

MICHAEL BEEDE, Esq.
Law Office of Michael Beede
Nevada Bar No. 13068
2300 W. Sahara Ave. #420
Las Vegas, NV 89102
T: 702-473-8406
F: 702-832-0248

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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF FREI
IRREVOCABLE TRUST DATED
OCTOBER 29, 1996.

Supreme Court No. 68029
District Court Case No. P065257

STEPHEN BROCK

Appellant,

v.

PREMIER TRUST, INC.; LAWRENCE
HOWE; AND ELIZABETH MARY
FREI,

Respondents.

APPELLANT'S REPLY BRIEF

ATTORNEY FOR THE
APPELLANT

Michael Beede, Esq.
Nevada Bar No. 13068
LAW OFFICE OF MIKE BEEDE
2300 W. Sahara Ave. #420
Las Vegas, NV 89102
T: 702-473-8406
F: 702-832-0248

ATTORNEY FOR THE
RESPONDENT –
Premier Trust

Richard D. Chatwin, Esq.
Douglas D. Gerrard, Esq.
GERARD COX & LARSEN
2450 St. Rose Parkway
Suite 200
Henderson, NV 89074
T: (702) 796-4000

ATTORNEY FOR THE
RESPONDENT –
Elizabeth Mary Frei

Russel J. Geist, Esq.
Todd L. Moody, Esq.
HUTCHINSON & STEFFEN
10080 West Alta Drive,
Suite 200
Las Vegas, NV 89145
T: (702) 385-2500

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SUMMARY OF THE ARGUMENT

Respondents in this appeal contend that the death of a single settlor, in a trust with multiple settlors, should essentially be ignored by this Court. However, in doing so, Respondents ask this Court to also ignore the intent and will of the deceased settlor, and to make modifications of an irrevocable trust that would eliminate the material purpose of the trust. However, this Court cannot so easily disregard the intentions of a deceased settlor, as the foundation of trust law is built upon the great deference given to settlors' intent. Thus, if a modification of this trust was legally possible, it could not be done with the consent of the settlor.

Collectively, Respondents have not cited a single case or law that allows for an irrevocable trust, in which a spendthrift clause was a material purpose of the trust, to be modified in a way that would eliminate the spendthrift clause. Even the plethora of codes, Restatements, and other state's statutory authority, as presented by Premier Trust, Inc., demonstrate that after a settlor is incapacitated, the trust can only be modified if the modification does not eliminate a material purpose of the trust.

If the 2009 modification to the Frei Irrevocable Trust had the effect of eliminating the spendthrift provision, then such modification eliminated a material purpose of the trust. As such, this modification is void and any trust funds that Mr. Brock used to pay his creditors should be refunded by Premier Trust.

Furthermore, Premier Trust had a duty to protect the spendthrift provision of the Trust in both the 2009 modification and the 2010 settlement agreement. Their failure to provide this protection is a breach of the fiduciary duty that they owed to the deceased settlor, Adoria, and to Mr. Brock.

Lastly, while Mr. Brock may have attempted to modify the trust in the 2009 petition, this action cannot prevent him from arguing that a spendthrift clause “**shall never be assigned, aliened, diminished or impaired** by any alienation, transfer or seizure” The use of “shall” in Nev. Rev. Stat. Ann. § 166.120(1), reinforces the mandatory nature of the protections afforded to spendthrift provisions. To the degree that Respondents have presented other non-binding authority that allows for a modification of an irrevocable spendthrift trust, Mr. Brock should not be judicially estopped from presenting arguments that the Spendthrift provision still applies to this trust. Allowing the beneficiary of a trust with a valid spendthrift provision to simply pledge his interest away and allow creditors to attack the corpus of the trust contradicts the purpose of the spendthrift clause. Doing so would disregard the unambiguous language in Nev. Rev. Stat. Ann. § 166.120(1) and effectively render spendthrift provisions meaningless. Accordingly, Mr. Brock should not be judicially estopped from arguing that his trust is protected by the spendthrift provision, and that any modification that would eliminate that provision is invalid.

...

