

1980

Rebecca B. Larrabee v. Glenwood B. Larrabee And
Royal Dairy Products Company, Mary Dorothy
Poulsen, Margaret Iona Aitken, Geraldine L.
Hogan, Cornelia L. Hancock, Otto Blaine Larrabee,
Jr., And Warren H. Larrabee : Defendant-
Respondent's Brief

Utah Supreme Court

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IN THE SUPREME COURT
OF
THE STATE OF UTAH

REBECCA B. LARRABEE,)

Plaintiff-Appellant,)

vs.)

GLENWOOD B. LARRABEE,)

Defendant-Respondent,)

and)

Case No. 16589

ROYAL DAIRY PRODUCTS COMPANY,)

MARY DOROTHY POULSEN, MARGARET)

IONA AITKEN, GERALDINE L.)

HOGAN, CORNELIA L. HANCOCK,)

OTTO BLAINE LARRABEE, JR., AND)

WARREN H. LARRABEE,)

Defendants.)

FILED

JAN 15 1980

Clerk, Supreme Court, Utah

DEFENDANT-RESPONDENT'S BRIEF

Appeal from the Judgment of the Third Judicial District
Court of Salt Lake County, Honorable Bryant H. Croft, Judge

Gerald E. Nielson
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ARGUMENT

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OTTO BLAINE LARRABEE, JR., AND)
WARREN H. LARRABEE,)
Defendants.)

Case No. 16589

DEFENDANT-RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

Plaintiff seeks to have an agreement reciting and defining Defendant-Respondent's interest in real property declared a nullity and revoked by the revocation of a revocable trust.

DISPOSITION IN LOWER COURT

The lower court found that the agreement was valid and binding on all of the parties; that it was independent of the revocable trust; and that it was not revoked.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks affirmation of the judgment of the trial judge.

STATEMENT OF FACTS

Defendant-Respondent agrees with the facts as set forth by Plaintiff, except where Plaintiff characterizes herself as the owner of the property in question (because Defendant-Respondent claims an interest therein), but feels that the facts, as recited by Plaintiff, are incomplete.

Plaintiff and the Defendant-Respondent Glenwood Larrabee entered into an agreement dated September 7, 1973 (Plaintiff's Exhibit 4) which Defendant-Respondent will hereafter refer to simply as "the Agreement." Thereafter Plaintiff made a revocable trust agreement (Plaintiff's Exhibit 1) which will be referred to herein as "the Revocable Trust." The Agreement provided for a revocable trust as a means of husbanding the property in question during Plaintiff's lifetime. The Agreement was the culmination of a 2-year negotiation with Robert Ryberg representing Plaintiff and all of Plaintiff's children, except Glenwood Larrabee and Gerald E. Nielson representing Glenwood Larrabee. In 1978 Plaintiff brought suit against Glenwood and the other children as defendants. The other children, being in reality co-Plaintiffs, did not answer. The complaint alleges the Agreement was obtained by undue influence and was without consideration and asks that it be declared to be of no effect and cancelled (See prayer, R-3). Defendant-Respondent prepared to defend an undue influence-no consideration case. When Plaintiff came to trial,

she abandoned both of those claims. She then, with the concurrence of Defendant-Respondent, placed in evidence the Agreement (Plaintiff's Exhibit 4) and the Revocable Trust (Plaintiff's Exhibit 1), together with two (2) notices from Plaintiff to Defendant-Respondent regarding the revocation of the Revocable Trust (Plaintiff's Exhibits 2 and 3). No other evidence, testimony or written, was introduced. Plaintiff then argued that the revocation of the Revocable Trust had the effect of revoking the Agreement and rested. Defendant-Respondent moved for judgment at the conclusion of Plaintiff's case and the Court granted judgment for Defendant-Respondent.

Plaintiff has raised a question as to whether the Trust was ever effectuated (Plaintiff's Exhibit 2). If it was, Defendant-Respondent agrees that Plaintiff could and did revoke it. If it was not effectuated, as Plaintiff's attorney claims it was not, (Plaintiff's Exhibit 2) it could not have been revoked and there could have been no revocation of the principal Agreement.

