Recent Cases of Interest to Fiduciaries

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The California Court of Appeals applied the well-established principle that a trustee of a revocable trust only owes duties to the settlor so long as the settlor is living and competent, and as a result reverses a $5 million surcharge award against the trustee who facilitated the settlor’s $4 million dollar investment in the trustee’s failed company. The court also reversed the lower court’s application of the doctrine of election as a bar to a window’s community property claims where she had accepted trust distributions after the settlor’s death.

In 2002, Bill Giraldin established a revocable family trust naming one of his sons, Tim, as trustee. The trust provided for the distribution of net income and discretionary principal to Bill during his lifetime, and thereafter for the creation of a trust for the benefit of Bill’s wife, with the remainder passing at her death equally to their nine children. Bill reserved the right to revoke or amend the trust in writing. Bill also executed a will leaving his separate property and his share of all community property to his trust, with Tim as executor.

Thereafter, Bill invested $4 million in Tim’s company, SafeTzone, through payments to the company from February of 2002 through May of 2003. After the final payment, the company issued stock to Bill that he then transferred to his trust. At the time of Bill’s death in 2005, the trust’s interest in the company was essentially worthless. Four of Bill’s children sued Tim as trustee for breach trust, and Mary petitioned to confirm her community interest in two homes and all of the remaining trust as sets. The children objected to Mary’s petition arguing that all of the assets were in the trust, and because she accepted trust distributions she could not disavow the trust by claiming a community property interest.

The probate court held that Tim breached his duties as trustee by (1) directing the transfer of trust assets to the company to serve his own interests and (2) failing to preserve trust assets and consider the interests of the remainder beneficiaries when making investments. The court also found that Bill lacked the mental capacity to approve the investment in the company and that the transaction documents signed by Bill did not amount to a direction by Bill to make the investment. The probate court surcharged Tim in the amount of $4,376,044 for the investment in the company and another $625,619 for the other trust disbursements.

The probate court also rejected Mary’s petition on the grounds that the doctrine of spousal election applied to the trust, and by accepting benefits from the trust she lost her right to pursue community property rights. Tim and Mary both appealed.

On appeal, the California Court of Appeal of California reversed the surcharge against Tim on the grounds that: (1) Tim only owed duties to Bill during his lifetime and therefore the children lacked standing; (2) remainder beneficiaries have no enforceable property rights in a revocable trust until it becomes irrevocable; (3) the death of the settlor does not grant the remainder beneficiaries retroactive rights; (4) the children could not enforce any duties owed to Bill because the only beneficiary under the will was the family trust and the claims were not for Bill’s benefit since Bill authorized the transaction; (5) Bill retained his rights to the trust since he was not adjudicated to be legally incompetent and did not restrict his own rights by making the trust irrevocable, and that included the right to do “financially risky or downright stupid things”; and (6) by acting as trustee, Tim had not agreed to act as a de facto conservator.

The court also reversed the decision dismissing Mary’s claims on the grounds that: (1) Bill only transferred his community share of property to the trust; (2) Mary’s share was
never made subject to the trust; (3) there was no inconsistency between Mary’s claim and her acceptance of trust benefits; and (4) the probate court erred by holding Mary was forced to elect between her claim and the trust benefits.


The Georgia federal district court refused to hear beneficiary claims against a trustee for breach of duty, improper investments, and federal and state racketeering, even though some beneficiaries resided in Georgia. The court rejected the claims because the claims sounded primarily in tort and were *quasi in rem*, and the trust corpus was located and managed in Wisconsin and not Georgia.

Trust beneficiaries sued the trustee in a Georgia federal district court seeking an accounting. Before the trustee answered the suit, the beneficiaries amended their complaint to add claims of legal malpractice, breach of fiduciary duty, negligent misrepresentation, negligence, fraudulent misrepresentation, conversion, breach of contract, breach of (1) the Wisconsin Uniform Prudent Investor Act, (2) the California Uniform Management of Institutional Funds Act (“UMIFA”), (3) the California probate code, (4) the Colorado UMIFA, and (5) the Georgia prudent investor rule, and federal and Georgia, Florida, California, and Colorado racketeering.

