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No. A10-1646

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**State of Minnesota  
In Supreme Court**

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In the Matter of the Pamela Andreas Stisser Grantor  
Trust Under Second Amendment and Restatement of  
Trust Agreement dated June 6, 2001

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**BRIEF AND ADDENDUM OF APPELLANT**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## I. STATEMENT OF THE ISSUES

1. Did the Court of Appeals err in overturning the District Court by holding that a general directive to pay legal debts in *a trust agreement* expresses a grantor's intention to exonerate secured debts, even though a general directive to pay legal debts in a *will* is not sufficient to express an intention to exonerate secured debts?

The District Court granted summary judgment in favor of the Trustee and held that it could not infer an intent on the part of the Grantor to have her secured debts exonerated by the Trust based upon a general directive to pay debts in the Trust Agreement. The Court of Appeals, in a split decision, reversed, reasoning that legal principles, case law and statutes applicable to wills, which require language more specific than a general directive to pay debts before an estate is required to exonerate secured debts, were not relevant, applicable, or persuasive in interpreting a trust agreement.

### Authority:

*In re Norseth's Estate*, 121 Minn. 104; 140 N.W. 337 (1913).

*In re Estate of Peterson*, 365 N.W.2d 300 (Minn. Ct. App. 1985).

*In re Estate of Vincent*, 98 S.W.3d 146 (Tenn. 2003).

2. Did the Court of Appeals err in holding that the Trustee was obligated to pay the Schwab Margin Loan when the Estate was not obligated to pay that loan and Stisser was not acting as Personal Representative of the Estate in requesting payment of that loan?

This issue was not addressed by the District Court. Rather, the Court of Appeals stated, without any analysis or authority, that Stisser was acting in his capacity as Personal Representative of the Estate in requesting payment of the margin loan secured by the Grantor's investment account at Charles Schwab, a probate asset. The Court of Appeals held that the Trustee was obligated to pay the margin loan.

Authority:

Minn. Stat. § 524.2-607 (2010).

Fla. Stat. § 733.803 (2011).

*In re Estate of Peterson*, 365 N.W.2d 300 (Minn. Ct. App. 1985).

## **II. STATEMENT OF THE CASE**

Petitioner David L. Andreas (“Trustee”) is the Trustee of the Pamela Andreas Stisser Grantor Trust under the Second Amendment and Restatement of Trust Agreement dated June 6, 2001 (“Trust” and “Trust Agreement”). Respondent Vernon L.E. Stisser, Jr. (“Stisser”) is the surviving spouse of Pamela Andreas Stisser (“Grantor”), and Stisser is the personal representative of the Estate of Pamela Andreas Stisser (“Estate”). The Trust Agreement expressly excludes Stisser as a beneficiary of the Trust. Stisser is the sole beneficiary of the Estate.

As the personal representative of the Estate and as an individual, Stisser asserted several claims as an interested party with respect to the Trust in trust proceedings venued in the Hennepin County District Court (“District Court”). The District Court had jurisdiction over the Trust and jurisdiction over matters relating to the Trustee’s and Stisser’s petitions under Minnesota Statutes Sections 501B.16 and 501B.24.

There were multiple petitions filed in the District Court related to the Trust. While many of the issues that have been decided in this trust proceeding were not and are not subject to appeal, a brief summary of the procedural background is provided below as context.

### **A. The Trustee’s First Petition**

The Trustee initiated court proceedings in the District Court regarding the Trust on December 29, 2006 by filing a petition requesting directions and

instructions from the District Court that a federal estate tax refund resulting from an overpayment of estate taxes by the Trust was the property of the Trust (“Trustee’s First Petition”).<sup>1</sup> (Appellant’s Appendix (“AA.”) 219-226). Although no money of Stisser’s or the Estate’s was used to pay the estimated federal estate taxes, Stisser nevertheless took the position that the Estate, not the Trust, was entitled to the resulting refund. (Appellant’s Addendum (“Add.”) 21-22). Stisser made a motion to dismiss the Trustee’s First Petition, contested the jurisdiction of the District Court, and claimed a petition he filed in Florida rendered the Trustee’s First Petition moot. (Ex. 1179, p. 6).<sup>2</sup> In making this argument to the District Court, Stisser did not disclose that he filed his Florida Petition after Trustee’s First Petition was filed in the District Court or that his Florida Petition was filed nearly nine months after a Florida appellate court confirmed that the Florida courts had no jurisdiction over the Trust or the Trustee. *In re Estate of Stisser*, 932 So.2d 400 (Fla. Ct. App. 2006); (Ex. 1230).

In an Order issued on February 28, 2007, the District Court granted the Trustee’s First Petition, held that it had jurisdiction, and ruled that the federal estate tax refund was property of the Trust. (Ex. 1164). Stisser did not appeal that Order.

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<sup>1</sup> The statement of the Court of Appeals that this litigation started with cross-petitions by Stisser and the Trustee for construction of the Trust is inaccurate. (Add.3). Stisser did not bring his petition for construction of the Trust and other relief until 2008.

<sup>2</sup> All references to exhibits (“Ex.”) refer to trial exhibits.

## **B. The Trustee's Second Petition**

On October 29, 2007, the Trustee filed a second petition with the District Court requesting directions and instructions that any Illinois tax refund resulting from overpayment of estimated estate taxes by the Trust is the property of the Trust ("Trustee's Second Petition"). In response, Stisser moved to vacate the District Court's earlier Order of February 28, 2007 and moved to dismiss the Trustee's Second Petition. Again, Stisser contested the jurisdiction of the District Court.

The District Court denied Stisser's motions in a detailed Order dated March 10, 2008. In its Order, the District Court expressed several concerns over Stisser's litigation tactics, including his ongoing disregard of the law of the case in continuing to assert that Florida courts had jurisdiction over the Trust assets and the Trustee, when in fact the Florida Court of Appeals expressly held Florida courts lacked jurisdiction. (AA.70-81). Stisser did not appeal that Order.

## **C. Stisser's Petition and the Trustee's Response and Third Petition**

On January 30, 2008, Stisser filed a Petition for Accounting of Trust, Instructions to the Trustee, Instructions to Certain Beneficiaries, for Removal of the Trustee, for Transfer of the Trust, and for Appointment of Successor Trustee ("Stisser's Petition"). Stisser's Petition included eighteen far-ranging claims for relief relating to the Trust. One of Stisser's requests for relief in his Petition was that the Trustee reimburse him for all estate administration expenses incurred,

which Stisser later claimed, in answers to interrogatories, included the four secured debts at issue on appeal. (AA.48-49, AA.133-136). The Trustee objected to the relief sought by Stisser's Petition, renewed his Second Petition, and presented a Third Petition requesting directions and instructions regarding certain Trust related matters ("Trustee's Third Petition"). Stisser asserted various objections to the Trustee's renewal of his Second Petition and Third Petition.

In June 2008, the Trustee moved for partial judgment on the pleadings or, in the alternative, partial summary judgment, and sought dismissal of eleven of the claims for relief asserted in Stisser's Petition because Stisser lacked standing to bring claims that were unrelated to Stisser's potential interest in the Trust. In an Order dated November 4, 2008, the District Court granted the Trustee's motion to dismiss and dismissed all eleven of Stisser's claims that were the subject of the Trustee's motion. The District Court held that Stisser was not a beneficiary of the Trust, that at most he was a potential creditor, and that he therefore did not have standing to assert claims against the Trustee that only a trust beneficiary could maintain. In its Order, the District Court pointed out Stisser's "misleading" and "slanted" recitations of facts and law. (AA.109-111). In rejecting Stisser's arguments, the District Court noted, "Construing Minn. Stat. 501B.16 in [the manner advocated by Stisser] would cause routine trusts to be in jeopardy of endless litigation whenever someone, like Stisser, makes up his mind to be obstructionist and to cause endless delay in the final determination of genuine trust

issues that are contested, all the while increasing attorney's fees." (AA.111). Stisser did not appeal this Order.

**D. Motions for Partial Summary Judgment**

Following discovery on the remaining issues in this trust proceeding, both the Trustee and Stisser moved for partial summary judgment. By its Order dated July 2, 2009, the District Court granted significant portions of the Trustee's motion for partial summary judgment, denied other portions of the Trustee's motion, and denied Stisser's motion for partial summary judgment in its entirety.

The July 2, 2009 Order resolved two main categories of issues presented by the Trustee's Petitions and by Stisser's Petition. First, the District Court held that all of the approximately \$2.5 million in federal, Florida, and Illinois estate tax refunds related to the taxable estate of Pamela Andreas Stisser were the property of the Trust. (Add.21-23). The District Court ordered Stisser to account for and pay over to the Trust the \$1,617,287.17 federal estate tax refund and the \$407,818.00 Florida estate tax refund, along with all proceeds, interest and earnings resulting therefrom. The District Court further held that the Trust was the proper payee of the pending estate tax refund to be issued by the State of Illinois. (*Id.*) Stisser did not appeal that part of the July 2, 2009 Order and the resulting Judgment relating to the estate tax refunds is final.

