

**[J-57A-2022, J-57B-2022 and J-57C-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

IN RE: TRUST UNDER DEED OF WALTER R. GARRISON	: No. 61 MAP 2022 : : Appeal from the Order of the : Superior Court at No. 1429 EDA : 2020 (cross appeal No. 1461 EDA : 2020), dated September 27, 2021, : Affirming the order of the : Montgomery County Court of : Common Pleas, Orphans' Court : Division, dated June 16, 2020 at No. : 1992-X1519 : : SUBMITTED: August 10, 2022
 APPEAL OF: MARK R. GARRISON, CHRISTOPHER GARRISON, LINDSEY GARRISON, LIZA GARRISON, AND BRITTANY GARRISON	
IN RE: TRUST UNDER DEED OF WALTER R. GARRISON	: No. 62 MAP 2022 : : Appeal from the Order of the : Superior Court at No. 1430 EDA : 2020 (cross appeal No. 1498 EDA : 2020), dated September 27, 2021, : which affirmed the order of the : Montgomery County Court of : Common Pleas, Orphans' Court : Division, dated June 16, 2020 at No. : 1992-X1518. : : SUBMITTED: August 10, 2022
 APPEAL OF: MARK R. GARRISON, CHRISTOPHER GARRISON, LINDSEY GARRISON, LIZA GARRISON, AND BRITTANY GARRISON	
IN RE: TRUST UNDER DEED OF WALTER R. GARRISON	: No. 63 MAP 2022 : : Appeal from the Order of the : Superior Court at No. 1431 EDA : 2020 (cross appeal No. 1562 EDA : 2020), dated September 27, 2021, : which affirmed the order of the : Montgomery County Court of : Common Pleas, Orphans' Court : Division, dated June 16, 2020 at No. : 1992-X1509.
 APPEAL OF: MARK R. GARRISON, CHRISTOPHER GARRISON, LINDSEY GARRISON, LIZA GARRISON, AND BRITTANY GARRISON	

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: SUBMITTED: August 10, 2022

OPINION

JUSTICE MUNDY

DECIDED: January 19, 2023

In this appeal by permission, we consider the validity of the modified terms, made by agreement of the settlor and beneficiaries, for removal and/or replacement of a trustee by the beneficiaries of irrevocable *inter vivos* trusts.¹ Specifically, we review the lower courts' extension of our holding in *Trust under Agreement of Edward Winslow Taylor*, 164 A.3d 1147 (Pa. 2017) to unified action of beneficiaries and settlor of a trust under section 7740.1(a). For the reasons set forth below, we hold that such extension is improper. At issue in this case are three trusts created by Walter R. Garrison, "Settlor," founder and CEO of CDI Corp., a successful computer serving company. The trusts all named Settlor's son Mark Garrison and any children Mark would have as beneficiaries.²

The original Trusts contained the following provisions relative to replacement of an individual trustee:

- a. If an individual trustee resigns or dies during the lifetime of the settlor, the settlor shall have the power exercisable within 90 days of such death or resignation

¹ The co-trustees, and appellees below, are Barton J. Winokur (acting in two capacities as co-trustee and executor of Settlor's estate), Lawrence C. Karlson and Michael J. Emmi. Relative to this grant of allocatur, each co-trustee requested to be marked as non-participants in this further appeal and filed no responsive briefs.

² The trusts include the December 21, 1967, Trust under Deed of Walter Garrison, Sprinkle Trust #1 f/b/o Mark R. Garrison; the October 9, 1970, Trust under Deed of Walter Garrison, Sprinkle Trust #2 f/b/o Mark R. Garrison; and the June 18, 1973, Trust under Deed of Walter Garrison, Sprinkle Trust #3 f/b/o Mark R. Garrison. Under these Trusts, income accumulation sub-trusts have been established for Mark and each of his four now adult, sui juris, children, Christopher Garrison, Lindsay Garrison, Eliza Garrison, and Brittany Garrison (collectively "Beneficiaries").

to designate a successor trustee, other than himself by any writing.

- b. If the settlor is not living, or if the settlor fails to make such a designation within 90 days of the death or resignation of a trustee, such trustee appointed by the settlor shall have the power to designate an individual successor for himself by a writing.

Orphans' Court Opinion, at 3.

