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Frizzell v. DeYoung Respondent's Brief 2 Dckt. 44975

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

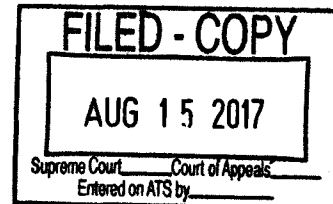
DONALD CRAIG FRIZZELL,) Supreme Court No. 44975-2017
Individually and as a beneficiary of the) District Court Case No. CV 2016-0007350
CLIFTON AND MARJORIE)
FRIZZELL FAMILY TRUST,)
)
Plaintiff/Appellant)
)
vs.)
)
EDWIN DEYOUNG, individually)
and in his capacity as trustee of the)
CLIFTON AND MARJORIE)
FRIZZELL FAMILY TRUST;)
DARLENE DEYOUNG, individually)
and in her capacity as a beneficiary of)
the CLIFTON AND MARJORIE)
FRIZZELL FAMILY TRUST; et. al.)
)
Defendants/Respondents.)

RESPONDENTS' BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT FOR
KOOTENAI COUNTY
HONORABLE CYNTHIA K.C. MEYER PRESIDING

ROBIN L. HAYNES
GIANTlegal PLLC
304 W. Pacific. Ave, Ste. 210
Spokane, WA 99201
Attorneys for Plaintiff-Appellant

SCOT D. NASS
Scot D. Nass, Attorney at Law, PLLC
1110 W. Park Place, Ste. 304
Coeur d'Alene, ID 83814
*Attorneys for Defendants-
Respondents*



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I. STATEMENT OF THE CASE

A. NATURE OF THE CASE:

This case raises unique issues which depend heavily on the specific language of a previous TEDRA settlement agreement and that language's relation to the TEDRA statutes. This case involves the methods available for a party to enforce a TEDRA agreement, whether the parties effectively waived certain avenues for relief by contract, and whether the parties ultimately pursued avenues for relief that were available. This issue appears to be of first impression for the Idaho Supreme Court.¹

B. PROCEDURAL/FACTUAL BACKGROUND:

The facts relevant to this appeal appear to be largely undisputed. Clifton G. Frizzell and Marjorie J. Frizzell created the Clifton and Marjorie Frizzell Family Trust ("Trust") on June 30, 2009, which included a Bypass Trust, a Survivor's Trust, and a QTIP Trust. *R. 7*. Clifton and Marjorie were the grantors and original trustees. *R. 7*. Both Clifton and Marjorie died in 2011. *R. 7*. The Trust names Haley Baker as successor trustee, but Ms. Baker declined the appointment, and Edwin DeYoung (Trustee/Defendant/Respondent) was appointed as the successor trustee on October 29, 2011. *R. 7*.

Donald Frizzell (Beneficiary/Plaintiff/Appellant) filed a lawsuit regarding the Trust in 2013. *R. 159*. The suit was resolved when the parties entered into a Trust and Estate Dispute Resolution Act (TEDRA) Agreement, which was filed in district court on October 31, 2014. *R. 159*. The TEDRA Agreement contains a release and hold harmless clause as well as a clause

¹ Trustee DeYoung acknowledges the potential to create confusing and/or unintended precedent in this case, especially given the lack of appellate decisions related to TEDRA combined with the peculiar facts of this case. As such, any decision might be most appropriately limited to the unique facts of this case.

purporting to indemnify Trustee DeYoung against any claims, lawsuits, or other actions relating to the administration of the Trust. *See R. 74-82.*

Beneficiary Frizzell then filed the Complaint in this case on October 6, 2016, alleging thirteen causes of action regarding the administration of the Trust: 1) Breach of Fiduciary Duty of Loyalty for failing to provide information, 2) Breach of Fiduciary Duty to Distribute Assets, 3) Breach of Fiduciary Duty for directly competing with Plaintiff, 4) Breach of Fiduciary Duty based on negligent supervision of the Trust, 5) Breach of Fiduciary Duty for failing to make Trust property productive, 6) Breach of Fiduciary Duty for failure to protect Trust property (security deposits), 7) Breach of Fiduciary Duty for failure to protect Trust property (Brayton property), 8) Breach of Fiduciary Duty for failure to provide information, 9) Breach of Fiduciary Duty for engaging in self-dealing, 10) Breach of Fiduciary Duty for failing to remain impartial, 11) Breach of the duty of Loyalty for failure to file insurance claims, 12) Claim for Punitive Damages, and 13) Claim for Damages for Lost Income. *See R. 6-35.*

Trustee DeYoung responded by filing a Motion to Dismiss for failure to state a claim upon which relief may be granted and requesting attorney fees. *R. 160.* The basis for the Motion was that Beneficiary Frizzell's claims were barred by the TEDRA Agreement, which had resolved similar claims from the previous lawsuit. *R. 160.*

The District Court granted Trustee DeYoung's motion, dismissed the case, and granted attorney fees to Trustee DeYoung via the Memorandum Decision and Order filed January 20, 2017. *R. 158.* Beneficiary Frizzell then timely filed the present appeal of the District Court's decision. *See R. 177-206.*

II. ISSUES PRESENTED ON APPEAL

1. Did the District Court err in granting Trustee DeYoung's Motion to Dismiss where Beneficiary Frizzell failed to pursue enforcement remedies pursuant to TEDRA and instead asserted claims which had already been released via the TEDRA Agreement?
2. Is DeYoung entitled to attorney fees for successfully defending this action, both in District Court and on appeal?

