Cases and Rulings

Tom Clancy’s widow wins her court battle.

MICHELLE BANDY ET AL. V. ALEXANDRA CLANCY, case number 93, in the Court of Appeals in Maryland

The estate plan of noted author Tom Clancy had three equal trusts, one for the children of his first marriage, a marital trust for his surviving second wife, and a family trust for the second wife and the daughter they had together. The trusts were funded from the residuary estate, and Clancy’s will called for death taxes to be paid from the residue. The personal representative of the estate (who also had drafted the will) proposed to pay half of the federal estate taxes due on the $83 million estate from the trust for the adult children, the other half from the family trust. The taxes came to roughly $15 million.

Mrs. Clancy objected. Before his death, Clancy had executed a codicil to his will, to make it clear that he intended both the family trust and the marital trust to qualify for the marital deduction. Assets that don’t share in the creation of the estate tax burden should not be tapped to pay those estate taxes. To the extent that the widow’s share is used to pay the tax, the marital deduction must be reduced, which means still more tax, and a further reduction in deduction, and yet more taxes, in an extended circular computation. If Mrs. Clancy’s share is free from the tax burden, the actual estate tax due drops by nearly a third, to roughly $11 million.

That’s what the probate court decided, and in a 4-3 decision the Maryland Court of Appeals affirmed in August. A savings clause in the codicil “explicitly directs that the personal representative not act to adversely impact the benefit of the marital deduction of the marital trust and the family trust.”

The result is decidedly unequal for the five children. The child from the second marriage will get roughly one-third of the estate, undiminished by taxes. The share for the other four will be reduced roughly 40% for taxes, and then split four ways among them. Whether Mr. Clancy expected an outcome for his estate plan as convoluted as the books that he wrote remains an open question.

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Executor may be vulnerable to RICO charges in federal court.

KING V. WANG, CA-2, August 26, 2016

Defendant was the executor of the estate of C. C. Wang, a noted art collector and the father of fashion designer Vera Wang. Plaintiff alleges that the defendant engaged in scheme to deprive the plaintiff of her inheritance. Elements of the scheme included a demand that plaintiff turn over assets in exchange for artwork of hers that he had misappropriated, and the auctioning off of two unlawfully acquired paintings. Plaintiff brought civil suit in federal district court, alleging violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). In the event of success, plaintiff will receive triple damages.

Question 1: Can the federal court even entertain this suit, or is it covered by the "probate exception," which limits the federal courts' jurisdiction when the action requires probate or annulment of a will or administration of a decedent's estate. The District Court held that although this case involved probate-related claims, they are of the sort that may be pursued in the federal courts after the U. S. Supreme Court's decision in *Marshall v. Marshall* [547 U.S. 293 (2006)]. Second Circuit Court of Appeals affirms on this point.

Question 2: Has the plaintiff adequately pleaded the elements of a RICO claim? The District Court said no, but the appellate court reverses. "To adequately plead a pattern of racketeering activity, a 'plaintiff must plead at least two predicate acts, and must show that the predicate acts are related.' *GICC Capital Corp. v. Tech. Fin. Grp. Inc.,* 67 F.3d 463 (CA-2, 1995)." Factors include the length of time over which the acts occurred, the number and variety of acts, the number of victims, the number of participants, and the presence of separate schemes. Here, the pleadings were sufficient for the appellate court to order the RICO suit to go forward.

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GSTT protection not sacrificed when final distribution to disabled beneficiary is altered.

PRIVATE LETTER RULING 201633022

Great-grandmother established an irrevocable trust before September 25, 1985. The date signifies that the trust is protected from the generation-skipping transfer tax (GSTT) by the so-called "grandfather rules" for pre-existing trusts. The trust continues for the lives of Great-grandmother's children, grandchildren, and great-grandchildren. The great-grandchildren acquire a demand right when they reach age 25, and they receive the balance of their share of the trust when they reach age 35.

As it happens, one great-grandchild was born with cognitive deficits and other disabilities. That beneficiary does not have the capacity to exercise the demand right, and her parents have been appointed her permanent conservators.

The trustees have petitioned the local court to change the terms of the trust, to hold the disabled beneficiary's interest in trust for life, rather than forcing a distribution at age 35. The trustees may distribute income or principal to the beneficiary in their sole discretion. It was represented that Great-grandmother never considered the possibility that a descendant might be disabled, and that this change will further the essential purpose of the trust. The court ordered the modification, contingent upon a favorable ruling from the IRS.

The Service has no problem with the change. The modification will not cause the interest to pass to a lower generation beneficiary. At the disabled beneficiary's death, the entire remaining interest will be included in her taxable estate.

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University gets investment restrictions on a bequest dissolved.

IN THE MATTER OF ROCKEFELLER UNIVERSITY, Supreme Court of the State of New York, Index Number 153142/2016

When James Martin had his will drafted in 1962, he had strong opinions about investments. He created a trust with a remainder interest for Rockefeller University for the purpose of combatting arteriosclerosis. The remainder, which was to be held in a perpetual trust, was delivered in 2007 and was then worth nearly $13 million.

The will restricts the University from selling securities in 17 enumerated industrial corporations. What's more, the University is barred from investing in "mortgages, corporate bonds, preferred stock, or government bonds while the value of the United States dollar remains unindexed to the price of gold, or to the purchase of securities in companies engaged in steel, copper, and railroad equipment production, and management of investment trusts and securities under any circumstances."

To date, the University has abided by the investment restrictions, even though six of the 17 named corporations no longer exist as independent entities. One of the companies that had to be retained was Eastman Kodak, and those shares have fallen in value by 50% in the University's hands. The performance of the Martin portfolio has fallen far short of that achieved by the University's endowment overall.

Accordingly, the University asked to be relieved from the investment restrictions. The New York Attorney General agreed, and the estate did not object. Citing the emergence of modern portfolio theory, the court granted the wish.