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SJC-10456

BANK OF AMERICA, N.A., & another,¹ trustees²
vs. W. BRUCE DUDLEY & others.³

November 18, 2009.

Trust, Reformation. Taxation, Trust.

The trustees of The Esther Eberstadt Baldwin Trust -- 1974 commenced this action in the Probate and Family Court seeking reformation of the trust to authorize division of the trust into two subtrusts in order to minimize Federal generation skipping transfer (GST) taxes. The defendants are certain named beneficiaries, who have all assented to the proposed reformation, as well as the Commissioner of Internal Revenue, who has neither appeared nor participated in the case. A judge in the Probate and Family Court, after allowing the trustees' motion to waive appointment of a guardian ad litem, reported the case to the Appeals Court. We granted the trustees' application for direct appellate review.

We have reviewed the record and are satisfied that the proposed reform, which would create one subtrust that is exempt from the GST tax and one subtrust that is subject to the tax, is consistent with the settlor's intent and should be allowed as a matter of Massachusetts law. The settlor appears to have been interested in minimizing tax liability and maximizing the assets to be received by the beneficiaries. "This type of trust reform is relatively minimal and represents a mere 'fine tuning of the administration of the trust[] . . . in order to reduce, if not eliminate, the application of the GST tax.'" Fleet Nat'l Bank v.

¹ Bradley R. Cook.

² Of The Esther Eberstadt Baldwin Trust -- 1974.

³ Faye A. Dudley, B. Dane Dudley, Kathryn Harrington, Christine D. Gilbert, Kevin A. Dudley, John P. Dudley, Katherine R. Dudley, Alexander J. Gilbert, and the Commissioner of Internal Revenue.

Kahn, 438 Mass. 1004, 1004 (2002), quoting Fleet Nat'l Bank v. Mackey, 433 Mass. 1009, 1010 n.11 (2001). For essentially the same reasons, we allow the reform.

The case is remanded to the Probate and Family court where a judgment shall be entered reforming The Esther Eberstadt Baldwin Trust -- 1974 to authorize division of the trust into exempt and nonexempt subtrusts. The court shall enter such further provisions in the judgment as are appropriate to fulfil the purposes of the division.

So ordered.

Mark E. Swirbalus & Leiha Macauley, for the plaintiffs,
submitted a brief.