

NOTE TO MEDIA: Will Sleeth is available as a resource for bylined articles or interviews on various issues related to trusts and estates.

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FOR IMMEDIATE RELEASE

**Va. Supreme Court Ruling Sets New Standards For
Power-Of-Attorney Lawsuits, Says LeClairRyan Attorney**

--Opinion delivers needed guidance, William Sleeth III advises in recent blogpost

WILLIAMSBURG, Va. (1/7/19)— A precedent-setting ruling by the Virginia Supreme Court clears the smoke when it comes to the kind of language a plaintiff should use when asserting claims against an agent under a power of attorney (POA) lawsuit, according to William Sleeth III, a Williamsburg-based partner in LeClairRyan and leader of the national law firm’s Estate and Trust Litigation team.

“The opinion handed down in *Mangrum v. Chavis*, 18 Va. S. Ct. UNP 160782 establishes that under the Virginia Uniform Power of Attorney Act, trial courts may award monetary damages against an agent under a POA, but may not issue an injunction directing that the agent must return money,” he explained. “Consequently, a plaintiff seeking to recover funds from an agent under a POA must plead a request for a monetary judgment and include a monetary demand in the lawsuit, as opposed to simply requesting injunctive relief that the agent restore the funds.”

Sleeth outlined the principles in a blog, *Virginia Supreme Court Clarifies Remedies In Power Of Attorney Lawsuits*. In May 2010, Bobbie F. Wynder appointed Leroy Mangrum, Jr. to be her attorney-in-fact by a general power of attorney subject to certain code sections of the Virginia Uniform Power of Attorney Act. Wynder died in June 2013, and in July 2014, Wynder's four stepchildren (the beneficiaries under her will) filed a suit against Mangrum seeking disclosure of all transactions and financial records from his service as Wynder's attorney-in-fact. The plaintiffs were concerned about several transactions, including Mangrum's surrender of an annuity that Wynder owned, valued at more than \$116,000, and his subsequent deposit of the proceeds into his own account.

The plaintiffs brought suit under the Virginia Uniform Power of Attorney Act, Section 64.2-1615(1). The circuit court found for the plaintiffs and ordered Mangrum to restore the money to Wynder's estate. Mangrum appealed, raising the issue of whether the language under the Code section cited provides that the agent under a power of attorney, who is being sued for alleged financial improprieties, may be forced by court order to restore money to the estate of the deceased principal, or whether it merely provides that a monetary judgment may be entered against the agent.

The Virginia Supreme Court held that the language “permits the circuit court to award a judgment for money damages against the attorney-in-fact to his or her principal, or to the principal’s successors-in-interest, not to enjoin or to decree specific performance that a *res* be returned.”

“This ruling is significant for several reasons,” according to Sleeth. “First, it clarifies the remedies that a litigant must plead in a lawsuit when asserting claims against an agent under a power of attorney. Second, it makes the job of a litigant a bit more challenging in recovering on a judgment compared to if the Virginia Supreme Court had accepted the plaintiff’s position.”

In light of the ruling, a successful plaintiff who has obtained a judgment against an agent under a power of attorney must undertake efforts to try to collect on the judgment if it is not paid, he adds. “Those efforts could include conducting debtor’s interrogatories, garnishing wages, and garnishing bank accounts,” Sleeth notes. “If the agent does not have adequate assets from which to satisfy the judgment, the plaintiff will effectively be out of luck until a day comes when the agent acquires some assets.”

If the court had accepted the plaintiff’s position, an agent under a power of attorney would be subject to a trial court’s contempt power if he didn’t restore the money. “This would have provided a more powerful remedy for a successful plaintiff compared to a mere monetary judgment,” Sleeth notes. “Plaintiffs may also wish to consider seeking punitive damages for misconduct by the agent under the POA. Frequently judges and juries are especially hard on defendants who commit financial misconduct in the context of a family member.”

The full column is available at: <https://estateconflicts.com/virginia-supreme-court-clarifies-remedies-in-power-of-attorney-lawsuits/>

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