

**[J-31-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.**

JUDITH SCALFARO,	:	No. 127 MAP 2006
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court dated September 30, 2005 at No.
	:	2811 EDA 2004 reversing the Order of the
v.	:	Court of Common Pleas of Bucks County,
	:	Civil Division dated March 2, 2004 at No.
	:	0303916-13-5 and entered on December
RICHARD RUDLOFF AND JAMES	:	3, 2004
RUDLOFF,	:	
	:	884 A.2d 904 (Pa. Super. 2005)
Appellees	:	
	:	ARGUED: April 17, 2007

**OPINION**

**MR. CHIEF JUSTICE CAPPY<sup>1</sup>**

**DECIDED: November 21, 2007**

In this appeal, we consider whether a trust instrument gave a joint settlor, who was also a joint trustee, the authority to revoke an *inter vivos* trust when he became the sole trustee upon the death of his spouse. For the following reasons, we conclude that the trust instrument is clear and unambiguous in stating that the power of revocation was to be exercised by the settlors jointly and not by either one of them as sole trustee. Accordingly, the order of the Superior Court is reversed.

Robert C. Rudloff (“Mr. Rudloff”) and Helen M. Rudloff (Mrs. Rudloff”) (collectively, the “Rudloffs”) owned property (“Property”) located in Bucks County, Pennsylvania as

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<sup>1</sup> This matter was reassigned to this author.

tenants by the entirety. On August 11, 1993, the Rudloffs executed a form-book Declaration of Trust, establishing an *inter vivos* trust (the "Trust"). The corpus of the Trust was the Property and the Rudloffs were the designated trustees. Under the terms of a quit claim deed, the Property was transferred to the Trust and into the Trust Estate.

Paragraph 1 of the Declaration of Trust named the Rudloffs' three children, Appellant Judith Scalfaro and Appellees Richard and James Rudloff, as equal one-third beneficiaries. In paragraphs 2 and 3, the responsibilities and interests of the beneficiaries were set forth. Paragraphs 4 and 5 specified the powers and rights the Rudloffs reserved, stating:

4. We reserve unto ourselves the power and right at any time during our lifetime (1) to place a mortgage or other lien upon the [P]roperty and (2) to collect any rental or other income that may accrue from the trust property.....

5. We reserve unto ourselves the power and right at any time during our lifetime to amend or revoke in whole or in part the trust hereby created without the necessity of obtaining the consent of any beneficiary and without giving notice to any beneficiary. The sale or other disposition by us of the whole or any part of the [P]roperty held hereunder shall constitute as to such whole or part a revocation of the trust.

(Trial Stipulations at Exhibit 2). Paragraph 6 addressed the revocation of the beneficiary designation and termination of the Trust in the event that the beneficiaries predeceased the Rudloffs. Paragraph 7 addressed what role the survivor of the Rudloffs would assume, stating that "[i]n the event of the physical or mental incapacity or death of one of us, the survivor shall continue as sole Trustee." (Trial Stipulations at Exhibit 2).

Mrs. Rudloff died in October of 1996. On June 14, 2000, Mr. Rudloff executed and filed a deed conveying the Property to Appellees. Mr. Rudloff died on December 24, 2001. Appellees claimed ownership of the Property under the June 14, 2000 deed.

On June 19, 2003, Appellant filed a Complaint against Appellees in an Action to Quiet Title, alleging that given the terms of the Declaration of Trust, Mr. Rudloff, as sole trustee, was not authorized to convey the Property. Appellant requested that the June 14,

2000 deed be voided and cancelled, and that the Property be administered under the Declaration of Trust. Appellee Richard Rudloff (“Appellee Rudloff”) filed an Answer, New Matter and Counterclaim, alleging that the Trust was revocable by both or either one of the Rudloffs and that Mr. Rudloff’s conveyance of the Property on June 14, 2000 served to revoke the Trust and extinguish Appellant’s rights in the Property. Appellee Rudloff requested that Appellant’s action be dismissed and that the court quiet title in the Property in Appellees.

A bench trial was held on March 1, 2004. The trial court decided in Appellant’s favor, and entered an order dated March 2, 2004, voiding the June 14, 2000 deed, cancelling the June 14, 2000 deed as matter of record, and directing that the Property be administered in accordance with terms and conditions of the Trust. Appellee Rudloff filed post-trial motions, which were denied. He then lodged a timely appeal in the Superior Court, raising whether the trial erred in not recognizing that under the Declaration of Trust, Mr. Rudloff as sole trustee, had the power to revoke the Trust and did so, by conveying the Property.

