

ROOM 521

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Civil Administration
F. HEWITT

PAP PARTNERSHIP, L.P.

R. POSTELL
COMMERCE PROGRAM

**IN THE COURT OF COMMON PLEAS FOR PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

THE SIMON FAMILY CHARITABLE	:	JANUARY TERM, 2018
REMAINDER UNITRUST dated 11/30/1994	:	
	:	NO. 05649
	:	
Plaintiff,	:	COMMERCE PROGRAM
	:	
v.	:	
	:	Control No. 22034482
THE CHARLES SIMON TRUST, et al.,	:	
	:	
Defendants.	:	

OPINION

Before the court is the Joint Motion to Approve Settlement Agreement filed on March 22, 2022, in this matter. It is supported by all parties, but opposed by the Intervenor, Stephen G. Simon. This court will grant the motion for the reasons that follow.

This dispute arises from a mortgage foreclosure action on an apartment building in Northeast Philadelphia, the Haven Arms.¹ This property is owned by the Charles Simon Trust, and has five mortgages on it, all owned by various Simon family-related trusts involved in this action.² The beneficiaries of the trusts are the children of Charles Simon, and the Jewish Federation as the residual beneficiary of the Simon Family Charitable Remainder Unitrust (the Unitrust).³ The Intervenor is one of the beneficiaries of the Unitrust and a contingent beneficiary of the Charles Simon Trust.⁴

¹ Joint Motion to Approve Settlement at paragraph 2.

² Id. at paragraphs 3; Joint Supplemental Memorandum of Law at 2.

³ Joint Supplemental Memorandum of Law at 2.

⁴ Id.

All of the parties in this dispute reached a settlement; however, the Intervenor has objected to the settlement. The question before the court is whether to permit settlement over Intervenor's objections. After review of the record including the parties' submissions, the court will do so.

As Movants note, under Pennsylvania law, "[e]xcept as otherwise provided in the trust instrument or in other provisions of this title, a trustee has all the powers of the trust property that an unmarried competent owner has over individually owned property and may exercise those powers without court approval from the time of creation of the trust until final distribution of the assets of the trust."⁵ More specifically, a trustee may "pay or contest a claim; settle a claim by or against the trust by compromise, arbitration or otherwise; and release, in whole or in part, any claim belonging to the trust."⁶ Trustees also have the statutory power to "sell or exchange any real or personal property at public or private sale."⁷ Further, both the Unitrust agreement and the Charles Simon Trust agreement specifically provide that the trustees have the power to settle lawsuits against the trusts.⁸ Conversely, a beneficiary such as Intervenor does not have the power to prevent settlement or sale of the property held in trust.⁹

The Intervenor especially has no ability to prevent settlement or sale in this matter, because the Trust Agreement provides for a designated representative to act on his behalf. The

⁵ 20 Pa.C.S. §7780.5.

⁶ 20 Pa.C.S. §7780.6.

⁷ Id.

⁸ Unitrust Agreement, Exhibit B to the Joint Supplemental Memorandum, Paragraph ELEVENTH, Section A, subsection 10; Charles Simon 2009 Amended and Restated Trust Agreement, Exhibit A to the Joint Supplemental Memorandum, Article V, Paragraph R.

⁹ "In an action at law brought by the trustee against a third person, the beneficiary is not a necessary or proper party." People's Nat. Bank v. Hollar, 26 Pa. D. & C. 692, 696 (Com. Pl. 1936), citing the First Restatement of Trusts.

Settlor, Charles Simon, amended the Charles Simon Trust Agreement in 2012 to name a designated representative for Intervenor, with the power to act for Intervenor as to all trusts created for Intervenor under that agreement.¹⁰ Therefore, even if the consent of the beneficiaries were required here, the consent of Intervenor's representative would suffice.

As noted by the Movants, the validity of the settlement and termination of the Unitrust is before the Philadelphia Orphans' Court. The Intervenor's objections to the termination of the trusts are properly addressed in the Philadelphia Orphans' Court. This court, Philadelphia Commerce Court, is only disposing of the Mortgage Foreclosure action. Furthermore, it is indisputably within the power of a trustee to consent to settlement in this action, and settlement does not require the consent of the beneficiary.¹¹

Accordingly, this court hereby grants the joint motion to approve the settlement.

DATED: 10/26/2022

BY THE COURT

NINA WRIGHT PADILLA, J.

¹⁰ Exhibit C to the Joint Supplemental Memorandum, Article IV-A reads as follows: "The Settlor has created in this Trust Agreement separate trusts for the benefit of the Settlor's son, STEPHEN G. SIMON. Pursuant to Section 736.0306 of the Florida Statutes, the Settlor is naming a Designated Representative to act on behalf of STEPHEN G. SIMON with respect to this Trust Agreement and any trusts created for the benefit of STEPHEN G. SIMON under this Trust Agreement, and to receive all notices, information, accountings, and reports on his behalf." The article names Gene K. Glasser, Esq., as the designated representative, with a first and a second named substitute to serve as designated representative if he is unable. If none of the named individuals are available to serve, the other children of Charles Simon are to choose a new representative for Stephen G. Simon.

¹¹ 20 Pa.C.S. §7780.6.