Second, the District Court's July 2, 2009 Order resolved the issue of the Trustee's obligation to pay secured debts on which the Grantor was an obligor. By his partial summary judgment motion, the Trustee argued that a general

directive to pay debts, like that in the Trust Agreement, did not require payment or exoneration of secured debts and that the Trust Agreement, when read as a whole, did not show an intention by the Grantor that the Trustee pay her secured debts. The Trustee requested that the District Court dismiss Stisser's Petition to the extent it sought payment of secured debts. (AA.19-20, 24-25; Memorandum of Law in Support of Motion by Trustee David L. Andreas for Partial Summary Judgment at 21-27).

By his motion for partial summary judgment, Stisser requested that the District Court grant his claim for payment of one secured debt: the margin loan secured by the Grantor's investment account at Charles Schwab, which was a probate asset. (Memorandum in Support of Vernon Stisser's Motion for Partial Summary Judgment at 20-21). Stisser did not affirmatively seek summary judgment with respect to the three other secured debts he claimed should be paid from the Trust. Those debts were joint debts secured by real property that passed to Stisser outside of probate or by real property solely owned by Stisser.

In their cross-motions for partial summary judgment, both the Trustee and Stisser took the position and argued that the Trust Agreement was unambiguous and that the District Court need not look at extrinsic evidence in

order to ascertain the Grantor's intent.<sup>3</sup>

The District Court's July 2, 2009 Order granting partial summary judgment to the Trustee focused on and analyzed the plain language of the Trust Agreement and the historic interpretations and limitations of general directives to pay debts as applied to secured debts. (Add.25-37). The District Court extensively reviewed Minnesota's law on exoneration, including the historic purpose behind the now abrogated presumption of exoneration, which presumption never even applied to debts secured by personal property like the Schwab investment account. (Add.31). Based on a thorough analysis and discussion of the applicable law, the District Court concluded that it could not "infer a directive" from the general pay "my legal debts" language in the Trust Agreement for the payment or exoneration by the Trust of the secured debts being claimed by Stisser. (Add.32-33).

In connection with its analysis and discussion, the District Court also reviewed the Trust Agreement as a whole and considered the potential effect of requiring payment from the Trust of the secured debts claimed by Stisser. (Add.35). The District Court noted that the Trust Agreement explicitly omits Stisser as a beneficiary under any provision in the Trust and observed that if all of

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<sup>3</sup> Both the Trustee and Stisser submitted affidavits that included extrinsic evidence, however, which they argued should be considered in the event that the District Court found that the Trust Agreement was ambiguous in respect to the Grantor's intent. The Trustee interposed objections to the self-serving affidavit Stisser submitted, purportedly as extrinsic evidence of the Grantor's intent. The District Court did not rely on the affidavit testimony offered by either the Trustee or Stisser in making its July 2, 2009 Order.

the secured debts claimed by Stisser were paid from the Trust, the Trust assets would be substantially depleted. (Add.36). The District Court found that payment of the subject secured debts by the Trust was not what the Grantor intended. The District Court awarded summary judgment to the Trustee on Stisser's claims for payment of secured debts. (Add.36).

**E. Bench Trial and the Resulting Order and Judgment**

Following the District Court's July 2, 2009 Order, the remaining issues in this trust proceeding were presented in a bench trial. The issues litigated at trial included whether the Trustee had an obligation to pay: (1) certain claimed unsecured debts of the Grantor; (2) the Estate's claimed administration expenses; (3) the Estate's claimed litigation expenses; and (4) Stisser's claimed compensation as the personal representative of the Estate.

Following the completion of an eleven day trial and after extensive briefing by the parties, the District Court issued detailed and comprehensive Findings of Fact and Conclusions of Law and a corresponding Order dated June 14, 2010. The District Court made the following conclusions of law:

(1) the Trustee exercised reasonable judgment and was not obligated to pay any of the Estate's claimed litigation expenses. (Add.82).

(2) the Trustee exercised reasonable judgment and was not obligated to pay any claimed compensation to date of Stisser as personal representative of the Estate. (Add.99).

(3) the Trustee had an obligation to pay certain limited items of the Estate's claimed administration expenses, but that the Trustee exercised reasonable judgment and was not obligated to pay the balance of the claimed administration expenses. (Add.92-93)

(4) the Trustee had an obligation to pay certain unsecured debts on which Grantor was an obligor, but that the Trustee exercised reasonable judgment and was not obligated to pay other unsecured debts claimed by Stisser. (Add.93-95).

By its final Order, the District Court determined that the Trustee had a total obligation to the Estate in the amount of \$45,966.75. (Add.101, 115). The District Court further held that this obligation on the part of the Trust was subject to an offset in favor of the Trust in the amount of \$407,818.00 (plus interest) because of Stisser's obligation to account for and repay to the Trust the Florida estate tax refund. (Add.101).

On July 9, 2010, the District Court entered an Order for Judgment based on its June 14, 2010 Findings of Fact, Conclusions of Law, and Order, its July 2, 2009 Order and its November 4, 2008 Order. (Add.111). Judgment was entered on July 21, 2010.

#### **F. Court of Appeals Decision**

Stisser appealed three of the issues decided by the District Court to the Minnesota Court of Appeals: (1) whether the District Court erred in granting summary judgment to the Trustee and holding that the Trustee was not obligated to pay the four secured debts for which Stisser was seeking payment; (2) whether

the District Court erred and abused its discretion following trial in concluding that the Trustee was not obligated to pay any compensation to Stisser; and (3) whether the District Court erred and abused its discretion following trial in concluding that the Trustee was not obligated to pay administration expenses in the form of attorneys' fees incurred by an attorney for the Estate, Laird Lile.<sup>4</sup>

The Court of Appeals affirmed in part and reversed in part the decisions of the District Court that were appealed by Stisser. The Court of Appeals unanimously affirmed the District Court in respect to its decision, following trial, that based on the evidence, the Trustee was not obligated to pay Stisser's claimed compensation or to pay the claimed administration expenses related to the work and resulting fees of attorney Lile. The Court of Appeals held that the District Court's decisions in respect to those two matters were supported by the record and that the District Court did not abuse its discretion in denying Stisser's claim for compensation and in denying Stisser's claim for reimbursement of attorney Lile's fees. The Court of Appeals also unanimously affirmed the District Court's award of summary judgment to the Trustee with respect to three of the four secured debts claimed by Stisser – specifically, holding that the Trust was not obligated to pay the three joint debts that were secured by non-probate real property. In a split

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<sup>4</sup> The statement by the Court of Appeals that all three of the issues raised by Stisser on appeal arose from the District Court's grant of summary judgment is inaccurate. (AA.1). The issue relating to secured debts was decided by the District Court's award of partial summary judgment to the Trustee by its Order of July 2, 2009. The issues related to claimed fiduciary compensation and administration expenses were addressed and determined in the District Court's Findings of Fact, Conclusions of Law, and Order of June 14, 2010 following trial.

decision, however, the Court of Appeals reversed the District Court with respect to one of the secured debts claimed by Stisser—specifically, holding that the Trust was obligated to pay the margin loan debt secured by Grantor’s investment account at Charles Schwab.

**G. Petition for Review**

On June 28, 2011, the Trustee petitioned this Court to review the decision of the Court of Appeals to the extent it held the Trustee is required to pay the Schwab margin loan debt. Stisser opposed the Trustee’s petition and submitted a conditional request for cross-review of additional issues. By its Order dated August 16, 2011, this Court granted Trustee’s petition and Stisser’s conditional petition for cross-review.

**III. STATEMENT OF FACTS**

**A. Trust Background.**

Grantor, Pamela Andreas Stisser, created the Trust on January 17, 1966. Grantor later married her first husband, with whom she had three children. Grantor and her first husband divorced and Grantor later married Stisser.

The Trust was substantively amended and restated on April 9, 1999 to include Stisser’s four children from his first marriage as remainder beneficiaries of the Trust along with Grantor’s three children. The 1999 Trust Agreement expressly omitted any provision for Stisser. (Add.50, ¶ 4). Stisser never contributed any funds or property to the Trust. (Add.50).

The Trust was again amended and restated on June 6, 2001, and titled “Second Amendment and Restatement of Pamela Andreas Stisser Grantor Trust.” This was the operative Trust Agreement when Grantor died. The Trust Agreement continued to expressly omit Stisser as a beneficiary under any provision of the Trust:

§12.4.5 Intentional Omissions I have intentionally limited gifts to my descendents as provided in this instrument. I have intentionally omitted from this instrument any provision for my spouse, VERN STISSER, and any persons who may claim descent from me.

