

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No. 2008 - 08619

Section: 15 - B

MONTGOMERY, SUSAN HENDERSON
versus
ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND

Date Case Filed: 8/20/2008

NOTICE OF SIGNING OF JUDGMENT

TO:

John F Shreves Esq 17139
30th Fl
1100 Poydras St
New Orleans LA 70163-1101

Phillip A Wittmann Esq 13625
546 Carondelet St
New Orleans LA 70130-3509

Genevieve M Hartel Esq 25232
49th Fl
201 Saint Charles Ave
New Orleans LA 70170-5100

Daniel J Caruso Esq 03941
30th Fl
1100 Poydras St
New Orleans LA 70163-3031

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
Dennis H. Tracey III, Esq.

In accordance with Article 1913 C.C.P., you are hereby notified that Judgment
in the above entitled and numbered cause was signed on August 28, 2009
New Orleans, Louisiana.
August 28, 2009

S
Adrienne Yates, Minute Clerk
Division "B"
BY ORDER OF THE COURT

MINUTE CLERK

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

CASE NO.: 2008-8619

DIVISION "B"

SECTION 15

SUSAN HENDERSON MONTGOMERY

VERSUS

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND

JUDGMENT

This matter came for hearing on July 30, 2009 on cross Motions For Summary Judgment filed on behalf of plaintiff, Susan Henderson Montgomery and defendant, Administrators of The Tulane Educational Fund.

Present: John F. Shreves and Daniel J. Caruso, attorneys
for plaintiff, Susan Henderson Montgomery

and Philip A. Wittman and Dennis H. Tracey III, attorneys for
defendant, Administrators of The Tulane Education Fund

Considering the pleadings, memoranda of law, exhibits, argument of counsel, and for reasons assigned herein;


IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's, Susan Henderson Montgomery's, Motion For Summary Judgment is DENIED.

Further, defendant's, Administrators of the Tulane Educational Fund's, Motion For Summary Judgment is GRANTED. The Court finds the language of Josephine Newcomb's will contains no enforceable conditional obligation to support plaintiff's claim. Thus, plaintiff's Petition For Declaratory Judgment is dismissed with prejudice, each party to bear her/their own costs.

August 28, 2009


ROSEMARY LEDET
JUDGE

A TRUE COPY


DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

CASE NO.: 2008-8619

DIVISION "B"

SECTION 15

SUSAN HENDERSON MONTGOMERY

VERSUS

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND

Reasons For Judgment

The Court cannot overlook that one provision of Josephine Newcomb's will of 1898 uses precatory language and another uses mandatory language. "Precatory expressions are words requesting or praying that a thing be done and are not binding in law if made by a testator". *Succession of Diaz*, 617 So. 2d 34 (La. App. 4 Cir. 1993). This distinction should be given significance in interpreting Ms. Newcomb's testamentary intent. The intent of the testator controls the interpretation of his testament. The first and natural impression conveyed to the mind on reading the will as a whole is entitled to great weight. *Carter v. Succession of Carter*, 332 So. 2d 439, 442 (La. 1976).

The Court does not find the following precatory language in Ms. Newcomb's will as a condition on her gift to the Administrators of the Tulane Educational Fund ("Tulane"):

"I have implicit confidence that the 'Administrators of the Tulane Educational Fund' will continue to use and apply the benefactions and property, I have bestowed and may give, for the present and future development of this Department of the University known as the H. Sophie Newcomb Memorial College which engrosses my thoughts and purposes, and is endeared to me by such hallowed associations."

The following language is evidence of a clear expression that Ms. Newcomb intended her bequest to Tulane to be dispositive:

"With the exception of the Special legacies and bequests herein above stated and made, I hereby given an bequeath to the 'Administrators of the Tulane Educational Fund' of New Orleans, the whole of the property real, personal, and mixed, of which I am now possessed or which I may leave at that end and purpose I do hereby name and constitute the said 'Administrators of the Tulane Educational Fund' to be my universal legatè."

Louisiana law is clear that this is a legally binding directive. La.C.C. art. 1611.

Succession of Williams, 608 So. 2d 973, 975 (La. 1992). Thus, performance by Tulane to develop and maintain Newcomb college as a separate degree granting institution is owed out of a sense of duty and gratitude and is left to their sole discretion to carry out or not as they see fit.