.*, 57 N.E. 702, 702 (Mass. 1900). They found that the purpose of an “old ladies’ home” is “to provide a home for aged, homeless, and indigent women.” *Id.* Both rest homes and old ladies’ homes could be public charities. *Id.*

194. See 105 MASS. CODE REGS. 150.007 (1994).

195. See JEFFREY A. BLOOM & HARRY S. MARGOLIS, MASSACHUSETTS PRACTICE SERIES, VOLUME 56 ELDER LAW 293 (2010).

196. *Id.* at 295; FROLIK, *supra* note 187, at 311.

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ested in selling, Quinn's letter to the prospective purchasers noted that at "age sixty-one I would like to spend three or four months a year in Florida."¹⁹⁷ Quinn went on to note that:

As for my partners, Larry Connor is retired from the presidency of the Aggie Bank. He has just been through a serious illness and plans to travel extensively. Leon Riche has retired from the Berkshire Life and at sixty-nine wants no further responsibility. Stanley Wilkes has sold his real estate holdings at the Pittsfield Roofing Co. property on Wahconah Street to the General Linen Co. and is also Florida bound for part of the year.¹⁹⁸

Everyone involved in the business knew that things were changing and that Springside Nursing Home faced an inevitable transition. What they did not know was how that transition would unfold. Although it can be assumed that they hoped for the best, what they got was an unpleasant mess.

III. THE PLOT

At its peak, Springside Nursing Home, Inc. was one of the largest nursing home operations in the Commonwealth of Massachusetts. But nothing lasts forever, and in the mid-1960s the nursing home industry changed in response to the mandates of governmental programs and insurance company requirements. The somewhat casual era of the 1950s was gone. The time when one capable nurse, like Ms. Adeline Bourn, could run an entire nursing home was over as Medicare regulations imposed staffing and facilities requirements that required additional resources. In light of the new requirements for staffing and facilities, the Board of Directors of Springside Nursing Home, Inc. decided to spin off the Hillcrest Property and the Annex in order to focus on the nursing home operations at the West Branch.

In 1965, the shareholders decided to sell the Annex to Dr. Quinn so he could run a rest home on the property.¹⁹⁹ Quinn al-

197. Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. III, 9, *Wilkes v. Springside Nursing Home, Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976).

198. *Id.* at 10. Sadly, Dr. Pipkin, Dr. Quinn, and Mr. Connor would not outlive the litigation that was about to unfold. Mr. Wilkes lived six years beyond the date of the opinion, *see Wilkes Obituary, supra* note 8, at 17, and Mr. Riche beat all the odds and lived to the ripe old age of ninety-seven before he passed away in 1993. *See Riche Obituary, supra* note 88.

199. Master's Final Report at 14, *Wilkes* (Docket No. 251).

ready owned the Burke Rest Home, so he knew the business, and the Annex, while not suitable as a modern nursing home, was adequate as a rest home. The transaction made sense; the only question was the price. It appears that Connor and Riche wanted to essentially give the property to Quinn as a reward for a job well done as administrator of the Springside Nursing Home business.²⁰⁰ The way the deal was originally structured, it would have been basically a gift. The property was encumbered with a \$16,000 mortgage and Quinn proposed to buy it for \$12,000.²⁰¹

Wilkes did not agree with the others that Quinn should get a windfall, and he made his own offer to buy the property for \$25,000.²⁰² Riche and Connor, two old boys from the club, did not want to turn the process into an auction and they offered it to Quinn for the price Wilkes was willing to pay. Quinn balked, but eventually agreed to pay that price for the property.²⁰³ In fact, however, Quinn only paid off the \$16,000 mortgage and paid an additional \$2,250 to Stanley Wilkes for his share of the \$9,000 additional consideration that had been agreed to. As a favor to Quinn, and to help him out financially,²⁰⁴ the other principals did not receive any money from this transaction.²⁰⁵

200. See Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. I, 57, *Wilkes* (Docket No. 251) (quoting Quinn as saying “Leon and Larry had voluntarily agreed that they didn’t want to make or take any money from me”) (on file with author). William Simons confirmed that the sale of the Annex to Quinn was a payback for years of doing all the work for the same salary as the other principals. Interview with Hon. William Simons, *supra* note 108.

201. See Transcript of Direct Examination of Plaintiff in Testimony Before the Master at Vol. VI, Page 34, *Wilkes* (Docket No. 251).

