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SJC-12865

HARRY DE PRINS vs. MICHAEL J. MICHAELES, personal representative,<sup>1</sup> & others.<sup>2</sup>

Suffolk. March 5, 2020. - October 20, 2020.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.<sup>3</sup>

Trust, Self-settled trust, Spendthrift provision. Practice, Civil, Action to reach and apply. Uniform Trust Code.

Certification of a question of law to the Supreme Judicial Court by the United States Court of Appeals for the First Circuit.

Michael J. Rossi for the defendants.

J. Mark Dickison (Ryan A. Ciporkin also present) for the plaintiff.

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<sup>1</sup> Of the estate of Donald Belanger.

<sup>2</sup> Michael J. Michaelles, trustee of the Donald Belanger Irrevocable Trust dated October 28, 2008; and the Donald Belanger Irrevocable Trust dated October 28, 2008.

<sup>3</sup> Chief Justice Gants participated in the deliberation on this case prior to his death.

CYPHER, J. The United States Court of Appeals for the First Circuit has certified a question to this court, pursuant to S.J.C. Rule 1:03, as appearing in 382 Mass. 700 (1981). We are asked whether, on the undisputed facts of this case, the assets of a self-settled discretionary spendthrift<sup>4</sup> irrevocable trust governed by Massachusetts law are protected from a reach and apply action by the deceased settlor's creditors. We answer the question "no," based on the circumstances presented here. Consistent with the well-established public policy of the Commonwealth, we conclude that where, as here, a settlor creates a self-settled spendthrift irrevocable trust and a judgment-creditor's cause of action accrues prior to the settlor's death, a judgment-creditor of the settlor's estate may reach and apply the trust's assets after the settlor's death. We do not address what the result might be in other circumstances.

Background. We recite the undisputed facts as established by the First Circuit in its opinion accompanying the certified question. See De Prins v. Michaelles, 942 F.3d 521, 523-525 (1st Cir. 2019). In 2000, Donald Belanger and his wife moved from Massachusetts to Arizona. In 2005, a dispute with their

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<sup>4</sup> A spendthrift trust is one "that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that interest; a trust by the terms of which a valid restraint is imposed on the voluntary or involuntary transfer of the beneficiary's interest." Black's Law Dictionary 1824 (11th ed. 2019).

neighbors, Armand and Simonne De Prins (the De Prinses), over shared water rights gave rise to litigation. In 2007, the De Prinses prevailed in their lawsuit against Belanger and his wife. In 2008, Belanger and his wife moved to California, where the wife committed suicide on October 4, 2008. Immediately thereafter, Belanger returned to Arizona with his daughter. That same month, Belanger created the Donald A. Belanger Irrevocable Trust Dated October 28, 2008 (trust), which included a spendthrift clause and provided that Belanger could not "alter, amend, revoke, or terminate" the trust. Belanger named himself as the sole beneficiary during his lifetime and his attorney, Michael J. Michaelles (defendant), as the sole trustee. On Belanger's death, his daughter would become the sole beneficiary. Immediately after signing the trust on November 3, 2008, Belanger conveyed substantially all his assets to the defendant as trustee.

Four months later, on March 2, 2009, Belanger shot and killed the De Prinses. On March 3, 2009, Belanger shot and killed himself after being stopped by a police officer in New Mexico. The defendant, as personal representative of Belanger's estate, probated the estate in Arizona.

On June 10, 2010, the De Prinses' son, the plaintiff, Harry De Prins, brought a wrongful death action against the defendant as personal representative of Belanger's estate. That action

was removed from Arizona State court to the United States District Court for the District of Arizona.

In November 2014, after learning about the existence of the trust through the wrongful death action, the plaintiff brought a separate action in the United States District Court for the District of Arizona to reach and apply assets of the trust toward any judgment he may receive in the wrongful death action. In July 2015, the plaintiff settled the wrongful death action against Belanger's estate for \$750,000. In the action probating Belanger's estate, the plaintiff and the defendant stipulated that (1) the plaintiff's collection of the wrongful death judgment would be against the trust exclusively, through the pending reach and apply action, and (2) the reach and apply action would be transferred to the United States District Court for the District of Massachusetts.