ARGUMENT

I. MODIFICATION OR REVOCATION OF THIS TRUST WAS DONE WITHOUT CONSENT OF THE SETTLOR, AS TRUE CONSENT OF THE SETTLOR WAS IMPOSSIBLE THE DAY ADORIA DIED.

In the context of a multi-settlor trust, the consent of a single surviving settlor does not protect that the material purpose of the trust as intended by the deceased settlor. In Nevada, whether consent from a single surviving settlor is sufficient to modify an irrevocable trust that was created by multiple settlors is a matter of first impression. However, a wealth of authority from other jurisdictions demonstrate that unanimous settlor consent is required to effectuate such a change.

Many states allow for a trust to be modified upon the consent of the settlor and the beneficiaries. *See* UTC § 411, 412, Wyoming Statutes Annotated 4-10-412, Arizona Revised Statutes § 14-10412(A); *See also* California Probate Code § 15404(a)-(b). In fact, Senate Bill 484 adopted in the 2015 Nevada Legislative Session only allows for trust modifications, in regards to settlement agreements, if the modifications are entered into by “all indispensable parties.” 2015 Nev. Stat. 3550 (emphasis added); *See also* Nev. Rev. Stat. § 669A.233. “Indispensable parties refer to all interested persons, as defined in NRS 132.185...” *Id.* NRS 132.185 explicitly includes “settlor” as an interested party. Therefore, a settlor must be involved in any settlement that modifies a trust. Similar to Nevada, other states that

have allowed modifications of an irrevocable trust maintain that consent of the settlor is vital, if not absolutely necessary, to modify the trust.

In the case herein, one settlor was deceased at the time of the modification of the trust in 2009, and 2010 settlement. Nevada requires that a settlor consent to the modification of a trust, in regards to settlement agreements, as this ensures that the settlor's interests are being protected. When a settlor is deceased, they can no longer protect their interest even if multiple settlors are present as no two settlors can be assumed to have perfectly aligned interests. Thus, when one settlor dies, any modification without all of the settlors' approval risks completely undoing the intent of the deceased settlor. And accordingly, any incapacitation of any settlor should be deemed an incapacitation of the settlor group as a whole.

When Dr. Frei and his wife, Adoria, created the Frei Irrevocable Trust, they did so with joint intentions concerning the nature of the trust and its material purpose. Included in the trust was a detailed explanation of how the trust funds were to be spent. See Ex. 10.1 at 3-5. The trust directed the trustee to pay for the "education, health, maintenance, and support" of the beneficiaries. This is the only evidence presented in the record of Adoria's intentions regarding the trust. To simply ignore Adoria's intentions would constitute a travesty, as Adoria died thinking that the "education, health, maintenance, and support" of her children were provided for. As such, any analysis regarding a modification of the trust must be done with the

understanding that, after Adoria died, the remaining settlor could no longer consent to any modification of the Frei Irrevocable Trust.

II. IN NEVADA, MODIFICATION OF AN IRREVOCABLE TRUST WITHOUT THE CONSENT OF THE SETTLOR CAN ONLY BE EFFECTUATED IF IT DOES NOT ELIMINATE A MATERIAL PURPOSE OF THE TRUST.

It is a matter of first impression for this Court on if and how an irrevocable trust, *with a spendthrift provision*, can be modified after the death of a settlor when there are multiple settlors to the irrevocable trust. If Dr. Frei had not agreed to the modification of the trust, the analysis herein would be simpler as it would be known that no settlor participated in any modification of the Trust. Lawrence Howe and Elizabeth Mary Frei even go as far as to say that “If Dr. Frei had not been a party to the settlement and had not consented to the modification of Brock’s right under the Trust, the pledge would not have been effective.” See Respondents Lawrence Howe and Elizabeth Mary Frei’s Answering Brief (hereinafter “LE Answering Brief”) at 23. The Respondents’ Briefs collectively, however, argue that that even without the consent of a settlor, the Courts were correct in modifying the trust and eliminating the spendthrift clause. All case law cited by all parties suggests that without the consent of a settlor, an irrevocable trust can only be modified if it does not eliminate a material purpose of the trust. In the case herein, the 2009 modification effectively eliminated the material purpose of the trust, and therefore, is invalid.