The trustee filed an accounting action in Wisconsin state court and moved to dismiss the federal complaint for lack of subject matter jurisdiction or personal jurisdiction, and improper service. The trustee argued that the action was *quasi in rem* and because the trust assets were not physically in Georgia, the Georgia federal court had no power over the *res* and therefore could not hear the case.

Relying on *Princess Lida of Thurn and Taxis v. Thompson*, 305 U.S. 456 (1939), the George federal court held that it lacked jurisdiction in the case because: (1) the trust mismanagement claims sounded primarily in tort were *quasi in rem*; (2) the trust corpus did not reside in Georgia; (3) the trust was managed in Wisconsin; and (4) the only connection to Georgia was the residence of some beneficiaries in Georgia. The court rejected the beneficiaries reliance on *Marshall v. Marshall*, 547 U.S. 293 (2006) as being inapposite, and noted that there is not a “trust exception” similar to the probate exception or the domestic relations exception to abstain as a matter of course.


The Utah Court of Appeals affirms the trial court’s invalidation of a trust amendment where the amendment did not comply with the trust terms for a valid amendment. A beneficiary who was removed by the amendment was allowed to bring the challenge to the amendment after the statute of limitations had run by application of the discovery rule that tolled the running of the statute, since the beneficiary had no reason to suspect she was a beneficiary or that she was removed by the amendment, and did not receive any notice of the amendment. The court also refused to reform the trust to carry out the terms of the amendment because the settlor know how to validly amend his trust but failed to comply with the requirements, and there was no evidence of a mutual mistake or fraud justifying amendment.

Analisa Bowen brought a suit seeking to invalidate a 2001 amendment to the Bruce J. Bowen Irrevocable Trust that removed Analisa and her brother as trust beneficiaries. The trial court applied the “discovery rule” and held that the statute of limitations had
been tolled and her claims were therefore not brought outside the limitation period. Without application of the discovery rule, Analisa’s claim would be barred by the four year limitations period, because the claim accrued either when the amendment was executed or sometime after the settlor died on May 18, 2002. The trial court agreed with Analisa’s claim and invalidated the trust amendment for not complying with the trust terms for a valid amendment, notwithstanding that the court found that the settlor did intend to disinherit Analisa and her brother. The court also refused to reform the trust to confirm with the settlor’s intent.

On appeal, the Utah Court of Appeals first noted that the discovery rule applies to toll the statute of limitations (1) until the discovery of facts forming the basis for the cause of action, (2) where a defendant affirmatively conceals the cause of action, or (3) unless exceptional circumstances exist. The trial record consisted only of Analisa’s affidavit and a 1996 Order indicating that notice was given, but listing Analisa’s address as “unknown”. On that record, the court affirmed the trial court’s finding that Analisa lacked constructive or actual notice of her claim until May 26, 2006. The court then found that exceptional circumstances justified application of the discovery rule because: (1) she had no reason to suspect she was a beneficiary or that she was removed by the amendment, since she did not receive any notice of the amendment; (2) there was little prejudice to the defendant in allowing the claim since the evidence consisted primarily of documents associated with the settlor’s estate rather than memories of aging witnesses; and (3) the equities weighed in favor of a finding that exceptional circumstances existed that would make rigid application of the statute of limitations irrational or unjust.

Notwithstanding the trial court’s finding about the settlor’s intent, the court also upheld (1) the trial court’s invalidation of the amendment on the grounds that the settlor had failed to follow the manner and circumstances proscribed in the trust document for a valid amendment and (2) the trial court’s refusal to modify the trust where the settlor knew the trust terms about how to validly modify his trust and there was no evidence of a mutual mistake, fraud, or other inequitable conduct justifying amendment.


