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Mary Kay heirs at odds over trust funds

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(Dallas Morning News, The (KRT) Via Thomson Dialog NewsEdge) Nov. 6--COLLEGE STATION -- Nearly five years after the death of cosmetics mogul Mary Kay Ash, a fierce battle has erupted between two of her heirs over the management of her multimillion-dollar fortune.

Kathlyn Kerr, one of Ms. Ash's granddaughters, is suing one of her uncles, Richard Rogers, and Bank of America, seeking to remove them as trustees of the family trust funds.

Mrs. Kerr, 51, accuses her uncle of imprudent management, self-dealing, failing to diversify the trusts' assets and other misdeeds.

In a legal filing, Mr. Rogers, 63, denied the lawsuit's allegations. He declined to be interviewed, but his spokesman, David Margulies, said: "This lawsuit is about one thing and one thing only -- Mrs. Kerr wants more money. Her lawsuit is about jealousy, self-pity and an overblown sense of entitlement."

Mr. Rogers co-founded Mary Kay Inc. with his mother in 1963 and now serves as executive chairman of the Addison-based company.

"My goal here is not to hurt anyone," said Mrs. Kerr, a homemaker and mother of three who resides in College Station. "It's not about greed. It's about right and wrong. My grandmother would want me to do what is best for my family. I know that with all my heart."

The legal battle is about the family's inheritance and doesn't affect Mary Kay, the family-owned direct seller that earned a record \$2.2 billion in sales last year. But the dispute contrasts sharply with the legacy left behind by the family's legendary matriarch, known worldwide not just for her marketing savvy but also for practicing the Golden Rule.

When Ms. Ash died at the age of 83, she left behind a fortune worth nearly \$98 million, about two-thirds of which was in shares of Mary Kay stock. Before her death, she had appointed Mr. Rogers as sole trustee of her testamentary trust, whose assets were to be divided among her children and their descendants. That trust has not yet been distributed to the heirs.

But in 1968 and 1975, Ms. Ash also set up two trusts for her only daughter, Marylyn, and her five children, including Mrs. Kerr. Mr. Rogers and Republic National Bank of Dallas, which was later succeeded by Bank of America, were named co-trustees.

Mrs. Kerr wants a disinterested corporate trustee to replace Mr. Rogers and Bank of America.

Bank of America denies wrongdoing. "We believe this lawsuit to be without merit and will vigorously defend ourselves against these allegations. We have diligently discharged our fiduciary duties in keeping with the trust agreements and all applicable statutes, and we will continue to do so as we remain in our role as trustee of these trusts," it said in a statement.

Today Mrs. Kerr and her family live off distributions from the two trusts of about \$350,000 a year.

In addition to a monthly allowance, Mrs. Kerr receives payments for unusual expenses and taxes. The trust fund pays for her children's education. Altogether, she's collected more than \$2 million from the trusts since 2001.

But Mrs. Kerr's lawsuit alleges that she should be getting much more money. It says that the total value of her shares in the three trusts exceeds \$100 million. It describes her annual distribution as relatively modest, "representing less than one-half of 1 percent of the value of the trusts."

"It's a very difficult decision to have to make," Mrs. Kerr said when asked why she chose to sue her uncle. "I grieved over it for months and months. Yet I have a responsibility. I don't want to leave these complicated trust issues to my children to deal with. I want them resolved now."

A private woman, Mrs. Kerr refused to be photographed for this story. She has not sought publicity for her lawsuit and only agreed to answer questions after The Dallas Morning News discovered the court documents.

Mrs. Kerr's four sisters have not joined her in the lawsuit.

"My sisters and I have very little knowledge of what's going on," said Rosslyn Alexander, Mrs. Kerr's older sister.

She referred questions to Dayna Manning, another sister, but Mrs. Manning did not return telephone calls seeking comment.

Born in Pasadena, Mrs. Kerr is Marylyn's second daughter. Her parents divorced when she was 2 years old, and she's never seen her father since.

At age 18, she got married after graduating from high school and had a daughter, Tiffany. The marriage didn't last.

But Mrs. Kerr remarried and had two more children. One of her sons, Jonathon, became a successful motocross racer, winning a roomful of trophies. For 13 years, Mrs. Kerr and her husband, James, traveled to races around the country with him.

