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Trusts - Spendthrift Trusts - Deviation from Trust Terms on the Basis of Unforeseen Emotional Emergencies

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TRUSTS—SPENDTHRIFT TRUSTS—DEVIATION FROM TRUST TERMS ON THE BASIS OF UNFORESEEN EMOTIONAL EMERGENCIES—Plaintiff and her son were the principal beneficiaries of a testamentary spendthrift trust which had

been created by plaintiff's husband. The son, Montgomery Ward Thorne, was found dead under unusual circumstances. His will left a portion of his interest in the trust to his fiancee and her mother. A contest over the son's will developed between plaintiff and the designated beneficiaries in the will which caused intense bitterness between the parties. A compromise agreement was entered into, and plaintiff brought suit to obtain (1) court approval of the will contest settlement and (2) a direction to defendant trustee to invade the corpus of the spendthrift trust to provide funds for the settlement. The chancellor approved the settlement and directed defendant trustee to invade the corpus. On appeal, *held,* affirmed. The chancellor had authority to deviate from the trust terms on the basis of an emotional emergency engendered by the son's death and the subsequent dispute between plaintiff and her son's beneficiaries. The existence of spendthrift provisions did not prevent deviation. *Thorne v. Continental Ill. Nat. Bank & Trust Co.,* (Ill. App. 1958) 151 N.E. (2d) 398.

The general rule is that spendthrift trusts cannot be terminated even though all the beneficiaries consent,[1] and that the terms of the trust must be followed.[2] The reason for the rule is that the purpose of such a trust is to insure its beneficial enjoyment, which can best be accomplished by securing it from the beneficiaries' own improvidence[3] as well as by shielding it from the claims of creditors.[4] Courts have recognized exceptions to this rule where exigencies develop which were unforeseen by the settlor, and deviation from the terms of a spendthrift trust is allowed on the basis of what the settlor would have intended had he anticipated the circumstances.[5] Generally, cases applying this exception have involved either economic emergencies which threaten substantial or complete deterioration of the trust corpus,[6] or impossibility to comply literally with the trust provisions.[7]

1 Harrison's Estate, 322 Pa. 532, 185 A. 766 (1936). See 123 A.L.R. 1438 (1939).

2 Johns v. Johns, 172 Ill. 472, 50 N.E. 337 (1898).

3 See Wagner v. Wagner, 244 Ill. 101, 91 N.E. 66 (1910).

4 See Perabo v. Gallagher, 241 Mass. 207, 135 N.E. 113 (1922).

5 See Curtiss v. Brown, 29 Ill. 201 at 230 (1862). See also SCOTT, TRUSTS, 2d ed., §337 (1956), for a discussion of termination and modification of trusts; Scott, "Deviations from the Terms of a Trust," 44 HARV. L. REV. 1025 (1931).

6 In re Minden's Will, 138 N.Y.S. (2d) 340 (1954), where the court allowed the sale of the real property held in trust because of a substantial reduction in net income and changed character of the community. See also Matter of Pressprich, 124 Misc. 15, 207 N.Y.S. 412 (1924), where the court allowed a sale of the securities constituting the trust when they became highly speculative.

7 St. Louis Union Trust Co. v. Ghio, 240 Mo. App. 1033, 222 S.W. (2d) 556 (1949). The court allowed a different investment from the one specified in the trust as none could be found to yield the required rate. See also Donnelly v. Nat. Bank of Wash., 27 Wash. (2d) 622, 179 P. (2d) 333 (1947), where the court allowed the beneficiary to use the proceeds of the trust for the purpose specified despite failure literally to comply because World War II made literal compliance impossible. However, as stated in Rogers v. English, 130 Conn. 332, 33 A. (2d) 540 (1943), mere "difficulty" to comply will not be a basis for deviation from the trust terms.

The court in the principal case based its decision on the "emotional" emergency confronting the plaintiff, believing that such an emergency could be far more devastating than a financial emergency. The court reasoned that the dominant purpose of the settlor was the welfare of the plaintiff and her son, and this would be best effectuated by allowing a part of the corpus to be used to settle the compromise. Use of the unforeseen emergency doctrine as a basis for deviation has been substantially extended by the court in two distinct ways: (1) it is interpreted to include the beneficiary's "emotional," as opposed to financial emergencies; (2) it is applied to an emergency which in no way affects the trust corpus. The principal case appears to hold that if a trust beneficiary becomes involved in a sufficiently unpleasant situation which money can cure, the chancellor may in his discretion order the trustee to invade the corpus if he finds the beneficiary's interest is best served thereby. Adoption of such a position appears to run at cross currents with a basic purpose of a spendthrift trust, which is to provide an income from a relatively stable fund which cannot be tampered with except where emergencies threaten the fund itself. It is questionable, therefore, whether the action of the court conforms with the settlor's intent, since "emotional emergencies" might be just the sort of improvidence from which the settlor attempted to protect his beneficiary.