The Idaho federal court held that the probate exception to federal court jurisdiction applies to a trust that operates as a will substitute, but refused to apply the exception to dismiss for lack of subject matter jurisdiction claims against a trustee for breach of fiduciary duties.

In 1991, Brian and Patricia Hutcherson created a trust for their six children. In 2006, they amended the trust to change the distribution provisions. Brian died in 2008, and one of his children, Tyler, served as trustee along with Patricia. Thereafter, Patricia exercised her powers of appointment over the trust to reduce the shares of two of the children and increase the Tyler’s share to 54.5%.

After Patricia’s death, the other children sued Tyler in Idaho federal district on the basis of diversity of citizenship, alleging that Tyler (1) improperly influenced his mother (who had undergone radiation treatment for cancer at the end of her life) to change the trust and (2) breached fiduciary duties by using trust assets for personal expenses and keeping trust property for himself. Tyler moved to dismiss the suit for lack of subject matter jurisdiction due to the probate exception from federal court jurisdiction, and alternatively because the amount in controversy did not exceed the jurisdictional limit.

Noting that the probate exception is extremely limited in scope as clarified in *Marshall v. Marshall*, 547 U.S. 293 (2006), the court held that (1) the *Marshall* court had implicitly held that the probate exception analysis applies to trusts that act as will
substitutes because Americans increasingly use trusts rather than wills and (2) the probate exception applied to the trust in this cases because it was a major part of the estate plan.

Applying the Marshall analysis, the court held that the probate exception did not apply to the breach of fiduciary duty claims. However, the court held that it did not have jurisdiction to remove and replace trustees because that relief was within the exclusive jurisdiction of the Idaho state court. The court therefore denied the Tyler’s motion to dismiss for lack of subject matter jurisdiction, except to the extent the children were asking the court to (1) administer the trust, (2) remove a trustee, (3) appoint a new trustee, (4) broadly enjoin the trustee from performing his duties, or (5) distribute the trust assets.

The court also denied Tyler’s attempt to be dismissed from the suit in his individual (as opposed to fiduciary) capacity on the grounds that if Tyler breached his fiduciary duties as trustee he would be personally liable for damages. Also, the court denied as premature the children’s motion to compel Tyler to individually to pay his legal fees.


The Idaho Supreme Court upheld dismissal of claims against a corporate trustee due to a lack of any fiduciary relationship owed to a contingent beneficiary after the interests of the actual beneficiaries had vested. The trustee mistakenly informed the plaintiff that she (rather than her daughters) was the remainder beneficiary and made an incorrect partial distribution. In alleged reliance on the trustee’s representations, the plaintiff retired. When the mistake was discovered, the plaintiff sued the trustee for breach of fiduciary duty, negligence representation, and infliction of emotional distress. The court upheld dismissal of the suit in the grounds that her contingent interest had expired at the time of the breach by the vesting of her daughters’ interests, and the trustee’s error did not create a fiduciary duty where the plaintiff had as much knowledge of the trust terms as the trustee.

Geraldine Schneider created a revocable trust with Davidson Trust Company as trustee. Upon her death in 2004, the trust was divided into equal separate trusts for her daughters, Virginia and Margaret. By 2006, Virginia had consumed all of her trust assets. Margaret died in 2007, and pursuant to the trust terms her remaining trust assets were to be distributed to Virginia’s children and not to Virginia. Although she was apparently aware of the trust terms, Virginia spoke to a trust assistant and alleged that (1) the assistant told her that she was the remainder beneficiary of Margaret’s trust and (2) she discussed with the assistant whether she could retire because of the trust assets and then decided to do so.

Thereafter, the trustee made a partial distribution of the trust assets to Virginia. After the mistake was discovered, Virginia sued the trustee claiming breach of fiduciary duty, negligence representation, and infliction of emotional distress, and sought damages for the costs she incurred in reliance on the mistake.

