



Texas Fiduciary Litigation Update: 2020-2021

DAVID F. JOHNSON

Winstead PC

dfjohnson@winstead.com

www.txfiduciarylitigator.com

300 Throckmorton St., Suite 1700

Fort Worth, TX 76102

817-420-8223



WINSTEAD PC | ATTORNEYS

Table of Contents

I.	Introduction.....	1
II.	Trust-Related Litigation	1
A.	Texas Court Does Not Have Personal Jurisdiction Over A Trustee Of A Trust With Texas Timber Rights	1
B.	Court Discusses De Facto Trustee Status In Texas	3
C.	Wife’s Fraudulent Transfer Claim Against Husband For Transferring Business Interests To Trust Failed Due To The Statute Of Repose	7
D.	Court Upheld A Release In A Family Settlement Agreement That Protected A Former Trustee’s Estate From Claims	9
E.	Court Reversed Temporary Injunction Against Co-Trustees	10
F.	Co-Trustees Who Managed A Texas Trust With A Texas Beneficiary Had Sufficient Contacts With Texas To Be Subject To A Texas Court’s Personal Jurisdiction.....	11
G.	Court Holds That Allegations Related To A Trustee’s Filing Of Suit Did Fall Under The Protection Of The Texas Citizens Participation Act, That A Trustee’s Actions To Modify Administrative Terms Did Not Trigger An In Terrorem Clause, But That Other Actions Unrelated To Suit Filings Were Not Protected From The Act	13
H.	Court Reversed Jury Trial And Determined That Settlement Agreement Dividing Real Property Owned By Trusts Was Not Ambiguous	16
I.	Court Held That The Issue Of Who Was Included In The Class Of Descendants Was Not Ripe Until The Current Beneficiary Dies	18
J.	Court Affirmed An Order Modifying A Trust Where The Complaining Beneficiaries Were Not Affected By The Modification, Where The Modification Was Not Contrary To The Purpose Of The Trust, And Where The Beneficiaries Waived Their Right To A Jury Trial.....	19

K.	Court Reverses Turnover Order That Disregarded A Trust Where The Trustee Was Not A Party To The Proceeding	20
L.	Court Held That The Term “Spouse” In A Trust Meant The Primary Beneficiary’s Wife At The Time Of The Trust’s Execution And Not A Subsequent Wife	21
M.	Court Holds That Venue For Suit Over Royalties By A Trustee Was Proper Due To Statutory Venue Provision Even Though The Suit Did Not Pertain To The Trust	22
N.	Court Holds That A Trustee Had The Power To Sell Trust Property To An Affiliate, Though Such An Act May Be In Breach Of A Duty	23
O.	Court Addresses Claims Against A Trustee Arising From The Management Of A Limited Partnership Interest	25
P.	Court Had Jurisdiction To Declare That The Majority Of Co-Trustees Had The Authority To Sell Trust Property And The Declaration Was Proper	29
Q.	Court Affirmed Arbitration Decision Because Multiple Documents Regarding The Resignation And Appointment Of A Trustee Constituted One Large Transaction	33
R.	Court Affirmed Summary Judgment For Successor Trustees Due To Clause Stating That They Had No Duty To Investigate Former Trustee’s Actions	35
S.	Appellate Court Held That Judgment Construing A Trust Was Enforceable And Had Effect When The Trust Was Later Challenged	38
T.	Texas Supreme Court Held That The Reformation Statute For The Rule Against Perpetuities Could Apply To An Instrument Created By A Corporation Because Corporations Can Create Inter Vivos Trusts	38
U.	Texas Supreme Court Holds That There Was No Trust Protecting Church Assets And A Withdrawing Faction Was Entitled To Those Assets	40

V.	Court Rejected A Trustee’s Objection To Personal Jurisdiction In His Individual Capacity But Affirmed The Objection In His Capacity As Trustee	42
III.	Probate Litigation	43
A.	Relative Had Standing To Assert Slayer Statute And Declaration Regarding Rights To Insurance Proceeds Over Victim’s Estate	43
B.	Texas Supreme Court Holds That A Beneficiary May Not Accept Any Benefit From A Will And Then Later Challenge The Will	44
C.	Court Holds That An Executor May Breach Duties In Making A Non-Pro Rata Distribution Of Assets	46
D.	Court Properly Admitted A Will To Probate Where The Evidence Did Not Establish Mental Incompetence Or Undue Influence As A Matter Of Law	49
E.	Administrator Of An Estate Has The Power To Seek The Partition Of Community Property	52
F.	Court Finds That Party Lacked Standing In A Probate Proceeding Where She Was Not An Informal Spouse	53
G.	Courts Rule On Jurisdictional Issues Involving Probate Orders	54
H.	Court Affirmed Trial Court’s Reformation Of A Will To Omit The Word “Personal” From The Term “Property” In A Residuary Clause	55
I.	Court Held That An Heir Of An Estate Who Released All Claims Against The Estate Via A Settlement Agreement No Longer Had Standing To Bring Suit.....	57
J.	Court Holds That Holographic Will Was Not Valid As There Was No Signature	59
K.	Court Affirmed Finding That An Applicant Was Not Equitably Adopted Where There Was No Evidence Of An Agreement To Adopt The Applicant.....	60

