

Wills and Trusts. *In re Robert A. DiBiasio*, 705 A.2d 972 (R.I. 1998). Under Rhode Island law, a bequest of the rest, residue and remainder of a trust, subject to a beneficial life estate, vests in the remainder beneficiary upon the testator's death.

In the case of *In re DiBiasio*,¹ the Rhode Island Supreme Court addressed two conflicting claims to the rest, residue and remainder of a trust.² According to the court, where a trust bequests the res of the trust, subject to a life estate, to a trustee, and that trustee predeceases the life tenants, the trust res does not revert back to the estate.³ Instead, an indefeasibly vested remainder is created in favor of the trustee and his estate.⁴

FACTS AND TRAVEL

On November 14, 1986, Vincent Fiore (Fiore) executed a will creating a trust, to which Joseph A. DiBiasio (DiBiasio) was named as trustee.⁵ As trustee, DiBiasio was to "provide for the proper care, support, maintenance, education, and welfare of Fiore's surviving sisters and brother."⁶ Upon the death of Fiore's last sibling, Fiore's heirs were to take, free and clear of the trust, certain cash legacies.⁷

Pursuant to a codicil dated April 28, 1989, Fiore amended the will to distribute "the rest, residue and remainder of the Trust estate and assets" to DiBiasio.⁸ This codicil further provided that "[u]pon the distribution and division of said trust funds in manner as aforesaid, this Trust shall close and terminate and my said trustee shall be relieved."⁹

1. 705 A.2d 972 (R.I. 1998).

2. *Id.* at 973.

3. *See id.* at 975.

4. *See id.*

5. *See id.* at 973.

6. *Id.*

7. *See id.* According to the will, Fiore's heirs were "Joseph Saccoccio, Victor Vito' Morgenro, Thomas Fiore, and James Fiore." *Id.*

8. *Id.* Paragraph (E) of the codicil stated:

After making distribution to those individuals set forth in subparagraph (C) herein of the named sums, the rest, residue and remainder of the Trust estate and assets, together with any accumulations thereto, shall be paid and distributed to my nephew, JOSEPH A. DiBIASIO, individually for his sole use free and clear of Trust.

Fiore passed away on July 27, 1989.¹⁰ All went according to the will until November 2, 1994, at which time DiBiasio passed away.¹¹ At least one of Fiore's siblings was still living at DiBiasio's death.¹² DiBiasio left two sons, Joseph A. DiBiasio (Joseph) and Robert A. DiBiasio (Robert).¹³

Robert filed a complaint seeking to have himself named as successor trustee. Joseph Saccoccio (Saccoccio), Fiore's nephew and heir pursuant to the will, "answered the complaint and counter-claimed to have himself named as successor trustee."¹⁴ Saccoccio and Fiore's other heirs claimed that "the language 'individually for his sole use' in subparagraph (E) of the codicil demonstrates Fiore's clear intent to create a contingent remainder whereby DiBiasio's interest in the residue of the trust was dependant on his outliving Fiore's siblings."¹⁵ They further claim that because Robert's father passed away prior to the death of Fiore's last living sibling, "any remainder must revert to Fiore's estate and pass to them under the laws of intestacy."¹⁶

After the submission of memoranda, the Superior Court appointed Robert as successor trustee.¹⁷ The court also declared that the "rest, residue and remainder of the estate had vested in DiBiasio at Fiore's death."¹⁸ Saccoccio and the other defendants appealed this decision to the Rhode Island Supreme Court.¹⁹

ANALYSIS AND HOLDING

The Rhode Island Supreme Court was presented with a very limited issue on appeal. According to the court,

[t]he sole issue on appeal is whether the Superior Court erred in holding that a bequest of the rest, residue and remainder of the Fiore trust, subject to a beneficial life estate, vests in the remainder beneficiary upon the testator's death or

10. *See id.*

11. *See id.*

12. *See id.*

13. *See id.*

14. *Id.* Subsequently, Thomas and James Fiore, Fiore's nephews, and Jennie Saccoccio, Fiore's sister, also answered the complaint. *See id.*

15. *Id.*

16. *Id.*

17. *See id.*

18. *Id.*

whether the trust res reverts to the estate if the remainderman predeceases the life tenants.²⁰

Before addressing this issue, the court noted that, in Rhode Island, the law "favors the immediate vesting of remainders unless there is a clearly indicated intention to the contrary."²¹

The supreme court noted that Fiore's codicil, subparagraph (E), contained the ambiguous language which is the cause of the dispute.²² Both parties, according to the court, disagree on the meaning of the phrase "individually for his [DiBiasio's] sole use free and clear of Trust."²³ The court rejected defendant's contention that the phrase shows Fiore's intent to pass the remainder to DiBiasio's heirs only if DiBiasio outlived Fiore's siblings.²⁴ The Rhode Island Supreme Court instead found it more plausible that Fiore used this phrase "to make clear that upon the vesting of his interest DiBiasio would no longer be merely the trustee of the property, as he had been previously, but its outright owner."²⁵

The court noted that in *In re Estate of Sprinchorn*,²⁶ a New York court faced a similar issue.²⁷ The supreme court relied on the New York court's reasoning that when "language creating the remainder interests did not include 'any further gift or limitation over to any substitutionary beneficiary,' it created 'an indefeasibly vested remainder."²⁸ Therefore, since the language in subparagraph (E) of the codicil did not include any further gift, Fiore, pursuant to that subsection, received an indefeasibly vested remainder.²⁹

20. *Id.* at 974. The court noted that this issue could have been avoided if the will had provided for the disposition of the rest, residue and remainder of the trust in the event that DiBiasio passed away before Fiore's last living sibling. *See id.*

21. *Id.* (citing *Sawyer v. Poteat*, 153 A.2d 541, 545 (R.I. 1959)). The court listed four factors which make this preference particularly strong: "(1) the remaindermen are in existence at the death of the testator, (2) the remainder is a gift of the residue of the estate, (3) the gift is to relatives of the testator, and (4) when intestacy would otherwise result." *Id.* (citations omitted). The court noted that all of the above factors are present in this case. *See id.*

22. *See id.*

23. *Id.*

24. *See id.*

25. *Id.*

26. 546 N.Y.S.2d 256 (1989).

27. *See In re DiBiasio*, 705 A.2d at 974.

28. *Id.* at 975 (quoting *Sprinchorn*, 546 N.Y.S.2d at 258).

The *DiBiasio* court held that Fiore's failure to include any substitute beneficiary, in case of DiBiasio's death, evidenced his intent to make DiBiasio outright owner of the property under trust.³⁰

CONCLUSION

In the case of *In re DiBiasio*, the Rhode Island Supreme Court determined that when a testator uses the phrase "individually for his sole use free and clear of Trust" to bequest property to the trustee, it is a clear indication of the testator's intent to make the trustee the outright owner of the property contained within the trust. Thus, absent any contrary showing of intent, the remainder will not revert to the testator's estate, but will instead pass to the trustee or the trustee's heirs.

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