On August 18, 2017, Settlor and Beneficiaries entered into agreements to modify the Trusts by substituting the provisions quoted above with the following language:

1. Following the settlor's death or incapacity, a majority of the sui juris permissible income beneficiaries of a trust held hereunder (excluding the Trustees of an Income Accumulation Trust under [other provisions in the Trust document]) may at any time remove, with or without cause, any Independent Trustee of such trust (whether a bank or trust company or an individual Independent Trustee) and may appoint in his, her or its place another Independent Trustee, or may leave such office vacant. Any successor Independent Trustee likewise may be removed and replaced, or not replaced.
2. A removed Independent Trustee of a trust held hereunder shall immediately transfer to the remaining and/or successor trustees all assets held under such trust.

Id. at 4. This agreement was made pursuant to section 7740.1(a) of the Pennsylvania Uniform Trust Act ("UTA"). See *infra*, 20 Pa.C.S. § 7740.1(a).

Settlor subsequently passed away on February 24, 2019. Proceeding under the modified provision, Beneficiaries, in April of 2019, acted to remove the existing independent co-trustees and to appoint Dr. Mairi Leining, Christina Zavell, and Michael Zavell in their place. The existing co-trustees, when notified of Beneficiaries' action, advised that they did not recognize the modifications to the Trusts as valid or their purported removal thereunder. Seeking to uphold the co-trustee replacements, Mark, on July 19, 2019, filed a declaratory judgment petition to test the validity of the August 18,

2017, modifications. Following the filing of all responsive pleadings, the parties moved for judgment on the pleadings. The orphans' court, based upon the pleadings, denied Beneficiaries' petition, relying chiefly on our decision in *Taylor*. *Id.* at 5-11.

In *Taylor*, beneficiaries of an irrevocable trust sought permission from the orphans' court, pursuant to section 7740.1(b) of the Uniform Trust Act (UTA), to modify the terms of the trust to include the ability of the beneficiaries to replace trustees, in what is commonly referred to as a portability provision. *Taylor, supra* at 636-637. The settlor of the trust was at that time deceased. The orphans' court denied the modification. The beneficiaries appealed, and a panel of the Superior Court reversed. *Id.* at 638. On appeal from the Corporate Trustee, this Court reversed. We determined sections 7740.1(b) and 7766 of the UTA each provided a path for beneficiaries to apply to a court for removal or replacement of a trustee, the former by amendment and the latter for cause. *Id.* at 643. This, we held, created a latent structural ambiguity in the act triggering our review based on the rules of statutory construction. *Id.* at 645. Applying those rules and reviewing the legislative history and prior judicial treatment of issues concerning trustee removal, we held that the more particular section 7766³ must be applied. *Id.* at 646-653. In this case the orphans' court determined that our reasoning in *Taylor* applied equally to the instant facts under section 7740.1(a) of the UTA.

The beneficiaries appealed and a panel of the Superior Court in a memorandum opinion affirmed, determining the orphans' court correctly interpreted that our decision in *Taylor* precludes any party or parties from bypassing the more particular section 7766 of the UTA through the more general modification provisions of section 7740.1 when the

³ As discussed further *infra*, section 7766 sets forth procedure and grounds for parties with interests in an irrevocable trust, or the court on its own initiative, to move for the removal or replacement of a trustee. 20 Pa.C.S.A. § 7766.

goal is gaining authority to remove or replace a trustee. The panel quoted with approval the orphans' courts holding:

When adopting [section] 7766, the legislature did not carve out an exception for modifications made under [section] 7740.1(a) and did not distinguish the application of [section] 7766 to [section] 7740.1(a) from its applicability to [section] 7740.1(b) or (d). Likewise, the *Taylor* Court made no exception to allow modifications of trusts for removal of trustees made with the consent of a settlor and beneficiaries. Following the legislature's intent, the Court held that UTA [section] 7766 is the exclusive provision for removal of trustees and, therefore, an end run on the stringent requirements of [section] 7766 could not be made by using a different UTA provision governing modification by consent to add a portability clause to a trust.

Trust Under Deed of Walter R. Garrison, slip opinion 1429-1431, 1461, 1498, 1562 EDA 2020 at 22-23 (quoting Orphans' Court Opinion at 11-12). ⁴

We accepted Appellants' petition for allocatur to address the following question.

