

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Maria Crudele
O.C. No. 619 IV of 2004
Control No. 040791

O P I N I O N

Introduction

Angelo Crudele, as Administrator C.T. A. of the estate of his mother, Maria Crudele, filed a petition to terminate a trust that was set forth in a deed dated August 22, 1944 between Camillo Crudele and Maria Crudele as grantors to Camillo Crudele and Maria Crudele as grantees. The issue raised in this petition is whether the trust created in this 1944 deed was testamentary, and thus revocable by a subsequent will executed by Maria Crudele on November 12, 1986. Upon an analysis of the language in both the 1944 deed and Maria Crudele's subsequent 1986 will as well as relevant precedent, this court concludes that the deed created a testamentary trust which Maria Crudele subsequently revoked by her 1986 will.

Background

Maria Crudele died in Philadelphia on August 27, 1992, leaving a Will dated November 12, 1986. In article SECOND of her Will, Maria devised her premises located at 1326 Sigel Street in Philadelphia "including furniture, furnishings, fixtures and personal items" to her daughter Yolanda Muto "for and during the term of her natural life or until she remarries (whichever occurs first)." The Will further authorized Yolanda:

- (a) to occupy, use and enjoy said premises or to rent the same subject to payments of all charges and costs and to keep the same in proper repairs;
- (b) in case she decides to terminate said estate, she may do so with the consent and joinder of the remainders in interest to effect a sale, free and clear of all of their rights and interests;

(c) upon the death of said Yolanda Muto or until she remarries (whichever occurs first) said premises shall vest unto my children, namely Philomena DeMeo, Angelo Crudele, and Rita Pecoraio, and the survivor of them and the heirs and assigns of such survivor;¹

After Maria Crudele's death, her daughter Yolanda took possession of the premises at 1326 Sigel Street (the "Sigel Street property"), where she lived until her death on February 3, 2003. On November 6, 2003, Angelo Crudele was appointed Administrator C.T.A of Maria Crudele's estate. As administrator, Angelo Crudele sought to sell the Sigel Street property. A title search revealed that the Sigel Street property had been purchased by his parents -- Camillo and Maria Crudele-- as tenants by the entireties by deed dated August 22, 1944. The title search also uncovered a second deed dated August 22, 1944.² That second deed created a trust between Maria and Camillo Crudele, as grantors, and between Maria and Camillo Crudele, as grantees, under which the Sigel Street premises were to be held:

IN TRUST NEVERTHELESS to collect the rents, income, issues and profits thereof, and after deducting taxes, water rents, necessary repairs and all other charges and expenses incidental to this Trust to take and appropriate the whole of the net income for their own sole and separate use and purpose absolutely for and during the term of their natural lives, or at their option to occupy the said premises, they paying all the taxes, water rents, repairs and all other necessary charges, From and immediately after the death of the survivor of the said Camillo Crudele and Maria Crudele, his wife, title to the said premises shall vest in Philomena Crudele, Angelo Crudele, Rita Crudele, Yolanda Crudele and Maria Crudele (the younger), their heirs and assigns, absolutely, free and clear of the said Trust. PROVIDED, however, that it shall and may be lawful for the said Camillo Crudele and Maria Crudele, his wife, Trustees as aforesaid, or the survivor of them, at such time or times as they shall deem meet to grant, bargain and sell in fee simple or mortgage or encumber said premises above-described, or any part thereof, to any person or persons, corporation or corporations, for such term or terms as to them shall seem advisable, and to make, execute, acknowledge and deliver all necessary deeds, bond and mortgages or other assurances in the law to vest a fee simple title in the purchaser or purchasers, mortgagee or

¹ See Petition, Ex. A, Will of Maria Crudele, Article SECOND.

² Petition, ¶¶ 2, 5-9.

mortgagees thereof, free and clear of the aforesaid Trust, without any liability on the part of such purchaser or purchasers, mortgagee or mortgagees to see to the application of the purchase money, and to use or expend the same as they may deem fit, or to reinvest the proceeds of such sale or mortgages upon the same and like uses and trusts with the same and like powers, provisos and conditions.