The issue for this appeal is simply, given the four (4) exhibits, without more, could reasonable men have concluded other than that the revocation of the Trust revoked the principal Agreement of the parties or, conversely, could the Court reasonably conclude that the revocation of the Trust did not revoke the principal Agreement?

Note even if the Court agreed with Plaintiff as to all of that, it does not follow that Defendant-Respondent does not have an interest in the property. The evidence is that he does have such interest. (The second recitation of the Agreement recites that Defendant-Respondent had such interest in the property as

a result of his placing substantial improvements thereon pursuant to an understanding that he would have the value of the property in excess of \$57,000.00.) If the agreement could be revoked, the interest did not just disappear. The purpose of the Agreement was to define and describe that interest.

Defendant-Respondent wishes to describe to the Court the circumstances of the making and execution of the Agreement (Plaintiff Exhibit 4). There was no evidence on that point, but the trial court was advised as to those circumstances in Defendant-Respondent's opening statement (R 101-105). Since there was not evidence, such description or explanation can only be considered as one explanation the trial court might have considered in its determination that the revocation of the Revocable Trust did not revoke the principal Agreement.

Those facts are that Defendant-Respondent worked with his father in a milk distributing and later an ice cream store and restaurant business upon the property in question until his father died in 1952. Pursuant to a family council with the late Emmett Brown, attorney, the family and particularly Plaintiff agreed that Defendant-Respondent would take charge of the property; pay Plaintiff rent for it; have the increase in value of the property that occurred after that time; and that the residual interest would be divided equally among all of the children. (The father had intended and willed that the property be divided only among the children.) An appraisal was obtained indicating the value at that time was \$57,000.00.

In 1971 there was complaint that the rent was in arrears.

the demand was made for a return of the property. Plaintiff and the children other than Defendant-Respondent, by and through their attorney Robert Ryberg, entered into extensive negotiations with Defendant-Respondent, by and through his attorney Gerald E. Nielson, which resulted in the execution of the principal Agreement almost two (2) years later. It was signed by the mother (Plaintiff-Appellant), the Defendant-Respondent and all of the other children. It recited Defendant-Respondent's interest in the value of the property because of his improvements on it, pursuant to a prior understanding with the family; it provided for the surrender by Defendant-Respondent of the possession of the property; it provided for the repayment by Defendant-Respondent of the past due rents and other debts; it provided (and this is not immediately apparent from a casual reading of the Agreement) for the benefit and income from the property, including Defendant-Respondent's improvements on said property, to go to Plaintiff for a minimum of five (5) years or until Plaintiff's death whichever was later (Plaintiff was 82 or 83 at the time and the minimum of five years of benefits was a bargained-for consideration intended to compensate for a prior disparity of the value of the property and the rents which it received); it provided for the distribution of the property upon Plaintiff's death or after the five years to all of her children, after preserving Defendant-Respondent's agreed interest in it; it made it clear that Plaintiff could consume the property in her lifetime for her own support, but that she could not alter the agreed-upon distribution and that she could not prefer one or more of the children over the others; it provided a

right of first refusal in Defendant-Respondent to obtain the property upon the death of Plaintiff or a proposed sale; it provided for mutual releases, indemnification for debts incurred by Defendant-Respondent and payment by Defendant-Respondent of increases in inheritance taxes caused by the improvements attributable to Defendant-Respondent. It also provided for a revocable trust as a scheme to manage the property during Plaintiff's lifetime. The Revocable Trust was signed approximately two (2) months after the Agreement and recites that the distribution per said Trust shall be modified in accordance with the provisions of the principal Agreement.

Prior to the onset of this lawsuit, Plaintiff gave notice of her revocation of the Trust (clouded by an assertion that the Trust was never effectuated) (Plaintiff's Exhibit 2). She then attempted to sell the property without Defendant-Respondent's participation. Defendant-Respondent recorded a Notice of Interest in the property by reason of the Agreement and Plaintiff brought suit.

ARGUMENT

DEFENDANT-RESPONDENT HAD AN INTEREST IN THE PROPERTY PURSUANT TO HIS PRIOR UNDERSTANDING WITH THE FAMILY AND HIS IMPROVEMENTS MADE ON THE PROPERTY OVER A PERIOD OF TWENTY (20) YEARS. THAT INTEREST AND UNDERSTANDING WAS MEMORIALIZED AND DEFINED BY THE AGREEMENT IN QUESTION. IT WAS NOT REVOCABLE.