...

a. This court in *Ambrose* did not set the precedent that every irrevocable trust can be modified without all surviving settlors.

In *Ambrose v. First National Bank of Nevada*, 87 Nev. 114 (1971), this Court found that a trust created by a mother, for the sole beneficiary of her daughter, did not contain a valid spendthrift provision. This decision hinged on the fact that the trust failed to indicate that the provision for the beneficiary was for the support and maintenance of the beneficiary. *Id.* at 117. This Court instead found the purpose of the trust was to prevent the settlor from spending all of her estate, which she planned on leaving for her daughter. *Id.* 119. As such, this Court found that termination of the trust would not eliminate a material purpose of the trust, and therefore would not frustrate the settlor's intent, and allowed the sole beneficiary to terminate the trust. *Id.* at 120. However, this Court also stated that a material purpose of a trust could be spendthrift in nature. *Id.* at 117. Additionally, if the *Ambrose* Court were to have found that a valid spendthrift provision applied, the Court would have likely prevented termination of the trust as this is what the dissenting Justices would have done. *Id.* at 119; *See also Id.* at 121 ("The material purpose of this trust has not been served as to the daughter, and for that reason alone she cannot terminate the trust.") (Zenoff, C.J., and Mowbray, J., dissenting).

Mr. Brock's case is fundamentally different than the *Ambrose* case, as the Frei Irrevocable Trust does contain a valid spendthrift provision, the modification of which would have eliminated a material purpose of the trust. Furthermore, unlike

the present case, the *Ambrose* Court dealt with the termination of a trust by a sole beneficiary, and not the modification of a trust with multiple beneficiaries. Accordingly, based on this Court’s decision and rationale in *Ambrose*, because there was a valid spendthrift provision in the present case, modification of that provision would eliminate a material purpose of the Trust, and therefore is invalid.

b. The Nevada Legislature, in SB 484, required that all indispensable parties enter into the settlement agreement that does not violate a material purpose of the Trust.

i. Senate Bill Ch. 484 §61

Nevada Senate Bill 484 §61 subsection (2) states that “A nonjudicial settlement agreement is void to the extent it violates a material purpose of the trust ...” 2015 Bill Text NV S.B. 484 §61(2). This section of the statute demonstrates that protecting the material purposes of a trust is highly important to the Nevada Legislature.

Furthermore, SB 484 §61 subsection (1) requires that a settlement agreement that modifies a trust includes approval of “*all indispensable parties.*” 2015 Bill Text NV S.B. 484 §61(1). An indispensable party includes the settlor. *See* NRS 132.185. In the case of two settlors, the Nevada Legislature has instructed that *all* parties must be part of the agreement. 2015 Bill Text NV S.B. 484 §61(1). That includes all parties that qualify under NRS 132.185, including all settlors. Given that in the case herein Ms. Frei is deceased, it would have been impossible for the parties to agree

to a non-judicial settlement that modified the trust even if this statute was effective in the relevant timeline herein.

Lastly, SB 484 §61 expressly prohibits a modification, even with the consent of all settlors, if it violates a material purpose of the trust. *Id.* Therefore, where the settlors create a trust with a valid spendthrift provision that constitute a material purpose of that trust, even consent of the settlors is not enough to eliminate the spendthrift clause based on this statute.

ii. NRS 163.556

Premier Trust relies upon the particulars of decanting trusts and NRS 163.556. NRS 163.556 specifically deals with the circumstances under which a trustee may appoint trust assets from one trust in favor of another trust. This process is informally known as “decanting.” The fact that decanting is allowed to take place even if the original trust has a spendthrift provision bears no factual relation to the present case.

Stephen Brock’s interest in the Frei Irrevocable Trust does not derive from an original trust that decanted its assets into another trust. Additionally, this law does not contradict any authority cited by Mr. Brock that an irrevocable trust, with a spendthrift provision, cannot be modified if it would violate a material purpose of the trust. Therefore, this Court must not read too deeply into the intent of the Nevada Legislature based on the language of NRS 163.556, or the principles governing decanting trusts, as they do not have any relevance to the case before this Court.

c. The Uniform Trust Code has not been adopted by the Nevada Legislature, and even if it had been, the Uniform Trust Code still protects the material purpose of an irrevocable trust.