After the action was transferred pursuant to the stipulation, the plaintiff amended the complaint to state a single claim to reach and apply the trust's assets to satisfy the \$750,000 wrongful death judgment against Belanger's estate. On cross motions for summary judgment, judgment entered for the plaintiff, with the judge concluding that the plaintiff satisfied the three elements required for a reach and apply

action under Massachusetts common law.<sup>5</sup> The District Court judge further concluded that a settlor may not use a self-settled spendthrift trust to protect his assets from creditors. The defendant appealed. On appeal, the First Circuit held that (1) Massachusetts's statute of limitations for creditors' claims against a decedent's estate or trust did not apply to bar the plaintiff's claim against the trust;<sup>6</sup> and (2) the defendant was not collaterally estopped from arguing that the plaintiff could not collect against the trust for the wrongful death judgment, despite the stipulation in the probate action that collection of the judgment could be enforced only against the trust's assets. The First Circuit certified to this court the following question:

"On the undisputed facts of this record, does a self-settled spendthrift irrevocable trust that is governed by Massachusetts law and allowed unlimited distributions to the settlor during his lifetime protect assets in the irrevocable trust from a reach and apply action by the settlor's creditors after the settlor's death?"

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<sup>5</sup> The three elements required for an action for reach and apply are (1) a creditor who has secured judgment (2) who has "unsuccessfully sought to execute on judgment," and (3) "property which could not be taken on execution at law." Cavadi v. DeYeso, 458 Mass. 615, 631 (2011).

<sup>6</sup> General Laws c. 190B, § 3-803 (a), (b), provides that a creditor of a deceased person must bring an action against the decedent's estate or trust within one year after the date of death of the deceased.

The well-established legal maxim that one must be just before being generous compels us to conclude that it does not. See Foster v. Hurley, 444 Mass. 157, 172 (2005) (Greaney, J., dissenting in part); Hill v. Treasurer & Receiver Gen., 229 Mass. 474, 477 (1918); Chase v. Redding, 13 Gray 418, 420 (1859).

Discussion. The answer to the certified question depends, in part, on whether the common law or the Massachusetts Uniform Trust Code (MUTC), G. L. c. 203E, §§ 101 et seq., controls. When interpreting a statute, we are bound by the Legislature's intent. Rotondi v. Contributory Retirement Appeal Bd., 463 Mass. 644, 648 (2012). Where a statute's plain meaning is unambiguous, the statutory text may be dispositive as to legislative intent. Id. Where the language of the statutory provision is ambiguous, however, we must look for legislative intent in the statute as a whole, and in "extrinsic sources, including the legislative history and other statutes" (citation omitted). Ciani v. MacGrath, 481 Mass. 174, 178 (2019). See Rotondi, supra. "[W]e do not construe a statute 'as effecting a material change in or a repeal of the common law unless the intent to do so is clearly expressed.'" Suffolk Constr. Co. v. Division of Capital Asset Mgt., 449 Mass. 444, 454 (2007), quoting Riley v. Davison Constr. Co., 381 Mass. 432, 438 (1980).

Although we determine that the common law applies to the present facts, an overview of the MUTC is warranted. General Laws c. 203E, § 505, addresses when a creditor can reach a trust's assets to satisfy a claim against the trust's settlor and applies regardless of whether a trust contains a spendthrift provision. Section 505 (a) (1) provides that a creditor can reach the assets of a revocable trust during the settlor's lifetime. Section 505 (a) (3) provides that a creditor can reach the assets of a revocable trust after the settlor's death.

Section 505 (a) (2) addresses a creditor's ability to reach the assets of an irrevocable trust. It does not specify whether it applies only during a settlor's lifetime or whether it applies after a settlor's death. G. L. c. 203E, § 505 (a) (2). It provides that, where a settlor has created an irrevocable trust, including one that contains a spendthrift provision, a creditor "may reach the maximum amount that can be distributed to or for the settlor's benefit." Id. Where a settlor may reach the assets of an irrevocable trust, the settlor's creditors may also reach those assets. Therefore, as the defendants concede, if Belanger were still alive today, the plaintiff could reach the entirety of the trust's assets because the defendant trustee could, under the express terms of the trust, distribute all such assets to Belanger or for Belanger's benefit.

