SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

Bauer v. Bauernschmidt

187 A.D.2d 477 (2d Dep't 1992) · Decided November 9, 1992

SUMMARY

The court reviewed surcharges imposed against a trustee for alleged mismanagement of two inter vivos trusts. It held that the trustee generally acted in good faith and with adequate prudence, but affirmed a reduced surcharge of $2,500 for each trust based on improper capital expenditures from trust funds that the trustee personally enjoyed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Bracken, J.P.; Harwood, J.; Balletta, J.; Fiber, J.
JURISDICTION	New York
DECIDED	November 9, 1992
DISPOSITION	remanded
PROCEDURAL POSTURE	The trustee appealed from a judgment entered after a nonjury trial in an action to compel an accounting and impose surcharges for alleged trust mismanagement.
STANDARD OF REVIEW	The court reviewed the trustee's surcharge liability and exercised its discretion to modify the amount of the award based on the record, the trust instrument, the settlor's intent, and the circumstances surrounding the expenditures.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Bauernschmidt v. Bauer

TOPICS

trust administration · trustee duties · breach of trust · damages · appellate procedure

PRACTICE AREAS

trusts and estates · fiduciary litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the trustee's inability to provide a satisfactory accounting established negligence or a failure to exercise the degree of care required to support a surcharge.
2. Whether the trust's exculpatory provision and informal-accounting provision were valid and limited the trustee's liability.
3. Whether the trial court's $21,985 surcharge for each trust was warranted under the circumstances.
4. Whether the trustee's $2,500 capital expenditures from each trust constituted an improper appropriation of trust property.

HOLDINGS

1. A surcharge requires proof that a financial loss resulted from the trustee's negligence or failure to exercise the degree of care employed by prudent persons of discretion and intelligence in similar affairs.
2. An exculpatory provision in an inter vivos trust relieving a trustee from liability for good-faith conduct is valid so long as there is some accountability, at least to the settlor.
3. Whether a surcharge should be imposed for a particular investment or expenditure depends on the circumstances of the individual case, including the settlor's intent, the parties' relationship, and the history of the investment viewed when the challenged act or omission occurred.
4. The trustee was properly surcharged $2,500 from each trust because those capital expenditures constituted an improper personal appropriation of trust property.

KEY QUOTATIONS

> *"To warrant a surcharge, the plaintiffs must show that a financial loss resulted from the defendant's negligence or failure to exercise that degree of care which " 'prudent [people] of discretion and intelligence in such matters, employ in their own like affairs' ""* (478)

> *"Furthermore, whether a surcharge is to be imposed for a particular investment decision must necessarily depend on the circumstances of each case, including the settlor's intent, the relationship of the parties, and the history of the particular investment viewed at the time of the act or failure to act for which the surcharge is imposed"* (479)

FACTUAL BACKGROUND

The defendant served as trustee of two inter vivos trusts established for his daughters, each funded with approximately $18,000. The trust instrument gave him broad investment discretion and relieved him of liability for acts or omissions undertaken in good faith, while permitting informal accountings to the settlor. The settlor knew of and tacitly approved expenditures for horses used by the beneficiaries, but the trustee also made $2,500 in capital expenditures from each trust whose benefits he personally continued to enjoy after the trusts ended.

PROCEDURAL HISTORY

The Supreme Court, Suffolk County, directed the trustee to pay a $21,985 surcharge for each of two trusts. The Appellate Division modified the judgment by reducing the surcharge for each trust to $2,500 with interest from

January 1, 1976, affirmed as modified, and remitted the matter for entry of an amended judgment.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The matter was remitted to the Supreme Court, Suffolk County, for entry of an appropriate amended judgment reflecting a $2,500 surcharge for each trust, with interest from January 1, 1976.

CASES CITED

- Matter of Hahn, 93 A.D.2d 583, 586, aff'd, 62 N.Y.2d 821
- King v. Talbot, 40 N.Y. 76, 86
- Matter of Bank of N.Y., 35 N.Y.2d 512, 518-519
- Matter of Clark, 257 N.Y. 132, 136
- Matter of Kassover, 124 Misc. 2d 630
- Matter of Cowles, 22 A.D.2d 365, aff'd, 17 N.Y.2d 567
- Kolentus v. Avco Corp., 798 F.2d 949, 966, cert. denied, 479 U.S. 1032
- Matter of Levy, 97 Misc. 2d 582, 591

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