



The Anatomy of a Trust Contest

Hon. Vincent W. Versaci
Gary B. Freidman, Esq.
Frank T. Santoro, Esq.

Trusts & Estates Law Section
2019 Spring Meeting

1

FACT PATTERN (1 OF 5):

On March 28, 2016, Sammy Settlor, then age 85, was discharged from the Standish Sanitarium, a psychiatric hospital, after suffering from severe depression and anxiety. His physician, Dr. Hugo Z. Hackenbush of the Standish Sanitarium (a for profit institution owned by Dr. Hackenbush), has prescribed a high dose regimen of anti-depressants and mood stabilizing medications – some of the side effects of which are intermittent memory loss, hallucinations and delusions, and impaired vision.

2

FACT PATTERN (2 OF 5)

On April 1, 2016, Sammy, who resided in Columbia County, New York (but maintained a pied-a-terre in Manhattan) executed a Will and revocable trust (“Trust”) prepared by Louis Litt, whom Sammy met at one of Louis’ many catered breakfast seminars on avoiding probate. Sammy named as his trustees both Louis Litt -- whose offices were in Manhattan and Copake, NY, but who is now retired and a resident of Naples, Florida -- and an old girlfriend, Jessica Pearson, who resided in New York County, but who moved a few months later to an apartment at the Ritz Carlton in Naples, Florida. Sammy’s 2016 Will pours his entire probate estate into his Trust and contains a direction that his Will be probated in the Surrogate’s Court, New York County. His prior Will, executed in 2010, left a \$2 Million bequest to his alma mater, the School of Hard Knocks.

3

FACT PATTERN (3 OF 5)

On April 2, 2016, the day after the Will and Trust were executed, Sammy funded the Trust with \$10 Million in marketable securities maintained at an account at First Jersey Securities, headquartered in Hoboken, NJ, his 500-acre horse farm in Columbia County, valued at \$5 Million, and a \$500 saving account at a Citibank branch on East 42nd Street in Manhattan, New York. All decisions concerning Trust investments and administration are made in Naples.

4

FACT PATTERN (4 OF 5)

The Sammy Settlor Revocable Trust gives \$500,000 to Louis Litt, \$500,000 to the Standish Sanitarium, Inc. \$1 Million to each of Sammy's 2 children from his first marriage, \$4 Million to each of his two children from his second marriage and his horse farm to Jessica Pearson. The Trust residuary is bequeathed to the New York Bar Foundation. The Trust contains a detailed *in terrorem* clause which provides that any person who directly or indirectly challenges the Trust, Sammy's Will, his nomination of fiduciaries or any actions of his fiduciaries will be deemed to pre-decease Sammy without issue.

5

FACT PATTERN (5 OF 5)

Sammy died on May 1, 2019 while feeding the pigeons at City Hall Park and it is not clear whether his probate estate contains any assets other than a few hundred dollars in a bank account in New York County.

His grieving third wife of 10 months, Donna Paulsen, and his 2 children from his first marriage Mike Ross and Rachel Zane, have made an appointment to see you on your return to your office in Manhattan from Naples, Florida. Rachel is named as Sammy's executor.

You should be ready to discuss the following issues with them. . .

6

TRUST'S DISPOSITIVE

- Louis Litt: \$500,000
- Standish Sanitarium: \$1,500,00
- Mike Ross: \$1,000,000
- Rachel Zane: \$1,000,000
- 2 Children of Second Marriage: \$4,000,000 (each)
- Jessica Pearson: \$5,000,000 and horse farm
- New York Bar Foundation: Residuary

7

Before Donna, Mike and Rachel have a chance to meet with you, you are cornered on the flight back from Naples by Louis Litt who is returning from visiting Jessica at the Ritz Carlton in Naples – he talks to you about what he says is a hypothetical estate dispute – but which to you sounds a lot like Sammy Settlor's life and death. Over mini-bottles of Maker's Mark, Louis asks what kinds of defenses would a trustee have to a trust challenge if the proceeding was filed in the Surrogate's Court, New York County?



