

Memorandum 90-29

Subject: Study L-645 - Jurisdiction of Superior Court in Trust Matters

Two recent cases have eroded a principle sought to be established in the Trust Law concerning the jurisdiction and power of the superior court (the "probate court"). (See *Estate of Mullins*, attached as Exhibit 1; *Johnson v. Tate*, attached as Exhibit 2.) The Trust Law sought to abolish the artificial limitations on the jurisdiction and power of the "probate court" and to eliminate the difficulties that had been caused by the concept of the probate court as a "court of limited and special jurisdiction." Several sections in the Trust Law are directed to this end:

(1) 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) 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 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)."

(3) Section 17004 makes clear 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.

Section 7050, applicable to administration of decedents' estates, also seeks to establish the principle that the probate court has all the

powers that it has as a superior court. See also Section 2200 (jurisdiction in superior court under Guardianship and Conservatorship Law).

Additional background and analysis of this issue was presented in the Commission's *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 575-82 (1986). This material notes that California has not had a separate probate court since 1879 and that the "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 is that the courts remain free to divide their work along appropriate lines, by organizing into separate divisions or "courts" in common parlance. So we still speak of a probate court, as we speak of a criminal court or a civil court. But through it all, we must remember that there is no longer a "probate court of limited and special jurisdiction" in the traditional sense.

The statutory reforms in the Trust Law intended to avoid situations like that in *Copley [supra]* where 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. Sections 17001 and 17004 were intended to avoid the trap of this case, which encourages multiple filings and appeals, without resolving any disputes.

This reform has not been completely successful, as illustrated in two recent cases. The courts seem to have a tendency to reinvent some form of this inferior court, as they did in the 1880's, after abolition of the old county courts, the only true probate courts in California. In *Estate of Mullins*, 206 Cal. App. 3d 924 (1988), 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. (See Exhibit 1.) The trial

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

Both courts misinterpreted Section 15003 which provides 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 (an equitable remedy) and resulting trusts. This provision merely states what should be obvious, that a constructive trust is not a true trust, and so there is no intent to apply all of the technical rules of the Trust Law to this remedy. It has nothing to do with jurisdictional issues per se. And it is entirely counter to the approach of the Trust Law to confer full power and jurisdiction on the court to deal with the issues raised before it. Hence, the "probate court" does have jurisdiction and power to impose a constructive trust, providing that the proceeding was properly before the court. In order to avoid the construction placed the statute, the staff proposes to amend Section 15003 as follows:

§ 15003. 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 the statement to this effect 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.

Mullins may reach the right result, but for some wrong reasons. Unfortunately the court seeks to pour the new statute back into the old mold by dwelling on the old cases that are no longer relevant. We are not suggesting that a petition for imposition of a constructive trust should be heard in the probate court without more. But it is a question of division of the court's business, not jurisdiction. The blanket statements of the court in *Mullins* go too far and result in unnecessary limitations on jurisdiction. If this case was improperly brought before the probate court, it was not because of Section 15003(a).

Nor does the definition of "trust" in Section 82 provide sufficient grounds to dismiss this petition, as suggested by the court in *Mullins* (See Exhibit 1, at 931.) Section 82 simply states the general understanding that a constructive trust is not a true trust, an express trust, except in the rare instance where a court may impose a constructive trust and order that it be administered as an express trust. The only effect of Section 82 in this case is that it makes clear that the exclusive jurisdiction of the court to hear petitions concerning the internal affairs of a trust does not include a constructive trust in the normal case. It is not supposed to limit the broad grant of jurisdiction and powers in other sections.

Remember that the "probate court" has exclusive jurisdiction over proceedings concerning the internal affairs of a trust. If the petitioner guesses wrong, following *Mullins*, and commences proceedings in the civil court, the petitioner suffers if that court decides it does not have jurisdiction because the case involves internal trust matters which may be heard only by the court having jurisdiction under the Trust Law. However, that court (the probate court) would not have any such problem if constructive trust issues arise in a petition that involves internal trust affairs, since the probate court, by statute, has no inherent limitations other than those imposed by the constitution. The only appropriate ground for dismissing this case was that the gist of the action did not involve the internal affairs of a trust and so was not appropriate for initiation in the probate division of the superior court.