(Add.50; AA.29).

From the inception of the Trust until March of 2004, Grantor’s father, Lowell Andreas, served as a trustee. David Andreas, Grantor’s brother, was appointed co-trustee on January 21, 2003. After Lowell Andreas resigned as a trustee on March 11, 2004, David Andreas became the sole trustee of the Trust. (Add.51, ¶ 7).

Grantor remained the beneficiary of the Trust during her lifetime. The Trust Agreement provides that after the death of Grantor, the remaining assets of the Trust are to be divided equally among the seven children (“Beneficiaries”). (Add.51, ¶ 6). The Trust Agreement also instructs the Trustee to pay certain expenses. For purposes of the Trustee’s appeal to this Court, the meaning and application of the following provision is at issue:

3.1 Expenses and taxes. The Trustees shall, if requested by the legal representative of my estate, or in their own discretion may, pay the following expenses, debts and taxes, directly or through the legal

representative of my estate by way of advancement to or reimbursement of said legal representative:

3.1.1 Expenses. The expenses of my last illness, funeral, burial, or other disposition, unpaid income and property taxes properly chargeable against my estate, expenses of administration of my estate, including my non-probate assets, and my legal debts.

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(AA.5-6).

In 1987, Stisser and Grantor executed a hand-written, joint will. Stisser is the sole beneficiary of Grantor's Estate under the joint will. (AA.161-163). Stisser is also the personal representative of the Estate.

Grantor died on November 17, 2002. Following her death, the Trustees calculated estimated state and federal estate tax obligations of the Estate and made the estimated estate tax payments of \$3,242,000. (Add.86, ¶ 31). The Trustees also paid several small bills for expenses related to Grantor's death, such as funeral and medical expenses. For each of these expenses, an invoice was provided to the Trustees by either Stisser or the service provider. (Wuebker test. (Tr. XI at 107-109)). The Trustees also offered the resources of the Andreas Family Office to assist Stisser in opening a probate estate. (Wuebker test. (Tr. XI at 104-106); Andreas test. (Tr. XII at 117-119)). Stisser did not take advantage of this offer, and he failed to open a probate estate until February 2004, nearly fifteen months after Grantor died. (Wuebker test. (Tr. XI at 106)). This delay caused two probate estates to be opened, one in

Illinois and one in Florida. This situation resulted in multiple litigation matters between the two estates and substantial attorneys' fees. (Add.61-62).

**B. Stisser Demanded Payment From the Trustees of Four Large Secured Debts**

Following Grantor's death, Stisser sought to have the Trust pay four secured debts on which Grantor was an obligor. Stisser first demanded that the Trustees pay these secured debts in August 2003, before Stisser had opened a probate estate and before he had been appointed as personal representative. (Add.53-54). The date of death amount of the secured debt obligations claimed by Stisser and for which he demanded payment was \$4,362,262.00. (AA.133-35). The particular secured debts for which Stisser claimed he was entitled to payment from the Trust are described below.

**1. Debt Secured by Residential Real Estate in Galesburg, Illinois.**

Before Grantor's death, Grantor and Stisser, through a land trust, had owned a residential property located in Galesburg, Illinois "not as tenants in common, but as joint tenants with full rights of survivorship." (Stisser test. (Tr. VII at 76); AA.164). Thus, Grantor's interest in the Galesburg residence passed to Stisser upon her death by right of survivorship.

The Galesburg residence served as security for a joint line of credit that the Grantor and Stisser took out through Central Illinois Bank ("CIB"). (*Id.*; AA.166-169). Stisser's and Grantor's obligation to repay this line of credit ("CIB Loan")

was “joint and several.” (AA.167). The amount of the CIB Loan on the date of Grantor’s death was \$621,324. (AA.135).

In January 2003, after Grantor’s death, the CIB Loan became due. Stisser knew the loan was due and that there was no legitimate reason for nonpayment. (Potter test. (Tr. IV at 42, 44); Stisser test. (Tr. VII at 77); Exs. 1140, 1142)). After Stisser refused to pay the loan or even communicate with CIB, CIB took the initiative to open an Illinois probate estate in July 2003 for Grantor, and CIB brought a foreclosure action against Stisser. (Ex. 1146). Stisser chose not to answer the foreclosure action, resulting in a default. (Potter test. (Tr. IV at 62-63); Stisser test. (Tr. VII at 94-95)).

With no legitimate defense to CIB’s foreclosure action other than payment of the underlying debt, Stisser and his Illinois counsel, James Potter, devised a plan under which Stisser would provide funds to a shell corporation named MJP Farms to pay off and take an assignment of the secured debt. Potter was the sole owner, officer, and director of MJP Farms. (Add.58, ¶¶ 28-29; (Potter test. (Tr. IV at 77-81)). MJP Farms, using funds provided to it by Stisser, would then seek to obtain a judgment against the Estate for the full amount of the debt and in turn would claim that the Trustee was obligated to pay the judgment because it was a debt of the Estate. (*Id.*; Potter Test. (Tr. IV at 17-18, 97, 100)).

Acting in direct conflict with his fiduciary duty as personal representative, Stisser carried out this scheme. (Add.108). Stisser funded MJP

Farms' payment of the debt owing to CIB by wiring \$630,000 to Potter's firm on August 3, 2004. (Add.59, ¶ 32; Stisser test. (Tr. VII, at 110-112)).<sup>5</sup> Potter, acting as President of MJP Farms, wired \$620,723.44 to the lender, CIB, on August 6, 2004, and took an assignment of the debt, thus resolving the foreclosure action. (*Id.*; AA.143; Potter test. (Tr. IV at 76-77, 92-93)). MJP Farms, using even more funds provided by Stisser, then filed a claim in the Florida probate proceeding against the Estate and commissioned a lawsuit against the Estate representing that only the Estate was liable for the debt and "not [Stisser] individually." (Add.59-60, ¶¶ 33-34; Add.104-105, ¶¶ 32-36; AA.144-159).

## **2. Debt Secured by the Condominium in Naples, Florida.**

Before Grantor's death, Grantor and Stisser also owned a condominium located in Naples, Florida. The Grantor and Stisser owned the condominium as joint tenants, and the Grantor's interest in the Naples condominium passed to Stisser by right of survivorship at her death.

The condominium served as security for a mortgage taken out by both Grantor and Stisser. Grantor and Stisser were jointly and individually liable on this mortgage debt. (AA.170-185). The amount owed on this mortgage at Grantor's death was \$1,366,205. (AA.134).

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<sup>5</sup> Contrary to his testimony at trial, Stisser testified in his deposition that he did not have the money to pay off the CIB debt and that he did not know where MJP Farms obtained the money to pay off the debt. (Tr. VII at 103-104).

**3. Debt Secured by Commercial Property in Galesburg, Illinois.**

At the time of Grantor's death, Grantor and Stisser were co-borrowers on a loan secured by a mortgage on commercial property located in Galesburg, Illinois. (Stisser test. (Tr. VII at 69). The amount owed on the mortgage at Grantor's death was \$658,293. (AA.135). Although Grantor and Stisser were both personally liable on this debt, the title to the commercial property was, at all times, in Vernon Stisser's name only. (*Id.*) Stisser does not dispute that he is personally liable for this debt.

**4. The Margin Loan Against Grantor's Account at Charles Schwab.**

The final secured debt for which Stisser sought payment from the Trust was the margin loan taken against Grantor's investment account at Charles Schwab.<sup>6</sup> The Schwab Account was solely owned by Grantor before her death and became an asset of the Estate following her death. (Potter test. (Tr. IV at 157)). The Schwab Margin Loan was secured by the assets in the Schwab Account. (Stisser test. (Tr. IX at 122-23)). As is typical with margin loans secured by an investment account, "[s]ecurities purchased on margin [were] Schwab's collateral for the [margin] loan," and Schwab had the right to force the sale of securities or other

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<sup>6</sup> In 2008, Stisser transferred the account and its margin loan to Raymond James. (Lile test. (Tr. III at 179). For simplicity, this investment account and the margin loan will be referred to as the "Schwab Account" and "Schwab Margin Loan."

assets in the account to maintain the required account equity.<sup>7</sup> (AA.191); *see also* 12 C.F.R. § 220.4(d) (part of the Federal Reserve Board's Regulation T which governs the extension of credit, including margin loans, by securities brokers and dealers).

