

LAW

1 documentation, that all efforts were attempted, all
2 reasonable efforts, were attempted to preserve as much of
3 Mr. Bell's patrimony as was possible.

4 Q. And, you have reviewed the Trust itself, haven't you?

5 A. Yes, I have.

6 Q. Can you turn, please, I think it's Item Number 3 in that
7 bench book in front of you? And, I direct your attention,
8 Mr. Hood, please, to Section 6.3.

9 A. Okay.

10 Q. Do you see where that Section 6.3 says, "The Trustee shall
11 have in the investment and reinvestment and administration of
12 the securities, and property forming the subject of this Trust,
13 the widest latitude and authority permitted by Louisiana law?"

14 A. That's what it says.

15 Q. All right. Now, would you interpret that to mean that
16 with regard to, among other things, the administration of Trust
17 property, the set law in this case granted to the Trustee the
18 widest possible latitude and discretion authorized by Louisiana
19 law?

20 A. Well, I think you would interpret that provision with the
21 rest of the provisions in the Trust, most notably the
22 permission on the part of the Trustee to set her own
23 compensation as well as to self-deal.

24 Q. And, what would be your conclusion with regard to whether
25 the Trustee -- the settlor in this case granted broad

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1 discretion to the Trustee?

2 A. Well, the Trustee's discretion, obviously, begins in the
3 powers of Trustees. You've got the general powers, and in the
4 Trust Code we set forth a series of default powers. Some a
5 Trustee has unless the settlor has otherwise provided. Others
6 the Trustee does not have unless the Trust instrument so
7 provides.

8 So, in this instance, 6.3 has altered the prudent man
9 standard, since changed to prudent person standard -- nothing
10 to do with political correctness, it's just a different
11 standard.

12 Retention of Trust property speaks to the same thing, wide
13 latitude to purchase and sell.

14 Same is true with respect to leases, borrowing, lending.

15 And, most notably in the area of self-dealing, the Trustee
16 is permitted in this Trust to self-deal, and that is one of the
17 provisions 2084, 2085, and 2086, where those powers must be
18 expressed in the Trust instrument for the Trustee to possess
19 those powers.

20 Q. So, in summary, would it be accurate to say that in this
21 particular Trust, the Trustee was granted broad discretion?

22 A. Absolutely.

23 Q. All right. Now, in a case in which broad discretion is
24 granted by the Trustee, do you know what Section 2115 of the
25 Trust Code provides with respect to a court's power to

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1 duty. It's a fiduciary duty, and you'll be reviewed, you
2 know, later on. You cannot come ask us."

3 In like fashion a trustee cannot seek ratification of
4 prior actions under the guise of an instruction proceeding;
5 because it says "to act." It doesn't say -- it doesn't use
6 "act" in the past tense.

7 So, it's a very -- I mean, it puts the trustee in a
8 situation like this, between cilia and carbides; I mean, that's
9 where you are. W

10 The trustee has to make a call, and it's a tough call. It
11 is subject to only review on the -- and, I wouldn't say it's
12 necessarily, the courts are prohibited from reviewing, but I
13 think that the standard by which that they have to review it
14 under 2115, is an abuse of discretion standard, which is
15 clearly much higher than a de novo standard.

16 Q. Now, do I interpret your last answer to mean that it's
17 your opinion that under the Louisiana Trust Code, that in this
18 case had Sue Bell come up with what she thought was a
19 reasonable compensation amount, that the Trust Code does not
20 provide for her to get advanced approval and instructions from
21 the court as to the reasonableness of that fee prior to paying
22 it? }

23 A. That's exactly right. Now, there are other provisions by
24 which the trustee could have gone to beneficiaries around the
25 bend, but, you know, I also see circumstances where a trustee X

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1 But, no, ordinarily I think you would have to rely on
2 your counsel.

3 Q. The Trust Code is provides, does it not, that a trustee
4 shall defend any action, all actions, which may result in loss
5 to the trust, is that correct?

