

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

**Case Title:** Edwin Dewayne Fry v. Ivan Simmons, et al.  
**Case Number:** 00-01147  
**Nature of Suit:**  
**Judge Code:** S  
**Reference Number:** 00-01147 - S

Document Information			
<b>Number:</b>	69		
<b>Description:</b>	Memorandum Opinion re: [43-1] Motion For Summary Judgment by Ivan Simmons, Stan Manske, Dallas Fry, Eldon Fry .		
<b>Size:</b>	20 pages (33k)		
<b>Date Received:</b>	03/06/2003 11:28:41 AM	<b>Date Filed:</b>	03/06/2003
		<b>Date Entered On Docket:</b> 03/06/2003	
Court Digital Signature			<a href="#">View History</a>
11 6c 32 5f 70 4c fc e7 58 ff 02 81 56 4f c1 88 ed ee e9 99 a8 92 77 8b f6 80 98 c4 91 58 77 f9 c6 af cd 86 86 83 f2 81 9b 82 b4 69 41 b7 b8 24 8e 62 6a 57 be d0 c4 3f 38 58 74 7f 0d d9 d1 0d 2e 83 d6 00 93 2b b2 3f 9c f1 74 f6 0f 8d 80 f5 12 0e 75 d9 9b b2 4b 84 73 58 7e 88 9f 2f 75 55 a0 62 26 d5 db dc c9 b6 10 5c f7 ae ce 54 f3 7f 3f 10 6d e2 ed ce 42 d0 f1 ab 69 c0 46 5c 83 19			
Filer Information			
<b>Submitted By:</b>	James E Burke		
<b>Comments:</b>	Memorandum Opinion on Defendants' Second Motion for Summary Judgment		

**Digital Signature:** The Court's digital signature is a verifiable mathematical computation unique to this document and the Court's private encryption key. This signature assures that any change to the document can be detected.

**Verification:** This form is verification of the status of the document identified above as of *Wednesday, December 22, 2004*. If this form is attached to the document identified above, it serves as an endorsed copy of the document.

**Note:** Any date shown above is current as of the date of this verification. Users are urged to review the official court docket for a specific event to confirm information, such as entered on docket date for purposes of appeal. Any element of information on this form, except for the digital signature and the received date, is subject to change as changes may be entered on the Court's official docket.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:  
Edwin Dewayne Fry  
a/k/a Dewayne Fry and Pete Fry,  
SSN 512-40-9498,  
Debtor.

No. 12-99-16379 SS

Edwin Dewayne Fry,  
Plaintiff,

vs.

Ivan Simmons, Stan Manske,  
Dallas Fry, Eldon Fry, and  
Aurora National Life Assurance,  
Defendants.

Adversary No. 00-1147 S

**MEMORANDUM OPINION ON DEFENDANTS'  
SECOND MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on Defendants' Second Motion for Summary Judgment (doc. 43, and Brief in Support, doc. 44), the Plaintiff's Response (doc. 63, and Exhibits in Support, doc. 64) and Defendants' Reply (doc. 67). For the reasons set forth in this Memorandum, the Court finds that Defendants' Second Motion for Summary Judgment is well taken and should be granted. In an earlier Memorandum Opinion (doc. 26) the Court found 1) that Plaintiff was a contingent beneficiary of a trust and, by operation of a statute, was stripped of that beneficial interest upon his divorce from the grantor, and 2) that he was removed as trustee pursuant to a

partial revocation of the trust pursuant to a term of the trust. Summary judgment was denied, however, on Plaintiff's claims that he had a contractual right either to be beneficiary or trustee of the Trust. "[T]he Court finds that there is a genuine issue of material fact whether Plaintiff and Luella Mae Fry had a contract to create mutual trusts. ... The Court therefore does not decide at this time whether application of 60 Okl.St. Ann. § 175<sup>1</sup> would be constitutional if Plaintiff could prove at trial that he had an enforceable

---

<sup>1</sup>60 Okl.St. Ann. § 175 provides in relevant part:

A. If, after making an express trust, the trustor is divorced, all provisions in such express trust in favor of the trustor's former spouse, which are to take effect upon the death of the trustor, are thereby revoked. ... In the event of either divorce or annulment, the trustor's former spouse shall be treated for all purposes under the express trust, as having predeceased the trustor.

