NEW YORK SURROGATE'S COURT

In re Morgan Guaranty Trust Co.

89 Misc. 2d 1088 (N.Y. Sur. Ct. 1977) · Decided July 1, 1977

SUMMARY

In an accounting proceeding involving a common trust fund, the court considered objections to Morgan Guaranty Trust Company's purchase, sale, and retention of various securities, as well as objections to administrative and legal fees. The court held that the trustee's investment decisions were evaluated under a conduct-based prudent-person standard and that the record disclosed no triable issues of fact or imprudence. The court granted summary judgment for the trustee, denied the cross-motion, dismissed the objections, and ratified or approved the challenged fees.

CASE DETAILS

COURT	New York Surrogate's Court
WRITING FOR THE COURT	Millard L. Midonick
JURISDICTION	New York
DECIDED	July 1, 1977
DISPOSITION	other
PROCEDURAL POSTURE	Accounting proceeding by a corporate trustee for the period from November 1, 1967, through October 31, 1971. The trustee moved for summary judgment dismissing objections to its investment, retention, fee, and accounting practices; the guardians ad litem cross-moved for summary judgment.
STANDARD OF REVIEW	Summary judgment is proper where the record presents no triable issue of fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published New York Surrogate's Court opinion; persuasive trial-level authority.

TOPICS

trust administration · trustee duties · prudent investor rule · summary judgment · probate procedure

PRACTICE AREAS

trusts and estates · trust administration · probate litigation

QUESTIONS PRESENTED

1. Whether the trustee was entitled to summary judgment on objections alleging that its purchases, sales, and retention of individual securities were imprudent.
2. Whether overall gains in the common trust fund insulated the trustee from liability for imprudence in individual investments.
3. Whether the trustee complied with Banking Law § 100-c and 3 NYCRR 22.10 requiring committee approval and minutes for common-trust-fund investment transactions.
4. Whether prior decrees settling earlier accounts barred objections to securities purchased in prior accounting periods and previously approved by decree.
5. Whether the record established imprudence based on investment yield, bond ratings, or retention of particular securities.
6. Whether the trustee was required to reimburse withdrawing trusts for de minimis amounts resulting from an administrative error in accruing stock dividends.
7. Whether legal and accounting fees paid in connection with the accounting should be approved and ratified.

HOLDINGS

1. Summary judgment was appropriate because the complete record disclosed no triable issue of fact concerning the prudence of the trustee's investment decisions.
2. A trustee's prudence is judged primarily by conduct at the time of the investment decision, not solely by subsequent performance or hindsight.
3. Overall gains in the common trust fund do not insulate the trustee from surcharge for imprudence in an individual investment, although overall portfolio performance may be considered with other factors.
4. The trustee complied with Banking Law § 100-c and 3 NYCRR 22.10 concerning approval and documentation of purchases and sales for the common trust fund.
5. A decree settling a trustee's account binds all persons over whom the court obtained jurisdiction and bars a later surcharge claim based on acts or omissions occurring during the settled period and disclosed in that accounting.
6. The objections based on yield, retention, and bond ratings did not establish imprudence on the record, and those objections were dismissed.
7. The trustee was not required to reimburse the withdrawing trusts for the small amounts resulting from the administrative error because the loss was de minimis and reimbursement expenses would substantially exceed the amounts at issue.
8. The fees paid to counsel and Ernst & Ernst were reasonable, proper, and required, and were approved and ratified; the related objections were dismissed.

KEY QUOTATIONS

> *"the trustee is bound to employ such diligence and such prudence in the care and management, as in general, prudent men of discretion and intelligence in such matters, employ in their own like affairs."* (1091)

> *"The focus of inquiry, however, is nonetheless on the individual security as such and factors relating to the entire portfolio are to be weighed only along with others in reviewing the prudence of the particular investment decisions."* (1091-1092)

> *"the test to be applied is one of conduct rather than performance"* (1092)

FACTUAL BACKGROUND

Morgan Guaranty Trust Company administered a common trust fund during the accounting period and purchased, sold, and retained various stocks and bonds. Beneficiary guardians ad litem challenged numerous investment decisions, including investments in corporate bonds, convertible securities, and common stock, asserting imprudence, statutory violations, inadequate yield, and improper retention. The trustee's investment decisions were made through a common trust fund committee and supported by extensive research, reports, committee minutes, and investment analysis. The trustee also acknowledged an administrative error involving delayed accrual and distribution of two stock dividends to trusts that had withdrawn from the fund.

PROCEDURAL HISTORY

The trustee submitted a complete record in support of its motion, and the objectants submitted cross motions. At a conference, all parties agreed that no hearing was necessary on the summary-judgment motions, while the trustee reserved the right to proceed to trial if any portion of its motion was denied. The court found no triable issue of fact, granted the trustee's motion, denied the cross motion, and dismissed the objections.

DISPOSITION

other

CASES CITED

- Matter of Bank of N.Y., 35 N.Y.2d 512
- Harvard College v. Amory, 26 Mass. 446
- King v. Talbot, 40 N.Y. 76, 85-86, 90-91
- Matter of Clark, 257 N.Y. 132
- Costello v. Costello, 209 N.Y. 252
- Matter of Hubbell, 302 N.Y. 246
- Matter of Roche, 259 N.Y. 458
- Matter of Baker, 249 App. Div. 265
- Matter of Froehlich, 82 N.Y.S.2d 884, aff'd, 275 App. Div. 707
- Ungrich v. Ungrich, 141 App. Div. 485
- Matter of Kellogg, 35 Misc. 2d 541
- Matter of Marine Midland Bank—New York, 77 Misc. 2d 543