

With Strings Attached: New Jersey Courts Enforce Donor Conditions on Gifts and Trusts

By Andrew T. Fede

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Charitable giving, it is often said, is an act of trust. When donors attach conditions to gifts in New Jersey, they do so with the reasonable expectation that those provisions will be honored. Our courts permit donors and heirs to sue to enforce their rights, unlike the other state courts that continue to apply the old common law rule denying standing to donors who do not explicitly reserve that right when making their gifts. See, Nancy A. McLaughlin, “Donor Standing to Enforce Charitable Gifts in the 21st Century,” 60 *Real Property Trust & Estate L. J.* 207 (2025). As a result, gift recipients and trustees who administer gifts in this state need to confirm—before accepting the gifts or fiduciary roles—that they can comply with the conditions that donors have imposed in making their gifts.

Three New Jersey appellate division decisions demonstrate how the courts enforce donor-imposed restrictions in different contexts. These decisions serve as important guides for practitioners who advise New Jersey’s donors, charitable organizations,



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municipalities, and trustees about the legal obligations that arise when conditional gifts are made and accepted.

Enforcing the Rule Favoring Donor Intent

Judge Jose Fuentes’s opinion in *Adler v. SAVE*, 432 N.J. Super. 101 (App. Div. 2013) described the general rule providing that a recipient who accepts a gift offered on conditions creates “a reasonable expectation in the donor’s mind that the recipient would attempt to meet those conditions in good faith[.]” It follows that, “absent the donor’s consent, the recipient of the gift is not at liberty to ignore or materially modify the

expressed purpose underlying the donor's decision to give."

The plaintiffs in *Adler* were two "tenacious ... people" living in the Princeton area "who love large dogs and older cats." They made inter vivos gifts totaling \$50,000 to a local nonprofit "no-kill" animal shelter to fund two living areas for large dogs and older cats, along with naming rights for these rooms. The appellate division affirmed the order of then Law Division Judge Thomas W. Sumners, Jr. (now Chief Judge of the appellate division) compelling the shelter to refund the donation because it wished to use the funds contrary to the donors' uncontroverted expressed conditions. The shelter: "(1) decided to construct a substantially smaller facility; (2) outside the Princeton area; (3) without any specifically designated rooms to serve the needs of large dogs and older cats; and (4) without any mention of plaintiffs' names."

The court rejected the shelter's argument that the plaintiffs' refund claim should fail because they did not expressly state a right of reverter in their gift. Judge Fuentes—deciding what he called a novel issue—instead affirmed the donors' standing by holding that when a recipient "decides to unilaterally disregard the donor's expressed condition, basic fairness dictates that the gift be returned to the donor." He applied the "analytical paradigm" of a fiduciary relationship between the plaintiffs and the shelter, finding that a gift recipient is in the "superior position to determine to either meet plaintiffs' conditions, request their consent to rededicate the funds to another purpose acceptable to plaintiffs, or return

the gift. By opting to disregard plaintiffs' conditions," the shelter "breached its fiduciary duty" to the plaintiffs. The refund, therefore, "appears not only eminently suitable, but a mild sanction."

Judge Fuentes also rejected the shelter's attempt to invoke the common law cy pres doctrine, later codified effective on July 17, 2016, in New Jersey's version of the Uniform Trust Code, N.J.S.A. 3B:31-1 to -84. See, N.J.S.A. 3B:31-29(a). He noted that, under this doctrine, the courts modify a gift's or a trust's terms "according to the donor's intentions, when those intentions cannot be exactly carried out." (citing *MacKenzie v. Trustees of the Presbytery of Jersey City*, 67 N.J. Eq. 652, 672-673 (E. & A. 1905)). The court instead found that "it would be a perversion of these equitable principles to permit a modern charity ... to aggressively solicit funds from plaintiffs, accept plaintiffs' unequivocally expressed conditional gift, and thereafter disregard those conditions and rededicate the gift to a purpose materially unrelated to plaintiffs' original purpose, without even attempting to ascertain from plaintiffs what, in their view, would be 'a charitable purpose as nearly possible' to their particular original purpose."

The court also was not persuaded by the shelter's public policy argument, which hypothesized that a ruling against the recipient would discourage charitable giving. To the contrary, the court asserted "that responsible charities will welcome this decision because it will assure prospective donors that the expressed conditions of their gift will be legally enforceable." *Adler*

is among the authorities that Professor McLaughlin cites in her discussion of the nationwide “lack of coherence” in the law of donor standing. See, McLaughlin, “Donor Standing,” at 210, 233-236.