202. *Id.*

203. *Id.* In the kind of shady scenario that Quinn often occupied, the deal among the principals was clearly that the Annex would be sold for \$25,000, yet the amount declared for purposes of the revenue stamps at the Registry of Deeds was only \$18,250, and the amount stated on the corporate income tax was \$16,000. Master’s Final Report at 15, *Wilkes* (Docket No. 251).

204. *Id.*

205. See Transcript of Direct Examination of Defendant T. Edward Quinn (as Hostile Witness) By Counsel for Plaintiff in Testimony Before the Master at Vol. II, Page 6, *Wilkes* (Docket No. 251) (quoting Quinn in a letter saying “Larry, Leon and myself got nothing [in cash from the transaction]”) (on file with author). Apparently everyone but Wilkes wanted Quinn to get the home, including Tom Carrington, President of the Berkshire County Saving Bank, which lent money to Quinn for the acquisition. See *id.* at Vol. II, 13 (quoting Quinn as saying “Tom Carrington, like Leon and Larry, wanted me to have the place”).

The opinion written in *Wilkes v. Springside Nursing Home, Inc.* by the Supreme Judicial Court,²⁰⁶ following the findings of the Master,²⁰⁷ cites the disagreement over the sale of the Annex property as the event which precipitated the falling out among the shareholders. While that event undoubtedly had a detrimental effect on their relationship, it neither initiated the animosity nor terminated the relationship. In 1966, the shareholders agreed to sell the Hillcrest Hospital property—the original location of the Springside Nursing Home—to Stanley Wilkes for a price of \$30,000.²⁰⁸ Apparently this sale was punctuated with acrimony. Quinn insisted that the property could not be used as a nursing home.²⁰⁹ Wilkes ended up operating the facility as a rest home.²¹⁰ With the Hillcrest Property and the Annex spun off to shareholders, after 1966 the only property owned by Springside Nursing Home was the West Branch facility on Lebanon Avenue.²¹¹

As the relationship among the shareholders deteriorated, Wilkes saw the writing on the wall and decided that he would seek a purchaser for his shares. In January of 1967, he offered his shares under the terms of the shareholders' agreement, saying he would sell at a value to be determined by an appraisal.²¹² By that time, the relationship between Wilkes and Quinn had been seriously impaired for "three or four years" during which time they "hardly were speaking."²¹³ The board of directors of Springside Nursing Home responded by voting in February of 1967 to set the salaries for the coming year, at which time they gave Quinn a retroactive raise of \$175 per week as of January 1, 1967, they kept the payments to Riche and Connor at \$100 per week, and they completely eliminated the payments to Wilkes.²¹⁴

206. *Wilkes*, 353 N.E.2d at 660.

207. Master's Final Report at 15, *Wilkes* (Docket No. 251).

208. *Id.* at 16.

209. *Id.*

210. *Rest Home for the Elderly Planned at 800 North Street*, BERKSHIRE EAGLE, July 26, 1966, at 11. At some point, Wilkes sold the Hillcrest Property that he had acquired in 1966. It was known as the Willow Manor Rest Home, and it ceased operations in 1982 when the owner could not make a financial return based on the existing reimbursement rates. Debra A. Harrington, *Willow Manor Rest Home Closing; Owner Blames State Welfare Rates*, BERKSHIRE EAGLE, Jan. 20, 1982, at 17.

211. Master's Final Report at 2, *Wilkes* (Docket No. 251).

212. *Id.* at 16.

213. Transcript of Examination of Defendant T. Edward Quinn By the Court in Testimony Before the Master at Vol. IV, 75, *Wilkes* (Docket No. 251).

214. Master's Final Report at 16-17, *Wilkes* (Docket No. 251). By the time of the litigation, with Wilkes squeezed out and Connor having passed away, Quinn was receiving \$300 per week and Riche was getting \$150. Transcript of Direct Examination of

At the annual meeting of the corporation held March 1967, Quinn, Riche, and Connor did not elect Wilkes to a seat on the board of directors, and they did not elect him to the Treasurer's role he had held since the beginning of the venture sixteen years earlier.²¹⁵ Wilkes learned of the meeting through a telephone call from Connor, who also conveyed the news that the other shareholders would be willing to buy his shares back for \$15,000.²¹⁶ When asked, Connor admitted he would not have sold his own shares for that price.²¹⁷

