

Legal-mal decision offers guidance to trusts and estates bar

By Christopher R. Blazejewski



The Rhode Island Supreme Court recently issued a significant decision providing clearer guidance on the duties owed by trusts and estates attorneys to the beneficiaries of a trust.

In *Audette v. Poulin, et al.* (Lawyers Weekly No. 60-093-15), the court held as a matter of first impression that an attorney representing the trustee of a trust did not also owe a duty of care to the beneficiary of the trust when the trustee and beneficiary are adverse.

Plaintiff Richard Audette was the beneficiary of a trust established in 1993 that included, among other things, a provision allowing him to live at a certain property rent-free. In 2000, the plaintiff decided that he wanted to live at the property, along with his parents, and they all moved in.

Trustee Donald Poulin objected and sought legal advice from trusts and estates lawyer David J. Correira.

Correira, as counsel to the trustee, advised the trustee that the terms of the trust did not permit the parents of the plaintiff/beneficiary to live with him at the property.

Soon thereafter, Correira, on behalf of the trustee, filed suit to evict the plaintiff and his parents. The case was

ultimately dismissed in 2005 by agreement of the parties.

Plaintiff/beneficiary Audette then filed an action against several parties, including trustee Poulin and his attorney, Correira. The claims against Correira sounded in negligence and breach of fiduciary trust.

Correira filed a motion to dismiss the complaint against him for failure to state a claim, arguing that, as attorney to the trustee, he did not owe a duty of care to the plaintiff/beneficiary while he represented the trustee, especially when the trustee and the beneficiary were adverse.

The trial court judge agreed, dismissing the claims against Correira.

On appeal, the state Supreme Court affirmed the trial judge's ruling. In its decision, the court noted that the claims brought by the plaintiff/beneficiary were essentially for legal malpractice. Citing prior Supreme Court precedent, the court found that "third parties generally cannot recover for attorney malpractice" and that "generally an attorney owes no duty to an adverse party" in Rhode Island.

The court furthermore declined, under the facts of the case, to extend the exception providing that the liability of an attorney may include the third-party beneficiaries of an attorney-client relationship, when the plaintiff/beneficiary and trustee are adverse and have no overriding identity of interest.

The Supreme Court wrote: "Given our

conclusion that Correira did not owe Audette a duty of care with regard to his representation of Poulin as trustee, Audette's claims for malpractice must fail."

For trusts and estates attorneys in Rhode Island, the decision offers guidance that, under state law, they do not owe a duty of care to the beneficiary of a trust while representing the trustee in a matter adverse to the beneficiary.

Audette does not address, however, situations in which the trustee and beneficiary are not adverse or have an overriding identity of interest.

Audette is consistent with case law in Massachusetts following *Spinner v. Nutt*, 417 Mass. 549 (1994). There, the state Supreme Judicial Court held that the attorneys of a trustee of a trust did not owe a duty of care to beneficiaries of the trust, and also that the beneficiaries of a trust were not third-party beneficiaries of the attorney-client relationship between the trustee and the trustee's attorneys.

Like the Rhode Island Supreme Court in *Audette*, the *Spinner* court in Massachusetts affirmed dismissal of the claims brought by the trust beneficiaries against the trustee's attorneys for failure to state a claim upon which relief could be granted. **R|LW**

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