



Appeals Court addresses issues of first impression in trust case

Lawyers: Appeals Court answers, raises questions

By: Eric T. Berkman | December 9, 2021

A recent Appeals Court decision addresses three issues of first impression regarding disputes over trusts but also raises procedural questions going forward, practitioners say.

The petitioner in the case, Michael Colecchia, filed a Probate & Family Court petition alleging that two of his sisters breached their duty of loyalty by benefitting from uncompensated maintenance and improvement work he performed on their parents' Revere home. He claimed his sisters failed to tell him the property had been placed in a trust to which the sisters were trustees, and that they stood to inherit more of the trust property than he did.

He also claimed a breach of duty of care from their handling of the proceeds from selling the home.

In the context of the dispute, three questions of first impression arose for the Appeals Court to address:

- whether, despite contrary statutory language and contrary language in the Probate Court's supplemental rules, instructions on the Probate Court's "trust citation" form allow a petitioner to satisfy notice requirements by publication only;



- at what point a trust beneficiary becomes a "qualified beneficiary" to whom a trustee has a duty to inform; and
- whether Massachusetts Uniform Probate Code requirements, including its affidavit requirement, apply to actions challenging the validity of a trust.

As to the first question, the Appeals Court departed from the Probate Court in finding that due to the form's ambiguous instructions, Colecchia satisfied requirements when he provided notice by publication only.

Regarding the second question, the court found that Colecchia did not become a "qualified beneficiary" with a right to be informed of the trust until a triggering event occurred — in this case the death of both parents — that would entitle him to distributions.



Finally, the court determined that MUPC procedural requirements do not apply to general trust petition actions and thus Colecchia's undue influence claim should not have been dismissed on that basis.

Northampton attorney Mark A. Tanner, who litigates inheritance disputes but was not involved in the matter, described the case as a "common-sense decision" that guides attorneys through filing and serving aspects of the trust petition process.

"I found a lot in this decision that applies to cases I have going on," he said.

Boston attorney Marshall D. Senterfitt added that in light of the court's ruling that MUPC provisions do not apply to trust cases, the ruling raises questions as to whether, in contesting general trust petitions, trust litigants will still continue to file affidavits of objection, as has been the practice.

"The court and practitioners will have to consider what this means for that part of the trust petition process going forward," Senterfitt said. "If there are specific provisions in one or the other of the MUPC and the [Massachusetts Uniform Trust Code] that have led to similar practices in probate and trust proceedings, people will have to continue to analyze which statute applies in which circumstances."

Colecchia's attorney, Brian K. Wells of Boston, said he respected the court's decision but found it difficult to reconcile how a trustee could conceal a trust from a beneficiary for more than a decade as he used his own resources to maintain and improve the trust property, particularly where the trustee asked the beneficiary to perform the work and knew he would not do it if he had been aware of the trust.

"If that is deemed to be acting in the utmost good faith, our moral compass needs some recalibrating," Wells said.

The trustees' attorney, Gino N. Ricciardelli of Saugus, could be reached for comment prior to deadline.

The 37-page decision is *In the Matter of the Colecchia Family Irrevocable Trust*, Lawyers Weekly No. 11-118-21. The full text of the ruling can be found [here](#).

Petition proceeding

In February 2005, Colecchia's parents, Mario and Lillian, placed their home in an irrevocable trust, reserving the right to occupy it during their lifetimes and pledging to pay for all maintenance, repairs and other charges.

Their children were to receive nothing during their lifetimes, but after they died the trust called for Michael and his two brothers to split 30 percent of the trust property while their three sisters would split the other 70 percent. Two of the sisters, defendants Donna and Denise, were named trustees.

Unaware that his parents transferred the home into a trust or that trust assets would be distributed unequally, Michael spent the next 11 years performing landscaping, snow removal, and maintenance and renovations without compensation. He claims he would not have done so had he known otherwise.

It was not until February 2016, when both parents had died, that Michael learned of the trust and its terms.

A year later, over Michael's objection, Donna and Denise sold the property for \$366,000. The attorney representing the trust in the sale held onto its proceeds for the next nine months — an unreasonable delay, according to Michael — and, once the funds were released, Donna and Denise allegedly failed to place the proceeds in an interest-bearing account and delayed their distribution.



