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.

OPINION

Filing # 194072084 E-Filed03/14/2024 10:05:13PM IN THE CIRCUITCOURTOF THE17TH JUDICIALCIRCUIT INAND FORBROWARD COUNTY, FLORIDA CASENO. PRC170005718DIVISION: *U JUDGE Gillespie, Kenneth (62J) In Re: Trust of: Salah, JamesM. i FINALJUDGMENT THIS CAUSE, having comebefore theCourtfora non-jury trialheardonMarch 13, 2023and concluding March 14, 2023.

The Court, having received testimony fromwitnesses (includingdeposition testimony), reviewedallexhibitsandthe joint pretrial st*ulation, heard argument ofcounseland being otherwise duly advisedinthe premises, makesthe following findings offactandconclusionsoflaw: PROCEDURAL BACKGROUND Thiscaseinvolvestheadministrationofthe James M.Salah Trust 2001 (the"Trust") and actionstaken by itsformer trustee, Brown BrothersHarriman Trust Company, N.A. ("Defendant").

F. RonaldMastriana ("Plaintiff'), thecurrenttrusteeofthe Trust, filedatwo-countSecondAmended Complaintregarding Defendant'sactions on August 2, 2021.CountI ofPlaintiff's Complaint seeks a declarationanddeterminationthatDefendantbreachedits fiduciary duties by retaining anexcessiveand unreasonable reserve after being discharged as trustee.CountII ofPlaintiff's Complaint seeks a surcharge against Defendantfor imprudentlyinvesting thefunds heldas a reserveandto disgorge any fees chargedby Defendantforitsservices as trustee since September 7, 2016.

ThePlaintiffmade a demandfor jury trial, whichwasstricken pursuant tothisCourt's June 24, 2022Orderon Brown BrothersHarriman Trust Company, N.A.'s Motion to Strike Demandfor Jury Trialin Second Amended Complaint. On August 27,2021, theDefendantfiledanAnswertotheSecondAmended Complaint (andDefenses).

On September 16,2021, th e Plaintiff filedhis Reply to theAffirmativeDefenses. FINDINGSOF FACT First, the Court begins its analysis with Section 736.0707(2), Fla. Stat., which provides that "[a] trustee whohas resigned or beenremovedshallwithin a reasonable timedeliver the trust property withinthe trustee's possession to the cotrustee, successor trustee, or other person entitled to the Page 1 of 5 *** FILED: BROWARD COUNTY, FL BRENDA D. FORMAN, CLERK03/14/2024 10:05:13 PM.**** CaseNumber:PRC170005718 property,subject to the right of the trusteetoretain areasonablereserve for the paymentof debts, expenses, and taxes." (emphasisadded).

Based upon the foregoing statute andtheevidenceadduced at trial, theDefendantwasentitledtomaintain/holda reserve upon itsremovalastrusteeon September 1, 2016. Second, theCourtmovestothereserveamountatrusteeis permitted toretain.Atrusteehas broaddiscretion to"act in good faithandinaccordance withthe terms and purposes ofthe trust andthe interestsofthebeneficiaries".

736.0814(1), Fla.Stat. Further, acourt"shallnotdeterminethata trustee abuseditsdiscretion merely becausethe court wouldhaveexercisedthe discretion in a different mannerorwouldnothaveexercisedthe discretion".Id SeeCohenv. Friedland, 450So. 2d 905,906 (Fla. 3d DCA 1984)("In theabsenceof proof thatthe trustee hasfailed to perform, or has performed arbitrarily, acourtiswithout authority toremovetrustassetsfromcontrolofthe trustee..."); seealso Covenant Trust Co. v. Guardianshipof Ihrman, 45So.

3d 499, 503-506 (Fla. 4th DCA 2010). Regarding theamountofthereservemaintained by the Defendant, theDefendantsubmitted evidencewhich supported itsdiscretionusedin determining the amount of reserve itwouldwithhold. Both, theDefendant andthePlaintiff agreed thattheDefendantheldback $8,910,829.44 asa reserve, which amount was approximately 7.98% ofthetotal trust funds (roughly $111,635,410.67 was distributed to the thePlaintiff's predecessor, Robert Judd, thethen survivingtrustee).

TheDefendantestablished thatit was the company's standard practice to hold a reserve of 10% ofthetotalfunds.Onthis point, Defendant provided three reasons whichitfound prudent to maintain a 10% percent reserve: (1) the fear thatitwouldbesued or brought in asa party toan ongoing Massachusetts malpractice lawsuit, (commonly known as the Sally &Fitch litigation), whichit determinedthatits potentialliabilityexposure could be as high or greater than $20,000,000.00);(2) the need to complete a complex final accounting ofthe Trust and as personal representative of

James Salah's Estate; and (3) theneed to potentially address anyobjections to itsTrustandEstate accountings (in light ofthethensuccessortrustee's unwillingness to sign aconsentand waiver).

Trueto theDefendant's concerns, Plaintiff's predecessor (Robert Judd) didin fact, file an objection totheDefendant's discharge andfinalestate accounting, whichnecessitateda response from Defendant.ThePlaintiff's predecessor (Robert Judd) dismissedhis objections to thefinal Estate accounting and discharge on June 23,2017, andtheDefendantwas discharged as personal representative ofthe Estate onOctober 6, 2017.

However, it was not until February 14,2018, after serviceo f its Trust accounting on thr Plaintiff' s predecessor (RobertJudd), that thrPlaintiff' s predecessor andthe Trust Protector (Noreen S. Burpee) waived any objection to the trust accounting (excluding any claimsrelatedtothecurrent litigation). Additionally, an additionalwaiver andrelease related to the James andBeatrice Charitable Foundation Trust wasexecuted by the Plaintiff's predecessor (Robert Judd) andthe Trust Protector Page 2 of 5 CaseNumber:PRC170005718 (Noreen S. Burpee) on June 26, 2018.