III. STANDARD OF REVIEW

"A motion to dismiss under Rule 12(b)(6) for failure to state a claim must be read in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim and calls for 'a short and plain statement of the claim showing that the pleader is entitled to relief' and a demand for relief." *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992). A court may only consider matters within the pleadings as part of a Rule 12(b)(6) motion. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990). A complaint should be dismissed under Rule 12(b) when "it appears beyond doubt that the plaintiffs can prove no set of facts which would entitle them to relief." *See, e.g., Dumas v. Ropp*, 98 Idaho 61, 62, 558 P.2d 632, 633 (1977). "The non-moving party is entitled to have all inferences from the record and pleadings viewed in his/her favor, and only then may the question be asked whether a claim for relief has been stated." *Idaho Schs. For Equal Educ. v. Evans*, 123 Idaho 573, 578, 850 P.2d 724, 729 (1993).

A court's dismissal of a complaint under Rule 12(b)(6) is reviewed *de novo*. *Coalition for Agriculture's Future v. Canyon County*, 160 Idaho 142, 369 P.3d 920, 923 (2016). If the record reveals that there are no genuine issues of material fact and the case can be decided as a matter of law, the granting of a Rule 12(b)(6) motion will be affirmed. *See Moss v. Mid-American Fire and Marine Ins. Co.*, 103 Idaho 298, 302, 647 P.2d 754, 758 (1982).

Additionally, TEDRA gives courts “full and ample power and authority to ... administer and settle” trust and estate matters. I.C. § 15-8-102(1). Furthermore, even if TEDRA is inapplicable, insufficient, or doubtful with reference to the administration and settlement of trust and estate matters, courts still have “full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court. I.C. § 15-8-102(2). These provisions must be read so as to respect TEDRA’s purpose “to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter.” I.C. § 15-8-101(2).

As such, the District Court has the power and discretion to proceed with administration of trust disputes in any manner that to the court seems right and proper, with the goal being to resolve such disputes as expeditiously as possible. Therefore, although review of an I.R.C.P 12(b)(6) motion is clearly *de novo*, this Court should also recognize the District Court’s broad discretion in determining the proper method for administering trust disputes, and apply an abuse of discretion standard to the court’s decisions regarding the appropriate procedure for resolving trust disputes in this case.

IV. ARGUMENT

A. THE TEDRA STATUTES PROVIDE A METHOD FOR ENFORCEMENT OF TEDRA AGREEMENTS.

As already briefly mentioned above, TEDRA’s purpose

is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under title 15, Idaho Code. The provisions of this chapter are intended to provide nonjudicial methods for the resolution of matters by agreement. This chapter also provides for judicial resolution of disputes if a nonjudicial resolution is not obtained that are alternatives to the other provisions for resolution of contested matters under other chapters of title 15, Idaho Code.

I.C. § 15-8-101(2).

In order to facilitate its goals, TEDRA provides courts with “full and ample power and authority ... to administer and settle” trust and estate matters. I.C. § 15-8-102(1). Moreover, in circumstances where TEDRA is inapplicable, insufficient, or doubtful with reference to the administration and settlement of trust and estate matters, “the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.” I.C. § 15-8-102(2). “Matter” is defined broadly to include essentially any issue, dispute, or question regarding distribution, administration, or management of a trust or estate. I.C. § 15-8-103(1).

While Beneficiary Frizzell apparently contends that TEDRA does not provide a process for enforcement of the instant TEDRA Agreement (*Appellant’s Brief*, p. 15), I.C. § 15-8-201(1) clearly states:

Any party may have a judicial proceeding for the declaration of rights and or legal relations with respect to:

- (a) Any matter, as defined in section 15-8-103, Idaho Code;
- (b) The resolution of any other case or controversy that arises under the Idaho Code and referenced judicial proceedings under this chapter; or ...

Any party to a trust matter or dispute can petition the court for a declaration of rights and or legal relations pursuant to TEDRA. I.C. § 15-8-201(1). As the district court recognized, “it is clear from a reading of the statutes that a TEDRA agreement is binding on the parties to such an agreement and a party seeking to enforce a provision of a TEDRA agreement may do so in the same manner as one would petition a court to enforce a court order. *See* Idaho Code §§ 15-8-301-03.” *R. 163*. “On filing the agreement or memorandum, the agreement will be deemed approved

by the court and is *equivalent to a final court order* binding on all persons interested in the estate or trust.” I.C. § 15-8-303 (emphasis added).

The instant TEDRA Agreement was undisputedly filed in District Court on October 31, 2014. *R. 8.* As such, Beneficiary Frizzell could have sought enforcement of the TEDRA Agreement in the same way as any other final court order, but instead chose to file a new suit alleging claims he’d already released.

