

Common Ground Title Policies

Conveyance of Trust Property to Beneficiaries Declared Void

A beneficiary of a trust brought a quiet title action contending that the conveyance of the trust property from the settlor of the trust to the other two beneficiaries of the trust violated the terms of the trust instrument. The other two beneficiaries contended that the settlor had the power to revoke the trust and that the conveyance of the property constituted a revocation of the trust. HELD: At the time of the conveyance of the property, the settlor did not possess the power to unilaterally revoke the trust and, therefore, the transfer of the property was void. Scalfaro v. Rudloff, 934 A.2d 1254 (Pa. November 21, 2007).

Robert and Helen Rudloff owned a property in Bucks County, Pennsylvania as tenants by the entireties. On August 11, 1993, the Rudloffs executed a form-book “Declaration of Trust” establishing an *inter vivos* trust (“Trust”) in favor of their three children, Judith, Richard and James, who were named equal one-third beneficiaries of the Trust. The only asset of the Trust was the Bucks County property and the Rudloffs were designated as joint trustees.

Under paragraph 4 of the Trust, the Rudloffs retained the right during their lifetime “to place a mortgage or other lien upon the property and . . . to collect any rental or other income that may accrue from the trust property.” In paragraph 5, the Rudloffs also reserved the power and right at any time during their lifetime to amend or revoke the Trust without the beneficiaries’ consent:

“We reserve unto ourselves the power and right at any time during our lifetime to amend or invoke in whole or in part the trust hereby created without the necessity of obtaining the consent of any beneficiary and without giving notice to any beneficiary. The sale or other disposition by us of the whole or any part of the property held hereunder shall constitute as to such whole or part a revocation of the trust.”

Paragraph 7 of the Trust provided that, if one of the trustees died or became physically or mentally incapacitated, the remaining trustee would continue as the sole trustee.

Mrs. Rudloff died in October, 1996. Four years later, on June 14, 2000, Mr. Rudloff executed and recorded a deed conveying the property to his two sons, Richard and James. Mr. Rudloff subsequently died on December 24, 2001.

On June 19, 2003, over three years after the conveyance of the property, the daughter, Judith, filed an action to quiet title in the Court of Common Pleas of Bucks County claiming that, under the terms of the Trust, only her parents *acting jointly* had the power to revoke the Trust and that, after her mother died, her father as the sole trustee did *not* have the power to *unilaterally* revoke the Trust or convey the property. Judith requested that the June 14, 2000 deed be voided and that the

property be administered in accordance with the terms of the Trust. Her brother, Richard, defended the litigation claiming that either or both of his parents had the right to revoke the Trust and that his father’s conveyance of the property on June 14, 2000 served to revoke the Trust and extinguish his sister’s rights in the property.

Following a bench trial on March 1, 2004, the trial court ruled in Judith’s favor and entered an order voiding the June 14, 2000 deed and directing that the property be administered in accordance with the terms and conditions of the Trust. On appeal, a divided panel of the Superior Court reversed the trial court’s order holding that once Mrs. Rudloff died, Mr. Rudloff had the right to unilaterally revoke the Trust and convey the property to his sons.

Judith then appealed to the Pennsylvania Supreme Court which granted review to consider the question “whether under the declaration of trust, Mr. Rudloff, acting as a sole trustee, had the power to revoke the trust.”

The Court began its analysis by noting that, under Pennsylvania law, the power of revocation is a power that the settlor of a trust reserves. A settlor may revoke a trust, if and to the extent that power has been reserved in the trust instrument. The settlor’s intent as to the power of revocation is to be determined from all the language within the four corners of the trust instrument, the scheme of distribution, and the circumstances surrounding the execution of the instrument. When a settlor of a trust reserves the power to revoke in a given manner and under certain conditions, revocation cannot be effected in another manner.

Turning to the language of the Trust agreement, the Court noted that the first sentence of paragraph 5 stated that the settlors reserved the power to revoke; the second sentence stated that a particular action, the sale or disposition of the property of the Trust by them, amounted to a revocation. However, the Court observed that paragraph 5 included only *plural* words and phrases – “[w]e reserve unto ourselves,” “during our lifetime,” and “sale or disposition [of the Property] by us . . .” There was no mention in paragraph 5 that the power of revocation could be exercised by Mr. or Mrs. Rudloff alone or that either

one of them could convey the property on his or her own, either as sole trustee or surviving settlor. The Court noted that no rights of survivorship were expressed in paragraph 5. Paragraph 7 of the Trust merely authorized the survivor to continue as sole trustee and made no reference to the power of revocation.

The Court held that the “language in the declaration of trust is clear and unambiguous in stating that the power of revocation was to be exercised by the Rudloffs jointly, and not by either one of them unilaterally as sole trustee.” Therefore, Mr. Rudloff did not have the power to revoke the trust as sole trustee, and, accordingly, did not have the authority to convey the property to his sons in June, 2000. Accordingly, the Court reversed the decision of the Superior Court and reinstated the decision of the trial court.

This case highlights the difficulties and pitfalls facing title agents and underwriters when insuring conveyances of trust property. In such cases, the trust agreement must be reviewed very carefully to determine whether the trustee has the authority to convey the property or, as this case highlights, whether the trust has been property revoked. ■

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