

Title

In breach-of-trust litigation where adequacy of fiduciary disclosure is in question, the trustee's motion for summary judgment ought to fall on deaf ears

Text

Assume trustee of an irrevocable inter vivos trust leases entrusted land to an entity that employs the trustee. All rents properly accrue to the trust estate. The beneficiaries assert, however, that the trustee may have engaged in unauthorized self-dealing in violation of the trustee's fiduciary duty of loyalty. They move to discover any information regarding the inner workings of the entity that may be relevant to the transaction and are prepared to execute an appropriate confidentiality agreement. They particularly have in mind the entity's tax returns, balance sheets, QuickBooks files, and profit-and-loss statements. The trustee opposes the discovery motion. The trustee counters with a motion for summary judgment, which the trial court grants. Call this the summary judgment Catch-22. The beneficiaries appeal. This was the gist of the fact pattern in *Matter of Potter Exemption Trust*, 2025 WL 2910424 (Supreme Court of Montana). The appellate court quite rightly disagreed with the trial court's granting of summary judgment as adequacy of fiduciary disclosure was in question. "...[W]e cannot read the...[trustee's]...duty to inform and report so narrowly as to require a beneficiary to prove a breach of trust before being entitled to information reasonably necessary to *prevent* a breach of trust, because that would render the beneficiary's right to information...meaningless."

By way of background, it is classic equity doctrine that if a trustee self-deals in violation of the duty of loyalty, such as by purchasing for his own account an entrusted asset, the transaction is voidable *per se* at the petition of the beneficiaries. There would be no need for them to ascertain the inner workings of the other party to the transaction, to delve into the transaction's particular facts and circumstances, or to prove unfairness and/or bad faith on the part of the trustee *vis a vis* the beneficiaries. They need only prove that the transaction (1) involved some type of self-dealing on the part of the trustee and (2) had not been authorized by the trust's terms. This is known as the no-further-inquiry rule. See generally §6.1.3 of *Loring and Rounds: A Trustee's Handbook* (2026), the relevant portion of which section is set forth in the appendix below.

Cross reference. For another example of judicial Catch-22, see *Sanford v. Vinal*, 28 Mass. App. Ct. 476 (1990), a dispute between the developer of a tract of land and a descendant of persons interred somewhere in a long-neglected portion of the tract, though the developer's experts had not a clue which part. The portion had been dedicated via deed as a burial ground circa 1707. The plaintiff-descendant's own experts were denied access to the tract for purposes of ascertaining, if possible, the boundaries of the ancient burial ground, though the investigation would have been non-invasive and at her expense. See *Rounds, Protections Afforded to Massachusetts' Ancient Burial Grounds*, 73 Mass. L. Rev. 176 (1988), footnote 55 and accompanying text (<https://www.jdsupra.com/legalnews/protections-afforded-to-massachusetts->

a-39668/0). The plaintiff-descendant having failed to prove the boundaries of the burial ground, the developer was granted summary judgment and allowed to proceed with his project. The Massachusetts appellate court affirmed the judgment of the trial court dismissing the plaintiff-descendant's litigation complaint for want of standing.

Appendix

§6.1.3 Trustee's Duty of Loyalty to the Beneficiaries or to the Trust's Charitable Purposes [from *Loring and Rounds: A Trustee's Handbook* (2026)].

The no-further-inquiry rule. Under classic principles of trust law, the fact that the trustee engaged in an unauthorized act of self-dealing was all that the beneficiary needed to prove in an action to void the transaction. As no further proof was required, this came to be known as the “no further inquiry rule.”¹⁷² Whether the trustee acts in good faith¹⁷³ or pays a fair consideration¹⁷⁴ or erects a Chinese wall between its commercial and fiduciary departments¹⁷⁵ is immaterial.¹⁷⁶ The rule was marbled through the English common law¹⁷⁷ and is consistent with traditional civil law (continental) fiduciary principles.¹⁷⁸ It is a rule that the Restatement (Third) of Trusts for “prophylactic reasons”¹⁷⁹ has given its unqualified endorsement

¹⁷²See *Girod v. Girod*, 45 U.S. 503, 553 (1846). See generally 3 Scott & Ascher §17.2.

¹⁷³See *In re Gleeson's Will*, 124 N.E.2d 624 (Ill. App. Ct. 1955) (“The good faith and honesty of the ... [trustee]... can avail ... [him]... nothing so far as justification of the course he chose to take in dealing with trust proper is concerned.”).

¹⁷⁴See *In re Gleeson's Will*, 124 N.E.2d 624 (Ill. App. Ct. 1955) (“[T]he fact that the trust sustained no loss on account of his dealings therewith ... can avail ... [the trustee]... nothing so far as justification of the course he chose to take in dealing with trust proper is concerned.”).

¹⁷⁵Lewin ¶20-61 (England); 3 Scott & Ascher §17.2.14.6 (noting that Chinese walls have generally proven “not very effective”).

¹⁷⁶See *Girod v. Girod*, 45 U.S. 503, 553 (1846).

¹⁷⁷See generally Lewin ¶20-60.

¹⁷⁸*Girod v. Girod*, 45 U.S. 503, 552–562 (1846). See generally §8.12.1 of this handbook (civil law alternatives to the trust).