To suggest that a TEDRA judicial proceeding would lack the teeth to enforce any such declaration completely ignores the more general judicial power to enforce court orders. For example, I.C. § 7-302 allows a district court to issue a writ of mandate “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” *See also* I.C. § 7-401 *et. seq.* (Writs of Prohibition). Furthermore, courts are provided with contempt powers to ensure that the orders they issue are actually followed. *See, e.g.,* I.C. § 7-601 *et. seq.*; Idaho Const. Art. V, § 2; *Marks v. Vehlow*, 105 Idaho 560, 566, 671 P.2d 473, 479 (1983).

For the sake of argument only, if Beneficiary Frizzell’s allegations were true, Beneficiary Frizzell had an avenue for relief by petitioning the District Court to determine the effect of and enforce the terms of the TEDRA Agreement. Instead, Beneficiary Frizzell filed a lawsuit that didn’t cite TEDRA as its avenue for relief and asserted new claims that had already been released. The District Court thus properly granted Trustee DeYoung’s I.R.C.P. 12(b)(6) Motion to Dismiss.

B. THE TEDRA AGREEMENT IN THIS CASE UNAMBIGUOUSLY RELEASES TRUSTEE DEYOUNG FROM FUTURE LIABILITY RELATED TO ADMINISTRATION OF THE TRUST AND SUBMITS FUTURE DISPUTES TO THE TEDRA STATUTORY SCHEME.

A court construes a trust instrument, a TEDRA agreement, and all other contracts as a whole, considering all parts in light of the entire instrument. *See Salfeety v. Seideman (In re Estate of Kirk)*, 127 Idaho 817, 827, 907 P.2d 794 (1995). The court’s primary objective is to discover

the intent of the parties through viewing the document in its entirety. *See Bondy v. Levy*, 121 Idaho 993, 996, 829 P.2d 1342 (1992). When a document is clear and unambiguous, interpretation of its meaning is a question of law. *See id.*

“The legal effect of an unambiguous written document must be decided by the trial court as a question of law.” *Latham v. Garner*, 105 Idaho 854, 858, 673 P.2d 1048 (1983). “If, however, the instrument of conveyance is ambiguous, interpretation of the instrument is a matter of fact for the trier of fact.” *Id.* When a court is called upon to interpret contractual language,

A party’s subjective, undisclosed intent is immaterial to the interpretation of a contract, as under the objective law of contract interpretation, the court will give force and effect to the words of the contract without regard to what the parties to the contract thought it meant or what they actually intended for it to mean. The court will not attempt to ascertain the actual mental processes of the parties in entering into the particular contract; rather the law presumes that the parties understood the import of their contract and that they had the intention which its terms manifest.

J.R. Simplot Co. v. Bosen, 144 Idaho 611, 614, 167 P.3d 748 (2006).

Similarly, when interpreting a trust instrument, a court must construe the instrument as a whole, considering all parts in light of the entire instrument. *See In re Estate of Kirk*, 127 Idaho 817, 907 P.2d 794, 804 (1994). The court’s primary objective is to discover the intent of the parties through viewing a document in its entirety. *See Bondy v. Levy*, 121 Idaho 993, 996, 829 P.2d 1342 (1992). When a document is clear and unambiguous, interpretation of its meaning is a question of law. *See id.* In determining whether a document is ambiguous, the court seeks to determine whether it is “reasonably subject to conflicting interpretation.” *Id.* at 997.

1. ALL PARTIES UNDERSTOOD AND SIGNED THE TEDRA AGREEMENT WHILE REPRESENTED BY COUNSEL

All parties undisputedly signed the TEDRA Agreement. *See R. 107-117*. The TEDRA Agreement itself states it is entered into pursuant to I.C. § 15-8-101 through 15-8-305, and that

“The issues addressed in this Agreement are the types of issues or matters contemplated to be resolved pursuant to I.C. 15-8-103.” *R. 100.* All parties to the Agreement understood and accepted the terms of the Agreement and “had the opportunity to consult with his or her own attorney.” *R. 105.* The TEDRA Agreement clearly and unambiguously bars Beneficiary Frizzell’s claims.

2. PARAGRAPH 2 OF THE TEDRA AGREEMENT

Paragraph 2 of the TEDRA Agreement states:

Nature of this Agreement. This Agreement is intended to be a binding agreement to resolve certain issues that have arisen *or could arise in the future* between the Parties in a manner that will avoid the necessity of further litigation or court proceedings in this matter to resolve such issues and further will serve as written documentation to third Parties of the Parties’ Agreement.

R. 100 (emphasis added).

As the District Court noted, the intent of all parties to the TEDRA Agreement was to resolve certain issues both that had already arisen and that “could arise in the future between the Parties.” *R. 100, 166.* The plain reading of paragraph 2 clearly states that the TEDRA Agreement was not merely a resolution of those issues contested at the time, but also future issues that “could arise in the future” related to the administration of the Trust.

If the parties intended that only past disputes be resolved pursuant to the Agreement, then the language regarding issues that “could arise in the future” would be unnecessary. The statement is unambiguous and demonstrates that the TEDRA Agreement contemplated and intended to proactively resolve disputes that “could arise in the future” related to the administration of the Trust.