Mullins also errs in drawing a negative implication from the full power provision of Section 17001. (See *Mullins*, Exhibit 1, at 931.)

In order to avoid this implication, Section 17001 should be revised as follows:

§ 17001. Full-power court

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 the implication drawn in dictum in *Estate of Mullins*, 206 Cal. App. 3d 924, 931, 255 Cal. Rptr. 430 (1988). 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.

The second case is *Johnson v. Tate* [89 Daily J. Daily App. R. 13970] in which another appellate court has affirmed a dismissal for lack of jurisdiction in the probate court. *Johnson* involved a petition by a person claiming rights under a trust. Miranda and Tate had executed 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 decision of the trial court is defensible, if we disregard the failure to transfer the case to an appropriate forum, instead of dismissing the petition outright. Unfortunately the court of appeal went beyond the issues that needed decision and, as in *Mullins*, raises the specters of old cases concerning probate court jurisdiction that are irrelevant under the new Trust Law.

In addition, the appellate court 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, as provided in Section 15800. 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 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 probate court. In any event, this is not a jurisdictional issue, and was not the grounds on which the trial court dismissed the petition.

The opinion also discusses *Mullins*, and suggests that the question was essentially the same, involving an oral agreement as to the effect of a trust. The court also speculates that, since Johnson was not described as a "good friend" in the Tate and Miranda trusts, Johnson was placed in the same category as the petitioner in *Mullins*. This seems rather flimsy stuff, and appears to have occurred to the court on appeal.

Once again, the manner of the discussion is as worrisome as the result. There is nothing in the statute that prevents a court from hearing cases such as these. The Comments make clear, on the other hand, that the courts remain free to organize their business, so that contract cases would not be filed and heard in the probate court. It would be better if the court simply ruled that an action to enforce an agreement to make a trust or not to modify or revoke a trust is a question of contract law, not an internal trust affair within the exclusive jurisdiction of the probate court (the court having jurisdiction under the Trust Law). Thus, where the gist of the action is enforcement of a contract, it is probably not appropriate to petition under Probate Code Section 17200, as courts are currently organized. 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.

The CEB Estate Planning Reporter has also pointed out another evil in these cases: the courts dismissed the petitions, instead of transferring them to the appropriate court under Code of Civil Procedure Section 396. (See 10 CEB Est. Planning R. 105 (Feb. 1989); 11 CEB Est. Planning R. 69-70 (Dec. 1989).) The CEB writer concludes with this comment:

Perhaps the most unfortunate part of the current situation is that it is not at all clear that the interests of anyone have been served. Presumably, the petitioners/plaintiffs in both [Johnson] and Mullins were able to refile their cases as civil actions, with the result that we can speculate that there was considerable expenditure of appellate judicial time which served little if any purpose. The other 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.

(11 CEB Est. Planning R. 70 (Dec. 1989).) The staff concurs, but we have no statutory patch to suggest. Perhaps we could include a cross-reference to Code of Civil Procedure Section 396 in any relevant comments to sections in the new Probate Code.

Respectfully submitted,

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Staff Counsel

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ESTATE OF MULLINS

206 Cal.App.3d 924; — Cal.Rptr. — [Dec. 1988]

[No. B036079. Second Dist., Div. One. Dec. 20, 1988.]

ESTATE OF MAY BARRETT MULLINS, Deceased.
MARY CARTER HAWLEY et al., Petitioners and Appellants, v.
JOHN McSWEENEY, as Trustee, etc., Defendant and Respondent.

SUMMARY

In probate proceedings, a niece of decedent's deceased husband sought to impose a constructive trust on the trust estate established by decedent, and to determine that half of that estate was held in constructive trust for her deceased uncle's heirs, pursuant to an alleged oral agreement between decedent and her husband. The petitioner was not a named beneficiary of the trust. The probate court issued an order stating that it had no jurisdiction over an action for imposition of a constructive trust, pursuant to the provisions of Prob. Code, §§ 82, subd. (b)(1) and 15003, subd. (a), and dismissed the petition. (Superior Court of Los Angeles County, No. P724106, Richard C. Hubbell, Judge.)

