Title

May agent of dying settlor of revocable inter vivos trust effectively transfer to trustee via general assignment title to any property of settlor that may be found in a certain safe deposit box?

Text

When the beneficiaries of a revocable inter vivos trust are not also those who could take the settlor's probate estate, the trust needs to be funded as settlor intends while settlor is alive. Easier said than done, sometimes. One Thursday morning I was summoned to the hospital room of a gentleman awaiting life-endangering surgery the next day. He owned a slew of bearer bonds stored in safe deposit boxes in three Boston banks. He wanted a full-blown estate plan, the inter vivos trust to be funded with the bonds. Early next morning I returned. As the trust, will, durable power of attorney (DPA), etc. were being executed he was being readied for the operating room. Only time to token fund trust before he was off. Now to get the bonds into the trust before close of business that day. I had his agent under the DPA scribble a general assignment to the trustee of title to any property of the settlor that may be in the three boxes. A nurse made photocopies. The agent served the original on the trustee, who luckily was in the room. The trustee scribbled a receipt on the assignment, to include date and time. Copies in hand the agent and I set off on foot for the banks. We would serve the first bank employee we could find willing to date stamp the assignment. Just before the close of business we made it into the third bank. Over the weekend the settlor died. The assignment was never dishonored and never contested. Had the personal representative (PR) contested its enforceability, what might have been the doctrinal issues?

The PR might have asserted that the agent lacked authority to make the assignment. Luckily such trust-funding was expressly authorized by statute and the DPA itself.

The general assignment was invalid as not having been supported by consideration. Not so. Gratuitous assignments have been generally enforceable since time immemorial. Moreover, the trust's revocability meant that the settlor merely became, via the assignment, the property's equitable owner, he having been its legal owner before. There had been no re-ordering of economic interests, no gifting. Such re-titling assignments are common in modern estate planning and tolerated by the courts. See Est. of Williams, 2023 WL 6994425 (2023 OK 103).

The property-to-be-entrusted had not been adequately identified. Location being an acceptable identifier of fungible cash for estate-planning purposes, so also should it be an acceptable identifier of bearer bonds.

The subject property was not sufficiently ascertainable. Disagree. The settlor's interest in the bonds had been fully vested and possessory. Even one's possible right to a recovery incident to a pending wrongful death action is presently assignable to a trustee. See Williams.

Notice should have been given to the debtors, i.e., bond issuers. Not so. Even in the case of entrusting a life insurance contract, while notice to the insurer is desirable for evidentiary

purposes, in equity such notice is not required for entrustment to be enforceable. See §2.1.1 of *Loring and Rounds: A Trustee's Handbook* (2024).

The banks had not been given due notice of the assignment. Only notice to vice presidents and above would have sufficed. Irrelevant. The validity of such an assignment is not contingent upon notice to the mere custodian of the assigned property. The date-stamping was for evidentiary purposes in case the PR had asserted that assignment had been executed postmortem or the banks had denied trustee postmortem access to bonds. My plan had been Monday in any case to have the trustee, *qua* trustee, lease a safe deposit box and have agent physically transfer bonds into it. By then, however, the agency had terminated.

What if trustee had been unavailable or had neglected to accept in writing the assignment, or had declined to accept the assignment altogether? In equity a trust shall not fail for want of a trustee. Had the instrument not provided for a successor ready, willing, and able to accept the assignment it would have fallen to some court to find someone who would be, effective as of date of assignment.

The Uniform Trust Code is of no help when it comes to navigating the intersection of assignment law and trust law. Worse, successful completion of a discrete course in the law of trusts is no longer required in most U.S. law schools and knowledge of basic trust doctrine is no-longer to be tested on the multi-state bar exam. See my 7/17/22 JDSUPRA posting, which touches on the purging of trusts from the multi-state bar exam: Merger Doctrine, the Common Trust Fund, the Trusteed Mutual Fund, Common-Fund Doctrine, Combining Trusts, Common Fund of Related Sub-trusts: Which is not about trust investing? | Charles E. Rounds, Jr. - Suffolk University Law School - JDSupra.