CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

In Re: Trust of: Salah, James M.

No. PRC170005718 (Fla. Cir. Ct. Mar. 14, 2024) · No. PRC170005718

SUMMARY

In Mastriana v. Brown Brothers Harriman Trust Co., a Florida trial court held that a removed trustee did not breach its fiduciary duties by retaining a 7.98% reserve of trust assets under Fla. Stat. § 736.0707(2), finding the amount reasonable and within the trustee's broad discretion given potential litigation, complex accountings, and objections. The court also ruled that investing the reserve in fixed-income and cash assets was prudent under Florida's Prudent Investor Rule (Fla. Stat. § 518.11) and prudent administration standard (Fla. Stat. § 736.0804), as the conduct—not the resulting performance—is the test. The decision underscores that a court will not second-guess a trustee's discretionary decisions absent arbitrary action or bad faith.

CASE DETAILS

COURT	Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida
WRITING FOR THE COURT	Kenneth Gillespie
JURISDICTION	Florida
DOCKET	PRC170005718
DISPOSITION	other
PROCEDURAL POSTURE	After a non-jury trial on Plaintiff's Second Amended Complaint for breach of fiduciary duty, the court issued findings of fact and conclusions of law in this Final Judgment.
STANDARD OF REVIEW	Non-jury trial; findings of fact reviewed for clear error, conclusions of law de novo, and discretionary decisions for abuse of discretion.
PRECEDENTIAL VALUE	trial

TOPICS

probate · trusts · fiduciary duty · attorney fees · civil procedure

PRACTICE AREAS

Trusts and Estates · Fiduciary Duty · Probate

QUESTIONS PRESENTED

1. Whether Defendant breached its fiduciary duties by retaining an excessive and unreasonable reserve after being discharged as trustee.
2. Whether Defendant imprudently invested the reserve funds and should be surcharged or required to disgorge fees.

HOLDINGS

1. Under Fla. Stat. § 736.0707(2), a trustee who has resigned or been removed has the right to retain a reasonable reserve for the payment of debts, expenses, and taxes.
2. A trustee has broad discretion to act in good faith, and a court will not find an abuse of discretion merely because it would have exercised discretion differently. The decision to retain a reserve of 7.98% of trust assets, based on potential litigation, complex final accountings, and anticipated objections, was not arbitrary, was reasonable, and fell within the trustee's discretion.
3. The Defendant's investment of the reserve in fixed-income assets and cash, which were liquid, low-risk, and suitable for the immediate payment of debts and expenses, satisfied the Prudent Investor Rule under § 518.11 and the prudent administration standard under § 736.0804. A court will not interfere with a fiduciary's good-faith, non-arbitrary decisions regarding investment.

KEY QUOTATIONS

> *"A trustee who has resigned or been removed shall within a reasonable time deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the property, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes."* (at 1)

> *"The Court finds that Defendant's reserve in an amount of 7.98% of the Trust assets was not arbitrary, was reasonable, and well within the Defendant's discretion."* (at 3)

> *"The reserved funds were held fixed income investments and cash, so that any debts, expenses, and taxes could be paid without delay."* (at 4)

FACTUAL BACKGROUND

Defendant served as trustee of the James M. Salah Trust 2001 until its removal on September 1, 2016. Upon removal, Defendant retained $8,910,829.44 as a reserve (approximately 7.98% of total trust funds) to cover potential litigation, complete complex final accountings, and address objections from the successor trustee. The reserve remained partially in place, with $5.5 million released in April 2019, leaving approximately $2.5 million still held (under 3% of total trust funds) at the time of trial. The reserve consisted of fixed-income investments and cash already in the trust portfolio.

PROCEDURAL HISTORY

F. Ronald Mastriana, current trustee, sued former trustee Brown Brothers Harriman Trust Company for breach of fiduciary duty (Count I - excessive reserve; Count II - imprudent investment and disgorgement of fees). A jury demand was stricken, and a two-day non-jury trial was held on March 13-14, 2023.

DISPOSITION

other

CASES CITED

- Cohen v. Friedland, 450 So. 2d 905 (Fla. 3d DCA 1984)
- Covenant Trust Co. v. Guardianship of Ihrman, 45 So. 3d 499 (Fla. 4th DCA 2010)
- Smith v. Jones, 162 So. 496 (Fla. 1935)
- First Union Nat'l Bank v. Jones, 768 So. 2d 1213 (Fla. 4th DCA 2000)
- Sheaffer v. Trask, 813 So. 2d 1051 (Fla. 4th DCA 2002)

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