Did the Superior Court err by not enforcing modifications to trusts under 20 Pa. C.S.A. §7740.1(a), which were agreed to by both the settlor and all beneficiaries to allow for the replacement of trustees by a majority of beneficiaries after the death of the settlor?

Trust Under Deed of Walter R. Garrison, 278 A.3d 854, *per curiam*.

The question presents a pure question of law for which our review is plenary and our standard de novo. *Commonwealth v. Long*, 922 A.2d 892, 897 (Pa. 2007). Further we recognize our standard of review and standards for statutory construction as set forth in *Taylor*, which, as further explained *infra*, we find consistent with Appellants' position in this appeal. See *Taylor*, *supra* at 1154-1155, 1157.

⁴ The panel also addressed certain jurisdictional and standing issues over the appeal that are not before us. It also declined to reach certain factually disputed issues including whether participation of Settlor in the modification agreements was a result of undue influence. For the purpose of this appeal, we accept the facts pleaded by Appellants to test its challenge to the lower courts' decisions as a question of law.

Appellants' central argument is that the lower courts failed to appreciate the distinguishing circumstances presented by the facts of this case coming under §7740.1(a) as precluding applicability of our reasoning in *Taylor* to the instant case. Appellants' Brief at 12-13. In support, Appellants argue that *Taylor* was grounded on four premises which distinguish it from the instant case. First, in *Taylor* the settlor's interest was unrepresented in the application to the orphans' court by the beneficiaries. Here, the joint agreement of the settlor and beneficiaries leaves no unrepresented interests for a court to protect. This obviates the structural ambiguity found by this Court in *Taylor* between two potential court actions initiated by a subset of interests in the subject trust. *Id.* at 18. Second, the authority recognized in *Taylor* of limitations on a court in removing trustees, again pertained to applications of a subset of interests in the subject trust. *Id.* at 20 (citing our reference in *Taylor* to *In re Corr's Estate*, 58 A.2d 347, 350 (Pa. 1948), where the concern was preserving the settlor's intent). Third, *Taylor* recognized the legislature's omission of Section 7740.1(b) Joint State Government Commission Comment from Pennsylvania's enactment of the uniform code, as evidence of legislative intent not to extend the empowerment of beneficiaries' unilateral action. *Id.* Such is not implicated by the coordinated action of all interests as dealt with in §7740.1(a). Finally, for similar reasons, the *Taylor* decision's reliance on the comment to §7740.1 does not implicate coordinate action by all interests. *Id.* at 22. Appellants also argue that Pennsylvania precedent and precedent from other jurisdictions support its position that §7766 does not limit the pre-existing ability at common law for all parties of interest in an otherwise irrevocable trust to effect a termination or modification of that trust by unanimous consent. *Id.* at 24-25.

For reasons set forth within, we agree with Appellants that *Taylor* is inapplicable to the case at hand. We first set out the relevant sections of the UTA:

**§ 7740.1. Modification or termination of noncharitable
irrevocable trust by consent - UTC 411**

(a) Consent by settlor and beneficiaries.—A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by a guardian, an agent under the settlor's general power of attorney or an agent under the settlor's limited power of attorney that specifically authorizes that action. Notwithstanding Subchapter C (relating to representation), the settlor may not represent a beneficiary in the modification or termination of a trust under this subsection.

(b) Consent by beneficiaries with court approval.—A noncharitable irrevocable trust may be modified upon the consent of all the beneficiaries only if the court concludes that the modification is not inconsistent with a material purpose of the trust. A noncharitable irrevocable trust may be terminated upon consent of all the beneficiaries only if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

. . .

(c) Distribution upon termination.--Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

(d) Consent by some beneficiaries with court approval.-- If not all the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court only if the court is satisfied that:

(1) if all the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

20 Pa.C.S.A. § 7740.1.

§ 7766. Removal of trustee - UTC 706

(a) Request to remove trustee; court authority.—The settlor, a cotrustee or a beneficiary may request the court to remove a

trustee or a trustee may be removed by the court on its own initiative.

(b) When court may remove trustee.--The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or

(4) there has been a substantial change of circumstances. A corporate reorganization of an institutional trustee, including a plan of merger or consolidation, is not itself a substantial change of circumstances.

...