L.	Court Dismissed Appeal By Pro Se Individual Who Could Not Represent An Estate	61
M.	Court Reverses Receivership Order In Partnership Dispute Because The Probate Court Did Not Have Jurisdiction To Enter A Rehabilitative Receivership	62
N.	Court Affirmed Finding That Testator Had Capacity To Execute A Will, Was Not Unduly Influenced, And That The Appointment of Co-Executors Was Appropriate	63
O.	Court Granted Mandamus Relief To Reverse A Probate Court's Order Transferring A Case To A District Court	65
P.	What Did He Say? A Court Reverses A Statutory Probate Court's Order Because There Was No Record	65
Q.	Court Holds That Decedent's Residence Was Homestead That Was Exempt From Claims Against Her Estate	67
R.	Court Affirms Default Judgment Against A Foreign Corporate Fiduciary Because Service Was Proper Under The Texas Estates Code	68
S.	Court Held A Claim For An Heirship Proceeding Was Barred By Limitations Even Though A New Statute Provides For No Limitations For Heirship Proceedings.....	70
IV.	Business Divorce: Fiduciary Duties In Business Relations	71
A.	Court Affirms Jury Finding That A Manager Did Not Breach Her Fiduciary Duties	71
B.	Exiting Member of LLC May Still Owe Fiduciary Duties	72
C.	Court Affirms Denial Of SLAPP Motion Regarding Partnership Divorce Suit	72
D.	Partnership Agreement Was Invalid Where It Was Entered Into Between A Fiduciary And Principal And Was Otherwise Unfair And The Principal Did Not Owe Fiduciary Duties As A Partner Where There Was No Enforceable Partnership	74
E.	Court Held That Parties Did Not Form A Partnership Where Certain Express Conditions Precedent Were Not Met	76

F.	Court Found That There Was A Fact Question On Whether Officers Violated Fiduciary Duties By Obtaining A Side Bonus From A Purchaser When Negotiating A Sale Of The Company's Assets	77
G.	Bankruptcy Court Discussed The Fiduciary Duties Owed To A Limited Liability Company And Its Creditors By Its Manager	79
H.	Court Holds That Purchaser Of Partnership Property Was Not Liable For Aiding And Abetting A General Partner's Breach Of Fiduciary Duty	80
I.	Court Addressed A Shareholder Derivative Suit Against Officers And Directors For Self-Interested Transactions, Misuse Of Company Assets, And Dereliction Of Duties	81
J.	Court Correctly Dismisses Breach Of Fiduciary Duty Suit Against Employee For Reporting Owner's Criminal Behavior	83
K.	Court Affirms The Equitable Forfeiture Of A Manager's Partnership Interest Due To Breach Of Fiduciary Duty And Discussed Interesting Jury Instruction Issues	84
L.	Old College Friends Do Not Generally Owe Fiduciary Duties To Each Other	88
M.	Court Held That Manager Owed Limited Liability Company Fiduciary Duties And That A Derivative Action Could Still Be Pursued After The Company Dissolved	89
N.	Companies Should Know When Their Customers Die: Court Rendered Judgment For An Estate Who Was Sued By An Annuity Company For Overpayments	90
V.	Potpourri Issues	92
A.	Insurance Broker Does Not Ordinarily Owe Fiduciary Duties To A Client	92
B.	Court Holds That A Defendant Did Not Owe A Fiduciary Duty To An Affiliate's Licensee Because Its In-House Attorneys Did Not Have An Attorney/Client Relationship To The Plaintiff And There Was No Informal Confidential Relationship	93

C.	Court Holds That Bank Did Not Owe Fiduciary Duties To Depositor/Customer.....	95
D.	Court Holds That Insurers Do Not Generally Owe Fiduciary Duties To Insureds	96
E.	A Rose By Any Other Name Would Not Smell As Sweet: Court Holds That Texas Does Not Have An Aiding And Abetting Breach Of Fiduciary Duty Claim.....	97
F.	Court Reversed Breach Of Fiduciary Duty Judgment Due To A Lack Of Damages	98
G.	Attorney For Lender Did Not Owe Any Fiduciary Duties To Borrower As An Escrow Agent	99
VI.	Legislative Changes	100
A.	New Texas Bill Would Provide Release Relief To Trustees Who Deliver Adequate Accountings Without A Timely Objection By The Beneficiary.....	100
B.	Texas Legislature Extends The Rule Against Perpetuities To 300 Years For Trusts.....	101
VII.	Receiverships in Trust and Estate Litigation in Texas	104
A.	Introduction	104
B.	Receiverships for Estates: Texas Civil Practice and Remedies Code Chapter 64	105
C.	Receiverships for Trusts: Texas Property Code Section 114.008	111
D.	Common-Law Equity As A Basis for A Receivership	113
E.	Conclusion	117
VIII.	Use Of Equitable Defenses In Breach Of Fiduciary Duty Litigation	118
A.	Introduction	118
B.	Legal Basis for Equitable Defenses.....	118
C.	Recent Case Using Quasi-Estoppel to Forgive A Trustee's Breach of Duty	121