Another basis for terminating or deviating from the terms of a spendthrift trust which is recognized in many courts is a will compromise agreement.[8] The court in the instant case, by way of an additional justification for its decision, stated that there is "some analogy" between this case and those involving such agreements.[9] In the will compromise cases, however, including those relied on by the court in the principal case, the controversy was over the will which established the trust[10] while in the instant case the controversy involved the subsequent will of a trust beneficiary. The significance of this difference is brought out by the view of the New York courts, which deny that a testamentary trust is being altered or terminated by a will compromise since the trust does not attain legal existence until final

[8] Nat. Shawmut Bank of Boston v. Fitzpatrick, 256 Mass. 125, 152 N.E. 328 (1926), which allowed a will compromise to terminate a spendthrift trust; Madden v. Shallenberger, 121 Ohio St. 401, 169 N.E. 450 (1929), which allowed a will compromise to deviate from the trust terms. See also, Mass Laws Ann. (1955) c. 204, §§13-17; R.I. Gen. Laws (1956) tit. 33, c. 7, §17, which deal with allowing will compromise agreements. *Contra:* Rose v. Southern Mich. Nat. Bank, 255 Mich. 275, 238 N.W. 284 (1931), where the court did not allow a will compromise to terminate a spendthrift trust; Stein v. LaSalle Nat. Bank, 328 Ill. App. 3, 65 N.E. (2d) 216 (1946), where the court did not allow a will compromise to deviate from the trust provisions. See also note, 31 MICH. L. REV. 268 (1932) for a discussion of the Rose v. Southern Mich. Nat. Bank case.

[9] Principal case at 404.

[10] E.g., Nat. Shawmut Bank of Boston v. Fitzpatrick, note 8 supra; N.Y. Life Ins. and Trust Co. v. Conkling, 159 App. Div. 337, 144 N.Y.S. 638 (1913); Altemeier v. Harris, 403 Ill. 345, 86 N.E. (2d) 229 (1949); Tree v. Continental Ill. Nat. Bank and Trust Co., 346 Ill. App. 509, 105 N.E. (2d) 324 (1952). Both of the Illinois cases were cited by the court in the principal case.

adjudication of the will.[11] It is often difficult to determine whether this theory is accepted by other jurisdictions since it is usually not considered,[12] but those that do so would be unlikely to grant relief in the principal case since the New York decisions clearly indicate that the court cannot affect a previously created trust on the theory of a will compromise. The use of the will compromise as a basis for the result in the principal case would appear to be a clear extension of the theory. Thus whether this decision is based on the doctrine of unforeseen emergency or will compromise, or a combination of both, it appears to represent a substantial departure from traditional views. Nonetheless, the case illustrates the apparent wisdom of leaving the doctrine sufficiently flexible to permit relief in the highly unusual circumstances which gave rise to this litigation.

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11 See Matter of O'Keefe, 167 Misc. 148, 3 N.Y.S. (2d) 739 (1938), involving a will contest settlement where the court held that statutory restraints against alienation of a trust did not apply until after the will creating the trust is probated.

12 See Madden v. Shallenberger, note 8 supra, where a will compromise allowed modification of a spendthrift trust; Nat. Shawmut Bank of Boston v. Fitzpatrick, note 8 supra, where a will compromise allowed termination of a spendthrift trust. In neither case was the New York theory discussed. See also Bohannon v. Trotman, 214 N.C. 706, 200 S.E. 852 (1939). Several years after a will establishing a trust had been probated, a will compromise was allowed and the trustee used part of the trust corpus to effectuate the settlement. This would seem inconsistent with the New York view expounded in Matter of O'Keefe, note 11 supra, as it would be difficult to deny the existence of a trust which had been operating since probate of the original will, and this case might have gone the opposite way in the New York court. For the Illinois view, see Wolf v. Uhlemann, 325 Ill. 165, 156 N.E. 334 (1927), where the court allowed a will contest settlement to alter the terms of a testamentary trust without mention of the New York theory. But see Altemeier v. Harris, note 10 supra, which said by way of dictum that a testamentary spendthrift trust could not be *terminated* by a will compromise. In the principal case, the court said they were not terminating the spendthrift trust. But it is at least arguable that there was termination as to a portion of the spendthrift trust, for which the court cited no authority under the will compromise theory.