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TOPIC: No Fiduciary Breach Under ERISA for Benefit Payment to Former Spouse Despite Divorce Decree

An ERISA plan administrator did not breach its fiduciary duty when it paid benefits under a group life insurance-funded employee welfare benefit plan to a decedent's former spouse, who was still named as the designated beneficiary under the plan documents. Since the couple's marital settlement agreement stated the "parties agree that each may maintain or dispose of any existing life insurance policies and may choose beneficiaries to any such policies as they see fit," the estate alleged that the plan administrator was obligated to "investigate the marital history of a participant and determine whether any domestic relations orders exist[ed] that could affect the distribution of benefits." A U.S. District Court, however, found that the plan administrator's duty was to follow the decedent's beneficiary designation and that neither the plan's internal administrative procedures nor the federal common law pertaining to ERISA plans require an inquiry into the decedent's divorce decree or related marriage settlement agreement.

See Lutz v. Lutz, 2017 WL 714032 (2017).

TOPIC: Residence Subject to New Jersey Inheritance Tax Despite Ownership by an Irrevocable Trust

The New Jersey Tax Court held that decedent's residence was subject to New Jersey inheritance tax despite the transfer of the residence to an irrevocable trust more than three years before decedent's death. While New Jersey exempts from inheritance tax property that is irrevocably and completely disposed of more than three years before death, pursuant to the terms of this irrevocable trust, decedent and her husband continued to live in the residence after its transfer to the trust and until their respective deaths. The court determined that, because decedent's continued use of the residence constituted a retained interest, the transfer of the residence was not a complete disposition more than three years before death, as required for the New Jersey inheritance tax exemption.

See Estate of Mary Van Riper v. Director, Division of Taxation, N.J. Tax Ct., Dkt. No. 008198-2016 (02/23/2017).

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2017 WL 714032
Only the Westlaw citation is currently available.
United States District Court,
E.D. Pennsylvania.

Estate of Richard G. Lutz, Jr., Deceased
and Sheree Nordall, Plaintiffs,
v.
Sandra Lutz, et al., Defendants.

CIVIL ACTION NO. 16-01461
|
Filed 02/23/2017

MEMORANDUM

GERALD J. PAPPERT, District Judge

***1** The Estate of Richard Lutz and Sheree Nordall sued Sandra Lutz and the Standard Insurance Company, among others, to recover life-insurance benefits Sandra received as the sole beneficiary of her late ex-husband Richard's ERISA-governed life insurance policy. [1] Before the Court is Standard's Motion for Summary Judgment. (ECF No. 53.) For the reasons that follow, the Court grants the motion.

I.

Richard and Sandra Lutz were married on May 18, 1985. (Pl.'s Stmt. of Facts ("Pl.'s Stmt."), ¶ 32, ECF No. 54.) The marriage eventually deteriorated and in March 2012 Richard hired an attorney to file a divorce complaint against Sandra in the Berks County Court of Common Pleas. (*Id.* ¶ 39.) The couple entered into a Marriage Settlement Agreement ("the Agreement") on August 28, 2012 to divide their marital assets. (*Id.* ¶ 41.) The Agreement provides that "[t]he parties agree that each may maintain or dispose of any existing life insurance policies and may choose beneficiaries to any such policies as they see fit." (Admin. R., at 00005, ECF No. 53-1.) A divorce decree was entered in the Common Pleas Court on September 6, 2012. (Pl.'s Stmt. ¶ 41.) Richard died on September 26, 2012. (*Id.* ¶ 46.)

At the time of his death, Richard had a life insurance policy governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). (*Id.* ¶ 35.) The ERISA Plan was an employee welfare benefits plan sponsored by Cargill Inc., the parent company of Richard's employer, the Wilbur Chocolate Company. (Def.'s Stmt. of Undisputed Facts ("Def.'s Stmt."), ¶¶ 1, ECF No. 53.) The benefits under the Plan were funded by a group life insurance policy issued by Standard to Cargill. (*Id.* ¶¶ 2–4.) The Plan provides that benefits "will be paid to the Beneficiary you name" and according to established Plan procedures. (*Id.* ¶ 13; Admin. R., at 00225–26, ECF No. 53-3.) Sandra Lutz was the sole beneficiary listed on Richard's policy; Richard never removed her or added any other beneficiaries. *See* (*id.* ¶¶ 10–11; Admin. R., at 000072.)

The Plan procedures require a claimant seeking benefits to submit a "proof of loss" form—written proof that a loss for which the policy provides benefits—to Standard within ninety days of the date of the loss. (Admin. R., at 000222.) The procedures also provide for administrative review of any denial of a claim for benefits. (*Id.* at 000224.) On October 5, 2012 Standard received a "proof of loss" by way of a "Proof of Death Claim Form" stating that Richard died on September 26, 2012. (*Id.* at 000071.) Standard corresponded with Sandra about her "claim for Life Insurance benefits" by October 8, 2012. *See* (*id.* at 000070). Standard requested Richard's certified death certificate from Sandra, which her attorney provided on January 16, 2013. [2] (*Id.* at 000053.) On February 19, 2013, Standard issued to Sandra the $44,819.55 death benefit under Richard's policy. (Def.'s Stmt. ¶ 17.)

***2** That payment is at the heart of the Plaintiffs' claim against Standard. Ms. Nordall called Standard on December 20, 2013 claiming that she believed Sandra was not the proper beneficiary of Richard's policy. (Admin. R., at 000005.) On November 18, 2014 Standard received a letter from the Estate's attorney also stating that Sandra should not have received the benefits under Richard's policy. (Def.'s Stmt., ¶¶ 19; Admin. R., at 000021.) The letter noted that Richard and Sandra were divorced at the time of his death, (Def. 's Stmt., ¶ 20; Admin. R., at 000021), though Standard already had notice of that fact, (Admin. R., at 000058). Because the ninety-day window to submit a claim had closed, and because Standard already paid the policy benefits to Sandra, the Plaintiffs neither submitted a claim for benefits nor requested an

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administrative review of Standard's decision to pay the benefits to Sandra. *See* (Def.'s Stmt. ¶ 21; Pl.'s Stmt. of Facts, ¶ 21–22).