Although Stisser was not personally liable for the margin loan, Stisser was responsible for incurring the margin loan debt. (Stisser test. (Tr. IX at 122-23). He purchased stocks in the account on margin through a power of attorney Grantor had given to him. At the time of Grantor's death, the Schwab Account assets had a value of approximately \$3,030,856 and the margin loan was \$1,716,440. (Add.60-61). As a result of the economic downturn in 2008, the value of the Schwab Account declined sharply, forcing the brokerage firm to call the margin loan and sell account securities to pay off the margin loan, leaving the value of the Schwab Account at approximately \$50,000. (*Id.*; AA.204).

## **5. Settlement Efforts.**

In an attempt to avoid litigation with Stisser, the Trustees made a series of substantial settlement offers to Stisser in 2003 and early 2004. (Add.54-56).<sup>8</sup> Some of the offers provided for the payment of the secured debts, but

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<sup>7</sup> These conditions also applied after the Schwab Account was transferred to Raymond James. (AA.193).

<sup>8</sup> Each of the Trustees' offers of settlement included express reservations that the Trustees were not, in any manner, admitting any obligation on the part of the Trust to pay the debts, or any portion of the debts, that Stisser claimed. (Add.55; Ex. 1031). The District Court allowed evidence of the Trustees' offers of settlement to document the history of communications between the parties, not as evidence of liability. (Add.54).

required assurances that the assets securing those debts would go to the Beneficiaries upon Stisser's death. The Trustees made these offers to settle in an attempt to avoid litigation expenses and to permit the distribution of the Trust's assets to the Beneficiaries. (Id). Stisser rejected the Trustee's offers and refused to negotiate with the Trustees, adopting a strategy of "sticking to [his] guns." (Add.55-56, ¶ 20).

#### **IV. ARGUMENT**

The Court of Appeals decision, reversing the District Court's award of summary judgment to the Trustee on Stisser's claim for payment of the margin loan secured by Grantor's Schwab Account, is erroneous as a matter of law for several reasons. The Court of Appeals incorrectly held that the general directive to pay debts in the Trust Agreement should be read to express an intention on the part of the Grantor to have the Trustee pay her secured debts. The decision of the Court of Appeals ignores the history, purpose, and commonly-used meaning of a general directive to pay debts. General directives to pay debts in wills generally do not require the payment of secured debts – instead, more specific language needs to be used by a testator if s/he intends to exonerate a secured debt. The same rules of construction apply to wills and will substitutes, and revocable trusts are will substitutes. There is no reason that a general directive to pay debts should be read any differently depending on whether it is in a will or a trust. The decision of the Court of Appeals also violates and disregards the clear intent of Grantor that her children and step-children, not Stisser personally, receive the assets in her

Trust upon Grantor's death. In addition, the Court of Appeals' logic creates significant confusion as to how a general directive to pay debts should be interpreted, in both wills and trusts.

The Court of Appeals also erred insofar as it held that Stisser was acting in his capacity as personal representative of the Estate in requesting payment of the Schwab Margin Loan. Although the Schwab Account was a probate asset, under both Minnesota and Florida law (the law governing the administration of the Estate), the Schwab Account passed to the Estate beneficiary (Stisser personally) subject to the Schwab Margin Loan. The Estate was not required to exonerate the Schwab Margin Loan. Thus, when Stisser requested payment of the margin loan from the Trust, he was not requesting advancement or reimbursement of a debt for which the Estate was responsible; rather, he was acting in his personal capacity in requesting payment of that debt. Neither the law nor the Trust Agreement require payments to Stisser for debts that are not the responsibility of the Estate.

**A. Standard of Review.**

De novo is the appropriate standard of review in this case as to the issues presented by the Trustee. This Court reviews legal decisions on summary judgment under a de novo standard. *SCI Minnesota Funeral Services, Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860-61 (Minn. 2011). “That standard of review does not change simply because the claims at issue are

for equitable relief.”<sup>9</sup> *Id.* at 861. Similarly, in reviewing a District Court’s interpretation of a trust agreement, “Where the trial court has interpreted an unambiguous written document, the standard of review is de novo.” *In re Trust Created by Hill*, 499 N.W.2d 475, 482 (Minn. Ct. App. 1993).<sup>10</sup>

**B. The Court of Appeals Erred as a Matter of Law in Overturning the Decision of the District Court and Holding that the General Directive to Pay Debts in Sections 3.1 and 3.1.1 of the Trust Agreement Requires Payment of Secured Debts.**

The District Court correctly held that the language of the Trust Agreement, and in particular, the general directive regarding the payment of legal debts, did not express an intent by the Grantor that the Trustee be obligated to pay off or “exonerate”<sup>11</sup> the secured debts on which Grantor was an obligor. The Court of Appeals erred in reversing the decision of the District Court.

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<sup>9</sup> This trust proceeding is an equitable proceeding. When a trustee, beneficiary, or interested party files a petition under Minnesota Statutes Section 501B.16, he or she invokes “the equitable jurisdiction of the court.” *First Trust Co. v. Union Depot Place Ltd. P’ship*, 476 N.W.2d 178, 182 (Minn. Ct. App. 1991).

<sup>10</sup> Even though the de novo standard generally applies to the review of a District Court’s legal determinations on a summary judgment motion in an equitable proceeding, “[a] deferential standard of review might be applicable where, after balancing the equities, the district court determines not to award equitable relief.” *SCI Minnesota Funeral Services, Inc.*, 795 N.W.2d at 860. Generally, this Court “will uphold the district court’s exercise of equitable powers unless they are manifestly contrary to the evidence.” *Id.* at 860. To the extent the District Court considered equitable principles, such as weighing the effect that payment of Stisser’s claims from the Trust would have on the Trust Beneficiaries, the District Court’s findings are entitled to deference.

<sup>11</sup> Black’s Law Dictionary defines “exonerate,” in part, as “[t]he removal of a burden, charge, responsibility, or duty.” BLACK’S LAW DICTIONARY (6th ed. 1990). A party may exonerate a secured debt by paying the debt and removing the debt as an obligation of the asset that had been used as security for the debt.

## **1. The Court Is Bound to Follow Grantor's Intent.**

The cardinal rule in construing trust agreements is to give effect to the grantor's intent. "[O]ne of the court's highest duties is to give effect to the [trust settlor's] dominant intention as gathered from the instrument as a whole." *In re Trusteeship Under Agreement with Mayo*, 251 Minn. 91, 95; 105 N.W.2d 900, 903 (1960). In ascertaining the grantor's intent, courts look to the language of the trust instrument. *Id.* A trust agreement "must be construed to carry out the main object of the settlor as disclosed by its terms notwithstanding inaccuracies of expression, ineffectiveness of terms, or the presence of provisions therein which on their face appear inconsistent [with the grantor's intent]." *In re Fiske's Trust*, 242 Minn. 452, 460; 65 N.W.2d 906, 910 (1954). Minnesota courts follow the same rule of construction when interpreting wills. *Barney v. May*, 135 Minn. 299, 301; 160 N.W. 790, 791 (1917) ("The cardinal rule in the construction of wills, to which all others must bend is that the intention of the testator as expressed in the will shall prevail.").

## **2. General Directives to Pay Debts Are Not Used to Express an Intent to Exonerate Secured Debts.**

In order to determine whether the general directive to pay debts in the Trust Agreement was the Grantor's way of expressing her intent that the Trustee exonerate all her secured debts, it is important to review the history and modern use of general directives to pay debts in testamentary instruments. This

background demonstrates that a general directive to pay debts is not language a decedent uses to express an intent that secured debts be exonerated.

**a. General Background.**

This Court has long recognized the limited meaning of a general directive to pay debts – almost 100 years ago, this Court stated that “pay all my *just debts*” is a “well-worn stereotyped expression that really means nothing.” *In re Norseth’s Estate*, 121 Minn. 104, 110; 140 N.W. 337, 339 (1913). In considering the parties cross-motions for summary judgment in this case, the District Court correctly noted that, historically, the “direction to ‘pay my legal debts’ constituted a directive authorizing estate assets (rather than the assets of the personal representative himself) to be used by the personal representative to pay estate debts directly.” (Add.33). “Thus the omnipresent directive to pay debts ha[s] more to do with empowering the personal representative than making a statement about exoneration of devisees from any encumbrances on the devise.” (*Id.*) Although, in modern times, the personal representative has authority, without court order, to “satisfy and settle claims” under Minn. Stat. § 524.3-715(27) (2010), a general directive to pay debts is still commonly used in wills.<sup>12</sup> See Gary D. McDowell et al., *DRAFTING WILLS AND TRUSTS AGREEMENTS* at 2-2 (6th ed.

