TECP Alert: Minnesota Court Rules Trust Beneficiaries are Entitled to Interest on Delayed Payments of Specific Gifts

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Case Summary:

Attorneys from Gray Plant Mooty's Trust and Estates litigation team recently secured a major victory for a trust beneficiary in a matter of apparent first impression in Minnesota. Gray Plant Mooty's client was the widow of the trust settlor and, under the terms of the trust agreement, was entitled to a specific pecuniary devise of several million dollars. Although the settlor had died in 2013, his widow had not received payment of the majority of the amount owed five years later.

After negotiations with the trustee for payment reached an impasse, Gray Plant Mooty brought a trust petition in Washington County District Court, requesting that the court enter an order declaring that the widow was entitled to statutory interest on the delayed payment dating from one year after the settlor's death until the amount was paid in full. Gray Plant Mooty's argument relied on a relatively new provision of the trust code, Minnesota Statutes § 501C.1105, subd. 2(2), which states that when a trust is silent on the matter, a beneficiary of a specific pecuniary devise is entitled to interest on the devise to which he or she would have been entitled if the devise had been made in a will.

The trustee raised a number of arguments in opposition to the petition, including that section 501C.1105 was inapplicable because it only applied where an "income interest" had terminated, and the trust settlor had no income interest in the trust. The trustee also asserted that by bringing the petition in the first place, the widow had violated the trust's "no contest" clause and had thus forfeited her rights to any distribution at all under the trust.

The court rejected these and other assertions raised by the trustee and ultimately held that under Minnesota law, the beneficiary of a pecuniary devise under a revocable trust is entitled to statutory interest on any unpaid amount, at six percent per year, beginning one year after the settlor's death until the amount is paid in full. The total interest owing to Gray Plant Mooty's client amounted to nearly $1,000,000.

Additionally, the court clarified that the settlor of a revocable trust retains an income interest in the trust unless the trust agreement says otherwise. The court also agreed with Gray Plant Mooty that, although the

Minnesota trust code is silent on the matter, a "no contest" clause is inapplicable where the petitioner has "probable cause" to bring the petition, as the court held the widow had.

The case is *In the Matter of the Revocable Living Trust of Robert W. Nemitz, dated November 17, 1993, as amended*, No. 82-CV-18-506 (Wash. Cnty. Dist. Ct. July 5, 2018).

Tips from Our Litigators:

1. A trustee's failure to communicate with and keep beneficiaries appropriately informed can create unnecessary angst among beneficiaries and expose a trustee to legal risk—and could be a breach of the duty to keep beneficiaries informed. If a trustee is unable to make required distributions in a timely manner, it should communicate with affected beneficiaries about why that is the case.

2. Because the delayed distribution of a specific devise can expose a trust to claims for statutory interest, trustees should have a plan to mitigate such risks (*e.g.*, by making partial distributions of principal when possible, by investing trust assets in interest bearing accounts, etc.).

3. Minnesota courts will strictly construe "no contest" clause claims made for the purpose of disinheriting a beneficiary. Although often an attractive claim to assert when beneficiaries challenge the actions of a trustee, these claims rarely succeed.

Planning Tips:

1. This case is the first known case in Minnesota interpreting the new Trust Code to say that beneficiaries of specific devises in trust have the same right to statutory interest as do beneficiaries under wills. Going forward, trustees beginning a new administration should promptly assess whether specific devises need to be satisfied and the nature of the work needed in order to accomplish that task, such as by selling illiquid assets. Then the trustee can build a timetable for completing the gift within one year.

2. Similarly, planners and trustees alike should take the opportunity (if available) to advise the settlor of the possibility that interest will be charged to the trust if distribution on a specific devise ends up delayed for any reason. If the settlor doesn't want the trust to be liable for the interest, or wants to specify different terms, he or she should state that explicitly in the trust agreement or consider alternate ways to make the gift.

3. Trustees should remain flexible and responsive. Unwillingness on the part of the trustee to compromise on a viable claim on the part of a beneficiary can lead to much bigger expenditures in the long run—both in terms of court-ordered distributions and unnecessary litigation expenses.

For more information, reach out to the Gray Plant Mooty Trust and Estate litigation team.