Nevada, despite being given the opportunity, has not adopted the Uniform Trust Code (hereinafter “UTC”). Thus, Premier Trust’s argument that the Court should treat this case as if the UTC applied is without merit. For the same reasons, this Court should not be persuaded by Premier Trust’s cited statutory schemes from Wyoming, Utah, New Mexico, and California as these states have all adopted some version of the UTC. *See* Premier Trust’s Responding Brief at 19-20.

However, even an analysis of the UTC, and laws based on the UTC, shows that this Court should set aside the trust modification in this case as it conflicted with a material purpose of the trust. Section 411 of the UTC only allows a termination or modification of an irrevocable trust under the following conditions:

- b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

Unif. Trust Code § 411.

Here, the settlors of the Frei Irrevocable Trust cannot give their consent to modify or terminate the trust as one of settlors is deceased. The UTC, much like Nevada law, does not account for the death of a settlor if multiple settlors exist. However, allowing a single settlor to change the purpose of an irrevocable trust

would be contrary to the deceased settlor's intentions. As such, even if the Nevada Court were to attempt to modify the trust based on the UTC, a termination or a modification could only be made if the termination or modification did not violate a material purpose of the trust, which in this case, is the spendthrift provision.

Respondents will surely argue that the UTC maintains that a spendthrift provision "is not presumed to constitute a material purpose of the trust." See Section 411 subsection (c). However, this section of the UTC does not state that a spendthrift provision can never be a material purpose of the trust. This section merely allows for the modification of spendthrift provisions similar to one found in *Ambrose*, in which the spendthrift was intended to prevent the settlor from squandering her estate and not actually for the welfare and benefit of the beneficiary. *Ambrose*, 87 Nev. At 117. This section does not preclude a spendthrift provision that lays out that the funds of the trust are to be used for the health, welfare and benefit of the beneficiaries from being a material purpose of the trust.

d. *Musick v. Reynolds* is not analogous to the case herein.

Based on Premier's Trust's representation of *Musick v. Reynolds*, it would seem that *Musick* is the doppelganger case to Mr. Brock's case. 798 S.W.2d 626 (Tex. App. 1990). However, the present case and *Musick* have striking differences which make this comparison less than helpful to this Court.

First, in *Musick*, the settlor was alive and able to make a modification to the Musick Trust. That is completely opposite to the case herein where one of the settlors was deceased, and therefore could not agree to any modification of the Frei Irrevocable Trust. Furthermore, States that allow modification of an irrevocable trust put far fewer requirements to modify an irrevocable trust when all interested parties agree to the modification. *See* UTC Section 411(a). After the settlor is unable to give consent to the modification, the route to modification, if possible, usually involves protection of the material purposes of the trust. UTC Section 411(b). As such, the modification of the Musick Trust was much easier than a modification to the Frei Irrevocable Trust would be.

The Second glaring difference between the present case and *Musick* concerns the requisite approval by all of the beneficiaries to the trust. In *Musick*, the uninformed beneficiaries were unborn children. *Musick*, 798 S.W.2d at 630. The beneficiaries that did not affirmatively approve of the modification Mr. Brock has referred to are living and breathing individuals, not unborn children. In regards to the Frei Irrevocable Trust, the record indicates that only one beneficiary, Mr. Brock, approved of the modification of the Trust. *See* Probate Commissioner's Report and Recommendation Regarding Petition for Order Reforming Terms of Trust, Exhibit 6.A. The Probate Commissioner's report does state that "the only objection raised by any party to the reformation of the Trust was Dr. Frei's allegation that this Court

did not have jurisdiction over the Trust.” *Id.* at 3:14-16. However, failure to object does not equate to affirmative approval as required by Nevada law.