B. Subsection A of this section shall not apply:

3. If the decree of divorce or annulment contains a provision expressing an intention contrary to subsection A of this section;

...

6. If prior to the death of the trustor and subsequent to the divorce or annulment, the trustor executes an amendment to said express trust which is not revoked or held invalid.

C. This section shall apply to any express trust, the trustor of which dies on or after November 1, 1987.

contract right based on mutual trusts." Memorandum Opinion, pp. 19-20. Familiarity with this earlier Memorandum Opinion is assumed, and its findings and conclusions will not be repeated here.

### Summary Judgment

Summary judgment is governed by Federal Bankruptcy Rule 7056, which incorporates Federal Rule of Civil Procedure 56.

"Summary judgment is appropriate when there is no genuine dispute over a material fact and the moving party is entitled to judgment as a matter of law." Russillo v. Scarborough, 935 F.2d 1167, 1170 (10th Cir. 1991). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986).

Ingels v. Thiokol Corporation, 42 F.3d 616, 620 (10th Cir. 1994). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts."

Matushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation, 475 U.S. 574, 586 (1986)(Footnote omitted.) "In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial'." Id. (Emphasis in original).

## ADDITIONAL FACTS

The Court's Memorandum Opinion (doc. 26) on the first motion for summary judgment set out facts 1 through 7.

8. Plaintiff's affidavit alleges that he and Luella Fry agreed to enter into and did enter into two virtually identical life insurance trusts, each naming the other as beneficiary and trustee. He further alleges that the parties somehow "agreed" that Plaintiff "would own" the Luella Mae Fry Trust and that Luella May Fry "would own" the DeWayne Fry Trust. Attorney Frank Schwartz represented both parties in the design, planning, and preparation of the two reciprocal, mirror image trusts. The trusts were designed to minimize the exposure of the estates of the parties to estate taxation upon their deaths.

9. The parties and their divorce attorneys treated the insurance policies and the trusts as "extramarital" or "separate" property and agreed that neither the insurance policies nor the trusts would be treated as jointly owned marital property subject to division by the divorce court; neither party requested that the divorce court consider, divide or rule upon the policies or the trusts as marital property subject to division.

## DISCUSSION

Defendants' Second Motion for Summary Judgment focuses on Plaintiff's contractual claim to some interest, benefit or rights in the trust. It also addresses Plaintiff's arguments that the divorce preserved the status quo, that the beneficiaries are estopped, and that the trusts were illusory.

### A. Contract Rights

Defendants' first argument is that the only contract between Plaintiff and Luella May Fry was the one to execute reciprocal or mutual trusts. Because the parties did execute those trusts, Defendants claim that the contract was completely performed with no obligations remaining due, leaving Plaintiff with no claim at this time.

Plaintiff and Luella Fry did enter into identical trusts. This could be some evidence that the parties had a contract to create mutual or reciprocal trusts<sup>2</sup>. However, the actual

---

<sup>2</sup>The simple fact that mutual, reciprocal, joint or identical wills are created is generally not sufficient proof by itself that there was a contract. See Novick v. Booker (Estate of Richardson), 1995 OK CIV APP 33, 899 P.2d 1178, 1179 n. 2 (1995). Furthermore, even if there are mutual or conjoint wills, neither testator is prohibited from revoking the will. Id. at 1178. See also 84 Okl.St. Ann. § 52 ("A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.") and Whiting v. Bentley (Estate of Whiting), 1990 OK CIV APP 6, 789 P.2d 255, 256 (Ct. App. 1990)(Neither testator prohibited from revoking joint will.)

creation of the trusts would then be a complete performance of that contract. Under this fully performed contract Plaintiff would not have any further rights. Therefore, Plaintiff needs to show something more than just an agreement to enter into reciprocal trusts.