The Agreement, the Revocable Trust and the two (2) notices of revocation of the Trust constitute all of the evidence in this case. Defendant-Respondent proposes to file copies of the Agreement and the Revocable Trust with his brief so that the Court may have them before it when it considers such briefs on this case.

Accordingly, Defendant-Respondent will resist extensive quotation from those agreements.

The essence of Plaintiff's claim is that because the first paragraph of the Agreement provided for the establishment of a Revocable Trust, the balance of the Agreement provided only for the definition of the terms of such Revocable Trust, all of which was to be revocable at the whim of Plaintiff. Plaintiff had the burden of proof at trial. Her position has to be that a bare reading of the Agreement and Trust Agreement compels the result she claims. Since Plaintiff is the Appellant herein, her position must further be that reasonable men could not disagree, except that such reading compels that result.

Defendant-Respondent contends the opposite; that a reading of the documents compels the decision reached by the trial court. If the situation were reversed, Defendant-Respondent would claim that reasonable men could not find otherwise.

It is entirely consistent to provide for a revocable trust as a management device to husband the property and at the same time to memorialize and define Defendant-Respondent's interest in the property.

It would be inconsistent to recite and define Defendant-Respondent's interest in the property only to provide that such interest is revocable at the whim of Plaintiff. Plaintiff is essentially asking the Court to conclude that the trial court could not conclude other than that Defendant-Respondent made a contract that not only gave Plaintiff the right to declare such contract a nullity, but more importantly, that it gave Plaintiff

the right to declare Defendant-Respondent's prior conceded interest in the property a nullity.

There is no provision in the Agreement or in the Revocable Trust that constitutes a grant of Defendant-Respondent's interest in the property (acquired by his improvements and the prior understanding) to Plaintiff or to the Trust in a way that would cause such interest to revert to Plaintiff upon the revocation of the Trust, as urged by Plaintiff.

Defendant-Respondent's right to purchase and his right of first refusal are inconsistent with and unnecessary if Plaintiff could simply annul the contract at her whim, as urged by Plaintiff.

Most importantly, the limitation of Plaintiff's right to sell or dispose of the real property until she consumes the rest of the property and the limitation of her right to prefer one of her children over the others is inconsistent with and unnecessary and meaningless if Plaintiff was empowered to annul those limitations of her authority at her whim, as urged by Plaintiff.

The specific Agreement that Plaintiff is entitled to use to consume all of the property, including this property, upon certain conditions is meaningless if the construction of the Agreement urged by Plaintiff is accepted.

The fact that the Agreement and the Revocable Trust were signed contemporaneously is significant. (The Agreement is dated the 7th day of September, 1973 and the Revocable Trust is dated the 7th day of November, 1973.) If the parties intended that Plaintiff could annul the Agreement at her whim, it would have been necessary to protect that essential, overwhelming, most important

tant of all rights by having the Revocable Trust executed contemporaneously with the Agreement.

That there are two (2) Agreements signed at different times by different parties, belies the construction advanced by Plaintiff. The provision for revocation of the Revocable Trust did not say that the revocation of the Trust would have the effect of revoking the Agreement. On the contrary, the Revocable Trust is by its terms subject to the Agreement, but not vice versa. If the parties had intended the construction urged by Plaintiff, the convenient thing would have been simply to say in the Agreement that it was subject to the revocation provisions in the Revocable Trust, or even more logically to dispense with the Agreement altogether and simply include the entire agreement of the parties in the Trust Agreement. But the parties made two (2) agreements. Defendant-Respondent urges: that the first was intended to define and describe Defendant-Respondent's interest in the property and Plaintiff's rights and responsibilities respecting the same; and that the second was intended to provide a means of caring for the property in Plaintiff's name. It was entirely logical to make the second Agreement (the Revocable Trust) revocable, but it would have made no sense at all to make the first one (the Agreement) revocable. Again, if the first one was intended to be revocable, it would have been easy to say so. While there is a signature of Defendant-Respondent on the Revocable Trust, it was an acceptance of the role as trustee. It stretches the imagination to say that by signing that acceptance to act as trustee, he was also agreeing

that the revocation of the Trust Agreement would nullify or otherwise modify his interest in the property; yet, that is exactly what Plaintiff asks us to do. On the other hand, if the construction advanced by Defendant-Respondent is correct, the requirement for two (2) contracts is obvious. The Revocable Trust is very different than the principal Agreement and it would have been inappropriate or at best very awkward to try to incorporate both agreements into one document.