The petitioner maintains that this trust was revoked when Maria Crudele executed a subsequent 1986 Will which specifically referenced and bequeathed the Sigel Street property. Petitioner states that notice was given to all parties in interest and the consents of four of those parties were attached.³ No formal objections were filed, but the petitioner submitted a letter dated March 1, 2004 from Michael Muto, a son of Yolanda Muto and grandson of Maria Crudele.⁴ Mr. Muto asserts that under the trust title to the Sigel Street property would vest in all of the children of Maria Crudele. He also objects to the appointment of Angelo as administrator and asserts that he should be named executor instead. Any issue as to the appointment of an administrator is, of course, beyond the purview of this court and should be raised instead with the Register of Wills in the first instance. See 20 Pa.C.S.A. § 3181. A hearing was held on the trust termination issue raised in the petition, but Michael Crudele did not appear.

Analysis

Petitioner seeks to terminate the trust pursuant to 20 Pa.C.S.A. § 6102. Section 6102 provides that after a hearing a court may terminate a trust if it is “satisfied that the original purpose of the conveyer cannot be carried out or is impractical of fulfillment and that the termination, partial termination or allowance more nearly approximates the intention of the conveyer, and notice is given to all parties in interest or to their duly appointed fiduciaries.” 20 Pa.C.S.A. § 6102(a). Although no evidence was presented at

³ See, e.g., 6/16/04 Hearing Transcript (hereinafter “N.T.”) at 3 & 6.

⁴ Petition, ¶ 16 iii.

the hearing that the original purpose of the trust could no longer be carried out, section 6102(c) also provides that “nothing in this section shall limit any power of the court to terminate or reform a trust under existing law.” An analysis of existing law supports the conclusion that with their 1944 Deed the intent of the settlors was to create a testamentary trust since they retained a life interest, maintained a right to revoke the trust and maintained absolute control over the trustee by naming themselves trustees.

It is fundamental that “the intention of the creator of a trust is the guide primarily to be followed in interpreting the intended effect of the indenture.” Wolters Estate, 359 Pa. 520, 525, 59 A.2d 147, 149 (1948). Pennsylvania courts when interpreting trust provisions have emphasized that a “settlor’s intent is to be determined from all the language within the four corners of the trust instrument, the scheme of distribution and the circumstances surrounding the execution of the instrument.” Estate of Taylor, 361 Pa. Super. 395, 400, 522 A.2d 641, 643 (1987) quoting Farmers Trust Co. v. Bashore, 498 Pa. 146, 150, 445 A.2d 492, 494 (1982).

In the instant case, it is necessary to determine whether the settlors’ intent was to create a trust that was testamentary, that is, one which could be revoked, or whether they intended to create an inter vivos trust that had vested in the named beneficiaries.⁵ There are several significant aspects of the 1944 trust. First, the settlors reserved the right to revoke the trust they created in the following terms:

it shall and may be lawful for the said Camillo Crudele and Maria Crudele, his wife, Trustees as aforesaid, or the survivor of them, at such time or times as they shall deem meet to grant, bargain and sell in fee simple or mortgage and encumber said premises above described, or any part thereof, to any person or persons, corporation or corporations, for such term or terms as to them shall seem advisable, and to make, execute, acknowledge and deliver all necessary deeds,

⁵ For a discussion of the distinction between an inter vivos trust vested in the beneficiaries and a testamentary trust, see Mason Estate, 395 Pa. 485, 491, 150 A.2d 542, 546 (1959).

bond and mortgages or other assurances in the law to vest a fee simple title in the purchaser or purchasers, mortgagee or mortgagees thereof, free and clear of the aforesaid Trust, without any liability on the part of such purchaser or purchasers, mortgagee or mortgagees to see to the application of the purchase money, and to use or expend the same as they may deem fit, or to reinvest the proceeds of such sale or mortgages upon the same and like uses and trusts with the same and like powers, provisos and conditions.

