

Trusts and Estates - Dispositive Effect of Personal Receipt Clauses on Remainder Interests

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problem of increasing highway safety and reducing injuries and fatalities on the nation's highways. The problem of nonuse of seat belts as a defense in tort actions must be met with more than an eager intimation for legislative action²⁶ to make use mandatory and the easy disposition of a defense on the basis of its being conjectural and thereby inadequate in law.

John Simon

²⁶ The National Safety Council is in the process of drafting a model seat belt code requiring the use of seat belts which it may distribute to state legislatures at their request after its final approval. Conversation with Mr. Edwin Kirby of the National Safety Council in Chicago, February 21, 1967.

TRUSTS AND ESTATES—DISPOSITIVE EFFECT OF PERSONAL RECEIPT CLAUSES ON REMAINDER INTERESTS

Testatrix established a spendthrift trust wherein one half of the income was to go to a friend for life with a remainder in testatrix's adopted son. The will further provided that in the event the son did not live to collect the remainder, it was to go to testatrix's brother and sister, or the survivor of them. A spendthrift clause contained a statement that any payments were to be made in person or upon the personal receipt of the beneficiary. The adopted son, the brother, and the sister died before the remainder interest could be distributed upon the death of the life tenant. The trial court held that the personal receipt language of the spendthrift clause had no dispositive effect and ordered distribution to be made one half to the brother's estate and one half to the sister's. The Appellate Court of Illinois affirmed the trial court's holding. *Northern Trust Co. v. North*, 73 Ill. App. 2d 469, 220 N.E.2d 28, *appeal denied*, 222 N.E.2d v (1966).

The Illinois courts have held, in the three cases in which it was an issue,¹ that a personal receipt clause in a spendthrift clause had the effect of requiring the individual named in the remainder to be living at the termination of the life estate in order to claim the interest. The Illinois courts have not been alone in this view. The four other states² which have considered the effect of a personal receipt clause on distribution have likewise held that the remaindermen must be alive at the termination of the life estate. *Northern Trust Co. v. North* is therefore an important case in that it represents a marked departure in the effect given these clauses.

¹ *Routt v. Newman*, 253 Ill. 185, 97 N.E. 208 (1912); *First Nat'l Bank of Chicago v. Cleveland Trust Co.*, 308 Ill. App. 639, 32 N.E.2d 964 (1941); *Cowdery v. Northern Trust Co.*, 321 Ill. App. 243, 53 N.E.2d 43, *appeal denied*, 326 Ill. App. xiii (1944).

² California, Massachusetts, Nevada, and Pennsylvania. *Union Nat'l Bank of Pasadena v. Hunter*, 93 Cal. App. 2d 669, 209 P. 2d 621 (1949); *Hemenway v. Hemenway*, 171 Mass. 42, 50 N.E. 456 (1898); *Barringer v. Gunderson*, 81 Nev. 288, 402 P. 2d 470 (1965); *In re Nixon's Estate*, 306 Pa. 261, 159 Atl. 442 (1932).

The purpose of this note is twofold: first, to examine the change in the law of remainder interest brought about by this case and second, to examine writings and theories which may have contributed to this change in position.

The Illinois courts first considered the effect of a personal receipt spendthrift clause in *Routt v. Newman*.³ In this case a widow attempted to get her deceased son's share of the income of a trust through the administrator of his estate. The court held that the interest of the son lapsed at his death because of the personal receipt spendthrift clause.⁴ The court said: "The continued existence of the recipient of the fund was necessary to a compliance with this requirement [the personal receipt spendthrift clause]".⁵

This same principle was applied to a distribution of trust corpus in *First Nat'l Bank v. Cleveland Trust Co.*⁶ The court cited the requirement of the *Routt* case that the existence of the recipient of the fund was necessary to comply with a personal receipt spendthrift clause.⁷ The court then reasoned that payment to a deceased beneficiary, whether named in the will or by the exercise of a power of appointment, could not be made in person; therefore, the personal receipt spendthrift clause barred distribution to decedent's estate. In effect, the court held that the vesting of the remainder interest was postponed until actual distribution by the personal receipt spendthrift clause.⁸ The court cited and applied the existence requirement of the *Routt* case again in *Cowdery v. Northern Trust Co.*⁹ In settling the question of whether accrued income should go to the estate of the deceased beneficiary, the court held that distribution could not be made to the estate because of the personal receipt spendthrift clause.¹⁰

The position taken by the Illinois courts with respect to personal receipt spendthrift clauses has been followed by the four other states which have considered the question, two of which¹¹ quoted with approval from the *Routt* case. The California Appellate Court¹² cited *Routt v. Newman*¹³

³ *Routt v. Newman*, *supra* note 1.

⁴ Brief for Defendant-Appellant, p. 29, *Northern Trust Co. v. North*, 73 Ill. App. 2d 469, 220 N.E.2d 28, *appeal denied*, 222 N.E.2d v (1966).

⁵ *Routt v. Newman*, *supra* note 3, at 189, 97 N.E. at 210.

⁶ *First Nat'l Bank of Chicago v. Cleveland Trust Co.*, *supra* note 1.

⁷ *First Nat'l Bank of Chicago v. Cleveland Trust Co.*, *supra* note 1 at 655-56, 32 N.E.2d at 972.

⁸ Brief for Appellant, p. 31, *Northern Trust Co. v. North*, 73 Ill. App. 2d 469, 220 N.E.2d 28, *appeal denied*, 222 N.E.2d v (1966).

⁹ *Cowdery v. Northern Trust Co.*, *supra* note 1.

