

Title

Whether the trust relationship should be fundamentally transmogrified into a juristic entity/person

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Summary

In re Estate of Fournier, 902 A.2d 852 (Me. 2006) illustrates how a fundamental conversion of the trust relationship by legislation or otherwise into a juristic entity/person might well limit the trust's practical applicability, particularly in the informal context. In 1998 or 1999, a one George Fournier asked X & Y if they would "hold some money for him." After his death, he wanted them to turn the money over to his sister. The court concluded that Fournier had created an oral trust. X & Y were the co-trustees. They were equitably bound to hold the money during Fournier's lifetime and turn it over to the sister in her individual capacity after his death, free of trust. If a trust were fundamentally a juristic entity/person, would or could the court, as a practical matter, have found a trust under these facts? If not, then what are the legal/equitable tools that the court would have had at its disposal to sort out the rights, duties, and obligations of the parties with respect to the money? It is suggested that to fundamentally convert a trust from a relationship into a juristic entity/person would unnecessarily tear a substantial hole in the fabric of the Anglo-American legal tradition. Here is a link to the Fournier Case:

http://www.leagle.com/decision/20061754902A2d852_11748.xml/IN%20RE%20ESTATE%20OF%20FOURNIER. The topic of deeming a trust a juristic entity/person for certain purposes is discussed in §8.15.77 of *Loring and Rounds: A Trustee's Handbook*. The section is reproduced below in its entirety, including enhancements that will be included in the forthcoming 2016 Edition.

The Text

§8.15.77 *The Trust Entity Doctrine* [from Rounds & Rounds, *Loring and Rounds: A Trustee's Handbook*]

*The whole bundle of property, persons, rights, and duties makes up the trust.*¹¹⁹¹

The trust is being deemed an entity for certain purposes. Under classic principles of trust law, a trust is a fiduciary relationship with respect to property, not a juristic person.¹ As to the world, the trustee is the legal owner of the property.² The beneficiaries, however, have equitable property rights incident to

¹¹⁹¹Bogert, *Trusts and Trustees* §1, n.29.

¹ See *Portico Management Group, LLC v. Harrison*, 202 Cal.App.4th 464 (2011); *Jimenez v. Corr*, 764 S.E.2d 115 (Va. 2014) ("In contrast, an inter vivos trust is inseparable from the parties related to it, and the trust does not have a separate legal status.").

² See *Portico Management Group, LLC v. Harrison*, 202 Cal.App.4th 464 (2011).

the relationship. In other words, trusts are not corporate-like entities.³ Having said that, for some purposes legislatures and courts are treating trusts as if they were. “Under the ‘trust entity’ theory...[, for example,]...a testamentary trust is established and remains at the testator's domicile, thereby giving the domiciliary court in rem jurisdiction independent and apart from the presence of the trustee, the trust assets or the trust beneficiaries.”¹¹⁹² For years the tax laws have deemed certain trusts to be entities for purposes of the income tax, a topic we take up in Chapter 10 of this handbook. In Section 7.3.1 of this handbook, we consider the trust entity doctrine in the context of contracts between the trustee and third parties. The trust entity doctrine in the context of the trustee's liability in tort to third parties is considered in Section 7.3.3 of this handbook. A trust created under the Uniform Statutory Trust Entity Act is intended to be a juridical entity, “separate from its trustees and beneficial owners, that has the capacity to sue and be sued, own property, and transact in its own name.”¹¹⁹³

To fundamentally transmogrify the trust into an entity, however, would be ill-advised. While it may be appropriate to *deem* a trust an entity *for certain purposes*, it would be ill-advised, legislatively or otherwise, to altogether revise the default law of trusts such that the trust is no longer fundamentally a relationship; rather, it is now fundamentally a juristic entity/person. The two classic fiduciary relationships are the agency and the trust. Just as a conversion of the agency into a juristic entity/person would self-evidently destroy the agency's practical utility, so also would such a conversion of the trust into a juristic entity/person destroy the trust's practical utility, particularly in the case of the informal trust. The corporation has already been invented. There is no need to reinvent it. That the legal title to the trust property is in the trustee, that the trustee as to the world is the owner of the property, that the entrusted assets are segregated from the trustee's personal asset, and that the trustee assumes direct burdensome fiduciary duties to identifiable individuals or charitable purposes is what has made the trust such an attractive alternative to the corporation in certain settings, particularly in the informal, noncommercial setting. Even in the commercial context, the trust's protean nature can make it an attractive alternative to the standardized corporation, particularly when structural flexibility and operational nimbleness are a priority. And then there are the inevitable unanticipated/unintended consequences were the trust to be fundamentally transmogrified into a juristic entity/person. What, for example, would now be the legal/equitable status of the “trustee”? Would the “trustee” be an agent/employee of “the trust”? Where would the legal title to the underlying property now be lodged? Still in the “trustee” or now in “the trust”? The rights, duties, and obligations of the “parties” to “the trust,” once a long-seasoned legal/equitable relationship, now a fledgling juristic entity/person, would take decades, if not centuries, to sort out.

Cross reference. See generally §3.5.1 of this handbook (nature and extent of the trustee's estate).

³ See *Portico Management Group, LLC v. Harrison*, 202 Cal.App.4th 464 (2011).

¹¹⁹²Bogert, *Trusts and Trustees* §292.

¹¹⁹³Uniform Statutory Trust Entity Act, Prefatory Note.