Second, the settlors reserved a life interest in the property under which they could claim any income or rents. Alternatively, they had the right to occupy the premises during their lifetimes. Third, and perhaps most significantly, the Crudeles did not name a separate trustee for their trust; instead, the Crudeles served as trustees themselves with the right to collect rent or income, to pay taxes, to make necessary repairs “and to appropriate the whole of the net income for their own and separate use and purpose absolutely.” Petition, Ex. C (emphasis added).

In determining whether a trust is testamentary, courts typically consider whether the settlor reserved the right to revoke a trust while maintaining a life interest in it. See e.g. Wilson v. Anderson, 186 Pa. 531, 536-37, 40 A. 1096, 1097-98 (1898)(where settlor did not retain power to revoke or to convey the trust property, there was an absolute vesting of the equitable estate in the trust beneficiaries). The intent of the settlor is critical since “[t]he general rule is that, if the intention of the grantor at the time he delivered the deed was to part with the legal title, the trust will be enforced in favor of the beneficiaries, even though their enjoyment of the estate is postponed until the death of their benefactor.” Id., at 539-40, 40 A. at 1099.

A trust is not testamentary, however, merely because the settlor maintains the power to revoke the trust or to enjoy the income of the trust during his lifetime. In addition, a key consideration is the degree of control the settlor exercises over the trustee.

Thus, if the settlor also “reserves the power to control the trustee as to the details of the administration of the trust, and thus makes the trustee *merely the agent of the settlor*, the scheme becomes testamentary as to dispositions intended to take effect after death.”⁶

All three elements for a testamentary trust are present in the 1944 deed of trust executed by the Crudeles. In creating their 1944 deed, the Crudeles not only maintained the power to convey the Sigler property as well as the right to occupy it or enjoy its rental income, they also denominated themselves as trustees of the trust. In this most explicit fashion, the Crudeles made clear their intent to exercise complete control over the trustees. Their 1944 trust was therefore testamentary. The Pennsylvania Supreme Court has observed in In re Tunnell’s Estate, 325 Pa. 554, 560, 190 A. 906, 909 (1937) that “where the settlor declares himself trustee and reserves not only a beneficial life estate and a power to revoke and modify the trust but also power to deal with the property as he likes as long as he lives, the intended trust is testamentary”.

The will that Maria Crudele executed on November 12, 1986 is also significant. In this subsequent will, Maria Crudele specifically provided for the disposition of her Sigler property. In analyzing whether a subsequent will served to revoke a trust, courts have analyzed whether the will specifically references property encompassed within a prior trust. The Pennsylvania Superior Court , for instance, concluded that a will did not revoke a bank account trust where the will failed to specifically reference that account. As the court explained in In re Pozzuto’s Estate, 124 Pa. Super. 93, 97, 188 A.209, 210

⁶ Estate of Mason, 395 Pa. 485, 491, 150 A.2d 542, 546 (1959)(concluding that a trust as to real estate was not testamentary where settlor retained the power to revoke trust but trustee had active duties and was not a mere agent of the settlor). See also Shapley Trust, 353 Pa. 499, 502, 46 A.2d 227, 228 (1946)(where a settlor reserves not only a life estate and power to revoke a trust, but also “reserves the power to control the trustee as to the details of the administration of the trust, and thus makes the trustee merely the agent of the settlor, the scheme becomes testamentary as to dispositions intended to take effect after death”).

(1936), “[i]f it was the testatrix’ intention to revoke the trust, she certainly would have been more specific in the language used in her will, which was made shortly after the creation of the trust than the general expression in the first paragraph thereof.”⁷ Maria Crudele, in contrast, made highly specific dispositions of “my premises, 1326 Sigel Street, Philadelphia, Pennsylvania”. Petition, Ex. A, Paragraph SECOND.

For all of these reasons, Angelo Crudele’s petition to terminate the trust is granted.

Date: _____

BY THE COURT:

John W. Herron

⁷ Accord In re Krewson’s Estate, 154 Pa. Super. 509, 512, 36 A.2d 250, 251 (1944); Zerbe Trust, 10 Fid. Rep. 2d 268, 270 (1990).