Her family has endured its share of challenges. Tiffany was the victim of a crime and has had significant medical expenses. James suffers the effects of a surgery that went awry and lacks health insurance due to his medical problems.

"Family means everything to me," Mrs. Kerr said. "My children are my life."

The living room of her home features a painting of Ms. Ash in a pink dress. And Mrs. Kerr proudly shows off a photograph of Ms. Ash posing next to a Triumph motorcycle. Ms. Ash signed the photo and gave it to Jonathon.

Mrs. Kerr said she didn't spend a lot of time with her grandmother, but "the moments that we spent were amazing."

She fondly recalls rubbing her grandmother's feet, cooking for her and buying her a new poodle to replace one that had died. One year, Mrs. Kerr and her sisters attended a wedding at Lake Tahoe with their grandmother. During the trip, they stopped by a casino, where Ms. Ash played the nickel slot machines.

"She told me to always be kind and gracious to everyone I meet," she said. "I try to follow her footsteps."

After Marylyn died suddenly of pneumonia in 1991, Mrs. Kerr said she and her sisters saw more of their grandmother. "She made time to spend with us," she said.

But in 2002, not long after Ms. Ash's death, Mrs. Kerr said she was called to Dallas and told that her 1968 trust was running out of money. She was asked to curtail her spending by a third and submit a budget, she said.

Mr. Margulies, Mr. Rogers' spokesman, said he doesn't think this is an accurate portrayal of the meeting. In 2003, the company began paying dividends on Mary Kay stock, and the income from her trusts increased, he said.

"What exactly does she have to complain about?" he asked. "She has never not been paid. Most people would gladly trade lifestyles with her."

Mrs. Kerr said the meeting led her to question the way the trusts were being managed. After hiring an attorney, she says she learned details about the trusts that she never knew. She filed the suit last year, and it's making its way through the courts.

Mrs. Kerr wondered why the trusts were so heavily invested in Mary Kay stock without any effort to diversify their holdings, and why

the funds generated so little income. She is now seeking a court order that would allow her to sell her Mary Kay stock. The most likely buyers would be the trusts or the company.

Mr. Margulies said the growth and success of Mary Kay has made it a very conservative and prudent investment for the trusts. The company's stock has outperformed the overall stock market, he said. In addition, he noted that as the trusts' dividend income accumulates, its investments are being diversified.

"Mary Kay Ash never intended for her grandchildren to become 'trust fund babies' and did not create the trusts with a requirement that they distribute any specific amount of money each year," he said.

Before Mary Kay went private in a 1985 leveraged buyout, the two trusts set up for Marylyn's children held voting shares in the company. After the buyout, those shares were converted to nonvoting, preferred stock, which Mrs. Kerr alleges devalued the trusts' assets. Mr. Rogers and Ms. Ash received the only voting stock in the company, according to the lawsuit.

The switch placed Mr. Rogers' "paramount obligations and duties as trustee in direct and severe conflict with his individual interests," the lawsuit states.

Mr. Margulies said that Mrs. Kerr agreed to the terms of the leveraged buyout and received the nonvoting stock in exchange for guarantees of additional financial protection.

But Mrs. Kerr's attorneys said their client simply did what her uncle wanted her to do at the time and did not obtain any independent advice. Her agreement had nothing to do with obtaining the additional financial protection, they said.

In the lawsuit, Mrs. Kerr also accuses her uncle of self-dealing. In particular, she alleges that Mr. Rogers didn't invest the trusts in a number of financial entities that were collectively called Richmond. These entities were designed to diversify Mr. Rogers' immediate family's wealth, the lawsuit says.

In a legal filing, Mr. Rogers said he has no interest in many of the Richmond entities.

"The Richmond investments involved a much higher degree of risk and were not suitable for the trusts," Mr. Margulies said.

Mr. Margulies would not discuss his client's relationship with his niece, except to say that there was no hostility between them before the lawsuit. Mrs. Kerr said that when her grandmother was alive, she usually saw her uncle at family gatherings during Thanksgiving.

Mrs. Kerr said that throughout the years she wrote letters to Mr. Rogers, telling him about her family. She said he never wrote back, a point that his spokesman disputes. The last time she saw Mr. Rogers was at her grandmother's funeral.