6 A. That's correct.

7 Q. In your opinion under the Louisiana Trust Code, is the
8 trustee required to wait until an action, a civil suit or any
9 type of action is actually filed, before they begin taking
10 action to try to defend to minimize it?

11 A. No. I think that the trustee who waits could very well
12 and very easily be surcharged if it comes out in the wash that
13 the trustee could have taken steps that in hindsight would have
14 minimized the harm.

15 And, this is one of those situations where the trustee's
16 actions in review, and it's very similar -- you've got to look
17 back on what -- in reasonableness of a fee, but then also in
18 what you should have done, you look back as well. So, it's
19 consistent.

20 Q. Now, and that duty to defend is mandatory, is it not?

21 A. That's correct.

22 Q. All right.

23 A. And, there are a number of duties in the Trust Code that
24 trust instruments cannot modify.

25 Q. And, that's one of them?

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1 A. That's correct.

2 Q. And, absent a specific provision in the trust to the
3 contrary, would you agree that all trustees have broad
4 discretion in taking appropriate actions to defend the trust
5 from an action which may result in a loss?

6 A. Yes. I mean, the trustee is the party-in-interest in the
7 action, and I think that it's subject to the prudent man
8 standard.

9 But, yes, the trustee has to defend all actions against
10 the trust, and take the steps necessary to address the
11 potential harm, and the probability of an adverse ruling.

12 Q. Now, if the potential -- if the action against the trust
13 has a potential to clean out the trust, wipe out the trust,
14 take all of the property of the trust, do you think in that
15 case that a trustee is required to wait until that loss becomes
16 probable before taking action?

17 A. I would think that under those circumstances the trustee
18 that would wait would likely get surcharged. If, in fact, the
19 trust corpus was removed, especially if there were actions that
20 the trustee could have taken.

21 Q. Now, would it be reasonable to say that under the
22 Louisiana Trust Code, the greater the potential loss to the
23 trust, the broader the number of actions that would be
24 appropriate for the trustee to try to avoid?

25 A. That's correct as a general rule. I think you also have

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1 to consider the probability of incurring that loss.

2 Q. With regard to this particular case, do you understand,
3 either from the documents you went through or from discussions
4 with Ms. Bell, that in this case, at about the time the Trust
5 was being created with regard to her father's criminal
6 activity, the U.S. Attorney here in Lafayette was on television
7 threatening forfeiture of all of Mr. Bell's property?

8 A. Yes, and I found that information not necessarily from
9 discussions from Ms. Bell, but from reading her depositions and
10 assuming that her depositions were truthful in that regard, I
11 would have to say, yes.

12 Q. And, did you also get from her depositions that, in trying
13 to lessen the potential federal criminal penalties, that her
14 father's cooperation was sine qua non for that lowering of the
15 penalty, and he was not inclined to cooperate?

16 A. That's what I'm given to understand. He certainly could
17 have thrown a monkey wrench into the plan, and he seems to have
18 been a rather unwilling participant in the plan to essentially
19 preserve his own property.

20 Q. And, you understand that he pled guilty to those federal
21 criminal charges, is that correct?

22 A. That's what I'm given to understand.

23 Q. And, you understand that some of his victims filed civil
24 suits for his actions arising -- for those same criminal acts?

25 A. That's what I'm given to understand.

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1 Q. And, what is your understanding of the effect of a
2 guilty plea in a criminal proceeding when there's a civil suit
3 on the same issue?

4 A. Well, it would seem to me that in most situations, it
5 would prove liability on the civil side, because the standard
6 of proof is higher in the criminal setting than it is in the
7 civil context.

8 Q. And, you are aware that civil suits were filed, is that
9 correct?

10 A. That's what I'm given to understand.

11 Q. Okay. And, you are aware that under the Louisiana Civil
12 Code, if a person transfers property and that creates -- either
13 makes him insolvent or increases his insolvency, then his
14 creditors are entitled to file what is known as a revocatory
15 action, and cancel that transaction?