The trial court granted summary judgment in favor of the trustee on all claims on the grounds that (1) no fiduciary relationship existed with Virginia at the time of the alleged breach and (2) there was no legal support for the creation of a duty solely by mistakenly treating her as if she was a beneficiary. Virginia appealed.

On appeal, the Idaho Supreme Court affirmed the trial court’s summary judgment for the trustee on the grounds that: (1) the trustee owed no duties to Virginia; (2) Virginia’s
status as a lifetime beneficiary ended when her trust was exhausted; (3) Virginia’s status as a contingent beneficiary of her sister’s share ended when her sister died and her children’s shares vested as the actual remainder beneficiaries, which was before the time of the alleged breach; (4) the trustee did not assume any fiduciary duty by mistakenly informing Virginia she was a trust beneficiary, because the trustee was not in a superior position over Virginia as to knowledge about the trust terms where Virginia knew her children were the beneficiaries and had served as an advisor to the trust; and (5) there was therefore no foundation for the trust and confidence required for the imposition of a fiduciary duty.

Patterson v. Patterson, 2011 Utah LEXIS 148 (November 1, 2011)

The Utah Supreme Court reverses the trial court’s application of a common law limitation on amendment of trusts, and affirms a trust amendment by application of the Uniform Trust Code even though the issue was not properly raised in the trial court. The court exercised its discretion to apply the new law regardless of the procedural defect because of the significance of the passage of the Uniform Trust Code in Utah.

Darlene Patterson created a revocable trust, with the assets passing at her death to her children. Darlene reserved the right to revoke or amend the trust, but the trust also stated that “the interests of beneficiaries are presently vested interests subject to divestment which shall continue until this Trust is revoked or terminated other than by death.” In 2006, Darlene amended the trust to remove her son, Ron, as a beneficiary because she had already provided for him. Darlene died 11 months later.

Even though Utah had enacted the Uniform Trust Code in 2004, Ron sued to void the amendment under the Utah Supreme Court’s decision in Banks v. Means, which held that where a settlor expressly reverses the right to revoke a trust but also creates vested interests that could only be divested by revocation or termination of the trust, a complete revocation is required to divest the beneficiary’s interest. The rule was based on the court’s prior holding that a revocable trust without vested interests in beneficiaries is illusory.

The trustee defended the amendment and asked the trial court to distinguish Banks, but did not raise the Uniform Trust Code. The trial court voided the trust amendment applying the rule in Banks. The trustee appealed.

On appeal, the Utah Supreme Court exercised its discretion under the “preservation rule” to review an issue not properly before the court on the grounds that significant new controlling authority had been enacted, in this case the Uniform Trust Code. The court then reversed the lower court and upheld the amendment, on the grounds that: (1) the Uniform Trust Code statutorily overruled the Banks case, (2) the Uniform Trust Code applies in Utah to all trusts created before, on or after July 1, 2004 and all judicial proceedings concerning trusts commenced on or after that date, and (3) the Uniform Trust Code gives a settlor wide latitude to revoke, amend, or modify a revocable trust, in direct contradiction to Banks.

Boyar v. Dixon, 2011 IL App (1st) 111013U (December 8, 2011)

The Illinois Court of Appeals affirmed the application of the doctrine of election as a bar to beneficiary’s contest to trust amendment, where the trust operated in the same manner as a will and the beneficiary took, and refused to return, tangible personal property belonging to the trust.
Robert E. Boyar executed a pour over will and a revocable trust with the trust assets passing equally to his five children at his death. Mr. Boyar amended the trust five times to change the distribution provisions. Mr. Boyar amended the trust a sixth time to remove Northern Trust Company and his son, Robert, as co-trustees and appointed his neighbor, attorney G. Grant Dixon, as sole trustee.