20 Pa.C.S.A. § 7766.

It is important to note that there is no contention that the new provisions established by the agreements to modify the trusts are inherently invalid or unenforceable had they been included in the trust documents originally. Indeed, the Superior Court has noted; "As is the case regarding most other UTA provisions, a settlor may provide in the trust document for a regime different from this one. See [20 Pa.C.S.] § 7705." *In re Jackson*, 174 A.3d 14, 26 (Pa.Super., 2017).⁵ What is at issue here is the manner in which the trust was modified. Section 7705 is consonant with our previous descriptions of the Uniform Trust Code ("UTC"), upon which the UTA is based, as codifying the consensus

⁵ Section 7705 provides; **"(a) Trust instrument controls.--**Except as provided in subsection (b), the provisions of a trust instrument prevail over any contrary provisions of this chapter." 20 Pa.C.S. §7705. None of the exceptions in subsection (b) are implicated in the issue before us.

of common law principles then governing the law of trusts. “The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this Commonwealth.” 20 Pa.C.S. § 7706. Under that common law a settlor and beneficiaries could, in concert, modify or terminate a trust. See *In re Bowers’ Trust Estate*, 29 A.2d 519, 520 (Pa. 1943) (adopting the Restatement (Second) of Trusts §338 (1959), permitting settlor and beneficiaries, by united consent, to terminate or modify a trust). While the lower courts are correct that our decision in *Taylor* did not specifically articulate an exception for modifications under Section 7740.1(a), that scenario was not before us or implicated by the facts of that case.

The two primary interests created by a trust include the settlor and the beneficiaries. The settlor is the party who creates the trust, transfers interest in the trust property, and establishes conditions of the trust. The beneficiary is the party or parties to whom the benefit of the trust is directed. These primary interests guide a courts’ interpretations of the trust. The trustee or trustees’ interest in the trust is derivative, as a trustee’s interest is in performing the agreed duty to administer the trust assets for the benefit of the beneficiaries in accordance with the terms established by the settlor.

The ambiguity this Court discerned in *Taylor* among the sections of the UTA stemmed from balancing these interests by competing methods of modifying a trust relative to removing or replacing a trustee. What sections 7740.1(b) and 7766 have in common in this regard, is that the change is sought by a party or parties that do not include the unified participation of all settlors and beneficiaries. Section 7740.1(b) involves a request for modification by beneficiaries alone. Section 7766 is triggered by a request from; “[t]he settlor, a cotrustee **or** a beneficiary [for] the court to remove a trustee **or** a trustee may be removed by the court on its own initiative.” 20 Pa.C.S. §7766 (emphasis added). These scenarios provide standards for court action absent the unified intent of

the parties of interest, such as was the case in *Taylor* where the settlor was deceased at the time the modification was sought. Employing the more particular provisions of section 7766 had the effect of preserving the settlor's intent in regulating the selecting of trustees. We did not hold that section 7766 created any right in trustees they did not possess under common law. Importantly, in *Taylor*, we employed the rule of statutory construction favoring an interpretation that gives effect to all provisions of an act and disfavors an interpretation that could render some provisions superfluous or nullified by another. *Taylor, supra*, at 646 (citing 1 Pa.C.S. § 1922 and *Cozzone ex rel. Cozzone v. WCAB (PA Municipal/East Goshen Twp.)*, 73 A.3d 526 (Pa. 2013)). That concern is not implicated in interpreting the interplay between §§ 7740.1(a) and 7766.

As pointed out by Appellants for their persuasive value, those of our sister states that have addressed this issue have come to similar conclusions that the specific provisions authorizing judicial approval of amendments to a trust upon requisite findings do not apply to, or alter, the ability of modification or termination by agreement of all settlors and beneficiaries to a trust.

The Florida District Court of Appeal noted that state's Trust Code included a provision, similar to our section 7706, preserving rights under common law absent specific expressed intent to the contrary. *Demircan v. Mikhaylov*, 306 So. 3d 142, 148 (Fla. 3d DCA 2020). This includes the previously recognized ability of all settlors and beneficiaries to terminate or modify an otherwise irrevocable trust even if its purposes had not been met. *Id.*, citing *Preston v. City Bank of Miami*, 294 So. 2d 11 (Fla 3d DCA 1974) (holding, similarly to this court in *Bowers, supra*, that modification by consent of all settlors and beneficiaries is permitted irrespective of the original purpose of the trust). Thus, the court held:

Although it substantially represented a “major shift from the common law regarding judicial modification, under which the

intent of the settlor was paramount,” the code also authorizes a court to “give greater consideration to the interest of the beneficiaries as long as the modification conforms to the extent possible with the intention of the settlor.” Brian J. Felcoski & Jon Scuderi, *The Administration of Trusts in Florida* § 8.3 (10th ed. 2019). The *Preston* exception is in clear harmony with such a purpose, since it provides for the actual and joint intent of settlors and beneficiaries to be presently realized. The code’s enactment has not altered the idea that “[t]he settlor and beneficiaries of a trust can consent to its modification.” *Id.* The exception in *Preston*, therefore, continues to be part of Florida’s common law *despite* its subsequent enactment of the code.

Id. at 148.

Similarly, the Wisconsin Court of Appeals interpreting comparable statutory provisions to our sections 7740.1(b) and 7766,⁶ on facts comparable to the instant case held:

⁶ The provisions at issue included the following.

By written consent of the settlor and all beneficiaries of a trust or any part thereof, such trust or part thereof may be revoked, modified or terminated, except as provided under s. 445.125(1)(a) 2. to 4.

Wisconsin Stat. § 701.12(1).

REMOVAL. A trustee may be removed in accordance with the terms of the creating instrument or the court may, upon its own motion or upon a petition by a beneficiary or cotrustee, and upon notice and hearing, remove a trustee who fails to comply with the requirements of this chapter or a court order, or who is otherwise unsuitable to continue in office.

Wisconsin Stat. § 701.18(2).

These provisions have since been revoked by the Wisconsin Legislature and supplanted with a new Code that further expands the right of beneficiaries to amend a trust with court permission notwithstanding absence of a settlor’s consent. See WIS. STAT. § 701.0111(3). We do not purport to apply as analogous those amended provisions.

[T]he two statutes serve different purposes. On the one hand, WIS. STAT. § 701.12(1) allows a settlor and all of the trust beneficiaries to revoke, modify or terminate a trust if all are in agreement. Such a removal need not be premised on any cause. On the other hand, WIS. STAT. § 701.18(2) provides a means for removing a trustee where the conditions envisioned by § 701.12(1) do not exist. However, in that setting, the trustee can be removed only upon a showing of cause. Thus, § 701.18(2) would apply where the settlor and all of the trust beneficiaries are not in agreement that removal is appropriate, or where the settlor is no longer living and therefore unable to provide written consent to the removal as required by § 701.12(1).

In summary, WIS. STAT. § 701.12(1) is not rendered ambiguous by its interaction with WIS. STAT. § 701.18(2) or by its application to the facts of this case.

In re Catherine H. Bowen Charitable Trust, 622 N.W.2d 471, 474 (Wis.App.,2000). While these cases are not binding, we deem these authorities to be persuasive in construing the interplay among sections 7740.1(a), 7740.1(b), and 7766.

The structural ambiguity recognized by this Court in *Taylor* between different sections authorizing alternative methods for a subset of interested parties to apply to the orphans' court, required the Court to engage in an inquiry into what priority among those alternatives was consistent with the rules of statutory construction. This ambiguity is not present under §7740.1(a), for three reasons. First, section 7740.1(a) involves unified action by all interests in a trust, *i.e.*, settlor and all trustees, to revoke or modify an otherwise irrevocable trust. Second, section 7740.1(a) does not require court involvement, unlike sections 7740.1(b) and 7766. Third, the interest protected by the decision in *Taylor* was ultimately the original intent of the settlor, who was not a party to the requested modification in that case. *Taylor* did not elevate the interest of Trustees independent of that of the settlor and beneficiaries. Unlike sections 7740.1(b) and 7766, section 7740.1(a) has no competing alternate section for modification or termination of a trust by unified action of all interests. Additionally, this ability to amend by unified action

was recognized prior to the enactment of the UTA and nothing in the Act creates an ambiguity with §7740.1(a)'s reiteration of that ability. Therefore, we deem the lower courts' extension of our decision in *Taylor* to the submitted facts in the instant case to be erroneous. Accordingly, we reverse the decision of the Superior Court and remand for consideration of any additional legal or factual issues properly preserved but not reached in rendering its determination.

Jurisdiction relinquished.

Chief Justice Todd and Justices Donohue, Dougherty, Wecht and Brobson join the opinion.