Ultimately, these two glaring differences make *Musick* of little relevance to this Court, and as neither the facts in the present case or Nevada law is similar to this Texas trust case, this Court should refrain from including *Musick* in its analysis.

e. Both the Second Restatement and the Third Restatement of Trust require a court determination to modify a trust, which includes a court finding that a material purpose of the trust is not violated.

i. The Second Restatement of Trust

Premier Trust has failed to provide this Court with any section of the Restatement that would be instructive as to what to do if the settlor is incapacitated, or if one of multiple settlors is incapacitated. As stated multiple times before, parties will have a substantially easier time modifying a trust, in states that allow modification of an irrevocable trust, if the settlor and all the beneficiaries agree. In the case herein, one of the settlors was deceased preventing the settlors from consenting at all to a modification, and only one beneficiary affirmatively approved the modification.

ii. The Third Restatement of Trust

The Third Restatement of Trust, however, has accounted for the death or incapacity of a settlor. Section 65 reads as follows:

- 1) Except as stated in Subsection (2), if all of the beneficiaries

of an irrevocable trust consent, they can compel the termination or modification of the trust.

- 2) *If termination or modification of the trust under Subsection (1) would be inconsistent with a material purpose of the trust, the beneficiaries cannot compel its termination or modification except with the consent of the settlor*, or, after the settlor's death, with authorization of the court if it determines that the reason(s) for termination or modification outweigh the material purpose.

Restatement (Third) of Trusts § 65 (2003) (emphasis added).

The Third Restatement states that a trust cannot be modified in a way that would defeat a material purpose of the trust without the consent of the settlor. The only exception to this is if a reason for termination or modification outweighed the material purpose.

The settlors of the Frei Irrevocable Trust could not consent to the modification as one of the settlors was deceased. Thus, even if Nevada were to follow the Third Restatement approach, which has never been adopted by the Nevada Courts, the Court would have to find a reason for this modification that outweighs the purpose of the spendthrift provision. Nothing from the record has been presented that the Court even considered whether the modification of the trust was for a reason that outweighed the spendthrift provision. As such, even under the Third restatement approach, the 2009 modification and 2010 settlement were improper.

f. The material purpose of the trust was the spendthrift provision.

All Respondents argue that the spendthrift provision was not a material purpose of the Trust. Yet, Respondents ignore the plain language of the Trust which

evidences the intent of the settlors. The Trust read as follows before the modification:

Our Trustee shall pay to or apply for the benefit of our beneficiaries as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, determines to be necessary or advisable for their education, health, maintenance, and support.

Any net income not distributed by our Trustee shall be accumulated and added to the principal of the trust.

See Exhibit 10.1. at 3-5.

The Trust clearly directs that the net income of the Trust was for the “education, health, maintenance, and support” of the beneficiaries. The trust even directs the trustee to add any net proceeds of the trust to the principle, showing that the settlor had made arrangements for extra proceeds to be left over after a disbursement by the trustee.

Premier Trust would have this Court believe that the purpose of the Frei Irrevocable Trust was to transfer life insurance proceeds to the beneficiaries, while simply avoiding paying taxes on the proceeds. *See* Premier Trust’s Response Brief at 27-28. However, avoiding taxes surely is not a legitimate purpose of a trust. Additionally, Premier Trust argues that the material purpose of the trust was flexible estate planning. Even if this were the case, Premier Trust has failed to cite to a single provision in the Trust, or the record, which indicates that the Trust’s purpose was estate planning or tax avoidance. Instead, the record reflects that the settlors wanted

to provide for the health, welfare and support of their children, and that they wanted the trust to contain a spendthrift provision to protect those interests.

The reason Dr. Frei would not have opposed this 2009 Petition that resulted in the wrongful removal of the spendthrift clause, is that he felt that Mr. Brock owed him, and his trust, money. Dr. Frei, or at least the trust Dr. Frei was a beneficiary to, became Mr. Brock's creditor. This is the prime example of how Adoria and Dr. Frei's interests would not have been aligned after the death of Adoria.

No party was able to cite a single Nevada Authority stating that a spendthrift provision cannot be a material purpose of a trust. The unambiguous language of the Trust demonstrates that the settlors intended for the Frei Irrevocable Trust to provide for the "education, health, maintenance, and support" of the beneficiaries, and to include an explicit spendthrift provision. Based on this record, this Court should find that the spendthrift provision was a material purpose of the trust.