Because it is unclear from the statutory language whether § 505 (a) (2) addresses a creditor's ability to reach the assets of an irrevocable trust after the settlor's death, we look to the other sections of the statute as well as the legislative history. See Ciani, 481 Mass. at 178; Rotondi, 463 Mass. at 648. When Massachusetts was considering adopting the Uniform Trust Code, an ad hoc committee was created to review and revise it for adoption. Report of the Ad Hoc Massachusetts Uniform Trust Code Committee 1-2 (rev. Jul. 18, 2012) (Report). The committee's comment to G. L. c. 203E, § 505, however, does not shed any additional light as to whether § 505 (a) (2) was intended to allow a creditor to reach an irrevocable trust's assets after the settlor's death or only during the settlor's lifetime.<sup>7</sup>

Looking to the other provisions in the statute, G. L. c. 203E, § 106, provides that the MUTC is to be supplemented by the "common law of trusts and principles of equity." The committee's comment to this section further clarifies that "the [MUTC] is not intended to replace the common law of trusts in Massachusetts except where the [MUTC] modifies it." Report,

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<sup>7</sup> The comment explains how this section was altered from the Uniform Trust Code to provide that property is not considered distributable solely because the trustee may reimburse the settlor for taxes paid related to income earned by the trust. Report of the Ad Hoc Massachusetts Uniform Trust Committee 27 (rev. Jul. 18, 2012).

supra at 7. It is clear, then, that the common law continues to apply where the MUTC does not address the situation at issue, and that the court may apply "principles of equity" to such cases. See G. L. c. 203E, § 106. In accordance with principles of equity, two sections of the MUTC specify that a trust may not be created that is contrary to public policy. See G. L. c. 203E, §§ 105 (b) (3), 404.<sup>8</sup>

The trust at issue here is an irrevocable, self-settled, spendthrift trust. A trust is self-settled where "the settlor is also the person who is to receive the benefits from the trust." Black's Law Dictionary 1824 (11th ed. 2019). General Laws c. 203E, § 102, provides that the MUTC applies to express trusts "of a donative nature." The committee's comment to this section explains that the MUTC "will not apply to business trusts or other non-donative trust arrangements." Report, supra at 4. "[D]onative" is defined as "[o]f, relating to, or characterized by a donation." Black's Law Dictionary, supra at 617. "[D]onation" is defined as "[a] gift, [especially] to a charity; something, [especially] money, that someone gives to a

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<sup>8</sup> General Laws c. 203E, § 105 (b) (3), provides: "The terms of a trust shall prevail over any provision of this chapter except: . . . the requirement that a trust has a purpose that is lawful and not contrary to public policy."

General Laws c. 203E, § 404, provides: "A trust may be created only to the extent its purposes are lawful and not contrary to public policy."

person or an organization by way of help." Id. A "donative trust" is defined as one "that establishes a gift of a beneficial interest in property for a beneficiary." Id. at 1819. See Matter of the MacMakin Nominee Realty Trust, 95 Mass. App. Ct. 144, 149-150 (2019), quoting 4 Restatement (Second) of Property: Donative Transfers, Division III Introductory Note, at 3 (1992) ("The underlying requirement to effectuate a donative transfer is the intention on the part of the donor that some interest in property of the donor move from the donor to the intended donee, either during the donor's lifetime or on the donor's death").

Given the authorities discussed above, to the extent that a trust is self-settled such that the settlor retains the beneficial interest in the trust's assets and does not give such interest to another, it appears that the committee did not intend the MUTC to apply.

In accordance with settled principles of statutory construction, and because the MUTC both (1) expressly provides that it does not replace the common law and (2) fails to address the situation here (i.e., the ability of a creditor to reach the assets of an irrevocable self-settled trust after the settlor's death), we conclude that the common law applies.

In Massachusetts, there are both statutory and nonstatutory reach and apply actions. See G. L. c. 214, § 3 (6); Cavadi v.

DeYeso, 458 Mass. 615, 624-625 (2011). The statute provides this court and the Superior Court with equity jurisdiction to decide

"[a]ctions by creditors to reach and apply, in payment of a debt, any property, right, title or interest, legal or equitable, of a debtor, within or without the commonwealth, which cannot be reached to be attached or taken on execution although the property sought to be reached and applied is in the possession or control of the debtor independently of any other person or cannot be reached and applied until a future time or is of uncertain value, if the value can be ascertained by sale, appraisal or by any means within the ordinary procedure of the court."

G. L. c. 214, § 3 (6).<sup>9</sup>

A nonstatutory reach and apply action is also considered an equitable action and "remains broader than the available statutes." Cavadi, 458 Mass. at 626. See Pacific Nat'l Bank v. Windram, 133 Mass. 175, 177 (1882); In re Rare Coin Galleries of Am., Inc., 862 F.2d 896, 903-904 (1st Cir. 1988). As equitable actions that, when brought pursuant to statute, expressly invoke a court's equity jurisdiction, such actions are often determined by equitable, rather than legal, principles.

