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A) Whether the court should grant Betty's petition to dissolve the Farm Trust

Charitable trust

A testamentary trust is a trust that is created by a valid will. A charitable trust is a specific type of trust that has the following requirements: 1) testamentary intent to create a trust; 2) property 3) unascertainable beneficiary; 4) a charitable purpose; and 5) the formalities of a trust (i.e., a trustee who has fiduciary duties to a beneficiary who is a different legal entity from the trustee). A charitable trust's purpose can either be general or specific in nature.

Here, Grandma created a valid testamentary trust with the Farm trust through her will. Here, there is testamentary intent to create a trust because Grandma died with a valid will that created the Farm Trust. Here, there is property in the trust because Grandma requested that the farm be used as the trust's assets. Here, there is not an ascertainable beneficiary because Grandma left the farm to the City for the general benefit of the City. However, while a charitable trust permits the use of an unascertainable beneficiary, it is fine for the trustor to identify an ascertainable beneficiary. Here, there is a charitable purpose for the trust because Grandma created the trust for the general benefit of the city. However, there also appears to be a specific purpose for the charitable trust because Grandma preferred that the farm be used in perpetuity as an active organic-certified farm, on which no chemical pesticides were to be used. Finally, there are the formalities of a trust because Bank was named as the trustee of the Farm Trust.

Thus, there is a valid charitable trust.

Cy Pres

A charitable trust's purpose can either be general or specific in nature. If the specific charitable purpose of the charitable trust no longer is feasible or attainable, then a court can use the doctrine of cy pres to try to align the charitable purpose of the trust with the original intentions of the settlor. If a court finds that it is unable to apply the doctrine of cy pres (i.e., cannot meet the original trustor's intentions), then the charitable trust becomes a resulting trust (a trust that results from a revocable trust that no longer can serve its purpose) and the resulting trust's assets are to be distributed back to the trustor or to the trustor's estate.

Here, there is a specific charitable purpose because Grandma wanted the Farm to be an active organic-certified farm for perpetuity. Here, there is a danger that this specific charitable purpose is no longer feasible or attainable because Grandma's farm lost its organic certification but continued to operate as a farm. Moreover, Bank intends to allow City to use pesticides on the farm. Here, the court would try to apply the doctrine of cy pres to ensure that the farm remains organic and no chemical pesticides are used because that runs counter to the original trustor's (Grandma's) intent for the Farm Trust. Here, it seems like Bank did not purposefully intend for this to happen. However, because it does not seem like the court can stop Bank from allowing City to use pesticides, the court would find that it could not honor the original trustor's intent. Consequently, the Farm trust would become a resulting trust and the resulting trust's assets would be distributed back to Grandma's estate. Meaning, because the court cannot apply the doctrine of cy pres to align Grandma's intent for the farm with the reality of the farm's future use, the court will grant Betty's petition to dissolve.

Thus, the court will grant Betty's petition to dissolve the Farm trust. And, because the trust fails, its assets--the farm--will be given to the children (Darcy) of Betty.

B) Whether the court should grant Betty's petition to dissolve the Ancestry Trust

Trustee's fiduciary duties

A trustee may be a beneficiary of a trust if the trustee owes fiduciary duties to other beneficiaries. With a revocable trust, the trustee owes fiduciary duties to the trustor. If a trust is irrevocable, then the trustee owes fiduciary duties to the beneficiaries of the trust. A trustee's fiduciary duties include the duty of loyalty (i.e., the fiduciary must act in the best interests of the trustor and/or beneficiaries), the duty of impartiality (the trustee is to treat each trust beneficiary fairly and equitably given their unique needs), and the duty of care (the trustee must manage the trust property with the care of someone in a similar situation and how an individual would manage their own assets). Income is the money generated off the investments of a trust's principal assets (the assets that originally funded the trust). A trustee who uses trust assets for his own personal reasons will be liable for the misuse of trust assets as a violation of his fiduciary duties. A beneficiary of a trust may bring an action to dissolve the trust upon the trustee violating one or more of his fiduciary duties.

Here, there is a trustee who is also a beneficiary because Grandma named Tom as the trustee of the Ancestry Trust and also named Tom as a beneficiary of the trust. Here, there is an irrevocable trust because Grandma created the Ancestry Trust through her valid will and the trust is irrevocable because Grandma (the trustor) is no longer alive to revoke the trust.

Here, there is a trustee who failed to act in the best interests of the trust's beneficiaries because Tom wrote a check from the assets of the Ancestry Trust to pay off his large debt for medical expenses. Meaning, Tom's decision resulted in less trusts assets that were to be evenly distributed to Tom, Betty, and Carol. Thus, Tom violated his duty of loyalty to the trust.

Here, there is a trustee who did treat each trust member fairly and equitably given their unique needs because Tom wrote a check from the Ancestry Trust assets to pay off his large debt for medical expenses. Meaning, although Tom acted in his own interest through this action, it could be argued that Tom's decision treated him as a beneficiary fairly and equitably given his unique need of having to pay off a large debt for medical expenses. Thus, Tom likely did not violate his duty of impartiality.

Here, there is a trustee who managed the trust assets in a similar way as someone would in a similar situation because Tom recognized that one beneficiary (himself) needed extra assistance from the trust and a person in a similar situation managing a trust would likewise give that beneficiary the trust assets needed to resolve his medical bills. Thus, Tom likely did not violate his duty of care.

However, as noted above, because Tom's action breached his duty of loyalty by ensuring the trust's beneficiaries did not receive equal shares of the trust's income, Betty would be able to bring a petition to have the Ancestry Trust resolved. This is also true because Tom failed to repay the Ancestry Trust before he died for the funds he took out.

Thus, a court would likely grant Betty's petition to dissolve the Ancestry Trust and its assets would be given to Darcy.

C) Whether the court should order Tom's estate to repay the Ancestry Trust

A trustee may be personally liable for the contracts entered into during administration of a trust, as well as for any torts committed during administration of the trust. Generally, a trustee who uses trust assets for his own personal use during trust administration will be charged with paying that money back to the trust. If the trustee is no longer alive but there is an outstanding debt owed to the trust, then the decedent trustee's estate will be ordered to repay the debt.

Here, there is a trustee who personally entered into a contract during trust administration because Tom incurred a large debt for medical expenses and was contractually obligated to repay the debt owed to his medical service provider. Here, there is a trustee who used trust assets for his own personal use during trust administration because Tom wrote himself a check from the Ancestry Trust's assets to pay off his debt to his medical service provider. Moreover, here there is a trustee who owed a debt to the trust but died before he could repay it because Tom owed the Ancestry Trust the funds he used to cover his medical expenses and then died prior to reimbursing the Ancestry Trust with those funds. Thus, there is a decedent trustee who owed a debt to the trust.

Therefore, the court should order Tom's estate to repay the Ancestry Trust--or, more precisely, to pay it to Darcy who would receive the assets of the Ancestry Trust.

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