The Estate and Nordall sued Standard and others in the Lancaster County Court of Common Pleas on March 7, 2016.[3] (ECF No. 1-1.) The defendants removed the case to this Court on March 30, 2016, (ECF No. 1). Standard filed its motion for summary judgment on December 29, 2016, (ECF No. 52), the Plaintiffs responded on January 19, 2017, (ECF No. 54), and Standard filed its reply on January 26, 2017, (ECF No. 55). The Court held oral argument on the motion on February 13, 2017, (ECF No. 57), and has thoroughly reviewed the administrative record.

II.

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A dispute is genuine if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). Summary judgment is granted where there is insufficient record evidence for a reasonable factfinder to find for the plaintiff. *Id.* at 252. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.*

In a case concerning an ERISA plan administrator's benefits determination, the Court's review must be based on the administrative record. *See Howley v. Melon Fin. Corp.*, 625 F.3d 788, 793 (3d Cir. 2010) (holding that courts must decide ERISA summary judgment motion based on "the materials that were before the administrator when it made the challenged decision"). Though it was not the case here, to the extent that a claim for breach of a fiduciary duty necessarily implicates evidence extrinsic to the administrative record, the Court may consider relevant admissible evidence outside the administrative record. *Creelman v. Carpenters Pension & Annuity Fund of Phila. & Vicinity*, 945 F. Supp. 2d 592, 594 (E.D. Pa. 2013).

Courts review a denial of benefits in ERISA cases "under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," in which case courts review a denial of benefits for abuse of discretion. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Doroshow v. Hartford Life and Acc. Ins. Co.*, 574 F.3d 230, 234 (3d Cir. 2009). The administrator here had discretionary authority to determine eligibility for benefits. *See* (Admin. R., at 000224). This abuse of discretion standard in the ERISA context is "essentially identical" to an arbitrary and capricious standard. *Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 845 n.2 (3d Cir. 2011). Thus, a court may overturn a plan administrator's denial of benefits only if it is without reason, unsupported by substantial evidence or erroneous as a matter of law. *Doroshow*, 574 F.3d at 234. A decision is supported by substantial evidence if "there is sufficient evidence for a reasonable person to agree with the decision." *Courson v. Bert Bell NFL Player Ret. Plan*, 214 F.3d 136, 142 (3d Cir. 2000).

III.

***3** ERISA's civil enforcement provisions are found at 29 U.S.C. § 1132(a). Two subsections of § 1132(a) are relevant here: First, § 1132(a)(1)(B) permits a participant or beneficiary to bring a civil suit "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." *Id.* § 1132(a)(1)(B). Second, § 1132(a)(2) permits civil suits "by the Secretary, or by a participant, beneficiary or fiduciary for appropriate *relief under* [*§ 1109*]." *Id.* § 1132(a)(2) (emphasis added).

Section 1109 establishes a fiduciary's personal liability:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have

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> been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary....

29 U.S.C. § 1109(a).

Section 1104 of ERISA establishes a "prudent man" standard of care for fiduciaries:

> (1) ... a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> ...
>
> (B) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
>
> ...
>
> (D) in accordance with the documents and instruments governing the plan....

Id. §§ 1104(a)(1)(B), (D).

A.

i.

Plaintiffs' amended complaint contains only one count against Standard. In Count IV, the Plaintiffs assert that Standard breached a fiduciary duty under § 1109(a), *see* (Amend. Compl., ¶¶ 80, 91–93), yet the Plaintiffs seek to recover Richard's life insurance benefits under § 1132(a)(1)(B), *see* (Pl.'s Resp. ¶ 100).[4] As a matter of law, this cannot be done. Section 1132(a)(2) provides the only means of suing for breaches of fiduciary duty arising under § 1109. Because the Plaintiffs' seek to recover the benefits of Richard's policy, however, they cannot proceed under § 1132(a)(2).

***4** Plaintiffs suing under § 1132(a)(2) may not recover the benefits of an individual's policy. *Haberern v. Kaupp Vascular Surgeons LTD Defined Benefit Pension Plan*, 24 F.3d 1491, 1500–01 (3d Cir. 1994) ("[Plaintiffs] may not recover damages for a breach of fiduciary duty under section 502(a)(1)(B)."). Rather, claims for breach of fiduciary duty under § 1132(a)(2), which seek relief under § 1109, "are derivative in nature—that is, while various parties are entitled to bring suit ... they do so on behalf of the plan itself." *Graden v. Conexant Sys. Inc.*, 496 F.3d 291, 295 (3d Cir. 2007) (citing *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985)); *see also Russell*, 473 U.S. at 140 ("[R]ecovery for a violation of § 1109 inures to the benefit of the plan as a whole."). The plan itself—not the plaintiffs—takes legal title to any recovery from a claim arising pursued under § 1132(a)(2), because § 1109 "does not authorize a private right of action for compensatory relief." *See id.*; *McMahon v. McDowell*, 794 F.2d 100, 109 (3d Cir. 1986).

The Supreme Court examined this very issue in *Russell*:

> [W]hen the entire[ty of § 1109] is examined, the emphasis on the relationship between the fiduciary and the plan as an entity becomes apparent. Thus, not only is the relevant fiduciary relationship characterized at the outset as one 'with respect to a plan,' but the potential personal liability of the fiduciary is 'to make good *to such plan* any losses *to the plan* ... and to restore *to such plan* any profits of such fiduciary which have been made through use of the assets *of the plan*....'

Russell, 473 U.S. at 140 (quoting 29 U.S.C. § 1109). "Consequently, Plaintiff[s] ... can only bring a claim pursuant to §§ 1132(a)(2) and 1109 *on behalf of the* Plan, not *against* the Plan." *Gidley v. Reinhard Foodservice, L.L.C.*, No. 14-0800, 2015 WL 1136447, at *5 (M.D. Pa. Mar. 12, 2015) (quotations and citations omitted); *see also Hozier v. Midwest Fasteners, Inc.*, 908 F.2d 1155, 1162 n.7 (3d Cir. 1990) ("Because plaintiffs here seek to recover benefits allegedly owed to them in their individual capacities, their action is plainly not authorized by either [§§ 1109 or 1132(a)(2)]).

Here, the Plaintiffs ask the Court to order Standard to "*pay to the Estate* of Richard G. Lutz, Jr. an amount equal to any loss *incurred by the Estate* ... due to non-receipt of the Standard group life insurance death benefit." (Am. Compl., at 19 (emphasis added).) When asked at oral argument how paying the benefits of Richard's life insurance policy to the Estate would inure to the benefit of the Plan as a whole, counsel asserted that "[t]he plan

as a whole would benefit from the absence of a breach of fiduciary duty. The plan as a whole would benefit from its own standards being followed during that ... time for an investigation, that money would have been set aside." (Hr'g Tr., at 35:19–23.) That is plainly insufficient.

