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TOPIC: Trustee's Ability to Purchase Life Insurance Not to be Used in Trust Interpretation

CITATIONS: [Minassian v. Rachins](#), No. 4D13-2241. (Ct. App. 4th Dist. FL, December 3, 2014); [Fla. Stat. § 736.0808\(3\)](#) (2008); [Uniform Trust Code § 808 \(c\)](#) (2000).

SUMMARY: Zaven Minassian created a family trust in which the trustee, who was his wife Paula, was empowered to purchase life insurance on her own life. Paula was sued by Zaven's children, Rebecca and Rick, on claims of breach of fiduciary duty and accounting inaccuracies. The trustee defended the suit by claiming that the plaintiffs were not beneficiaries of the trust, and thus had no standing (i.e. sufficient interest in the trust) to sue.

The issue before the court was whether the trust will terminate at Paula's death. The trust created three separate share trusts for the children at Paula's death. If these separate share trusts were deemed to be part of the *original* family trust, then the children would be beneficiaries of the family trust. They would therefore have standing to sue. However, if the separate share trusts were deemed to be *new* trusts, then the children could *not* sue the original family trust trustee.

The trial court cited the trustee's authority to purchase life insurance on Paula as an investment for the family trust, reasoning, "[t]here would be no need for such an investment if the Family Trust ceased to exist upon the wife's death." The court therefore held in favor of the children's right to sue.

On appeal, the holding of the trial court was reversed.

BACKGROUND: In the midst of the litigation, Paula appointed a trust protector, as allowed by both Florida law and the terms of the trust, to modify the trust's provisions. The trust protector filed an affidavit stating he had "amend[ed], clarif[ied], and correct[ed] ambiguities to the Trust" to effectuate the settlor's intent. He was purported to amend the trust to clarify that it was meant to create a new trust after the wife's death, and grant the children shares in the new trust. The new provision was entitled, "The Distribution of the Remaining, if any, Trust Property Upon the Death of [the Wife]," and Section 1 was entitled, "Creation of a Trust With Separate Shares."

The new Section 1 provided, “Upon the death of [the wife] and the termination of the Family Trust if there is any property remaining, it shall be disbursed to a *new* trust to be created upon the death of [the wife] with a separate share for each of” the children.

The *trial* court found that, because the trust was unambiguous, the trust protector had no authority to change the terms of the trust. This court relied on several provisions it saw as establishing the continuity of the trust beyond the life of Paula. Of paramount importance to the trial court was the trustee’s authority to purchase life insurance on the settlor’s wife as an investment for the family trust. The trial court reasoned “[t]here would be no need for such an investment if the Family Trust ceased to exist upon the wife’s death.” The trial court further rejected the literal language in the trust which provided that the family trust would terminate on Paula’s death and the remainder should be administered as creating separate shares of the family trust, and not new, separate trusts.

FACTS:

The *Appeals Court* first addressed the validity of the trust protector provision, because, if it were invalid under Florida law, then any amendments created by the trust protector would likewise be invalid. On the other hand, if those provisions were valid, then the trust provided that the trust protector could exercise his powers in his sole and absolute discretion, and his actions would be binding and conclusive on all persons.

The Florida Trust Code provides: “The terms of a trust may confer on a trustee *or other person a power to direct the modification or termination of the trust.*” § 736.0808(3), Fla. Stat. (2008) (emphasis added). This section was adopted from the Uniform Trust Code, which contains identical language in section 808(c). The commentary to this section of the Uniform Trust Code, further provides:

“Trust protector,” a term largely associated with offshore trust practice, is more recent and usually connotes the grant of greater powers, sometimes including the power to amend or terminate the trust. Subsection (c) clarified the recent trend to grant third persons such broader powers....The provisions of this section may be altered in the terms of the trust.. A settlor can provide that the trustee must accept the decision of the power holder without question. Or a settler could provide that the holder of the power is not to be held to the standards of a fiduciary....

The trust protector testified in a deposition that he met with the husband twice, first in person to discuss his estate planning desires, and second over the phone to discuss and execute the documents he had drafted. During the husband’s life, the husband and wife’s “lives revolved around horse racing and legal gambling,” and, in the trust, the husband wanted “to provide for spouse / trustee in the way they had lived in the past....”

The plan was “to create a separate Trust for the benefit of his children” which would be created only if the family trust was not exhausted during Paula’s lifetime. He declared that the revisions were “to assure that the family trust was not in any way associated to a new trust that might be created for his children.”

The trust protector also stated, “This challenge by the children is exactly what the husband expected.” The trust protector noted that the husband referred to his daughter in derogatory terms, and that the daughter had not seen her father in years.

RESULT: The Appeals Court found that the trust language *was* ambiguous. It further found that it was the settlor's intent that, where his trust was ambiguous or imperfectly drafted, the use of a trust protector would be his preferred method of resolving those issues. Removing that authority from the trust protector and assigning it to the trial court was held to violate the intent of the settlor.

While the trial court thought that the ability to purchase life insurance on the wife showed that only one trust was intended, the appeals court held that it was simply an investment provision and that it permitted the trustee to use trust income for such a purchase. The Appeals Court held that the option to purchase life insurance on Paula's life was a reasonable investment for the family trust and could be used to pay Paula's last expenses. It also could be a funding source for the new trusts. Thus, the presence of the trustee's ability to purchase life insurance was not conclusive proof that the family trust and separate share trusts were one trust.

RELEVANCE: The case stands for the proposition that the trust's ability to purchase life insurance should not be used to decipher the trust settlor's intent with regard to operative provisions in the trust. This result in this case feels correct, since life insurance can be used for many purposes and trust-owned life insurance might provide advantages to *all* beneficiaries.

The case also illustrates the value of the grantor naming a trust protector. In this case, according to the testimony of the trust protector, the grantor intended his wife to be protected from litigation brought by his children. The strategic use of the trust protector to address any ambiguities in the trust created exactly what the grantor intended—a stronger legal protection for Paula.

A trust protector may be useful to interpret an ambiguous provision or correct an imperfectly drafted trust document. A trust protector can also add tremendous flexibility in assuring the intentions of the grantor are accomplished—including the ability for the trust to purchase additional life insurance on the lives of individuals in whom the trust's beneficiaries have insurable interest.

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