Plaintiff argues that the contract at issue consisted of more than just an agreement to enter identical trusts; he claims that there was an agreement predating the trusts to ensure that, no matter what, he would receive the proceeds of Luella's insurance in the event of her death<sup>3</sup>. See Plaintiff's Response, doc. 63, p. 1. He also claims that this agreement/contract between the parties predates the trusts and

---

<sup>3</sup>Plaintiff actually claims that the agreement was to "own" each other's life insurance. Plaintiff's Response, Doc. 63, p.1. This claim is not supported by anything in the record except Plaintiff's affidavit. See August 13, 2002, Affidavit of Edwin Dewayne Fry, Exhibit A to Plaintiff's Response to Defendants' Second Motion for Summary Judgment (doc. 64), ¶¶ 2, 4 and 6. In fact, the claim is contradicted by overwhelming and undisputed evidence that the trusts became the owners of the life insurance policies. See Memorandum Opinion, fact 3, p.2. See also Plaintiff's own Complaint for Declaratory Judgment and Turnover of Property, doc. 1, ¶ 5 ("The sole assets of the Trust are two (2) life insurance policies.") and ¶ 8 ("At the present time, the sole assets of the Trust are the proceeds of the two (2) life insurance policies.") A contrary affidavit may be disregarded if the Court determines it is an attempt to create a sham fact issue. Franks v. Nimmo, 796 F.2d 1230, 1237 (10th Cir. 1986); Rios v. Bigler, 67 F.3d 1543, 1551-52 (10<sup>th</sup> Cir. 1995); Lantec, Inc. v. Novell, Inc., 306 F.3d 1003, 1016-17 (10<sup>th</sup> Cir. 2002). The Court will disregard this attempt by Plaintiff to create a fact question on the ownership of the insurance policies.

survives the divorce. Id. p. 18. This argument fails for two reasons. First, the parol evidence rule defeats Plaintiff's claim. Second, 60 Okl. St. Ann. § 175, defeats Plaintiff's claims.

### **1. Parol Evidence Rule**

In Oklahoma, the parol evidence rule bars inquiry into pre-contract negotiations and oral discussions, which are merged into and superseded by the terms of a writing. See 15 Okl. St. Ann. § 137 ("The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument."); First National Bank in Durant v. Honey Creek Entertainment Corp., 2002 OK 11, 54 P.3d 100, 103 (2002). Parol evidence is not admissible to vary, modify or contradict the terms of a writing. Id. Parol evidence also may not be introduced to show additional terms, even if those terms are consistent with the document. Southwestern Bell Media, Inc. v. Eden, 1993 OK CIV APP 10, 848 P.2d 584, 585 (Ct. App. Ok. 1993). Rather, the Court is restricted to the "four corners" of the document. Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority, 1994 OK 20, 896 P.2d 503, 514 (1994), cert. denied 516 U.S. 975 (1995). See also Ollie v. Rainbolt, 1983

OK 79, 669 P.2d 275, 279 (1983)("Where a contract is complete in itself and, as viewed in its entirety, is unambiguous, its language is the only legitimate evidence of what the parties intended. The intention of the parties cannot be determined from the surrounding circumstances, but must be gathered solely from the words used.")

Even if the parties had a general oral understanding about owning insurance policies on each other and naming each other beneficiary (the Court will refer to this as the "original contract"), this understanding necessarily was incorporated into the written trusts which deal with the same subject matter. The trusts contain a provision for partial revocation which allows a change of beneficiaries. See Trust § 13. Plaintiff's claim that he could never be removed as beneficiary directly contradicts the plain language of the trust. The parol evidence rule therefore bars Plaintiff's claim that he must remain as beneficiary entitled to the insurance proceeds. Similarly, Plaintiff could be removed as trustee.

Plaintiff also argues that the trust documents are "no more than a partial manifestation" of the parties' intentions. See Plaintiff's Response, doc. 63, p. 19. However, Oklahoma's parol evidence rule prohibits evidence that offers additional

consistent terms to a contract. Southwestern Bell Media, Inc., 848 P.2d at 585. See also 15 Okl. St. Ann. § 155 ("When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this article.")

There is an exception to the parol evidence rule in cases of fraud in the inducement to contract, First National Bank in Durant, 53 P.3d at 104, and in cases of accident or mistake, Lewis, 896 P.2d at 514 n.78. Before evidence is admissible to prove that a contract was entered into through fraud, accident or mistake, the fraud, accident or mistake must be pled and proven by clear, cogent and convincing evidence. Lone Star Gas Company v. Oakman, 283 P.2d 810, 814 (Ok. 1955). Fraud, accident and mistake were not alleged in the complaint filed herein so this could end the Court's inquiry. The Court will nevertheless address each in turn.

