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CONNECTICUT SUPERIOR COURT ENTERTAINS CLAIM THAT A TRUSTEE'S RESIGNATION CONSTITUTES A FRAUDULENT CONVEYANCE

SULLIVAN V. SULLIVAN, NO. FSTFA 22-6057558-S (AUG. 27, 2025)

AT A GLANCE

1. The Connecticut Superior Court's ruling in *Sullivan v. Sullivan* allows a claim that a trustee's resignation in a divorce context could be considered a fraudulent conveyance, even though conventional estate planning advises trustees to resign to protect trust assets during divorce proceedings.
2. The Court applied more liberal standards to fraudulent conveyance claims in family matters, suggesting that removing property from the marital estate—even by transferring control rather than direct asset movement—may expose trust assets to equitable distribution in divorce.
3. This decision was made at an early stage, and the claim may not ultimately succeed. However, the Court's willingness to entertain such arguments could increase the "settlement value" of similar claims in future divorce actions, prompting estate planners to reconsider standard advice and seek legal counsel for risk mitigation.

OVERVIEW

In a troubling ruling to keep an eye on, a Connecticut Superior Court refused to strike a claim in a divorce action that a divorcing spouse who resigned his position as trustee of a family trust engaged in a fraudulent conveyance. Although it was an early ruling in the case, and the claim may or may not ultimately prevail, the ruling was notable as a novel argument that calls into question conventional estate planning guidance: that a divorcing spouse should resign immediately as a trustee in order to protect the trust.

CONTINUED

CONNECTICUT SUPERIOR COURT ENTERTAINS CLAIM THAT A TRUSTEE'S RESIGNATION CONSTITUTES A FRAUDULENT CONVEYANCE

CASE SUMMARY

In *Sullivan v. Sullivan*, available at 2025 WL 2505915, the wife claimed that the husband had "transferred" his trusteeship to a successor trustee, and "thus [he had transferred] control of the trust assets," and his actions therefore constituted a fraudulent conveyance. Husband moved to strike the claim. Surprisingly, the Court denied the motion to strike and sustained the claim on multiple grounds.

At issue was a family trust with total assets of \$60MM. It is not clear whether the trust was created by the husband's family for his benefit, or by the husband himself as grantor. However, we are told that the husband served as trustee for 12 years, which suggests the trust was created by the husband's family. Husband resigned as trustee in favor of successor trustee Northern Trust after meeting with divorce counsel but before filing for divorce.

The Court in *Sullivan* repeatedly used the term "transfer" of trusteeship to characterize the husband's resignation. The Court stated that it was mindful that the husband had "transferred his "trusteeship to [a corporate trustee], rather than directly transferring marital assets" to the corporate trustee. (Emphasis in original.) And the Court acknowledged that prior cases "all . . . involved an underlying transfer of an alleged marital assets – stock, real property, the movement of assets from one trust to another, etc." Nevertheless, the Court drew a distinction between what it called a "traditional" analysis of fraudulent conveyance with an analysis in "a family matter." The Court stated that the proper analysis in a family matter was "whether the conveyance removed property from the marital estate that would otherwise have been subject to claims of equitable distribution."

The Court held that the wife properly had alleged that the husband had "removed property" from the marital estate that would otherwise have been subject to claims of equitable distribution. (Emphasis original.) The Court did not explain in any detail why, if the husband had remained trustee, the trust assets would have been subject to claims

of equitable distribution. However, the Court noted that the wife had alleged that the trust assets included the marital residence which, per the Court, "obviously[]" is property of the marital estate subject to equitable distribution."

The Court in fact sustained the wife's claim on two separate grounds: common law and Connecticut's fraudulent conveyance statute. When analyzing the statutory claim, the Court added troubling dicta to an already troubling conclusion: it credited the wife's claim that the husband previously had "the authority to access the Trust's income and assets, in part or in whole," and he had "relinquished dominion and control over the trust assets, and but for the transfer, he could have continued to access those trust assets." Most troubling, perhaps, is that the Court repeatedly stated that different – and more liberal – standards apply to claimants in a "family matter."

WHY IS THIS IMPORTANT?

Estate planners will find this ruling troubling and at odds with conventional guidance to trustees when a trust faces a creditor claim, especially a claim by a divorcing spouse. Because the court allowed this claim to survive a motion to strike, these types of claims may now have greater "settlement value."

We note, however, that the ruling came at the earliest stages of the case, and the claim ultimately may not prevail. The Court rejected husband's counterarguments, which were based on the protective terms of the trust, noting that the trust agreement was not yet part of the record. The Court wrote: "All of that may be true (or not), but these arguments will have to await summary judgment, or trial" when the terms of the trust are part of the record before the Court.

Consider speaking with your Wiggin and Dana attorney to determine how best to address the concerns highlighted in this advisory to reduce exposure of your estate plan to divorce actions.

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