

APPELLATE AND COMPLEX LITIGATION BLOG

Trust in Our Coordinated Efforts

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Recently, our Business Litigation Practice Group asked for our Appellate Team's assistance on a complicated appeal after our client won a summary judgment. The issues included a question of first impression regarding the interpretation of Missouri's unitrust statute in connection with a trust that predated the statute's existence. The case also involved issues regarding the admissibility of an affidavit, supporting exhibits, and an award of attorneys' fees. The trustee of the income-only trust at issue sought a declaratory judgment to permit it to convert the trust to a unitrust in accordance with Missouri's unitrust statute. After a summary judgment in the trustee's favor, a contingent beneficiary appealed.

The Court of Appeals affirmed the trial court, resulting in a win for our client. The appellate court found that nothing in the trust specifically prevented the unitrust statute from applying, and that a conversion to a unitrust was permitted by the statute. The Court also noted that the beneficiary's motion to strike the supporting affidavit and exhibits did not comply with Missouri's Rules of Civil Procedure and did not properly respond to the trustee's motion for summary judgment. Further, the Court held that the affidavit and supporting exhibits were admissible because the affiant had the requisite knowledge and the exhibits were admissible business records. In addition, the appellate court found there was no abuse of discretion in awarding attorneys' fees because the contingent beneficiary attempted to widen the scope of the litigation and complicated the matter.

The contingent beneficiary requested the matter be transferred to the Supreme Court of Missouri, but that request was denied. With summary judgment and the award of attorneys' fees upheld in our client's favor, our Business Litigation Practice Group working in conjunction with our Appellate Team delivered a great result for our client. The decision of the Missouri Court of Appeals can be found at *U.S. Bank v. Molk*, 618 S.W.3d 652 (Mo. App. E.D. 2021).