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On May 23, 2018, Michael filed a general trust petition, attaching a complaint and copy of the trust. He alleged, among other counts, breach of duty to inform him of the trust, unjust enrichment via his uncompensated labor, and breach of duty of care in handling of the sale proceeds.

The trustees filed affidavits of objection attacking the fact that Michael provided notice of the petition by publication only and that Michael failed to file an affidavit supporting his undue influence claim, and moved to dismiss the substantive claims on their merits.

Probate Court Judge Jennifer M.R. Ulwick dismissed most of the claims on either procedural or substantive grounds. In dismissing the fiduciary and unjust enrichment claims against the trustees, she ruled that the parents, not the trust, were the ones benefitting from Michael's labor.

Michael appealed.

Three questions

The Appeals Court ruled on three issues of first impression.

First, it found that Michael's petition should not have been dismissed for deficient notice. As Judge Gabrielle R. Wolohojian wrote for the panel, though Probate Court supplementary rules and a relevant statute dictated that a trust petition be served in hand or by mail to interested parties of known whereabouts, the form in question was written in a way to suggest that publication by notice was sufficient on its own.

"The problem here was not with service, but with the lack of clarity in the order of notice," Wolohojian said. "If the probate court continues to use the existing preprinted order of notice form, it is incumbent on the judge in each case to indicate whether notice by publication is additive or alternative to service by delivery or mail."

Addressing the second question, the Appeals Court ruled that one does not become a "qualified beneficiary" to whom a trustee has a duty to inform until a "triggering event" occurs that entitles that person to a distribution.

"Upon Lillian's death, Michael became a distributee under the trust and, thus, met the definition of 'qualified beneficiary,'" Wolohojian said. "Until [Lillian's death, Michael] was not a 'qualified beneficiary' because the triggering event for his qualification as a beneficiary had not yet occurred."

With respect to the third question, the Appeals Court found that the lower court should not have dismissed the undue influence claim on grounds that such a claim required an affidavit.

The provision the judge apparently relied on was part of the MUPC and concerned objections to probate of an estate, Wolohojian pointed out.

"We decline to import the requirements of the Massachusetts Uniform Probate Code to an action, such as this one, challenging the validity of a trust," she said, adding that Michael's allegations of undue influence should have been sufficient to withstand a motion to dismiss.



Meanwhile, the court criticized Michael's use of the trust petition process to bring fiduciary claims for money damages by attaching a complaint in equity to a general trust petition.

"We do not endorse this approach and ... caution future litigants against proceeding as Michael did here," Wolohojian wrote.

Form or substance?

Eric D. Correia of Swansea, who handles trust issues, said the case provides helpful direction for who is considered a qualified beneficiary.

"It can sometimes be unclear where to draw the line between qualified and unqualified beneficiaries," he said. "It is best to assume that anyone in the gray area is a qualified beneficiary to avoid an issue in the future. However, at the same time, trustees often do not want to provide information to non-qualified beneficiaries if they do not have to."

Boston T&E litigator Joseph L. Bierwirth Jr. said the most instructive part of the decision was the Appeals Court's statement that it did not endorse the use of a general trust petition to bring fiduciary or monetary damages claims.

Petitioners have long done that to create a procedural posture where the objecting party must assert, through an affidavit based on personal knowledge, sufficient facts to disprove an affirmative claim, Bierwirth explained.

Though the MUTC actually authorizes the filing of trust petitions to invoke Probate Court jurisdiction over a number of specified trust-related actions, Bierwirth said the practice upends the usual burden of production and gives the petitioning party an upper hand and a chance at free discovery, since the affidavit must contain particular and persuasive facts.

"The guidance supplied by the Appeals Court here, if followed, results in a more suitable process for resolution of these types of claims, even though it seemingly runs afoul of the plain language of the statute," Bierwirth said.

Meanwhile, Tanner said the case emphasizes how careful one must be when using court-approved forms because they may not contain the same law as relevant statutes or other rules of procedure.

"You can't count on the court saving you from yourself as the court did here," he said, adding that the relevant statute and supplemental rule in the case could have supported a decision the other way.

In the Matter of the Colecchia Family Irrevocable Trust

THE ISSUE: Do affidavit requirements in the Massachusetts Uniform Probate Code apply to actions in Probate & Family Court challenging the validity of a trust?

DECISION: No (Appeals Court)

LAWYERS: Brian K. Wells of Boston (petitioner)
Gino N. Ricciardelli of Saugus (trustee)

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