¹⁰ Brief for Appellant, p. 32, *Northern Trust Co. v. North*, *supra* note 8.

¹¹ California and Nevada. See cases cited note 2 *supra*.

¹² *Union Nat'l Bank of Pasadena v. Hunter*, *supra* note 2.

¹³ *Routt v. Newman*, *supra* note 1.

and *First Nat'l Bank of Chicago v. Cleveland Trust Co.*¹⁴ and pointed out that both cases held that payment to a decedent's estate, following his death prior to the termination of the trust, was precluded because the personal receipt spendthrift clause showed an intention to limit the gift to the life of the beneficiary. The court then said that the *Routt* and *First Nat'l Bank* cases alone sufficiently sustained the conclusion of the court to deny payment to decedent's estate.¹⁵

Nevada recently cited and followed the principle in the *Routt* and *First Nat'l Bank* cases in *Barringer v. Gunderson*.¹⁶ The court also quoted from *California Jurisprudence*¹⁷ to the effect that the personal receipt spendthrift clause shows an intention to limit a gift to the life of a beneficiary and prevents payment to his estate after his death.¹⁸ Also in accord with this position is the Massachusetts case of *Hemenway v. Hemenway*¹⁹ and the Pennsylvania case of *In Re Nixon's Estate*.²⁰

The position of the court in *Northern Trust Co. v. North* is a logical extension of the view the court took in dictum in the earlier case of *Costello v. Warnisher*.²¹ This was a case dealing with whether a "bill of review" was the proper method to re-examine an agreement to sell trust assets by the trustee. As a peripheral issue, the appellant argued that the personal receipt spendthrift clause would prohibit payment to the beneficiary's estate. In disposing of this contention, the court pointed out that it had little relevancy to the issue in the case, but it then went further and said that the clause must yield to the intention of the testator as derived from the dispositive provision of the will.²²

Illinois has long held that a spendthrift clause without the personal receipt language has no dispositive effect.²³ The decision in *Northern Trust Co. v. North* brings the treatment of spendthrift clauses with personal receipt language in line with the treatment of spendthrift clauses without personal receipt language. The Illinois Appellate Court in *McKeown v. Pridemore*²⁴ cites the view of Professor Griswold that the chief justification of spendthrift trusts should be the protection they furnish to a living beneficiary. Since the beneficiary cannot be protected after his death, Griswold reasons that protection from a spendthrift clause should be allowed only during the beneficiary's lifetime and thereafter the property should be held

¹⁴ *First Nat'l Bank of Chicago v. Cleveland Trust Co.*, *supra* note 1.

¹⁵ *Union Nat'l Bank of Pasadena v. Hunter*, *supra* note 2, at 624, 209 P.2d at 624.

¹⁶ *Supra* note 2.

¹⁷ 48 CAL. JUR. 2f, *Trusts*, § 127 (1959).

¹⁸ *Ibid.*

¹⁹ *Supra* note 2.

²⁰ *Supra* note 2.

²¹ 4 Ill. App. 2d 571, 124 N.E.2d 542 (1955).

²² *Ibid.*

²³ *McKeown v. Pridemore*, 310 Ill. App. 634, 35 N.E.2d 376 (1941).

²⁴ *Ibid.*

liable for his debts. The court stated that it was in full accord with Griswold's view.²⁵

The position taken by the *Restatement*²⁶ is in agreement with the court in the *McKeown* case. The *Restatement* states that the executor or administrator of the estate of a deceased beneficiary of a spendthrift trust is entitled to accrued income from the trust if he would have been entitled to that income were it not for the spendthrift clause.²⁷

The most cogent argument for treating a personal receipt spendthrift clause the same as other spendthrift clauses insofar as remainder interests are concerned is put forth by Griswold in his work *Spendthrift Trusts*.²⁸ Griswold acknowledged that there are some decisions that a spendthrift clause prevents an estate from vesting.²⁹ He points out that there is no basis on which such a conclusion can be supported as the mere restraint on alienation has nothing to do with vesting. He concludes:

It [the power of alienation] relates only to the power to alienate the interest, and the question whether that is 'vested' or not depends on the contingencies that may affect the ultimate ownership of the interest—contingencies which do not depend on the power of alienation.³⁰

In conclusion, it appears that *Northern Trust Co. v. North* represents a significant departure from the effect personal receipt spendthrift clauses are to be given in determining the disposition of remainder interests. In the future, remainders are to be determined from the dispositive language of the instrument regardless of whether there is a spendthrift clause with or without personal receipt language.

Douglas Mitchell

²⁵ *Ibid.*

²⁶ RESTATEMENT (SECOND), TRUSTS § 158(2) (1959).

²⁷ *Ibid.*

²⁸ GRISWOLD, SPENDTHRIFT TRUSTS (2d ed. 1947).

²⁹ In his discussion Griswold cites *Routt v. Newman*, *First Nat'l Bank v. Cleveland Trust Co.*, and *Cowdery v. Northern Trust Co.* (*Id.* at 324).

³⁰ GRISWOLD, SPENDTHRIFT TRUSTS, *op. cit. supra* note 28, at 323–24.

USURY—REQUIRED PURCHASE OF INSURANCE FROM CREDITOR—ILLINOIS ADOPTS REASONABLENESS TEST

Defendant borrowed \$25,000 from plaintiff and gave as partial security a twenty-five year, five per cent mortgage note. As a condition precedent to obtaining the loan, defendant was required to purchase one of plaintiff's life insurance policies and assign the policy to plaintiff as collateral security for the note. At the time of the loan, defendant had an insurance estate, in policies with other insurance companies, with a face