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<sup>9</sup> General Laws c. 214, § 3 (8), provides this court and the Superior Court with equity jurisdiction to decide "[a]ctions to reach and apply in payment of a debt any property, right, title or interest, real or personal, of a debtor, liable to be attached or taken on execution in a civil action against him and fraudulently conveyed by him with intent to defeat, delay or defraud his creditors, or purchased, or directly or indirectly paid for, by him, the record or other title to which is retained in the vendor or is conveyed to a third person with intent to defeat, delay or defraud the creditors of the debtor."

"The established policy of this Commonwealth long has been that a settlor cannot place property in trust for his own benefit and keep it beyond the reach of creditors." Ware v. Gulda, 331 Mass. 68, 70 (1954), quoting Merchants Nat'l Bank of New Bedford v. Morrissey, 329 Mass. 601, 605 (1953).<sup>10</sup> The Commonwealth has disfavored the self-settled trust as a tool to protect one's assets from creditors, as it is seen as an attempt by a settlor to "hav[e his] cake and eat[] it too." Cohen v. Commissioner of the Div. of Med. Assistance, 423 Mass. 399, 414 (1996), cert. denied sub nom. Kokoska v. Bullen, 519 U.S. 1057 (1997); Nile v. Nile, 432 Mass. 390, 400 (2000) ("it would violate established authority and public policy for an individual to have an estate to live on, but not an estate from which his debts could be paid").

The prohibition against using a self-settled trust to protect one's assets against creditors applies both to current and future creditors. Forbes v. Snow, 245 Mass. 85, 89 (1923).

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<sup>10</sup> This rule is derived from the Restatement of Trusts § 156 (Restatement), which provides: "Where a person creates for his own benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit." Ware v. Gulda, 331 Mass. 68, 70 (1954), quoting Restatement, supra at § 156(2). This language from the Restatement was imported almost verbatim into the MUTC, G. L. c. 203E, § 505 (a) (2), further indicating that the Legislature merely intended to codify, rather than displace, the common law here.

It also applies where the settlor has included a spendthrift provision in the trust.<sup>11</sup> See Taylor v. Buttrick, 165 Mass. 547, 551 (1896); Jackson v. Von Zedlitz, 136 Mass. 342, 343 (1884); Pacific Nat'l Bank, 133 Mass. at 178-179; Tilcon Capaldi, Inc. v. Feldman, 249 F.3d 54, 60 (1st Cir. 2001).

Here, the defendant trustee relies on State Street Bank & Trust Co. v. Reiser, 7 Mass. App. Ct. 633, 638-639 (1979) (Reiser), for the proposition that a creditor may only reach and apply assets of a discretionary trust after the settlor's death where the settlor reserved the power to amend or revoke the trust and direct the disposition of the trust's assets (i.e., where the trust was revocable). In Reiser, the plaintiff creditor sought to reach and apply trust assets of a revocable trust of a deceased settlor to satisfy a debt owed by the settlor's estate. Id. at 633. The settlor died before repaying the debt, and his estate had insufficient funds to pay it. Id. at 634. The Appeals Court held that the creditor could reach and apply the trust's assets to satisfy the debt. Id. at 638-639. On the facts, the holding of the court in Reiser is merely illustrative of one instance in which a creditor was allowed to

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<sup>11</sup> This disregard for the spendthrift provision as a tool to protect one's trust assets from creditors also is found in the MUTC, G. L. c. 203E, § 505, which, as discussed above, addresses when a creditor can reach a trust's assets to satisfy a claim against the trust's settlor and applies regardless of whether a trust contains a spendthrift provision.

reach the assets of a trust of a deceased settlor.<sup>12</sup> It does not define the limits of a creditor's ability to so reach.<sup>13</sup>

In another Appeals Court case, a creditor was allowed to reach the assets of an irrevocable spendthrift trust to satisfy a judgment in a personal injury action against the deceased beneficiary's estate because the trust was held to be self-settled. Calhoun v. Rawlins, 93 Mass. App. Ct. 458, 459, 464-465 (2018). The beneficiary allegedly caused an automobile collision that seriously injured the plaintiffs and resulted in the beneficiary's death. Id. at 461. In that case, the court focused on the trustees' "complete discretion to distribute" trust assets to the beneficiary or for his benefit. Id. at 460-461. Although the court did not address the effect of the beneficiary's death on the creditor's ability to reach the trust

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<sup>12</sup> The Appeals Court held that "where a person places property in trust and reserves the right to amend and revoke, or to direct disposition of principal and income, the settlor's creditors may, following the death of the settlor, reach in satisfaction of the settlor's debts to them, to the extent not satisfied by the settlor's estate, those assets owned by the trust over which the settlor had such control at the time of his death as would have enabled the settlor to use the trust assets for his own benefit." State Street Bank & Trust Co. v. Reiser, 7 Mass. App. Ct. 633, 638 (1979) (Reiser). This holding does not address whether the assets of an irrevocable trust are reachable after the settlor's death.