In *Harrow*, the Third Circuit Court of Appeals addressed a claim in which the executrix of a former employee's estate alleged that a putative class of plaintiffs were wrongfully denied insurance coverage for Viagra in violation of ERISA. Although the plaintiff couched her claim in fiduciary duty terms, *see id.* at 245, 253–54, the court concluded the claim was in fact one for benefits, *id.* at 254. In doing so, the Court explained that "[a] claim for breach of fiduciary duty is 'actually a claim for benefits [if] the resolution of the claim rests upon an interpretation and application of an ERISA-regulated plan rather than upon an interpretation and application of ERISA.' " *Id.* at 254 (citing *Smith v. Sydnor*, 184 F.3d 356, 362 (4th Cir. 1999)).

Plaintiffs' amended complaint asserts that "Standard breached its fiduciary duty to Richard ... by its failure to recognize the terms of the Marital Settlement Agreement entered by Richard ... and Sandra Lutz." (Am. Compl., at 18.) It further contends that Standard breached its fiduciary duty by "its failure to recognize the divorce of Richard ... and Sandra Lutz." (*Id.* at 19.) While the amended complaint thus casts the claim in terms of the legal duties imposed by ERISA, it is nothing more than a grievance over Standard's decision to pay the policy's benefits to Sandra as opposed to the Estate. *See Harrow*, 279 F.3d at 254; (Am. Compl., at 18–19). The breach of fiduciary duty alleged by the Estate and Nordall "is merely a claim for benefits because the alleged breach ... is clearly not independent of the denial of benefits." *See Menendez v. United Food & Comm. Workers Local 450T, AFL-CIO*, No. 05-1165, 2005 WL 1925787, at *3 (D.N.J. Aug. 11, 2005) (citing *Harrow*, 279 F.3d at 254).

ii.

***5** Standard would be entitled to summary judgment even if the plaintiffs asserted a proper claim for breach of fiduciary duty under § 1132(a)(2). The Plaintiffs contend that Standard had a duty under federal common law applying ERISA to "investigate the marital history of a participant and determine whether any domestic relations orders exist that could affect the distribution of benefits." [5] (Am. Compl. ¶ 86.) Standard, meanwhile argues that its duty was to follow Richard's "plan documents," such as his beneficiary designation, regardless of the terms of Richard and Sandra's Marriage Settlement Agreement.

Standard is correct. *See Kennedy v. Plan Adm'r for DuPont Savs. & Inv. Plan*, 555 U.S. 285 (2009). While *Kennedy* articulated this "plan documents rule" with respect to ERISA pension plans, the rule applies in the context of ERISA employee welfare benefits plans as well. *See Estate of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 134 (3d Cir. 2012) (finding the "plan at issue in this dispute is an 'employee welfare benefits plan' within the meaning of ERISA" and that the district court properly relied on *Kennedy* to conclude that ERISA required the benefits of the plan to be distributed to "the named beneficiary in accordance with the plan documents."); *see also Boyd v. Metro. Life Ins. Co.*, 636 F.3d 138, 142 (4th Cir. 2011) ("Neither *Kennedy* nor 29 U.S.C. § 1104(a)(1)(D) provides any basis for concluding that the plan documents rule only applies to employee pension benefit plans. Indeed, in deciding to broadly endorse the plan documents rule, *Kennedy* drew upon case law involving employee welfare benefit plans—an odd decision if employee welfare benefit plans and employee pension benefit plans were somehow different.").

Because the Plaintiffs' claim is one for Richard's benefits, and because Standard did not have a fiduciary duty under federal common law to examine extrinsic materials, the claim cannot proceed under § 1132(a)(2). No reasonable juror could conclude that Standard's decision to pay Sandra was without reason or unsupported by substantial evidence; that decision was also not erroneous as a matter of law. *See Doroshow*, 574 F.3d at 234.

B.

i.

To the extent that Plaintiffs seek to recover Richard's benefits under § 1132(a)(1)(B), they must first exhaust their administrative remedies. *See Zipf v. Am. Tel. & Tel. Co.*, 799. As the administrative record makes clear, however, they did not do so. The exhaustion requirement is a judicially created hurdle: Because ERISA plans must

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offer beneficiaries an administrative appeals process if their claims are denied, *see* 29 U.S.C. § 1133, courts in this circuit require claimants "to exhaust this congressionally mandated system before resorting to the courts." *Stanford v. Foamex L.P.*, No. 07-4225, 2008 WL 3874823, at *5 (E.D. Pa. Aug. 20, 2008). This exhaustion requirement:

> [E]nsures that the appeals procedures mandated by Congress will be employed, permits officials of benefit plans to meet the responsibilities properly entrusted to them, encourages the consistent treatment of claims for benefits, minimizes the costs and delays of claim settlement in a nonadversarial setting, and creates a record of the plan's rationales for denial of the claim.

***6** *Zipf*, 799 F.2d at 892; *see also Harrow v. Prudential Ins. Co. of Am.*, 279 F.3d 244 (2002) ("Courts require exhaustion of administrative remedies 'to help reduce the number of frivolous lawsuits under ERISA; to promote the consistent treatment of claims for benefits; to provide a nonadversarial method of claims settlement; and to minimize the costs of claims settlement for all concerned.") (citing *Amato v. Bernard*, 618 F.2d 559, 567 (9th Cir. 1980)).

The Plan establishes an administrative process for filing claims. A claimant must provide proof of loss within ninety days of the loss or as soon as reasonably possible. (Admin. R., at 000222–23.) If a claimant fails to provide proof of loss within that timeframe, the claim will be denied. (*Id.* at 000222.) Within ninety days of receiving a proof of loss, Standard, as the claim administrator for the Plan, must send the claimant either a written decision on the claim or a notice that the review period is extended for an additional ninety days. (*Id.* at 000224.) In the event Standard denies a claim, it must send the claimant: a written notice of denial containing the reason for the denial; reference to the specific policy; reference to any internal rule or policy relied upon in denying the claim; a description of any information needed to support the claim; information regarding the claimant's right to review Standard's decision; and information regarding the right to bring a civil suit for benefits under 29 U.S.C. § 1132(a). (*Id.* at 000223–24.)