3. PARAGRAPH 5.5 OF THE TEDRA AGREEMENT

Paragraph 5.5 of the TEDRA Agreement reads:

Management of the real properties to be distributed to DON pursuant to Section 5.2 above shall be delegated to DON effective October 1, 2014. *DON shall indemnify, defend, and hold harmless ED as Trustee against any claims, lawsuits or other actions, including all costs of attorney fees incurred in defense of such claims, lawsuits or other actions, arising as a result of DON'S management of the real properties described in Section 5.3 above.* During such management and before distribution of the properties to DON, DON is prohibited from terminating and unreasonably interfering with the existing manager of the real property at 39th St. in Phoenix, Arizona.

R. 103 (emphasis added).

The section 5.3 real property was to remain in the Trust until it was distributed to Beneficiary Frizzell at a later date. *See R. 103.* In Paragraph 5.5, Beneficiary Frizzell specifically holds Trustee DeYoung harmless for any actions taken by Beneficiary Frizzell *after* the execution of the TEDRA Agreement, clearly contemplating that the distribution of Trust assets had not yet taken place as of the date of the execution of the TEDRA Agreement. In paragraph 5.5, both Beneficiary Frizzell and Trustee DeYoung clearly intended to and did waive certain rights pursuant to actions that might or might not occur in the future. As such, the District Court correctly concluded that the plain language of paragraph 5.5 is clear and unambiguous and that such language demonstrated an agreement by the parties to indemnify and hold Trustee DeYoung harmless for *future* claims arising out of Trustee DeYoung's administration of the Trust.

4. PARAGRAPH 6 OF THE TEDRA AGREEMENT

Paragraph 6 of the TEDRA Agreement provides:

Donald C. Frizzell's Indemnification of Edwin J. DeYoung. DON, on behalf of himself and as custodian for CRAIG J. FRIZZELL and DEAN J. FRIZZELL *agrees to indemnify, defend and hold ED harmless against any claims, lawsuits, or other actions, including all costs and attorney fees incurred in defense of such claims, lawsuits or other actions, advanced against ED by DON or DON'S children or heirs relating to ED's administration of the Family Trust, Survivor's Trust, Bypass Trust and QTIP Trust.*

R. 104.

The plain language of paragraph 6 is unambiguous. Beneficiary Frizzell intended to indemnify, defend, and hold Trustee DeYoung harmless against any and all “claims lawsuits or other actions ... relating to [Trustee DeYoung’s] administration of the [Trust].” Again, the TEDRA Agreement clearly shows that at the time of execution there were still assets to be distributed from the Trust and Trustee DeYoung was still acting as the Trust Administrator. *See, e.g., R. 103*. Paragraph 6 clearly encompasses and holds Trustee DeYoung harmless for *any* claims that could be levelled against Trustee DeYoung in his capacity as Trust Administrator. While Beneficiary Frizzell may now regret such language, it is the black letter law of contracts that a party to a contract is presumed to have read, understood, and agreed to the provisions therein. *J.R. Simplot Co. v. Bosen*, 144 Idaho 611, 614 (2006).

5. PARAGRAPH 9 OF THE TEDRA AGREEMENT

Paragraph 9 of the TEDRA Agreement begins in relevant part:

Release and Hold Harmless. The Beneficiaries, on behalf of themselves, their heirs and successors-in-interest (including unborn and unascertained descendants), their agents and assigns (hereinafter collectively referred to in this Section as the “Releasors”) release, discharge, and indemnify ED, and ED’S heirs, successors-in-interest, agents, and assigns (hereinafter collectively referred to in this paragraph as the “Releasees”), from any and all actual *or potential* claims or causes of action, of whatsoever kind or nature, whether at law or in equity, whether known or unknown, accrued *or yet to arise or accrue, including but not limited to any claims of negligence or breach of fiduciary duty or breach of contract, which relate to or arise out of any act, omission or conduct of ED in his capacity as Trustee* that the Releasors now have, ever had, may have had, *or may thereafter have* from the inception of the Family Trust, Survivor’s Trust, By pass Trust and the QTIP Trust up to the date this Agreement is executed. Such release is limited to claims that were asserted or that could have been asserted by the Releasors against the Releasees arising out of or related in any way to the administration of the Family Trust, Survivor’s Trust, Bypass Trust and the QTIP Trust, the distribution of the trust property held in the Family Trust, Survivor’s Trust, Bypass Trust and the QTIP Trust, *and all liability relating to the Family Trust, Survivor’s Trust, Bypass Trust and the QTIP Trust that might arise between the Releasors and the Releasees now or in the future.*

...

R. 105 (emphasis added).

Beneficiary Frizzell contends that Paragraph 9 limits the Beneficiaries' release to claims that arose "from the inception of the [Trust] up to the date this Agreement is executed." However, Beneficiary Frizzell neglects to consider the remaining language of Paragraph 9 which clearly pertains to and releases future claims. As properly interpreted by the District Court, paragraph 9 can be summed up as follows:

1. [Trustee] is released from all liability from the inception of the Trust until the execution of the TEDRA Agreement based on the following:

[Beneficiaries release Trustee] from any and all actual or *potential* claims or causes of action, of whatsoever kind or nature, whether at law or in equity, whether known or unknown, *accrued or yet to arise or accrue*, including but not limited to any claims of negligence or breach of fiduciary duty or breach of contract, which relate to or arise out of any act, omission or conduct of ED in his capacity as Trustee that the Releasors now have, ever had, may have had, or may thereafter have from the inception of the [Trust] up to the date this Agreement is executed. Such release is limited to claims that were asserted or that could have been asserted by the Releasors against the Releasees arising out of or related in any way to the administration of the [Trust], the distribution of the trust property held in the [Trust]...

