Trust Relationship

Does "Trustee" really mean a Trust Relationship?

The Trusteeship Law, 5739-1979 imposes special duties on a person defined as trustee. In the case handled by us, the contracting parties used the term "trustee" concerning one of the parties in reference to this party's meeting his obligations according to the agreement.

Later, a conflict arose between the parties over the agreement and a claim against the "trustee" was filed at the Magistrate's Court, for causes other than based on the Trusteeship Law. The Court decided that, the respondent being a trustee, the duties contained in the Trusteeship Law apply to him and in the absence of a separate account for the subject of the agreement, he was charged according to the claim.

We handled the case in the framework of an appeal against the Court decision. We examined the question as to whether every "trustee" actually is a trustee as defined in the Trusteeship Law.

As it arose from our examination, the answer was negative. Using the term "trustee" will not turn the relationship into a trustee-beneficiary relationship and will not necessarily impose the duties of a trustee according to the Trusteeship Law.

We found support of our opinion in the books of the following scholars:

> **Shlomo Kerem: "Trusteeship", 4th edition, Perlstein-Ginossar Publishers, 2004, Page 105:**
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> ***"The fact that a person is called trustee, will not impose on him the obligation of a trustee, hence there cannot be a trusteeship without a trustee".***
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> **And on Page 106:**
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> ***"It shall be emphasized that not in every case where a person is obligated to hold or act in respect of property for a certain purpose, a trusteeship is created. The existence of a trusteeship in a certain case is determined by the contents and purpose of the obligation… a person will not serve as trustee unless he has the obligation to act for the realization of a purpose not being for his personal benefit!"***
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> **And on Page 132:**
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> ***"What will determine whether a certain transaction is a trusteeship transaction, is its contents, which means: whether, in this transaction, the requirements for the applicability of the trusteeship definition are met."***

And on Page 178:

> ***"Trusteeship according to a contract is an affinity compatible with the definition of trusteeship in Clause 1 of the Trusteeship Law, created by a contract. As the term "contract" is not defined in the Trusteeship Law, it is to be understood according to its accepted meaning in the Law, including in the Contracts Law".***
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> ***"Contents of the obligation contained in the contract will determine whether a trusteeship is created according to it. If the contents of the obligation is compatible with the definition of trusteeship in Clause 1, a trusteeship "according to the contract" will be created."***

Therefore, an objective and subjective examination of the estimated opinion of the parties regarding the interpretation of the contract signed between them, does not indicate anything about the institution of a trusteeship or the implied intention of establishing a trusteeship.

Furthermore, we found following citations by Lawyer Shlomo Erdman in: "Trusteeship by Virtue of the Law", edited by A.D. Sentences Publishing Ltd., 2000, Page 11-12:

> **"*An explicit trusteeship is the regular private trusteeship. This trusteeship applies when such arises clearly from an explicit declaration of a person (the initiator of the trusteeship) appointing a person (the trustee) as holder of certain property in trust for another person (the beneficiary) or for a certain purpose. According to the English law, there are two likely methods for creating an explicit trusteeship. (1) Transfer of property by the lawful owner of same (the initiator of the trusteeship) to some other person (the trustee), who is obligated to hold it in trust for a third party. (2) Self-declaration by the owner of the lawful right to the property (initiator of the trusteeship) declaring himself trustee for another person. In Israel, there is no reference, neither in rulings not in relevant literature, to the second type – self-declaration. Would it be possible, according to the Trusteeship Law (1979), to create this type? It seems that the law recognizes also this type of trusteeship. Such a declaration should be regarded as a trusteeship according to a contract. Clause 7 of the Contracts Law (General Part), 5733-1973, determines an offer not implying anything but to grant something to the person receiving the offer, which he presumably accepted. In fact, the rulings in Israel regarded a gift as a contract (Civil Appeal 495/80, Berkowitz v. Klimmer, Judgment 36 (4) 57).***

For creating an explicit trusteeship, the strict requirements of the English Court provide (in respect of both types of trusteeship described above), that three certainties must exist:

(1) Verbal certainty – providing that the words of the person initiating the trusteeship were sufficiently clear to create a trusteeship; in regard to a trusteeship of the first type, it should be examined whether the person

initiating the trusteeship, did not content himself with simply imposing on the trustee a moral obligation only. As concerns a trusteeship of the type of a self- declaration, it should be examined whether or not the words were said for the purpose of conversation only (Jones v. Lock [1865] I 25 ch: App.), although a trusteeship of this type might be created by behavior.

(2) Certainty of the subordinate property – the property on which trusteeship is imposed, must be defined accurately to enable the identification thereof.

(3) Certainty of beneficiary – the beneficiary should be identifiable.

In addition to the aforesaid, it is mandatory that the trusteeship contract is valid in accordance with the requirements of the law. Therefore, if, for example, it concerns the transfer of land to a trustee, the written requirements must be met.

In this matter, we found that even a lawyer may have a slip of the tongue in defining himself "trustee", while certainly not intending to apply to him the provisions of the Trusteeship Law.

In Civil File 5112/03 T.J.C. Engineering Ltd. v. Y. Zadka Management and Maintenance Ltd. [Pador (not published) 806 (17) 06], Page 11-12:

"… Lawyer ….. testified himself that he took upon himself the responsibilities of a trustee, without understanding all the meanings involved thereby (Protocol Page 149, Lines 21-25)": "At that time, I did not have all the knowledge, nor the entire picture, nor did I examine at all the interpretation of the Trusteeship Law. It is only recently that I look it up and read – what does trusteeship mean? What is the meaning of the Trusteeship Law? What is trusteeship anyway? That, I understand, that actually, in spite of what I am writing here, this, in fact, is not trusteeship…" (Protocol Page 150, lines 22-26), These are serious matters. There is no need to reiterate the duty of a lawyer acting as a trustee, or acting in favor of his client, or even in favor of somebody who is not his client, to know and understand his work, a certain level is required of him in everything concerned with knowing the Law". It is not to be expected of a lawyer to know the contents of each and every law in the State, but there are useful laws he must know, particularly laws relating to the case he agrees to handle for a client (Civil Appeal 479/65, Wyder v. Arnon, Judgment 20 (I) 468, 471 (1966); Civil Appeal 37/86, Levy v. Sherman, Judgment 44 (4) 446, 463 (1990).

Therefore, in our case we claimed on behalf of the appellant that he did not understand the meaning of the definition "Trustee" and certainly did not intend to apply to himself the provisions of the Trusteeship Law. In the case at hand, no claim of trusteeship was filed on basis of causes defined in the Trusteeship Law, and the Magistrate's Court, with all due respect, went beyond the controversy between the parties.

Another question worth asking is whether the Magistrate's Court has the practical competence to judge in causes of action according to the Trusteeship Law.

In conclusion: lawyers will be careful not to define themselves “trustees”. As far as laymen are concerned, this seems to be somewhat different. In any case, it is recommended to a contracting party not to enter into a contractual relationship lacking clear definitions concerning his rights and obligations.

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