The Court of Appeal affirmed, holding that because the cause of action was clearly an equitable one to impose a constructive trust and made its contractual claim adversely to the beneficiaries of the trust, and did not seek to affect the trust's internal affairs, the probate court lacked jurisdiction to hear the petition, rejecting petitioner's contention that Prob. Code, § 17200 et seq. (part of div. 9, "Trust Law" of the Probate Code revisions added in 1986) gave the probate court jurisdiction. The court held an action to enforce an oral agreement to make a particular testamentary disposition is generally enforceable, but the appropriate action to enforce such a contract is the imposition of a constructive trust, while the probate court's exclusive jurisdiction, wholly derived from statute, bars suits in equity. (Opinion by Hanson (Thaxton), Acting P. J., with Devich and Ortega, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a, 1b) Decedents' Estates § 5—Probate Courts—Jurisdiction—Enforcement of Oral Agreement to Make Testamentary Disposition.—

In probate proceedings in which a niece of decedent's husband sought to impose a constructive trust on the trust estate established by decedent, and to determine that half of that estate was held in constructive trust for her deceased uncle's heirs, pursuant to an alleged oral agreement between decedent and her husband, the probate court properly dismissed the petition for lack of jurisdiction. Under a probate court's exclusive jurisdiction, wholly derived from statute, probate of a will bars suits in equity. Petitioner's cause of action was an equitable one to impose a constructive trust under a contractual claim adverse to the beneficiaries of the trust, and did not seek to affect its internal affairs. Petitioner was not a beneficiary of the trust, and the probate court therefore lacked jurisdiction over the petition, and the 1986 revision to the Probate Code, in division 9 thereof (Prob. Code, § 17200 et seq.) did not give the probate court jurisdiction over the petition.

[See Cal.Jur.3d, Decedents' Estates, § 110; Am.Jur.2d, Executors and Administrators, § 22.]

- (2) **Trusts § 57—Actions to Establish Trust—Constructive Trust—Oral Agreement for Testamentary Disposition.**—An action to enforce an oral agreement to make a particular testamentary disposition is generally enforceable, and the appropriate action to enforce such a contract is the imposition of a constructive trust.

COUNSEL

Parker, Milliken, Clark, O'Hara & Samuelian, Paul J. Livadary, and Rosa Linda Cruz for Petitioners and Appellants.

Irell & Manell, and Charles A. Collier, Jr., for Defendant and Respondent.

OPINION

HANSON (Thaxton), Acting P. J.—

FACTS

On March 3, 1988, Petitioner Mary Hawley filed a petition in Los Angeles County Superior Court for determination of entitlement to trust proper-

ty, for imposition of constructive trust, and for instructions, pursuant to Probate Code section 17200.

The petition alleged the existence of a contract agreement between Hawley and her uncle, Kieram Emmet Mullins, regarding the disposition of his estate after his death and after the death of his wife, May Barrett Mullins. The petition alleged that May and Kieram Mullins, who had no children, frequently told petitioner they intended to leave their half interests in their community property to their respective nieces and nephews after the death of their survivor. In 1983, in failing health, Kieram wished May's assistance in handling his financial affairs. Kieram and May sought the advice of an attorney, John Caldecott, who suggested that Kieram convey title of their community property home to May to allow her to manage their main assets.

Petitioner was present during a meeting during which Kieram and May discussed the transfers with Caldecott and agreed that notwithstanding Kieram's transfers of community property to May, the last one to die would provide for an equal division of the remaining estate between Kieram's relatives and May's relatives. The petition designated this as "the contract agreement." Kieram and May executed wills dated May 24, 1983, to effect this intent in the wills' article sixth, attached to the petition, which alleged that both Kieram and May orally acknowledged to Caldecott that the 1983 will provided for distribution in accordance with the contract agreement. Caldecott's declaration concerning events occurring on May 24, 1983, accompanied the petition.

In 1985, after Kieram's death, May executed a will and trust of which respondent John McSweeney became the trustee. The 1985 will distributes the residue of May's estate to the trustee. When Kieram died, his heirs at law consisted of nine nieces and nephews, of whom petitioner is one. The 1985 will distributes 90 percent of the estate to May's heirs, and 10 percent of the estate to six of Kieram's nine nieces and nephews. The 1985 trust does not name petitioner as a beneficiary.

