



CUMMINGS & LOCKWOOD WINS SIGNIFICANT TRUST AND ESTATE LITIGATION CASE

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Cummings & Lockwood recently obtained a significant victory before the Connecticut Supreme Court in a case that will have long-lasting implications for trust and estate planning and litigation in Connecticut. On September 26, 2023, the Supreme Court officially released its decision in *Salce v. Cardello*. In the decision, written by Chief Justice Robinson, the Court officially recognized a public policy exception to the enforcement of in terrorem clauses (also known as no-contest clauses), which are commonly used in wills and trusts as a way to try to limit challenges by beneficiaries. A typical clause may provide that a beneficiary of an estate will be disinherited if he or she objects in any way to the way the estate is administered.

In *Salce*, there were identical in terrorem clauses in a will and a trust created by the mother of the defendant, Joan Cardello, which provided that a beneficiary would be disinherited if he or she objected “in any manner to any action taken or proposed to be taken in good faith” by the executor of the estate or trustee of the trust. Cardello objected in the Probate Court to two mistakes made by the trustee of the trust and executor of the estate in the preparation of the estate’s tax return, namely the inclusion of two non-estate bank accounts as assets of the estate and the failure to deduct from the value of the estate the amount of an outstanding mortgage on a property owned by the estate. The defendant’s brother, plaintiff John Salce, claimed that Cardello had violated the in terrorem clauses by raising these issues before the Probate Court and that she should be disinherited as a result.

Cummings & Lockwood Litigation Group Principal, William N. Wright, argued the case for Cardello in the Connecticut Supreme Court. In its majority decision, the Court found that although Cardello had technically violated the in terrorem clauses, enforcement of the in terrorem clauses under these circumstances would violate public policy. The Court held that “an in terrorem clause violates public policy when its application would interfere with the Probate Court’s exercise of its statutorily mandated supervisory responsibilities over the administration of an estate and its superintendence of the fiduciary’s statutory obligations.” Here, the Court found that there was a strong public policy interest in favor of the Probate Court ensuring that an estate’s tax return does not contain errors. The Court further held that “this statutory duty and public policy exception protects only those challenges to the actions of a fiduciary that are brought in good faith.”

The Court recognized that this exception runs against the normal rule that a person should be able “to dispose of his or her property he or she sees fit,” but held that this “prerogative...must yield to the Probate Court’s exercise of its power to protect the assets of the estate, which would be impinged if a beneficiary risks disinheritance by bringing, in good faith, potential tax return errors to the attention of the Probate Court.”

Justice D’Auria dissented, writing that “enforcing the in terrorem clauses in this case implicates no issues of public importance.” Justice D’Auria added: “I fail to see a public interest strong enough, clear enough, and important enough to overcome the testator’s own interest in placing a condition on the distribution of the trust’s proceeds to any and all beneficiaries, either to prevent family strife or to prevent dissipation of the estate.”

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The holding announced by the majority in *Salce* means that in terrorem clauses (or no-contest clauses) will not necessarily be strictly enforced in Connecticut in circumstances where the objecting beneficiary acts in good faith and there is a sufficiently strong public policy implicated. **Cummings & Lockwood Litigation Group Principal, Michael P. Kaelin**, assisted Attorney Wright on the appeal.

Below are PDFs of the two opinions:

[Salce v. Cardello.pdf](#)

[Salce v. Cardello Dissent.pdf](#)