As ERISA requires, the Plan also establishes a process for the administrative review of denied claims. *See* 29 U.S.C. § 1133. Claimants must request, in writing, a review within sixty days of receiving notice of a denied claim. (*Id.* at 000224.) During the review process, a claimant may support a claim with "written comments or other items." (*Id.*) Standard must review any written materials submitted in support of the claim and, within sixty days, return either a written decision or notice that the review period is extended for another sixty days. (*Id.*)

The appeal process is not an empty requirement; it generates valuable material for review. If Standard denies any part of a claim following a review, it must provide the claimant with the reasons for its decision, specific references to the parts of the policy on which that decision was based, references to any internal rules or guidelines the Plan relied upon in making its decision, information concerning the claimant's rights to receive free copies of documents and records relevant to the claim and information regarding the claimant's rights to bring a civil suit under § 1132(a). (*Id.*)

ii.

The Estate and Nordall do not even contend that they exhausted their administrative remedies. They argue instead that they are excused from the exhaustion requirement under the contract-law doctrine of impossibility. (Pl.'s Mem., at 31.) Impossibility, however, is a defense to breach of contract and does not apply to this case. *See* WILLISTON ON CONTRACTS § 77:6 (4th ed. 2015).

Although the Plaintiffs incorrectly rely on impossibility, courts can waive the administrative exhaustion requirement of § 1132(a)(1)(B) when a plaintiff demonstrates a clear and positive showing of futility. *D'Amico v. CBS Corp.*, 297 F.3d 287 (3d Cir. 2002). Whether requiring exhaustion of administrative remedies is futile depends on five factors: (1) whether the plaintiff diligently pursued administrative relief; (2) whether the plaintiff acted reasonably in seeking immediate judicial review; (3) whether the employer has a fixed policy denying benefits; (4) the failure of the insurance company to comply with its own internal administrative procedures; and (5) testimony of plan administrators that any

administrative appeal would be futile. *Harrow*, 279 F.3d at 250.

***7** The Plaintiffs did not pursue administrative relief at all, much less diligently. By the time the Plaintiffs first contacted Standard the ninety-day period to make a claim had lapsed and Standard had already paid Richard Lutz's policy benefits to Sandra. (Pl.'s Mem., at 32–33.) While Plaintiffs' counsel stated at oral argument that the Estate could not make a claim until Nordall was appointed executrix, (Hr'g Tr., at 36:25–37:3), Nordall did not petition for appointment as executrix until September 5, 2013 and for a grant of letters to open the Estate until September 19, 2013—nearly a year after Richard's death, *see* (Pl.'s Stmt. ¶ 72). Nothing in the administrative record suggests that Standard had a "fixed policy" of denying benefits in this case; Standard simply paid the benefits to Richard Lutz's designated, sole beneficiary. Nor is there evidence that Standard failed to follow its own internal procedures. Rather, the Plaintiffs contend primarily that Standard failed to meet its duty imposed by federal common law to evaluate whether the divorce decree and the Marriage Settlement Agreement waived Sandra's rights as a beneficiary under Richard's policy. *See* (*id.* at 33:16–23); *see also* 29 U.S.C. § 1104(a)(1)(B). Neither Standard's internal procedures nor the federal common law required such an inquiry. *See supra* subsection III.A.ii. Finally, there is no "testimony of plan administrators that any administrative appeal would be futile" in the record. *See Harrow*, 279 F.3d at 250.

An appropriate order follows.

All Citations

Slip Copy, 2017 WL 714032

Footnotes

1 Ms. Nordall is Mr. Lutz's sister and the executrix of his Estate. She sues on behalf of the Estate as well as individually. (Am. Compl., ECF No. 40, at 1.)

2 The Plaintiffs contend that Sandra did not file a claim until January 16, 2013—outside the ninety-day window required by the Plan. (Pl.'s Opp'n to Def.'s Mot. for Summ. J. (Pl's Resp."), ¶ 69, ECF No. 54.) That is a misreading of the Administrative Record. The parties agree that Standard received proof of loss on October 5, 2012. *See* (Def.'s Stmt. ¶ 15; Pl.'s Resp. ¶ 67). The Plaintiffs read the January 16, 2013 letter from Sandra's attorney, Loren Schrum, as a belated initiation of Sandra's claim. (Pl.'s Resp. ¶ 69.) The letter was not the beginning of correspondence between Standard and Sandra, however; it simply noted that Schrum was Sandra's attorney and included the certified copy of Richard's death certificate Standard had previously requested from Sandra. (Admin. R., at 000059.) The letter further requested that a check be sent directly to Sandra at her home address. (*Id.* at 000053.)

3 The Plaintiffs also sued Sandra Lutz, Motorists Life Insurance Co., Vanguard Group, Inc. and Cargill Inc. They voluntarily dismissed Vanguard Group, Inc. and Cargill Inc. on May 19, 2016. (ECF No. 28.) The Court granted Motorists's motion to dismiss on October 6, 2016. (ECF No. 50.) The Plaintiffs requested an entry of default against Sandra Lutz on October 12, 2016, (ECF No. 52), and a default was entered the same day.

4 Specifically, the Plaintiffs contend that the standard of care articulated in § 1104(a)(1)(B) imposes a duty on the plan to "investigat[e] any judicial order or event that may affect a beneficiary's status," which Standard did not do, allegedly subjecting it to liability under § 1109.

The Plaintiffs also assert that Sandra waived her right to make a claim against Richard's Estate in paragraph 22 of the Marriage Settlement Agreement. (Am. Compl. ¶ 85.) This case does not involve Sandra making a claim against the Estate, however, and in any event, the preceding paragraph of the Marriage Settlement Agreement makes clear that "[t]he parties agree that each may maintain or dispose of any existing life insurance policies and may choose beneficiaries to any such policies as they see fit." (*Id.*)

The Plaintiffs also asserted in a letter to Standard that 23 Pa. C.S.A. § 6111.2 requires that Sandra be treated as though she predeceased Richard due to the couple's divorce. (Admin. R. at 000021.) That statute instructs that any designation of a spouse as a beneficiary on a life insurance policy is void if, at the time of the policyholder's death the couple are divorced, or if the policyholder dies during divorce proceedings. The statute is preempted by ERISA, however, and therefore does not apply to the Plaintiffs' claim against Standard. *See In re Estate of Sauers*, 32 A.3d 1241 (Pa. 2011).

