

The Trust Agreement provides in plain unambiguous language that the trustee has the right to "settle, by compromise, arbitration or otherwise any and all claims and demands . . ." and "may release or abandon any claims in favor of this trust." Thus, without question the trustee has the right under the Trust Agreement to agree to arbitration binding the Minor beneficiary as to claims or demands once they have arisen. This provision in the Trust Agreement is consistent with the Tennessee Uniform Trust Code, Tenn. Code Ann.] 35-15-101, et seq. Specifically, Tenn. Code Ann.] 35-15-816 provides:

8

35-15-816. Specific powers of trustee.

(b) Unless the terms of the instrument expressly provide otherwise and without limiting the authority conferred by] 35-15-815, a trustee may:

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

Tenn. Code Ann.] 35-15-816(b)(14) (2015).

In their brief on appeal Wunderlich and Alexander argue, in part, that the "any and all" language contained in Section 11.05(e) of the Trust Agreement shows that the clause does not refer only to existing claims and demands, but also can include disputes that have not yet arisen. Black's Law Dictionary, however, defines the term "claim" as:

1. The aggregate of operative facts giving rise to a right enforceable by a court <the plane crash led to dozens of wrongful death claims>. 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional <the spouse's claim to half of the lottery winnings>. 3. A demand for money or property to which one asserts a right <an insurance claim>.

BLACK'S LAW DICTIONARY 240 (7th ed. 1999). The word "claim" simply does not include disputes that have not yet arisen. As such, the "any and all" language contained in Section 11.05(e) of the Trust Agreement, which modifies the words "claims and demands," cannot refer to disputes not yet in existence.

The Trust Agreement does not provide that the trustee has the right to agree to arbitration prior to a claim or demand arising. To hold that it does would result in re-writing the agreement, which clearly and unambiguously provides the trustee the right to agree to arbitration only after claims or demands arise. Furthermore, it is difficult to comprehend how a trustee could foresee that agreeing to arbitrate a claim or dispute would be in the best interest of a minor when the trustee lacks knowledge of what that future claim or dispute might encompass. Given the nature of the claim or dispute arbitration may very well not be in the best interest of a minor beneficiary and agreeing to arbitration could potentially violate the duties that a trustee owes to a minor beneficiary

9

of a trust. See Tenn. Code Ann.] 35-15-801 et seq. (discussing duties and powers of trustee).

As the plain and unambiguous language of the Trust Agreement did not give the trustee the power to agree to arbitration of unknown future claims or disputes, we find and hold that the signature of the trustee on the investment/brokerage account agreement agreeing to arbitration does not bind the Minor beneficiary of the Trust to conduct arbitration of unknown future disputes or claims.

Conclusion

The judgment of the Trial Court granting the motion to compel arbitration is reversed, and this cause is remanded to the Trial Court for further proceedings consistent with this Opinion and for collection of the costs below. The costs on appeal are assessed against the appellees, Wunderlich Securities, Inc. and Albert M. Alexander, Jr.

D. MICHAEL SWNEY, CHIEF JUDGE

In case of any query regarding this article or other content needs please contact: editorial@plusmediasolutions.com

LOAD-DATE: May 19, 2016

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Journal