16 A. That is correct.

17 Q. Are you also given to understand that throughout most of
18 the history of this Trust, Mr. Bell was threatening to the
19 Trustee to take action to attempt to revoke the donation of his
20 property to the Trust?

21 A. That's what I'm given to understand.

22 Q. But, in summary we had, for lack of a better phrase, three
23 swords hanging over this Trust, any one of which was sufficient
24 to kill it; the federal criminal forfeiture, the civil suits
25 and revocatory action, and Mr. Bell threatening to revoke the

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1 donation to the Trust?

2 A. I think it would be reasonable to say that each of those
3 threats were certainly real when the Trust was formed, and
4 ongoing for a while.

5 Q. Based on what you have been given to understand, is this
6 Trust the normal trust that you run across in your practice,
7 and in consulting with bank Trust Departments?

8 A. No indeed.

9 Q. All right. This is a fairly unique situation, would you
10 agree?

11 A. This is a very unique situation.

12 Q. And, how many different bank Trust Departments have, over
13 the years, retained you to offer them advice?

14 A. Somewhere between -- you lose track in bank mergers, but
15 probably between six and 12.

16 Q. Okay. In your course of working with those bank Trust
17 Departments, have you obtained a familiarity with the type of
18 work they do, and the type of trust they handle?

19 A. Yes, I have.

20 Q. In your opinion, based on your experience with those bank
21 Trust Departments, can you envision back in 1996 any bank Trust
22 Department undertaking this Trust?

23 A. Absolutely no way. And, I'll tell you one brief story
24 about a matter that actually happened in 1996. We were
25 terminating a trust that had 13 different publicly traded

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1 holdings. A bank trust officer -- we had four
2 beneficiaries, and two of the 13 holdings had numbers of shares
3 that were not divisible by four. The bank trust officer called
4 me to issue an opinion that would allow the bank to rely on the
5 fact they could -- you know, basically asking them what to do.
6 And, I refused. I said, "I refuse to charge the bank my hourly
7 rate." I said, "I'll take responsibility. Sell those odd
8 shares and divide the cash."

9 Bank Trust Departments operate as loss leaders,
10 particularly in Louisiana, and they're very, very risk averse.
11 The only way they end up in these types of -- would ever have
12 ended up in a situation like this, would have been a trust that
13 had gone south after a long time. I mean, I remember being
14 tangentially involved in a case involving Hibernia Bank where a
15 trust held a sword collection among some other assets, and
16 nobody wanted to be trustee. It was a provisional trustee case
17 called Speckler. (phonetic)

18 Yeah, I mean, it's very rare. They avoid it like the
19 plague.

20 Q. Banks would not have touched this Trust?

21 A. Not from the get-go. No way.

22 Q. Okay. have you ever seen a bank or any other trustee who
23 was willing to undertake substantial trustee responsibilities
24 on a contingent fee basis?

25 A. Again, given the amount of activity that seems to have

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1 occurred, again based upon Ms. Bell's deposition, no, I
2 can't envision a situation where someone would have taken that.

3 Not the usual person who would be an unrelated person, for
4 example.

5 Q. Considering the matters, which were the subject of the
6 civil suits in this case, the criminal sexual acts with minors,
7 would it have been your opinion at the time that any potential
8 revocatory action had the potential to wipe out this entire
9 Trust?

10 A. Well, that's correct.

11 Q. That being the case, at least for those first three years,
12 and only with respect to those civil suits, the Trustee's
13 compensation was entirely contingent?

14 A. That would be correct.

15 Q. Now, the Trustee in this case, I believe, made some
16 substantial distributions of income to beneficiaries during
17 those three years. Had the Trust been revoked -- I mean, had
18 the transfer to the Trust been revoked under a revocatory
19 action, was Ms. Bell, in your opinion, under the Trust Code
20 personally liable for those distributions?

