



RECENT DELAWARE TRUST LITIGATION DECISIONS AND TRENDS—MAKING THEM WORK TO YOUR CLIENTS’ ADVANTAGE

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AGENDA

J.P. Morgan Trust Company of Delaware v. Fisher

Rogers v. Wilmington Trust Company

In re CES 2007 Trust

Tigani v. Tigani

In re Jeremy Paradise Dynasty Trust and Andrew Paradise Dynasty Trust

*J.P. MORGAN TRUST COMPANY
OF DELAWARE*

V.

FISHER

Delaware Court of Chancery, C.A. No.
12894-VCL

RELEVANT FACTS

- J.P. Morgan accepted position as Trustee of Trust on expedited basis
 - Settlor – Richard (father of Hadley and Winston)
 - Beneficiaries – Hadley and his heirs (minor son Michael)
- Primary asset of Trust – special member interests in RLF Assets LLC
 - Trust had no voting rights in the LLC
 - Assets of Settlor would transfer to the LLC upon Settlor's death
 - LLC obligated to make distributions to special members (including the Trust) for 10 years
 - LLC had right to acquire special members interests after 10 years for \$10 million
 - LLC exercised right to buyout special members interests in year 10

RELEVANT FACTS

- Litigation over Settlor's Estate filed in New York Surrogate's Court
- Settlement reached in 2010
 - Hadley signed settlement agreement releasing the LLC and his brother Winston from all claims
 - LLC Agreement ratified and confirmed to be in full force and effect per terms of settlement
- JP Morgan became Trustee of Trust as part of Settlement
 - J.P. Morgan had an extensive relationship with Fisher family
 - Expedited appointment per settlement terms
 - Minimal due diligence performed upon appointment

RELEVANT FACTS

- Hadley unhappy with Settlement Agreement after execution
- Questioned J.P. Morgan's loyalty based on its relationship with Fishers
 - Court found no evidence that this relationship compromised J.P. Morgan's handling of Trust
- J.P. Morgan resigned as Trustee in 2012
 - Retracted resignation after successor trustee could not be secured
 - Continued to serve as full trustee despite efforts to serve as directed trustee

RELEVANT FACTS

- LLC exercised right to purchase Trust's special member interests in 2016
- Trust would receive only \$7 million instead of \$10 million as a result of tax consequences of distribution
- Negotiations ensued with LLC/Winston to find a solution
- Litigation contemplated by Hadley against LLC/Winston but not filed
- Multiple non-litigation options considered by J.P. Morgan
- Hadley not pleased with any of these options
 - Demanded that J.P. Morgan initiate arbitration
 - J.P. Morgan requested a release from Hadley
 - Hadley refused
- J.P. Morgan elected Cash Premium Option – \$1.5 million more to Trust

DELAWARE LITIGATION

- J.P. Morgan filed Petition for Instructions days later
 - Sought declaration that it complied with legal and equitable duties
 - Permission to resign as Trustee
 - Appointment of GAL for Michael
- Court determined that J.P. Morgan assumed burden of proof
- Beneficiaries answered and asserted counterclaims
- Court granted J.P. Morgan's request to resign and appointed a GAL
- Remaining issues proceeded to trial

CLAIMS ASSERTED AGAINST TRUSTEE

- Breach of duty of loyalty
 - Requires trustee to administer the trust solely in the best interests of the beneficiary and exclude interests of trustee and third persons. *Hardy v. Hardy*, 2014 WL 3736331, at *8 9(Del. Ch. July 29, 2014)
- Breach of duty of care
 - Requires trust to administer the trust with the “skill and care that a [person] of ordinary prudence would exercise in dealing with his own property in light of the situation existing at the time. *Wilm. Tr. Co. v. Coulter*, 200 A.2d 441, 448 (Del. 1964)
- Duty of loyalty claims waived by Hadley