In its Pa.R.A.P. 1925(b) opinion, the trial court concluded that Appellee Rudloff’s contention had no merit. The trial court recognized that a settlor may revoke or amend a revocable trust, provided that the power to revoke is reserved in the trust instrument’s terms, and that the settlor’s intent as to revocation is to be gathered from the language of the trust. (Trial Court opinion at 6, citing In re Trust of Kaufmann, 331 A.2d 209, 211 (Pa. 1975). Applying these principles to the Declaration of Trust, the trial court noted that paragraph 5 used plural words to describe the power of revocation that the Rudloffs reserved and included no words to indicate that either one of the Rudloffs were authorized to revoke the Trust alone, and that paragraph 7 did not state that the surviving and sole trustee was empowered to change the Trust. (Trial Court opinion at 5-6.) Thus, the trial court concluded that the Declaration of Trust clearly vested the power to revoke the Trust in

the Rudloffs jointly, that the action taken by Mr. Rudloff as sole trustee on June 14, 2000 was unauthorized, and that the conveyance of the Property by deed to Appellees was void. (Trial court opinion at 7.)

On appeal, in a published opinion, a divided panel of the Superior Court reached a different conclusion, and reversed the trial court's order. Scalfaro v. Rudloff, 884 A.2d 904 (Pa. Super. 2005). Relying heavily on a decision rendered by the Supreme Court of Utah in Matter of Estate of West, 948 P.2d 351 (Utah 1997), the Superior Court majority focused on the second sentence in paragraph 5, which stated that "the sale or other disposition by us of the whole or any part of the [P]roperty held hereunder shall constitute as to such whole or part a revocation of the trust" and the direction in paragraph 7 that upon the death of one of the Rudloffs, the survivor would continue as sole trustee. The majority repeated the observation made by the Utah Court in Estate of West that the sale of trust property can be accomplished only by a trustee who holds legal title, and reasoned that since Mr. Rudloff retained the powers of a trustee when Mrs. Rudloff died, the Declaration of Trust must be interpreted to mean that Mr. Rudloff was authorized to convey the Property on his own. Scalfaro, 884 A.2d at 907-09. Accordingly, the majority concluded that Mr. Rudloff had the right to convey the Property, and that the conveyance Mr. Rudloff made on June 14, 2000, to Appellees extinguished the Trust and Appellant's rights in the Property. Id. at 910.

Judge Kelly dissented. Id. at 910-14 (Kelly, J. dissenting). Judge Kelly examined the language in the Declaration of Trust addressing the settlors' power to revoke and the context in which this power was set out, and concluded that the instrument gave the power to revoke to the Rudloffs jointly as settlors, and not to Mr. Rudloff as sole trustee. Id. at 910-15. Accordingly, Judge Kelly would have determined that the trust became irrevocable upon Mrs. Rudloff's death, and would have affirmed the trial court. Id. at 915.

This Court granted review to consider whether under the Declaration of Trust, Mr. Rudloff, acting as sole trustee, had the power to revoke the Trust. Scalfaro v. Rudloff, 912 A.2d 838 (Pa. 2006).<sup>2</sup>

We begin with the principles that control in this area. Under Pennsylvania law, the power of revocation is a power that the settlor of the trust reserves. In re Trust of Kaufmann, 331 A.2d 209, 211 (Pa. 1975); Damiani v. Lobasco, 79 A.2d 268, 271 (Pa. 1951). A settlor may revoke a trust, if and to the extent that power has been reserved in the trust instrument. Id. A trustee does not decide whether or how the power of revocation will be exercised. See id. The settlor's intent as to the power of revocation is to be determined from all the language within the four corners of the trust instrument, the scheme of distribution, and the circumstances surrounding the execution of the instrument. See Farmers Trust Co. v. Bashore, 445 A.2d 492, 494 (Pa. 1982). When a settlor of a trust reserves a power to revoke in a given manner and under certain conditions, revocation cannot be effected in another manner. Damiani, 79 A.2d at 271. A trust instrument that is unambiguous on a matter may not be superseded by extrinsic evidence of the settlor's intent. Kaufmann, 331 A.2d at 212.