Mr. Boyar died in 2010 survived by his five children, all of whom were trust beneficiaries. Robert sued to contest the sixth amendment on the grounds of lack of capacity, breach of duty by Dixon by appointing himself as trustee without the beneficiaries being able to remove him by majority vote, and undue influence by Dixon.

Robert removed personal property held under the trust from his father’s residence, and when it was challenged by Dixon, Robert claimed that pursuant to the trust terms the children had allocated the tangible personal property among themselves.

Dixon then moved to dismiss Robert’s contest to the amendment on the grounds that Robert’s claim was barred by the doctrine of election as a consequence of his accepting benefits under the trust. Dixon also counterclaims asking the court to declare that Robert had violated the trust’s no-contest clause resulting in his forfeiture of his interest in the trust.

The circuit court granted Dixon’s motion and dismissed Robert’s contest, finding that “if you take advantage of something you can’t at a later date turn around and disavow the existence of it.” The court noted that under the doctrine of election the petition should be dismissed in its entirety and that Robert could always file a petition to remove the trustee. Robert filed a motion to reconsider which was denied, and then appealed.

On appeal, the Illinois Court of Appeals affirmed the trial court on the grounds that: (1) the doctrine of election applies to a trust that is used to achieve the same effect as a will, such as the trust at issue in this case, and bars Robert’s claims; (2) the exception to the doctrine where the beneficiary does not know all of the fact including the contents of the documents and the circumstances of execution does not apply in this case; (3) the application of the doctrine in this case would not violate any law or public policy; (4) the exception to the doctrine where the beneficiary returns the property does not apply in this case because Robert was repeatedly asked to return the property and sued before returning the property; and (5) Robert’s challenge to the sixth amendment would be considered a challenge to the trust and not merely to the appointment of a trustee, regardless of the severability provision in the trust agreement.

In re Estate of Brantman v. Brantman et al., 2011 Ill. App. Unpub. LEXIS 3013 (December 2, 2011)

The Illinois Court of Appeals blocked an attempt by a charitable trust beneficiary to bring claims to recover improper distributions to family members made by a former trustee, where the distributions to family members were made in breach of the former trustee’s fiduciary duties and while failing to make specific distributions to numerous charities. The successor trustee that replaced the breaching trustee sought to settle his final accounts and be relieved of any duty to pursue recovery of the improper distributions on behalf of the trust, which was granted by the court over the charity’s objection. The charity filed a suit to recover the improper distributions from the family members directly, but the court held that the charity lacked standing to bring the claims because the successor trustee had the exclusive right to bring the claims, the charity filed its suit when the successor trustee was still in office, and he was discharged from that obligation by the court and no appeal was
Robert Brantman Sr. died leaving a pour over will and trust that provided for (1) specific gifts to his sister, 11 children, 21 grandchildren, the Catholic Archdiocese of Chicago, the Diocese of Rockford, the McDermott Foundation, and three other charities and (2) the residue to pass equally to his 11 children. Robert named his son, Charles, as his executor and trustee.

Robert’s will was probated in 2001 and the estate remained open with little activity. In 2005, nine of the children sued Charles and B.M. Brantman Inc., a corporation in which Charles was the sole shareholder, alleging that Charles (1) converted $2 million dollars from the estate for his and his company’s benefit, (2) made improper distributions to family members, and (3) at the same time, failed to make required distributions to Reverend Thomas Brantman, James Brantman, and several charities. At the time an accounting was finally provided by Charles, only $128,700 remained of the $7 million dollars originally in the estate and trust.

Charles resigned as executor and trustee, and his brother Robert Jr. was appointed by the court as successor. Robert Jr. obtained a consent judgment against Charles for $2 million dollars which the court approved. The court also approved the sale of the company which netted $175,000 for the trust. Robert Jr. then filed a petition to close the estate along with an inventory, final accounting, and request for fees. Robert Jr. credited the $175,000 collection from the sale of the company towards the $2 million judgment against Charles, and designated the remaining $1,825,000 as an uncollectible debt. Robert Jr. also proposed to the court that the trust not pursue recovery of the improper distributions made by Charles, and asked to be relieved of the obligation to pursue recovery.