21 A. Yes.

22 Q. To the creditors?

23 A. That's correct.

24 Q. So, in addition to taking a chance on not getting paid,
25 she, during those first three years to the extent she made

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1 distributions, was undertaking a significant contingent
2 liability?

3 A. Had I been advising Ms. Bell at the time, I would have
4 told her not to take the Trustee position.

5 Q. And, if she had, would you have advised her not to make
6 any distributions?

7 A. Yes.

8 Q. Now, because of the contingent nature of her chance of
9 getting compensated in this case, do you think that is
10 something that under the Trust Code a court can properly take
11 into account in determining whether her fee was reasonable?

12 A. Well, again, I think that under the abuse of discretion
13 standard, a court reviewing whether the trustee's distribution
14 of a fee that the trustee determined to be reasonable would, in
15 fact, you know, be based upon an analysis of numerous factors;
16 obviously, the amount of time expended, the amount of risk, the
17 contingency of the fee, the general hectic nature of the
18 situation, the angst amongst the family. There are lots of
19 things that the court would have to review.

20 But, again, under the abuse of discretion standard, all
21 these matters the trustee could have easily taken into account.

22 Q. Now, did you review the 56 or 58 page document referred to
23 as Sue Bell's invoice in this case?

24 A. Yes, I did.

25 Q. All right. Did you give a lot of weight to the specific

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1 production from that land, I mean, the fraction is about the
2 best way you can do for this obviously off road situation.

3 Q. Now, if she got 135 of the 288 acres, plus the mineral
4 rights over the portion she didn't get, would it be your
5 opinion that those assets transferred to her as compensation
6 were in the high end of the range of reasonableness, medium, or
7 the low end of the range of reasonableness?

8 A. Well, again, reasonable compensation is not an exact
9 science, and it doesn't arrive at a particular number. It's
10 like valuation. Valuation and reasonable compensation are best
11 determined by way of ranges.

12 And, I would say that in this circumstance, her range is
13 probably low to mid at best. And, that she could have easily
14 justified a higher percentage.

15 Q. The extremely unusual nature of the Trust and the dangers
16 that the Trust property faced in this case certainly impact on
17 what reasonable and not reasonable for Ms. Bell to do in this
18 case, doesn't it?

19 A. That's correct. And, for example, the reason why a bank
20 trustee would not have taken this case is because the regular
21 fee schedule that the bank starts with would not have
22 compensated it for the risks that were obviously inherent, and
23 that the bank trustee would have been far more cognizant of
24 when asked to accept this Trust, than Ms. Bell obviously was.

25 Q. All right. And, the Trust Code provides, does it not,

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1 her father, which were reasonable steps for her to take in
2 defense of those actions, that in a normal bank trust situation
3 a bank trustee would not have to be charged with reasonably
4 having to do, is that correct?

5 A. Well, that's correct, because, for example, had Mr. Bell
6 decided to file suit to nullify the Trust, whether it was on
7 the basis of undue influence or whatnot, had Ms. Bell not
8 defended that Trust interest, the beneficiaries of that Trust,
9 other than Ms. Bell, would probably look to Ms. Bell for
10 compensation, if she didn't adequately defend it.

11 I mean, in other words, had she just sat idly by, and
12 said, "Okay, dad, I'll give you back your property," she would
13 have breached, in my opinion, her fiduciary duty to the Trust
14 and to the beneficiaries of the Trust.

15 Q. All right. And, so if she took any actions which she felt
16 would be reasonably appropriate in talking him out of filing
17 such an action, that's a reasonable and appropriate action of a
18 Trustee in these facts, is it not?

19 A. Yeah. I mean, again, it's subject to the abuse of
20 discretion standard, and it certainly doesn't strike me as an
21 abuse of discretion.

22 Q. Did the fact that the Trustee distributed over \$300,000 in
23 income to the beneficiaries over the life of this Trust in any
24 way impact your opinion that the amount of her fee was
25 reasonable?

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