5 In their response to Standard's motion, the Plaintiffs contend that Standard had a duty to determine whether the divorce decree was a Qualified Domestic Relations Order within the meaning of ERISA. (Pl.'s Mem., at 26–27.) The parties agreed at oral argument, however, that because this case does not involve a pension plan, Standard's procedures did

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not require it to evaluate whether Richard and Sandra's divorce decree was a Qualified Domestic Relations Order. (Hr'g Tr., at 13:1–7, 25:23–26:4.)

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NOT FOR PUBLICATION WITHOUT APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS

ESTATE OF MARY VAN RIPER	TAX COURT OF NEW JERSEY
	DOCKET NO: 008198-2016
Plaintiff,	
vs.	
DIRECTOR, DIVISION OF TAXATION,	
Defendant.	

Approved for Publication
In the New Jersey
Tax Court Reports

Decided: February 23, 2017

James J. Curry for plaintiff.

Heather Lynn Anderson for defendant (Christopher S. Porrino, Attorney General of New Jersey, attorney).

CIMINO, J.T.C.

I. Introduction and Factual Findings

Under the New Jersey Transfer Inheritance Tax, a tax is imposed for the transfer of property in three general categories. First, there is a tax for the transfer of property by will. N.J.S.A. 54:34-1(a), (b). Second, there is tax on any transfer of property by operation of law if the decedent does not have a will. Id. This is referred to as an intestate transfer. Third, there is a tax on a transfer of property by way of deed, grant, bargain,

sale or gift made either: 1) in contemplation of death, or 2) intended to take effect at or after death. N.J.S.A. 54:34-1(c).

The third type of transfer described above is meant to reach certain transfers made during one's lifetime in lieu of a transfer by will or by operation of law under the intestacy laws. In re Estate of Lichtenstein, 52 N.J. 533, 575 (1968). This type of lifetime transfer is commonly referred to as an inter vivos transfer. Many times, inter vivos transfers are effectuated through a trust.

In this case, the husband and wife transferors, Mr. and Ms. Van Riper, established an irrevocable trust in 2007. The marital home was transferred to the trust for one dollar. The express purpose of the trust was "to provide a residence" for "the lifetime" of the transferors. Pl.'s Stmt. of Material Facts, Ex. A. The trust provided that each transferor could live out their respective lives in the marital home.[1] Id. Three months later,

[1] Although the home was not sold, technically the Trust documents provided that the Trustee could sell the home. Generally, "[a]ny funds realized as a result of the sale shall be utilized to provide shelter and housing for the [transferors]." Id. at 2, ¶ Fourth. Specifically, "[i]n the event that the premises are sold, the Trustee shall utilize the proceeds of any such sale for the following purposes: (A) A residence shall be established for the [transferors]. [Transferor wife] may require custodial care. In the event that that can be provided for in a residential setting, then the proceeds of the sale shall be utilized in order to acquire the premises. Any funds remaining shall be utilized to pay the carrying charges on behalf of [transferor wife]. Any surplus funds

husband died and six years later, in 2013, the wife died. Upon the death of both transferors, the trust provided that the marital home would go to their niece. Under New Jersey law, a niece is considered a Class D beneficiary subjecting the transfer to a 15-16% tax. N.J.S.A. 54:34-2(d).[2]

At issue here is a seldom discussed 1955 provision which limits the taxation of at or after death transfers. See L. 1955, c. 135, § 1 (codified at N.J.S.A. 54:34-1.1). The 1955 provision provides that some transfers intended to take effect at or after death are exempt if a complete disposition occurs more than three years prior to death. Id. The question here is whether the structure of the transfer created six years prior to death here satisfies the 1955 exception, thus placing the transfer outside the reach of the at or after death provision.

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shall then be utilized for the carrying charges for any such residence, including taxes, insurance and utilities. (B) Any remaining funds shall be held in trust for the benefit of the [transferors] herein. The Trustee may, in his sole and absolute discretion, pay either the interest or principal or both for the benefit of the [transferors]. (C) Upon the death of the [transferors], any funds remaining in this Trust together with the proceeds of any substitute residence purchased for the [transferors], shall be distributed by the Trustee to [niece]. . ." Id. Thus, the trust would still "provide a residence" for "the lifetime" of the transferors in accordance with the express purpose of the trust.

[2] The tax is 15% up to $700,000 and 16% above $700,000.

This matter comes before this court on cross-motions for summary judgment. Our Supreme Court has indicated that summary judgment provides a prompt, business-like and appropriate method of disposing of litigation in which material facts are not in dispute. Brill v. Guardian Life Ins. Co. of Am., 14 N.J. 520, 530 (1994). Additionally, cross motions for summary judgment demonstrate to the court the ripeness of the matter for adjudication. Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 177 (App. Div. 2008).

The estate filed transfer inheritance tax returns excluding the home. After review, the Division included the transfer of the home to the niece as a transfer subject to the tax. The estate paid the additional tax based upon the home's value of $935,000 and filed the instant appeal. The estate now seeks a refund of the tax paid. The court has jurisdiction over this appeal pursuant of N.J.S.A. 54:33-2.

II. History and Purpose of the "At or After Death" Provision.

New Jersey imposed an inheritance tax starting in 1892. L. 1892, c. 122. The law taxed the property of the decedent transferred at death whether by will, intestate law or otherwise. The tax specifically included a transfer of assets "made or

intended to take effect in possession or enjoyment after the death of the [decedent]." Id. at § 1. In 1906, the law was amended to tax the transfer of the property of the decedent instead of the property itself. L. 1906, c. 228.

The current legislation has its roots in the 1909 iteration of this legislation. L. 1909, c. 228. The 1909 version of the law also provided that a transfer intended to take effect, in possession or enjoyment, at or after death is subject to the tax. Id. at § 1.

The modern provisions of the law at issue here are now codified at N.J.S.A. 54:34-1. In particular, the law now provides that a "transfer of property, real or personal" or "any interest therein or income therefrom, in trust or otherwise" "intended to take effect in possession or enjoyment at or after such death" is taxable.[3,4] Id. This provision applies to the real or tangible personal property situated within the state and intangible personal property wherever situated of residents, and the in-state real or tangible personal property of non-residents. Id.

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[3] Also included are transfers "in contemplation of death of the transferor." Id. The "contemplation of death" and "at or after death" provisions are two separate and independent bases for taxation. In re Estate of Lichtenstein, supra, 52 N.J. at 560.