The Revocable Trust itself provides that upon its termination the distribution shall be in equal shares, except as modified in accordance with the provisions of the principal Agreement (paragraph 2 (e)).

Plaintiff's Exhibit 2 is a letter from Plaintiff's attorney to Defendant-Respondent. It says:

Dear Mr. Larrabee:

This is to advise you, as one of the attorneys for your mother, that your mother has elected to revoke the Trust Agreement dated November 7, 1973 in which she is the Trustor. This Trust, in my opinion, has never legally been put into effect by the recording of deeds, the setting up of trust accounts, or the like, but should it have had any validity, she has the right under Article 8 (VIII) to revoke the same.

Defendant-Respondent points out that if there is no Trust, as urged by Plaintiff's attorney, there is no revocation, and if there is no revocation, it is impossible to conclude there was a revocation of the principal Agreement.

This writer finds it difficult to argue this matter without reciting his own testimony that Plaintiff's construction of the Agreement is not what the parties intended or that the interpretation of Defendant-Respondent and the trial court is obvious.

what the parties did intend. Acknowledging the defectiveness of that form of argument, Defendant-Respondent points out that the trial court also felt strongly about the matter. See R 116, lines 5 through 12 wherein the following dialogue between the trial court and counsel for Plaintiff is recorded:

THE COURT: She has a right to do anything she wants to with property having revoked the trust, subject to Glen's interest in the property under that agreement of September '73.

MR. HASLAM: If that is the way you interpret it, I suppose that is the way you interpret it.

THE COURT: To me, it is so clear. I am surprised you argue it otherwise.

If there is a justification for Plaintiff's argument, and Defendant-Respondent does not concede there is, it appears to be that the provision for the creation of the Revocable Trust occurs in the first paragraph of the Agreement, thus allowing the inference that all subsequent paragraphs are in reality sub-paragraphs. But the paragraphs in the Agreement are numbered separately. Paragraphs 2, 3, 4, 5, 6, and 7 are each as independent as paragraph 1. The trial court so found. In its Findings and Conclusions, it recited: (R 84 and 85)

Findings of Fact 4. The Agreement and the Revocable Trust are separate documents, each of which is complete on its face; each of which involves different parties; and each of which is separately executed. The Revocable Trust was executed approximately two (2) months after the Agreement. While the Revocable Trust was referred to in the Agreement and the Agreement was referred to and incorporated in the Revocable Trust, there is no provision in either document that makes one dependent on the other.

Conclusions of Law 3. The reference to and the incor-

poration of the Agreement in the Revocable Trust was intended by the parties to make it clear that the dispositive provisions of the Revocable Trust were affected and modified by the terms of the Agreement. The Agreement and the Revocable Trust are each separate independent agreements, neither of which is dependent upon the other. The revocation of the Revocable Trust did not affect or revoke the Agreement.

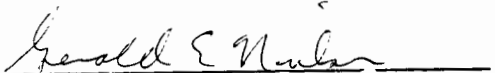
Plaintiff has urged at the top of page 5 of her brief the rule that the effect to be given a contract depends on the intent of the parties and that this is to be ascertained by looking at the entire contract and all of its parts in their relationship to each other. Defendant-Respondent concurs and urges that standard in the analysis of the Agreement here under consideration.

Defendant-Respondent has not cited any legal authority in the presentation of this argument. It would be possible to cite cases relating to the Plaintiff's burden of proof at trial and, more importantly, to the Appellant's burden on appeal. This writer does not believe he can gainsay the Court's understanding of those rules and will resist that compulsion. In the end, this case involves the interpretation of the Agreement and the Revocable Trust. They and the two (2) notices relating to revocation were the only evidence before the trial court. That the determination of the intent of the parties as ascertained by looking at the entire contract is the task at hand is asserted by Plaintiff and agreed to by Defendant-Respondent. That the dispute is entirely factual is itself significant. Everyone knows that facts have to be determined by the trier of fact, and his determination should stand unless clearly erroneous.

