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Money Transfers Created Resulting Trust For Uncle

By: john.o.cunningham | April 30, 2001

A Russian citizen who made several money transfers to his nephew in America was the beneficiary of a resulting trust, rather than a creditor of the nephew's estate, a Probate & Family Court judge has ruled.

The defendant argued that the plaintiff failed to demonstrate he was entitled to the money transfers, and that as a creditor of the nephew's estate, the claim was barred by the statute of limitations.

But Judge Judith Nelson Dilday disagreed in awarding the transfers and accumulated interest of over $200,000 to the plaintiff.

"The [d]efendant did not present sufficient evidence for the [c]ourt to conclude the monies transferred constituted a loan, or that [plaintiff] should be found to be a creditor," Dilday ruled. "The [c]ourt concludes that the transaction between [plaintiff] and [d]ecedent meets the requirements to establish a resulting trust."

The 19-page decision is *Troyanker v. Kamkina*, Lawyers Weekly No. 15-004-01.

Trust 'Well-Placed'

Robert R. Pierce of Boston, counsel for the plaintiff, said even though no written agreements or trust instruments existed, "the trust was still well-placed."

Pierce suggested that "people don't seek a written agreement on what will happen if a trusted [young] relative dies holding their money. It's not how the world works."

He lauded the decision as an application of the principle that "money held by a decedent for the benefit of another constitutes a claim in equity not subject to the [statute of limitations] for creditors."

Pierce noted that his client had evidentiary hurdles to overcome in establishing the resulting trust.

"This was a very unusual case," he said. "The administrator did not know where the money came from, and all of the banks that originally transferred the money were defunct. There were almost no records. The [Russian] system was collapsing and that's partly why [the plaintiff] was getting his money out."

Pierce said he had to prove that wire transfers from London, Switzerland and Germany originated from his Russian client.

"Our banking expert testified that it's unusual for an international wire to go directly to a Boston bank if there is no relationship with that bank. But the decedent did create a separate account for the transfers, and he never touched the money, despite living almost as a pauper."

William F. Kehoe of Boston, a 30-year veteran of handling probate matters, noted that the "old world, family trust"

played a role in the case, but suggested that "just setting up an account in a trust name might have avoided [litigation]."

Kehoe said the decision reflects a growing prominence of resulting trusts in probate law.

Alan H. Aaron of Framingham, who represented the defendant, could not be reached for comment prior to deadline

A Family Affair

In 1993, Andrey Tregor, the decedent, was living in the United States, but separated from his wife, the defendant, Maria Kamkina.

In early 1994, Viktor Tregor, the plaintiff and the decedent's uncle, considered transferring money to the United states from Russia.

The plaintiff testified that his nephew agreed to place the money received in a separate account, and to use the money in the account only to pay taxes on the interest accrued.

The nephew established two bank accounts with BayBank, and deposited funds from the wire transfers into the second account. Eleven wire transfers totalling $177,455 were received between April 1994 and August 1997.

The nephew apparently never used the money.

The plaintiff made telephone calls within days after each transfer to confirm receipt of the funds. He retained documentation for the origination of few, but not all of the wire transfers.

Because of the economic crisis in Russia, the plaintiff wanted to get his money out of the country. He made the transfers so his son, Vladimir, could start a company in America.

Before Vladimir arrived in the United States, the plaintiff's nephew died of brain cancer in November 1997.

The defendant did not know about the second bank account or the wire transfers until after husband, the plaintiff's nephew, died. She was appointed administratrix of the decedent's estate and guardian of their son, Michael.

An expert testified at trial that electronic transfers from foreign banks are routed through correspondent banks in other countries before they reach the United States. Therefore, evidence that the wire transfers came from other countries could not prove that the wires did not originate in Russia, he testified.

Resulting Trust

Dilday rejected the defendant's argument that the bank account was not in trust, even if the plaintiff was not a creditor. "To demonstrate the establishment of a resulting trust, the claimant must prove that he paid for the property in question, and that it was his intent that the 'holder' not receive any beneficial interest in the property by gift, settlement or advancement," said Dilday.

"Because there was no written agreement between [the plaintiff] and [the] [d]ecedent, evidence of an oral agreement is admissible to establish a resulting trust," wrote the judge.

She found that the "oral agreement between [d]ecedent and [the plaintiff] provided that [the] [d]ecedent would hold monies until Vladimir arrived in the U.S."

The defendant could not rebut evidence of the agreement, the judge determined.

But she also noted that "the one seeking enforcement of the trust must demonstrate by 'clear and convincing evidence' that he paid the purchase prices of the property in question."

Dilday noted the evidence of the plaintiff's income and expenditures for the periods in question, the oral testimony, the wire records and bank records.

She also noted that "the [d]efendant was unable to provide any evidence that the money in question came from an other source than [the plaintiff]."

Dilday also rejected the defendant's argument that the arrangement did not create a resulting trust because the plaintiff transferred the money to the decedent for the plaintiff's benefit, and the money is for Vladimir's computer software business.

But, Dilday wrote, the plaintiff "can keep the money for himself or give it to Vladimir. This is [the plaintiff's] choice. Should [he] decide to give the money to Vladimir, that … would not violate existing case law or the restatement."

Not A Creditor

The judge determined that the statute of limitations for claims of creditors did not apply to the facts of the case.

"Viktor's status as creditor or equity holder determines whether G.L.c. 197, Sect. 9 applies," wrote Dilday. "Creditor interests are distinguished from equitable interests, and the statute of limitation in question does not apply to equitable interests in a [d]ecedent's property."

The court's analysis conceded that "Viktor and [the] [d]ecedent did not reduce their agreement to writing," but emphasized that "writing is not required to establish a contract."

Dilday found that "[t]he evidence indicates that the purpose of the transfers from Viktor to [the] [d]ecedent were for the [d]ecedent to hold the funds until Vladimir's arrival in the U.S."

On that basis, she ruled "that Viktor possesses an equitable interest in the monies and is not a creditor within the meaning of the statute," and, as a result, the statute of limitations on claims against the estate did not apply.

Prior Pending Claims

The judge also rejected the defendant's motion to dismiss based on the allegation that Vladimir had filed prior pending claims as his father's agent.

Dilday did note the power of attorney authorizing Vladimir to take actions on behalf of the plaintiff to recover money, but said, "A power of attorney alone is not a clear indication of an agency relationship."

The judge explained: "Vladimir held the power for the benefit of [the plaintiff], and ultimately [for himself]. Power holders of this type differ from agents because they do not have the *duty* to act primarily for the benefit of the give of the power, nor are they subject to the giver's right of control."

The judge also rejected the defendant's arguments on procedural grounds.

"[The] [d]efendant waived her right to [these] additional affirmative defenses by waiting until the conclusion of trial to submit a [m]otion to [d]ismiss and a [m]otion to [a]mend [a]nswer. The conclusion of a three-day trial is too late to move to dismiss an action that has been filed for almost two years," Dilday said.

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