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<sup>12</sup> The Georgia Supreme Court has aptly characterized a general directive to pay debts as “a generic phrase relating to the payment of debts routinely included in a will and ‘most likely reflect[s] the testat[rix]’s intent to leave the world with [her] accounts paid and to be remembered as an upright and respectable person.”” *Manders v. King*, 667 S.E.2d 59, 61 (Ga. 2008)(citing *Am. Cancer Soc. v. Estate of Massell*, 258 Ga. 717, 718; 373 S.E.2d 741 (Ga. 1988)).

2008). Commentators in Minnesota have noted that “[T]he debts referred to in the typical debt clause are unsecured obligations.” 6A Steven J. Kirsch, MINNESOTA PRACTICE § 59.35 (3d ed. Supp. 2010); *see also Drafting Wills and Trusts Agreements* at 2-2, 6A-2 (citing Minn. Stat. § 524.2-607)).

General directives to pay debts also commonly appear in revocable trusts. (Hess Report (AA. 116)). Boiler plate language, similar to that in Sections 3.1 and 3.1.1 of the Trust Agreement, appears in standard form revocable trust agreements used throughout Minnesota and other states. *See McDowell et al., supra*, at 6-7 (6th ed. 2008); (Hess Report (AA.116)). The drafters’ comments to the Minnesota State Bar Association practitioner’s guide, *Drafting Wills and Trusts Agreements*, state that the purpose of including this language in a revocable trust agreement is to allow the personal representative of the estate and the trustee to work together to determine the best source for the payment of a decedent’s debts. *Id.* According to the drafters’ comments, this language allows a personal representative to request payment from the trustee of those debts that “the settlor’s estate is, at least initially, obligated to pay.” *Id.* The drafters’ comments do not say that this language is used to express an intent that secured debts be exonerated.

**b. A General Directive To Pay Debts Does Not Express an Intention to and Require the Exoneration of Debts Secured by Probate Assets.**

**i. Minnesota has Abrogated the Common Law Presumption of Exoneration.**

The Minnesota Legislature has made clear that in the context of a will, a general directive to pay debts does not require the exoneration of a debt secured by a specific devise. “A specific devise passes subject to any mortgage or security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.” Minn. Stat. § 524.2-607.

The Legislature’s conclusion that something more than a general directive is required to exonerate a specific devise is notable because at common law, there was a presumption that a testamentary devise of real estate would pass free and clear of any debt, unless a will specifically stated otherwise. (Hess Report (AA.117) *citing* Frances M. Ryan, *Exoneration of the Specific Devise at the Expense of the Residue*, 44 MARQ. L. REV. 290 (1960-61)); *In re Estate of Peterson*, 365 N.W.2d 300, 303 (Minn. Ct. App. 1985). This presumption of exoneration is sometimes referred to as the rule of exoneration or the doctrine of exoneration. The reason the presumption of exoneration was developed under the English common law was because of the especially high value that English society placed upon real estate and the relatively low value placed on all forms of personal property. (AA.117). It was assumed, under the old English common law, that a decedent would want a debt secured by devised real estate to be paid from

personal property in the estate and not from the real estate itself.<sup>13</sup> Under the common law, the presumption of exoneration was not dependent on whether a will included a general directive to pay debts; it operated as a matter of law. *See generally* (Hess Report (AA.117)); Ryan, 44 MARQ. L. REV. 290.

The common law presumption of exoneration has now been expressly abrogated in states like Minnesota that have adopted the Uniform Probate Code. *See* Minn. Stat. § 524.2-607; UNIFORM PROBATE CODE § 2-607 (2006).<sup>14</sup> The reason the common law rule of exoneration has been abrogated is because of a belief that the rule frustrates the intent of most testators, who would not want secured debts to be satisfied at the expense of other beneficiaries but, instead, would want the property to pass subject to the debt. (Hess Report (AA.117)). Importantly, Minnesota law now requires specific language—something more

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<sup>13</sup> The “assumption that the average testator prefers that the real property be relieved of the mortgage rather than that it passes subject to it” made sense “in a predominantly pastoral society in which real estate was the asset of main importance and its ownership was a mark of social distinction. Today, however, financial status and stability are determined in terms of total net worth in which real and personal assets play an equally important part, and the assumption that the average testator prefers to exonerate the specifically devised real estate at the expense of the personalty is not convincing.” Ryan, 44 MARQ. L. REV. at 291.

<sup>14</sup> Many states, including Florida and Illinois, where the subject real estate in this case is located and where the Grantor resided, have also abrogated the common law presumption of exoneration by adopting similar laws. *See* Fla. Stat. § 733.803 (2011); 755 Ill. Comp. Stat. 5/20-19(a) (2011). The presumption of exoneration was also abrogated in England in the 1850s. Ryan, 44 MARQ. L. REV. at 292-293.

than a general directive to pay debts—in order for a devise to pass free and clear of encumbrances.

The common law presumption of exoneration did not apply to personal property (such as the Schwab Account) or to property that passed outside of probate (such as the real estate that secured the Stissers' three joint debts). (Hess Report (AA.117-121)). Thus, at common law, there was never a presumption that secured debts, such as the four claimed by Stisser, would be exonerated by an estate. Because Minnesota has abrogated the common law presumption of exoneration, there is no longer any kind of presumption that a secured debt (of any kind) will be exonerated by an estate. Rather, any right of exoneration from the estate must be based upon the specific language of the will.

**ii. Specific Language of a Grantor's Intent is Required to Exonerate a Debt Secured by a Probate Asset.**

Consistent with Minnesota's nonexoneration statute and the commonly understood limited meaning of a general directive to pay debts in a will, the Minnesota Court of Appeals has not read a general directive to pay "my legal debts" in a will to require an estate to pay a debt secured by probate property. *In re Estate of Peterson*, 365 N.W.2d at 303-304. In *In re Peterson*, the decedent's will devised his share of a business and several tracts of land to his son and directed his son to assume the mortgages on those lands. The residue of the decedent's estate passed to his daughter. The property she inherited included the decedent's homestead, which secured several debts. *Id.* at 302. The will in

*Peterson* included a direction that all “legal debts” be paid by the estate. The Court of Appeals held that Minnesota’s nonexoneration statute applied and that the daughter, not the estate, was responsible for the debts secured by the property she had inherited, despite the general directive that the estate pay all “legal debts.” *Id.* at 303. The Court came to this conclusion despite the fact that the daughter had inherited the homestead as part of the Estate’s residue. The homestead was not a “specific devise” under a literal reading of the nonexoneration statute, but the Court applied the concept of the statute to the residuary bequest. In addition, the Court held that the fact that the will directed that the decedent’s son assume the mortgages on the lands he inherited, but was silent as to whether the daughter would assume mortgages on the homestead, did not mean that the estate was required to pay the mortgages on the property the daughter inherited. *Id.*

Likewise, under Florida law (the law that governs administration of the Estate), something more than a general directive to pay debts is required if a probate asset is to pass free and clear of debt. *See Fla. Stat. § 733.803; In re Estate of Woodward*, 978 So.2d 865, 867 (Fla. Dist. Ct. App. 2008).

**c. A General Directive to Pay Debts Does Not Express an Intention to and Require Exoneration of Debts Secured by Non-Probate Property.**

Minnesota courts have not considered whether a general directive to pay debts in a will requires payment of debts secured by property that passes outside of probate by right of survivorship. However, courts in several other states – even in states that still follow the presumption of exoneration – have required that specific

language be used to express an intent that such a secured debt (which debt is not subject to the presumption of exoneration) be paid by the estate. In *In re Estate of Zahn*, 702 A.2d 482, 487-88 (N.J. Super. Ct. App. Div. 1997), the Superior Court of New Jersey, Appellate Division, held that where a will required payment of “just debts,” but was silent regarding satisfaction of mortgage indebtedness, the estate was not required to exonerate the mortgage debt on the decedent’s house, which decedent and plaintiff had owned as a joint tenants with right of survivorship.<sup>15</sup> The Court held that the general directive in the will to pay “just debts” did not clearly indicate the decedent’s intent regarding payment of the mortgage. *Id.* at 487.

Similarly, the Georgia Supreme Court<sup>16</sup> held that a “surviving joint tenant does not qualify for exoneration of a mortgage on joint tenancy property unless there is language in the decedent’s will clearly expressing an intention that the mortgage debt be paid.” *Manders v. King*, 284 Ga. 338, 340; 667 S.E.2d 59, 61 (Ga. 2008) (quoting *In re Estate of Young*, No. A-96-423, 1997 Neb. App. LEXIS

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<sup>15</sup> New Jersey, like Minnesota, has abrogated the common law presumption of exoneration. N.J.S.A. 3B:25-1. The New Jersey nonexoneration statute did not literally apply to the plaintiff’s claim because the property passed to her by right of survivorship instead of through the will. Nonetheless, the New Jersey Court held that a general directive to pay debts was not specific enough to show a clear intent of the testator that the mortgage debt be paid.

