

**Third District Court of Appeal**  
**State of Florida, July Term, A.D. 2010**

Opinion filed October 27, 2010.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-773  
Lower Tribunal No. 06-25656

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**James Aronson, et al.,**  
Appellants,

vs.

**Doreen Aronson,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Gerald Hubbard,  
Judge.

Buckingham, Doolittle & Burroughs and Michael D. Mopsick, for  
appellants.

Shutts & Bowen and William Jay Palmer, for appellee.

Before COPE, GERSTEN, and SALTER, JJ.

PER CURIAM.

James Aronson and Jonathan Aronson (“the trustees”) appeal, and Doreen Aronson (“the widow”) cross-appeals, from a final judgment construing a decedent’s revocable trust. We affirm in part and reverse in part.

Hillard J. Aronson (“the decedent”) executed a revocable trust, naming himself as sole trustee, and then transferred a condominium to the trust. This condominium, which later became the decedent’s and the widow’s marital residence, was the trust’s sole asset. When the decedent died, his sons became trustees of the trust.

The widow is the life beneficiary of the trust, and the trustees are the remainder beneficiaries of the trust. The trust allows for non-income producing property to be converted into income producing property at the widow’s direction. The trust states that the trustees **shall** pay the trust income to the widow. In addition, the trust provides that the trustee **may** transfer to the widow portions of the principal “as in the discretion of the Trustee are necessary or desirable for her support, maintenance and medical care and enjoyment, at such times, in such manner and to such extent as the Trustee shall determine.” Finally, the trust directs that portions of the principal be paid or transferred to the widow “as she may from time to time request, not exceeding, however, in valuation the greater of Five Thousand (\$5,000.00) Dollars or five (5%) percent of the market value of the

principal of this Trust portion on the last day of the calendar year in which such withdrawal is requested.”

Because the decedent also executed a quit claim deed of the condominium in her favor, the widow believed she owned the condominium. She continued to reside there, and paid all fees, taxes, and expenses associated with the property, including satisfying a mortgage.

This Court declared the quit claim deed void, and confirmed the trust as the owner of the condominium. Aronson v. Aronson, 930 So. 2d 766 (Fla. 3d DCA 2006). Soon thereafter, the widow filed this action.

The widow’s complaint *inter alia* sought: (Count I) to declare the property exempt from forced sale as her homestead, (Count II) specific performance of the annual principal disbursement provided for in the trust, and (Counts III and IV) reimbursement, based on unjust enrichment, of the money she paid for maintaining the condominium. The trial court determined that the condominium was not constitutionally protected from sale by the trustees. However, the trial court ruled in favor of the widow on Counts II-IV, and directed that the widow be paid by transfer of an equivalent interest in the condominium.

On appeal, the trustees contend that the trial court erred in ordering that the trust transfer an interest in the condominium to the widow instead of selling it. They argue that continued invasion of the principal through transfers of interest

would eventually eliminate their remaindermen benefits. The widow, on the other hand, asserts that the trial court correctly ordered the transfer of the property interest, but erred in determining that the condominium was not protected from forced sale. We agree with the widow.

Turning first to the issue of homestead protection, the trial court reasoned that because any sale would be for the purpose of paying a debt owed to the widow, Article X, Section 4 of the Florida Constitution would not bar the sale. Section 4(b) of Article X specifically states that the exemption from forced sale inures to a decedent's surviving spouse. There are only three recognized exceptions to this exemption, none of which apply here. See In re Adell, 321 B.R. 562, 571-72 (Bankr. M.D. Fla. 2005). Accordingly, since the trial court erred in denying declaratory judgment on the homestead protection, we reverse on this point.

Next, we consider the trust disbursal provisions under the trust's choice of Massachusetts law. See Aronson, 930 So. 2d at 767. Massachusetts law requires that a trust be construed as a whole to ascertain the settlor's intent. See, e.g., Pond v. Pond, 678 N.E.2d 1321, 1323 (Mass. 1997). Where property held by a trust is unproductive and yields no income, taxes, interest and other expenses paid on the property are chargeable to principal. Ogden v. Allen, 114 N.E. 862, 862-63 (Mass. 1917). Additionally, where a trust provided for invasion of principal as needed for

a life beneficiary's support, a Massachusetts court interpreted this to mean that the life beneficiary was to be maintained in accordance with his pre-trust standard of living. Woodberry v. Bunker, 268 N.E.2d 841 (Mass. 1971).

Here, the trust as a whole clearly demonstrates the decedent's intent to provide for his widow. The trust gives the widow the authority to decide whether to sell any non-income producing property. Further, the trust allows for invasion of principal to provide for the widow. Understandably, the widow does not wish to sell her residence. Concomitantly, the trustees may not force her to do so. Alternatively, the trustees contend that the widow should be required to pay rent on the condominium to pay for its upkeep. However, requiring the widow to pay rent is illogical and contrary to the obvious intent of the trust.

The trust specifically provides that the trustees shall pay to the widow all trust income, and any rent paid on the condominium would be trust income payable to the widow. Moreover, the trustees are charged with providing for the widow's support, maintenance and medical care even to the extent of invading the trust principal. Allowing the widow to remain in the same home she occupied prior to decedent's death, comports with the trustees' obligation to maintain the widow's pre-trust standard of living.

Additionally, the trial court properly directed that the trustees transfer an interest in the condominium to the widow. The widow is equitably entitled to be

reimbursed for the unjust enrichment to the condominium during the time she believed she was the owner. Additionally, the widow is entitled to the five percent annual principal disbursements provided for in the trust. As the trust's sole asset is title ownership of the condominium, the only way to effectuate the trust's intent of providing for the widow is through an equivalent transfer of interest.

Finally, the trial court erred in not ordering the payment of prejudgment interest on the awards to the widow. "When a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses, plaintiff is entitled, as a matter of law, to prejudgment interest at the statutory rate from the date of that loss." Argonaut Ins. Co. v. May Plumbing Co., 474 So. 2d 212, 215 (Fla. 1985). Neither a defense to entitlement nor a dispute as to the amount changes the right to prejudgment interest. 474 So. 2d at 215. Additionally, where a date of loss can be established on an unjust enrichment claim, prejudgment interest may be awarded. See Montage Group, Ltd. v. Athle-Tech Computer Sys., Inc., 889 So. 2d 180 (Fla. 2d DCA 2004).

Here, although the trial court determined the widow's entitlement to payment when it entered judgment, the date of loss is the date when the widow filed this action. On that date, after determining that she was not the owner of the condominium, the widow claimed her right to reimbursement for unjust enrichment and annual principal disbursements from the trust. See Berloni S.P.A. v.

Della Casa, LLC, 972 So. 2d 1007 (Fla. 4th DCA 2008) (finding that prejudgment interest was payable from date payment of debt was demanded by filing suit). Therefore, the trial court erred in not awarding the widow prejudgment interest.

Accordingly, we reverse the involuntary dismissal of the widow's claim for declaratory judgment, and remand for entry of a judgment declaring the condominium is protected from forced sale as the widow's homestead. We affirm the awards to the widow in reimbursement for unjust enrichment and principal disbursements from the trust, and the trial court's order directing that the trustees transfer to the widow an interest in the condominium equivalent to these amounts. Further, we remand for the trial court to award prejudgment interest on the awards to the widow from the date this action was filed.

Affirmed in part, reversed in part, and remanded for further proceedings.