KEY RULINGS BY COURT

- Confirmed that Section 3303(a) of Title 12 permits a trust instrument to modify a trustee's fiduciary duties (Mem. Op. at 28).
- Provision reflects Delaware's public policy to give maximum effect to the freedom of disposition and to the enforceability of governing instruments (*Id.* at 29)
- Statutory floor – trustee cannot insulate itself from liability for its own willful misconduct. 12 *Del. C.* § 3303(a)(4).
- Court enforced language in Trust Agreement that limited Trustee's liability to acts or omissions that amounted to "Trustee's own gross negligence, actual fraud or willful misconduct." (Mem. Op. at 29)

KEY RULINGS BY COURT

- Court equated gross negligence to criminal negligence
 - “A person acts with criminal negligence with respect to an element of an offense when the person fails to perceive a risk that the element exists or will result from the conduct. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.” 11 *Del C.* § 231(a).
 - Court applied different standard for gross negligence than it would in a corporate context, where gross negligence has been equated to recklessness
 - Court applied this gross negligence standard to each of Hadley’s breach of duty of care claims

KEY RULINGS BY COURT

- Court found that J.P. Morgan did not act grossly negligence whether the mistakes identified by Hadley were considered individually or in the aggregate (Mem. Op. at 31)
 - J.P. Morgan did not act grossly negligent with respect its decision not to attend Surrogate's Court hearing
 - J.P. Morgan did not act grossly negligent by failing to treat quarterly distributions and consideration received from buyout as testamentary bequests from Settlor's estate
 - J.P. Morgan did not act grossly negligent in accepting the Cash Premium Option and by not bringing claims against Winston for self-dealing
 - J.P. Morgan did not act grossly negligent by declining to pursue an arbitration against Winston
 - J.P. Morgan did not act grossly negligent by not filing a petition for instructions and later filing litigation seeking declaratory relief

ATTORNEYS' FEES

- Court declined J.P. Morgan's Request to have its attorneys' fees paid from the Trust (Mem. Op. at 44)
 - J.P. Morgan filed litigation "out of a desire to receive absolution"
 - Failed to demonstrate that it conferred a benefit to the Trust
 - Court found that J.P. Morgan "helped create the messy situation" (Mem. Op. at 48)
- Hadley required to pay his own legal expenses
- Michael's legal expenses reimbursed by J.P. Morgan and the Trust



***FRIEDA MAE ROGERS F/K/A FRIEDA MAE ROEN
AND PREMIER TRUST, INC.***

v.

WILMINGTON TRUST COMPANY

Civil Action No. 18-116-CFC, 2021 WL
739048 (D. Del. February 25, 2021)

No. 21-1473, 2022 WL 621690 (3d Cir. Mar.
3, 2022)

143 S. Ct. 406 (2022) (denying certiorari)

BREACH OF FIDUCIARY DUTY CLAIMS

1. Proprietary Funds

- Corporate trustee maintained an investment portfolio dominated by its own proprietary funds, which were “locked up,” i.e., not freely transferable.
- Claims related to the purchase of the proprietary funds and failure to disclose the lockup were waived by counsel at trial.

2. Suitability of Investment Portfolio

12 Del. C. § 3302(a): Investments need only “attain the purposes” of the trust.

§ 3302. Degree of care; authorized investments.

(a) When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a fiduciary may consider the general economic conditions, the anticipated tax consequences of the investment and the anticipated duration of the account and the needs of the beneficiaries; when considering the needs of the beneficiaries, the fiduciary may take into account the financial needs of the beneficiaries as well as the beneficiaries' personal values, including the beneficiaries' desire to engage in sustainable investing strategies that align with the beneficiaries' social, environmental, governance or other values or beliefs of the beneficiaries.

The balanced growth investment objective selected by the trustee was not inconsistent with the settlor’s intent for the trust to last multiple generations and for the trustee’s discretion to be independent from the beneficiaries.

- Portfolio achieved significant growth despite significant distributions.