<sup>16</sup> Unlike Minnesota, Georgia follows the common law presumption of exoneration. *Manders*, 667 S.E.2d at 60. The debt at issue in the *Manders* case was not subject to the presumption of exoneration because the property securing the debt passed outside of probate.

105, 1997 WL 426191 (Neb. App. 1997)).<sup>17</sup> The Court went on to hold that “[t]he testatrix’s directive in her will that ‘all [her] just debts be paid without unnecessary delay’ is not a clear expression of the testatrix’s intent” that the estate pay a note secured by a condominium that passed to her son as a joint tenant with right of survivorship. *Manders*, 667 S.E.2d at 60.

The Tennessee Supreme Court<sup>18</sup> has also held that a general directive to pay debts does not clearly express a decedent’s intent to have a secured debt paid: “We find that the general language in the decedent’s will, directing his personal representative to pay all of his “just debts,” is not sufficiently clear to justify the exoneration of a mortgage on property passing by right of survivorship.” *In re Estate of Vincent*, 98 S.W.3d 146, 149 (Tenn. 2003). The Tennessee’s Supreme Court’s reasoning is particularly compelling and applicable to this case:

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<sup>17</sup> In *In re Estate of Young*, the Nebraska Court of Appeals noted that “the general rule is that a surviving joint tenant does not qualify for exoneration of a mortgage on joint tenancy property unless there is language in the decedent’s will clearly expressing an intention that the mortgage debt be paid.” 1997 Neb. LEXIS 105 at \*13 (AA.212, 215). The will in that case provided: “I order and direct that all of the expenses of my last illness and burial, *all mortgages on any real property or interest therein titled in my name*, and all legal claims against my estate be paid...” *Id.* (Emphasis provided by Court). The Nebraska Court of Appeals held that this language was different than the standard “boilerplate” general directive to pay debts, because the term “mortgage” has a distinct and clear meaning and that an estate wouldn’t normally pay a mortgage, absent specific language in a will. The Court, therefore, held that this language expressed an intent by the decedent to have mortgage debts paid.

<sup>18</sup> Tennessee follows the common law presumption of exoneration. *In re Estate of Vincent*, 98 S.W.3d at 148-49.

As stated, the common law doctrine of exoneration did not apply to property passing by right of survivorship. Furthermore, given the trend in other states to limit the common law doctrine by requiring specific language indicating an intent to exonerate devised property, it would be inappropriate to interpret general language such as “just debts” as evincing an intent to exonerate property passing outside probate.

*Id.*

The Court of Civil Appeals of Alabama<sup>19</sup> came to a similar conclusion in *Bond v. Estate of Pylant*, 63 So.3d 638 (Ala. Civ. App. 2010). In that case, the court was asked to decide whether the estate was responsible for paying a joint debt on property that passed to the plaintiff by right of survivorship. *Id.* at 646-47. The will contained a general directive to pay debts. The Court held that “[decendent’s] general directive in the will to pay his debts is not ambiguous – it unambiguously omits any provision for exoneration.” *Id.* at 647. The Court held that the surviving joint tenant was not entitled to exoneration from the estate. *Id.* See also *In re Estate of Dolley*, 265 Cal.App.2d 63, 72-74 (Cal. Ct. App. 1968) (holding that language in the will directing the executor to “pay all my just debts” did not require the executor to pay mortgage debts on property held in joint tenancy by decedent and his surviving spouse); *Lopez v. Lopez*, 90 So.2d 456 (Fla. 1956) (holding that a surviving spouse was not entitled to exoneration from the estate for purchase money mortgages executed by both spouses for property held as tenants in the entireties).

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<sup>19</sup> Alabama, like Minnesota, has abrogated the common law presumption of exoneration. Ala. Code § 43-8-228.

**3. The District Court Correctly Held that the Language in the Trust Agreement Does Not Express an Intent by the Grantor to Exonerate the Secured Debts at Issue.**

It is clear that there is no kind of legal presumption that the Schwab Account or the real estate secured by the debts at issue would pass to Stisser free and clear of debt.<sup>20</sup> It is also clear that the use of a general directive to pay debts in a will would not require the exoneration of the secured debts being claimed by Stisser. The question in this case, therefore, is whether the general directive to pay debts in Sections 3.1 and 3.1.1 of the Trust Agreement, was the Grantor's way of expressing her intent that Trust assets be used to exonerate her secured debts.

The Grantor did not use any specific language in her Trust Agreement directing the Trustee to exonerate her secured debts. In claiming a right to payment of secured debts, Stisser relies solely on Sections 3.1 and 3.1.1 of the Trust Agreement. The District Court correctly concluded that the Grantor's "intention for exoneration cannot be inferred from the general pay 'my legal debts' language in the trust." (Add.37). The District Court's decision was based upon a careful and thoughtful review of the history and commonly used meaning general directives to pay debts. In particular, in analyzing the *In re Peterson* case, the District Court correctly reasoned and held:

[t]he principle to be gleaned from *In re Peterson* is that instructions about payment of mortgages cannot be assumed by a court without a very specific directive toward that end. If the court in *Peterson* was

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<sup>20</sup> In fact, with respect to the Schwab Account, there is now a statutory presumption under the nonexoneration statute that the investment account passes subject to the margin loan.

unable to infer a 'directive' (to pay the mortgage from estate proceeds) where other property was bequeathed with an assumed mortgage, so, too, in this case the Court cannot infer a 'directive' to pay the Schwab margin loan from the Trust's more general pay "my legal debts" language....

(Add.34) (emphasis in original).

The District Court's conclusion that specific language was required in order for Grantor to express an intent to exonerate secured debts and that the Court could not "infer a 'directive' to pay the Schwab Margin Loan from the Trust's more general pay 'my legal debts' language" is correct and is totally consistent with case law and statutes interpreting general directives to pay debts. *Id.* The Court of Appeals erred in reversing this correct and well-reasoned determination by the District Court.

#### **4. The Reasoning and Analysis of the Court of Appeals is Mistaken and Flawed.**

Despite the limited meaning courts in Minnesota and other states have prescribed to a general directive to pay debts in a will, the Court of Appeals held that it would not apply or consider this authority in interpreting the Trust Agreement. Rather than interpreting the Trust Agreement in the same manner that it would interpret a will, the Court of Appeals determined that the general directive to pay debts in Sections 3.1 and 3.1.1 requires the exoneration of secured debts. The Court of Appeals' analysis in this regard is wrong and its decision that a general directive in a Trust Agreement to pay debts requires the exoneration of secured debts should be reversed.

**a. The Decision of the Court of Appeals is Incorrect Because the Trust Agreement is a Will Substitute and Should be Subject to the Same General Rules of Construction as a Will.**

The Court of Appeals' analysis is incorrect because it construes language in a revocable trust agreement differently than it would be construed in a will. In interpreting both wills and trusts, the primary goal of Minnesota courts is to give effect to the intent of the testator or grantor, respectively. *In re Mayo*, 251 Minn. at 95; 105 N.W.2d at 903 (trusts); *Barney v. May*, 135 Minn. 299, 301; 160 N.W. 790, 791 (wills). There is no policy reason why a general directive to pay debts should be given a different meaning depending upon whether it is in a will or a revocable trust that is used as a will substitute. See George Gleason Bogert and Amy Morris Hess, THE LAW OF TRUSTS AND TRUSTEES, § 233 (rev. 2d. ed. repl. vol. 1992 & cum supp.); see also (Hess Report (AA.118-119)).

A will substitute is:

[A]n arrangement respecting property or contract rights that is established during the donor's life, under which (1) the right to possession or enjoyment of the property or to a contractual payment shifts outside of probate to the donee at the donor's death; and (2) substantial lifetime rights of dominion, control, possession, or enjoyment are retained by the donor.<sup>21</sup>

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<sup>21</sup> The Court of Appeals seemed confused as to the meaning of a will substitute. In the text of its opinion the Court of Appeals indicated that it did not agree that the Trust was a will substitute and then in a footnote, the Court of Appeals stated that "the trust was a will substitute as to the children but not as to Stisser." (Add.6, n. 2). This analysis is fundamentally flawed. The identity of the beneficiaries does not impact whether or not a revocable trust is a will substitute. In addition, the fact that there was not a pour over will, and that some of the Grantor's assets were administered through probate after her death, does not render the subject revocable trust something other than a will substitute. The Trust

RESTATEMENT (THIRD) OF PROPERTY § 7.1 (2003). Revocable trusts are will substitutes. RESTATEMENT (THIRD) OF PROPERTY § 7.1, cmt. b (listing a revocable inter vivos trust as a will substitute); *see also* (Hess Report (AA.116)).

