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TRUSTS - POWER OF SETTLOR-BENEFICIARY TO TERMINATE SPENDTHRIFT TRUST

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TRUSTS — POWER OF SETTLOR-BENEFICIARY TO TERMINATE SPENDTHRIFT TRUST — The plaintiff established a trust fund, the income from which was to be paid to herself for life, remainder as she should appoint by will or in default of appointment to her next of kin. The trust instrument contained spendthrift provisions, and an express provision against revocation. Subsequently the value of the corpus declined, income dwindled to practically nothing, and plaintiff became practically destitute. *Held*, the trust, failing to accomplish its purpose, may be terminated. *Rehr v. Fidelity-Philadelphia Trust Co.*, 37 Pa. D. & C. 324 (1939).

Termination of a trust may generally be had when the purposes of the trust

have been accomplished,¹ when all the interested parties so desire,² or when the purposes of the trust are impossible of attainment.³ Ordinarily, however, the beneficiary of a spendthrift trust cannot secure termination since to do so would defeat the intention of the settlor who made the gift.⁴ Usually though, this rule is not applied where the settlor is also the sole beneficiary. But in Pennsylvania and Kentucky, it is held that a settlor who is the sole beneficiary of a spendthrift trust cannot terminate the trust, unless he reserved a power of revocation, for the purpose of the trust (i.e., his protection against creditors and dissipation of the corpus) has not been accomplished.⁵ But in Pennsylvania it is clear that the creditors of the settlor-beneficiary can reach the trust res to satisfy their claims whether they extended credit prior to the establishment of the trust or subsequently,⁶ and it is not clear that the settlor-beneficiary cannot alienate his interest in the trust.⁷ The purpose secured by the spendthrift trust for the benefit of the settlor, then, is to divest himself of the management of his property. It seems to be assumed, however, that a settlor creating such a trust for his own benefit did so in a moment of wisdom and ought not to be permitted to deprive himself of the nebulous protection so afforded later in a moment of folly.⁸ In addition

¹ In re Estate of Cornils, 167 Iowa 196, 149 N. W. 65 (1914); Simmons v. Northwestern Trust Co., 136 Minn. 357, 162 N. W. 450 (1917); In re Estate of Packer, 246 Pa. 97, 92 A. 65 (1914); McNeer v. Patrick, 93 Neb. 746, 142 N. W. 283 (1913).

² Burton v. Boren, 308 Ill. 440, 139 N. E. 868 (1923); Broadway Nat. Bank v. Adams, 133 Mass. 170 (1882); Huber v. Donoghue, 49 N. J. Eq. 125, 23 A. 495 (1892); In re Estate of Stafford, 258 Pa. 595, 102 A. 222 (1917).

³ 2 PERRY, TRUSTS AND TRUSTEES, 7th ed., § 920 (1929); Tilton v. Davidson, 98 Me. 55, 56 A. 215 (1903); Sears v. Choate, 146 Mass. 395, 15 N. E. 786 (1888); Fidelity & Columbia Trust Co. v. Gwynn, 206 Ky. 823, 268 S. W. 537 (1925).

⁴ Fletcher v. Los Angeles Trust & Savings Bank, 182 Cal. 177, 187 P. 425 (1920); Bevier v. Hay, 221 Ill. App. 1 (1921); In re Estate of Stewart, 253 Pa. 277, 98 A. 569 (1916); Vines v. Vines, 16 Thomp. (143 Tenn.) 517, 226 S. W. 1039 (1920). Accord: 2 TRUSTS RESTATEMENT, § 339 (1935), and see 3 SCOTT, TRUSTS, § 339 (1939).

⁵ Reidy v. Small, 154 Pa. St. 505, 26 A. 602 (1893); Rehr v. Fidelity-Philadelphia Trust Co., 310 Pa. 301, 165 A. 380 (1933), noted 43 YALE L. J. 342 (1933); King v. York Trust Co., 278 Pa. 141, 122 A. 227 (1923); Long v. Tradesmen's Nat. Bank & Trust Co., 108 Pa. Super. 363, 165 A. 56 (1933); Downs v. Security Trust Co., 175 Ky. 789, 194 S. W. 1041 (1917); Coleman v. Fidelity Trust & Safety Vault Co., 28 Ky. L. Rep. 1263, 91 S. W. 716 (1906). In Fidelity & Columbia Trust Co. v. Gwynn, 206 Ky. 823, 268 S. W. 537 (1925), termination was allowed where the reason for the creation of the trust was no longer operative.

⁶ Nolan v. Nolan, 218 Pa. 135, 67 A. 52 (1907); Benedict v. Benedict, 261 Pa. 117, 104 A. 581 (1918). The trust in the principal case had been so levied upon by creditors.

⁷ Doubt is cast on the proposition that the settlor-beneficiary can alienate his interest by the fact that the doctrine of non-termination has been developed. See Patrick v. Bingaman, 2 Pa. Super. 113 (1896), alienation of future income but not corpus permitted.

⁸ See especially Reidy v. Small, 154 Pa. St. 505, 26 A. 602 (1893), where the court dwells at length on the peculiarities of the settlor, who was the sole beneficiary.

to the fact that the device affords the settlor-beneficiary no real protection, it cannot be so blithely assumed that the moment of wisdom occurs at the setting up of the trust, and the moment of folly at the time when termination is sought.⁹ Interestingly enough, the trust involved in the principal case was before the Pennsylvania Supreme Court in 1933 on a petition of the settlor-beneficiary to terminate.¹⁰ Although it did not appear that the settlor was in fact a spendthrift at either the time of setting up or at the time when termination was first sought, the court, following *Reidy v. Small*,¹¹ held that there could be no termination. The corpus of the trust declined in value from 1928 to the present time approximately from \$200,000 to \$60,000 and the income from approximately \$8,000 a year to less than \$400 in 1939. As the court in the principal case said, "from the looks of the portfolio, I should say that she [settlor] could do no worse than respondent has done."¹² It seems, therefore, that clearly the purpose of the trust (a nebulous protection against dissipation and inexpert management) was no longer being accomplished. In such a case authority for termination of the trust, be it spendthrift or otherwise, is plentiful.¹³ Perhaps, however, the history of the principal case illustrates that so long as the settlor is the sole beneficiary and is not incompetent, there is no sound reason to refuse to allow termination of any trust, spendthrift and irrevocable or not, upon the settlor-beneficiary's request.¹⁴ After all, the purposes of the trust are his purposes and the sole beneficial interest in the trust is his interest, and, saving only the trustee, who may be interested in his fees, no person in the world other than the settlor-beneficiary has any interest, legal or practical, in the continuance of the trust.

Roy L. Rogers

⁹ See 3 SCOTT, TRUSTS, § 339 (1939).

¹⁰ *Rehr v. Fidelity-Philadelphia Trust Co.*, 310 Pa. 301, 165 A. 380 (1933), noted 43 YALE L. J. 342 (1933).

¹¹ 154 Pa. St. 505, 26 A. 602 (1893).

¹² 37 Pa. D. & C. 324 at 327.

¹³ *Fidelity & Columbia Trust Co. v. Gwynn*, 206 Ky. 823, 268 S. W. 537 (1925) (settlor subject to attacks of epilepsy allowed to terminate when restored to health). See also authorities cited in note 3, *supra*.

¹⁴ In general on the problem, see 2 TRUSTS RESTATEMENT, § 339 (1935), and 3 SCOTT, TRUSTS, § 339 (1939).