¹⁷⁹Rest. (Third) of Trusts §78 cmt. b. “In such situations, for reasons peculiar to typical trust relationships, the policy of the trust law is to prefer (as a matter of default law) to remove altogether the occasions of temptation rather than to monitor fiduciary behavior and attempt to uncover and punish abuses when a trustee has actually succumbed to temptation.” Rest. (Third) of Trusts §78 cmt. b. “The inherent subjectivity and impracticability of second guessing a trustee's application of business judgment or exercise of fiduciary discretion are aggravated by the opportunities and relative ease of concealing misconduct—or at least by the absence of timely information and the likely disappearance of relevant evidence—that results from the trustee's day-to-day, usually long-term, management of the trust property and control over the trust records.” Rest. (Third) of Trusts §78 cmt. b. “Viewed from the beneficiaries' perspective, especially that of remainder beneficiaries, efforts to prevent or detect actual improprieties can be expected to be inefficient if not ineffective.” Rest. (Third) of Trusts §78 cmt. b. “Such efforts are likely to be wastefully expensive and to suffer from time lag and inadequacies of information, from a lack of relevant experience and understanding, and perhaps from want of resources to monitor trustee behavior and ultimately to litigate and expose actual instances of fiduciary misconduct.” Rest. (Third) of Trusts §78 cmt. b. *But see* John H. Langbein, *Questioning the Trust Law Duty of Loyalty: Sole Interest or Best*

and ratification.¹⁸⁰ It recognizes, however, that there are some long-standing exceptions to the rule that, for reasons of practicality, efficiency, and beneficiary interest, should be allowed to stand, *e.g.*, when the terms of the trust¹⁸¹ or rulings of the court authorize a transaction that involves conflicting fiduciary and personal interests.¹⁸² Otherwise, “a beneficiary establishes a prima facie case of fraud by showing that a trustee’s transaction benefited the trustee at the beneficiary’s expense.”¹⁸³ One commentator has articulated the rule’s general policy underpinnings: In its wish to guard the highly valuable fiduciary relationships against improper administration, equity deems it better to forbid disloyalty and strike down all disloyal acts, rather than to attempt to justify ... [the trustee’s]... representation of two interests.¹⁸⁴

The UTC’s mere rebuttable presumption that the duty of loyalty has been breached in a transaction between the trustee, *qua* trustee, and his personal agent, his spouse, a close relative, or an affiliated third party would “lessen the reach” of the no-further-inquiry rule.¹⁸⁵ As a general matter, “the UTC arguably has weakened the trustee’s fundamental duty of loyalty by treating it as just another default rule the settlor may override in the terms of the trust.”¹⁸⁶

John H. Langbein advocates that trustees generally be held to a best-interest-of-beneficiary default standard rather than the traditional and more rigorous sole-interest-of-beneficiary default standard, in other words, that there be a generalized defanging of the no-further-inquiry rule.¹⁸⁷ The ivory tower, however, is not the real world, as another trust academic has reminded us:

Under the influence of law and economics theory, prominent scholars and reformers are rapidly dismantling the traditional legal and moral constraints on trustees. Trusts are becoming mere “contracts,” and trust law nothing more than “default rules.” “Efficiency” is triumphing over morality. In the law and economics universe of foresighted settlors, loyal trustees, informed beneficiaries, and sophisticated family and commercial creditors, trusting trustees may make sense. In the real world, however, it does not. A trust system that exalts trustee autonomy over accountability can and increasingly does impose significant human costs on

Interest?, 114 Yale L.J. 929 (2005) (suggesting that profound historical changes over the past two centuries have rendered the no-further-inquiry rule obsolete). For the counterargument, see Leslie, *In Defense of the No Further Inquiry Rule: A Response to Professor John Langbein*, 47 Wm. & Mary L. Rev. 541 (2005).

¹⁸⁰Rest. (Third) of Trusts §78 cmt. b.

¹⁸¹See generally 3 Scott & Ascher §17.2.11.

¹⁸²Rest. (Third) of Trusts §78 cmt. c. See generally §7.1.2 of this handbook (defenses to allegations that the trustee breached the duty of loyalty); 3 Scott & Ascher §§17.2, 17.2.12.

¹⁸³See *In re Est. of Hedke*, 775 N.W.2d 13, 36 (Neb. 2009).

¹⁸⁴Bogert §543; Melanie B. Leslie, *In Defense of the No Further Inquiry Rule: A Response to Professor John Langbein*, 47 Wm. & Mary L. Rev. 541 (2005). But see John H. Langbein, *Questioning the Trust Law Duty of Loyalty: Sole Interest or Best Interest?*, 114 Yale L.J. 929 (2005) (suggesting that profound historical changes over the past two centuries have rendered the no-further-inquiry rule obsolete).

¹⁸⁵UTC §802(c).

¹⁸⁶Alan Newman, *Trust Law in the Twenty-First Century: Challenges to Fiduciary Accountability*, 29 Quinnipiac Prob. L.J. 261, 279 (2016) (referring to UTC §802 cmt.).

¹⁸⁷For the case against a defanging of the no-further-inquiry rule, see Melanie B. Leslie, *In Defense of the No Further Inquiry Rule: A Response to Professor Langbein*, 47 Wm. & Mary L. Rev. 541, 550–567 (2005).

all affected by trusts.¹⁸⁸

In the agent-fiduciary space, unlike the trustee-fiduciary space, those who would water down the fiduciary principle have been scoring some direct hits. See, for example, § 114(d) of the Uniform Power of Attorney Act: “An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.”

¹⁸⁸Frances H. Foster, *American Trust Law in a Chinese Mirror*, 94 Minn. L. Rev. 602, 651 (2010). See also Frederick R. Franke, Jr., *Resisting the Contractarian Insurgency: The Uniform Trust Code, Fiduciary Duty, and Good Faith in Contract*, 36 ACTEC L.J. 517 (2010).