**a. Fraud**

"Fraud cannot be pleaded in general terms; the specific acts constituting the fraud must be set forth. Mere conclusions are not sufficient." Butler v. Conyel, 177 Okla. 424, 60 P.2d 749, 750 (1936). "[F]raud is never presumed, but it must be affirmatively alleged and proven by the party who relies on it, and cannot be inferred from facts which may be

consistent with honesty of purpose." Albert & Harlow, Inc. v. Fitzgerald, 1964 OK 42, 389 P.2d 994, 996 (1964). Plaintiff refers to actions committed by Luella Fry, but there is no claim of any fraud on the part of any of the defendants named herein. Plaintiff does not allege that Luella Fry knowingly made representations that were materially false with the intent to deceive or mislead him and that but for those statements he would not have signed the trust and he was injured therefrom. Plaintiff does not allege that at the time the trusts were formed that Luella Fry had an undisclosed agenda or scheme to deprive him of the benefits of the trust. See Lone Star Gas Company, 283 P.2d at 813:

To establish fraud it must generally be shown that a material false representation was made, that the speaker knew of its falsity, or made it recklessly as a positive assertion without knowledge of its truth, that the speaker intended that the person addressed should act thereon, and that the person so addressed did act thereon to his damage.

(citing Miller v. Troy Laundry Machinery Co., Inc., 178 Okl. 313, 62 P.2d 975 (1936)). Nothing in the record of this case hints at any fraud at the time of the original contract or later at the time of creation of the trusts.

Rather, in the summary judgment papers Plaintiff claims that he did not understand the trust documents or the legal ramifications of the trust or the legal impact of a divorce on

the trusts. See, e.g., Plaintiff's Response, doc. 63, Proposed Facts 28, 29, 32, 33 and, e.g., August 13, 2002, affidavit of Edwin DeWayne Fry, Exhibit A to Plaintiff's Response (doc. 64), ¶¶ 8, 10, 12. However, despite allegations that he may not have understood all the ramifications of the trust document he was signing, one is deemed to know the law. Unit Petroleum Company v. Oklahoma Water Resources Board, 1995, OK 73, 898 P.2d 1275, 1279 (1995). And despite allegations in his affidavits that he was unaware of the trust's provisions related to change of beneficiaries or revocation, see August 13, 2002, affidavit of Edwin DeWayne Fry, Exhibit A to Plaintiff's Response (doc. 64), ¶ 10, one is deemed to be familiar with a legal document when signing off on it. C.I.T. Corporation v. Sautbine, 177 Okla. 15, 56 P.2d 1175, 1176-77 (1936). This would seem to be especially true for a document prepared by one's own attorney. Debtor's situation is not a fraud perpetrated upon him. In fact, nothing in the record indicates that Luella Fry had any intentions other than entering into a trust, which she in fact did. Plaintiff may have a complaint with his attorney about not understanding the documents or about what they contain, but that does not amount to a claim of fraud against the defendants.

The fraud Plaintiff does claim in his summary judgment papers is where he claims that Luella Fry stated her intentions to others that she intended that provisions of the Oklahoma statutes would invalidate Plaintiff's interest in the trust. See Plaintiff's Response, doc. 63, Proposed Fact 40. In general, the allegations of fraud are general and probably do not meet the technical requirements for pleading fraud. See, e.g. Vernon's Okla. Forms 2d, CIV Instr. 18.1 (Listing elements of claim of false representation.) However, at the time these statements were made the trusts were already established and everyone's rights were already fixed. In fact, at this point there was nothing that Luella Fry could legally do because the trust was revocable only by Simmons or Manske. See Trust § 13. Her intentions and statements were immaterial at this point. The damage to Plaintiff, if any, comes from the operation of Oklahoma law, not any actions or declarations by Luella Fry or any defendant. Finally, Plaintiff did not allege even in his summary judgment papers that he relied on any action or statement of Luella after the divorce.

**b. Accident and Mistake**

The Court did not locate any published cases where accident was used to allow an exception to the parol evidence rule. The Oklahoma Supreme Court has defined "accident" as "An

event that takes place without one's foresight or expectation; an undesigned, sudden and unexpected event, chance, contingency." United States Fidelity & Guaranty Co. v. Briscoe, 205 Okla. 618, 621, 239 P.2d 754, 757 (1951).

Plaintiff did not allege accident in the complaint, or argue accident in the summary judgment papers, and the Court also finds none.

