

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: :
THE ESTATE OF : **No. 41-93-0531**
JOHN C. YOUNGMAN, SR. : **ORPHANS COURT DIVISION**
:

OPINION AND ORDER

Before this Honorable Court, is PNC Bank, N.A.’s (“Trustee”) Petition for Clarification filed on June 19, 2008. Argument on the Petition was held on August 28, 2008.

Background

The John C. Youngman, Sr. Family Trust – 1994 (“Trust”) was created on December 22, 1994, by John C. Youngman, Jr., in his capacity as Guardian of the Person and Estate of John C. Youngman, Sr. (“Settlor”). The Trust Agreement identifies John C. Youngman, Jr., Charles Van Patten Youngman, and Margaret Youngman Holman (“named beneficiaries”) as income and principal beneficiaries until their death. The Trustee is to pay the then living named beneficiaries net income in equal shares and “so much principal as the Trustee may deem advisable for the care, maintenance, support or welfare of any of them. Payments of principal may be unequal and one or more beneficiaries may excluded from such payments.” Trust Agreement p. 2, Subsection A. The Trust Agreement also provides that the distribution is to be 21 years “after the death of the last survivor of the issue now living of JOHN C. YOUNGMAN, SR. However, after all of the named beneficiaries have died and before distribution, the Trustee may pay all or any portion of the net income or principal of the trust estate to any one or more of the issue of JOHN C. YOUNGMAN, SR.” in the same manner as he would to the named beneficiaries. Id. at 2-3,

Subsection C. Further, The Trust Agreement in relevant part provides, “[i]f any residential real estate shall be held as part of the trust estate, the trustee may permit any beneficiary or any member of any beneficiary’s household to occupy such real estate rent free.” Id. at 3, Subsection D. Additionally, “[w]hile any beneficiary of the trust estate is incapacitated, the Trustee shall pay to him or to his spouse or issue so much of the income and principal to which he would otherwise be entitled as the Trustee in its sole discretion may deem advisable. Id. at 4, Subsection E.

On March 4, 2004, the Trustee and the Youngman children entered into a stipulated Order, the relevant portions of which are as follows:

1. The beneficiaries of the real estate portion of the John C. Youngman Sr. Family Trust are John C. Youngman Jr., Margaret Homan, and C. Van Youngman.
2. Said real estate beneficiaries shall have exclusive right to allow other individuals to use the Trust real estate only during the time they are using the Trust real estate themselves.
3. Any conflicts to use of the real estate portion of the Trust among the beneficiaries of the Trust shall be resolved at the direction of the Trustee.
4. When a non-family member is using the real estate portion of the trust with permission from a beneficiary, said beneficiary or other family member granting permission must be present.

The Trustee alleges in his petition that the stipulated Order did not address who, if anyone would be permitted to utilize the Trust Real Estate in the event of the death or incapacity of a named beneficiary. John C. Youngman, Jr., is alleged to be incapacitated, residing in a nursing home, and unable to utilize his interest in the Trust Real Estate; his children wish to utilize their father’s interest in such real estate. The other named beneficiaries allege that John C. Youngman, Jr., does not have the “capacity” to direct that his children can utilize his share, nor be present when they use it. The Trustee also alleges the Trust is unclear as to whether use of the Trust Real Estate is to be divided into equal shares among the named beneficiaries or whether it should be

divided in a different manner. Further, he alleges that the Trust is unclear as to whether a named beneficiary can assign any or all of his interest in the Trust Real Estate to another beneficiary. Finally, the Trustee states his belief that the Trust was not established for any beneficiaries to use the Trust Real Estate for profit and/or commercial purposes.

Discussion

In Pennsylvania, the same principles used to interpret wills are used to interpret trusts. In re Tracy, 346 A.2d 750, 752 (Pa. 1975). When interpreting a trust document in Pennsylvania, it is the intent of the settlor which prevails. Id. “To ascertain this intent, a court examines the words of the instrument and, if necessary, the scheme of distribution, the circumstances surrounding the execution of the will and other facts bearing on the question.” Estate of Houston, 421 A.2d 166, 169 (Pa. 1980). The Court will resort to the canons of construction if the intent does not appear with reasonable certainty. Id. “[T]he search for the intention of the transferor must . . . be changed to a search for the intention it is reasonable to attribute to the average transferor with respect to the particular situation.” Tracy, 346 A.2d at 752.

The Trust Agreement does not speak to the issue of who is permitted to stand in the place of any of the named beneficiaries in the event of incapacity or death. However, in the context of income or principal distributions, the Trust Agreement is clear in that the Trustee may pay the incapacitated beneficiary’s portion to the issue of said beneficiary. As such, the Court finds that it is reasonable to attribute the Settlor’s intent as having permitted a named beneficiary’s issue to stand in his/her place in the event of incapacity or death. While the other named beneficiary’s hold very strong opinions that John C. Youngman, Jr., cannot assign his interest in the use of the Trust Real Estate due to his incapacity, the Court finds this argument not supported by the plain language of either the Trust or the subsequent stipulated order. The Trust has already set forth a

plan that the issue of a named beneficiary may stand in his/her place in the event of incapacity or death; therefore, it is reasonable to attribute the Settlor's intent as having permitted a named beneficiary's issue to also utilize the Trust Real Estate in place of a named beneficiary in the event of incapacity or death.

The Trust Agreement also does not speak to how the Trust Real Estate should be divided. Again, in the context of how the income should be distributed, the Settlor is quite clear; the income should be divided equally. Therefore, the Court finds it is reasonable to attribute the Settlor as having intended use of the Trust Real Estate to be divided equally.

Finally, the Court finds the Trust Real Estate is not to be used for profit and/or commercial purposes. The Trust Agreement states that a beneficiary or any member of any beneficiary's household can occupy the real estate rent free. This shows the Testator did not intend for the real estate to be used for profit.

ORDER

AND NOW, this _____ day of September 2008, it is hereby ORDERED and DIRECTED as follows:

1. The issue of the named beneficiaries are permitted to stand in the place of the named beneficiaries in the event of incapacity or death; and
2. Use of the Trust Real Estate shall be divided into one-third shares to be used by the three named beneficiaries or their issue, and
3. A beneficiary may assign his/her one-third share of the use of the Trust Real Estate to another trust beneficiary; and
4. The Trust Real Estate may not be used for any profit or commercial purposes, or in any manner inconsistent with the stipulated Order of March 4, 2004.

By the Court,

Nancy L. Butts, Judge