BREACH OF FIDUCIARY DUTY CLAIMS

3. Excessive Fees

- Trust instrument permitted “reasonable” fees, and there was no evidence of unreasonableness.
- Statute of limitations began to run when the fee schedule was provided.
- 3rd Circuit further noted that a “report” need not take any particular form under § 3585:

(b) For the purpose of subsection (a) of this section, a report adequately discloses the facts constituting a claim if it provides sufficient information so that the person knows of the claim or reasonably should have inquired into its existence.

4. Misrepresentations Regarding Transfer Restrictions

- Statute of limitations barred any securities fraud claims based on corporate trustee’s failure to disclose lockup in Private Placement Memoranda.
- Trust officer’s statements that corporate trustee would not transfer the funds were not false.
- Plaintiffs never requested consent to transfer, or more information on other options that corporate trustee alluded to.

5. Failure to Undertake Financial or Tax Planning

- Trust officer conceded at deposition that no “tax planning” was conducted for the trust.
- No damages were identified.
- Neither court directly addressed whether the trustee had a duty to conduct tax planning for the trust, or what that would entail.

BREACH OF FIDUCIARY DUTY CLAIMS

6. Failure to Deliver K-1s

- Outgoing trustee was obligated to provide K-1s to successor trustee.
- Successor trustee was required to follow up as needed to obtain information necessary to file tax returns.
- § 3544 does not absolve the successor trustee of the duty to inquire:

§ 3544. Successor trustee.

Unless provided otherwise by the terms of the governing instrument or by order of court, in the absence of actual knowledge of a breach of trust, or information concerning a possible breach of trust that would cause a reasonable person to inquire, a successor trustee appointed in accordance with the terms of the governing instrument, by the court, or by nonjudicial settlement agreement, is under no duty to examine the accounts and records of a predecessor trustee, is under no duty to inquire into or confirm the validity of a governing instrument or actions by a predecessor trustee altering or modifying a governing instrument or to inquire into the acts or omissions of its predecessor, is not liable for any failure to seek redress for any act or omission of any predecessor trustee, shall have responsibility only for property which is actually delivered to it by its predecessor, and shall have all of the powers and discretions conferred in the governing instrument upon the original trustee.

The terms of the governing instrument “provided otherwise” by requiring the successor trustee to prepare the tax return.

7. Conflict of Interest

- No conflict in acting as both trustee and advisor.
- Beneficiary appointed trustee to both roles, so she cannot complain.

EQUITABLE FRAUD CLAIMS

Court reviewed the equitable fraud claims as separate torts because they were based on separate allegedly false and misleading statements.

Equitable fraud does not require intentional or reckless actions—innocent or negligent misrepresentations or omissions suffice—but the trust instrument limited the trustee’s liability to actions constituting fraud, willful misconduct, or gross negligence.

- “Fraud” in the exculpatory clause refers to common law fraud, not equitable fraud; therefore, misstatements had to be at least grossly negligent.
- Corporate trustee’s statements that it would not transfer the funds were not false.
- Corporate trustee did not communicate that it would consider holding the funds as custodian—but successor trustee didn’t ask, despite the email from the corporate trustee that left open the possibility of other options. Corporate trustee’s conduct did not constitute an “extreme departure” from industry norms.
- Exculpatory provisions applied to outgoing trustee’s conduct after its tenure as trustee ended.



OTHER CLAIMS

Investment Advisers Act of 1940 does not provide a private right of action for restitution—only to void an investment adviser’s contract.

The ***California Financial Elder Abuse*** claims were based on the corporate trustee’s use of its proprietary funds in the trust. The courts found no intent to defraud or exercise undue influence, and that the successor trustee shared responsibility for the tax consequences.

The outgoing corporate trustee was granted leave to amend to seek attorneys’ fees.