Plaintiff claims unilateral mistake, e.g., that he did not know the trust was revocable by Simmons or Manske. See Plaintiff's Proposed Fact 37, Plaintiff's Response, doc. 63, pp. 15-16. Plaintiff is unable to read and understand complex legal documents. See Id. Fact 28, p. 13.

One who fails to read or have read to him a writing which is plain and unambiguous in its terms is prima facie bound by the same and guilty of such negligence in his ignorance of its provision as will preclude him from obtaining relief therefrom upon the ground of mistake as to the same.

McDonald v. McKinney Nursery Co., 44 Okla. 62, 143 P. 191, 193 (1914). Plaintiff's unilateral misunderstanding of the trust therefore does not excuse him from its operation.

For evidence of mistake to be admissible in the face of the parol evidence rule there must be mutual mistake or unilateral mistake combined with inequitable conduct on the part of the other. Thompson v. Estate of H. H. Coffield, 1995 OK 16, 894 P.2d 1065, 1067-68 (1995); Cinco Enterprises, Inc.

v. Benso, 1994 OK 135, 890 P.2d 866, 872-73

(1994)("Notwithstanding the parol evidence rule, extrinsic evidence is generally admissible when it is shown that by reason of mutual mistake the true intention of the parties is not expressed in the contract.")(Footnotes omitted.) As noted above, the Court finds no inequitable conduct by Luella Fry. Therefore, the Trust will not be reformed on the grounds of accident or mistake.

In summary, the Court finds that Plaintiff has not alleged fraud, mistake or accident sufficiently to be able to fall within the exception to the parol evidence rule. The parol evidence rule therefore prohibits introduction of evidence to explain, supplement, or modify the written trust document. Plaintiff does not have a contract right to be trustee or beneficiary of the Trust. What is clear is that Plaintiff does not like the outcome when an Oklahoma law is applied to an Oklahoma trust in which he once was beneficiary.

**2. 60 Okl. St. Ann. § 175**

Plaintiff had no vested contractual rights in the trust. His only rights were as a contingent beneficiary. See Memorandum Opinion, pp. 6-8. Therefore, the issue on constitutionality of 60 Okl.St.Ann. § 175 left unanswered in the Court's earlier Memorandum Opinion can now be addressed.

Having no vested right, 60 Okl.St. Ann. § 175 can constitutionally change Plaintiff's status under the trust. The statute operated to treat Plaintiff as if he had predeceased Luella Fry.

**B. The Divorce**

Defendants' second argument relates to alleged conduct of the parties' divorce attorneys, specifically Plaintiff's and Luella Fry's agreement to not submit questions related to the trusts to the divorce court. Plaintiff urges that this conduct demonstrates that the parties intended to maintain a pre-divorce status quo for the trusts. See Plaintiff's Response, doc. 63, p.19. Defendants respond that 1) any agreement between the divorce attorneys could not amend the terms of the trust or change ownership of insurance policies that were owned by the respective trusts, 2) any agreement between the divorce attorneys regarding property settlement would be unenforceable because it was not affirmatively approved by the divorce court, and 3) the provisions of 60 Okl.St. Ann. § 175 defeat Plaintiff's interest in any event because the divorce decree was silent regarding the trusts. The Court agrees with the Defendants.

First, the insurance policies were owned by the respective trusts. Neither party "owned" a trust<sup>4</sup>. Defendants deny that there was an agreement between the divorce attorneys that Plaintiff would continue to "own" the life insurance policy on Luella, but argue that, even if there were such an agreement, it could not change the ownership of the policies or amend any conditions of the trust. The policies were trust property and an oral agreement between the attorneys would not change that. Furthermore, there would be no reason for the divorce court to address the trusts because they were separate entities which would carry on under their own terms. Next, under Oklahoma law a pre-divorce property settlement agreement is not enforceable absent its affirmative approval by the court. Dickason v. Dickason, 1980 OK 24, 607 P.2d 674, 677 (1980). This agreement between divorce counsel, even if it could have changed ownership of the trust's property, was not approved by the court. Finally, 60 O.S. § 175(B)(3) provides that it will not apply: "If the decree of divorce or annulment contains an provision expressing an intention contrary to subsection A."