"Richard, my uncle, was my hero for many years," she said. "I'm very proud of what he and grandmother accomplished together."

Until her lawsuit, Mrs. Kerr said that she never questioned her uncle's management of the trusts.

"Grandmother believed in him so much," she said. "Everyone in the family is afraid of him."

Though Mrs. Kerr said she never had any arguments with her uncle, she recalled an unpleasant telephone call from him. Shortly before her grandmother's death, she and her sisters were taking turns staying with Ms. Ash because her health was failing.

When Mr. Rogers found out, Mrs. Kerr said, he called her and told her to leave. Mrs. Kerr also testified about that phone call in a deposition.

When asked about the incident, Mr. Margulies said, "We are not going to ask the Rogers' family to relive Mary Kay's death. The fact that Mrs. Kerr would even bring up the subject is disheartening."

Since Mrs. Kerr filed her lawsuit, she and other family members have been invited to two annual meetings where they could ask questions about the management of the trusts.

Mrs. Kerr did not attend because her lawyer was not allowed to accompany her to the meetings, she said.

The chief accusation in Mrs. Kerr's lawsuit -- breach of fiduciary duty, or acting inappropriately in managing an estate -- is a pretty common complaint, said Michael Wald, an estate planning attorney in Richardson.

It's relatively uncommon for trustees to be removed because most of them are banks or trust companies that know how to manage trusts properly, he said.

But in other cases, trustees who are family members have run a higher risk of being removed, he said.

This isn't the first time that Mr. Rogers has been sued. In 2003, John Rochon, a former Mary Kay chief executive, accused Mr. Rogers of taking money from a joint venture that Mr. Rochon and another former executive had set up with the company.

The lawsuit sought more than \$50 million from Mary Kay and Mr. Rogers. It was settled but not before the company had filed a counterclaim against Mr. Rochon and others.

These days, Mrs. Kerr finds solace in art. She's turned a small room in her house into an art studio where she makes decorative items using mosaics and stained glass.

"I am standing alone right now," she said. "I'm fighting the battle myself. It's stressful and it's scary and it makes me cry. But I don't think I could live with myself if I don't question these things."

But Mr. Margulies sees his client as the victim. "What exactly more does she want the man to do that hasn't been done?" he asked. "She ought to be applauding and saying, 'Thank you, Uncle Richard.' "

THE LIFE AND TIMES OF MARY KAY ASH:

- 1918: Born Mary Kathlyn Wagner in Hot Wells, Texas.
- 1935: Marries Houston radio personality Ben Rogers.
- 1963: Co-founds Mary Kay Cosmetics with son Richard Rogers.
- 1966: Marries Mel Ash, a Dallas sales representative.
- 1968: Creates Marylyn Yvonne Reed Family Trust. Company goes public on the OTC market.
- 1969: First pink Cadillacs are awarded.
- 1971: Company opens first international subsidiary in Australia.
- 1974: Company moves annual seminar to the Dallas Convention Center.
- 1975: Creates Marylyn Yvonne Reed 1975 Trust.
- 1976: Company's stock listing moves to the New York Stock Exchange.
- 1979: A Mary Kay beauty consultant passes the \$1 million mark in commissions.
- 1980: Mel Ash dies of cancer.
- 1981: Ms. Ash publishes her autobiography, which becomes a bestseller.
- 1984: Publishes On People Management, another bestseller.
- 1985: Company goes private in a leveraged buyout.
- 1987: Ms. Ash retires as chairman emeritus. Richard Rogers becomes chairman.
- 1991: Marylyn Theard, Ms. Ash's daughter, dies of pneumonia.
- 1993: Creates testamentary trust in her will.
- 1995: Company moves to its Addison headquarters. Publishes her third book (left), another bestseller.

- 1996: Establishes Mary Kay Ash Charitable Foundation. Sales surpass \$1 billion. Ms. Ash suffers a stroke.
- 2001: Richard Rogers becomes CEO again. Mary Kay Ash dies at age 83.
- 2005: Kathlyn Kerr, one of Ms. Ash's granddaughters, sues Richard Rogers.
- 2006: David Holl is named Mary Kay CEO, succeeding Richard Rogers, who remains executive chairman.

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 2 Trap Falls Road Suite 106, Shelton, CT 06484
USA

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