Wilkes was unable to attend these meetings as he was in the hospital recovering from a heart attack.²¹⁸ He was represented by his attorney, Santino Cornelio.²¹⁹ Even with assistance of counsel, however, the end result was that Wilkes was completely removed from any involvement in the business and stripped of any financial return. A letter from the corporation's lawyer drove home the point that his presence on Springside Nursing Home property was no longer welcome.²²⁰

Later in 1967, Attorney Cornelio brought suit on Wilkes's behalf in Superior Court alleging, among other things, fraud.²²¹ The

Defendant Leon Riche By Counsel for Plaintiff in Testimony Before the Master at Vol. V, 37, *Wilkes* (Docket No. 251).

215. Master's Final Report at 17, *Wilkes* (Docket No. 251).

216. Transcript of Direct Examination of Plaintiff in Testimony Before the Master at Vol. VI, 38, *Wilkes* (Docket No. 251).

217. *Id.*

218. *Id.* at 37-39.

219. *Id.* at 39. Attorney Cornelio established his practice in Pittsfield in 1942, so by the time he took on Wilkes as a client he was quite experienced. Later in his career he practiced law with his daughter, Imelda LaMountain. See *Santino C. Cornelio, 77, Longtime Pittsfield Lawyer*, BERKSHIRE EAGLE, Oct. 10, 1989, at B2.

220. Master's Final Report at 17, *Wilkes* (Docket No. 251). At this point, Quinn and the corporation were getting legal advice from Judge John Dwyer, a larger-than-life lawyer-cum-politician-cum-judge who had no trouble wearing all three hats at the same time. See *Judge Dwyer is Making the Tour*, *supra* note 4, at 1. Dwyer was a gregarious man who had a reputation from making witty remarks from the bench. *Id.* He was a Democratic political operator and made no bones about taking care of his friends, even if the Berkshire Eagle called it "cronism." *Id.* He held several political offices and ran several unsuccessful campaigns during the 1950s. See *Man Who Lost Battles But Won the War*, BERKSHIRE EAGLE, Jan. 7, 1961, at 13. Between 1961 when he was appointed to the bench by Gov. Furcolo and 1976 when he went on the bench full time, he also conducted a successful law practice in Pittsfield. *Judge Dwyer is Making the Tour*, *supra* note 4, at 1. Twice married, he was a bon vivant who loved travel and golf and even had a bit role in the movie "Alice's Restaurant," which was shot on location in Great Barrington. See *Judge John Dwyer Dies at 60*, *supra* note 116, at 17.

221. Master's Final Report at 19, *Wilkes* (Docket No. 251).

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case was dismissed without a determination.²²² The defendants had retained Attorney William Simons to handle the litigation.²²³ Attorney Simons would live to regret the dismissal of the matter without prejudice because he was not able to raise *res judicata* to preclude the subsequent action brought by Attorney Egan on Mr. Wilkes's behalf in 1971.²²⁴

Attorney Cornelio initiated the lawsuit before David Martel had even started law school. Martel was working as a newspaper reporter during the time between finishing college at Holy Cross and starting law school at Catholic University.²²⁵ He knew nothing of his uncle Stanley Wilkes's business or legal matters. In 1971, after Martel had started law school and was home on break, he saw his Uncle Stanley at a family gathering.²²⁶ As every law student quickly learns, the moment you enter law school every one of your relatives comes to believe you know all there is to know about every aspect of human activity having a legal dimension. Every family gathering becomes a legal clinic where relatives drill the baby lawyer with not-so-hypothetical questions about legal topics. So it was with Dave and his Uncle Stanley. Martel learned that Wilkes was upset about the way he was being treated by his "partners" and was not really happy with the way his lawyer in Pittsfield was handling the case. Martel suggested that his uncle get in touch with Mr. James F. Egan, an attorney in Springfield and the father of one of Martel's college classmates at Holy Cross.²²⁷

222. *Id.* ("The Superior court suit was dismissed without a determination.") (on file with author).

