2026 IL App (1st) 252507-U
No. 1-25-2507
Order filed November 13, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, SIXTH DIVISION

MARILYN A. MCGARRY, LISA MCGARRY, and DANIEL F. MCGARRY, III, as Co-Trustees of the Daniel F. McGarry Trust, Plaintiffs-Appellees,

v.

PATRICIA EVANKO, Defendant-Appellant.

PATRICIA EVANKO and FOUNTAIN VIEW JOINT VENTURE, an Illinois joint venture, Counter-Plaintiffs-Appellants,

v.

MARILYN A. MCGARRY, LISA MCGARRY, and DANIEL F. MCGARRY, III, as Co-Trustees of the Daniel F. McGarry Trust, Counter-Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
Honorable Joel Chupack Judge, Presiding.
No. 2022 CH 001204

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Hyman and Evans concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm summary judgment for appellees because the decedent's joint venture interest was validly transferred during his lifetime to a trust created for the benefit of his immediate family. Appellants therefore had no right to purchase the interest under the joint venture agreement.

¶ 2 In 1986, four siblings created a joint venture. By 1998, only Daniel McGarry and his sister Patricia remained as joint venturers. In 2020, Daniel was deemed disabled under his Florida revocable trust. His wife Marilyn became successor trustee, and later their children, Lisa and Daniel III, were appointed co-trustees. Marilyn, acting under a power of attorney, transferred Daniel's joint venture interest to his trust without notice to Patricia. Daniel passed away approximately a year later. A month after his passing, Patricia notified Daniel's family of her intent to buy out Daniel's joint venture interest, but they refused to sell.

¶ 3 Marilyn, Lisa, and Daniel III filed a declaratory judgment action seeking confirmation that the trust owned Daniel's interest and that Patricia had no right to compel a sale. Patricia and the joint venture counterclaimed, arguing the transfer was ineffective and that Daniel still owned the interest at his death. The court granted summary judgment for the McGarrys. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Joint Venture Agreement

¶ 6 In 1986, siblings Daniel McGarry, Patricia Evanko, Mary Cone, and Ann Kegel created the Fountain View Joint Venture to own and operate an apartment complex held in land trust in Indiana. Section 17 of the Fountain View Joint Venture Agreement (agreement) provides:

> "*Except for transfers which may be made by any Joint Venturer to his immediate family (defined to mean parent, spouse, brother, sister, children, or grandchildren, or Trusts created for the benefit of any such parties),* no Joint Venturer shall sell, transfer, assign, exchange, or otherwise dispose of all or any part of his Joint Venture interest without the written consent of all of the other Joint Venturers unless the party desiring to make such disposition *** shall have first offered said interest to the other parties hereto." (Emphasis added.)

¶ 7 Upon transfer or assignment, section 17C provides that "[t]he transferee or assignee of a Joint Venture interest shall execute and acknowledge such other instrument or instruments as the other parties hereto may deem necessary to effectuate the admission of the new party as a Joint Venturer" and "shall deliver to the Joint Venture a written acceptance and adoption of all of the terms and provisions of this Joint Venture Agreement as the same may be amended." The agreement sets no deadline for execution or delivery, and section 17C, unlike section 17B, does not expressly address transfers to immediate family.

¶ 8 Section 17F states that in the event of death or adjudication of incompetency of Daniel, Mary, Ann, or Patricia, the remaining joint venturers "shall have the option to purchase his entire interest in the Joint Venture" within one year immediately following death or incompetency by sending notice to their personal representative, heirs, or next of kin. If the surviving or remaining joint venturers do not elect to purchase the deceased or incompetent joint venturer's interest, the deceased or incompetent joint venturer's estate "shall succeed to the Joint Venture interest *** and shall be deemed an assignee." Section 18 of the original agreement outlines a formula and procedure for purchasing a deceased or incompetent joint venturer's interest upon election of the remaining joint venturers.

¶ 9 In 1992, Mary died, and Daniel, Patricia, and Ann purchased her joint venture interest and amended the joint venture agreement. The 1992 amendment deleted and replaced section 18 in its entirety. The new section 18A allows the transfer of a joint venturer's interest as a result of death, with section 18B giving the joint venture 60 days to exercise an option to purchase, or "claw back," the transferred interest in the event of a transfer "caused by the death" of a joint venturer.

¶ 10 Following Ann's death in September 1998, Daniel and Patricia purchased Ann's 28.2% interest and amended the agreement again to reflect this purchase. As of that date, Daniel owned 51.6% of the joint venture and Patricia owned 48.4%.

¶ 11 B. Daniel Creates Revocable Trust

¶ 12 In December 1998, Daniel created the Daniel F. McGarry Trust, a self-settled, revocable Florida trust, and amended and restated it in March 2009. The trust provides that Florida law governs its validity, construction, and administration. During Daniel's lifetime, the trustee is to hold and administer the trust assets for his benefit, distribute all net income to or for him, and, in the trustee's discretion, distribute principal for his benefit.