The petition sought to impose a constructive trust on the trust estate and determine that the trustee held half the trust estate as constructive trustee for Kieram's heirs, and requested the court instruct the trustee to convey trust assets equal in value to half the trust estate to them. The petition also sought a determination that Kieram's heirs could join in the petition without forfeiting any of their interest in the trust or in May's estate under any in terrorem provision of the 1985 will. On May 11, 1988, Margaret Mullins Pileggi, another niece and also a beneficiary named in the 1985 trust, joined the petition "only to the extent that the petition [asked] for a determination that a member of a class of beneficiaries named in the Trust . . . may join in

the Petition . . . in its entirety without violating the *in terrorem* provisions of the Trust and the 1985 Will. . . . At this time the undersigned [Pileggi] does not hereby join in said Petition for Determination of Entitlement to Trust Property and for Imposition of Constructive Trust." (This opinion will refer to a single petitioner.)

After a hearing on May 12, 1988, Judge Richard C. Hubbell issued an order dismissing the petition for lack of jurisdiction, filed May 27, 1988. The order stated that the court had no jurisdiction over an action for imposition of a constructive trust, pursuant to the provisions of Probate Code sections 82, subdivision (b)(1) and 15003, subdivision (a). It further found that since the court had no jurisdiction over the principal action to impose a constructive trust based upon an alleged oral agreement, it had no jurisdiction to determine whether bringing that action would violate the *in terrorem* clause of the written trust agreement.

On July 5, 1988, the trial court issued an order denying petitioner's motion for reconsideration because it was not based on an alleged different state of facts as required by Code of Civil Procedure section 1008, and because the court found the motion should be denied based upon lack of jurisdiction. The respondent filed a notice of entry of order on July 7, 1988. Petitioner filed a notice of appeal on July 11, 1988.

ISSUES

Petitioner on appeal claims that: 1. The 1986 enactment of division 9 of the trust law broadened and clarified probate court jurisdiction, and that the probate court had exclusive and concurrent jurisdiction over the May Barrett Mullins Trust;

2. The probate court did not lose jurisdiction over the trust simply because petitioner asked it to exercise its equitable powers;

3. The probate court had jurisdiction to determine whether May entered into a valid will contract; and that

4. Petitioner's alleged failure to plead different facts is not a proper basis for denying a motion for reconsideration.

DISCUSSION

(1a) Petitioner's claim on appeal, though variously phrased, essentially concerns the correctness of the trial court's assertion that it lacked jurisdiction because of Probate Code sections 82, subdivision (b)(1) and 15003,

subdivision (a). Petitioner claims that Probate Code section 17200 et seq. gives the probate court jurisdiction. These sections are part of division 9, "Trust Law," of the Probate Code revisions added by statutes 1986, chapter 820, section 40, operative July 1, 1987. We hold that under the facts of this case, division 9 does not give the probate court jurisdiction over petitioner's claim, and affirm.

(2) An action to enforce an oral agreement to make a particular testamentary disposition is generally enforceable. (*Redke v. Silvertrust* (1971) 6 Cal.3d 94, 100 [98 Cal.Rptr. 293, 490 P.2d 805].) The appropriate action to enforce such a contract is the imposition of a constructive trust. (*Estate of Watson* (1986) 177 Cal.App.3d 569, 573 [223 Cal.Rptr. 14].) (1b) The question in the case at bench is whether the probate court has jurisdiction to hear such an action, or whether that action must be brought as a civil action, separate from probate proceedings, in superior court.

Traditionally, under the probate court's exclusive jurisdiction, wholly derived from statute, probate of a will barred suits in equity. (*Stevens v. Torregano* (1961) 192 Cal.App.2d 105, 127 [13 Cal.Rptr. 604].) Although the probate court had the power to apply equitable and legal principles in performing its functions, it could do so only insofar as a statute authorized its jurisdiction in a circumscribed class of proceedings. (*Conservatorship of Coffey* (1986) 186 Cal.App.3d 1431 [231 Cal.Rptr. 421]; *Neubrand v. Superior Court* (1970) 9 Cal.App.3d 311 [88 Cal.Rptr. 586].)