2. [Trustee] is released from all liability from the point of the execution of the TEDRA Agreement until he is no longer serving as the Trust Administrator based on the following:

and all liability relating to the [Trust] that might arise between the Releasors and the Releasees now or in the future.

R. 170 (emphasis in original, alterations added for clarification/simplicity): As the District Court explained, "The plain meaning provides that: in addition to a release for all prior claims related to Defendant's administration of the Trust, all future claims that might arise between Plaintiff and Defendant are encompassed by the release." *R. 171.*

First, the paragraph releases claims that could have been asserted from the inception of the Trust until the execution of the TEDRA Agreement. Next, the Beneficiaries release Trustee

DeYoung from liability for claims related to Trustee DeYoung's administration of the Trust that might arise now or in the future. The plain language is clear and unambiguous. The release includes future actions related to the administration of the Trust. This reading is appropriate and is supported when considering Paragraph 9 in light of the entire Agreement.

6. PARAGRAPH 7 OF THE TEDRA AGREEMENT

Paragraph 7 contains the statement:

All Parties to this Agreement understand and acknowledge that if this Agreement is filed with the court then its terms will become final and binding and the equivalent of a final court order binding on all of the Parties who have signed the same pursuant to I.C. § 15-8-303. ... Furthermore, the Beneficiaries specifically agree that this Agreement shall be fully binding upon them even if it may be determined later that this Agreement is not an Agreement under I.C. § 15-8-303 and/or that any necessary Party for such an Agreement was omitted or not virtually represented.

R. 104. As a party to the TEDRA Agreement, Beneficiary Frizzell is bound by its terms regardless of what his own subjective intent might have been. *See, e.g., Justad v. Ward*, 147 Idaho 509, 512, 211 P.3d 118 (2009) (*quoting* 17A Am. Jur. 2d. Contracts § 91 (2d ed. 2008)).

Especially when examined as a whole, The TEDRA Agreement in this case clearly and unambiguously releases Trustee DeYoung from future liability related to administration of the Trust and submits future disputes to the TEDRA statutory scheme for enforcement.

C. INSTEAD OF SEEKING A DECLARATION OF RIGHTS UNDER THE APPROPRIATE AND AGREED TEDRA PROCEDURES AND STATUTORY SCHEME, BENEFICIARY FRIZZELL PURSUED NEW CLAIMS FOR BREACH OF FIDUCIARY DUTY EVEN THOUGH BENEFICIARY FRIZZELL HAD ALREADY RELEASED SUCH CLAIMS.

Beneficiary Frizzell now contends that the clear and unambiguous terms to which he agreed should be void as against public policy because a contract cannot waive someone's day in court. Beneficiary Frizzell appears to misconstrue the District Court's decision, claiming that "[t]he District Court asserted that the TEDRA Agreement waived Frizzell's right to ever seek

enforcement of the TEDRA Agreement or the underlying Trust that it modified.” *Appellant’s Brief*, p. 25. Trustee DeYoung acknowledges that it would be nonsensical for a court to recognize the TEDRA Agreement as binding while simultaneously finding that its own terms prevent enforcement. That is not the case here. To the contrary, as the District Court explained,

[Beneficiary Frizzell] did not waive his day in court, rather, [Beneficiary Frizzell] agreed to non-judicial dispute resolution regarding matters related to the administration of the Trust. Further, [Beneficiary Frizzell] had every opportunity to seek enforcement of the TEDRA Agreement through the plenary power of the court to resolve disputes related to the Agreement. That cannot be considered a waiver of [Beneficiary Frizzell’s] day in court. The policy behind the Act is to promote non-judicial resolution of trust disputes, efficiency in trust administration, and *judicial resolution of disputes where non-judicial efforts fail*. Idaho Code § 15-8-101. **The TEDRA Agreement is not a waiver of Plaintiff’s day in court.**

As this Court noted above, [Beneficiary Frizzell] had a vehicle to assert his rights under the TEDRA Agreement and the administration of the Trust. [Beneficiary Frizzell] could have filed a petition with the Court to execute the terms of the TEDRA Agreement. *See* Idaho Code § 15-8-101 *et. seq.* [Beneficiary Frizzell] did not waive his rights, rather [Beneficiary Frizzell] contracted to have his rights administered pursuant to the TEDRA statutes. That is something different than an absolute waiver of a right to assert a claim in court. [Beneficiary Frizzell] slept on his right to bring his claims under the TEDRA statute and here is attempting to circumvent the Agreement and continue litigating issues related to [Trustee DeYoung’s] administration of the Trust. This is precisely the action that TEDRA was designed to avoid. The provisions of the TEDRA [Agreement] holding [Trustee DeYoung] harmless from actions taken as the Trust administrator speak clearly, directly, and release [Trustee DeYoung] from all liability related to the administration of the Trust.

