Sacks Glazier Franklin & Lodise LLP
Specializing in Litigation Regarding Trusts and Estates

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SACKS GLAZIER FRANKLIN & LODISE LLP SUCCESSFULLY DEFENDS APPEAL IN PUBLISHED OPINION

--Terrence Franklin and Matthew McMurtrey obtain affirmation in probate case--

LOS ANGELES, CA – The trusts and estates litigation firm, Sacks Glazier Franklin & Lodise LLP, announced that attorneys, partner Terrence Franklin and Of Counsel Matthew McMurtrey, successfully defended an appeal brought against the firm's client on the important issue of when ambiguous language contained in a trust document may be reformed without violating the trust's no contest clause. Although most appellate court decisions are not certified for publication, this is Mr. Franklin's fourth successful published California appellate court or Supreme Court decision.

The case (Giammarrusco v. Simon, 2nd Dist., Div. 1, 3/12/09), concerned whether a no contest clause in a trust would bar a beneficiary from seeking to take action to correct or avoid the result of a drafting error in the trust.

The trust in the Giammarrusco case provided three different methods the surviving trustor could use to exercise a power of appointment over specified trust property. Two of the three methods were for the power to be exercised by Will or Codicil duly admitted to probate within 60 days of the survivor's death; otherwise it was to be conclusively presumed that the survivor did not exercise the power of appointment. The third method of exercise was by delivery of a written acknowledged instrument delivered to the Trustee; but, this method did not contain any time restraints or conclusive presumption. Here, after the trustors' death, no Will or Codicil was probated, but an exercise of the power of appointment was in fact delivered to the Trustee.

The Court of Appeal acknowledged that the lack of verbal symmetry between the methods of exercising the power of appointment was at the “heart of the dispute,” with Cynthia Giammarrusco, Sacks’ client and daughter of the deceased trustor, taking the position that, notwithstanding the conclusive presumption provisions, the ambiguous language of the power of appointment may be reformed or interpreted to give effect to the acknowledged instrument. She applied for a judicial declaration that her position would not violate the trust’s no contest clause, which disinherits a beneficiary who seeks to nullify a provision of the trust.

Opposing the daughter was the survivor’s step-son, also a beneficiary under the trust. He argued that if his step-sister were to prevail, the conclusive presumption provisions would be nullified and the trust would be changed so as to trigger the application of its no contest provisions.

In upholding the trial court’s ruling, and agreeing with Messrs. Franklin and McMurtrey, the Court of Appeal concluded that when, as in the case before it, a written instrument, including a trust document, can be reformed to correct the instrument so as to effectuate the common intention of the parties which was incorrectly reduced to writing, that a no contest clause would not be violated.

The appellate court also held that the reformation of a trust does not automatically trigger a no contest clause because such an act is not a necessarily a contest of the document, unless the reformation or modification being sought would invalidate the trust document or any of its provisions.

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Since 1991, the lawyers at Sacks Glazier Franklin & Lodise LLP have specialized in trust, estate and conservatorship mediation and litigation, including appeals, for substantial estates.

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