IN RE CES 2007 TRUST

Civil Action No. 2023-0925-SEM (Del. Ch.
May 2, 2025) (Magistrate's report), aff'd
(Del. Ch. Oct. 1, 2025)

In re CES 2007 Trust

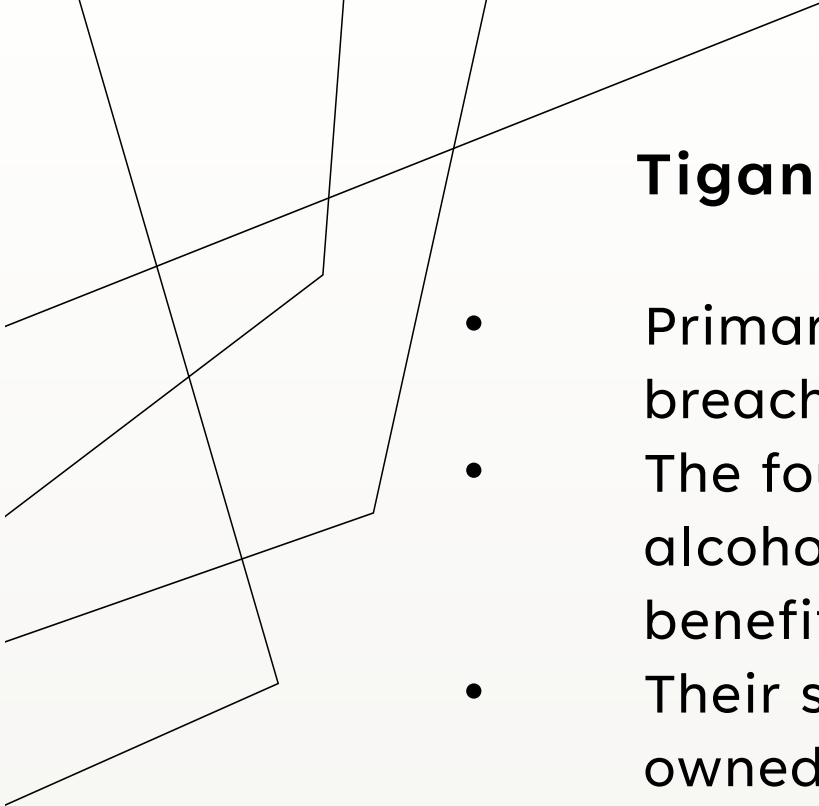
- Grantor's creditor sued to invalidate an asset protection trust and/or void the spendthrift provision, in order to reach the trust assets to satisfy grantor's loan obligations. Creditor complained that the grantor, who served as investment fiduciary for the trust and LLC manager, used his authority to transfer real estate properties back and forth between himself and the LLCs in which the trust owned a majority interest.
- Senior Magistrate's recommendation found that trust met the statutory requirements and was a valid asset protection trust, and declined to void the spendthrift provision.
 - The transfers of the LLCs to the trust were qualified dispositions; the subsequent transfers about which the creditor complained occurred at the LLC level and did not change the trust assets.
 - Grantor's role as investment fiduciary did not vitiate the qualified trustee's role.
- Vice Chancellor agreed but found that the creditor lacked standing. There was no connection between the trust and the creditor—creditor was a “classic intermeddler.” Magistrate's conclusions are advisory opinions.



