

Memorandum 90-56

Subject: Study L-645 - Jurisdiction of Superior Court in Trust Matters
(Draft of Tentative Recommendation)

At the March meeting, the Commission decided to proceed with the effort to clarify the jurisdiction of the superior court in trust matters. A draft tentative recommendation to implement this proposal is attached hereto.

Also attached to this memorandum is a letter from W.S. McClanahan who agrees with the effort to clarify the Trust Law to avoid future misapplications. Mr. McClanahan also provides some interesting background on this issue, including past legislative efforts.

Respectfully submitted,

Stan Ulrich
Staff Counsel

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March 5, 1990

Stan G. Ulrich, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-645
Memo 90-29

Dear Stan:

This will acknowledge receipt of your Memo dated 2/7/90, and the attached copies of the two cases commented upon. I fully agree with your criticisms of these cases, and your conclusion that the Trust Law be amended in order to prevent future misapplications of the Trust Law.

As the person who wrote the Comments on the New Trust Law in the C.E.B. Annotated Edition of the Probate Code, I feel bound to make my views known to you and L.R.C. and others.

You may recall that this attitude of the California courts that the so-called "Probate Court" was a court of limited jurisdiction, and that its jurisdiction was limited by statute (the Probate Code) has long been a source of controversy among the courts and the bar. Your comments trace the history of this matter from early times.

Of course, this attitude of the courts was not limited to matters of trust law, but was often expressed in cases affecting probate law and procedure in its broadest sense. I first became aware of it when I moved to California in 1954 and became a Trust Officer of United California Bank, engaged in administering decedents estates and testamentary trusts, and particularly when I was admitted to the California Bar in 1956.

Working with the attorneys for estates, we often found situations where litigation to determine questions regarding probate matters was required, and found that we could not have them heard by the "probate court", but had to file in the civil court. There were numerous cases that held that the question of title to property between the estate and a stranger could not be heard "in probate", but required a civil court suit. The court had held, however, that if the controversy was between the estate and the "personal representative", the probate court could determine it, on the basis that the estate and the personal representative were "in privity" with each other. These cases involved not only real property, but also contracts, other co-tenancies and the personal property contained in safe deposit boxes.

This disturbed me and many others, and we decided to try to amend the Probate Code. If my memory is correct, I was a member, and later Chairman, of the Committee on Probate and Trust Law of the Los Angeles County Bar at this time. We wrote and submitted an amendment (resolution) to the Conference of Delegates and it was submitted to the State Bar and the legislature, and eventually enacted as Probate Code Section 851.5 in 1965. It was later amended several times. It now appears in Chapter 11, Sections 9860, et seq. in the Probate Code.

In later years, I was involved in several suits to try title to property between the estate and a stranger, and the probate court accepted jurisdiction without question. I have long thought that the question of the "probate court" being a separate court of limited jurisdiction had been settled. But it seems that this has come up again, even though we thought the new Trust Law made the law clear. So we have to amend the law again.

I agree with your view that the reasons given for the two recent decisions are rather flimsy, and revert back to old cases that we thought were no longer valid. It appears that the recommendations for amendments of §15003, and 17001 should suffice to give the court jurisdiction in these trust matters.

I am wondering if there are still possibilities that the courts will bring up the old bugaboo of limited jurisdiction in questions arising under other divisions of the Probate Code. With the revision of the Code to cover so many areas of the law, it may be that some court will refuse jurisdiction in one of the innumerable types of suit that may be filed in probate cases.

Stan G. Ulrich, Staff Counsel
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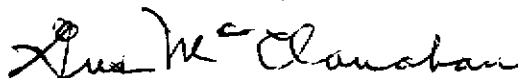
Is there any way that unlimited jurisdiction could be granted to the Superior Court sitting in probate, by an amendment or addition to the sections of Division 1, 2 or 3 of the Probate Code?

I agree with you that the so-called "Probate Court" (in the metropolitan areas), and the one day a week "Probate Calendar", (in the smaller counties), is simply a Superior Court assigned by the Supervising Judge to hear probate matters in a segregated session. The Probate Judge is still a Superior Court Judge, with all the powers, duties, procedures and judicial discretions of any Superior Court Judge. There seems to be no adequate reason why any matter, which is part of the administration of the estate, should be denied to him and sent to another division of the court (which divisions are created by the court itself).