The McDermott Foundation objected, and argued that (1) the estate should not be closed, (2) Robert was not entitled to fees due to his failure to pursue recovery of improper distributions, and (3) to the extent the trust had insufficient funds for the specific beneficiaries, the assets should have been distributed on a pro rata basis and no distributions should have been made to the residual beneficiaries. The McDermott Foundation also sued to recover assets from the family members. The state attorney general filed and adopted the McDermott Foundation’s objections.

After considering a special administrator’s report that the charities had a right to pursue their claims against the beneficiaries but that the executor need not be involved, the trial court entered an order (1) approving Robert’s final accounting, (2) approving his fees, and (3) discharging him as administrator and trustee on finding no breach of fiduciary duty. The trial court kept the estate open and appointed a special administrator to hold all estate and trust assets pending resolution of the McDermott Foundation’s separate suit to recover assets.

The McDermott Foundation filed an amendment petition adding a claim for imposition of a constructive trust, and asked that the trust assets be redistributed on a pro rata basis. The family members asserted that the McDermott Foundation lacked standing to sue the family members as trust beneficiaries. The trial court, without explanation, imposed a constructive trust on the assets in favor of the McDermott Foundation. The family members appealed.

On appeal, the Illinois Court of Appeals reversed the trial court and held that the McDermott Foundation lacked standing to bring its claims on the grounds that: (1) once a blameworthy trustee has been removed from office and a successor trustee appointed, the rationale for permitting a beneficiary to pursue an equitable claim against a transferee who has received trust property in breach of trust no longer applies;
(2) the exceptions to the rule that a trustee has exclusive standing to sue on behalf of a trust do not apply here because the order discharging Robert as trustee was final and not appealed and the Foundation’s lawsuit was filed while Robert was still trustee; (3) no Illinois court had adopted section 254 of the Restatement (Second), and regardless that section did not apply where there was a successor trustee in place and available to pursue the claims for the trust.


The Maryland Court of Appeals applied the personal representative’s statutory right to require releases from the beneficiaries before making distributions, even where the distribution plan was already approved by the court. The court recognized the importance of the releases so that the personal representative would not have to defend claims from beneficiaries without funds for the defense, but cautioned that the releases could not apply to acts of fraud, material mistake, or irregularity. The court also affirmed the power of the orphans court to order the beneficiaries to sign the releases.

Roy H. Allen died in 2005. Following a contentious dispute over the estate, the Maryland orphans court approved an estate accounting by the personal representative and a plan for distributions. Before making the distributions, the personal representative required the beneficiaries to sign a contract releasing her from liability as personal representative. One beneficiary signed, but the others refused. The court actually ordered the beneficiaries to sign the release, but they refused and appealed to the Court of Special Appeals, which affirmed. The Maryland Court of Appeals granted certiorari to decide two legal issues: (1) whether Maryland Estates and Trusts Code section 9-111 allows a personal representative to obtain a release when acting pursuant to a court-approved distribution; and (2) whether the orphans court has the authority to order legatees to sign releases when requested by a personal representative under section 9-111.

The court held that: (1) the personal representative has a statutory right to obtain a release prior to making distributions; (2) the court approval of the distribution plan does not negate the personal representative’s statutory rights; (3) the release is necessary because “without a release, heirs could sue the personal representative for alleged malfeasance, improper distribution, or other claims, and with all the estate assets distributed, the personal representative would have no assets with which to fund a defense, or if appropriate, settle or satisfy the claim”; (4) while the court would not attempt to “decipher the exact contours of the releases”, the releases must not apply to acts of fraud, material mistake, or irregularity by the personal representative; and (5) the orphans court could appropriately order the beneficiaries to sign releases since the releases were incident to the estate administration.