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## Trusts - Spendthrift Trusts - Reduction in Income as Justification for Termination in Favor of Beneficiary

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TRUSTS—SPENDTHRIFT TRUSTS—REDUCTION IN INCOME AS JUSTIFICATION FOR TERMINATION IN FAVOR OF BENEFICIARY—Testatrix died in 1913 leaving a will which established a \$20,000 spendthrift trust. The income from this trust was to be paid to her son for life with the remainder, in default of issue and the exercise of a general testamentary power of appointment, to go to the other descendants of the testatrix then living.<sup>1</sup> The stated purpose of the trust was to assure her son of “a support throughout his

<sup>1</sup> The son claimed that a life estate coupled with a general power of appointment constituted an estate tantamount to a fee. In discounting this issue, the court commented that a life estate under a spendthrift trust will not coalesce or merge with an estate in remainder. Principal case at 336. See also *Wormser Estate*, 85 D. & C. 526 (1953).

... whole life, under any circumstances."<sup>2</sup> The son, 65 years old and without issue, sought to terminate the trust on the ground that he was about to be retired with little probability of obtaining further employment and faced the prospect of being unable to support himself and his wife. The income of the trust had fallen substantially and at the time amounted to only \$660 a year.<sup>3</sup> The lower court allowed a partial invasion of the corpus. On appeal, *held*, reversed. After the death of the settlor a partial reduction of income is insufficient to constitute such a failure of purpose of a spendthrift trust as to warrant its termination or modification, when such a decree would benefit the life tenant. *In re Bosler's Estate*, 378 Pa. 333, 107 A. (2d) 443 (1954).

Even though all the beneficiaries of a spendthrift trust request its termination,<sup>4</sup> an equity court will not grant termination if the settlor is deceased<sup>5</sup> and the purposes of the trust have not been fully accomplished.<sup>6</sup> Since the purpose of a spendthrift provision is to prevent the voluntary or involuntary alienation of the beneficiary's interest,<sup>7</sup> when a court terminates the trust and turns complete control over to the beneficiary, it obviously defeats that purpose. If, however, because of circumstances not known to the settlor and not anticipated by him, the continuation of the trust would defeat or substantially impair the accomplishment of its purpose, the court will direct or permit the termination or modification of the trust.<sup>8</sup> Although for the past fifteen years Pennsylvania lower courts have held that a considerable reduction in trust income may constitute a failure of purpose of a spendthrift trust and have allowed either a partial or complete termination under these circumstances,<sup>9</sup> no appellate court has granted a termination for this reason.<sup>10</sup> Where a support or annuity trust is involved, however, there is authority to the effect that a reduction of income may constitute a frustration of purpose, and that an invasion of the corpus may be allowed in such circumstances even without

<sup>2</sup> Principal case at 335.

<sup>3</sup> *Ibid*.

<sup>4</sup> If all the beneficiaries do not consent, or there are unascertained contingent remainders who cannot consent, the trust will not be terminated. *Kamerly Estate*, 348 Pa. 225, 35 A. (2d) 258 (1944).

<sup>5</sup> If the settlor is living and both he and the beneficiaries consent, the trust may be terminated even though its purposes have not been accomplished. *Bowers' Trust Estate*, 346 Pa. 85, 29 A. (2d) 519 (1943); 2 TRUSTS RESTATEMENT §338, comment *h*, §339 (1935).

<sup>6</sup> GRISWOLD, SPENDTHRIFT TRUSTS, 2d ed. §517 (1947); 2 TRUSTS RESTATEMENT §337, comment *l*, §338, comment *a* (1935).

<sup>7</sup> 1 SCOTT, TRUSTS §153.3 (1939).

<sup>8</sup> 2 TRUSTS RESTATEMENT §336 (1935); 1 TRUSTS RESTATEMENT §167 (1935).

<sup>9</sup> *Auchu's Estate*, 38 Pa. D. & C. 33 (1939); *Honeywell Estate*, 70 Pa. D. & C. 472 (1950); *Kelby Estate*, 80 Pa. D. & C. 1 (1952).