---

<sup>4</sup>Each party previously owned a policy on the other's life. These policies were transferred into the trusts. Trusts are not owned by anyone. See George T. Bogert, Trusts § 1 (6th Ed. 1987)("A trust is a fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another.")

In this case, the divorce decree was silent, so 60 O.S. § 175 applies. Furthermore, an intent to modify applicable law by contract is not effective unless the power is expressly exercised. Dickason, 607 P.2d at 677. In summary, nothing the divorce attorneys did or did not do impacted or could have impacted the trust or the ownership of the policies.

### **Fraud and Estoppel**

Next, Plaintiff argues that Luella Fry defrauded him by using 60 O.S. § 175 to "gain control and benefit all of the policies on both lives." Plaintiff's Response, p. 20. He also claims as further indication of fraud that Luella "agreed and confirmed the prior agreement of the parties that each had a vested right<sup>5</sup> under the cross-insurance agreements," and that "neither party would challenge, change or interfere with that preexisting right." Id. pp 22-23.

Plaintiff argues that this fraud should equitably estop Defendants from benefitting from Luella Fry's dishonesty. Defendants claim that because Plaintiff did not raise fraud in the pleadings, he may not now use it to defeat a motion for summary judgment.

---

<sup>5</sup>The Court found in the Memorandum Opinion that the trusts created only a contingent remainder, not a vested interest. See Memorandum Opinion, Conclusion of Law 4, p.6.

Defendants are correct that fraud was not raised in the pleadings. See Complaint, doc. 1. One cannot raise fraud in defense to a motion for summary judgment when that theory has not been previously pled. See Auston v. Schubnell, 116 F.3d 251, 255 (7th Cir. 1997)(summary judgment stage is "too late in the day" to add new claims); Hodges v. Koons Buick Pontiac GMC, Inc., 180 F.Supp.2d 786, 793 (E.D. Va. 2001)(same). In the case before the Court, the case is at the point of a second motion for summary judgment that will dispose of the entire case. Plaintiff cannot, at this late date, raise fraud for the first time.

### **Illusory Trust**

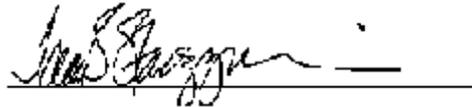
Finally, Plaintiff argues that the trusts were in substance illusory and should not be enforced because 1) the insurance policies were paid directly by the beneficiaries, 2) the parties never intended to create trusts that contain the provisions that these do, and 3) the parties never acknowledged the trusts or followed any formalities regarding the trusts.

An illusory trust lacks either an express trust instrument or, if an agreement exists, the settlor reserves virtually complete control over the trustee's administration of the trust. In either instance, the transferor reserves and exercises such a degree of control over the property that Courts are often drawn to the conclusion that there was no real intent to transfer, that the transaction is a sham, and that in effect, the trustee is merely an agent acting under the direction of the settlor.

Roberts v. South Oklahoma City Hospital Trust, 1986 OK 52, 742 P.2d 1077, 1082 (1986)(footnote omitted). The Court finds that there is no genuine issue of fact that valid trusts were created by Plaintiff and Luella Fry. See supra note 3. There are formal trust documents drafted by an attorney and executed by the parties into which insurance policies were transferred.

**Conclusion**

Plaintiff has failed to come forward with specific facts showing that there is a genuine issue for trial concerning his contract claims. An order will therefore issue granting summary judgment to Defendants on this remaining issue.

A handwritten signature in black ink, appearing to read "James S. Starzynski", is written over a horizontal line.

Honorable James S. Starzynski  
United States Bankruptcy Judge

I hereby certify that on March 6, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

Jim Lee  
5532 North Western  
Oklahoma City, OK 73118

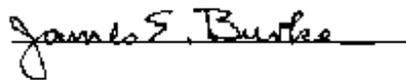
Paul M. Fish  
P. O. Box 2168  
Albuquerque, NM 87103

Robert H. Jacobvitz  
500 Marquette NW #650  
Albuquerque, NM 87102

Daniel H. Diepenbrock  
PO Box 2677  
Liberal, KS 67905-2677

Ronald E. Holmes  
4300 Carlisle Blvd. NE, Suite 4  
Albuquerque, NM 87107-4827

Aspinwall, Charles  
PO Box 984  
Los Lunas, NM 87031 -984

A handwritten signature in black ink, reading "James S. Bustee", is written over a horizontal line.