

Texas Supreme Court Affirms The Release In A Family Settlement Agreement That Protected A Former Trustee's Estate From Claims And Discusses the "Full Knowledge" Requirement For Enforcing Releases In Fiduciary Relationships

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[In *Austin Trust Co. v. Houren*, beneficiaries of a trust executed a family settlement agreement with the former trustee's estate. No. 21-0355, 2023 Tex. LEXIS 285 \(Tex. March 23, 2023\).](#) After the settlement agreement was executed, one of the parties sued the former trustee's estate for over a \$37 million alleged debt. The former trustee was the primary beneficiary and distributed the \$37 million to himself over a long period of time and categorized the payments as accounts receivable on software program. The beneficiaries alleged that this was a debt due to the entries. The former executor's estate alleged that the entries simply showed distributions, not loans. The beneficiaries asserted claims in the alternative, that the trustee's estate owed a debt and that even if it was not a debt that the distributions were inappropriately large.

The trustee's estate filed a motion for summary judgment based on the release in the settlement agreement, which the trial court granted. The court of appeals affirmed, finding that the release's language was sufficiently broad to cover these claims and that the release was effective. *Id.* (*Austin Trust Co. v. Houren*. No. 14-19-00387-CV, 2021 Tex. App. LEXIS 1955 (Tex. App.—Houston March 16, 2021, pet. granted)). The Texas Supreme Court affirmed the lower courts.

The Court first addressed the scope of the release in the family settlement agreement and stated:

The parties agreed to release "the other Parties . . . with respect to any and all liability arising from any and all Claims . . . in connection with the other Parties . . . and the Covered Activities." "Claims" is broadly defined as "any and all obligations, causes of action, suits, promises, agreements, losses, damages, charges, expenses, challenges, contests, liabilities, costs, claims, and demands of any nature whatsoever, known or unknown, which have now accrued or may ever accrue in the future." The released claims include, but are not limited to, "claims of any form of sole, contributory, concurrent, gross, or other negligence, undue influence, duress, breach of fiduciary duty, or other misconduct by the other parties, the professionals, or their affiliates." And as noted, "Covered Activities" includes claims based on the "operation, management, or administration of the Estate . . . or the Trusts"; "the

distribution (including, but not limited to, gifts or loans) (or failure to distribute) of any property or asset of or by [Bob], the Estate, the Companies, or the Trusts”; and “any Claims related to, based upon, or made evident in the Disclosures” or the facts stated in Article I of the Agreement.

Id. The Court held that this was broad enough to cover any claim that the former trustee’s estate had a debt or that the trustee made inappropriate distributions to himself. The plaintiff alleged that a separate provision dealing with paying of estate debts was the applicable provision and meant that the estate still had to pay back the \$37 million. The Court disagreed:

Read in isolation, Paragraph 3.11’s requirement that Houren pay “all” debts of and claims against the Estate does not distinguish between the source of those claims. But Houren argues that this paragraph, when read within the context of the entire Agreement, does not require payment of claims and debts that (1) are asserted by parties to the Agreement and (2) otherwise fall within the scope of the Agreement’s releases in Article IV. We agree with the result Houren urges because other provisions within the Agreement confirm that Paragraph 3.11 was not intended to override the Article IV releases.

Id.

In the FSA, the parties agreed that the releases contained therein generally applied to “any and all liability arising from any and all Claims,” as defined in the FSA, against the other parties or relating to “Covered Activities,” as defined in the FSA. The released claims included, but were not limited to “claims of any form of sole, contributory, concurrent, gross, or other negligence, undue influence, duress, breach of fiduciary duty, or other misconduct by the other parties, the professionals, or their affiliates[.]” The FSA defined “Covered Activities” as (1) “the formation, operation, management, or administration of the Estate, . . . or the Trusts,” (2) “the distribution (including, but not limited to, gifts or loans) (or failure to distribute) of any property or asset of or by the Mayor, the Estate, . . . or the Trusts,” (3) “any actions taken (or not taken) in reliance upon this Agreement or the facts listed in Article I,” (4) “any Claims related to, based upon, or made evident in the Disclosures,” and (5) “any Claims related to, based upon, or made evident in the facts set forth in Article I” of the FSA. We conclude that this language specifically and unambiguously released appellants’ claims asserted in their First Amended Counterclaim.

Id.