¶ 13 As settlor, Daniel reserved the rights to revoke or amend the trust, change its beneficiaries or trustee, withdraw any or all trust assets, and use or direct the use of trust principal for his benefit. He could exercise those rights during his lifetime unless he became disabled, at which point they were "exercisable only by a legally appointed guardian of Settlor's property acting pursuant to an order of the court ***."

¶ 14 If Daniel ceases to serve as trustee, Marilyn becomes successor trustee. The trust defines Daniel's disability as being "physically or mentally unable to properly manage [his] affairs," as established by a written letter from his attending physician. During any period of disability, the trustee may, in its discretion, use trust income and principal for Daniel's medical expenses, care, support, and maintenance, and for Marilyn's health, support, and maintenance.

¶ 15 Upon Daniel's death, the trust directs the trustee to establish a credit shelter trust for Marilyn's benefit from the trust estate. During her lifetime, Marilyn is to receive all income in installments and as much principal as necessary for her health, maintenance, or support. The credit shelter trust terminates at Marilyn's death, and the remaining assets pass to Daniel and Marilyn's

children. The trust further provides that, if Marilyn survives Daniel, "all of the residuary assets *** shall be distributed outright and free of trust to" her. If she does not, those assets pass to their children.

¶ 16 In conjunction with the 2009 trust amendment, Daniel granted Marilyn a broad power of attorney to exercise his rights in his business interests, including the joint venture.

¶ 17 C. Transfer of Daniel's Joint Venture Interest to His Trust

¶ 18 In February 2020, Daniel was diagnosed with dementia by his primary care physician and declared unable to make legal and financial decisions. Under the terms of Daniel's trust, this made Marilyn the successor trustee. Marilyn memorialized her acceptance as successor trustee on November 23, 2020. That same day, Marilyn, acting under the March 2009 power of attorney, "transfer[red], assign[ed], and convey[ed] to Marilyn A. McGarry, Trustee of the Daniel F. McGarry Trust ***, the entire interest of Daniel F. McGarry in Fountain View [Venture] ***." Patricia was not informed of this transfer until after Daniel's death approximately a year later.

¶ 19 After Daniel's death, Patricia sent notice to the McGarrys of her intent to buy out Daniel's joint venture interest. They refused to sell on the grounds that Daniel's interest was transferred to "a trust he created for the benefit of his wife and children." Later that month, Patricia sent a second notice, offering to buy out Daniel's interest for $5,260,816.00, per the formula set out in section 18 of the agreement.

¶ 20 Marilyn, Lisa, and Daniel III as co-trustees of Daniel's trust filed a declaratory judgment action against Patricia, which they later amended to include a count for breach of fiduciary duty.[1] They sought a declaration that the trust owns Daniel's joint venture interest and Patricia has no right to compel a sale. Patricia and the joint venture filed a counterclaim, seeking a declaration that

[1] The court ruled in Patricia's favor on the breach of fiduciary duty claim.

Patricia, either on behalf of the joint venture or individually, has a right to buy out Daniel's joint venture interest under section 18 of the agreement.

¶ 21 The parties moved for summary judgment. The co-trustees argued notice and consent from Patricia was not required prior to the transfer to Daniel's trust because Daniel's wife and children were the "ultimate beneficiaries" of his trust. Patricia, on the other hand, argued the transfer was ineffective because Daniel's trust was "revocable *** for his own benefit during his lifetime," not for his wife and children. Even if the transfer was valid, it was still Daniel's property upon his death because the trust was held and administered for his "sole benefit ***, as Settlor, during [his] lifetime."

¶ 22 The trial court agreed with the co-trustees. Without considering who Daniel's trust was created to benefit, the court found the transfer "proper under the Agreement" because Marilyn was acting under a valid power of attorney. The trial court also found that because the transfer to Daniel's trust was valid under the immediate family exception, it was "not subject to the qualifications outlined in the succeeding paragraphs" of section 17. The trial court granted the co-trustees' motion for summary judgment and declared that Daniel's "joint venture interest in Fountain View was properly transferred to the Trust and that the Trust is the owner of such interest." Patricia and the joint venture appeal.

¶ 23 II. STANDARD OF REVIEW

¶ 24 Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits on file show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2024). Because no material facts are disputed, we must determine which party is entitled to judgment as a matter of law. We apply Illinois contract law to the joint venture agreement and Florida trust law to Daniel's Florida-created

trust, which provides Florida law governs questions of its validity, construction, and administration. We review the trial court's ruling on summary judgment *de novo*. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004).

¶ 25 We construe the language of the agreement as a whole to determine the parties' intent. *Shapich v. CIBC Bank USA*, 2018 IL App (1st) 172601, ¶ 18. Where, as here, the terms of the agreement are clear and unambiguous, they will be given their plain and ordinary meaning, and the parties' intent will be determined from the agreement's language alone. *Id.*

¶ 26 III. ANALYSIS

¶ 27 Patricia argues that Daniel's death triggered the buyout provisions in sections 17F and 18B, entitling her or the joint venture to purchase the interest that was transferred to Daniel's trust. Whether those provisions apply turns on whether Daniel transferred his interest "to his immediate family (defined to mean parent, spouse, brother, sister, children, or grandchildren, *or Trusts created for the benefit of any such parties*)" (emphasis added) within the meaning of section 17. If so, the transfer required neither Patricia's consent nor an offer of first refusal, and Daniel's death triggered no buyout right. Because Daniel's trust was created for the benefit of his immediate family, neither Patricia nor the joint venture has any right to purchase the interest.

