

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF RESTATEMENT :
OF DECLARATION OF TRUST CREATING :
THE SURVIVOR'S TRUST CREATED : C.A. No. 7743-VCG
UNDER THE RAVET FAMILY TRUST :
DATED FEBRUARY 9, 2012 :

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Chancery Courtroom No. 12D
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Wednesday, January 29, 2013
10:10 a.m.

- - -

BEFORE: HON. SAM GLASSCOCK, III, Vice Chancellor

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EVIDENTIARY HEARING TRANSCRIPT
AND THE COURT'S RULING

CHANCERY COURT REPORTERS
500 North King Street
Wilmington, Delaware 19801
(302) 255-0521

1 APPEARANCES:

2 DAVID W. CARICKHOFF, JR., ESQ.
3 Archer & Greiner, P.C.
4 for Petitioner

4 WILLIAM M. KELLEHER, ESQ.
5 Gordon, Fournaris & Mammarella, P.A.
6 for Respondent Northern Trust Co.

6 CHAD M. SHANDLER, ESQ.
7 Richards, Layton & Finger, P.A.
8 for Respondents Lorey Baldwin,
9 Deborah L. Hill and Patty J. Raphaelson

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1 package on the 27th. And there is no other evidence
2 that the notice materials were delivered to him prior
3 to that. So, with that --

4 THE COURT: Thank you, Mr. Carickhoff.

5 MR. CARICKHOFF: -- thank you.

6 THE COURT: I appreciate that.

7 I appreciate the arguments from both
8 sides. It's a very interesting set of issues. I
9 apologize for my confusion earlier about the dates,
10 which made this I think a more difficult situation
11 than it needed to be.

12 It's clear, and I think both sides
13 agree, that the statute that we're dealing with here,
14 12 Delaware Code, Section 3546, provides a statute of
15 repose that is to be strictly construed to cut off the
16 right to challenge a trust. And it is specifically
17 provided to be a short period so that the settlor can
18 learn within a reasonable period of time whether there
19 is going to be a challenge or not so that we don't get
20 into the situation that we unfortunately have here
21 where the settlor has passed away, a significant
22 amount of time has passed, and these issues become
23 more and more difficult of proof, the issues of
24 competence, undue influence, et cetera, that the

1 petitioner here would like to raise.

2 So the question is whether this was
3 timely filed. And, I, as I say, enforce it strictly
4 in favor of the trust. I must apply the time period
5 strictly in favor of the trust. But the language of
6 the statute itself is what has to govern here. And
7 we've spent some time discussing it. It provides that
8 receipt, not mailing, is the operative trigger that
9 runs the 120-day period. And it also provides that
10 delivery to the last known address gives rise to a
11 presumption of receipt absent evidence to the
12 contrary. And just how that operates has been a
13 matter of some discussion here.

14 The trust, at least initially, took
15 the position or perhaps still takes the position that
16 evidence to the contrary only goes to evidence as to
17 whether the last known address is the correct address.
18 The trust has also argued alternatively that proof of
19 delivery gives rise to the presumption and then
20 evidence of non-delivery can come in to rebut the
21 presumption. I think that is also the petitioner's
22 point of view.

23 But it seems to me under either of
24 those, the first issue I have to reach is not the

1 issue concerning the Fed Ex delivery in March, because
2 the Fed Ex delivery was on March 27th. If there is
3 receipt, either presumed receipt or actual receipt, on
4 that day, this matter is time-barred. If it is later
5 by even a day, the matter is not time-barred.

6 The first issue I have to reach is as
7 to whether there was delivery prior to that Fed Ex
8 delivery. And what the trust points to is the fact
9 that as of the 23rd of February, some 150 days before
10 this petition was filed, there were four mailings
11 made, each containing notice sufficient to satisfy the
12 statutory requirements. One was made by certified
13 mail, return receipt, to the home address of the
14 petitioner, one first class mail to that address, and
15 then two additional mailings, one certified mail and
16 one first class mail, to the post office box. And as
17 I read this statute, any of those would be sufficient
18 if I find they have been delivered.

19 Now, the petitioner has argued that
20 there is either an absence of proof of delivery or
21 that he has presented evidence to the contrary because
22 his testimony is that, despite being home at least
23 periodically during the over a month between the
24 mailing on the 23rd of February and the last day under

1 which his action would be tolled, which is the 27th of
2 March, he never received either of the first class
3 letters.

4 He's testified he's the only one who
5 had access to mail at his home. He lived alone. And
6 he testified he's the only one who had access to his
7 post office box. He also testified that he did not
8 receive either of two notices that the postal service
9 left at his home address indicating that he had a
10 certified mail delivery awaiting receipt, nor did he
11 receive either of the two certified mail notices left
12 at his post office box.

