



NEW YORK

LOSS OF FUTURE INHERITANCE



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Robert A. Fitch

In the pending case of Curtin v. J.B. Hunt Transport, Inc., Rawle & Henderson attorneys Robert A. Fitch and James R. Callan successfully appealed the trial court's decision excluding from evidence a buy-sell agreement executed by plaintiff's decedent. The case involves claims of wrongful death following a motor vehicle accident that occurred on January 20, 2003, near Utica in Oneida County, New York. The decedent, Thomas Curtin, resided in Oneida County and was one of four brothers operating the family dairy known as Curtin Dairy. Curtin died in the collision with a tractor trailer operated by J.B. Hunt Transport, Inc.



James R. Callan

Plaintiff asserted claims for loss of future inheritance on behalf of the decedent's wife and administrator to the estate, Paula Curtin as well as the Curtin children. Plaintiff's claim to loss of inheritance hinged upon the theory that but for the accident and resulting death of Thomas Curtin, his wife and children would have reaped the benefit of his continued involvement in the family business and subsequently, would have received the full value of Curtin's interest in the dairy upon his natural death. This element of the claim is unusual, but it is the largest item claimed of the special damages.

However, nine months before Thomas Curtin's death, the four owners of the Curtin Dairy executed a buy-sell agreement which provided procedures to be followed in the event of the untimely death of a partner to prevent the sale of his interests outside the family. Significantly, the buy-sell agreement expressly stated that it superceded all prior wills of the individual partners.

Plaintiff filed a motion in the Supreme Court for the County of Oneida (Utica) seeking to exclude the buy-sell agreement from evidence at the time of trial pursuant to CPLR 4545(c), asserting that the agreement was more prejudicial than probative because any buy-out was funded by life insurance policies on the lives of the four partners, and because the valuation of the dairy in the agreement was arbitrary, based on the costs of insurance premiums.

Robert A. Fitch and James R. Callan opposed plaintiff's motion, arguing that the buy-sell agreement was probative of the value of the dairy at the time of Curtin's death, and exclusion of such key evidence would substantially prejudice the defendants' right to defend against plaintiff's damages claims. In addition, the document provided a viable explanation to the jury as to the amount of money Paula Curtin actually received upon the death of her husband pursuant to the express terms of the agreement. Plaintiff's counsel argued that the defendants' use of the buy-sell agreement at the time of trial would limit the recovery of the Curtin family and their loss of inheritance claim.

Following oral argument, Honorable Anthony F. Shaheen of the Oneida County Supreme Court granted plaintiff's motion excluding the agreement from evidence at the time of trial. Judge Shaheen agreed with plaintiff's counsel that the "arbitrary" valuation placed on the dairy would be prejudicial to plaintiff's claims and that the agreement was inadmissible because it contained references to life insurance.

James Callan and Robert Fitch prepared the record and briefs on appeal and Robert Fitch appeared before the five judge panel for oral argument. During oral argument, the defendants argued that the buy-sell agreement was probative of the dairy partners' own valuation of the Curtin Dairy and that the defense should be able to present this evidence to the jury for consideration of the plaintiff's claims of loss of inheritance. Moreover, the defense argued that the court below failed to provide any rationale for how the buy-sell agreement was unfairly prejudicial to plaintiff's claims. Admission of the agreement would not preclude plaintiff from contesting the value of the business in 2002 or in the present day. However, exclusion of this key piece of evidence would be highly prejudicial to J.B. Hunt's defense of the action. Interestingly, plaintiff argued that admission of the buy-sell agreement at trial would greatly prejudice plaintiffs claims for loss of inheritance. Plaintiff also argued that because the defendants caused the death of Thomas Curtin, they should not be allowed to use the buy-sell agreement as a defense to the claim for loss of inheritance since the buy-sell agreement provided an artificially low valuation of the decedent's primary asset.

Following oral argument, the Appellate Division, Fourth Department, decided the appeal in favor of the defendants, reversing the lower court's

ruling regarding exclusion of the buy-sell agreement. In their unanimous decision, the Appellate Division ruled that the agreement should not be considered "dispositive of the issue regarding plaintiff's loss of inheritance claim". However, the agreement did "constitute relevant and probative evidence as to the value of the claim, given that the agreement expressly addresses the amount of money that the owner's heirs would receive in the event of the owner's death".

The Court also ruled that evidence such as the buy-sell agreement should be considered relevant if "it had any tendency in reason to prove the existence of any material fact." Furthermore, the Appellate Division held that although the agreement referred to life insurance proceeds as the means for funding the buy-out of the decedent's interest in the dairy, such references should not result in the exclusion of the agreement from evidence at the time of trial.

The effect of the Appellate Division's decision was significant to the case since admission of the buy-sell Agreement will allow a jury to learn how the partners of the business valued Curtin Dairy nine months prior to the decedent's accident. More significantly, admission of the buy-sell agreement will allow the defense to argue against plaintiff's exorbitant valuation of the family business and the alleged claims of loss of future inheritance by the Curtin heirs. The admission of the agreement will, in essence, allow the defense to argue that the heirs of Thomas Curtin received the benefits of his shares upon his death in 2003, pursuant to the expressed intent of the decedent and the Curtin Dairy partners, and that plaintiff has not experienced any significant financial harm or "loss of inheritance" as a result of the accident on January 20, 2003.

The successful appeal of the trial court's discovery ruling excluding the buy-sell agreement allowed the defense to significantly limit plaintiff's claims for loss of inheritance.

Robert A. Fitch is a resident partner in the Firm's New York office. He concentrates his practice in the defense of product liability, professional and medical malpractice and commercial motor vehicle litigation.

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