As a matter of present practice, in Los Angeles County, if the attorneys estimate that any contested matter will take more than two afternoon sessions, the matter is transferred to Department 1 (the Supervising Judge), for assignment to another department, where it may be handled by a judge who has no previous experience in probate. I realize, of course, that the assigned judge, for this case, may be "sitting in probate" (whatever that means).

These suggestions are made simply to add to the general background of your memo and recommendations, and to inform you that I am of the opinion that there is no such thing as a "probate court" in California.

Sincerely yours,



W.S. McClanahan

WSM:j

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03/22/90

Tentative Recommendation

relating to

JURISDICTION OF SUPERIOR COURT IN TRUST MATTERS

Background

The Trust Law grants full power and jurisdiction to the superior court to hear and determine questions concerning trusts. The new law sought to abolish the artificial limitations on the jurisdiction and power of the "probate court" and to eliminate the difficulties and confusion that have been caused by the concept of the probate court as a "court of limited and special jurisdiction."¹ Several sections in the Trust Law are directed to this end:

(1) Probate Code Section 17000 grants to the "superior court having jurisdiction over the trust" exclusive jurisdiction over internal trust affairs and concurrent jurisdiction over actions and proceedings to determine the existence of trusts, actions by or against creditors, and other actions and proceedings involving trustees and third persons.

(2) Probate Code Section 17001 provides that in "proceedings concerning the internal affairs of trusts commenced pursuant to this division, the court has all the powers of the superior court." The

1. For additional background and analysis of this issue, see *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 575-82 (1986). California has not had a separate probate court since 1879. The so-called "probate court" (the court having jurisdiction over trust matters) is no longer an inferior court, nor are the decrees of the "probate court" accorded less finality. The intent was to abolish the concept of "the superior court sitting in probate." The jurisdictional basis of the "probate court" is now indistinguishable from that exercised by the superior court generally. Its jurisdiction is the full jurisdiction consistent with the state and federal constitutions. Its powers are that of the superior court, since the "probate court" is the superior court. The only limitation remaining is that the court system remains free to divide its work along appropriate lines, such as by organizing into separate divisions, or "courts" in common parlance. Thus we still speak of a "probate court," as we speak of a "criminal court" or a "civil court."

Comment to this section further states that, "while not intending to disrupt the traditional division of business among different departments of the superior court, this section rejects the limitation on the powers of the probate court that has been cited in appellate decisions. See, e.g., *Copley v. Copley*, 80 Cal. App. 3d 97, 106-07, 145 Cal. Rptr. 437 (1978)."²

(3) Probate Code Section 17004 provides that the court "may exercise jurisdiction in proceedings under [the Trust Law] on any basis permitted by Section 410.10 of the Code of Civil Procedure." The effect of this language is to grant full jurisdiction over the parties, consistent with the California and United States Constitutions.

Other provisions in the Probate Code are consistent with this approach.³

Two recent cases threaten to erode these principles concerning the jurisdiction and power of the superior court in hearing trust matters.⁴

Estate of Mullins

In *Estate of Mullins*,⁵ a niece of the decedent's predeceased husband sought imposition of a constructive trust on half of the estate based on an alleged oral agreement between the decedent and her predeceased husband. The trial court dismissed the petition for lack

2. In *Copley v. Copley*, 80 Cal. App. 3d 97, 106-07, 145 Cal. Rptr. 437 (1978), the court discussed the broadening of jurisdictional concepts, but still found it did not have authority to join one of the necessary parties or to grant the relief sought. Probate Code Sections 17001 and 17004 were intended to avoid the trap of this case, which encourages multiple filings and appeals, without resolving any disputes.

3. See Prob. Code § 7050 & Comment (jurisdiction of decedent's estates administration in superior court with full power and authority of court of general jurisdiction); see also Prob. Code § 2200 (jurisdiction in superior court under Guardianship and Conservatorship Law).

4. See *Estate of Mullins*, 206 Cal. App. 3d 924, 255 Cal. Rptr. 430 (1988); *Johnson v. Tate*, 215 Cal. App. 3d 1282, XXX Cal. Rptr. XXX (1989). For commentary on these cases, see 10 CEB Est. Planning R. 105 (Feb. 1989); 11 CEB Est. Planning R. 69-70 (Dec. 1989).