[4] The transfer also must be in excess of $500. N.J.S.A. 54:34-1.

As discussed, the "at or after death" proviso has been a mainstay of New Jersey law since the institution of an inheritance tax in 1892. In fact, "[t]he 'at or after death' provision is a common feature of inheritance tax statutes." In re Estate of Lingle, 72 N.J. 87, 93 (1976). The purpose of the provision is to close avenues of tax avoidance. Id. at 94. The provision is "quite broad." Id.

In interpreting the transfer inheritance tax, the courts are to look "to the substance rather than the form of the scheme, . . . such as reciprocal trusts and agreements, annuities and the like." In re Estate of Lichtenstein, supra, 52 N.J. at 577. To that end, "highly technical concepts of property law have no proper place in the very practical field of taxation." Id. at 581.

III. N.J.S.A. 54:34-1.1 Exemption

Despite the broad reach of section N.J.S.A. 54:34-1, the estate here argues that the specific statutory language found in N.J.S.A. 54:34-1.1 (section 1.1) adopted in 1955 exempts the transfer from taxation since the trust was created more than three years prior to the death of the decedent.

In particular, section 1.1 provides:

> A transfer of property by deed, grant, bargain, sale or gift wherein the transferor is entitled to some income, right, interest or power, either expressly or by operation of law, shall not be deemed a transfer intended to take effect at or after transferor's death if the transferor, more than 3 years prior to death, shall have executed an irrevocable and complete disposition of all reserved income, rights, interests and powers in and over the property transferred.
>
> [Id.]

There are a scarcity of decisions explicitly dealing with section 1.1. Of the reported decisions, the Supreme Court has mentioned section 1.1 twice and the tax court once.

In In re Estate of Lichtenstein, supra, the Supreme Court only mentions section 1.1 in passing. Id. at 585. The Court had to decide whether the "at or after death" provision applied to transfers in which a transferor granted a life estate to another based upon the life of an individual other than the transferor. Id. at 562. Since the transfer was neither at nor after the death of the transferor, nor did the transferor hold any "strings," the transfer was determined to not be taxable. Id. at 578.

In In re Estate of Lambert, 63 N.J. 448 (1972) the Supreme Court considered a transferor who held an annuity which paid him for life. Id. at 450. The annuity was purchased in conjunction with a life insurance policy. The life insurance policy would not have been issued but for the purchase of the annuity. Id.

Generally, life insurance policy proceeds payable to named beneficiaries other than the decedent's estate, the executor or the administrator are exempt from taxation. See N.J.S.A. 54:34-4(f). However, the exception does not apply if the policy is an integrated asset with an annuity. See Tilney v. Kingsley, 43 N.J. 289, 298 (1964). Some years after purchasing the annuities and long before his death, Lambert irrevocably assigned the annuity proceeds to charity. In re Estate of Lambert, supra, 63 N.J. at 451. Upon Lambert's death, the Division wanted to tax the life insurance proceeds as a transfer at or after death. Id. The Court specifically reviewed section 1.1 and its statutory history and determined that even though the transfer was at or after death, the transferor completely and irrevocably disposed of the annuity to charity more than three years prior to death in accordance with section 1.1. Id. at 459. The Court held that "by reason of the 1955 act, transfers, as to which either the transferor retained no interest at inception or, if he did, completely and irrevocably disposed of the same more than three years before death, are not subject to transfer inheritance tax as a transfer 'intended to take effect in possession or enjoyment at or after' the death of the transferor." Id.

In Gray v. Director, Div. of Taxation, 28 N.J. Tax 28 (Tax 2014), a transferor's home and other assets were transferred to

trusts in which the decedent held an income interest for a period of six years. Almost seven years after the creation of the trusts, the transferor died. The transfer did not occur at or after death, but one year prior to death. Id. at 40-48. This court looked to section 1.1 in reaching the decision.

However, none of the decisions have squarely dealt with the applicability of section 1.1 to real property transferred more than three years prior to death, in which the transferor has the right to live until death.

IV. Elements of Section 1.1

The estate here now urges the court to expand section 1.1 to transfers of real property in which the transferors have the right to live until death. The estate alleges that the transferors here relinquished all power and control more than three years prior by transferring the home to an irrevocable trust which provided that the transferors could reside in the home until death. The estate argues that the "at or after death" provision of N.J.S.A. 54:34-1(c) is trumped by the transfer provisions of section 1.1 since the irrevocable transfer to trust was more than 3 years prior to the death of the transferors.

Section 1.1 consists of a number of elements that must be satisfied to overcome the at or after death provision of N.J.S.A. 54:34-1(c). These elements are as follows:

> First, there must be a transfer of property by deed, grant, bargain, sale, or gift;
>
> Second, the transferor is entitled to some income, right, interest or power in the property transferred; and
>
> Third, the transferor must three years prior to death execute an irrevocable and complete disposition of all reserved income, rights, interest and powers in and over the property transferred.

A. Transfer of property

First, there is not any dispute that there was a transfer of property consisting of the transferors' residence to the trust.

B. Transferors' entitlement to some income, right, interest or power.

The second issue is despite the transfer, did the transferors' ability to remain in the home until death constitute an entitlement to some income, right, interest or power in the property transferred.

It must be remembered that the "fundamental purpose [of the at or after death provision in N.J.S.A. 54:34-1(c)] is to preclude avoidance of the transfer inheritance tax by a lifetime transfer which is, in effect, a substitute for a substantial equivalent of

a testate or intestate distribution." In re Estate of Lingle, supra, 72 N.J. at 93; Estate of Berg v. Director, Div. of Taxation, 17 N.J. Tax 256, 262 (Tax 1998).

"It is a well-established rule, venerable with age, that a transfer inter vivos by which the donor retains a life estate in the subject matter is a transfer intended to take effect in possession or enjoyment at or after death." Darr v. Kervick, 31 N.J. 476, 483 (1960). "A transfer is, of course, taxable under the statute even though it be in form absolute, complete, immediately effective, and direct to the donee, if in substance and effect the donor retains or gets back for his life, the income or enjoyment (or the equivalent thereof)". Id. at 484. "It is substance, rather than form, which controls, and the transfer is subject to the transfer inheritance tax even if stated by its terms to be absolute, if it appears that the donor in actuality retains a life interest in the property or its income". Id. "[I]n the case of transfers in trust, taxability has been found where [] the settlor retained income or some benefit for his life with remainder over on his death." In re Estate of Lichtenstein, supra, 52 N.J. at 576.