Again, true toDefendant's concerns, theMassachusetts' malpractice action (the Sally & Fitch litigation) was not settled until October 1, 2018. The stipulation ofdismissaloftheactionand judgementthereupon wasnotentered until December 18, 2018. Notably, on April 17,2019, theDefendantreleased approximately $5.5 millionofthe reserve amountto the Plaintiff. Currently, Defendantis holding approximately $2.5 millionofthe Trustassets asa reserve, whichamountstolessthan3%ofthetotal Trust funds.In light oftheDefendant's necessity tobalance the purpose of the Trust (charity) withtheabove-noted potential andunknown litigation it might have faced, aswellasitsdutiesto wind up itsadministrationofthe Trust andthe James Salah Estate, the Court finds thatDefendant's reserve in an amount of 7.98% ofthe Trustassets was not arbitrary, was reasonable, andwell within theDefendant'sdiscretion.

Finally, as to theissueoftheDefendant's investment ofthe reserve.Under Florida'sPrudent Investor Rule, contained within section 518.11, Fla. Stat., a fiduciary hasa duty toinvestand manage assets asa prudent investorwould "considering the purposes, terms, distribution requirements, andother circumstancesofthetrust."Thisincludes taking intoconsiderationthe risksand objectives ofthe investment portfolio.

Id. Section 518.11(1)(b), Fla. Stat., further provides that a fiduciary's actionsand decisions areto beviewedin terms of a "reasonablebusiness judgment" andthatthePrudent InvestmentRuleis a "testofconductand not of resultingperformance." Also, Florida's Trust Code provides for a prudent trust administrationundersection 736.0804, Fla. Stat., whereinitisnotedthat "[a] trustee shalladministerthe trustas a prudentperson would [...], the trustee shallexercisereasonable care,skill, andcaution."Asindicated herein, the purpose of a reserve as indicatedwithinsection 736.0707(2) Fla. Stat., is to pay debts, expenses, and taxes ofthe trust administration.Thisincludes payment of trustee and attorney fees.See Smith v. Jones, 162 So.

496 (Fla.1935); First Union Nat'l Bankv. Jones, 76% So. ld1213 (Fla. 4th DCA 2000); and Sheaffer v. Trask, 813So. 2d 1051 (Fla. 4th DCA 2002). As noted by the Defendant, the assets itchose to holdback to fund the reservewere fixed- incomeassets already within the Trust portfolio andthatwere sufficiently liquid, andlowriskassets suitablefor establishing and maintaining a reserve, withit primary purpose of accessing such funds for theimmediate payment of expenses.

AstheCourthas already noted supra, theCourt will notinterfere withthe decisionsof a fiduciary if they are madein good faithand non-arbitrary. SeeCohen v. Medlan d, 450So. 2d 905, 906 (Fla. 3d DCA 1984). Accordingly, theCourtfinds that theDefendant exerciseit discretion, purposefully, in holding back specific assets forits reserve thatitbelieved was necessary to preservecapital by using fixedincomeinvestmentsandcashsothatsuchassetswouldnot need to besoldandwouldbe readily available for disbursement, whichthe Courtnotes istheintentand purpose ofareserve.

Page 3 of 5 CaseNumber:PRC170005718 CONCLUSION Basedontheevidenceadducedat trial, the Court findsthattheDefendantwas permitted tohold a reasonable reserve upon itsremoval.TheDefendant basedits reserveamount (within its discretion) uponpotentiallitigation,completion of accountings, and objections thereto. While tehDefendantdid notusea formula to determinethe amount of reserve, Defendant provided evidencethat holding a reserveof 10% wasitsstandard practice, andin fact, boththeDefendant andthePlaintiff agreed that the Defendant only withheld areserve thatamounted to approximately 7.98%ofthetotal trustaccount funds.

Accordingly, theDefendant's discretionary decision regarding theamountofreserve"held back" was reasonable, not arbitrary, and wasnot madeinbadfaith. Further, theCourtfinds that the Defendant prudently investedthereserveamountin light ofthecircumstances ofthiscase.The reservedfunds were heldfixedincomeinvestmentsand cash, so that any debts, expenses, and taxes couldbe paid without delay.

Lastly, the Court findsthattheDefendantwasentitledto payexpenses related to itsduties astrustee fromthe reserve, as contemplatedby Section 736.0707(2), Fla.Stat. Accordingly, itis hereby ORDERED, DECREED, ANDADJUDGED thatthe Plaintiff, F.RONALD MASTRIANA, as Trustee ofthe James andBeatrice SalahCharitable Trust U/T/A 08/09/2001, shalltake nothing from thislawsuitand go hencewithout day.

DONE AND ORDERED in Chambersat Broward County, Florida on 13th day of March, 2024. PRC1 7dt*)5718 03-13-202-4 10:30PTVT TLKLLA?U?? PRC170005718 03-13-202410:30PM Hon. Kenneth Gillespie CIRCUITCOURTJUDGE Electronically Signed by Kenneth Gillespie Copies FurnishedTo: Christian Petersen, E-mail: GeorgeJosephTaylor, E-mail George JosephTaylor, E-mail GeorgeJosephTaylor, E-mail: Harris K. Solomon, E-mail: Jon Scuderi, E-mail: Jon Scuderi, E-mail Page 4 of 5 CaseNumber:PRC170005718 LawrenceJ Miller, E-mail Lawrence J Miller, E-mail Lawrence J Miller, E-mail: Robert W. Goldman, E-mail Page 5 of 5