The parties' respective arguments applying these principles are straight forward. Appellant points to paragraph 5 of the Declaration of Trust and asserts that the plural words therein clearly demonstrate an intent on the settlors' part that the power of revocation was to be exercised jointly. According to Appellant, paragraph 7 does not change this result because it neither grants nor reserves any powers, but rather, authorizes the surviving trustee to continue administration of the Trust. Appellee Richard Rudloff<sup>3</sup> counters that it

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<sup>2</sup> This appeal raises a question of law. Our standard of review is *de novo* and our scope of review is plenary. Commonwealth v. Long, 922 A.2d 892, 897 (Pa. 2007).

<sup>3</sup> Appellee James Rudloff did not file a brief.

never occurred to the Rudloffs that certain of the terms in the Declaration of Trust pertained to their powers as settlors and others related to their rights as trustees. Pointing to paragraph 7, Appellee argues that the Rudloffs must have meant that the survivor of them would have full and unlimited power over the Trust upon the death of the other, and intended for one or both of them to enjoy the power to revoke the Trust at any time and by any means, including by conveyance of the Property.

Our application of controlling principles leads us to Appellant's position. Turning to the Declaration of Trust, we see that the powers of the settlors were set forth in paragraphs 4 and 5, with the latter addressing the power to revoke. The first sentence of paragraph 5 stated that the settlors reserved the power to revoke; the second sentence stated that a particular action, the sale or disposition of the corpus of the trust by them, amounted to a revocation.<sup>4</sup> In setting forth these provisions, paragraph 5 included only plural words and phrases, *i.e.*, "[w]e reserve unto ourselves," "during our lifetime," and "sale or disposition [of the Property] by us...." There was no mention in paragraph 5 that the power of revocation could be exercised by either Mr. or Mrs. Rudloff alone or that either one of them could convey the Property on his or her own, either as sole trustee or surviving settlor. Indeed, no rights of survivorship were expressed in paragraph 5. The role the survivor of the Rudloffs would assume was covered in Paragraph 7. In this regard, Paragraph 7 contained only one authorization -- that the survivor would continue as sole trustee -- and made no reference to the power of revocation.

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<sup>4</sup> As we observed, see supra p. 4, the Superior Court reasoned that because a trustee holds legal title and may dispose of the corpus of a trust, the Declaration of Trust necessarily meant that Mr. Rudloff, as sole trustee, could sell the Property on his own. The Superior Court's focus on the rights of a trustee was, however, in error. This appeal concerns the power to revoke that was reserved in the Declaration of Trust and how that power was to be exercised under that instrument.

In our view, this language in the Declaration of Trust is clear and unambiguous in stating that the power of revocation was to be exercised by the Rudloffs jointly, and not by either one of them unilaterally as sole trustee.<sup>5</sup> Therefore, we hold that under the Declaration of Trust, Mr. Rudloff did not have the power to revoke the Trust as sole trustee, and accordingly, did not have the authority to convey the Property to Appellees in June of 2000.

For these reasons, the order of the Superior Court reversing the order of the trial court is reversed, and this matter is remanded to the Superior Court for remand to the trial court for reinstatement of the trial court's order and any necessary proceedings consistent with this opinion.

Messrs. Justice Castille and Baer, Madame Justice Baldwin and Mr. Justice Fitzgerald join the opinion.

Mr. Justice Saylor files a dissenting opinion in which Mr. Justice Eakin joins.

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<sup>5</sup> Moreover, even if the terms of the Declaration of Trust were less than clear, as our respected colleague in the dissent would conclude, since paragraph 7 expressly provided that the right of the trustees would continue in the survivor, but is silent as to the rights of the settlors, we would conclude that survivorship rights in the settlors were denied under the maxim *expressio unius est exclusio alterius* (the expression of one item serves to the exclusion of other, non-expressed, items of the same general character). See Farmers Trust, 445 A.2d at 494 n.3 (explaining that canons of construction will be applied when a settlor's intent cannot be ascertained with reasonable certainty and stating that "[a]lthough we find settlor's language to be unambiguous in the context of the entire trust instrument, we note that, even if settlor's language were ambiguous in context, our canons of construction would mandate the same conclusion.").