"A careful review of the case law suggests that the following factors must usually be found in order to bring any inter vivos transaction within the reach of the statute: (1) the grantor or

settlor must transfer some property, or interest therein, while retaining for his lifetime some or all of the economic benefits therefrom; (2) there must be a consequent postponement of enjoyment on the part of the grantee, promisee or other beneficiary; and (3) both the grantor's retention and the grantee's postponement of enjoyment must be for a period determinable by reference to the grantor's death." In re Estate of Lingle, supra, 72 N.J. at 94-95.

Here, the transferors retained life interests in the property and the transferors did indeed live in the property until their deaths. This retention of life interests by both transferors postponed the niece's enjoyment of the property until the death of both transferors. Moreover, both the transferors' retention and the niece's postponement were determined by the death of the transferors.

"So taxability in this state under the 'at or after death' provision has required that the settlor retain in himself some realistic interest, power or control or some other 'string' during his lifetime, or his death must be the determinative and indispensable event in the shifting of economic benefits and burdens." In re Estate of Lichtenstein, supra, 52 N.J. at 578.

By holding the “string” of being able to reside in the property until death, the transferors retained for themselves and did indeed exercise the right and power to enjoy the property. Thus, the transfer is clearly contemplated by the at or after death provision of N.J.S.A. 54:4-1(c) as well as the second prong of section 1.1 since the transferors here are entitled to some right and power through possession and use of the marital home until death.

C. Irrevocable and complete disposition three years prior.

The estate argues that the exemption criteria set forth in section 1.1 is satisfied since the transfer of the marital home upon creation of the trust included an irrevocable and complete disposition of the reserved life interest. Thus, the only issue remaining is whether transferors’ “transfer” of property to the trust three years prior to death included an executed irrevocable and complete “disposition” of the life estate. Both terms “transfer” and “disposition” appear in section 1.1 and the estate urges the court to read the terms synonymously. However, the statutory language, the interpretation of the language by the Director of the Division of Taxation, and the legislative history militate against reading the terms synonymously.

1. Statutory language.

"Ordinarily, a comparative analysis of the language of contemporaneous statutes may, because of contrasting language applicable to similar subject matter, be indicative of an intent or purpose on the part of the Legislature to provide different treatment." Malone v. Fender, 80 N.J. 129, 136 (1979), See also, Great Adventure, Inc. v. Director, Div. of Taxation, 7 N.J. Tax 58, 65 (Tax 1984). If the Legislature intended that a mere transfer of the life interest be enough, it would have so stated rather than utilizing the term "disposition." By using the term "disposition," the Legislature signaled that something different has to be done with the reserved income, rights, interests and powers for the transfer to not be taxable. That something different is an irrevocable and complete disposition of the property.

A court "begin[s] by reading the words chosen by the Legislature in accordance with their ordinary meaning, unless the Legislature has used technical terms, or terms of art, which are construed in accordance with those meanings." Praxair Technology, Inc. v. Director, Div. of Taxation, 201 N.J. 126, 136 (2009). According to West's Tax Law Dictionary, 1096 (2016 Ed.), a transfer is the "[a]ct of conveying the title to property from one person to another." However, for tax purposes, a disposition is something

more. [T]he term refers to any transaction which terminates an interest in property." Id. at 289. Thus, a disposition is more than a transfer of legal title, it is the termination of an interest in the property.

Additionally, courts give words in a statute their "common acceptance and usage, but particular words may be enlarged or restricted in meaning by their associates and the evident spirit of the whole expression." Sinclair v. Merck & Co., Inc., 195 N.J. 51, 64 (1998). Here, the statute indicates not merely a disposition, but a complete disposition which signals that the Legislature meant something more than just a mere transfer of title.

2. Director's interpretation.

In interpreting section 1.1, the Director of the Division of Taxation has adopted regulations. See N.J.A.C. 18:26-5.10. There are three general principles that must be applied in interpreting what the Director has done in this case. First is that the Director's determinations are entitled to a presumption of validity. Atlantic City Trans. Co. v. Director, Div. of Taxation, 12 N.J. 130, 146 (1953). The presumption in favor of the taxing authority can be rebutted only by cogent evidence that is definite, positive and certain in quality and quantity to overcome the

presumption. Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985). See also Yilmaz v. Director, Div. of Taxation, 390 N.J. Super. 435, 440, 23 N.J. Tax 361, 366 (App. Div.), certif. denied, 192 N.J. 69 (2007). No such evidence has been provided.

The second general legal principal is that the Director's regulations are presumptively valid and should receive deference from the court unless they are inconsistent with the provisions of the statute they interpret. Koch v. Director, Div. of Taxation, 157 N.J. 1, 8 (1999). The regulation here is consistent with the statutory language and provides further clarity as to the statute's breadth.

Third, regulations are promulgated by the Director in order to clarify and interpret a statutory enactment. Prestia Realty Inc. v. Hartz Mountain Indus., Inc., 303 N.J. Super. 140, 144 (App. Div. 1997). The regulation provides that a transfer is not at nor after death if a transferor "completely and irrevocably disposes of all of his reserved income, rights, interests and powers in and over the transferred property including any right to possession, use and enjoyment of the property." N.J.A.C. 18:26-5.10. In conformity with the statute, the regulation explains the necessity for something more than a mere transfer of an interest and instead requires that the transferor "disposes" of his or her "possession,

use and enjoyment of the property" in order for the transaction to not be considered occurring at or after death. This interpretation and explanation of the statute is in full conformance with the statutory purpose and is entitled to deference. In this case, the transferors did not dispose of their possession, use and enjoyment until vacating the property upon death. Thus, under the regulation, the section 1.1 exemption does not apply.

3. Legislative history of section 1.1.

"[I]f the text [of a statute] is susceptible to different interpretations, the court considers extrinsic factors, such as the statute's purpose, legislative history, and statutory context to ascertain the Legislature's intent." Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000). "The judicial goal [when interpreting a statute] is to carry out fairly the legislative purpose and plan, and history and contemporaneous construction may well furnish important light as to that purpose and plan." Bernhardt v. Alden Café, 374 N.J. Super. 271, 279 (App. Div. 2005). "Statutes cannot be read in a vacuum void of relevant historical and policy considerations and related legislation." Borough of Matawan v. Monmouth Cnty. Bd. of Tax., 51 N.J. 291, 299 (1960). Helfrich v. Township of Hamilton, 182 N.J. Super. 365, 370 (App. Div. 1981).

