

# Third District Court of Appeal

State of Florida

Opinion filed August 28, 2019.

Not final until disposition of timely filed motion for rehearing.

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No. 3D18-0094

Lower Tribunal No. 17-9462

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**Wanda Barrett, as Personal Representative  
of the Estate of Vivienne Caserta,**  
Appellant,

vs.

**Bettina Caserta Kapoor, Individually, as Beneficiary and as Trustee  
of the Guido T. Caserta Trust dated October 6, 2008, and Roger  
Caserta, Individually and as Beneficiary,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Barbara Areces,  
Judge.

Wasson & Associates, Chartered, and Roy D. Wasson; Metnick Levy &  
Dyson, and Peter A. Dyson (Delray Beach), for appellant.

Silverberg & Weiss, P.A., and Kraig S. Weiss (Weston), for appellees.

Before **SALTER, LOGUE, and LINDSEY, JJ.**

LINDSEY, J.

Wanda Barrett, as personal representative of the Estate of Vivienne Caserta, appeals a final summary judgment entered in favor of Bettina Caserta Kapoor and Roger Caserta in this action arising out of the administration of the Guido Caserta Trust. Specifically, the parties dispute the distribution of the Residuary Trust Estate, which was funded by the net proceeds of the sale of the Trust Property. Because, the Co-Trustees properly distributed the Residuary Trust Estate in accordance with the provisions of the Trust, we affirm.

## **I. BACKGROUND**

Guido,<sup>1</sup> an unmarried widower, executed the Trust at issue herein on October 6, 2008, conveying a parcel of property on Miami Beach to himself as Trustee. Bettina and Vivienne, Guido's daughters, were named Successor Co-Trustees under the Trust. Meanwhile, Roger, Guido's son, was named as an alternative Co-Trustee in the event of one of his sisters' demise. All three children were named beneficiaries under the Trust.

The issue in this case concerns the interpretation of Article V of the Trust, which clarifies that the Estate should be distributed upon Guido's death. Article V provides:

### ADMINISTRATION AFTER GRANTOR'S DEATH

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<sup>1</sup> To avoid confusion, we address the parties by their first names.

After Grantor's death, the Residuary Trust Estate shall be administered and the principal and income shall be distributed as hereinafter provided:

A) Sale of Real Property. **Upon the death of the Grantor, Bettina Caserta Kapoor shall have the right, per stripes, to purchase the Real Property as defined in Schedule A of this Trust on the following terms and conditions: The purchase price for the Real Property will be \$670,000.00 payable in cash at closing free and clear of all liens and encumbrances. The closing shall occur within one (1) year after the death of the Grantor subject to extension of time in order for the trust to resolve any title claims or issues that may exist as it relates to the Real Property.....The net profits from the sale of the real property, after deducting the expenses of the sale (the "Net Proceeds") shall be added to the Residuary Trust Estate and distributed in accordance with the provision of Section B below.**

B) Residuary Trust Estate. **Upon the death of the Grantor, the Residuary Trust Estate shall be divided into shares to create one share for each beneficiary named herein, per stirpes, and shall be distributed as provided below:**

(a) The sum of Ten Thousand (\$10,000.00) Dollars shall be distributed outright to YOLANDA RASULO at such time as the Trustees deem appropriate but in no event later than at the time of the sale of the Real Property as provided for in Article V, Section A.

**(b) The Net Proceeds from the sale of the Real Property shall be equally distributed outright, per stirpes, as follows: Fifty (50%) Percent to VIVIENNE CASERTA and Fifty (50%) to ROGER CASERTA.**

(c) **The rest, residue and remainder of the Residuary Trust Estate shall be distributed to my children in equal shares, per stirpes, as follows: One-third (1/3) to my**

daughter BETTINA CASERTA KAPOOR, one-third (1/3) to my daughter VIVIENNE CASERTA, and one-third (1/3) to my son ROGER CASERTA.

**(d) If Grantor's child shall die before receiving his or her share in full, then the Trustee shall distribute the balance of such principal, per stirpes, to Grantor's deceased child's then living descendants or, if none, then to Grantor's living children . . .**

(Emphasis added).

