

THIRD DISTRICT COURT OF APPEAL, STATE OF FLORIDA

Jeff Lieberman, etc., et al. v. James Sloto, etc.

No. 3D24-0884, 2025 WL 703358 (Fla. 3d DCA Mar. 5, 2025) · No. 3D24-0884

SUMMARY

The Florida Third District Court of Appeal reversed a sanctions award under Fla. Stat. § 57.105, holding that the word “should” in a trust provision is ordinarily directory, not mandatory, and that the trust protector had sole authority to resolve any ambiguity. The court found the appellants’ position—that “should” was advisory and the trust protector could interpret it—was not so devoid of merit as to warrant sanctions, and that honoring the trust protector’s interpretive authority effectuated the settlor’s intent to avoid court involvement. The decision reinforces that sanctions are improper for non-frivolous arguments based on ambiguous trust language and that trust protectors’ power to clarify ambiguities must be respected.

CASE DETAILS

COURT	Third District Court of Appeal, State of Florida
WRITING FOR THE COURT	FERNANDEZ, J.; FERNANDEZ; LINDSEY; MILLER
JURISDICTION	Florida
DOCKET	3D24-0884
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a Final Judgment awarding sanctions pursuant to section 57.105, Florida Statutes, and an order denying rehearing.
STANDARD OF REVIEW	Abuse of discretion for §57.105 sanctions generally; de novo for legal issues and trust interpretation.
PRECEDENTIAL VALUE	Published
PARTIES	Jeff Lieberman, etc., et al. v. James Sloto, etc.

TOPICS

- trusts
- fiduciary duty
- sanctions
- attorney fees
- appellate procedure

PRACTICE AREAS

- Trusts and Estates
- Civil Procedure
- Attorney's Fees and Sanctions
- Appellate Practice

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion in awarding §57.105 sanctions against appellants when their position—that 'should' in Trust section 4.12 is advisory rather than mandatory—was not so devoid of merit as to warrant sanctions.
2. Whether the word 'should' in Trust section 4.12 is unambiguous and mandatory, or alternatively ambiguous, and if ambiguous, whether the Trust Protector had authority to interpret or clarify it.

HOLDINGS

1. The word 'should' in section 4.12 is either unambiguously advisory or, at minimum, ambiguous. Because the Trust Protector had authority under the Trust to resolve ambiguities, the legal position taken was not so devoid of merit to warrant §57.105 sanctions. The trial court's award of sanctions was an abuse of discretion.

KEY QUOTATIONS

“As we perceive it, the State's argument is that “should” is the equivalent of “shall” and that “shall” is mandatory. While we acknowledge that “should” retains its arcane, schoolmarm meaning as a past tense of “shall,” its modern usage is as the weaker companion to the obligatory “ought.” Thus, it is said that “[o]ught should be reserved for expressions of necessity, duty, or obligation; should, the weaker word, expresses mere appropriateness, suitability or fittingness.” B. Garner, A Dictionary of Modern Legal Usage 396 (1987).” (at 12-13)

“Use of the word 'should' indicates to us that the procedure ... is discretionary rather than mandatory in nature.” (at 13)

“It was the settlor’s intent that, where his trust was ambiguous or imperfectly drafted, the use of a trust protector would be his preferred method of resolving those issues. Removing that authority from the trust protector and assigning it to a court violates the intent of the settlor.” (at 17)

FACTUAL BACKGROUND

Mel Stier established the Mel Stier Revocable Trust, naming Sloto as Successor Trustee and Lieberman as Successor Trust Protector. A primary trust asset is a 40% interest in 953 Realty Corporation. In August 2022, Sloto appointed Harrison Stier (Mel's son, then 22, a recent college graduate with no prior paying job) as President of 953 Realty. On September 6, 2022, Lieberman directed Sloto to remove Harrison, citing Harrison's inexperience and lack of qualifications, relying on his personal knowledge of Harrison having known him since childhood. Sloto refused, leading to the underlying lawsuit. Lieberman had known Harrison since age five and believed his existing knowledge sufficed without additional inquiry.

PROCEDURAL HISTORY

Lieberman (Trust Protector) sued Sloto (Trustee) to compel removal of Harrison as President of 953 Realty. The trial court granted summary judgment for Sloto, finding Lieberman failed to comply with Trust section 4.12 requiring reasonable inquiry, and later awarded §57.105 sanctions against Lieberman and his counsel for pursuing a claim without merit. Lieberman appealed.

DISPOSITION

reversed

CASES CITED

- MC Liberty Express, Inc. v. All Points Servs., Inc., 252 So. 3d 397 (Fla. 3d DCA 2018)
- Wells v. Halmac Dev., Inc., 189 So. 3d 1015 (Fla. 3d DCA 2016)
- Vetrick v. Keating, 877 So. 2d 54 (Fla. 4th DCA 2004)
- Minassian v. Rachins, 152 So. 3d 719 (Fla. 4th DCA 2014)
- Fleck-Rubin v. Fleck, 933 So. 2d 38 (Fla. 2d DCA 2006)
- Barnett First Nat. Bank of Jacksonville v. Cobden, 393 So. 2d 78 (Fla. 5th DCA 1981)
- Roberts v. Sarros, 920 So. 2d 193 (Fla. 2d DCA 2006)
- Pounds v. Pounds, 703 So. 2d 487 (Fla. 5th DCA 1997)
- State v. Thomas, 528 So. 2d 1274 (Fla. 3d DCA 1988)
- Univ. of S. Fla. v. Tucker, 374 So. 2d 16 (Fla. 2d DCA 1979)
- Parrish v. State Farm Fla. Ins. Co., 356 So. 3d 771 (Fla. 2023)
- Allied Fidelity Insurance Co. v. State, 415 So. 2d 109 (Fla. 3d DCA 1982)
- Ewing v. Kaplan, 474 So. 2d 302 (Fla. 3d DCA 1985)
- Cuevas v. Superior Court, 58 Cal. App. 3d 406, 130 Cal. Rptr. 238 (1976)
- Starks v. Kentucky Health Facilities, 684 S.W.2d 5 (Ky. Ct. App. 1984)
- Texas & P. Ry. Co. v. Consolidated Co., 180 La. 180, 156 So. 215 (1934)
- Magnuson v. County of Grand Forks, 97 N.W.2d 622 (N.D. 1959)
- Baldassarre v. West Oregon Lumber Co., 193 Or. 556, 239 P.2d 839 (1952)
- Roanoke Memorial Hospitals v. Kenley, 3 Va. App. 599, 352 S.E.2d 525 (1987)

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