R. 172-173 (italicized emphasis in original, bold emphasis added, alterations added for clarification). A party may contract to release themselves from “certain duties and liabilities under a contract subject to certain limitations.” *Anderson & Nafziger v. G.T. Newcomb, Inc.*, 100 Idaho 175, 595 P.2d 709, 712 (1979). “Clauses which exclude liability must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue.” *Id.*

As explained above, the TEDRA Agreement, especially when considered as a whole, clearly and unambiguously releases future claims against Trustee DeYoung related to Trustee

DeYoung's administration of the Trust. Additionally, the TEDRA Agreement itself states the statutory basis for the agreement and further provides that "[t]he issues addressed in this agreement are the types of issues or matters contemplated to be resolved pursuant to I.C. § 15-8-103." *R. 100*. Beneficiary Frizzell did not waive his right to enforcement and relief; he agreed to seek enforcement and relief via TEDRA if necessary.

Beneficiary Frizzell cites *Rawlings v. Layne Bowler Pump Co.*, 93 Idaho 496, 500, 465 P.2d 107, 111 (1970) for the proposition that "[w]hile a party may bargain for exemption from liability for negligence, a bargain from liability for the consequences of a willful breach of duty is illegal." *Appellant's Brief*, p. 26. However, as that Court more fully explained,

Appellant contends that it is against public policy to allow a person to contract away his legal rights and remedies for future negligence. This rule is not absolute, and in the opinion of this Court is more realistically viewed as an exception rather than the general rule which prevails throughout the majority of American jurisdictions. Freedom of contract is a fundamental concept underlying the law of contracts and is an essential element of the free enterprise system.

Rawlings, 93 Idaho at 500. Beneficiary Frizzell freely contracted away his right to bring future separate claims against Trustee DeYoung related to the administration of the Trust. This did not waive his day in court or render the TEDRA Agreement unenforceable. Beneficiary Frizzell still could have sought to enforce the terms of the Agreement under the TEDRA scheme. He chose not to.

In what appears to be one of the few Idaho appellate decisions to mention TEDRA, the Court recognized that the Plaintiff "filed a verified Petition, invoking the Trust and Estate Dispute Resolution Act (TEDRA), I.C. §§ 15-8-101 to 305." *Quemada v. Arizmendez (In re Estate of Ortega)*, 153 Idaho 609, 288 P.3d 826, 829 (2012). Moreover, in considering attorney fees, the Court found it significant that the plaintiff "did invoke TEDRA in her initial Petition and in her superseding Amended Petition," and further, that the plaintiff "stated she was petitioning the court

‘pursuant to TEDRA, I.C. 15-8-101 *et. seq.*’” *Id.* at 834. Because it was “clear that [the Plaintiff] asserted in her Amended Petition that TEDRA was her basis for seeking relief,” the Court applied TEDRA’s attorney fee provision. *Id.* (*alteration added for clarification*).

Additionally, in another case cited by Beneficiary Frizzell, *In re Guardianship of Wells*, 150 Wash. App. 491, 208 P.3d 1126 (2009), the court again recognized and found significant that the initial petition had clearly invoked TEDRA and its broad powers. *Id.* at 1129, 1131. As Beneficiary Frizzell acknowledges, the *Wells* “lower court *sua sponte* invoked its inherent powers to order contempt for breach of the settlement agreement.” *Appellant’s Brief*, 19. Beneficiary Frizzell then apparently concludes that the District Court in this case had a duty to do the same.

However, in *Wells*, the Petitioner clearly invoked TEDRA as the basis for relief, which was significant in that case because of TEDRA’s “broad and exclusive” jurisdictional powers. *In re Guardianship of Wells*, 150 Wash. App. 491, 208 P.3d 1126, 1131 (2009). Conversely, in this case, Beneficiary Frizzell did not invoke TEDRA in his initial Petition and instead sought damages for breach of fiduciary duty. *See R. 6-35*. If Beneficiary Frizzell would have invoked and petitioned pursuant to TEDRA, as was the case in *Wells*, then the District Court could have invoked its contempt powers to enforce the TEDRA Agreement. Instead, Beneficiary Frizzell asserted claims he had already released and now argues that the District Court erred, essentially by not converting his Complaint into a TEDRA Petition *sua sponte*. Beneficiary Frizzell has provided no authority to support any duty, or even the power, of the District Court to make such a conversion.

As explained above, *Wells* is obviously distinguishable due to the key fact that the Petition in *Wells* invoked TEDRA and its broad powers. Moreover, simply because the Court in that case raised contempt as an avenue for enforcement *sua sponte*, (again, when the Petition invoked

TEDRA) does not support the contention that the District Court in this case had any duty to raise contempt as a means of enforcement where Beneficiary Frizzell failed to petition pursuant to or invoke TEDRA as a means of relief in any way.

