

Wednesday, November 16, 2011  
11:00 A.M.

NO. 3

#25849

In re: the Administration  
of the

FLORENCE Y. WALLBAUM REVOCABLE  
LIVING TRUST AGREEMENT.

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(FOR APPELLEE FIRST  
DAKOTA NATIONAL BANK)

The Honorable Arthur L. Rusch  
First Judicial Circuit  
Yankton County

(TRU 09-677)

STATEMENT OF ISSUES

- I. Whether a trustee may invade principal for the benefit of an income beneficiary when neither the law nor the trust instrument authorize the trustee to do so.

The trial court approved of the trustee using trust principal for the benefit of the income beneficiary.

- o In Re Cosgrave, 31 NW2d 20 (Minn 1948)
- o In Re Harris, 23 NW2d 445 (Iowa 1946)
- o Floyd v. Floyd, 6154 SE2d 465 (SC App 2005)
- o SDCL 55-3-5

- II. Whether a trustee may invade principal to pay for maintenance and taxes for a life tenant when the trust does not specifically relieve the life tenant of his obligation to do so.

The trial court held SDCL 43-8-2 does not apply to equitable life estates.

- o Thomas v. Thomas, 2003 SD 39, 661 NW2d 1
- o Estate of Jackson, 508 NW2d 374 (SD 1993)
- o In re Warner, 117 NW2d 224 (Minn 1962)
- o Doch's Estate v. Dolch, 24 NW2d 447 (Iowa 1946)

- III. Whether the trial court erred when it held the trust was ambiguous and that SDCL 43-8-2 did not apply to equitable life estates and "unproductive property."

The trial court held the trust's term "life estate" was ambiguous and that SDCL 43-8-2 did not apply because the residence in which the income beneficiary held a life estate was "unproductive property."

- o In re Schwan, 2006 SD 9, 709 NW2d 849
- o SDCL 21-44-1
- o Estate of Lindhardt v. H.B. Hoffman, 320 P2d 357 (Mont 1958)
- o Thomas v. Thomas, 2003 SD 39, 661 NW2d 1

- IV. Whether a trustee may sell trust real estate without obtaining informed consent from the beneficiaries, without court approval and when the sales are contrary to the express terms of the trust.

The trial court found no breach of trust or fiduciary duty when the trustee sold trust real estate without informed

consent from the beneficiaries, without court approval and when the sales are contrary to the express terms fo the trust.

- o Willers v. Wettestad, 510 NW2d 676 (SD 1994)
- o In re Higgins' Trust, 162 NW2d 768 (SD 1968)
- o SDCL 55-3-5
- o Garrett v. BankWest, Inc., 459 NW2d 833 (SD 1990)

V. If the Trust is ambiguous as to invasion of principal, did extrinsic evidence establish Florence intended for principal to be invaded for maintenance and taxes for the benefit of the equitable life tenant?

The trial court held extrinsic evidence established Florence intended the trustee to use principal to pay expenses for the benefit of the life tenant.

- o Estate of Klauzer, 2000 SD 7, 604 NW2d 474
- o Jensen v. Pure Plant Ford Int., Ltd., 274 NW2d 261 (SD 1976)
- o Matter of Bickel, 598 NYS2d 128 (NYS2d 1993)
- o Copeland Trust, 2009 WL 1220623 (Del. Ch. 2009)

VI. Even if extrinsic evidence established that Florence intended for principal to be invaded, was FDNB still guilty of breaches of trust, of its fiduciary duties and violating state law?

The trial court did not find the trustee in violation of its fiduciary duties or state law.

- o SDCL 55-3-5
- o SDCL 55-2-1
- o City of Aberdeen v. Rich, 2003 SD 27, 658 NW2d 775