223. Interview with Hon. William Simons, *supra* note 108. William Simons is a native New Yorker and received his undergraduate and law degrees from New York University, in 1950 and 1954, respectively. *Id.* He served in the U.S. Army in Korea in 1946-47. *Id.* His legal career started with a firm in New York before moving to Pittsfield in 1960, where he was a partner in the firm of Simons & Cook. *Id.* He served as an Assistant District Attorney for the Western District Massachusetts from 1968-1973. *Id.* He was appointed an Associate Justice of the Massachusetts Superior Court in 1978 and served until 1993. *Id.* After retiring from the bench Judge Simons practiced with the firm of Simons, Smith & Gerrard in Pittsfield from 1994-2008. *Id.*

224. Second interview with Hon. William Simons (Aug. 12, 2010).

225. David Martel Speech, *supra* note 38.

226. *Id.*

227. David Martel described Attorney Egan as follows:

Mr. Egan, born in 1896, was 11 years older than Stanley Wilkes but in many ways was the same type of person: dignified, forceful, a believer in justice and the son of Irish immigrants who worked his way through Holy Cross and Harvard Law School and was one of the first Irish-Americans to break into the Anglo legal establishment in Springfield.

Id.

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Mr. Wilkes contacted Attorney Egan and they hit it off really well.²²⁸ Both sons of immigrants who had broken into the old boys' network, they both believed in giving the little guy a fair shot to the little guy to beat the old boys in a fair fight.²²⁹ Mr. Egan did not believe that Mr. Wilkes was being treated fairly and he wanted to do something about it.²³⁰ Knowing he was nearing the end of a successful career, Mr. Egan was increasingly interested in cases that "mattered" even if they were long shots or did not carry the promise of a big fee.²³¹

Although the parties had no way of knowing that the Supreme Judicial Court was soon going to decide the famous case of *Donahue v. Rodd Electrottype Co.*,²³² which recognized a fiduciary duty among the shareholders in a closely-held corporation similar to the duty among partners in a partnership, Attorney Egan was developing a theory along those lines on his own. He was building on a handful of old cases that had not been fully developed. Mr. Egan's theory was that the principals had in fact been partners at the outset of their venture and the duties of partnership attached at that time.²³³ In his view, the mere fact that they decided to carry out their partnership in the corporate form in order to limit liability should not have changed the duties owed.²³⁴ Some of the old cases he found provided support for that idea.²³⁵

It is fair to say that Egan's theory was not the way corporate lawyers in mid-twentieth century Massachusetts understood the law. The cases he relied on were somewhat obscure. The prevailing law and practice in Massachusetts did not ordinarily impose a duty of loyalty among the shareholders of a corporation, even in a

228. Attorney Martel described the initial meeting this way:

[A]fter their first meeting I recall Uncle Stanley's calling me at home in Washington. He was thrilled. He and Mr. Egan had talked for three hours; Mr. Egan had taken 18 pages of notes and said he would take the case. Uncle Stanley suddenly believed that there was hope for his cause. Mr. Egan was then in his mid-70's but threw himself into the case like a young associate.

Id.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Donahue v. Rodd Electrottype Co.*, 328 N.E.2d 505, 592-93 (Mass. 1975).

233. Brief for Appellant, Commonwealth of Massachusetts Supreme Judicial Court No. SJC 428, *Wilkes v. Springside Nursing Home, Inc.*, Appeal from Judgment Entered in the Berkshire County Probate Court, Nov. 26, 1975 at 21-25, *Wilkes v. Springside Nursing Home Inc.* (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976).

234. *Id.*

235. *See id.* at 31-39.

closely-held corporation. Mr. Egan and every other competent Massachusetts business lawyer knew as much. That is why Mr. Egan did not want this case heard in a court of law—he wanted it decided under principles of equity.

At the time Attorney Egan commenced his case on behalf of Stanley Wilkes in August of 1971, courts of law and equity in the Commonwealth had not yet been combined.²³⁶ The probate court had been given jurisdiction over matters in equity.²³⁷ In addition, the probate court had recently had its jurisdiction expanded to handle more civil cases in order to relieve some of the pressure on the superior court's docket.²³⁸ At the outset of the matter Attorney Egan requested, and was granted, a restraining order to prevent respondents from “destroying, concealing, changing any corporate records, books of account, etc. and to refrain from transferring or disposing any and all shares of stock in Springside Nursing Home.”²³⁹

The local Probate Judge, F. Anthony Hanlon, was not happy about the expanded jurisdiction because he already had a full docket of his own. As an expedient way to handle these unwanted civil matters, the probate court referred them to a Master instead of hearing the case in court.²⁴⁰ So, after Attorney Egan began the equitable proceedings by filing a bill in equity in August 1971, some limited discovery took place and defendants' demurrers were denied, Judge Hanlon referred the matter to a Master on September 18, 1972, with instructions that the hearings were to be completed before December 1, 1972. A motion to extend the time for hearing until December 31, 1972 was granted on November 21, 1972. The parties put on their cases and the Master took all the evidence under consideration.