III. THE 2009 MODIFICATION PURPORTEDLY ELIMINATED THE SPENDTHRIFT PROVISION, RENDERING THE MODIFICATION INVALID.

Mr. Brock has already argued that the valid spendthrift provision contained in the trust prevented any modification of the trust from occurring. However, if a modification could have been made, that modification could not have violated the material purpose of the trust as outlined by all the precedent set forth above.

The predominant purpose of a spendthrift trust is “**to prevent anticipation or control of future income or corpus** by the protected income beneficiary.” *In re Estate of Bonardi*, 871 A.2d 103,108 (N.J. App. Div. 2005) (emphasis added). Furthermore, spendthrift trusts are, by definition, “created for the maintenance or benefit of a beneficiary which is **secured against his improvidence**, placing it beyond the reach of his creditors.” *Jackson v. Fidelity and Deposit Co. of Maryland*, 608 S.E.2d 901, 903 (Va. 2005) (emphasis added).

Therefore, if Respondents are correct that an irrevocable trust can be modified, the 2009 Petition and the 2010 Order of Commissioner Yamashita eliminated a material provision of the trust. As such, this modification would be against the well-established rules for modifying a trust absent the full consent of the settlors, and as a result is void.

IV. MR. BROCK IS NOT JUDICIALLY ESTOPPED FROM ARGUING THAT THE MODIFICATION TO THE TRUST IS INVALID.

As stated above, the predominant purpose of a spendthrift trust is “**to prevent anticipation or control of future income or corpus** by the protected income beneficiary.” *In re Estate of Bonardi*, 871 A.2d at 108 (emphasis added). That includes protecting the beneficiary from their own actions, if necessary. This is apparent in Nevada law which states that the interests in a spendthrift trust “**shall never be assigned, aliened, diminished or impaired** by any alienation, transfer or seizure” Nev. Rev. Stat. Ann. § 166.120(1) (emphasis added).

While Mr. Brock and counsel may have attempted to modify the trust in the 2009 petition, this action cannot prevent him from arguing that a spendthrift clause **“shall never be assigned, aliened, diminished or impaired** by any alienation, transfer or seizure” *Id.* The affirmative language of “shall” in Nev. Rev. Stat. Ann. § 166.120(1), demonstrates that this statute is always in effect. To the degree that Respondents have presented other non-binding law that allows for a modification of an irrevocable spendthrift trust, Mr. Brock should not be judicially estopped from raising arguments that these modifications violated a material provision of the trust. Part of the purpose of the spendthrift provision is to ensure a settlor that the beneficiary has his or hers “education, health, maintenance, and support” taken care of. It provides peace of mind to the settlor of a spendthrift trust. Allowing the beneficiary of a trust with a valid spendthrift provision to simply pledge his interest away and allow creditors to attack the corpus of the trust contradicts the purpose of the spendthrift clause. Doing so would disregard the unambiguous language in Nev. Rev. Stat. Ann. § 166.120(1) and effectively render spendthrift provisions meaningless. Thus, it is equally illogical that a beneficiary would be judicially estopped from arguing that his trust was subject to a spendthrift provision, when a beneficiary makes an invalid modification that would eliminate the spendthrift provision.

...

V. MR. BROCK IS NOT TIME BARRED FROM HAVING THIS COURT HOLD INVALID A PROVISION OF THE 2009 MODIFICATION OF THE TRUST THAT ELIMINATED THE SPEND THRIFT PROVISION.

Premier Trust has made the argument that Mr. Brock is time-barred from seeking to hold void the improper 2009 modification that eliminated the spendthrift provision of the trust. This argument was not raised during the below hearing on this matter, and should not be considered now.

However, Mr. Brock filed its Petition to Construe Terms of the Trust, To Compel Compliance with Terms of Trust, to confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust on November 19, 2014. *See* Exhibit 1. It was at this time that Mr. Brock first challenged the fact that any modification of the spendthrift provision was invalid. Up until that point, Mr. Brock had the mistaken position that his funds were still protected by a spendthrift provision. This explains why Mr. Brock elected to keep his funds in trust when each of the nine other beneficiaries elected to receive their full portion under the trust.

Accordingly, there is no violation of NRCP 59(e) or N.R.A.P. 4(a)(1). Furthermore, Mr. Brock has complied with all deadlines as required by this Court.

