SALCE V. CARDELLO

March 13, 2020

Case Summary, Estate Planning, In Terrorem Clause, Probate, Trusts, Wills

Connecticut

Corey Michelle Timpson

off

New Haven Superior Courthouse (Source).

ABSTRACT

Case Name: Salce v. Cardello, 2019 WL 6247662 (Conn. Sup. Ct. 2019).
Jurisdiction: Superior Court of Connecticut on Appeal from Probate Court.
Plaintiff/Counter-Claim Defendant: John Salce, son of decedent, Mae Salce.
Defendant/Counter-Claim Plaintiff: Joan Cardello, daughter of decedent, Mae Salce.
Concepts: Estate Planning; In Terrorem Clause.
Nature of Case: Whether either party violated the in terrorem clause as stated in both the trust and last will and testament.

INTRODUCTION

After the death of Mae Salce, mother to John Salce and Joan Cardello, the trustee, Jay Goldstein, issued letters to the beneficiaries regarding the estates assets.[1] Upon review of the listed assets, Cardello believed that one of the assets, a Citizen's Bank Account, which was solely titled in her name, was included erroneously.[2] Additionally, there were two mortgage payments, which would increase the value of the estate, that were not accounted for.[3] After noticing these issues, Cardello, through her personal attorney, brought them to the attention of Goldstein.[4] When Goldstein refused to amend the CT-706 list without an order from a Probate Judge, Cardello requested a hearing with the Probate Court to address these issues.[5] Cardello's position was that (1) the bank account should be removed as an asset of the decedent; (2) the mortgages should have been listed or reimbursed to Cardello; and (3) a $700,000 note owed by John Salce to the decedent should have been included as an asset, but was not.[6] As a result of this petition, Salce requested a counter-hearing to determine if Cardello's actions violated the in terrorem clauses present in both the trust and will of the decedent.[7] The Probate Court held (1) neither party breached the in terrorem clauses; and (2) the bank account was erroneously listed.[8] This Court, pursuant to a trial de novo, held that neither Salce nor Cardello violated the in terrorem clauses because each of them acted in good faith, with probable cause and with reasonable justification in their challenges.[9]

The main issues focused on when a challenge to the acts of a trustee constitutes violation of an in terrorem clause. This is important because in terrorem, or no-contest clauses, are often put into wills and trusts. This case is important as it outlines the test used in one of the exceptions to the enforceability of this clause.

Despite being an unpublished opinion, this case provides important insight and guidance into the use of in terrorem clauses for wills and trusts in Connecticut.

BACKGROUND

An in terrorem clause, also known as no-contest clause, is a tool used by settlors in drafting their wills and/or trusts in an attempt to avoid challenges among the beneficiaries.[10] These clauses essentially provide that if a beneficiary challenges any portion of the instrument, he or she forfeits their share.[11] However, these clauses are not favored highly by the courts. In fact, sometimes there is a valid challenge to be made to an estate planning instrument; so some courts have fashioned exceptions to be made when determining either the validity of the clause itself, or whether the actions taken by the beneficiary actually constitutes a violation of that clause. Many states have decided that, if the challenger has probable cause, he or she may contest the trust or will to a certain extent without violating the no contest clause.[12] This is also the approach taken by the Uniform Probate Code.[13] Many people believe that including these clauses will preclude their beneficiaries from challenging the distribution of assets, however, that is not always supported as there are many exceptions to the validity of such clauses.[14]

In *The Fine Art of Intimidating Disgruntled Beneficiaries with in Terrorem Clauses,* the authors discuss, in detail, the history and validity of these clauses.[15] Many courts will strictly construe these clauses , which almost always acts to preclude forfeiture.[16] Additionally, courts in Connecticut, as this case is venued, have held that beneficiaries "need not stand mute and the law will not by threat of forfeiture compel his [or her] silence."[17] Primarily courts in Connecticut, and other jurisdictions, require that the challenge be in good faith, with probable cause and for reasonable justification to be valid and not in violation of the settlor's wishes.[18]

CASE DESCRIPTION

The Superior Court of Connecticut held that neither Salce nor Cardello violated the in terrorem clauses.[19] The Court, as is true with many jurisdictions, strictly construed the statute to allow for genuine, good faith challenges to the trust administration.