The Master, L. George Reder, Esq., was a learned and well-respected attorney with a long and distinguished career in the Berk-

236. See *supra* note 3 and accompanying text.

237. MASS. GEN. LAWS ch. 215, § 6 (2008).

238. Interview with Hon. William Simons, *supra* note 108. The superior court docket was full of criminal cases. Because of the constitutional imperative to provide a speedy trial, civil cases pending in superior Court languished for years. To help remedy this problem, the legislature gave jurisdiction to probate court to hear civil cases. *Id.*

239. See Docket Entries in the Bill of Complaint of Stanley J. Wilkes, Wilkes v. Springside Nursing Home Inc. (Mass. Prob. Ct. June 9, 1975) (Docket No. 251), *rev'd*, 353 N.E.2d 657 (Mass. 1976).

240. Interview with Hon. William Simons, *supra* note 108.

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shire County Bar.²⁴¹ The Master conducted hearings and heard from multiple parties. It took a long time. Attorney Egan for the Plaintiff took pains to develop evidence about the unfair and unequal treatment suffered by his client at the hands of his fellow shareholders. He figured he would probably lose at trial, but wanted a strong record that could support his fiduciary duty theory on appeal.²⁴² William Simons had the law on his side—there was no free-floating fiduciary duty among the shareholders in a Massachusetts corporation, not even a closely held corporation. Nevertheless, Simons felt he ought to provide some evidence to counter the theory Egan was developing. When Simons took time in the hearing to develop that evidence, however, the Master grew impatient, suggesting that it would be a waste of time.²⁴³ The message from the Master to Simons was clear: there was no need to go into

241. L. George Reder's career in Pittsfield city government, the community, and the bar was long and distinguished. *L. George Reder, 80, Attorney for 57 Years*, BERKSHIRE EAGLE, Aug. 7, 2001, at B2. He was well-educated, long-experienced, and highly regarded. *Id.* Attorney Reder's family moved to Pittsfield when he was a boy because his father and his uncle owned the Model Dairy, a leading distributor of milk and ice cream in Berkshire County. *The City's Lawyers*, BERKSHIRE EAGLE, Dec. 29, 1973, at 13 (on file with author). Reder took his undergraduate degree in animal husbandry before heading off to Harvard Law School, where he was a member of the Law Review. *Id.* He eventually came home to Pittsfield and practiced law. *Law Partnership is Formed*, BERKSHIRE EAGLE, Apr. 1, 1961, at 14 (on file with author). He was associated with other lawyers at various times, see *Two Cousins Form Law Firm*, BERKSHIRE EAGLE, Nov. 18, 1961, at 15 (noting partnership with his cousin, Edwin Reder); *Law Partnership is Formed, supra*, at 14 (noting the association of Reder and Attorney Kearons Whalen III) (on file with author), and served as Assistant City Solicitor and as City Solicitor, *Crimmin Resigns as Solicitor; George Reder to Succeed Him*, BERKSHIRE EAGLE, Sept. 11, 1975, at 17 (on file with author). Attorney Reder was very active in community organizations, earning one of the highest honors for adult leaders in the Boy Scouts, *L.G. Reder, Orville DeRose Receive Silver Beaver Award*, BERKSHIRE EAGLE, Nov. 17, 1961, at 17 (on file with author), being named "Man of the Year" by the Jewish Community Council, *Atty. George Reder Named "Man of the Year" at Annual Jewish Community Dinner*, BERKSHIRE EAGLE, June 3, 1971, at 15, and otherwise being involved in activities such as the Masons and United Community Services, see *L. George Reder, 80, Attorney for 57 Years, supra*, at B2. As an aside, Reder's Assistant Solicitor was a young anti-poverty lawyer named Francis X. Spina, *Crimmin Resigns as Solicitor; George Reder to Succeed Him, supra*, at 17 who would eventually ascend to the Supreme Judicial Court and would deliver the keynote address at the conference for which this article was prepared. As an aside to the aside, when Attorney Spina was living in Pittsfield he owned a home on Whitehead Place and his next door neighbor was none other than Stanley J. Wilkes. Interview with Hon. Francis X. Spina, in Springfield, MA (Oct. 15, 2010).