5. 206 Cal. App. 3d 924, 255 Cal. Rptr. 430 (1988).

of jurisdiction and the court of appeal affirmed. A number of arguments are made in the opinion to support this disposition.

Both the trial court and the appellate court misapplied Probate Code Section 15003, which provides in part that "[n]othing in this division affects the law relating to constructive or resulting trusts." The purpose of this provision is to preserve the *substantive* law relating to constructive trusts and resulting trusts.⁶ Section 15003 simply reaffirms the principle that a constructive trust is a remedy, not an express trust, and thus that there is no intent to apply the multitude of rules in the Trust Law to this remedy. This provision has nothing to do with jurisdictional issues or the power of the court to dispose of matters before it. Hence, the "probate court" does have jurisdiction and power to impose a constructive trust, providing that the proceeding was properly before this division of the court.

Nor does the definition of "trust" in Probate Code Section 82 provide sufficient grounds to dismiss the petition in *Mullins*. Section 82 simply states the general understanding that a *constructive* trust is not an express trust.⁷ Section 82 is not a limitation on the broad grant of jurisdiction and power in other sections.

In order to avoid these statutory interpretations, the recommended legislation revises Probate Code Section 15003 to make clear that nothing in the Trust law affects the *substantive* law relating to constructive and resulting trusts.⁸

6. A constructive trust is an equitable remedy -- a fraud and mistake rectifying device -- by which the court imposes a "trust" on property for the purpose of requiring it to be conveyed to the rightful owner. See 7 B. Witkin, *Summary of California Law Trusts* § 131, at 5487-88 (8th ed. 1974). A resulting trust is an intention-enforcing device and arises where a transferor does not intend the transferee to take the beneficial interest in property transferred. See Restatement (Second) of Trusts § 404 & Introductory Note to Chapter 12 (1957).

7. Note, however, that Section 82 preserves the power of the court by recognizing that a constructive or resulting trust may be administered as an express trust to the extent the court orders.

8. *Estate of Mullins* also errs in drawing a negative implication from the full-power provision of Section 17001. See 206 Cal. App. 3d at 931.

Johnson v. Tate

The second case is *Johnson v. Tate*,⁹ in which another appellate court affirmed a dismissal for lack of jurisdiction in the "probate court." *Johnson v Tate* involved a petition by a person claiming rights under a trust. Miranda and Tate had executed revocable living trusts naming one another as beneficiaries and Johnson as the residuary beneficiary at the death of the survivor of Miranda and Tate. The trial court treated the petition as a claim for specific performance of an agreement between Miranda and Tate not to amend or revoke the trust, and found that the probate court did not have "independent jurisdiction" to hear the lawsuit. The trial court's decision is defensible, if the failure to transfer the case to an appropriate forum, instead of dismissing the petition outright, is ignored. However, the court on appeal went beyond the issues that needed decision and, as in *Estate of Mullins*, recited jurisdictional limitations from old cases that were rejected by the new Trust Law.

The *Johnson* opinion suggests that the question in the case is essentially the same as that in *Mullins*, involving an oral agreement as to the effect of a trust.¹⁰ This recommendation is concerned with the court's discussion, rather than the result in the case. Nothing in the law should prevent the court from hearing this case. Since the courts have the power to organize their business, e.g., so that contract cases would not be filed and heard in the "probate court," transfer of this case from the "probate court" may be appropriate, assuming that there is another forum that is more appropriate.¹¹ Thus, where the gist of the action is enforcement of a contract, it is not appropriate to petition under Probate Code Section 17200. But this does not mean that any controversy that involves enforcement of a contract is outside the jurisdiction of the "probate court," since it has full power to join parties and dispose of the matter once jurisdiction is properly invoked under Section 17000 and 17200.

9. *Johnson v. Tate*, 215 Cal. App. 3d 1282, XXX Cal. Rptr. XXX (1989).

10. *Johnson v. Tate*, 215 Cal. App. 3d 1282, XXX Cal. Rptr. XXX (1989).