TIGANI V. TIGANI

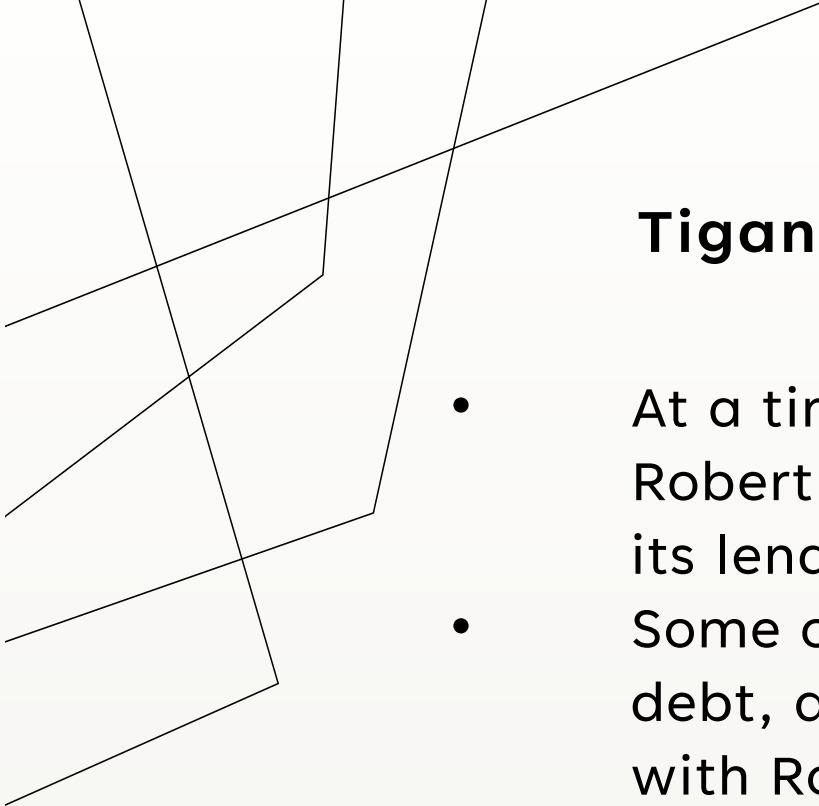
Civil Action No. 2017-0786-KSJM, 2021 WL
1197576 (Del. Ch. March 30, 2021)

aff'd by 271 A.3d 741 (Table), 2022 WL 222165
(Del. Jan. 25, 2022)



Tigani v. Tigani - Background

- Primarily a self-dealing case but also included claims of breach of duty of disclosure.
- The founders of N.K.S. Distributors, Inc., one of the largest alcohol distributors in Delaware, created a trust for the benefit of their descendants called the 1986 Trust.
- Their son Robert was the trustee of the 1986 Trust, which owned a majority of the shares of NKS. Robert was also president and a director of NKS and owned the remaining shares of the company outright.
- The Plaintiffs, Robert's sons, accused Robert of self-dealing in connection with a transaction in which NKS issued him additional shares, taking the 1986 Trust from majority shareholder to a minority shareholder and vice versa for Robert.

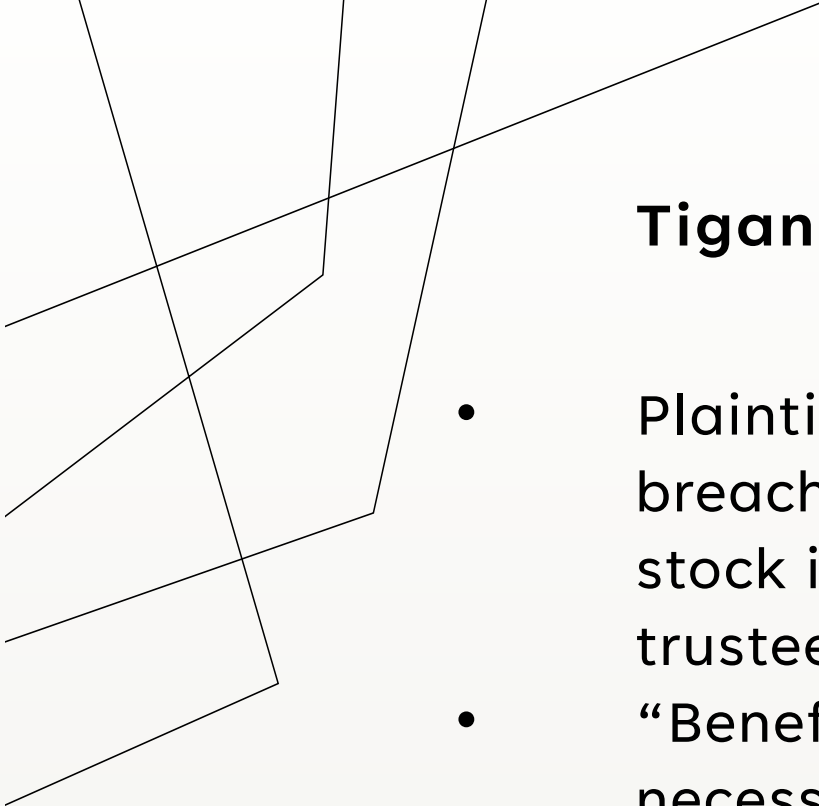


Tigani v. Tigani – Self-Dealing Claims (1)