D. Potential Arguments To Defeat Equitable Defenses122

E. Conclusion125

IX. Conclusion.....125

I. Introduction¹

The fiduciary field in Texas is a constantly changing area. Over time, statutes change, and Texas courts interpret those statutes, the common law, and parties' documents differently. This paper is intended to give an update on the law in Texas that impacts the fiduciary field from a period of mid-2020 to mid-2021. The author has a blog, the Texas Fiduciary Litigator (www.txfiduciaryliterator.com), wherein he regularly reports on fiduciary issues in Texas.

II. Trust-Related Litigation

A. Texas Court Does Not Have Personal Jurisdiction Over A Trustee Of A Trust With Texas Timber Rights

In *JPMorgan Chase Bank, N.A. v. Campbell*, a member of a limited partnership sued other partners, including a trustee of a trust, to dissolve the partnership. No. 09-20-00161-CV, 2021 Tex. App. LEXIS 5001 (Tex. App.—Beaumont June 24, 2021, no pet. history). The trustee was listed as a nominal defendant, and the trustee filed claims seeking declaratory relief regarding it not having to participate in an arbitration proceeding. The plaintiffs then filed additional claims against the trustee including breach of fiduciary duty and for modification of the trust. The trustee filed a special appearance regarding those new claims, which the trial court denied. The trustee appealed.

The court of appeals first held that the trustee did not waive its right to objection to personal jurisdiction by answering the original suit and seeking declaratory relief. The court noted that “Rule 120a allows a party to file a special appearance in any severable action of a lawsuit.” *Id.* The court held: “the trust modification claim is a severable action, and that JPMorgan did not waive its challenge to the trial court’s exercise of personal jurisdiction over it by appearing in and seeking declaratory relief in the underlying arbitration suit.” *Id.*

The plaintiff did not rely on general jurisdiction to establish personal jurisdiction over the trustee and only asserted specific jurisdiction. The plaintiff has alleged that the trustee would not maintain the timber rights in the trust and would liquidate them. The court held that that fact did not support jurisdiction as it did not show how the trustee did business in Texas. The court then reviewed additional facts in the response to the objection to personal jurisdiction:

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In its response, Foster argues that JPMorgan has benefitted from the sale of timber located in Texas as a trustee. JPMorgan solicited business from the beneficiaries stating it would “maximize the value of the Texas property,” and holds the “responsibilities of an owner[.]” Foster states that JPMorgan participated in business meetings of Foster Management and sent representatives to Texas on “nearly half a dozen occasions[.]” meeting with Christy in her Conroe home.

Id. The court concluded that the pleadings alleged sufficient facts that required the trustee to file a sworn denial or its equivalent responding to its allegations that the trustee “does business” in Texas. But the court held that even though the plaintiffs alleged facts that overcame the first prong of the analysis, “that is not necessarily enough to satisfy due process as required under the long-arm statute.” The court held:

Asserting personal jurisdiction comports with due process when (1) the nonresident defendant has minimum contacts with the forum state, and (2) asserting jurisdiction complies with traditional notions of fair play and substantial justice.... For a Texas court to exercise specific jurisdiction, the nonresident defendant must have made minimum contacts with Texas by purposefully availing itself of the privilege of conducting business here, and its liability must have arisen from or be related to those contacts. “[T]here must be a substantial connection between those contacts and the operative facts of the litigation.” A “purposeful availing” inquiry involves three parts: (1) consideration of the defendant’s contacts with the forum, but “not the unilateral activity of another party or a third person[;]” (2) “the contacts relied upon must be purposeful rather than random, fortuitous, or attenuated[;]” and (3) the defendant must seek a benefit, advantage, or profit by availing itself of the jurisdiction. *Id.* at 575 (citations omitted). “In contrast, a defendant may purposefully avoid a particular forum by structuring its transactions in such a way as to neither profit from the forum’s laws nor subject itself to jurisdiction there.”

Id. The court agreed with the trustee’s position:

JPMorgan argues that it did not purposely avail itself in Texas because the Trust was not created or modified in Texas, it administers the Trust in Illinois and never in Texas, the beneficiaries live in California, and one beneficiary’s move to Texas does not demonstrate that it is doing business in Texas. JPMorgan also contends that although the timber is located in Texas, JPMorgan does not hold legal title to the land, but that “an interest in a partnership for the benefit of third parties does not constitute ‘purposeful activity.’”

Id. The court held that just because a trust beneficiary lived in Texas, and received distributions here, that did not establish jurisdiction over the trustee. The

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