242. John "Jack" Egan, Comments at Western New England College School of Law Symposium: Fiduciary Duties in the Closely-Held Firm 35 Years After *Wilkes v. Springside Nursing Home, Inc.* (Oct. 15, 2010), <http://www1.law.wnec.edu/lawandbusiness/index.cfm?selection=doc.8185>.

243. Interview with Hon. William Simons, *supra* note 108.

Wilkes's fair and equal treatment because the law allowed the other shareholders to freeze Wilkes out.

After the Master finished gathering evidence, almost an entire year passed before he filed his final report, on November 13, 1973.²⁴⁴ After that, it took another six months before the probate court entertained a motion to confirm the report. On June 11, 1974, a motion to confirm the Master's report was filed and an order was entered confirming the Master's report six months after that, on December 12, 1974.²⁴⁵ On December 31, 1974, Wilkes filed a notice of appeal. Wilkes needed a final order from the Probate Court before he could appeal, so, eventually, the probate court issued a judgment on the findings by the Master six months later, on June 9, 1975.²⁴⁶ At that time the court also refused to extend the restraining order that had been issued at the beginning of the proceedings.²⁴⁷ On June 17, 1975, Wilkes filed a notice of Appeal from the final judgment.²⁴⁸

With the restraining order that had been put in place in 1971 finally lifted, the owners of Springside Nursing Home, Inc. (or, more accurately, their legal representatives) wasted no time in getting out of the business. They sold the operation to Charles M. Daley of Braintree in September 1975 for approximately \$125,000.²⁴⁹

244. Docket Entries in the Bill of Complaint of Stanley J. Wilkes, *Wilkes* (Docket No. 251).

245. See Application for Direct Appellate Review at 2-3, *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657 (Mass. 1976) (No. A.C.-75-735) (on file with author).

246. Application for Direct Appellate Review at 2-3, *Wilkes*, 353 N.E.2d 657 (No. A.C.-75-735).

247. Sheet, *Wilkes* (Docket No. 251).

248. Why everything took so long is hard to say, but it might be laid at the feet of the probate court Judge, Andrea Nuciforo. Judge Nuciforo cared about family law and about child welfare a great deal, but some members of the bar suggested that he was not all that interested in the non-family law equitable matters that came before his court, or worse, that he did not have the "depth" to handle those matters. See *The "Nuciforo Court" Changes Come in Handling of Wills, Divorces*, BERKSHIRE EAGLE, May 12, 1975, at 1, 16. On the other hand, some lawyers said that when he encountered something new he hit the books until he mastered it. *Id.* By his own admission, however, he found it difficult to keep up with the equity reports and wished the equity functions could be separated out from the probate functions and heard by a separate judge. *Id.* Ironically, prior to being appointed to the bench, when Nuciforo served as a state senator he played an important role in extending equity jurisdiction to the probate courts. *Id.*

249. *Springside Nursing Home Bought by Braintree Man*, BERKSHIRE EAGLE, Sept. 19, 1975, at 15.

While the litigation was proceeding, the Springside Nursing Home encountered a few setbacks. Tragically, in 1971, a resident at the nursing home died from severe burns which resulted from his clothing igniting as he was smoking his pipe.²⁵⁰ That incident led to litigation.²⁵¹ The nursing home was also the subject of an action by the federal government to recover overpayments for Medicare billings made during 1967 and 1968.²⁵²

During the pendency of the shareholder litigation there were also many changes among the circle of people who were connected in one way or another with Springside Nursing Home. On September 2, 1974, Dr. Quinn passed away.²⁵³ Mr. Connor had passed away before the second lawsuit, on November 29, 1970, and his wife followed shortly thereafter, on May 23, 1971.²⁵⁴ Many of the supporting players in the drama also died before the lawsuit or while it was pending: Dr. Pipkin passed away on July 20, 1968, Attorney Aaronson died on July 26, 1965, Ruth Riche breathed her last on August 3, 1968, and Attorney Rudolph Lewis died June 30, 1973.²⁵⁵

The matter took a very long time to resolve. By the time the probate court issued its final judgment, Wilkes had been cut off from the Springside Nursing Home for over eight years. William Simons compared the glacial pace of the matter to the case of Jarndyce and Jarndyce in Dickens' novel *Bleak House*.²⁵⁶

In the meantime, while the case was still in the probate court's jurisdiction, David Martel finished his legal studies and began his legal career practicing with a firm in New York City. In 1974, Martel moved to Springfield, Massachusetts to practice law.²⁵⁷ As he was getting his bearings in his new surroundings, Mr. Egan asked him to help with the *Wilkes* case.

