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Enforceability of "No Contest" Clauses in Connecticut Wills and Trusts

Article By:

Matthew E. Smith

Kaitlyn A. Pacelli

Will a Connecticut court give any effect to a properly drafted "no contest" clause in a will or trust? A "no contest" clause, also known as a "forfeiture" or "in terrorem" clause, directs that a beneficiary forfeits his or her interest under a will or trust if the beneficiary takes certain actions in violation of the clause – most commonly, by contesting the validity of the will or trust or a specific action by an executor or trustee. Do these clauses have any power to dissuade the problematic heir?

A recent Connecticut Superior Court case provides a rare datapoint for practitioners. In *Salce v. Cardello,* No. CV176070740S, 2019 WL 6247662 (Conn. Super. Ct. Nov 6, 2019), the Superior Court in New Haven reaffirmed dusty Connecticut Supreme Court precedent on in terrorem clauses dating from 1917. The facts of *Salce* are unusual, including (1) an in terrorem clause that forbade any objections to actions taken by the fiduciary (who also was the drafting attorney) and (2) a beneficiary who did not contest the will but merely identified mistakes by the Executor/trustee in preparing the estate tax return. Notwithstanding those unusual facts, the case includes several notable statements of law that may provide guidance to practitioners more broadly. For example:

- The court in *Salce* reaffirmed the common expectation among Connecticut planners that in terrorem clauses are disfavored and construed strictly to prevent forfeitures
- However, the court stated more directly that "Connecticut recognizes the validity of forfeiture clauses in a will" and set forth an "exception where a contest is begun in good faith, and there is probable cause and reasonable justification" (citing *South Norwalk Trust Co. v. St. John*, 92 Conn. 168, 177 (1917))
- That standard – whether the beneficiary "acted in good faith, upon probable cause, and with reasonable justification" – governed the court's analysis; the court stated bluntly that it would *not* look to "a plain language reading of the in terrorem clauses as drafted in the will and trust in question"
- The court's ruling turned on "probable cause," a standard not typically seen in Connecticut probate courts or probate litigation, such as will contests

The court in *Salce* ultimately rejected the claim by one sibling that the other sibling had forfeited her inheritance because she had identified several errors in the estate tax return filed by the Executor and had called for a hearing on those errors. The court noted that the beneficiary had exhausted other potential options before seeking a hearing, including raising concerns with the fiduciary directly (to no avail) and consulting with separate counsel and experts on the tax issues. On those facts, the court found that the beneficiary had acted based upon “probable cause.”

The text and holding of *Salce* likely will reaffirm the belief of most estate planning attorneys in Connecticut that in terrorem clauses are not a surefire solution, and that clients and planners should continue to proceed carefully in drafting documents to dissuade or disinherit problematic heirs. *Salce* also provides lessons for the beneficiary considering a claim or objection: a beneficiary should tread carefully given that “Connecticut recognizes the validity of forfeiture clauses,” but the beneficiary may have an an opportunity to raise objections without triggering the clause if the beneficiary can fit within the exception of good faith, probable cause and reasonable justification.

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