In adopting nonexoneration statutes, both Florida and Minnesota in essence codified the presumption that a decedent wants assets to pass subject to any debts securing them unless the decedent uses specific language to indicate a contrary intent. The Trustee's expert, Amy Hess, a renowned trust and estate scholar and the successor author of the well-known multi-volume treatise, Bogert, The Law of Trust and Trustees, stated in her expert report, "Although the Florida and Minnesota nonexoneration statutes are adapted from the Uniform Probate Code and apply only to wills, the reason for enactment applies equally to debt-payment clauses in trust agreements that function as will substitutes. Paragraph 3.1.1 should not apply to exonerate a secured debt on a probate asset in a state that has enacted such a statute." (AA.118).

The decision of the Court of Appeals, which gives a general directive to pay debts a different meaning in the context of a trust than it would have in the context of a will, is inconsistent with multiple commentaries urging similar construction of wills and will substitutes. The Third Restatement of Property provides, "Although a will substitute need not be executed in compliance with the statutory formalities required for a will, such an arrangement is, to the extent

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was, at the time of Grantor's death, a will substitute as to all of the Grantor's assets that were held in the Trust.

appropriate, subject to . . . rules of construction . . . applicable to testamentary dispositions.” RESTATEMENT (THIRD) OF PROPERTY § 7.2. Similarly, the Uniform Trust Code provides, “The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of trust property.” UNIFORM TRUST CODE, § 112 (2004).

In most cases, there is simply no good reason for interpreting a will differently than a will substitute. As University of Chicago professor John Langbein explained in an often-cited Harvard Law Review article:

Transferors use will substitutes to avoid probate, not to avoid the subsidiary law of wills. The subsidiary rules are the product of centuries of legal experience in attempting to discern transferors’ wishes and suppress litigation. These rules should be treated as presumptively correct for will substitutes as well as for wills. Once we understand that will substitutes are nothing more than “nonprobate wills” and that no harm results from admitting that truth, we have no basis for interpreting will substitutes differently from wills. Both as a matter of legislative policy and as a principle of judicial construction, we should aspire to uniformity in the subsidiary rules for probate and nonprobate transfers. Even when the subsidiary law of wills has been reduced to statute it represents a determination about what testators ordinarily intend or would have intended.

John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108 (1984). Similarly, comments to the Third Restatement of Property explains that “a will substitutes serves the function of a will” by shifting the right to possess certain property at the donor’s death. It is “in reality a nonprobate will” and should, to the extent appropriate, be subject to the

same rules of construction as a will. RESTATEMENT (THIRD) OF PROPERTY § 7.2, cmt. a.

The nonexoneration statute represents a determination by the Minnesota Legislature that a testator typically uses specific language when s/he intends for a secured debt to be exonerated. This same rule should apply in interpreting a trust agreement.

As Judge Schellhas noted in her dissent to the Court of Appeals' decision, "the district court properly used the nonexoneration statute and common law pertaining to the doctrine of exoneration to guide its construction of the trust language, 'pay my legal debts.'" (Add.17; see also Add.15). The Court of Appeals majority erred in dismissing and ignoring this guidance simply because the Court was interpreting a testamentary instrument titled a trust agreement and not a will.

**b. The Decision of the Court of Appeals Misconstrues the Purpose of the Nonexoneration Statute.**

The decision of the Court of Appeals is also erroneous because it misconstrues and misapplies the nonexoneration statute. The District Court properly considered the nonexoneration statute as guidance and as providing context to the meaning of the general directive to pay debts in the Trust Agreement. Under the nonexoneration statute, a general directive to pay legal debts in a will is not sufficient to express a testator's intention that debts secured by real property included in the probate estate be exonerated (which debts were

historically entitled to a presumption of exoneration). Minn. Stat. § 524.2-607; *In re Estate of Peterson*, 365 N.W.2d at 303. Therefore, there is no reason in Minnesota that such a general directive should be read any differently for debts that were not historically entitled to a presumption of exoneration, like the debts at issue here. Similarly, there is no reason that such a general directive should be read any differently if it appears in a trust agreement.

Rather than using the nonexoneration statute as guidance in interpreting the Grantor's intent with respect to the meaning of the general directive in Sections 3.1 and 3.1.1, however, the Court of Appeals held that the absence of a nonexoneration provision in the Trust Code meant that secured debts should be paid from the Trust. This reasoning completely ignores the history and purpose of the nonexoneration statute. The reason that there is no nonexoneration provision in the Trust Code is that there has never been a presumption of exoneration in the context of a trust. The nonexoneration provision in the Probate Code was enacted to abrogate the common law presumption that an estate would exonerate debts secured by specific devises of realty in the probate estate. *In re Peterson*, 365 N.W.2d at 303; (Hess Report (AA.117)). No such presumption ever existed with respect to trusts. In order for a beneficiary or other interested person to have a right to exoneration from a trust, the language of trust agreement would have to expressly provide such a right. Until the Court of Appeals decision, there has never been any reason for the Legislature to enact a nonexoneration provision in the Trust Code because there is no reason to abrogate a presumption that has never

existed. The Court of Appeals' decision effectively (but erroneously) expanded the abrogated presumption of exoneration to revocable trusts, even though no presumption of exoneration by a trust ever existed at common law.

**c. The Decision of the Court of Appeals Contravenes the Grantor's Intent.**

The Court of Appeals stated that it was bound by the general canons of construction to honor the plain meaning of the words used in Section 3.1. (Add.6). In applying this principle of construction, however, the Court of Appeals overlooked the fact that a court's highest duty in interpreting a trust agreement is to give effect to the intent of Grantor and that in interpreting a trust agreement, phrases "should not be given such a literal and narrow construction that the subject matter and purpose of [the grantor's] bounty are forgotten." *In re Butler's Trusts*, 223 Minn. 196, 204-05; 26 N.W.2d 204, 205 (1947). The Trust Agreement makes clear that Grantor intended that her children and step-children, not Stisser, were to receive the bounty of her Trust assets. Grantor, in fact, expressly omitted "any provisions for [Stisser]." (AA.29, ¶ 12.4.5). In addition, Grantor did not use any specific language in the Trust Agreement indicating an intent to exonerate secured debts.

The District Court correctly examined the Trust Agreement as a whole in ascertaining Grantor's intent. The District Court determined that the general directive to pay debts was not specific enough to indicate an intent by Grantor that the Trustee pay secured debts. The District Court also looked to Grantor's specific

exclusion of Stisser from any provision in the Trust Agreement and noted that, if all of the secured debts claimed by Stisser (which were estimated to be over \$5.7 million) were paid from the Trust, the Beneficiaries would each receive significantly less than they would receive if the debts were not paid from the Trust. (Add.36). The District Court concluded that Grantor did not intend Stisser to receive a windfall benefit at the expense of the Beneficiaries. (*Id.*) The District Court's decision is consistent with the court's "independent responsibility to protect trusts from unnecessary dissipation." *In re Great N. Iron Ore Properties*, 311 N.W.2d 488, 493 (Minn. 1981). The District Court's reasoning is also similar to that of Professor Hess, who stated in her expert report:

Mrs. Stisser provided for her surviving spouse exclusively under her will and provided for her children and step-children exclusively under the Trust Agreement. Satisfying a debt secured by property passing to Mr. Stisser under Mrs. Stisser's will out of assets passing in trust to her children and step-children clearly is inconsistent with this estate plan.

(Hess Report (AA.119)). The District Court correctly concluded that the Trust Agreement, when considered as a whole and read with the purpose of Grantor in mind, did not show an intent by Grantor to pay the secured debts claimed by Stisser.

An affirmance of the District Court's decision would not have required the Court of Appeals to "read language into an unambiguous written document" as the two person majority of the Court of Appeals inferred. (Add.6). Rather, the District Court's decision simply recognized that a specific expression of Grantor's

intent to exonerate a secured debt is required in order for a will or a trust to require such exoneration. The Court of Appeals erred by holding that a general directive to pay debts—boilerplate language that appears in many trust agreements for reasons entirely unrelated to exoneration—should be read to express an intent regarding the exoneration of secured debts.

**d. The Reasoning and Analysis of the Court of Appeals Creates Significant Confusion.**

The Court of Appeals' decision should also be reversed because the Court's analysis creates confusion as to the proper interpretation of both will and trusts. Consider, as an example, a case where a decedent has a revocable trust and a will, both governed by Minnesota law. The trust contains a general directive for the trustee to pay debts, and under the will, probate assets are "poured over" into the trust upon death for distribution to trust beneficiaries. Do the debts that are secured by probate assets have to be exonerated by the trust in this case? If the probate assets passed directly to the beneficiaries through probate, the debts secured by such assets would not be exonerated. *In re Estate of Peterson*, 365 N.W.2d at 303; Minn. Stat. § 524.2-607. But such a payment would seem to be required by the reasoning of the Court of Appeals' decision.