Donor Intent Enforced in Two Other Situations

Two unpublished appellate division opinions further illustrate the primacy of donor intent under municipal law and trust administration. The court, in *In the Matter of the Bierstadt Paintings Charitable Trust*, 2021 WL 3057076 (App. Div.), *certif. denied*, 249 N.J. 545 (2022), affirmed Chancery Division Presiding Judge Robert J. Mega’s order denying the City of Plainfield’s request to modify a trust to permit the city to sell two valuable Albert Bierstadt paintings titled “The Landing of Columbus” and “Autumn in the Sierras.” J. Ackerman Coles, “a well-known doctor, art collector, and philanthropist,” donated these paintings, in 1919, to honor his father, pursuant to an inter vivos charitable trust. In a letter, Coles “refers to the beauty, merit, and ‘historic value’ of the ‘Columbus’ painting. Coles included a passage from the American short story writer Washington Irving’s book ‘Life of Columbus.’” The city’s Common Council issued a resolution accepting the donation, thanking Coles “for his very generous and thoughtful gift[,]” and declaring that the paintings should be displayed where “they can be viewed by the lovers of art and serve as an inspiration to the youth of our city.”

“One hundred years later,” the city sued to modify the trust under the common law cy pres doctrine and N.J.S.A. 3B:31-29(a), alleging

that the “‘Columbus’ painting contained ‘racist implications’ and ‘to display it in a public forum in a community comprised mostly of people of color [would] only continue[] to cause irreparable harm.’” The city also contended that this painting “no longer provides aesthetic enjoyment to the community” and is a “source of constant controversy[.]” Therefore, the city claimed that Coles’s “charitable purpose of the trust is impracticable.” Although conceding that the other painting was not offensive, the city sought permission to sell both because it “does not have the economic resources to maintain and protect the ‘highly valued’ paintings.” The city claimed that the sale proceeds “would be held in trust by the Plainfield Promise, a charitable organization that would use the money to create a financial literacy program for the city’s youth, create a college scholarship fund for city residents, and establish and construct the ‘Plainfield Center of Excellence,’ a recreational educational facility.”

The trial and appellate courts enforced the donor’s intent and rejected the city’s attempt to invoke the cy pres doctrine, finding that the display of the paintings was not impracticable. The appellate court cited *Coles v. City of Newark*, 95 N.J. Eq. 73 (Ch. 1923), a decision permitting Newark to move a statue, also donated by Coles, while warning the city not to sell or demolish it. See, also, *Trustees of First Presbyterian Church v. Wheeler*, 106 N.J. Eq. 8 (Ch. 1930) (denying church specific performance because it could not convey marketable title to real property that was devised to church on conditions) (compare *In the Matter of the Estate of Barabara Ellen*

Heinecke, 2024 WL 1125186 (App. Div. 2024) (affirming application of cy pres to two bequests in a will, which became “impossible” because the charities were dissolved or defunct, but remanding for determination of alternatives “that most closely resemble” the designated charities)). *Bierstadt* is among the decisions discussed in Reid Kress Weisbord and Christiana Markella de Borja, “Restricted Charitable Gifts to the Government,” 135 *Yale L. J. Forum* 1, 17-18 (2025) and Nancy A. McLaughlin, “Laws Governing Restrictions on Charitable Gifts: The Consequences of Codification,” 70 *UCLA Rev. Discourse* 424, 442-445 (2023).

The trust administration decision, *In the Matter of the Trust of Ray D. Post*, 2018 WL 3862756 (App. Div. 2018), applied these principles to affirm Chancery Division Judge Stephen C. Hansbury’s finding that Valley National Bank breached the fiduciary duty that it owed, as the successor trustee, to the surviving beneficiaries of a trust agreement. That July 23, 1975 agreement stated that the trustee was to hold the shares of stock that made up the trust corpus. The courts permitted the beneficiaries to recover the damages that they suffered because the bank unilaterally decided to diversify the trust’s corpus. The courts rejected the bank’s attempt to justify its actions under New Jersey’s version of the Uniform Prudent Investor Act, N.J.S.A. 3B:20-

11.1 to -11.12, effective June 5, 1997, finding that the donor’s intent controls over that Act’s default rule, stated in N.J.S.A. 3B:20-11.2(b), favoring asset diversification. This decision is among those discussed in Sharon L. Klein, “What Every Trustee and Professional Should Know About Minimizing Fiduciary Liability and Reducing Litigation Exposure,” *Estate Planning* (May 2024).

Conditional gift recipients and trustees therefore should beware; the New Jersey courts give paramount importance to evidence of the donors’ intent. Charitable organizations, municipalities, and institutional trustees that deviate from that purpose do so at their legal peril, and prudent counsel will advise beneficiaries and fiduciaries, before accepting gifts, to comply with the donors’ intent.

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