<sup>13</sup> It should be noted that, even if the court in Reiser purported to demarcate the bounds of a creditor's ability to reach the trust assets of a deceased settlor, we would not be bound by the decision.

property, it necessarily assumed that the creditor was not prohibited from such reach, as the cause of action giving rise to the personal injury action in which the plaintiffs received judgment accrued simultaneously to the beneficiary's death. Id. at 461.

The facts here lean even more compellingly in favor of the creditor. Here, the cause of action giving rise to the judgment at issue accrued before Belanger's death. The De Prinses' deaths also are the direct result of Belanger's intentional act of murder, not the result of a negligently or recklessly caused automobile accident as in Calhoun. Further, as in Calhoun, this trust is self-settled. As noted above, it is well established in this Commonwealth that a settlor may not use a self-settled trust to protect his assets from creditors.

Although we have found no case law that directly discusses the distinction between the reachability of the assets of a self-settled trust during the settlor's lifetime versus after his death (if one exists), it would be incongruent for a self-settled trust not to protect a settlor's assets from creditors while the settlor is alive but to have it protect the settlor's beneficiaries from the settlor's creditors after the settlor's death when, absent the self-settled trust, they would not be so

protected.<sup>14</sup> We therefore hold that a self-settled trust does not become protected from creditors on the settlor's death.

Although the plaintiff does not argue that the conveyance of Belanger's assets to the trust was fraudulent, the timing of the events could give rise to the inference that it was part of a single plan. The De Prinses brought and prevailed in a lawsuit against Belanger in 2007. Belanger's wife committed suicide on October 4, 2008. Within six months of her suicide, Belanger created the trust, transferred substantially all of his assets to the trust, murdered the De Prinses, and then committed suicide.

The defendant argues that Belanger did not have an estate to live on but not one from which to pay his debts, because the defendant did not distribute any trust assets to Belanger prior to his death. According to the defendant's argument, now that Belanger is deceased, it would be impossible for the defendant to distribute any trust assets to Belanger or for Belanger's

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<sup>14</sup> Without the trust, the beneficiaries would not be protected, because the settlor's assets would simply be probated as part of the estate and subject to the creditor's claims prior to those of heirs or beneficiaries under a will. See G. L. c. 190B, § 3-802. See especially G. L. c. 109B, § 3-805 (listing order in which estate's personal representative is to pay claims against estate in event that estate has insufficient assets to pay all claims in full).

benefit,<sup>15</sup> so this is not a case where Belanger is able to "have his cake and eat it too." As the First Circuit correctly observed, however, the important point is what is within the trustee's power to do, not what he actually does. Tilcon Capaldi, Inc., supra at 60 ("Thus, even if the trustee chooses not to make any payments to the beneficiary, a creditor may still reach the maximum amount the trustee could pay"). In other words, although the defendant did not distribute any trust assets to Belanger during his lifetime, he could have under the express terms of the trust. Therefore, under the First Circuit's reasoning, the plaintiff should be able to reach the maximum amount the defendant could have distributed during Belanger's lifetime -- all the assets of the trust. See id.

Further, often one of our greatest goals in life is to leave our children the benefit of our property. To prevent the son of two murder victims from financially recovering for their wrongful deaths while protecting the murderer's assets for his beneficiary would contradict the well-established public policy of this Commonwealth and condone the actions of a settlor who, it can be inferred, thought he could use the protection of a trust to shield his assets from the consequences of his

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<sup>15</sup> As will be discussed below, allowing Belanger to gift his assets to his child could be considered a distribution for his benefit.

violence. The equities here simply do not allow Belanger to murder the plaintiff's parents and then leave the plaintiff with no recovery in the subsequent wrongful death action, despite Belanger's possessing substantial assets during his lifetime.

Conclusion. We answer the certified question as follows: On the undisputed facts of this record, we hold that a self-settled spendthrift irrevocable trust that is governed by Massachusetts law and that allowed unlimited distributions to the settlor during his lifetime does not protect assets in the irrevocable trust from a reach and apply action by the settlor's creditors after the settlor's death.

The Reporter of Decisions is directed to furnish attested copies of this opinion to the clerk of this court. The clerk in turn will transmit one copy, under the seal of the court, to the clerk of the United States Court of Appeals for the First Circuit, as the answer to the question certified, and also will transmit a copy to each party.