Many decades ago, the California Supreme Court established the rule that a person harmed by the violation of a contract to make testamentary provision for another must pursue the remedy in a court of law or equity, not a probate court. (*Estate of Rolls* (1924) 193 Cal. 594, 599 [226 P. 608]; *Estate of Berry* (1925) 195 Cal. 354, 361 [233 P. 330].) As *Estate of Dabney* (1951) 37 Cal.2d 672 [234 P.2d 962] explained, a claimant of property or contract rights adverse to the estate cannot have that claim resolved in a probate court. Neither does the probate court's order of distribution of estate properties bind someone claiming adversely to the estate. (*Id.* at pp. 676-677.) This latter rule also applies to claims based on a decedent's contract to make a particular testamentary disposition. (*Estate of Miller* (1963) 212 Cal.App.2d 284, 295 [27 Cal.Rptr. 909].)

Ludwicki v. Guerin (1961) 57 Cal.2d 127, 131-132 [17 Cal.Rptr. 823, 367 P.2d 415], and *Thompson v. Beskeen* (1963) 223 Cal.App.2d 292, 296 [35 Cal.Rptr. 676], explain the theory of the action to impose a constructive trust arising out of contract rights. To prevent the estate and legatees from gaining assets by the testator's wrongful act, equitable remedies may establish an involuntary trust for the benefit of the person who would otherwise

have the assets. When a will creates an express trust, the decedent's death vests legal title in the trustee and equitable title in the beneficiary. "The same principle should be applied to a constructive trust based on conduct of the decedent, including failure to perform a promise to make a will. . . . [An] action to impose the [constructive] trust does not interfere with the proceedings in probate. It does not set forth a claim against the estate, or against the executor, or against his right to possession for the purposes of administration. [¶] The action is in effect a suit between a claimant under the contract and claimants under the will or by intestacy as to who is entitled to all or part of the estate, and it does not purport to interfere with the administration by the executor, who, with respect to the proceeding, is in the position of a stakeholder." (*Ludwicki v. Guerin, supra*, 57 Cal.2d 127, 132.) The existence of a probate decree does not bar an action for equitable relief based on the breach of contract to make a particular testamentary disposition of property. (*Brown v. Superior Court* (1949) 34 Cal.2d 559, 565 [212 P.2d 878]; *Goldstein v. Hoffman* (1963) 213 Cal.App.2d 803, 813 [29 Cal.Rptr. 334].)

Estate of Baglione (1966) 65 Cal.2d 192 [53 Cal.Rptr. 139, 417 P.2d 683] expanded the probate court's jurisdiction to hear and determine third-party claims adverse to the estate, but only in limited circumstances. While recognizing the general rule that the probate courts' jurisdiction to administer decedents' estates does not encompass the power to pass on assertions of title to property made by parties not in privity with the estate and claiming adversely to it, the *Baglione* opinion mentioned several exceptions to this rule.

One exception occurs where a controversy has a sufficient connection with a pending probate proceeding to be properly litigated therein. That connection may arise out of the relationship between the parties, and may thus give the probate court the power to determine whether an assignment or other transfer of the interest of an heir, legatee, or devisee to a third party is valid and order distribution accordingly. (*Id.* at p. 196.) And when a party invokes the probate court's jurisdiction by asserting a substantive right in a particular piece of property or in certain assets as an heir, legatee, or devisee, the party may also obtain a judgment in probate court determining any additional claims asserted against those in privity with the estate in the same property. "The rationale for this exception is the conservation of time, energy, and money of all concerned. To deny a superior court sitting in probate the power to determine the whole controversy between the parties before it is pointless." (*Id.* at pp. 196-197.)

Baglione pointed out that "a superior court sitting in probate that has jurisdiction over one aspect of claim to certain property can determine all

aspects of the claim. A claimant is not required to sever and litigate a multifaceted claim in separate proceedings once all the necessary parties are before the court." (*Id.* at p. 197.)

This final requirement remains crucial to justifying why *Baglione* expanded probate court jurisdiction. In *Baglione*, the third party claiming adversely to the devisees of the will was the testator's widow, and had a community property interest in the property subject to probate. Because she was therefore properly before the probate court, *Baglione* held that the probate court should have resolved the entire controversy and determined her rights to the property under the alleged oral agreement with the decedent. (*Id.* at p. 197.)