- At a time when NKS was teetering on the brink of insolvency, Robert contributed his own funds to the company to satisfy its lenders.
- Some of this contribution to the company was classified as debt, and some was later classified by the board as equity, with Robert receiving additional stock, taking him to a majority position at the expense of the 1986 Trust.
- Plaintiffs argued that Robert, as trustee of the 1986 Trust, had a duty to maximize its value and thereby breached his duty of loyalty.

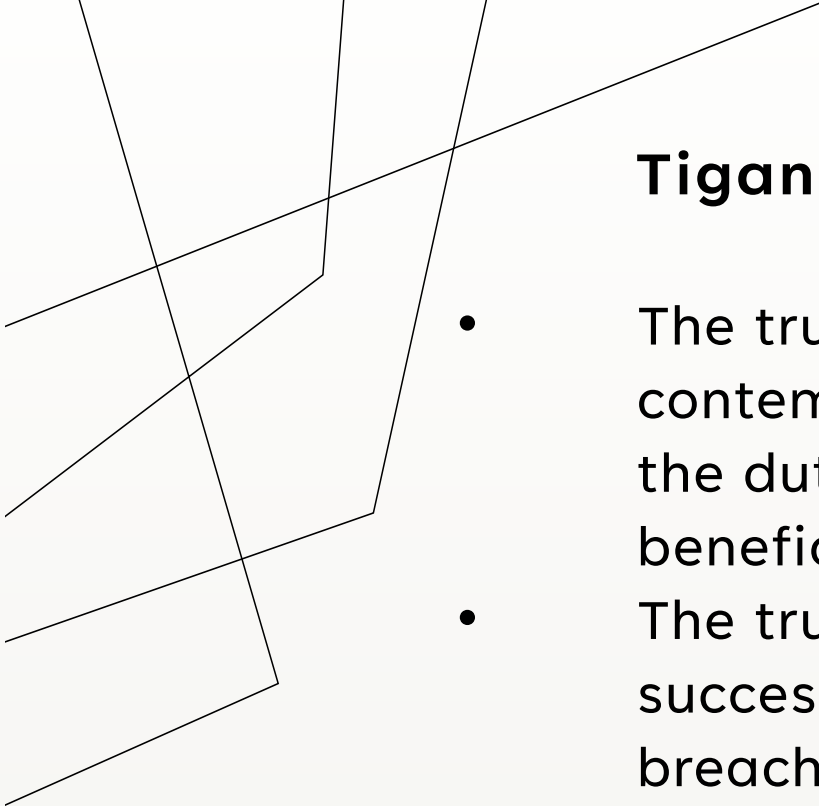
Tigani v. Tigani – Self-Dealing Claims (2)

- The Court found that the duty of loyalty may be modified by the terms of the trust.
- “A trustee may occupy conflicting positions in handling the trust where the trust instrument contemplates, creates, or sanctions the conflict of interest. . . when the settlor selects a conflicted person to serve as trustee, such as a family member who is also a beneficiary, the court infers that the settlor intended [to waive the conflict].”
- The Court further found that there was no breach of the duty of loyalty, in that the stock issuance, which helped save NKS, was actually in the best interests of the 1986 Trust.
- The Court did find Robert breached his duty of loyalty with respect to a separate trust, the BST Trust.



