



**Case Summary: *In re Trust Under Agreement of Taylor***

Decided: July 19, 2017

Summary: October 9, 2017

By: Justin G. Bish, Esquire

*In re Trust Under Agreement of Taylor*, 164 A.3d 1147, 2017 Pa. LEXIS 1692 (July 19, 2017)(Opinion by Justice Donohue), overturned years of practice for many Pennsylvania trust attorneys by holding that the scope of Section 7740.1 of the Uniform Trust Act (“UTA”) does not extend to modification of trust agreements to permit the removal and replacement of trustees. Therefore, Section 7766 is the “exclusive provision regarding removal of trustees.” *Id.* at 33.

The UTA is Pennsylvania’s enactment of the Uniform Trust Code (“UTC”). The UTA is a part of Pennsylvania’s Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §§ 101-8815, constitutes codification of trust law in the Commonwealth, and applies generally to “all trusts created before, on or after” its effective date. Act of July 7, 2006, P.L. 625, 702, §16(3).

As indicated, the Court in this case considered the interplay between sections 7740.1 and 7766 of the UTA. Section 7740.1 provides, in relevant part, as follows:

**§7740.1. Modification or termination of noncharitable irrevocable trust by consent**

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**(b) Consent by beneficiaries with court approval.** -- A noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the court concludes that the modification is not inconsistent with a material purpose of the trust.

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**(d) Consent by some beneficiaries with court approval.** -- If not all the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the

modification or termination may be approved by the court only if the court is satisfied that:

- (1) If all the beneficiaries had consented, the trust could have been modified or terminated under this section; and
- (2) The interests of a beneficiary who does not consent will be adequately protected.

20 Pa.C.S. § 7740.1(b), (d). Section 7766 provides, in relevant part:

**§7766. Removal of trustee**

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**(b) When court may remove trustee.** -- The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

- (1) The trustee has committed a serious breach of trust;
- (2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (3) The trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or
- (4) There has been a substantial change of circumstances. A corporate reorganization of an institutional trustee, including a plan of merger or consolidation, is not itself a substantial change of circumstances.

20 Pa.C.S. § 7766(b).

Edward Winslow Taylor, the settlor, established the irrevocable Taylor Trust on February 9, 1928 to care for his daughter (Anna Taylor Wallace) and her children living at the time of creation. The Taylor Trust was twice amended, first in 1928, and a second time in 1930. In the original Agreement of Trust, the settlor named "The Colonial Trust Company or its successors" as the corporate trustee. However, by the 1930 amendment, Colonial merged into a successor corporation and the settlor acknowledged the successor as the new corporate trustee. When Edward died in 1939, Anna became the trustee. Time naturally passed and successor co-trustees were named down the lineage of the Taylor

family without any real issues. In 2009, after a series of subsequent mergers, Wells Fargo had become the corporate trustee, and sought court approval to divide the Taylor Trust into four separate and equal trusts; one for each of Anna Wallace's surviving grandchildren. The Orphans' Court approved Wells Fargo's request.

In 2013, three of Anna Wallace's surviving grandchildren (the "Beneficiaries") cited to section 7740.1 of the UTA and petitioned the Philadelphia Orphans' Court to modify the Taylor Trust by adding a portability provision. The portability provision would give the Beneficiaries the power, without court approval, to appoint a new corporate trustee of their choosing. Wells Fargo opposed the petition and argued that Pennsylvania trustees must be removed in accordance with section 7766(b) of the UTA. The Orphans' Court granted Wells Fargo's motion and held that the "beneficiaries' attempt to use the broad modification provisions in section 7740.1(d) to eviscerate section 7766 must therefore yield to the specific removal provision in section 7766." Orphans' Court Opinion, 8/18/2014, at 10.