Beneficiary Frizzell's Complaint alleges multiple breaches of fiduciary duty, punitive damages, and a claim for lost income as causes of action. *See R. 6-35*. While it necessarily mentions the TEDRA Agreement, the Complaint never mentions the TEDRA statutes or suggests that it is a petition pursuant to TEDRA. *See R. 6-35*. As such, *Quemada* and *Wells* support the District Court's reasoning that Beneficiary Frizzell could have petitioned pursuant to TEDRA, but failed to do so, instead asserting different claims that had already been released by the TEDRA Agreement.

The TEDRA Agreement did not waive Beneficiary Frizzell's day in court, and its terms are not void as against public policy. Beneficiary Frizzell agreed to a set of non-judicial and judicial dispute resolution procedures pursuant to the TEDRA statutes but then attempted to sue Trustee DeYoung for claims Beneficiary Frizzell had already released. The District Court properly dismissed Beneficiary Frizzell's claims.

D. THE DISTRICT COURT DID NOT HAVE THE DUTY TO CONVERT BENEFICIARY FRIZZELL'S CAUSES OF ACTION INTO A TEDRA CAUSE OF ACTION.

Beneficiary Frizzell argues that the District Court erred by not permitting Frizzell to amend his Complaint, complaining that the district was too "harsh" on Frizzell. *Appellant's Brief, 17*. This argument must fail as Beneficiary Frizzell never moved or otherwise requested to amend his Complaint. *See R. 1-212*.

Additionally, Beneficiary Frizzell appears to contend that the District Court had a duty to functionally convert Beneficiary Frizzell's breach of fiduciary duty causes of action into a TEDRA

enforcement proceeding. *See Appellant's Brief*, 16-20. However, it was Beneficiary Frizzell's responsibility, as the Plaintiff, to place the Defendant on notice of the claims brought against him.

A sufficient complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." I.R.C.P. 8(a)(1). "Under notice pleading, 'a party is no longer slavishly bound to stating particular theories in its pleadings.'" *Seiniger Law Office, P.A. v. N. Pac. Ins. Co.*, 145 Idaho 241, 246, 178 P.3d 606, 611 (2008) (quoting *Cook v. Skyline Corp.*, 135 Idaho 26, 33, 13 P.3d 857, 864 (2000)). A complaint must merely state claims upon which relief may be granted, and pleadings should be liberally construed in the interest of securing "a just, speedy and inexpensive resolution of the case." *Id.* The technical rules of pleading have long been abandoned in Idaho, and the "general policy behind the current rules of civil procedure is to provide every litigant with his or her day in court." *Clark v. Olsen*, 110 Idaho 323, 325, 715 P.2d 993, 995 (1986). "Though this Court will make every intendment to sustain a complaint that is defective, e.g., wrongly captioned or inartful, a complaint cannot be sustained if it fails to make a short and plain statement of a claim upon which relief may be granted." *Gibson v. Ada County Sheriff's Dep't*, 139 Idaho 5, 9, 72 P.3d 845, 849 (2003). "The key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it." *Id.* "A cause of action not raised in a party's pleadings may not be considered on summary judgment nor may it be considered for the first time on appeal." *Maroun v. Wyreless Sys., Inc.*, 141 Idaho 604, 613, 114 P.3d 974, 983 (2005).

The notice pleading issue in this case is very similar to that in *Brown v. City of Pocatello*, 148 Idaho 802, 229 P.3d 1164 (2010). In *Brown*, the only theory of recovery identified in the Complaint was negligence. *Id.* at 1171. The Plaintiff then moved for partial summary judgment, claiming that the Defendant's actions constituted a nuisance and an uncompensated taking of

property. *Id.* at 1167. The District Court dismissed the plaintiff's claims for nuisance and inverse condemnation, finding that these claims were raised for the first time at summary judgment proceedings. *Id.* The Idaho Supreme Court affirmed the dismissal, reasoning

Although a complaint need not identify the statutory basis for relief nor include a formal statement of the cause of action being pursued, there must be *some* indication of the theory of recovery supporting the relief sought—a naked recitation of the facts alone is insufficient. Without a clear and concise statement sufficient to place a reasonable attorney on notice of the plaintiff's *theories* of recovery that must be defended against, whether in the body of the complaint or in the prayer for relief, it cannot be said that a cause of action was sufficiently pled. Even under the liberal notice pleading standard, a complaint must reasonably imply the theory upon which relief is being sought. See *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wash. App. 18, 974 P.2d 847, 851 (1999).

Id. at 1170 (emphasis in original). After analyzing the Plaintiff's Complaint in *Brown*, the Court continued eloquently,

Here, Brown's Complaint is not separated into multiple causes of action, and the only theory of recovery identified is negligence. Brown's Complaint uses the words "negligent," "negligently," and "negligence" but makes no mention of a nuisance or taking, either specifically or through the use of operative terms typically associated with these claims. Read as a whole, the allegations contained in Brown's Complaint are consistent with what is expected where a cause of action for negligence is being alleged. The prayer for relief is a generic request for damages, not inconsistent with what might properly be requested where the sole theory of recovery is negligence. Our liberal notice pleading standard is intended to see justice done, and prevent the dismissal of a valid claim for a mere technical failing. However, the opposing party must be provided with notice of the underlying theories being pursued against them in order to adequately prepare for trial. Our notice pleading standard requires more than a naked recitation of facts from which a hyper-vigilant attorney could possibly foresee the possibility of a given cause of action. A plaintiff cannot, in his complaint, paint us a picture of a four-legged animal with fur and a tail labeled "cat" and then assert at summary judgment that the picture depicts a dog.

