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JURY'S FINDING OF VALIDITY OVERRULED

Antonio Fraccaro's 2012 will left his estate to a hospital. In 2015, shortly after moving into an adult home and while terminally ill with cancer, Fraccaro executed another will leaving half his estate to Alberta Ross, the mother of his mail carrier and the operator of the adult home into which Fraccaro had moved. He died three days after signing the 2015 will.

The hospital, state's attorney general and the executor of the 2012 will challenged the validity of the 2015 document, saying it was not properly executed, Fraccaro lacked testamentary capacity and Ross had exercised undue influence. The Surrogate's Court jury found Fraccaro was competent, there was no undue influence and that the will was duly executed.

The Appellate Division of the Supreme Court of New York noted that the will was entirely handwritten by Ross, with no attorney present at the execution. One of the two witnesses – a resident and employee of the adult home – said Fraccaro had not eaten and she had given him oxycodone about 30 minutes prior to his signing the will. She could not recall if he had his glasses, which he needed for reading the document. The second witness – also a resident of the adult home and a friend of Ross – gave testimony with "multiple inconsistencies" and in conflict with her deposition, the court said.

State law requires that a will submitted for probate be validly executed and express the testator's intent. The court found the jury's verdict to be "against the weight of the evidence" and insufficient to support the finding that the will was duly executed. ***In re Estate of Fraccaro*, 2018 NY Slip Op 319**.

STATES' END RUN FOR SALT LIMITATIONS ADDRESSED

Starting in 2018, taxpayers are limited to $10,000 in state and local taxes when itemizing their income tax deductions [Code §164]. Several state legislatures have proposed or adopted the creation of funds that would allow residents to make transfers in exchange for credits against state or local taxes. These funds would purportedly permit taxpayers to characterize the transfers as fully deductible charitable contributions.

The IRS has cautioned taxpayers that "federal law controls the proper characterization of payments for federal income tax purposes," adding that it intends to propose regulations dealing with transfers to funds controlled by states which taxpayers can treat, in whole or in part, as satisfying state and local tax obligations. The IRS has said that it will apply the "substance over form principles" in determining the federal income tax treatment of payments to such state funds. **Notice 2018-54**

CONDITIONS MAKE GIFT INCOMPLETE

An art collector entered into a deed of transfer with two museums in a foreign country to pass title to the artworks at death. During her lifetime, the owner was entitled to retain possession of the artwork, subject to a favorable ruling from the IRS that the transaction is not a completed gift.

The donor asked the IRS to rule that the deed of transfer not be treated as a completed gift for gift tax purposes. The IRS noted that, under the deed of transfer, the donor has retained no power to change the disposition of the collection to the museums. Her grant to the museums of the "legal title, naked ownership and remainder interest" in the collection would be a completed gift for gift tax purposes, but for the condition precedent of the receipt of a favorable IRS ruling. **Letter Ruling 201825003**

▲ Tax Planning Pointer

The donor might want the transfer to be incomplete because under Reg. §20.2055-1(a)(4), an estate tax charitable deduction is allowed for bequests to foreign charities, but an income tax charitable deduction is allowed only for gifts to domestic organizations.

DELUSIONS DIDN'T AFFECT TESTAMENTARY CAPACITY

David Myren's children contested his 2012 will, in which he left his estate to the National Rifle Association and the Rocky Mountain Elk Foundation. They claimed that, due to "insane sexual delusions" regarding his children's activities, he was incapable of recognizing and providing for the natural objects of his bounty.

The trial court ruled that although there was no basis for Myren's "delusional" statements, it did not find that "but for" the comments, he would not have made the will in question. The Appellate Court of Illinois agreed.

Testimony from Myren's long-time attorney, physician and banker indicated that while he made unfounded comments about his children's sexual activities, he showed no confusion or neurosis that would cause him to favor charities over his children. Instead, the court found, Myren was bitter that, following his acrimonious divorce from the children's mother, they sided with her. He also complained to acquaintances that the children did not allow him to see his grandchildren, they did not help with the farm and only showed up during deer season when they wanted to hunt on his land.

The appellate court said the ultimate question was whether his alleged sexual delusions destroyed his testamentary capacity, adding that even if a testator has an insane delusion, "if the property and objects of bounty are known by the testator, and the property is disposed of according to a plan, the will will not be set aside for lack of testamentary capacity." Nothing indicated that Myren, who was a strong proponent of the Second Amendment and enjoyed elk hunting, would not have made the will but for his delusions. Myren had an obvious plan for his estate and legitimate reasons to disinherit his children, the court determined. ***In re Estate of Myren*, 2018 IL. App (4th) 170860-U**.

COURT FINDS DONOR IGNORES PLEDGE

The same day that the directors of Foremost Industries ratified a gift agreement pledging to give $4 million to the Appalachian Bible College (ABC) in five annual payments of $800,000, the company entered into a stock purchase agreement with GLD Foremost Holdings (GLD). Foremost's pledge to ABC was binding against the company's successors, and GLD acknowledged the legally binding obligation.

Foremost missed the first two payments on the pledge and indicated it did not intend to make future payments. ABC sued, claiming breach of contract, anticipatory breach of contract, conversion and unjust enrichment. It sought a temporary restraining order and preliminary injunction to prevent Foremost from selling off assets.

Despite several court deadlines, Foremost never filed any briefs before the court. The District Court of Pennsylvania noted that to establish a breach of contract claim, ABC must show the existence of a contract, a breach and resultant damages. The court found the first two elements. The gift agreement provided that ABC was "relying and shall continue to rely" on the full satisfaction of the pledge as an inducement for other donors to make gifts. The court found Foremost had anticipatorily breached the contract and granted ABC's motion for summary judgment. ***Appalachian Bible College v. Foremost Industries*, 1:17-cv-184**.

HELPING CLIENTS NAVIGATE ITEMIZED DEDUCTION CHANGES

Many clients may be unaware of the extent of changes to itemized deductions included in the Tax Cuts and Jobs Act of 2017. Between limits on deductions for state and local taxes, the elimination of many miscellaneous itemized deductions and a significant increase in the standard deduction, some clients who itemized in the past may find they no longer exceed the standard deduction threshold, even with gifts to charity. The charitable deduction not only survived under the TCJA, but the limit on cash gifts to charity actually increased from 50%-of-AGI to 60% (excess deductions can continue to be carried over for up to five additional years). Clients who normally give to charity should consider options that might enable them to itemize on their 2018 return. These include bunching several years' worth of gifts before year's end or establishing life-income gifts such as charitable gift annuities and charitable remainder trusts from which they retain payments for life and qualify for generous charitable deductions. Clients who have reached age 70½ should consider making their charitable gifts from their IRAs. Although there is no charitable deduction, to the extent the gifts take the place of required minimum distributions that would otherwise be fully taxed, they can save tax dollars. Even clients who can't itemize can avoid capital gains taxes by making gifts of appreciated securities, rather than cash. We'd be happy to provide more information on helping clients maximize itemized deductions through thoughtful charitable giving. Please feel free to contact our office.