<sup>10</sup> *Vines v. Vines*, 143 Tenn. 517, 226 S.W. 1039 (1920); *Brumbaugh v. Adcock*, 235 Mo. App. 643, 144 S.W. (2d) 823 (1940); *Brandt v. Continental Bank & Trust Co.*, (N. Y. Sup.Ct. 1943) 43 N.Y.S. (2d) 255. For current statements that a rise in the cost of living and a reduction of income do not constitute a failure of purpose, see *Maley v. Citizens National Bank of Evansville*, 120 Ind. App. 642, 92 N.E. (2d) 727 (1950); *Wogman v. Wells Fargo Bank & Union Trust Co.*, 123 Cal. App. (2d) 657, 267 P. (2d) 423 (1954).

the consent of the remaindermen.<sup>11</sup> In these cases the courts infer that the support of the life beneficiary is the primary purpose of the trust, and that partial termination, therefore, furthers the settlor's intent. This inference has not been carried forward to the case of a spendthrift trust, in which there is a specific provision operating to prevent the beneficiary from reaching his interest. In this situation the courts have not allowed the general aim to provide support to override the explicit prohibition against alienation.<sup>12</sup> The trust involved in the principal case contained a specifically expressed purpose to support the son under any circumstances. Since this conflicted with the spendthrift provision, the court held that the latter should control on the assumption that the testatrix must have realized there would be a change in circumstances and therefore would have provided for advances if she had intended the support provision to predominate.<sup>13</sup> This conclusion is questionable. It is at least reasonably doubtful whether a person in 1916 could have foreseen the extent of change in the current economy. Nevertheless, the decision is in accord with Pennsylvania common law which denies termination in any case where contingent remaindermen are involved, regardless of a failure of purpose.<sup>14</sup> Under the provisions of the Pennsylvania Estates Act of 1947,<sup>15</sup> which liberalized the requirements for terminations of spendthrift trusts, this trust probably would have been modified. Although this act cannot affect previously established trusts, there is nothing to prevent the courts from adopting the statutory policy and exercising it under their own equitable powers.<sup>16</sup> Rather than giving effect to the spendthrift provision, irrespective of the welfare or interest of the beneficiary,<sup>17</sup> the court would have done better to grant the relief in accordance with the policy of the Estates Act and the trust's express purpose of support. As it stands, the principal case represents another example of the unfortunate results often produced by the much-criticized dead hand.<sup>18</sup>

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<sup>11</sup> *Nirdlinger's Estate*, 331 Pa. 135, 200 A. 656 (1938); *In re Wolcott*, 95 N.H. 23, 56 A. (2d) 641 (1948), noted in 47 MICH. L. REV. 422 (1949); *Bolles v. Boatmen's National Bank of St. Louis*, 363 Mo. 949, 255 S.W. (2d) 725 (1953). See *Segelken v. Segelken*, 26 N.J. Super. 178, 97 A. (2d) 501 (1953).

<sup>12</sup> In matters of administration, however, the courts do modify trusts contrary to the specific intent of the settlor. 3 BOGERT, TRUSTS AND TRUSTEES, rev. ed., §561 (1951); Brunswick, "The Court Moves The Dead Hand," 15 CHI.-KENT L. REV. 24 (1936).

<sup>13</sup> *Fidelity Union Trust Co. v. J. R. Shanley Estate Co.*, 113 N.J. Eq. 562, 167 A. 865 (1933); *Rogers v. English*, 130 Conn. 332, 33 A. (2d) 540 (1943).

<sup>14</sup> See notes 1 and 2 supra; 24 TEMPLE L. Q. 84 (1950).

<sup>15</sup> Pa. Stat. Ann. (Purdon, 1950) tit. 20, §301.2. The act provides that spendthrift trusts can be terminated without the consent of the remaindermen if there is a failure of purpose. See Lefever, "Termination of Trusts in Pennsylvania," 96 UNIV. PA. L. REV. 305 (1948).

<sup>16</sup> See *Kelby Estate*, note 7 supra.

<sup>17</sup> See *Borsch Estate*, 362 Pa. 581, 67 A. (2d) 119 (1949).

<sup>18</sup> GRISWOLD, SPENDTHRIFT TRUSTS, 2d ed., §§391-393 (1947); 63 HARV. L. REV. 714 (1950).