The Pennsylvania Superior Court reversed the Philadelphia Orphans' Court and observed that section 7740.1 is not ambiguous on its face and "contains no language excluding from its ambit the modification of trustee-removal provisions." *In re Trust Under Agreement of Taylor*, 124 A.3d 334, 341 (Pa. Super. 2015). The Superior Court decided that if the General Assembly had intended for section 7740.1 to include modifications to the removal of a trustee, it could have done so expressly or cross-referenced section 7766. *Id.* In addition, the Superior Court rejected Wells Fargo's emphasis on the comment following section 7740.1 that section 7766 is the "exclusive provision on removal of trustees." *Id.* at 342. The Superior Court determined that because the language in section 7740.1 is clear and unambiguous, it is improper to resort to canons of statutory construction. *Id.*

The Pennsylvania Supreme Court granted discretionary review to determine whether the Superior Court erred in holding that beneficiaries may amend the terms of a trust to permit the removal of a trustee without judicial approval.

Wells Fargo argued to the Supreme Court that the Superior Court erred by refusing to apply the basic principles of statutory construction to resolve the inconsistency between sections 7740.1 and 7766. It contended the Superior Court viewed section 7740.1 in isolation, without considering it in relation to the UTA as a whole. It argued that the General Assembly did not intend for section 7740.1 to trump section 7766. If the Superior Court decision was allowed to stand, beneficiaries seeking to remove trustees will not resort to section 7766,

as amendment pursuant to section 7740.1 accomplishes the same result with less of a burden. Thus, the Superior Court decision would render section 7766 superfluous and expand the scope of 7740.1, which was never intended by the General Assembly.

The Beneficiaries argued that portability clauses are common in modern trust instruments, particularly because of significant restructuring in the banking industry over the last several decades. They argued that Mr. Taylor, the settlor of the Taylor Trust, would never have contemplated the banking world restructuring and never would have known that the trustees, the Colonial Trust Company, would become Wells Fargo, headquartered in San Francisco. In addition, the Beneficiaries asserted section 7740.1 is not ambiguous in any respect and insisted that Wells Fargo created a conflict that did not exist. In particular the Beneficiaries claimed that the provisions addressed different trust issues: section 7740.1 permits modification to provide beneficiaries with the flexibility to replace a trustee at a future date, while section 7766 allows a court to replace immediately based upon certain facts.

The Supreme Court concluded that ambiguities existed between section 7740.1 and 7766. It determined that currently, the corporate trustee may be removed and replaced, if at all, only pursuant to section 7766, the statutory default provision for removal and replacement. As a result, a modification pursuant to section 7740.1 to add a portability provision would be, in effect, a modification of the requirements for removal and replacement of the trustee in section 7766. Because there were ambiguities, the canons of statutory construction required the sections be construed in a way where one section does not cancel or nullify out the other.

The Court decided that permitting a modification pursuant to section 7740.1 to add a portability clause would “nullify, exclude or cancel” the effectiveness of section 7766 because a section 7766 removal requires substantial evidentiary hurdles to overcome and the Orphans’ Court must make numerous findings of fact and conclusions of law. Conversely, a modification under 7740.1 requires no detailed analysis and imposed no comparable evidentiary requirements.

The Court bolstered its decision by examining Pennsylvania law and legislative history supporting principals that limited the removal and replacement of a trustee to circumstances in which good cause existed.

Finally, the Court referenced the Uniform Law Comment to section 7740.1, which addressed similar issues. The Uniform Trust Code (“UTC”) comment to section 7740.21 provided that section 411 of the UTC (section 7740.1 of the UTA)

is not intended to be as broad as its Restatement (Third) counterpart, and that instead section 706 of the UTC (section 7766 of the UTA) is the “**exclusive provision on removal of trustees.**” 20 Pa.C.S. § 7740.21, Uniform Law Comment (emphasis added).

Thus, the Pennsylvania Supreme Court reversed the Superior Court and held that the scope of section 7740.1 of the UTA does not extend to modification of trust agreements to permit the removal and replacement of trustees. Therefore, section 7766 is the “exclusive provision regarding removal of trustees.”

### About the Author



Attorney Bish concentrates his practice on civil litigation matters and veterans law. He handles veterans benefits appeals, employment issues and landlord tenant disputes. Mr. Bish can be reached at McQuaide Blasko’s State College office.

Justin G. Bish, State College

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