

Question 12 – February 2018 – Selected Answer 1

1. Settlor has a right to challenge Trustee's designation of beneficiary because he is still alive and has an interest in the trust and to remove the Trustee because he engaged in self-dealing.

A trust is a property device in Texas where a Settlor gives legal title of property (the res) to the trustee for the benefit of a beneficiary who holds equitable title in the trust. Trusts can be made for private use (such as to benefit family members or friends) or for charitable use. When a trust is made for charitable use, the settlor retains an interest in the trust as long as he is alive to ensure that the trust fulfills its purpose.

Here, Settlor has standing to sue the Trustee even though he does not have equitable or legal title. Settlor gave money over to a trust to benefit a charitable cause - promoting healthy lifestyles in Austin and funding a sports complex. This gives Settlor, for the remainder of his life, standing to sue to enforce the purpose of the trust.

When the purpose of a charitable trust is frustrated, the Trustee must first return to the Settlor (if living) to determine the intent of the trust and act in accordance with the Settlor's reasonable wishes. Under the doctrine of Cypres, if a charitable trust's purposes are frustrated, it is appropriate for the trustee, court or settlor to find another beneficiary with a similar charitable purpose to benefit from the trust. If the Settlor is alive and the purpose is completely frustrated, the res returns to the trust and the trust is disbanded. If the settlor has passed, a judge may find another appropriate charitable purpose to benefit from the trust in perpetuity.

Here, the trust purpose of building a downtown sports complex was frustrated because the city decided not to build that complex. The trustee should have returned to Settlor to discuss options. Because the Settlor has standing, he is able to challenge the designation of the beneficiary and request removal of the trustee. The remedy to the challenge is for the court to 1. name a new beneficiary and 2. replace the trustee. If the court finds there is no reasonable charitable purpose consistent with the trust's purpose, they can disband the trust and return the res to Settlor.

2. The District Court will remove Trustee and Designate a New Beneficiary and Trustee.

Even if the trustee had the right to determine the new beneficiary, the trustee violated the duty of loyalty. A trustee has two primary duties: the duty of care and the duty of loyalty. The duty of care requires him to act as a reasonably prudent person in paying out the trust and investing it. The duty of loyalty means that the trustee cannot engage in self-dealing which means personally benefitting from the trust. A trustee who violates either duty can be removed.

Here, the Trustee violated the duty of no-self dealing when he designated SPI as the beneficiary. The trustee owned the real estate development company that owned the property that SPI was to build on. Thus, the trustee stood to benefit personally by having his company benefit - without SPI as a beneficiary they may not have been able to afford to buy his land. There is an irrebutable presumption that a trustee who engages in self dealing (benefitting personally from the trust) is not a fit trustee. Thus, the trustee must be removed and replaced by the court.

Here, because the Trustee violated his duties in selecting the beneficiary, the court will not allow the beneficiary to stand. The court will either designate a new beneficiary with a purpose consistent with the trust (under the doctrine of Cypres) or disband the trust and order the new trustee to transfer legal and equitable title back to Settlor.

3. The Attorney General may investigate and criminally punish Trustee.

The attorney general has the right to investigate and enforce charitable trusts. Here, Trustee violated his duties by engaging in self dealing. This is essentially stealing funds from the trust. The trust was designed to benefit charity and therefore the Attorney General has the right to enforce the trust. They may seek civil or criminal penalties against the trustee for his breaches as described above.

Question 12 – February 2018 – Selected Answer 2

1. Under Texas Law, the Settlor does not have any rights to challenge the Trustee's designation of SPI as a replacement beneficiary and remove the trustee as the Attorney General must bring suit.

The issue is whether the settlor has standing to bring suit when a Charitable Trust is not being used for the purpose originally intended by the Settlor.

A charitable trust may be established to benefit a certain group of people. The Attorney General is responsible for the enforcement of a charitable trust. A trustee shall not engage in self-dealing. The trustee has a fiduciary duty and a duty of care. The Doctrine of Cy Pres will permit the Trust to change the trust to conform to the intent of the Settlor when it is no longer legal or is impossible, provided it is not a great deviation.

Here, the Settlor established a charitable trust naming Real Estate Developer as Trustee, for the purposes of "promoting health lifestyles in the City of Austin" and "funding the maintenance of a downtown sports complex, forever" when Settlor learned City of Austin intended to build a downtown sports complex. Although Settlor filed a suit in a Travis County District Court challenging the Trustee's designation of Sports Parks, Inc (SPI), a private-for profit construction company specializing in sports parks as a replacement charitable beneficiary of the Trust and building a sports complex on the property owned by the Trustee's real estate development company which constitutes an act of self-dealing. Because the City of Austin decided not to build the downtown sports complex subsequent to the Charitable Trust being established, the purpose of the trust may be changed, but must still conform with the Settlor's intent.