Guido passed away on November 8, 2015. He was survived by all three of his children. Approximately eight months later, on July 26, 2016, Vivienne passed away. Subsequent to Vivienne's passing, Bettina exercised her option to purchase the real property, which closed on November 3, 2016. Because Vivienne had died before the closing and she had no living descendants, Roger received all of the net proceeds from the sale of the real property and Vivienne's Estate received nothing.<sup>2</sup> Wanda Barrett, as the personal representative of Vivienne's Estate, subsequently filed a three-count complaint against Bettina and Roger seeking declaratory relief, damages for breach of fiduciary duty, and a constructive trust.

Barrett asserted below that the right to the net proceeds and 1/3 of the residuary vested at Guido's death and should pass to Vivienne's Estate. Relying on Bryan v. Dethlefs, 959 So. 2d 314 (Fla. 3d DCA 2007), she claimed only the enjoyment of the proceeds was delayed rather than the substance of the gift and,

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<sup>2</sup> Up until her death, Vivienne had been receiving distributions from the Estate.

further, that the Trust does not explicitly require the beneficiaries to survive distribution. The trial court disagreed and granted summary judgment on all counts in favor of Bettina and Roger.

This appeal follows.

## **II. STANDARD OF REVIEW**

A summary judgment presenting a pure question of law is reviewed *de novo*. See Travelers Commercial Ins. Co. v. Harrington, 154 So. 3d 1106 (Fla. 2014). “A trial court’s interpretation of trust documents is also reviewed *de novo*.” Horgan v. Cosden, 249 So. 3d 683, 686 (Fla. 2d DCA 2018).

## **III. ANALYSIS**

The question presented here is whether, under Article V of the Trust, Vivienne’s right to the net proceeds vested upon Guido’s death or was contingent on her being alive at closing.

“[O]ne of the basic tenets for the construction of trusts is to ascertain the intent of the settlor and to give effect to his intent.” Bacardi v. White, 463 So. 2d 218, 221 (Fla. 1985) (citing West Coast Hosp. Ass’n v. Fla. Nat’l Bank, 100 So. 2d 807 (Fla. 1958)). The testator’s intent is determined by construing the language of the entire instrument, not isolated words or clauses. See Bourgeois v. Eberhart, 472 So. 2d 1274 (Fla. 4th DCA 1985). Although the law favors vesting at the earliest date possible, an estate should be held to be contingent if it is clear the settlor intended

vesting be postponed. Sorrels v. McNally, 105 So. 106, 110 (Fla. 1925). Similarly, “[I]f the element of futurity is annexed to the substance of the gift, rather than the enjoyment of it, vesting is suspended and the gift is contingent.” Travis v. Ashton, 23 So. 2d 725, 726 (Fla. 1945).

As reflected above, the Trust provides clear and detailed instructions that reflect Guido’s intent. Pursuant to subsection (d), if any of his children died before receiving his/her share in full, the Trustee was directed to distribute the proceeds, per stirpes, to that deceased child’s *living* descendants, *if any*. If there were no such descendants, the balance was to be distributed to Guido’s remaining *living* children. Subsection (d) fits squarely into what occurred here as: (1) Vivienne died before receiving her full share; and (2) Vivienne died without any living descendants.

Importantly, Guido could have left the property to Vivienne and Roger. He chose not to do so. Instead, he devised only the net proceeds. Because of this, the property had to be sold before Vivienne and Roger could receive anything. The trust provides no timeframe for the distribution of the proceeds to the remaining descendants. Instead, it required *only* that the closing take place within a year of Guido’s death. Bettina complied, and the closing took place on November 3, 2016.

Because the property had not been sold at the time of Vivienne’s death, on July 26, 2016, the net proceeds *could not* be distributed before her passing. Here, while Guido made no contingency plan for Vivienne’s Estate in the Trust, he used

“very decided terms” and expressed “a clear intent to postpone the vesting” subject to the closing on the property. See Bryan, 959 So. 2d at 318 (citing Sorrels, 105 So. 2d at 110). In light of the terms of the Trust, we find that Vivienne’s entitlement to the net proceeds was contingent upon her being alive at the time of closing.

Accordingly, the trial court correctly determined that Guido intended the balance of Vivienne’s share of the Residuary Trust Estate be distributed to Guido’s son Roger.

#### **IV. CONCLUSION**

For the reasons set forth above, we affirm the trial court’s order granting summary judgment on all counts in favor of Bettina and Roger.

Affirmed.