Similarly, it is unclear what impact the Court of Appeals' decision will have on the interpretation of general directives to pay debts in wills when the nonexoneration statute does not strictly apply, such as when property securing a debt of the decedent passes outside of probate. In most states that have considered

this issue, courts have held that there is no right of exoneration from the estate. *See, e.g., Manders*, 667 S.E.2d at 60; *In re Estate of Vincent*, 98 S.W.3d at 149-150. Under the logic of the Court of Appeals, however, it is unclear whether a general directive to pay debts in a will would give a surviving joint tenant a right of exoneration, because, just as the Legislature has not adopted a nonexoneration provision in the Trust Code, the Legislature has not adopted a statute to address nonexoneration of property that passes outside of probate.

#### **5. Summary.**

The holding of the Court of Appeals that a general directive to pay debts in the Trust Agreement required the Trustee to pay secured debts on which Grantor is an obligor should be reversed. The decision is inconsistent with Minnesota's nonexoneration statute, Minnesota case law, and with case law in other states interpreting general directives to pay debts. The decision also violates the rule that wills and will substitutes be subject to the same rules of construction, and it contravenes the clear intent of Grantor that her Trust assets pass to her children and step-children following her death. Finally, the decision of the Court of Appeals is simply misguided and it creates confusion and uncertainty regarding the interpretation of a general directive to pay debts.

#### **C. The Court of Appeals Erroneously Held that Stisser was Acting in his Capacity as Personal Representative of the Estate in Requesting Payment of the Schwab Margin Loan.**

The Court of Appeals also erred by holding that Stisser was acting in his capacity as personal representative of the Estate in requesting payment of the

Schwab Margin Loan.<sup>22</sup> The language of Section 3.1 only provides that the Trustee is to pay a debt of the Grantor if: (1) the request for payment comes from the legal representative of the estate; and (2) the legal representative requests such payment by way of “advancement” or “reimbursement.” (AA.5-6).

The Court of Appeals held that the Trustee was obligated to pay the Schwab Margin Loan because the Schwab Account was a probate asset and Stisser, according to the Court of Appeals “requested payment of the encumbrance on this account in his capacity as personal representative of the [G]rantor’s [E]state.” (Add. (7)).<sup>23</sup> The Court of Appeals held that the Trustee was not obligated to pay the three debts secured by real estate because the real estate was not part of the Estate, and Stisser was not acting in his capacity as the legal representative of the Grantor’s Estate in requesting payment of these debts.

The Court of Appeals is correct that Stisser was not acting in his capacity of legal representative of the Estate in requesting payment of the three debts secured by nonprobate assets. As a matter of Florida and Illinois law, (where the real estate is located) the Estate, is not, in the first instance, responsible for the debts secured by the non-probate assets at issue. Vernon Stisser was jointly liable on the

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<sup>22</sup> If the Court of Appeals had not erred in interpreting the general directive to pay debts, it would not have needed to reach the issue of whether the other requirements of Sections 3.1 and 3.1.1 had been satisfied. Thus, if this Court reverses the Court of Appeals with respect to its decision as to the meaning of the general directive to pay debts in the Trust Agreement, this Court need not address whether Stisser was requesting advancement or reimbursement of the Schwab Account Margin Loan in his capacity as Personal Representative.

<sup>23</sup> The District Court did not make any legal or factual finding in this respect.

three loans secured, respectively, by the Naples, Florida condominium, the Galesburg, Illinois commercial property, and the Galesburg, Illinois residence. (AA.166-86). Under Florida law (the law governing administration of the Estate), Vernon Stisser is not entitled to contribution or exoneration from the Estate of the debts secured by these non-probate assets. *See Lopez*, 90 So.2d 456. In *Lopez v. Lopez*, the Florida Supreme Court held that a surviving spouse was not entitled to exoneration or contribution from the estate for purchase money mortgages executed by both spouses for property held as tenants in the entireties. *Id.* at 457-58. Likewise, to the extent Illinois law governs Stisser's obligations on the two debts secured by real property in Illinois, Stisser is not entitled to exoneration of those debts under Illinois law. *See* 755 Ill. Comp. Stat. 5/20-19a (2011). To the extent Stisser sought payments of these debts, he was not seeking advancement or reimbursement of a debt the Estate was obligated to pay. He was not acting as personal representative of the Estate. Rather, he was acting in his personal capacity to further his personal interest.

While the Court of Appeals correctly held that Stisser was not acting in his capacity as personal representative in requesting payment of the real estate debts, the Court of Appeals erred in holding that Stisser was acting in his capacity as legal representative of the Estate in requesting payment of the margin loan on the Schwab Account. Under Florida law, the Schwab Account passes to Stisser subject to the Margin Loan debt. The Estate is not obligated to pay the margin loan. Like Minnesota, Florida has abrogated the common-law presumption of

exoneration and presumes that probate assets pass subject to any encumbrances, unless a will specifically provides that the asset pass free and clear of such encumbrance. *See Fla. Stat. § 733.803.*<sup>24</sup> The Florida Court of Appeals has held that under Florida's nonexoneration statute, a specific devise of property must pass with its encumbrance. *In re Estate of Woodward*, 978 So.2d at 867. Where a will contains only a general directive to pay debts, the personal representative does not have discretion to pay an encumbrance on devised property out of the residuary estate so that the devise may pass free and clear of debt. *Id.*

Similarly, the Schwab Account passed to Stisser, in his capacity as beneficiary of the Estate, subject to the margin loan. In his capacity as personal representative of the Estate, Stisser has no obligation to pay this loan and no valid reason to request "advancement" or "reimbursement" from the Trustee for payment of this loan.<sup>25</sup> Further, the fact that Stisser first asked for payment of the margin loan debt (along with the three real estate debts), before he had even opened a probate estate or become the personal representative, demonstrates that he was not acting in his capacity as personal representative of the Estate in

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<sup>24</sup> In her dissent, Judge Schellhas noted that if Grantor and Stisser had used the term "pay my legal debts" in their joint will, the Schwab Account would pass to Stisser subject to the margin loan secured by the account. The absence of a general directive to pay debts in a will does not mean that a probate asset passes to a beneficiary unencumbered. Under Minnesota and Florida nonexoneration statutes, a specific devise passes subject to any encumbrances regardless of the inclusion or omission of a general directive to pay debts in the will. Minn. Stat. § 524.2-607; Fla. Stat. § 733.803.

<sup>25</sup> In fact, the terms of the Schwab Margin Loan expressly allow the brokerage firm to pay the loan by liquidating securities in the Schwab Account without the consent of, or notice to, the account holder. (AA.191.)

requesting payment of the margin loan.

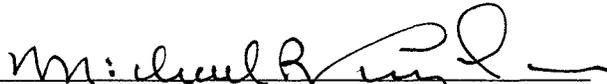
## V. CONCLUSION

The holding of the Court of Appeals that the Trustee is obligated to pay the Schwab Margin Loan should be reversed. The 2-1 decision of the Court of Appeals that the general directive to pay debts in the Trust Agreement requires the Trustee to pay the margin loan on Grantor's Schwab Account is incorrect. Under Minnesota law, a probate asset, like the Schwab Account, passes subject to any debts encumbering the asset unless a decedent specifically directs in the will that the devise pass free and clear of such debt. A general directive to pay debts is not sufficient under Minnesota law to show a testator's intent to exonerate such a debt. Minnesota applies the same cardinal rule of construction to both wills and trusts—the court's highest duty in interpreting such documents is to give effect to the intent of the testator or grantor. There is no reason that the general directive in Sections 3.1 and 3.1.1 of the Trust Agreement should be read to evince an intent of Grantor to have a debt secured by a probate asset exonerated when the same language, if used in a will, would not show such an intent.

Courts in several other states have held that a general directive to pay debts is not sufficiently clear or specific to establish and show a decedent's intent that secured debts be exonerated. Similarly, the District Court correctly held that it could not infer an intent of Grantor, from Section 3.1, that the secured debts claimed by Stisser be exonerated. The District Court's decision was correct and should have been affirmed in all respects by the Court of Appeals.

Dated: September 15, 2011

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The Trustee, through his attorneys, acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2011).

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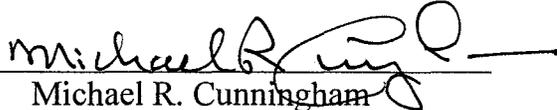
**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 131 and Minn. R. Civ. App. P. 132 for a brief produced with proportional font and typeface in 13-point Times New Roman using Microsoft Word 2003.

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