Therefore, under Texas Law, the Settlor does not have any rights to challenge the Trustee's designation of SPI as a replacement beneficiary and remove the trustee as the Attorney General must bring suit.

2. The District Court is likely to rule that the Trustee is not permitted to engage in self-dealing, possibly remove the Trustee and appoint another Trustee, but that the Charitable Trust may be used for building a non-profit downtown sports complex.

The issue is whether a Settlor may enforce the provisions of a Charitable Trust.

A charitable trust may be established to benefit a certain group of people. The Attorney General is responsible for the enforcement of a charitable trust. A settlor does not have standing to enforce a charitable trust. A trustee shall not engage in self-dealing. The trustee has a fiduciary duty and a duty of care. The Doctrine of Cy Pres will permit the Trust to change the trust to conform to the intent of the Settlor when it is no longer legal or is impossible, provided it is not a great deviation. If a trustee engages in self-dealing or violates his fiduciary, the Court shall remove the Trustee. A fiduciary duty is the highest duty imposed.

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Therefore, assuming the Attorney General intervened, the District Court is likely to rule that the Trustee is not permitted to engage in self-dealing, possibly remove the Trustee and appoint another Trustee, but that the Charitable Trust may be used for building a non-profit downtown sports complex.

3. The Attorney General's role is to enforce the terms of the Charitable Trust to conform to the original intent of the Settlor and enjoin the Trustee from self-dealing.

The issue is whether the Attorney General may set aside or vacate any agreement made by the Settlor and the Trustee involving a charitable Trust.

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challenging the Trustee's designation of Sports Parks, Inc (SPI), a private-for profit construction company specializing in sports parks as a replacement charitable beneficiary of the Trust and building a sports complex on the property owned by the Trustee's real estate development company which constitutes an act of self-dealing. Because the City of Austin decided not to build the downtown sports complex subsequent to the Charitable Trust being established, the purpose of the trust may be changed, but must still conform with the Settlor's intent. Because the Attorney General is not a part of the suit filed by Settlor in Travis County, the Attorney General may vacate and set aside any agreement or order affecting the Charitable Trust.

Therefore, the Attorney General's role is to enforce the terms of the Charitable Trust to conform to the original intent of the Settlor and enjoin the Trustee from self dealing

Question 12 – February 2018 – Selected Answer 3

1.

Under Texas Trust law, the Settlor has the right and standing to enforce the trust for the purpose it was created. The settlor may file an injunction to stop the trustee from continuing to act contrary to the trust. The settlor may also remove the trustee due to his breach of care, loyalty, and good faith. Under the breach of care, the trustee must act as a reasonable prudent investor and treat trust property in a manner that would be beneficial to the success of the trust. Under the duty of loyalty, the trustee has a duty to act in the best interest of the trust and not participate in self-dealing, using trust property for his own benefit, and usurp a business opportunity. The duty of good faith requires that the trustee act in good faith in negotiating deals, investing in diverse stock, and to overall act as if the trust property was his own property.

Further, the doctrine of Cy Pres applies to charitable trusts that have failed because the charity no longer exists or is no longer for a lawful purpose. The doctrine of Cy Pres will assign the Settlor's trust to a charity that closely resembles the charitable trust that was created by the Settlor.

As the facts present, Settlor established a valid charitable trust for the purposes of promoting healthy lifestyles in the city of Austin and funding the maintenance of a downtown sports complex forever. Settlor named a real estate developer as trustee. Subsequently the city of Austin decided not to build a downtown sports complex. Trustee then notified Settlor that, as Trustee, he was designating Sports Park Inc. (SPI) a private, for profit construction company specializing in sports parks, as a replacement charitable beneficiary of the Trust. Trustee also told Settlor that the Trust would provide funding to SPI to build a sports complex on property owned by the Trustee's real estate development.

When the trustee decided in his capacity of trustee to designate SPI as the alternative beneficiary of the trust he violated the duty of care and loyalty. The trustee designated SPI with full knowledge that he was going to benefit from this new designation because the property was

owned by the trustee's own real estate development company. This clearly is a breach of duty of loyalty.

Therefore The settlor may challenge the Trustee's designation of SPI as a replacement beneficiary and to remove the trustee for his breach of care, loyalty, and good faith.

2.

The court is likely to rule in favor of the Settlor.

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Although the original charitable trust was for promoting healthy lifestyles in the city of Austin and funding the maintenance of a downtown sports complex forever, and the trustee's designation was almost identical in which it designated SPI to receive funding to build a sports complex, the trustee nevertheless breached his duty of loyalty and as such the court is likely to rule in favor of the Settlor.

3.

Under Texas Trust law, the Texas Attorney General has standing to enforce a charitable trust and if the trust fails because the charity no longer exists or is no longer for a lawful purpose, the Attorney General may designate an alternative charity to give full effect to the Settlor's intent. Further the Texas Attorney General may sue on behalf of the charitable trust for any wrongdoing done by the Trustee and to enforce a trust by a settlor.