The court first addressed Salce's claim that Cardello violated the in terrorem clauses in both the will and trust.[20] In order to find that Cardello did not violate the clauses, she must have "acted in good faith, upon probable cause, and with reasonable justification."[21] The court believed that her actions were not a contest of the terms of either the trust or will, but rather was acting to ensure that the estate "did not pay more taxes than reasonably necessary" by challenging the inclusion of certain assets within the trust.[22] When the trustee refused to correct the errors Cardello discovered, she was essentially forced to seek a court order.[23]

Salce also claimed that Cardello violated the in terrorem clause by filing a creditor's claim since she submitted an expense sheet to the trustee.[24] However, the court found that the parties did not file a formal claim and were not expecting reimbursement, but rather only submitted the expense report upon request by the fiduciary.[25] As such, the court held that this was also not a violation of the in terrorem clauses.[26]

The court then addressed Cardello's counter-claim that Salce violated the interrorem clauses as the will made specific mention that Salce was not to contest the will or trust in any way or he will be required to repay a loan made by his mother in the amount of about $700,000.[27] The court found that Salce's actions did not constitute a challenge to the will or trust documents, but rather constituted him taking protective action to ensure that his rights were not lost.[28] As his course of action was also within the realm of good faith, probable cause and reasonable justification, he also did not violate the in terrorem clauses.[29]

CONCLUSION

In conclusion, the Superior Court of Connecticut was tasked with determining the validity of the disfavored in terrorem clauses. Since the court found that both parties acted in good faith, with probable cause, and upon reasonable justification, it held that neither violated the in terrorem clauses. This is just another example of the courts willingness to construe these in terrorem clauses in a manner which allows beneficiaries the opportunity to seek the truth rather than standby while their rights are potentially taken away.

---

1. Salce v. Cardello, 2019 WL 6247662 *3 (Conn. Sup. Ct. 2019). ↵
2. *Id.* ↵

3. *Id.*
4. *Id.*
5. *Id.*at *3-4.
6. *Id.*at *4.
7. *Id.*
8. *Id.*
9. *See Id.* at *1.
10. Salce, at *4; In Terrorem Clause, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/in_terrorem_clause.
11. *Id.*
12. *Salce,* at *4; *see also* Robert Fleming, *Should There Be An In Terrorem Clause in Your Will or Trust?* Fleming & Curti PLC, Vol 16, No 49, (Aug. 3, 2009) https://elder-law.com/should-there-be-an-in-terrorem-clause-in-your-will-or-trust/; *see also* Gerry Beyer, et al. *The Fine Art of Intimidating Disgruntled Beneficiaries With an In Terrorem Clause,* 51 SMU L. Rev. 225 (Jan.-Feb. 1998).
13. 5 Gerry Beyer, et al. *The Fine Art of Intimidating Disgruntled Beneficiaries With an In Terrorem Clause,* 51 SMU L. Rev. 225 (Jan.-Feb. 1998).
14. *Id.* at 248.
15. Gerry Beyer, et al. *The Fine Art of Intimidating Disgruntled Beneficiaries With an In Terrorem Clause,* 51 SMU L. Rev. 225(Jan.-Feb. 1998).
16. *See* Estate of Stuart v. Appeal from Probate for District of Norwalk/Wilton, Docket No. CV-11-6010417-S, 53 Conn. L. Rptr. 558 (Feb. 22, 2012).
17. Griffin v. Sturges, 101 Conn. 471, 477 (1944).
18. South Norwalk Trust Co. v. St. John, 92 Conn. 168, 177 (1917).
19. *Salce*, at *1.
20. *Id.* at *5.
21. *Id.*
22. *Id.* at *6.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at *8.
28. *Id.*
29. *Id.*

Posted by Corey Michelle Timpson

Corey Timpson recently passed the California bar exam and is a practicing attorney in Walnut Creek, doing primarily civil litigation defense work. Ms. Timpson also works on estate planning matters for a limited clientele. She received a Bachelors of Arts in Psychology from the University of California, Los Angeles in 2016, a Juris Doctorate from Golden Gate University School of Law in 2019, and is currently enrolled, full-time, in the Dual Estate Planning and Taxation LLM Program at Golden Gate University School of Law with an expected completion date of December 2020. While in law school Ms. Timpson was the Executive Research Editor of the Golden Gate University Law Review, where her was article published in the Journal's February 2019 Ninth Circuit Survey. Ms. Timpson is interested in taxation and estate planning because it is not only an interesting and always changing area of law, it is also an incredibly important field of law and will always be relevant.

RECENT POSTS

RECENT COMMENTS

ARCHIVES

CATEGORIES

META

CONTACT US!

Via our contact form or
through the avenues below.

GGU Tax & Estate
Planning Review
Golden Gate University
School of Law
536 Mission Street
San Francisco, CA 94105
ContactTaxReview@ggu.edu

Search …

TAGS

Connecticut Georgia Minnesota North Carolina Oklahoma Oregon Pennsylvania Texas

Privacy Policy