The Court then addressed the validity of the releases in the family settlement agreement. The Court discussed that a fiduciary has a duty to make disclosures to a beneficiary for a release to be enforceable:

A family settlement agreement is an alternative method of estate administration in Texas that is a favorite of the law. Generally, settlement agreements are enforceable in the same manner as any other written contract. However, when the agreement purports to release claims against one who owes the other party a fiduciary duty, the policies of freedom of contract and encouragement of final settlement agreements must be balanced against the duties of care and loyalty owed by the released fiduciary. Under longstanding common law, trustees and executors owe the beneficiaries of a respective trust or estate a fiduciary duty of full disclosure of all material facts known to them that might affect the beneficiaries' rights. With respect to agreements releasing a fiduciary from liability, the duty includes ensuring that the beneficiary "was informed of all material facts relating to the release." The condition on release agreements involving trustees is reflected in the Texas Trust Code, which provides that "[a] beneficiary who has full legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations."

Id.

The Court next held that the beneficiaries of the trust were not a beneficiary of the estate, and that therefore, the executor of the trustee's estate had no duty to disclose facts to those parties. The court held:

We have described an estate executor as "trustee of the property of the estate, . . . subject to the high fiduciary standards applicable to all trustees." The executor's duty runs to the estate and its beneficiaries. The duty is reflected in the Estates Code, which "vests" a decedent's estate immediately in his devisees or heirs at law, subject to payment of the decedent's debts, and requires the executor or administrator to "recover possession of the estate and hold the estate in trust to be disposed of in accordance with the law." Here, it is undisputed that no Estate assets passed by devise to the First Marriage Children, either directly or via the respective Descendants Trusts of which they were beneficiaries, under Bob's will. Although Bob exercised the testamentary power of appointment granted in Elizabeth's will to direct the Marital Trust's remaining assets to pass to the trustee of the Descendants Trusts, those assets were not probate assets that passed through the Estate, and Houren was not responsible for taking possession or disposing of them... Because the Beneficiary Parties had an interest in only nontestamentary property at the time the Agreement was signed, they did not qualify as beneficiaries of Bob's estate to whom Houren owed a corresponding fiduciary duty. Rather, any duty Houren owed to the Beneficiary Parties as executor of the Estate was no different from the duty he owed to any other unsecured creditor.

Id. The Court then held that an executor owes no fiduciary duties to estate creditors:

[T]o the extent Austin Trust argues that an independent executor owes a fiduciary duty to the estate's creditors, we reject that contention. We have never recognized such a relationship, nor does the Estates Code. As the Fourteenth Court of Appeals persuasively explained in *FCLT Loans, L.P. v. Estate of Bracher*, while an independent executor has various

statutory duties regarding the approval and payment of proper claims against the estate,¹² Link to the text of the note the language of those provisions gives no indication that the executor holds the estate's assets in trust for the benefit of creditors or otherwise owes them a fiduciary duty.

Id. The Court therefore affirmed the lower courts' summary judgment on the debt claim as that claim did not involve fiduciary duties:

In the absence of a fiduciary relationship between Houren as executor and the Beneficiary Parties as creditors, we reject Austin Trust's argument that "full disclosure" is the standard for evaluating the releases of the debt claim. Accordingly, we evaluate their enforceability using the same standard applicable to any other contract. In this Court, Austin Trust offers no contractual grounds to invalidate the releases apart from the absence of full disclosure. The court of appeals therefore properly affirmed the trial court's summary judgment on the debt claim.

Id.

The Court then turned to the breach of fiduciary duty claim, that the decedent breached duties by distributing assets that he was not entitled to distribute and whether that claim was effectively released. The Court first held that a beneficiary's consent is effective when it is made with full knowledge:

In *Slay v. Burnett Trust*, we confirmed the "established rule" governing when a beneficiary's "consent to an act of his trustee which would constitute a violation of the duty of loyalty precludes him from holding the trustee liable for the consequences of the act." We explained that such consent does not foreclose liability "unless it is made to appear that when he gave his consent the beneficiary had full knowledge of all the material facts which the trustee knew." Further, releases of liability for certain fiduciaries, including trustees, are governed by statute. Under the Trust Code, "[a] beneficiary who has full legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations." Tex. Prop. Code § 114.005(a).