The legislative history of section 1.1 confirms that the purpose of the law is not to take transfers three years prior to death in which the transferor retains a life interest outside the realm of taxability. Rather, the purpose of the section 1.1 is to except from taxability at or after death transfers in which the transferor has relinquished all benefit of the property including a life interest or life estate at least three years prior to death.

Prior to 1955, any transfer occurring at or after death, even one in which the transferor had no interest, was subject to the transfer tax. As then expressed by the New Jersey Supreme Court in 1950, "[t]he test for determining when the transfer takes effect in order to fall within the [at or after death] theory for taxing purposes is whether possession or enjoyment of the property is intended to take effect at or after the transferor's death, irrespective of the time when title is to vest. The important question is whether the shifting of the possession and enjoyment of the subject matter of the succession is dependent upon the settlor's death. Is his death a determining factor in the devolution of the possession and enjoyment of the estates granted? The thing taxed under our transfer inheritance tax statute is the transfer of the interest or property withheld from possession and enjoyment until the transferor's death." Schroeder v. Zink, 4 N.J. 1, 5-6 (1950).

The law prior to 1955 further provided that "a separately and specifically expressed remainder interest, where such remainder interest is expressed to commence at a time at or after the death of the donor, is taxable under our statute; notwithstanding that by the very same act or instrument of transfer the donor simultaneously transfers all other interests in the same property and thereby completely and presently divests himself of all interest or possibility of interest in the property as a whole." In re Estate of Hollander, 123 N.J. Eq. 55, 56 (Prerog. Ct. 1938).

In Hollander, supra, a trust was created by a husband which paid the income to the wife for the husband's lifetime, and then the principal to the wife upon the husband's passing. Id. at 53-54. There the court held the transfer of the principal which was tied to the husband's death was a taxable transfer despite the fact that the husband previously divested himself of all interest in the property. Id. at 56.

In other words, the law prior to 1955 provided that "[t]he criterion of taxability . . . is whether there is an estate passing at or after the death of the donor." Hartford v. Martin, 122 N.J.L. 283, 286 (E. & A. 1939). In Hartford, the decedent owned shares of stock he conveyed to a trust to pay the income to him for life and after death to his children. Hartford v. Martin, 122 N.J. Eq. 489, 490 (Prerog. Ct. 1937), aff'd, 120 N.J.L. 564 (Sup.

Ct. 1938), aff'd, 122 N.J.L. 283 (E. & A. 1939). Two years later, he assigned the income to his children. Id. The prerogative court determined that the separately stated remainder interest which passed at the death of the decedent would come within the express terms of the statute as being a transfer taking effect in possession or enjoyment after the death of the decedent. Id. at 493-94.

That is where the law stood on the eve of the 1955 amendment which became section 1.1. In the early 1950's, a wealthy New Jersey family had five inter vivos trusts. In re Estate of Lambert, supra, 63 N.J. at 456. In four of the trusts, the grantors retained an income or other interest. Id. Later, the grantors of the four trusts assigned their retained income or other interest to either charities or to a person not otherwise entitled to the remainder. Id. With the fifth trust, the grantor retained no interest with the income payable to one person until death of the grantor and then the remainder would pass to another person. Id.

Thus, the wealthy family with five trusts not only wanted to avoid federal estate taxation, which at that time was recently amended to preclude taxation in such circumstances, but also wanted to avoid the New Jersey Transfer Inheritance Tax as well. Id. at 454-456. After some hand-wringing, the Director of the Division of

Taxation supported the measure which was to become Section 1.1. Id. at 457.

The statement annexed to the bill indicated:

> This bill is designed to cure a discrepancy between the New Jersey Transfer Inheritance Tax Law and the Federal Estate Tax Law and the Estate Tax Laws of many of our sister states; notably New York and Pennsylvania. New Jersey now taxes trusts merely because the death of a grantor causes a shift in beneficial interest from one person to another. The tax is asserted even though the grantor has retained no beneficial interest in, and no power over, the property. Such trusts are exempt under Federal and New York statutes and under the Pennsylvania Statute as construed by the cases. The proposed act eliminates this unfairness to residents of New Jersey in comparison to residents of neighboring states.
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> [Id. at 452.]

The Legislature's intent in adopting this provision was to exempt transfers occurring at or after the transferor's death in which the transferor had given up any and all interest at least three years prior to death. In other words, the only involvement of the transferor was that his or her death served as a trigger as to when an interest would transfer. The Legislature certainly was not considering by any stretch of the imagination that it was exempting at or after death transfers in which the transferor retained a life interest. Transfers in which a transferor kept a life interest had long been subject to taxation. See e.g., Carter

v. Bugbee, 92 N.J.L. 390 (E. &. A. 1919). The Legislature merely sought to fix the situation in which the transferor had actually given all interest away and had not retained any "strings". In re Estate of Lichtenstein, supra, 52 N.J. at 578. The Legislature was of the opinion that once the strings were cut by the transferor with a complete and irrevocable disposition of retained interests, that taxation would not occur.

Overall, based upon the plain language, the Director's regulation and the legislative history, the death of the transferors here resulted in an at or after death taxable transfer that was not exempted by section 1.1.

V. Transfer of Husband's Interest.

The estate in the alternative argues only half the interest in the home is taxable. The trust was created in 2007. With the creation of the trust, there were three interests. The remainder interest which the niece received at or after the death of both husband and wife, the life interest of husband and the life interest of wife. Husband passed in 2007 and his interest extinguished. Wife passed in 2013 and her interest extinguished. Thus, per the express terms of the trust, the niece did not take

the property until after the death of husband and at the death of wife.

Thus the transfer to the niece is fully taxable under the at or after death provision of N.J.S.A. 54:34-1(c). As to the section 1.1 exemption, the trust was established only a few months prior to husband's death. Without looking any further, section 1.1's requirement that any disposition must be three years prior to death results in section 1.1 not being applicable. Moreover, even though wife created the trust more than three years prior to death, the transfer to the niece is not exempt for the reasons stated elsewhere in this opinion.

VI. Conclusion.

In conclusion, for the foregoing reasons, this court determines that the transfer of the marital home which was placed in trust is subject to the New Jersey Transfer Inheritance Tax.

The motion for summary judgment of the estate is denied and the motion for summary judgment of the director is granted. An order will follow.