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## INTERPRETATION OF TRUST AGREEMENTS

A recent Supreme Court of Virginia case illustrates the process by which courts analyze and interpret the language that grantors use in their trust agreements.

In *Harbour et al v. SunTrust Bank et al* (Record No. 082023, November 5, 2009), the Court considered an inter vivos trust agreement. The grantor directed that the income and corpus would be used for her during her lifetime, and, at her death, the income and corpus would be used for her husband if he survived her. The trust agreement provided the following in Section 7, entitled "Disposition of Trust:"

C. Payment of Estate Tax at Spouse's Death. Upon the death of the Grantor's spouse, the Trustee shall divide the trust res, including any undistributed income and the remaining principal, into four equal shares, to be distributed as follows:

One such share shall be paid and delivered to my brother, James Clayton Boaz; the second such share, shall be paid and delivered to my brother, Herbert Alan Boaz; and the third such share shall be paid and delivered to my sister, Hazel Boaz Harbour.

The fourth such share shall be delivered to the Stuart Baptist Church to be kept in a separate trust account entitled "Mollie Boaz Johnson Educational Fund," to be used for scholarships for deserving students from Patrick County in accordance with . . . my Last Will and Testament.

If any of my brothers or sisters shall fail to survive me, his or her share shall lapse and such share shall be added to the trust fund for Stuart Baptist Church, previously mentioned. (Emphasis added.)

The grantor placed her initials next to the paragraph underlined above and on the bottom of every page of section 7 of the trust agreement.

The grantor died in 1999, survived by her husband and two of her siblings. The two siblings predeceased the grantor's husband, who died in 2007. Hazel Boar Harbour ("Harbour") was survived by Steven M. Harbour, and James Clayton Boaz ("Boaz") was survived by James Aubrey Boaz. SunTrust Bank, as Trustee, filed a complaint in the circuit court seeking aid and guidance in interpreting the trust agreement and in distributing the trust proceeds. Stuart Baptist Church ("the church") and Steven M. Harbour and James Aubrey Boaz ("the nephews") filed answers and memoranda. The church claimed it was entitled to all of the remaining trust assets because the grantor's siblings predeceased the grantor's husband, and thus the shares to the siblings lapsed. The nephews contended that Harbour and Boaz survived the grantor, and thus their shares did not lapse under the plain language of the trust agreement, and the nephews were entitled to shares of the remaining trust assets. The circuit court entered judgment holding that "the shares of the three deceased siblings lapsed and should be added to the share to be delivered to the [church]." In its letter opinion, the circuit court stated that the church's position was "more compelling [from] review [of] the instrument in its entirety."

On appeal, the nephews contended that the circuit court erred in failing to adopt the plain meaning of the trust agreement's language, that unambiguously vested the remainder interests of Harbour and Boaz at the time of the grantor's death, and not at the time of the husband's death. They alternatively argued that under the rule of construction favoring early vesting of estates, because the trust agreement did not manifest a clear intent to postpone vesting, the remainder interests of Harbour and Boaz vested at the grantor's death. The church contended that under the plain terms of the trust, the qualifying remainder shares vested at the time of the husband's death when the shares were to be distributed. The church also contended that the early vesting rule was inapplicable because the two siblings died before the husband, and, therefore, they did not acquire vested remainder shares in the trust assets.

The Supreme Court of Virginia stated that the intent of the grantor controls when considering the language of a trust agreement. This court said that it would initially review the language of the trust. If the language is clear and unambiguous, then it would not resort to rules of construction, or consider the grantor's apparent reasoning or motivation in selecting the particular language used, but rather, would apply the plain meaning of the words the grantor used. Regarding the early vesting rule, the Supreme Court of Virginia said this rule of construction has no application when the language of the trust or will unambiguously demonstrates the grantor's intent.

The Supreme Court of Virginia examined the trust language and determined that it was unambiguous. This court did not apply the early vesting rule, but relied solely on the words the grantor used in the trust. The grantor used language that referenced her own death, not the death of the husband, as the event determining whether or not a sibling's share would lapse. A sibling's share would only lapse if

the sibling failed to survive the grantor. The court said that at the time of the grantor's death, Harbour and Boaz survived the grantor, and they received a vested remainder interest in the trust assets when the grantor died. The share of Herbert A. Boaz lapsed because he predeceased the grantor, and his share became part of the church's interest. This court said that the church's position would require the court to add the phrase "and my husband" to the grantor's directive that "[i]f any of my brothers or sister fail to survive me . . .," and this court had no authority to insert words into a trust document. The Supreme Court of Virginia also observed that the division of the trust res after the husband's death secured the possession of the remainder interests that had vested at the grantor's death. This court held that the circuit court erred in holding that the interests of Harbour and Boaz lapsed in favor of the church, reversed the judgment of the circuit court and remanded the case for entry of an order distributing the remainder interests of the parties in accordance with the ruling of the Supreme Court of Virginia.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans' benefits and special needs planning issues.

### Ask Allie

O&H: Allie, we've heard about some creative ideas for gifts for cats this holiday season. Please tell us about them.

Allie: Sure! Cats have been into recycling and repurposing long before "green" became the latest buzzword. An *Associated Press* article included some ideas for cat toys. If you are drinking wine to relax (or to make it through tough economic times), share the corks with your cat. We love batting them around. Let your hair grow long – then you can share your hair ribbons with us. Buy presents for other people – we can then help you wrap the presents. You can crunch up a piece of wrapping paper into a ball for us to chase around. You can do the same with aluminum foil. (Then you can clean the foil balls out from under the couch and the appliances in the kitchen, because we won't clean them up for you!). Shop by mail – we are suckers for the boxes that arrive with the items that you ordered. If you shop locally, we also will have fun with the paper bags (not the plastic ones!). You don't need to buy fancy beds for us this year, you know we love to lie on things on top of other things. Lying on a shirt on the bed is better than lying on any other spot on the bed. Hmmmm... I'm ready for a nap... after I check around the house first to see if my mom has left some paper bags or foil out for me!

### Advertisement

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