11. See discussion in 11 CEB Est. Planning R. 69-70 (Dec. 1989).

The Court of Appeal also concluded that, at best, the petitioner was a beneficiary of a revocable trust, and so was not permitted to petition during the time the trust was revocable.¹² Of course, this assumes that the trust was truly revocable, and in a properly argued case, that would have been one of the issues, and certainly one appropriate for "probate court" determination. If the trial court had heard this issue and determined that the trust was no longer revocable, then clearly the issues raised by Johnson were internal trust affairs within the exclusive jurisdiction of the court.¹³ In any event, this is not a jurisdictional issue, and was not the grounds on which the trial court dismissed the petition.

Transfer to Appropriate Court

Another problem presented by *Estate of Mullins* and *Johnson v. Tate* is that the courts dismissed the petitions, instead of transferring the cases to the appropriate court under Code of Civil Procedure Section 396.¹⁴ This failure results in delay and expense to the parties. In addition, it has been suggested that another "unfortunate byproduct of these cases is that practitioners must now consider the possible need to duplicate-file marginal cases, simultaneously filing a probate petition and a standard complaint, paying two filing fees, and then moving for consolidation."¹⁵

In order to alert the parties and the courts to the transfer provision in Code of Civil Procedure Section 396, the Commission has included a cross-reference to this section in the relevant Official Comments to the proposed legislation.

12. See Prob. Code § 15800 (limits on rights of beneficiary of revocable trust).

13. See Prob. Code § 17000 (subject matter jurisdiction).

14. See 10 CEB Est. Planning R. 105 (Feb. 1989); 11 CEB Est. Planning R. 69 (Dec. 1989).

15. 11 CEB Est. Planning R. 69, 70 (Dec. 1989).

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 15003 and 17001 of the Probate Code, relating to superior court jurisdiction.

The people of the State of California do enact as follows:

Probate Code § 15003 (amended). Substantive law of constructive and resulting trusts not affected

15003. (a) Nothing in this division affects the substantive law relating to constructive or resulting trusts.

(b) The repeal of Title 8 (commencing with Section 2215) of Part 4 of Division 3 of the Civil Code as provided in the act that added this division to the Probate Code is not intended to alter the rules applied by the courts to fiduciary and confidential relationships, except as to express trusts governed by this division.

(c) Nothing in this division or in Section 82 is intended to prevent the application of all or part of the principles or procedures of this division to an entity or relationship that is excluded from the definition of "trust" provided by Section 82 where these principles or procedures are applied pursuant to statutory or common law principles, by court order or rule, or by contract.

Comment. Subdivision (a) of Section 15003 is amended to avoid the implication that this provision is a limitation on the jurisdiction of the superior court in proceedings under this division. This amendment is intended to reject dicta in Estate of Mullins, 206 Cal. App. 3d 924, 931, 255 Cal. Rptr. 430 (1988). For provisions governing jurisdiction in proceedings under this division, see Sections 17000, 17001, and 17004.

Probate Code § 17001 (amended). Full-power court

17001. In proceedings ~~concerning the internal affairs of trusts~~ commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court.

Comment. Section 17001 is amended to delete unnecessary language from which a negative implication could be drawn, i.e., that the court would not have "all the powers of the superior court" when exercising concurrent jurisdiction, as well as exclusive jurisdiction. This amendment is needed to reject in dicta in recent cases as to

limitations on the power and jurisdiction of the court in proceedings properly commenced under this division. See *Estate of Mullins*, 206 Cal. App. 3d 924, 930-31, 255 Cal. Rptr. 430 (1988); *Johnson v. Tate*, 215 Cal. App. 3d 1282, 1285-87, XXX Cal. Rptr. XXX (1989). This amendment also reaffirms the original intent of this section, along with Sections 17000 and 17004, to eliminate any limitations on the power of the court hearing matters under this division, whether or not it is called the "probate court," to exercise jurisdiction over all parties constitutionally before it and completely dispose of the dispute. This section, along with Sections 17000 and 17004, is intended to eliminate any notion that the "probate court" is one of limited power or that it cannot dispose of matters properly brought before it, while preserving the power of the superior court in a particular county to organize itself into divisions for the efficient conduct of judicial business. If a court determines that it is not the appropriate forum or division of the court to hear a case, the court should transfer the matter to the appropriate court. See Code Civ. Proc. § 396.