8

After Louis leaves you alone, you wonder whether that little chat with Louis will disqualify you from representing Donna, Mike and Rachel?



9

After being retained to challenge the Will and Trust you instruct your associate, Harvey Specter, to start drafting papers. Harvey comes to you with several questions. . .



10

PLANNING AHEAD:

Your law school classmate, Daniel Hardman, has been retained to represent the trustees, Louis and Jessica, who have just been served with a Citation issued by the Surrogate's Court, New York County. He is, quite appropriately, thinking down the road.

11

**NAVIGATING DISCOVERY:**

You have noticed the depositions of Louis Litt and Jessica Pearson. Daniel Hardman writes you a letter objecting your noticing Louis' deposition on the ground that he was Sammy's long-time attorney so that his communications with Sammy are covered by the attorney-client privilege. You assign your associate to research the issue; what does he report back to you?

12

NAVIGATING DISCOVERY:

At the deposition, Daniel Hardman is quite obstreperous – not only does he direct Louis not to answer numerous questions on the ground of privilege, he also directs him not to answer on the grounds of relevancy, hearsay, Dead Man’s Statute. He also gives a little speech with each objection, cluing Louis as to what Daniel’s concerns are – What can you do about it?



13

NAVIGATING DISCOVERY

You write to Dr. Hackenbush to request a copy of his records concerning his treatment of Sammy together with the records of all hospitalizations of Sammy at the Standish Sanitarium for the past 10 years. He ignores you and he also ignores the document subpoena that you served upon him and the Sanitarium. You don’t understand why your subsequent motion to compel production of these documents is summarily denied – The only thing that the Surrogate said to you at the return date is “Counsel, you certainly should have known better.”

14

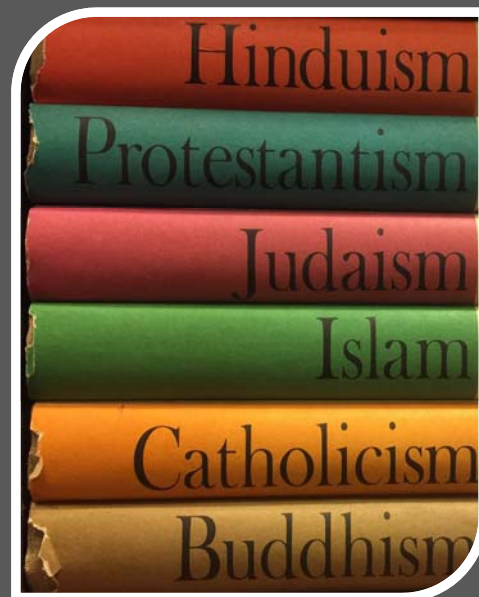
NAVIGATING DISCOVERY:

You learn that the person that you really should be deposing at the Sanitarium is the resident psychologist – Professor Quincy Adams Wagstaff. Unlike at Dr. Hackenbush’s deposition, each of your very targeted questions addressed to the Professor is objected to and a direction not to answer is also given. The special referee to supervise discovery who was appointed after your numerous fights with opposing counsel over your respective conduct at depositions, sustains the objections.

15

NAVIGATING DISCOVERY:

The resident clergy at the Sanitarium, Pastor Guido Sarducci, was very close to Sammy and you were told that Sammy spoke often and frankly to the good pastor about his relationships. The good pastor has the reputation for telling his wife everything.



16

EXPERT DISCLOSURE:

During a recent status conference before the Court, each side indicated that it intended to call at trial (a) several medical experts to opine on the likely effects on Sammy of the medications he was prescribed as well as what his mental ability was based on the extensive medical records; and, (b) handwriting experts to opine on the genuineness of Sammy's signature on the will and the trust.

17

Your clients survived the motion for summary judgment. The Court denied both the motion and your cross-motion. Looks like you are about to try your first case. The Court's decision referred often to something called the Dead Man's Statute – something that you vaguely remember from law school.

18

ISSUES ABOUND AT TRIAL:

The trial is set to begin on May 20, 2019,
following Jury selection. Back at the office you and
your associate start to do more research . . .