

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of June, 2017.*

Smith Mountain Building Supply, LLC, Appellant,

against Record No. 160949  
Circuit Court No. CL14-288

Shirley A. Craven, Individually and as Trustee  
of the Adkins Life Insurance Trust, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Henry County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

In August 2007, Smith Mountain Building Supply, LLC (“SMBS”) obtained a judgment against Ken Adkins for \$83,690.23, plus interest and attorney’s fees. Ken was a beneficiary of a life insurance trust created by his father, Bill. Bill died in July 2007. Under the terms of Bill’s trust agreement, his children were not entitled to divide and distribute the trust fund until the death of his wife, Irene. In November 2008, SMBS obtained a lien on Ken’s future distribution to satisfy the 2007 judgment. Irene died in November 2013. Shirley A. Craven and Bruce A. Adkins, the surviving co-trustees of the trust, thereafter filed an amended complaint seeking a declaratory judgment that SMBS’s lien was no longer valid because Ken was not entitled to any distribution from the trust. They alleged that the trust fund was valued at approximately \$1.6 million, to be divided equally among Bill’s five children. However, they alleged that a provision of the trust agreement required any beneficiary’s share to be adjusted for any “disproportionate distribution” made during Bill’s life, which included any obligation held by Bill’s estate or the

trust.<sup>1</sup> They further alleged that in December 2006, Ken executed a note in the principal amount of \$953,961.23, plus interest, as loan proceeds from Bill, which Ken had never repaid. They argued that this obligation exhausted Ken's share of any distribution from the trust.

SMBS filed a counterclaim alleging that, at the time of Irene's death, (1) the note was not "held by" the estate or the trust and (2) Ken was not "liable" to repay it. SMBS alleged that the note had been assigned to Irene in her personal capacity for estate tax purposes, so at the time of her death the note was "held by" only her. Further, the note had been discharged in a May 2012 Chapter 7 bankruptcy proceeding by Ken and his wife, so Ken was not "liable" for it at the time of Irene's death.

After a hearing, the circuit court indicated in two opinion letters and a memorandum that it would decide the case without evidence by interpreting the language of the trust agreement. SMBS responded by filing a motion for trial in which it proffered five exhibits and a deposition transcript. The court responded by entering an order admitting the exhibits and transcript as evidence.

The court thereafter entered a final order ruling that the 2006 note was an obligation payable to Bill's estate at the time of his death in 2007. It ruled that under the terms of the trust agreement, the loan therefore constituted a disproportionate distribution to Ken, and that neither the subsequent transfer of the note to Irene nor Ken's bankruptcy was relevant. Accordingly, Ken's entire share of the trust fund was exhausted and nothing remained for SMBS to attach.

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<sup>1</sup> Article IV(D)(1) provides that "Upon the death of Irene M. Adkins, or if she predeceases the Grantor, upon his death, the Co-Trustees shall divide the Trust Fund, after adjustment for any disproportionate distributions of principal to any of the Grantor's children previously made . . . ." Article IV(D)(2) discusses the adjustment for disproportionate distributions, providing that "any obligations *held by* the Grantor's estate or this Trust Fund shall be allocated to and charged against the individual share of the child who is *liable* therefor." (Emphasis added.)

The court further denied SMBS' request for trial, incorporating its two opinion letters and memorandum to explain that the terms of the trust agreement were clear and unambiguous so no further factual development was necessary. SMBS appeals.

The Court interprets a trust agreement de novo because it is in the same position as the trial court to read the words used within the four corners of the instrument. *Riverside Healthcare Ass'n v. Forbes*, 281 Va. 522, 528, 709 S.E.2d 156, 159 (2011); *see also Schuiling v. Harris*, 286 Va. 187, 192, 747 S.E.2d 833, 836 (2013).

In considering the language of a trust agreement, the intent of the grantor controls. [The Court] initially ascertain[s] the grantor's intent by reviewing the language that the grantor used in the trust instrument. If that language is clear and unambiguous, [the Court] will not resort to rules of construction, and [it] will not consider the grantor's apparent reasoning or motivation in choosing the particular language employed. Instead, in such instances, [the Court] will apply the plain meaning of the words that the grantor used.

*Harbour v. Suntrust Bank*, 278 Va. 514, 519, 685 S.E.2d 838, 841 (2009) (internal citations omitted).

Having reviewed the language used in Article IV(D)(1) and (2) relating to disproportionate distributions, the Court concludes that it is clear and unambiguous. Under the facts present here, the relevant language of subdivision (1) provides that "Upon the death of Irene . . . , the Co-Trustees shall divide the Trust Fund, after adjustment for any disproportionate distributions . . . previously made . . . ." This language means that the adjustment for disproportionate distributions occurs in conjunction with the division and distribution of the trust fund. Because Irene survived Bill, the division and distribution, and therefore the adjustment for disproportionate distributions, could not occur before her death.

Subdivision (2) provides that for the purpose of calculating disproportion distributions, "obligations held by [Bill's] estate or this Trust Fund shall be allocated to and charged against

the individual share of the child who is liable therefor.” This language imposes two criteria for an obligation to qualify as a disproportionate distribution. First, the obligation must be held by Bill’s estate or the trust. Second, the affected child must be liable for the obligation. Under subdivision (1), the time of Irene’s death is the time for determining whether a specific obligation qualifies as a disproportionate distribution under these criteria.

SMBS’s proffer includes an assignment of Ken’s note from the trust to Irene in her individual capacity in June 2009. The proffer also includes a copy of an order entered May 7, 2012 by the United States Bankruptcy Court for the Western District of Virginia granting Ken a discharge under 11 U.S.C. § 727. These exhibits were admitted as evidence by the circuit court’s March 22, 2016 order. The parties do not dispute that Ken’s indebtedness under the note was included in the discharge. The evidence in the record therefore establishes that at the time of Irene’s death, the note did not fulfill either of the criteria necessary to qualify as a disproportionate distribution under Article IV(D) (2) of the trust agreement. Because of the assignment, the note was not then “held by” Bill’s estate or the trust. Because of the bankruptcy discharge, Ken was not then “liable” for it.

Accordingly, the circuit court erred by ruling that the note was a disproportionate distribution and invalidating SMBS’s lien on Ken’s share of the trust fund.<sup>2</sup> The parties agreed at oral argument that the trust fund comprises appreciating assets and that its value, and the value of each beneficiary’s share, may have grown during the proceedings below and on appeal. The

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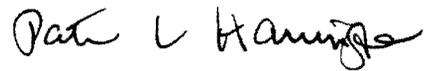
<sup>2</sup> Having concluded that the trust agreement is clear and unambiguous, the Court will not reach the circuit court’s alternative reasoning based on the early vesting doctrine. The early vesting doctrine is a rule of construction. *Harbour*, 278 Va. at 520, 685 S.E.2d at 841. Courts do not resort to such rules when construing an unambiguous document. *Id.* at 519, 685 S.E.2d at 841.

Court therefore reverses the judgment of the circuit court and remands for further proceedings consistent with this order.

This order shall be certified to the Circuit Court of Henry County.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Pat L. Hammonds". The signature is written in a cursive style with a large initial "P" and "H".

Clerk