...

...

VI. PREMIER TRUST HAD A DUTY TO CHALLENGE THE REMOVAL OF THE SPENDTHRIFT PROVISION.

Premier Trust had a duty to challenge any modification that would have eliminated the material purpose of the trust, which in this case, was the modification and elimination of the spendthrift provision. It is axiomatic in trust law that the court is required to ascertain and enforce the intent of the settlors. See *Concannon v. Winship*, 581 P.2d 11, 13 (Nev. 1978) (stating that a court's primary aim in construing a testamentary document is "to give effect ... to the intentions of the testator") (citations omitted). The presence of the spendthrift provision specifically prohibits the trustee from subjecting the trust corpus to claims by "any creditors." See Trust Art. 13 § 3, Exhibit 10.1. In fact, there is no provision in the Trust authorizing the trustee of the Trust to pay any amount of the income, or principal, of the Trust to any creditor of the beneficiaries. Thus, the settlors' intent was clear that the Trust was prepared to provide for the benefit of their beneficiaries, not for the benefit of their beneficiaries' creditors. And therefore, Premier Trust had a duty to Mr. Brock to protect the intent of the settlors, even when Mr. Brock was seeking a modification that could have potentially eliminated the spendthrift provision of the trust.

Premier Trust has stated that they cannot be held liable for their assignment of part of the trust to Mr. Brock's creditors because the Restatement (Second) of Trusts § 216, cmt. e. states that a beneficiary cannot hold a trustee liable for an act

of omission of a breach of the trust if the beneficiary consented to it. *See* Restatement (Second) of Trusts § 216, cmt. e. Here, Mr. Brock never consented to Premier Trust's assignment of Mr. Brock's interest in the trust over to his creditors before the 2010 settlement. Furthermore, the Restatement does not absolve Premier Trust from challenging any modification that would have eliminated the spendthrift provision of the trust. As such, Premier Trust has violated its duty in protecting the settlor's intentions regarding the trust, and therefore violated its fiduciary duties to the settlors and Mr. Brock.

CONCLUSION

For the above reasons, Mr. Brock seeks the following:

- A. That the Supreme Court affirm the District Court's finding that the Trust was irrevocable from its inception;
- B. That the Supreme Court affirm the District Court's finding that the Trust had a valid spendthrift provision pursuant to Nevada law;
- C. That the Supreme Court find that any modification to the Trust is void as such a modification changed a material purpose of the Trust;
- D. That the attempted pledge or assignment of Mr. Brock's interest in the Trust is void *ab initio* according to the explicit terms of the Trust;
- E. That the trustees be compelled to comply with the terms of the Trust;

F. That the trustee reimburses Mr. Brock for all funds paid to Mr. Brock's creditors out of the Trust; and

G. That the Court confirm the removal of Premier as trustee based on their repeated violations of their fiduciary duties to Mr. Brock.

DATED this 7th day of April, 2016.

THE LAW OFFICE OF MIKE BEEDE, PLLC

By: /s/Michael Beede

MICHAEL BEEDE, Esq.

Nevada Bar No. 13068

2300 W. Sahara Ave. #420

Las Vegas, NV 89102

T: 702-473-8406

F: 702-832-0248

eservice@legallv.com

ATTORNEY'S NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The Law Office of Mike Beede, PLLC

/s/ Michael Beede, Esq

Michael N. Beede, Esq

Attorney of Record for Appellant

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answering brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I FURTHER CERTIFY that this answering brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more and complies with the type-volume limitation because it contains 5,000 words.

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FINALLY, I CERTIFY that I have read this Appellant's Reply Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answering brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of April, 2016.

THE LAW OFFICE OF MIKE BEEDE, PLLC

By: /s/Michael Beede
MICHAEL BEEDE, Esq.
Nevada Bar No. 13068
2300 W. Sahara Ave. #420
Las Vegas, NV 89102
T: 702-473-8406
F: 702-832-0248
eservice@legallv.com

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On April 8, 2016, I caused to be served a true and correct copy of the foregoing **APPELLANT’S REPLY BRIEF** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court’s Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

/s/ Amanda Abril

An employee of the Law Office of Mike Beede,
PLLC