

Settlor's self-settled trust liable for his debts post-death

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In a recent case, the Massachusetts Supreme Judicial Court held that the Settlor's irrevocable trust which he had established for his own sole lifetime benefit could be attached after his death to pay his debts for his pre-death offenses.

The facts in *De Prins v. Michaelis* were gruesome. Two neighbor couples in Arizona got into a water rights dispute that led to litigation. A short time after one couple prevailed in the case, the wife of the other couple committed suicide. A few months later, the surviving spouse created an irrevocable trust for his sole lifetime benefit, and conveyed most of his assets to it. Within another few months, he then murdered his two neighbors, and committed suicide the next day.

The issue presented was whether the son of the murdered couple could collect his wrongful death settlement of \$750,000 against the murderer's irrevocable trust.

The Court held that the surviving son could do so, on multiple grounds. Under Section 505 of the Uniform Trust Code as adopted in Massachusetts (and in many other states, including Kentucky), a creditor can reach the maximum amount of the trust that can be distributed to or for the Settlor's benefit. Here, since the entire trust could have been reached by the Settlor during his lifetime under the trust terms, the Court reasoned that the Trust should be entirely subject to attachment. This was so in part because the Settlor had committed the murders before his death, at the time when he had full access to the Trust.

However, the Court found that Massachusetts common (case) law governed this situation, rather than the UTC itself. The UTC preserves the state's common law except where the UTC modifies the common law. And the Court found that UTC Section 505 did not directly address the post-mortem trust attachment issue in the case. Massachusetts common law holds a self-settled irrevocable trust for the Settlor's own benefit fully subject to the claims of his creditors. Many states (including Kentucky) have common law to the same effect.

In states that have enacted domestic asset protection trust ("DAPT") statutes, a DAPT for a settlor's own benefit may prevent a creditor from reaching the trust assets. Although Massachusetts has not enacted a DAPT statute, Indiana, and 18 other states, have established DAPT statutes. However, even in states with DAPT statutes, fraudulent transfer statutes may subject a DAPT to the claims of creditors in situations such as this case.

The Court's opinion did note that there had been no case law decisions there regarding the post-death attachment of a settlor's self-settled irrevocable trust. The Court reasoned that it would be incongruous to subject the trust's assets to claims during the Settlor's lifetime, and then protect the trust from creditor claims after the Settlor's death to protect his trust beneficiaries.

The Court also found an inference that the establishment and funding of the trust and the murders of his neighbors were all a part of the Settlor's single plan. In this situation, the equities and public policy would not allow such a trust

to defeat a claim made after the Settlor's death. To do so would deprive the son of the murdered couple from recovering his damages and thereby protect the inheritance of the murderer's daughter.

Your Key Contacts



John R. Cummins
Partner, Louisville
D +1 502 587 3602
john.cummins@dentons.com



Justin W. Jones
Associate, Indianapolis
D +1 317 635 5320
M +1 317 869 5673
justin.jones@dentons.com