In *Estate of Plum* (1967) 255 Cal.App.2d 357 [63 Cal.Rptr. 241], for example, the probate court had jurisdiction to determine the community property claim of a party already in privity with the estate and who participated in the probate proceedings. But where a husband never invoked the court's probate jurisdiction and did not appear or participate in probate proceedings, the probate court lacked jurisdiction to adjudicate his adverse claim of joint tenancy. (*Estate of Hagberg* (1969) 276 Cal.App.2d 622, 625-627 [81 Cal.Rptr. 107].)

On facts resembling to those in *Baglione*, in *Estate of Fincher* (1981) 119 Cal.App.3d 343, 348-350 [174 Cal.Rptr. 18], the claimant was already before the court as an heir within the meaning of Probate Code 1080. That participation gave her the right to assert her claim to community property rights and gave the probate court jurisdiction to determine her contract claim. *Copley v. Copley*, (1978) 80 Cal.App.3d 97, 108 [145 Cal.Rptr. 437], emphasized the precondition that *Baglione* required all the parties to be before the court. Absent the voluntary submission of the issue or the parties necessary to determine completely the issue before it, the probate court had only its statutory power and incidental legal and equitable powers necessary to exercise it.

The only case our research has disclosed construing the jurisdictional provisions of the 1986 revisions to the Probate Code in division 9 is *Stewart v. Towse* (1988) 203 Cal.App.3d 425, 430 [249 Cal.Rptr. 622]. *Stewart* found that a probate court had the power to grant equitable relief to the trustee and beneficiary of an irrevocable trust. Probate Code section 17001 gave the probate court all the powers of the superior court; section 17004 gave the court jurisdiction in proceedings under division 9 on any basis permitted by Code of Civil Procedure section 410.10; and section 17000 granted to the superior court having jurisdiction over the trust exclusive jurisdiction of proceedings directing the internal affairs of trusts.

As *Rolls, Berry, Dabney, Ludwicki, and Thompson*, make clear, however, an action for a constructive trust does not involve the internal affairs of a trust. Internal trust affairs, for example, include modification of the terms of the trust, changes in a designated successor trustee, other deviation from trust provisions, authority over the trustee's acts, or the administration of the trust's financial arrangements. (*Stewart v. Towse, supra*, 203 Cal.App.3d 425, 429-430; *Estate of Macmillan* (1954) 43 Cal.2d 437, 446-447 [274 P.2d 662]). The action in the case at bench does not affect these or similar "internal affairs" of the estate, and thus it cannot rely upon division 9 of the Probate Code for a grant of jurisdiction to be heard in probate court.

Probate Code section 15003, subdivision (a) confirms this conclusion, stating that "Nothing in this division affects the law relating to constructive or resulting trusts." Elsewhere in the Probate Code, section 82, subdivision (b)(1) states that a "trust" excludes constructive trusts (other than a judicially created trust administered like an express trust, an exception not applicable to the case at bench). It must be presumed that section 15003, subdivision (a) includes the law relating to jurisdiction within its scope, and that this section and division 9 therefore leave existing law concerning the lack of probate court jurisdiction to hear actions to impose a constructive trust unchanged.

This is especially true when we remember that another part of division 9, section 17001, expressly gives to the probate court "all the powers of the superior court," but conditions this expansion of probate jurisdiction, once again, to "proceedings concerning the internal affairs of trusts." This statutory jurisdictional expansion for these limited and carefully defined proceedings establishes that the Legislature consciously decided not to give the probate court a similarly expanded jurisdiction over constructive trusts.

Petitioner Mary Hawley is not named in the 1985 trust agreement between John McSweeney, trustee, and May Barrett Mullins, settlor. The petition, in fact, does not challenge the 1985 will and trust; instead it expressly relies upon the 1983 will only as evidence of a contract. The cause of action is clearly one to impose a constructive trust. Just as clearly, it makes its contractual claim adversely to the beneficiaries of the trust, and does not seek to affect its internal affairs. We therefore find the probate court correctly ruled in finding it lacked jurisdiction to hear the petition, and affirm its ruling dismissing the petition.