Id. at 1171-1172.

In this case, Beneficiary Frizzell asserted claims for damages based on causes of action for breach of fiduciary duty, punitive damages, and lost income in his Complaint. See R. 6-35. After realizing that he had already released such claims by way of the TEDRA Agreement, Beneficiary

Frizzell now contends for the first time on appeal that his Complaint should be read as an action under TEDRA to enforce the TEDRA Agreement. Beneficiary Frizzell simply failed to place Trustee DeYoung on notice of any claim under TEDRA, so the District Court properly dismissed the claim.

Beneficiary Frizzell contends that he should be permitted to amend his Complaint because “a district court should grant leave to amend ‘even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by allegation of other *facts*.’” *Appellant’s Brief*, 17 (quoting *Cook, Perkiss and Liehe, Inc. v. Northern California Collection Service, Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) (emphasis added)). The Complaint was not dismissed because of deficiencies in *factual* allegations; it was dismissed because the Complaint asserted claims that had already been released and because the Complaint failed to place Trustee DeYoung on notice of any valid *theories* to be defended against upon which relief could be granted. Therefore, the District Court properly granted Trustee DeYoung’s Rule 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief may be granted.

E. ATTORNEY FEES ON APPEAL

Trustee DeYoung requests attorney fees on appeal pursuant to I.C. § 15-8-208 and pursuant to the TEDRA Agreement itself. This Court should also affirm the District Court’s award of attorney fees to Trustee DeYoung. I.C. § 15-8-208 provides,

- (1) Either the District Court or the Court on appeal may, in its discretion, order costs, including reasonable attorney’s fees, to be awarded to any party:
 - (a) From any party to the proceedings;
 - (b) From the assets of the estate or trust involved in the proceedings; or
 - (c) From any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.
- (2) This section applies to all proceedings governed by this chapter including, but not limited to, proceedings involving trusts, decedent’s estates and properties, and guardianship matters.

Additionally, "[c]ontractual terms providing for recovery of attorney fees incurred in actions to enforce the contract represent an election by the parties to place the risk of litigation costs on the one who is ultimately unsuccessful. Such provisions are ordinarily to be honored by the courts." *Zenner v. Holcomb*, 147 Idaho 444, 210 P.3d 552, 560 (2009) (quoting *Holmes v. Holmes*, 125 Idaho 784, 787, 874 P.2d 595, 598 (Ct. App. 1994)). The TEDRA Agreement itself states,

If any dispute between or among the Parties concerning this Agreement hereto results in litigation, the prevailing Party shall be reimbursed and indemnified by the Party not prevailing for all costs and expenses reasonably incurred by the prevailing Party in enforcing or establishing his or her rights hereunder, including without limitation court costs and reasonable attorney fees.

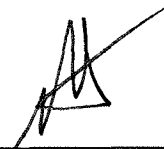
R. 81-82.

This proceeding obviously involves the TEDRA statutes, and the TEDRA Agreement itself clearly provides that the prevailing party should be award reasonable attorney fees. As such, the Court should affirm the District Court's award of attorney fees to Trustee DeYoung, and this Court should also award attorney fees to Trustee DeYoung on appeal.

V. CONCLUSION

For the reasons stated herein, the Court should affirm the District Court's decision to grant Trustee DeYoung's Motion to Dismiss and should grant attorney fees for this appeal to Trustee DeYoung.

DATED this 11th day of August, 2017.




SCOTD. NASS #4555
Attorney At Law, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 11th day of August, 2017, I caused to be served two true and correct copies of the Respondents' Brief by the method indicated below, and addressed to the following:

Robin L. Haynes
GIANTlegal PLLC
304 W. Pacific Avenue, Ste. 210
Spokane, WA 99201
Attorney for Plaintiff/Appellant

<input checked="checked" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Delivery
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Via Fax: (509) 753-7226



SCOT D. NASS

DONALD CRAIG FRIZZELL,
individually and as a beneficiary of the
CLIFTON AND MARJORIE
FRIZZELL FAMILY TRUST,

VS.

EDWIN DEYOUNG, individually
and in his capacity as trustee of the
CLIFTON AND MARJORIE
FRIZZELL FAMILY TRUST;
DARLENE DEYOUNG, individually
and in her capacity as a beneficiary of
the CLIFTON AND MARJORIE
FRIZZELL FAMILY TRUST; et. al.

) Supreme Court No. 44975-2017
) District Court Case No. CV 2016-0007350

CERTIFICATE OF COMPLIANCE (ELECTRONIC BRIEF)

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in L.A.R. 34.1, and that an electronic copy was served on each party at the following email address: robin@giantlegal.net (Robin L. Haynes, Counsel for Plaintiff/Appellant).

DATED AND CERTIFIED this 11th day of August, 2017.

SCOT D. NASS, ISB #4555
Attorney at Law