Reforming a Trust- 25 years Later!

March 18, 2024

Take-Away: Could it be that settlors are better off not proofreading their Trust instruments before they are signed, if they later want to change their mind?

Background: We have covered in the past how a reformation of a Trust can be effective to change the tax implications arising from the Trust, unlike a trust modification. A Trust's reformation is retroactive to the date of the Trust's creation while a Trust's modification is only effective prospectively.

MTC: The Michigan Trust Code (MTC) authorizes a Trust instrument's reformation, but only if there is clear and convincing evidence. [MCL 700.7415.] That statute authorizes the reformation of the terms of a Trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the Trust were affected by a mistake of fact or law, whether in expression or inducement.

Mistakes of Expression or Inducement: The comments to the Uniform Trust Code (which was adopted by Michigan with its MCL 700.7415) notes that a mistake of expression occurs when the terms of the Trust misstate the settlor's intention, fail to include a term that was intended to be included, or include a term that was not intended to be included. A mistake in the inducement occurs when the terms of the Trust accurately reflect what the settlor intended to be included or excluded, but this intention was based on a mistake of fact or law. Mistakes of expression are frequently caused by scriveners' errors while mistakes of inducement often trace errors of the settlor. [UTC Section 415 comment.]

Recently, the Mississippi Supreme Court found a settlor's mistake of expression, 25 years after the trust was created, because the settlor failed to read the Trust before he signed it.

In the Matter of the Elton G. Beebe Sr. Irrevocable Family Mortgage Trust, Mississippi Supreme Court, No. 2022-CA-01176-Februrary 29, 2024

Facts: This $80 million Trust named 16 lifetime beneficiaries. The co-trustee had sole discretion to distribute net income and principal to the named beneficiaries for their support, welfare, and maintenance. Any undistributed income was added to trust principal. The litigation centered on the provision that dealt with the future termination of the Trust. That trust provision provided that upon the death of the last of the named beneficiaries to die, any remaining trust principal and accumulated income 'shall be distributed in equal shares to the descendants of the named beneficiaries, or their issue, per stirpes.'

Apparently, 25 years later when his estate plan was being reviewed, Mr. Beebe learned who the 'end' beneficiaries of the Trust were, and he strongly objected to that provision. Mr. Beebe wanted the trust assets distributed to his own descendants, not those of the named beneficiaries. Consequently, Mr. Beebe claimed that the Trust instrument did not accurately reflect his intent. The Trustees asked the trial court to 'modify' the Trust instrument to reflect Mr. Beebe's 'true intent.'

Settlor's Testimony: Not reading an estate planning document is an excellent way to argue for its reformation later, it would seem in Mississippi.

> Mr. Beebe testified that his attorney, Mr. Earl, had drafted the Trust and had brought it to him to read. Mr. Beebe, however, testified that he did not read it. When asked why he did not read the document he testified:
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> "I just-the way I did business, and still do to this day, is the attorney took care of whatever I asked them to do, and my CPA. You know, once I told them what I would like to accomplish, then they took care of it and I never went behind and- which I should have, I guess, I never when behind and checked everything."

Mr. Beebe also testified that he had not spoken to his attorney about what would happen when the Trust terminated, and he stated that between 1992 and 2020 he had not read the termination clause in the Trust.

He further testified that he would not have continued to put assets in the Trust had he known about the termination clause.

He also testified that he would not have continued to grow the value of the Trust 'to take care of people that I don't even know and that maybe some of them not even born yet.

- "And I even told my three kids–of course, I don't know that I've lived up to this, but I told them, I'm going to help you but you're going to help your own kids. I'm not taking that responsibility. But here is this document I'm, taking a lot more responsibility. So, I just–I know that I would not have done that. I mean, the document says what it says. It was my fault for not studying the document."

Trial Court: The trial court authorized the Trust to be reformed.

Supreme Court: The Mississippi Supreme Court found that the trial court had not abused its discretion in allowing the Trust to be reformed to conform it to Mr. Beebe's original intent. The Court found–

> "Elton [Mr. Beebe] also pointed out that, because the youngest named beneficiary was fifty years old at the time the petition was filed, the termination provision contained in the Trust would likely lead to a vast number of beneficiaries. Hibernia [one of the acting co-trustees who survived– the scrivener/co-trustee had long ago died] corroborated Elton's testimony. She spoke about Elton's generosity but stated that his ultimate focus was on his family line. The Respondents presented no contrary testimony as to Elton's intent at the time the Trust was created. We find that [the Trustees] submitted sufficient evidence showing that the

> termination provision in the Trust was a mistake of expression that did not evidence Elton's intent at the time the Trust was created."

Observation: It is somewhat surprising that the Court relied upon the settlor's candid testimony that he did not bother to read the Trust instrument before he signed it, and that 25 years had passed before the Trust's termination provision was brought to his attention by his newest attorney. [Apparently Mr. Beebe was still not reading his legal documents!] I am not so sure a Michigan Court would be so tolerant of a settlor who fessed up that he/she did not read the document, but finally did so a quarter-century later, and wanted the instrument to be reformed to what he/she thought was in the instrument prepared at his/her direction.

Conclusion: According to the court opinion, there was opposition to the petition to reform Mr. Beebe's Trust. What if the remainder beneficiaries did not protest the petition. It makes me wonder how the IRS might view this 'reformation' albeit retroactive to 25 years earlier. Would the IRS try to assert some type of implied gift from the remainder Trust beneficiaries to the lifetime beneficiaries or their descendants now that their remainder interests in the Trust are effectively terminated by the Trust's reformation?