CONCLUSION

The trial court found that the Agreement was valid and binding on the parties; that the Agreement and the Revocable Trust are separate independent Agreements; and that the revocation of the Trust did not revoke the Agreement. The trial judge felt strongly about that conclusion. He was right.

Respectfully submitted,


GERALD E. NIELSON
Attorney for Defendant-Respondent



TRUST AGREEMENT

THIS TRUST AGREEMENT, made and entered into as of this 11th day of January 1973, by and between REBECCA B. LARRABEE, hereinafter called the "Trustor," and OTTO BLAINE LARRABEE, JR., GLENWOOD B. LARRABEE and WARREN H. LARRABEE, herinafter referred to jointly as "Trustee."

WITNESSETH:

WHEREAS, the Trustor has assigned, transferred, conveyed and delivered or is about to assign, transfer, convey and deliver to the Trustee certain property set forth and more particularly described in Exhibit "A", attached hereto and made a part hereof for the purposes hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and covenants herein contained the parties agree:

ARTICLE I

Trust Estate

Trustor or any other person may make additional contributions of property to Trustee, in trust, by inter vivos or testamentary transfer and Trustee may in its discretion accept such property, in trust. The property described in Exhibit "A" attached hereto, together with all other property that may be contributed to and accepted by Trustee, in trust, and together with all increments to, income from, and gain from the sale of or exchange of all property held by Trustee, in trust, and together with all other property coming into possession of Trustee by virtue of the sale, exchange, investment, reinvestment or disposition or use of property held by the Trustee, in trust, shall constitute the trust estate and shall be held, invested, reinvested, managed and distributed in accordance with the provisions of this Trust Agreement.

ARTICLE II

Dispositive Provisions

Trustee shall distribute the income and principal of the trust as follows:

1. During the Life of Trustor.

(a) Benefits for Trustor. The Trustee shall pay to the Trustor for her benefit such amounts from the principal or income of the trust estate as she shall from time to time in writing direct. If Trustor becomes legally incompetent or otherwise unable to handle her affairs, Trustee shall pay to or for the benefit of Trustor, so much of the income and principal of the Trust Estate as Trustee in its discretion deems reasonably necessary or appropriate for the proper maintenance, care and support of Trustor.

2. At the Death of Trustor.

(a) Death, Taxes, Costs, and Expenses. Trustee shall use so much of the income and principal of the trust as is necessary to pay the expenses of the last illness, funeral and burial of Trustor, all taxes that may arise because of Trustor's death, and all other just claims against Trustor's estate.

(b) Termination. The Trust shall terminate upon the death of Trustor or on the first day of September, 1976, whichever last occurs; or when the Trust estate shall have been completely consumed in accordance with the provisions of this Trust Agreement.

(c) Distribution Upon Termination. Upon the termination of the Trust, Trustee shall distribute the residue of the Trust estate to MARY DOROTHY POULSEN, MARGARET IONE AITKEN, GERALDINE L. HOGAN, CORNELIA L. HANCOCK, OTTO BLAINE LARRABEE, JR., GLENWOOD B. LARRABEE and WARREN H. LARRABEE, or if any of said persons are deceased to the surviving issue of them by right of representation, in equal shares provided that said equal shares shall be modified in accordance with the provisions of an Agreement between the Trustor and her children dated the ____ day of _____, 19____. (A copy of which agreement is attached to this Trust Agreement and by reference is incorporated herein.)

ARTICLE III

Powers of Trustee

In the administration of the trust, Trustee shall have the following

powers:

1. To hold as part of the trust estate all of the stock in any corporation which may come into his hands. If the shares of stock in any corporation held by Trustee shall be a majority of its total outstanding voting stock, Trustee may use such stock control to continue the corporation's business for such time and in such manner as Trustee may deem advisable. In Trustee's discretion, the kind of business in which the corporation is engaged may be changed and the scope and nature of its activities enlarged or diminished, or it may be dissolved and its assets liquidated. Trustee shall have, respecting the corporation's business and its stock owned by Trustee, all the powers of a natural person. Trustee is authorized, but not required to vote stock held by Trustee in such a way as to elect Trustee as a member of the Board of Directors of the corporation. In the absence of actual notice to the contrary, Trustee may accept as correct, financial and other statements rendered by such corporations from time to time as to their condition and operations. The corporation shall be regarded as an entity separate from the trust.