¶ 28 Patricia first contends that no transfer to a third party occurred because Daniel, as settlor of the revocable trust, retained beneficial ownership of the interest until his death. This argument conflates beneficial ownership with legal title, disregards the transfer's effect under Florida law, and overlooks the trust's other beneficiaries.

¶ 29 Under Florida law, a transfer of property to a revocable trust places legal title in the trustee, even though the settlor retains beneficial ownership during his lifetime. *Aronson v. Aronson*, 930 So. 2d 766, 767 (Fla. 3d DCA 2006). Thus, although a revocable trust is a "unique type of transfer,"

it is nonetheless a legally cognizable one. *Florida National Bank v. Genova*, 460 So. 2d 895, 897 (Fla. 1984). Because legal title passed from Daniel individually to the trustee of his trust on November 23, 2020, the transfer requirement is satisfied. That transfer fits squarely within section 17's immediate family exception because Daniel's trust was "created for the benefit of" Daniel's wife and children.

¶ 30 The statutory definition of "beneficiary" under § 736.0103(4), Fla. Stat., expressly encompasses present or future beneficial interests, whether vested or contingent. Consistent with this definition, Florida law treats contingent remainder interests as legally cognizable beneficial interests rather than mere expectancies. *Zuckerman v. Alter*, 615 So. 2d 661, 664 (Fla. 1993). The law also recognizes that contingent remainder beneficiaries, including children entitled to receive trust principal only after a lifetime beneficiary's death, hold legally cognizable beneficial interests. See *Rachins v. Minassian*, 251 So. 3d 919, 924-26 (Fla. 4th DCA 2018).

¶ 31 Although the trust primarily benefits Daniel during his lifetime, it also benefits Marilyn during Daniel's disability and after his death, and it ultimately benefits their children. Marilyn holds several legally cognizable beneficial interests under the trust: a contingent discretionary interest in distributions during Daniel's disability; upon his death, a vested lifetime income interest and a right to principal as needed for her support; and, if she survives him, all residuary assets outright. The children hold the remainder following Marilyn's death. These beneficial interests fall squarely within Florida's definition of a beneficiary. Daniel's status as the primary lifetime beneficiary does not alter the conclusion that the trust was created for the benefit of immediate family.

¶ 32 Section 17 does not require that the joint venturer relinquish all ownership interests to make a transfer to immediate family. It requires only that a transfer be made to qualifying recipients or

a trust created for their benefit. Had the joint venturers intended to limit the section 17 exception to irrevocable trusts, or to trusts that were created for the exclusive or primary benefit of immediate family, they could have done so. They did not. Section 17's language is broad, and Daniel's trust fits within it. We will not read in limitations that the drafting parties chose not to include.

¶ 33 Patricia argues alternatively that even if the transfer was made to a trust created for the benefit of immediate family, the transfer was ineffective because the trustee did not comply with the transfer requirements, obtain Patricia's consent, or immediately execute and deliver the acceptance documents as required by section 17C of the agreement. She further asserts that any transfer was limited to the derivative right to distributions, rather than the joint venture interest itself. We disagree.

¶ 34 First, section 17 expressly exempts transfers to immediate family from Patricia's written consent and right of first refusal requirements.

¶ 35 Second, apart from section 17B, section 17's procedural requirements do not appear to govern transfers to immediate family or trusts created for their benefit. But even if section 17C applies, it sets no deadline for executing or delivering the acceptance documents. In any event, the trustee's written acceptance, dated November 23, 2020, expressly agrees to and adopts all of terms and provisions of the joint venture agreement and, therefore, constitutes substantial compliance.

¶ 36 Third, Patricia's contention that the transfer only transferred Daniel's distribution rights, not his entire interest, contradicts the language of the transfer document as well as section 17's plain language. Section 17 provides that any disposition or transfer shall include the transferor's right, title, and interest to all the real estate and personal property owned by the joint venture. It does not limit the transfer to distribution rights.

¶ 37 Finally, Patricia contends that section 18B's buyout right was triggered upon Daniel's death. However, section 18B applies only when a transfer is "caused by" death. Daniel's interest was legally transferred to the trust under a power of attorney during Daniel's lifetime. Because the transfer was not caused by his death, section 18B never came into play.

¶ 38 IV. CONCLUSION

¶ 39 Daniel's joint venture interest was validly transferred during his lifetime to a trust created for the benefit of his immediate family. The transfer fell squarely within the section 17 immediate family exception, required no notice or consent of Patricia, and foreclosed Patricia and the joint venture's contractual right to purchase the interest upon Daniel's death. The circuit court correctly granted summary judgment for the co-trustees and dismissed Patricia and the joint venture's counterclaim.

¶ 40 Affirmed.