Id. The Court then discussed the court of appeals looking at six factors to determine whether the beneficiaries' releases were effective:

Without addressing Section 114.005, the court of appeals here identified six "factors" it considered in holding that the releases were valid: (1) the terms of the contract were negotiated rather than boilerplate, and the disputed issue was specifically discussed; (2) the complaining party was represented by legal counsel; (3) [*24] the negotiations occurred as

part of an arms-length transaction; (4) the parties were knowledgeable in business matters; (5) the release language was clear; and (6) the parties were working to achieve a once and for all settlement of all claims so they could permanently part ways. These factors were gleaned from this Court's precedent governing when a settlement agreement's disclaimer of reliance on the parties' representations forecloses one of the parties from claiming the agreement was fraudulently induced and thus unenforceable...

This Court has not addressed whether the Forest Oil factors—which assist courts in evaluating whether a disclaimer of reliance in a settlement agreement defeats a claim of fraudulent inducement—should be used to assess the validity of a release of a breach-of-fiduciary-duty claim. Nor does it appear that any Texas court, including the court of appeals here, has addressed how those factors should interact with the established common-law requirements for trustee releases we adopted in *Slay*. But we need not definitively answer that question in this case because (1) Section 114.005 of the Trust Code expressly enables beneficiaries to consent to the releases at issue when they have “full information” and (2) as discussed below, we hold that the Marital Trust's beneficiaries had such “full information” when they executed the Agreement.

Under the Trust Code, a “trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust, including . . . any loss or depreciation in value of the trust estate as a result of the breach of trust.” However, as noted, “[a] beneficiary who has full legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability that would otherwise be imposed on the trustee by this subtitle, including liability for past violations.” Here, the Beneficiary Parties agreed to release Houren, as executor of Bob's estate, from liability for Bob's alleged breach of the Marital Trust, thereby triggering Section 114.005's conditions.

Id. The Court held that Section 114.005 did apply in this case as it applies to a release of a deceased trustee's estate. The Court also assumed without deciding that the requirement of full knowledge cannot be waived by a beneficiary. The Court reviewed the evidence and held that it proved that the beneficiaries did have sufficient knowledge to enforce the release:

Section 114.005 does not define “full information,” but we presume the Legislature enacted the provision “with full knowledge of the existing condition of the law and with reference to it.” In the context of Section 114.005, we see nothing indicating that the Legislature intended “full information” to mean something other than we have required under the common law—specifically, “full knowledge of all the material facts which the trustee knew.” Both Section 114.005 and *Slay* echo the Restatement (Third) of Trusts, which, in turn, gives color to the phrase “acting on full information.” According to the Restatement, which we find persuasive:

It is not necessary that the trustee inform the beneficiary of all the details of which the trustee has knowledge; but, because of the strict fiduciary relationship between trustee and beneficiary, a trustee who would rely on a beneficiary's consent, ratification, or release normally has the burden of showing that the beneficiary (or his or her representative) was sufficiently informed to understand the character of the act or omission and was in a position to reach an informed opinion on the advisability of consenting, ratifying, or granting a release.

...

Whether such “full information” has been provided necessarily depends on the facts and circumstances of each case. The Restatement and our precedent clarify the purpose behind the full-information requirement, which is to ensure the beneficiary makes a meaningful and informed decision before signing away any rights he may have. Knowledge of the full scope, extent, and details of the acts the beneficiary is releasing, while certainly preferable, is not required so long as he is informed enough to understand the nature and consequences of what he is giving up. We hold that the Beneficiary Parties were sufficiently informed to understand the character of the act they were releasing and were in a position to reach an informed opinion on the advisability of agreeing to the release. This conclusion is supported by both the parties’ acknowledgments in the Agreement itself as well as the circumstances surrounding its execution.

Id. The Court concluded:

In sum, while the sufficiency of disclosure will depend on the facts and circumstances of each case, the underlying legal principle remains constant: a beneficiary has full information when he is in a position to make a meaningful and informed decision about releasing a trustee from liability or, said differently, when he is informed enough to understand the nature and consequences of what he is releasing. Here, the Beneficiary Parties were fully aware that they were waiving the right to challenge the propriety of any of the prior distributions from the Marital Trust, even if they did not know the exact amount, in exchange for an expedited distribution of the trust’s remaining assets.

Id. Therefore, the Court affirmed the lower courts’ judgment for the former trustee’s estate due to the release in the family settlement agreement.

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National Law Review, Volume XIII, Number 86

Source URL: <https://natlawreview.com/article/texas-supreme-court-affirms-release-family-settlement-agreement-protected-former>