2. To hold any property received at the inception of the trust or subsequently added to it or acquired by it pursuant to proper authority as long as Trustee, in the exercise of reasonable prudence, discretion and intelligence, may deem retention to be in the best interests of the trust estate.

3. To manage, control, sell, convey, exchange, partition, divide, subdivide, improve, repair; to grant options and sell on deferred payments property, real or personal in the trust estate; to lease for terms within or extending beyond the duration of the trust for any purpose, including exploration for and removal of gas, oil and other minerals; and to create restrictions, easements, and other servitudes.

4. To compromise, arbitrate, or otherwise adjust claims in favor of or against the trust.

5. To invest funds of the trust estate in such properties, whether or not authorized by the law for the investment of trust funds, as men of prudence, discretion and intelligence purchase for their own account, having regard not to

speculation but to the permanent disposition of their funds and considering the probable income as well as the probable safety of their capital; including but not by way of limitation, real property or interests therein, corporate bonds and debentures, stocks, preferred or common, and participations in a common trust fund.

6. To borrow money for any trust purpose upon such terms and conditions as Trustee may deem proper, and to obligate the trust estate for repayment; to encumber the trust estate or any of its property by mortgage, deed of trust, pledge or otherwise.

7. To have, respecting securities, all the rights, powers, and privileges of an owner, including the power to give proxies, and to pay assessments and other sums deemed by Trustee to be necessary for the protection of the trust estate; to participate in voting trust, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as Trustee may deem advisable; to exercise or sell stock subscriptions or conversion rights; to accept and retain as an investment all securities or other property received through the exercise of any of the foregoing powers.

8. To determine what is principal and what is income of the trust and to apportion and allocate in its discretion receipts and expenses as between principal and income.

9. To hold securities or other properties in the trust estate in his name as Trustee hereunder or in his own name or in the name of his nominee, and to hold such securities unregistered in such condition that ownership will pass by delivery.

10. To carry insurance of such kinds and in such amounts as Trustee may deem advisable at the expense of the trust; to insure against loss by fire or other cause any of the property constituting a part of the trust estate, separately or together with any other trust estate having a common interest or

obligation, and to pay for such insurance out of the principal or income of the trust, and in case of loss the proceeds of such policies of insurance shall be used in restoring or repairing the property constituting the trust estate, unless the purpose of the trust would be best served by making the proceeds of said insurance a part of the principal of the trust, as determined by Trustee in its discretion.

11. To commence or defend such litigation with respect to the trust or any property of the trust estate as Trustee may deem advisable at the expense of the trust.

12. To loan or advance Trustee's own funds to the trust for any purpose thereof at the then current rate of interest, and any such loan or advance, together with interest, shall be a first lien against the trust estate and shall be repaid therefrom. Trustee is authorized to deal with any indebtedness, liability, or obligation due to or from the trust and in connection therewith Trustee may make such extensions, compromises or other agreements relative thereto as Trustee in its discretion may approve.

13. All taxes, assessments, debts, and charges and other expenses incurred by Trustee in the administration or protection of the trust estate, including compensation for Trustee or any other services, shall be a charge upon the trust estate and shall be paid by Trustee out of principal or out of income, or partially out of each, in such manner and proportion as Trustee in its absolute discretion, may determine to be advisable.

14. To operate solely or in conjunction with others any business or enterprise, whether it be an individual business, general or limited partnership, or corporations, for so long a time and in such manner as it deems proper for the best interests of the trust estate.

15. To employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust and to engage the services of employees, superintendents, agents, and representatives as may be necessary or appropriate for conducting any business or enterprise.

16. To distribute any payments of income or principal to any minor beneficiary, or any beneficiary who is not of full legal capacity, by making

any such distribution directly to such beneficiary, or by applying the distribution for the benefit of such beneficiary, or by depositing cash distribution into a savings account of any reputable bank in the name of the beneficiary, and all distributions so made or applied shall be distributions of the Trust estate and a full discharge of Trustee.

17. At the time of any partial or final distributions of the Trust estate, to partition, allot and distribute the Trust estate in undivided interests, or in kind, or partly in money and partly in kind, at valuations determined by the trustee, which determination shall be conclusive on all parties concerned and to sell such property as the Trustee may deem necessary to make division or distribution.