13 So the question is, given the fact
14 that there was first class mail that did not come
15 back, sent to the correct address, and that there were
16 more than 30 days for that to have been delivered
17 sufficient to toll this suit, whether I should find
18 that there has been delivery to the last known address
19 under the statute.

20 It seems clear to me that the evidence
21 is overwhelming here that there was delivery during
22 that time, prior to March 28. Why do I say that?
23 Because the only evidence that that wasn't delivered
24 is the testimony of the petitioner here. He obviously

1 has an interest in this matter, but that doesn't
2 necessarily make his testimony less than credible.
3 However, to believe him, I would have to believe that
4 the first class mail to his home went missing; the
5 notice of certified mail to his home went missing; the
6 first class mail sent to his post office box went
7 missing; the notice of certified mail to his post
8 office box went missing; two more notices of certified
9 mail, one to his home and one to the post office box,
10 went missing; all these things went missing. And yet
11 the certified mail obviously went through because we
12 have the returns. So it seems incredible to me that
13 all of these things can have gone missing, at least
14 three of them in a post office box to which no one but
15 the petitioner had access, and that they simply
16 disappeared.

17 More than that, he testified that the
18 Fed Ex, which we know was delivered to his house on
19 the 27th, also went missing. I don't find that to be
20 "evidence to the contrary of delivery," assuming that
21 phrase modifies the delivery requirement, because it's
22 simply not credible evidence. It's absolutely not
23 credible to me.

24 And I say that not taking into account

1 the evidence that was put on concerning past acts of
2 the petitioner because I don't need to consider that.
3 It just seems absolutely unbelievable to me that seven
4 separate mailings can have gone awry: four notices,
5 two first class mailings, and a Fed Ex; that all of
6 those simply disappeared based simply on the
7 interested testimony of the petitioner here.

8 Now, Mr. Carickhoff argues that the
9 petitioner can have had no motive not to accept these
10 and get the correct date by which he had to file suit,
11 because he's got a lot in interest here and,
12 certainly, he would not have been so careless as to
13 miss the date. This is a statute which, as I say, is
14 a statute of repose. I can't simply extend the
15 statute based on guesswork.

16 And it occurs to me that there may
17 be -- and I'm not finding there is -- but there may
18 have been an interest on the petitioner's part to
19 extend the time to the last possible date, which
20 would, in his view, have been the date by which there
21 was incontrovertible evidence, March 29th, when he was
22 hand-served, that he had notice, so as to lessen the
23 possibility that the settlor would be available to
24 disagree with his interpretation of the facts that led

1 to the trust. So it is not the case, I think, that
2 there could be no possible reasons for him to wish to
3 avoid having the notice period apply to him and the
4 statutory period beginning to run.

5 But in any event, I find no credible
6 evidence that the first class mail was not delivered
7 to this residence, to the extent that modifier
8 applies. To the extent the modifier doesn't apply, I
9 simply make a positive finding that given the two
10 first class mailings and the two contemporaneous
11 certified mailings, which we clearly know reached his
12 two addresses, that it is extremely likely that
13 delivery was made before the 27th of March.

14 And there is no evidence, credible
15 evidence, to the contrary with respect to actual
16 receipt because, as I've said, the scenario that has
17 been testified to here today by the petitioner is
18 simply not believable by me. It is simply not
19 credible. One mailing can go awry. One notice can go
20 awry. Three mailings and four notices simply don't
21 disappear. I don't believe it. I don't think there
22 is any credible testimony to it.

23 And for all those reasons, I find that
24 there was delivery by March 27th; that there is no

1 credible evidence to the contrary; and that there is
2 no credible evidence to the contrary that receipt did
3 not occur within the statutory period which would
4 prevent maintenance of this action. So for all the
5 reasons I have stated, that's my decision, counsel. I
6 appreciate your time and your attention.

7 Is there anything else we can
8 profitably do here?

9 MR. CARICKHOFF: No, Your Honor.

10 MR. KELLEHER: No, Your Honor.

11 THE COURT: All right. I thank you
12 all, and I appreciate your attendance and your
13 courtesy with me, and we're in recess.

14 (Court adjourned at 1:17 p.m.)

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CERTIFICATE

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3 I, JEANNE CAHILL, RDR, CRR, Official
4 Court Reporter for the Court of Chancery of the State
5 of Delaware, do hereby certify that the foregoing
6 pages numbered 3 through 130 contain a true and
7 correct transcription of the proceedings as
8 stenographically reported by me at the hearing in the
9 above cause before the Vice Chancellor of the State of
10 Delaware, on the date therein indicated.

11 IN WITNESS WHEREOF I have hereunto set
12 my hand at Wilmington, Delaware, this 4th day of
13 February, 2014.

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15
16 /s/ Jeanne Cahill

17 Official Court Reporter
18 of the Chancery Court
19 State of Delaware
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