It was a big break for a young lawyer. Attorney Martel wrote the brief for his Uncle Stanley's appeal.²⁵⁸ He also argued the case

250. *Smoker's Clothing Ignites; Resulting Burns Are Fatal*, BERKSHIRE EAGLE, June 1, 1971, at 14.

251. *Nursing Home Fire Leads to \$250,000 Suit*, BERKSHIRE EAGLE, July 6, 1973, at 12.

252. *U.S. Seeking Funds from Nursing Home*, BERKSHIRE EAGLE, Dec. 26, 1974, at 25.

253. *Quinn Obituary*, *supra* note 29, at 19.

254. *Connor Obituary*, *supra* note 126, at 22 ; *see also Mrs. Laurence Connor*, *supra* note 142.

255. *See supra* notes 102, 106, 114, and 165.

256. Interview with Hon. William Simons, *supra* note 108.

257. David Martel Speech, *supra* note 38.

258. *Id.*

at the Supreme Judicial Court.²⁵⁹ In his appeal, Attorney Martel had the advantage of the Master's report, which, although it found for defendants, carefully laid out the entire factual case that Attorney Egan had developed detailing all the unfairness of Mr. Wilkes's treatment at the hands of his fellow shareholders.²⁶⁰ The other big advantage Martel had was the recently decided case of *Donahue v. Rodd Electrottype Co.*,²⁶¹ which was handed down in May of 1975, just a month before the Berkshire County Probate Court issued its final judgment in Stanley Wilkes's lawsuit against his fellow shareholders in Springside Nursing Home, Inc.

The *Donahue* case was truly a landmark and caused reverberations across the country. The gist of the case can be summed up in a paragraph:

Because of the fundamental resemblance of the close corporation to the partnership, the trust and confidence which are essential to this scale and manner of enterprise, and the inherent danger to minority interests in the close corporation, we hold that stockholders in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another. In our previous decisions, we have defined the standard of duty owed by partners to one another as the "utmost good faith and loyalty."²⁶²

While *Donahue* held that shareholders in closely held corporations must treat each other more or less equally, it did not provide much guidance for when the rule of equal treatment could yield to a right of selfish ownership. Indeed, Justice Wilkins offered a short concurring opinion to *Donahue* in which he suggested the "analogy to partnerships may not be a complete one," especially as it related to salaries and dividend policy,²⁶³ which was exactly the issue raised by *Wilkes*.

Attorney Martel was able to include an analysis of the *Donahue* case in his brief supporting the appeal of the *Wilkes* case.²⁶⁴ While the appeal was pending with the appeals court, Attorneys

259. *Id.*

260. *Id.*

261. *Donahue v. Rodd Electrottype Co.*, 328 N.E.2d 505, 521 (Mass. 1975).

262. *Id.* at 515 (citations omitted).

263. *Id.* at 521.

264. Brief for Appellant, Commonwealth of Massachusetts Supreme Judicial Court No. SJC 428, *Wilkes v. Springside Nursing Home, Inc.*, Appeal from Judgment Entered in the Berkshire county Probate Court, Nov. 26, 1975 at 39-45, *Wilkes v. Springside Nursing Home Inc.* (Mass. Prob. Ct. June 9, 1975), *rev'd*, 353 N.E.2d 657 (Mass. 1976).

Martel and Egan applied for direct review to the Supreme Judicial Court, which was granted.²⁶⁵ The court was clearly interested in fleshing out the *Donahue* doctrine, but, contrary to popular belief, the *Wilkes* case was not something that the Supreme Judicial Court “reached down and took up” on their own initiative.