18. To reimburse Trustee from income or principal or both of the Trust estate for any loss, liability or expense incurred by reason of Trustee's holding any property received or held in trust.

Unless specifically limited, all discretions conferred upon Trustee shall be absolute and their exercise conclusive on all persons interested in the Trust estate. The enumeration of certain powers of Trustee shall not limit the general powers, Trustee being vested with and having all the rights, powers, privileges and immunities which an absolute owner of the same property would have in order to further the trust purposes.

ARTICLE IV

Compensation of Trustee

The Trustee, other than a corporate trustee, as hereinafter provided, shall not be entitled to receive compensation provided that the individuals acting as trustee will be entitled to reasonable compensation on an hourly basis together with reasonable mileage for services which they render in their individual capacities to the trustee. If a corporate trustee is appointed, such trustee shall be entitled to receive such amounts as are currently charged by persons or institutions acting as trustees of similar trusts of Salt Lake City, Utah.

ARTICLE V

Successor Trustee

If the Trustee herein named resigns as Trustee or is otherwise unable or unwilling to or fails to serve as Trustee, Trustor hereby nominates and appoints VALLEY BANK & TRUST COMPANY of Salt Lake City, Utah, as successor trustee and its successors and assigns are nominated and appointed as subsequent successor trustees.

If a single trustee resigns or is unwilling or fails to serve as trustee, another trustee may be nominated who is a blood member of the REBECCA LARRABEE family to serve in such trustee's place with the written concurrence of the trustor. If two trustees resign or are unwilling or fail to serve as trustees, two other trustees may be nominated who are blood members of the REBECCA LARRABEE family to serve in such trustees' place, with the written concurrence of the trustor.

ARTICLE VI

Majority Control of Trustees

In the event all of the trustees do not agree on any action or matter, a simple majority will control. Such majority will be entitled to do anything or take any action the trustee can do or take as herein provided.

ARTICLE VII

Spendthrift Provision

No beneficiary under this Trust Agreement shall have the power to pledge, assign, mortgage, sell or in any other manner transfer or hypothecate any interest which such beneficiary may have or may expect to have in any income or principal of the trust; nor shall any beneficiary have any power in any manner to anticipate, charge, or encumber his or her interest either in income or in principal; nor shall such interest of any beneficiary be liable or subject to in any manner while in the possession of Trustee for the debts, contracts, liabilities, engagements, obligations or torts of such beneficiary.

ARTICLE VIII

Power of Trustor to Amend or Revoke

Notwithstanding anything in this Trust Agreement to the contrary, Trustor will have the right at any time or times to amend any of the provisions of this Trust Agreement or to amend any amendment thereto by an instrument in writing executed by Trustor and delivered to Trustee; provided, however, that Trustor shall not have power to amend the Trust Agreement, in such a way as to increase the duties of Trustee or to impose any additional burdens on him, without the consent of Trustee. Trustor shall have the right at any time or times to revoke this Trust Agreement in whole or in part, by an instrument in writing executed by Trustor and delivered to Trustee, upon paying all sums due to Trustee and indemnifying Trustee against loss from liabilities lawfully incurred in the administration of the trust.

IN WITNESS WHEREOF, Rebecca B. Larrabee, Trustor, and Otto Blaine Larrabee, Jr., Glenwood B. Larrabee, and Warren H. Larrabee, Trustees, have executed this Trust Agreement as of the day and year first above written.

Rebecca B Larrabee
REBECCA B. LARRABEE

O. Blaine Larrabee 11-7
OTTO BLAINE LARRABEE, JR.

Glenwood B. Larrabee
GLENWOOD B. LARRABEE

Warren H. Larrabee
WARREN H. LARRABEE

EXHIBIT "A"

WHEREAS, Rebecca is the owner of substantially all of the stock of Royal Dairy and of the following described real property hereinafter referred to as "the Property":

Lots 2, 3, 4, 5, 6, and 7, of Block 2, Dieter and Johnson, Main Street Addition, as recorded in the Office of the Salt Lake County Recorder, together with all improvements thereon.

more commonly known as 1501 South Main Street, Salt Lake City, Utah.