Tigani v. Tigani – Duty of Disclosure Claims (1)

- Plaintiffs also alleged that the trustee of the 1986 Trust breached his duty to disclose information including the stock issuance, changes to the designation of successor trustees, and NKS's employment contracts.
- “Beneficiaries are entitled to material information that is necessary to protect their interests, and thus the scope of a trustee's disclosure duty tracks the scope of a beneficiary's interests under a trust.”
- **Duty to inform arises when there is a material effect on a beneficiary's rights or interests.**



Tigani v. Tigani – Duty of Disclosure Claims (2)

- The trustee's failure to disclose the stock issuance contemporaneously to the beneficiaries was not a breach of the duty of disclosure because it did not affect the beneficiaries' rights or interests in the 1986 Trust.
- The trustee's failure to disclose changes in his designation of successor trustees to the beneficiaries likewise cannot be a breach because it was not necessary to protect Plaintiffs' interests under the 1986 Trust.
- The trustee's failure to disclose information about NKS's employment contracts to the beneficiaries was not material because the contracts had no impact on the beneficiaries' limited rights under the 1986 Trust and the 1986 Trust was not a party to any of these agreements.

*IN RE JEREMY PARADISE DYNASTY
TRUST AND ANDREW PARADISE
DYNASTY TRUST*

Delaware Court of Chancery, C.A. No.
2021-0354-KSJM

2021 WL 5564086 (Del. Ch. Nov. 29, 2021)

2023 WL 1241903 (Del. Ch. Jan. 31, 2023)

aff'd by 315 A.3d 445 (Table) (Del. April 3,
2024)

Paradise - BACKGROUND (1)

- Brothers Andrew and Jeremy Paradise created two trusts to hold stock in Skillz, Inc., a company founded by Andrew.
- The brothers agreed to set up trusts in order to provide for Jeremy and his family and to protect Jeremy's assets—primarily his stock in Skillz.
- The trust created by Jeremy was for the benefit of their mother and Jeremy's descendants.
- The trust created by Andrew was for the benefit of Jeremy and Jeremy's descendants.
- The trustee of each trust was directed as to investment and distribution.
- On each trust, Andrew had the power to remove and replace the trust protector, who in turn had the power to remove and replace all other fiduciaries.

Paradise - BACKGROUND (2)

- After Skillz went public, the value of the stock increased dramatically and Jeremy began looking for ways to reach the money in the trusts.
- When it became clear to him that he could not effectively control the fiduciaries, Jeremy brought an action in the Court of Chancery seeking:
 - Reformation of the Jeremy trust based on mistake
 - Reformation of the Jeremy trust based on fraud
 - Removal of the original individual fiduciary
 - Accounting for the trusts.
- Jeremy's reformation claims asserted that he should be the one with the power to remove and replace the trust protector of his trust, rather than Andrew.
- The individual fiduciaries responded to Jeremy's petition with a motion to dismiss.
 - The trustee, who was fully directed, never appeared in the main litigation.

Paradise – OPINION ON MOTION TO DISMISS

- The Court allowed Jeremy's reformation claims to proceed.
- The claim to remove the original individual fiduciary was dismissed because Jeremy failed to allege facts that would demonstrate willful misconduct on the part of the fiduciary, which was the applicable standard for liability under the trust.
 - The Court found that, despite Section 3581 allowing the Court to remove a trustee for breach of trust, the trust instrument included "contractual mechanisms for removing fiduciaries, suggesting an intent to vary and supplant the default statutory scheme," and that this was consistent with the ability of a settlor under Section 3303 to "vary any laws of general application to fiduciaries, trusts, and trust administration *notwithstanding* any other provision of the Trust Code."
- The claim for accounting was dismissed for Jeremy's failure to "show cause" under Section 3522.

Paradise - POST-TRIAL OPINION

- Jeremy, as settlor of the Jeremy trust, sought to reform its terms to make himself, rather than Andrew, the person with authority to remove and replace the trust protector.
- Jeremy asserted that Andrew's occupation of this role in the trust instrument was a mistake or fraud and, in any event, was inconsistent with Jeremy's intentions as settlor.
- The Court found that Jeremy could not prove by clear and convincing evidence that the trust should be reformed.
- Rather, the Court found that Jeremy had *no* clear intent regarding who would be able to remove and replace the trust protector at the time he executed the trust "because he had not read the documents, had no interest in their contents, and was focused on other life events."

QUESTIONS?

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THANK YOU