Nevertheless, the Supreme Judicial Court did seem eager to finally resolve the matter. Judge Simons believes the timing played a big part in how the appeals court handled the *Wilkes* case.²⁶⁶ By the time it made it to the Supreme Judicial Court, so many of the people involved in the case had died and Wilkes had been off the payroll for almost nine years. The case was so old the court could not plausibly send it back for more hearings on the underlying liability, but had to take the findings of the Master as the operative facts. The Master’s earlier impatience with Simons’s attempt to counter Attorney Egan’s theory of the case now loomed in significance.²⁶⁷

Another point bears mentioning here about how the world works and how judicial decisions are made. Judge Simons believes that in the end, Dr. Quinn’s shady background came back to haunt him one last time.²⁶⁸ One of the justices on the Supreme Judicial Court was Francis Quirico, a native of Pittsfield. According to Simons, Justice Quirico knew about Ted Quinn and his unsavory record and political scandals and found him disreputable.²⁶⁹ Quinn’s behavior was in stark contrast to the justice’s own demeanor, which Simons describes as “a straight arrow who could not understand, fathom or forgive anyone who did a bad thing.”²⁷⁰ Simons thinks Justice Quirico may have been disposed to impose justice on Ted Quinn for past wrongs.

CONCLUSION

One does not have to provide a “spoiler alert” before saying that in the end, Stanley Wilkes won his case. The duty that the court recognized in *Donahue* meant that the other shareholders could act in their own self-interest at the expense of the minority, but only if that action could survive scrutiny under a three part test. The essence of the holding can be stated as:

265. *Id.* at 8.

266. Interview with Hon. William Simons, *supra* note 108.

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.*

[W]hen minority stockholders in a close corporation bring suit against the majority alleging a breach of the strict good faith duty owed to them by the majority . . . [i]t must be asked whether the controlling group can demonstrate a legitimate business purpose for its action. . . .

When an asserted business purpose for their action is advanced by the majority, however, we think it is open to minority stockholders to demonstrate that the same legitimate objective could have been achieved through an alternative course of action less harmful to the minority's interest. If called on to settle a dispute, our courts must weigh the legitimate business purpose, if any, against the practicability of a less harmful alternative.²⁷¹

Applying that test to the facts reported by the Master, the court concluded:

It is an inescapable conclusion from all the evidence that the action of the majority stockholders here was a designed "freeze out" for which no legitimate business purpose has been suggested. Furthermore, we may infer that a design to pressure Wilkes into selling his shares to the corporation at a price below their value well may have been at the heart of the majority's plan.²⁷²

The Supreme Judicial Court remanded the matter to the Probate Court of Berkshire County concerning the issue of Mr. Wilkes's damages. The Supreme Judicial Court sought to provide some guidance on the matter, noting that the corporation had been dissolved during the pendency of the litigation, but that "any remaining corporate funds . . . may be diverted to satisfy Wilkes's claim," with the balance of the damages coming ratably from the other shareholders "according to the inequitable enrichment of each" from denying Wilkes the salary he would have received had he remained an officer and director of Springside.²⁷³

Before the matter went before the probate court for a determination, however, the parties negotiated a settlement. Wilkes's demand was for approximately \$35,000, and eventually the defendants met that demand.²⁷⁴ Judge Simons could not remember if Wilkes ever actually collected anything, though he was fairly certain that

271. *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 663 (Mass. 1976) (citations omitted).

272. *Id.* at 664.

273. *Id.* at 664-65.

274. David Martel Speech, *supra* note 38.

Ted Quinn's estate never paid anything to Mr. Wilkes.²⁷⁵ In David Martel's retelling of the story, it seems that what Wilkes really wanted was justification more than remuneration and the outcome did provide him with that satisfaction.

In the end, this case, like many, if not most, was more about human relationships and abstract concepts like fairness and respect than it was about legal rights. Ultimately, the decision provided another doctrinal block in the edifice of modern corporate law, but as far as the actual litigants were concerned it was more a matter of setting a wrong right than establishing a legal precedent. As David Martel remembers, the last two surviving principals, Wilkes and Riche, when all was said and done just asked themselves, "how did it ever come to this?"²⁷⁶

The case lives on, and the other articles in this symposium are evidence that there is a rich vein of material still left to mine even thirty-five years after the decision. As David Martel noted, the fact that legal scholars from across the country would gather to talk about the matter in 2010 would have been amazing to Mr. Wilkes, who was, after all, only looking to be treated fairly.²⁷⁷

275. Interview with Hon. William Simons, *supra* note 108.

276. David Martel Speech, *supra* note 38.

277. *Id.*



Stanley John Wilkes



Hubert Alexander Pipkin



Thaddeus Edward Quinn



Laurence R. Connor



Leon L. Riche



Hillcrest Hospital



Springside Nursing Home

