

TECP Alert: Court of Appeals Issues Important Opinion on Entitlement to Attorney Fees and Trustee Removal

January 31, 2019

On January 14, the Minnesota Court of Appeals issued its opinion in *Lund v. Lund*, the latest chapter in a long-running dispute between members of the Lund family—best known for the Lunds & Byerlys grocery store chain—regarding ownership and operation of a number of family business entities. Although the opinion addressed a number of subjects, two of its most important rulings dealt with matters of particular relevance to trustees—(1) what standard should be applied in determining whether a trustee should be entitled to recover attorney fees incurred to defend its administration of the trust from that trust; and (2) what factors justify removing a trustee at a beneficiary's request.

As stated in the Court's opinion, the case arose from an effort by one of the Lund siblings, Kim Lund, to secure a buy-out of her interest in several Lund entities. In a number of instances, her interest in these entities was actually owned by various irrevocable trusts, of which her brother, Russell Lund III ("Tres"), and another individual, Stanley Rein, were co-trustees. After a weeklong bench trial, the district court granted Kim's demand for a buy-out and for removal of her brother as a trustee; however, it denied Kim's motion to remove Rein as a trustee, and it also denied the trustees' motion to recover attorney fees and costs from Kim's trusts. On appeal, two of the issues raised were (1) whether the district court had erred in concluding that the common law standard for an award of attorney fees had been legislatively superseded by Minnesota Statutes § 501C.1004; and (2) whether the district court abused its discretion in addressing the trustee-removal claims.

1. Trustee's right to recover attorney fees from the trust in defense of its administration

Likely the most important of the Court of Appeals' rulings was its determination that a trustee's common law right to recover reasonable attorney's fees from a trust, incurred in good faith in defending its administration of that trust, has not been superseded by Minn. Stat. § 501C.1004.

The district court held that under § 501C.1004—which became effective on January 1, 2016 as part of Minnesota's adoption of a new Trust Code—its discretion to determine *whether* a trustee could recover *any* attorney's fees from a trust had been greatly expanded, and that the exercise of its discretion would be

guided by interests of "justice and equity." Applying this broader discretionary standard, the district court determined that neither Tres nor Rein were entitled to recover any of their attorney fees from the assets of Kim's trusts.

The Court of Appeals reversed this part of the district court's decision, definitively holding that § 501C.1004 did not replace the common law standard entitling trustees to recover attorney's fees from the trust, so long as the fees were incurred in good faith in defense of the trustee's administration. Relying on the official commentary to the Uniform Trust Code, upon which Minnesota's new Trust Code is based, the Court of Appeals held that § 501C.0709(a)—not § 501C.1004—properly governs the entitlement of a trustee to attorney fees. The Court noted that this statute mirrors the common law standard previously in place in Minnesota and that, by contrast, § 501C.1004 applies only to the ability of third parties and beneficiaries to recover attorney fees. Because the district court applied the wrong legal standard, the Court of Appeals reversed and remanded the matter for further consideration.

2. Trustee removal

Under Minn. Stat. § 501C.0706(b)(4), a trustee may be removed if (1) there has been a substantial change in circumstances or removal is requested by all qualified trust beneficiaries; (2) the court finds that removal best serves the interests of all beneficiaries and is not inconsistent with a material purpose of the trust; and (3) a suitable co-trustee or successor trustee is available.

Applying this rubric in the *Lund* case, the district court initially held that Tres' removal was justified based on a substantial change in circumstances (principally the court-ordered buy-out of Kim's shares and a deterioration of the relationship between Tres and Kim). In a post-trial order, the court went on to explain that Tres' removal also was requested by all qualified beneficiaries, best served the interests of the beneficiaries, and was not inconsistent with the material purposes of the trusts. On appeal, the trustees challenged Tres' removal, arguing there had not been a substantial change in circumstances. On this issue, the Court of Appeals held that because the district court independently found that all qualified beneficiaries had requested Tres' removal, a showing of a substantial change in circumstances was not required.

With regard to Rein's trusteeship, the district court determined that the substantial change in circumstances affecting the relationship between Kim and Tres did not bear on Rein, and that his removal was neither in the best interests of the beneficiaries nor consistent with the material purposes of the trusts. In particular, the district court placed great weight on Rein's long experience as a lawyer and as trustee of the Lund trusts and noted that, in light of the court-ordered buy-out, consistent administration of all the Lund family trusts was imperative. Although Kim challenged this ruling as inconsistent with the evidence, the Court of Appeals held there was sufficient evidence to support the district court's conclusion, and the district court did not abuse its discretion in so holding.



Although the *Lund* case provides valuable clarification regarding the standard to be applied in determining whether a trustee is entitled to recover his or her attorney fees from a trust, other questions raised by the Court of Appeals remain unaddressed. Most notable among these is whether a breakdown in personal relations between a beneficiary and a trustee is a sufficient "change in circumstances" to justify removing the trustee, assuming the other factors set forth in Minn. Stat. § 501C.0706(b)(4) have been met.

Gray Plant Mooty is continuing to monitor this case and will provide further updates on this and other issues as they develop. Reach out to the Gray Plant Mooty Trust, Estate, and Charitable Planning Practice Group if you have any questions or concerns with your trusts.