DISPOSITION

We affirm the probate court's ruling dismissing the petition.

Devich, J., and Ortega, J., concurred.

13970

Daily Appellate Report

Friday, November 24, 1989

PROBATE AND TRUSTS

Contingent Beneficiary Is Powerless To Impede Primary Beneficiary's Rights

Cite as 89 Daily Journal D.A.R. 13970

In Regards to:
The Trusts Created by
**VINCENT MIRANDA and
GEORGE MUNTUN,**
JIMMIE JOHNSON,
Petitioner-Appellant,
v.
GEORGE TATE,
Respondent. *

No. B040623
Super. Ct. No. P 729179
California Court of Appeal
Second Division
Division Four
Filed November 21, 1989

APPEAL from an order (judgment) of the Superior Court of Los Angeles County. Martha Goldin, Judge. Affirmed.

Turner & Schofield, and Mark H. Boykin for Petitioner and Appellant.

Seyfarth, Shaw, Fairweather & Geraldson, Robert Gore Rifkind, and Stephen A. Bauman for Respondent.

Jimmie Johnson appeals from an order dismissing his petition filed under Probate Code section 17200. The dismissal order was entered on January 6, 1989. We treat the order as a judgment that is appealable pursuant to Probate Code section 17207.

FACTUAL BACKGROUND

Vincent Miranda and George Tate (respondent herein) each created "Living Trusts" on January 28, 1983. Each trust was identical in its provisions, except as to the names of the distributees in the event of death. The Miranda Trust provides that upon his death, the property in his trust shall be distributed "to his good friend and business partner, George Tate." It further provides that if George Tate has not survived Trustor Miranda, the property in the trust shall distribute to "the Trustor's business associate, Jimmie Johnson."

The Tate Trust provides that upon his death, the property in his trust shall be distributed "to his good friend and business partner, Vincent Miranda." It also provides that if Miranda has not survived Trustor Tate, the property in the trust shall distribute to the "Trustor's business associate, Jimmie Johnson."

Each of the trusts provided that the trustor, during his lifetime, could "alter or amend any provision" of the trust or could "revoke" the trust.

Miranda died on June 2, 1985. The corpus of the Miranda trust was distributed to respondent Tate.

On October 6, 1988, appellant Johnson filed a document entitled "Petition Of Beneficiary Jimmie Johnson For Order Determining Nonexistence Of Right To Revoke, Alter, Or Amend Trust Subject To Agreement [Probate Code Section 17200]."

The apparent basis for the motion was difficult to discern from the transcript of the hearing. Appellant does state in his opening brief at page 2:

"There was in fact an agreement between Miranda and respondent [Tate], both expressed and implied, that the survivor of the two of them would use his power to control the disposition of his own trust so that appellant would receive the entire combined estate of the two men. Within the last year, actions taken by respondent, adverse to the interest of appellant, caused appellant to believe that respondent did not intend to honor the terms of the agreement with Miranda. Appellant thereafter filed this action."

There were no facts set forth in appellant's brief nor was

there an offer of proof in the trial court as to when, where, or how this alleged agreement between Miranda and Tate came about. Likewise, there were no facts set forth as to what actions had been taken by respondent Tate that showed he did not intend to honor the alleged agreement.

DISCUSSION

The essence of the trial court's ruling in this case was that the probate court had no jurisdiction to hear such a case. The trial court stated:

"The probate court does not have independent jurisdiction to hear a lawsuit that is of the nature that I perceive this one to be, whether I was right in what I thought the trust said or not, which appears to be a lawsuit seeking to establish that there was an agreement which your client wants to enforce, because that really sounds like—at least one cause of action which I have already stated that comes to my mind is something in the nature of a specific performance action for the performance of whatever this agreement was. [Para] It is only incidental that the agreement relates to the trust. It could relate to the purchase of real property or to anything. So I don't think that the general language, therefore, confers jurisdiction on this court. I think it's just totally the wrong place."

Assuming that there is some evidentiary basis to support the allegation that an agreement not to amend, alter, or revoke their trusts existed between Miranda and respondent Tate and that respondent had evidenced in some manner an intent to amend, alter, or revoke his trust, the trial court was nonetheless correct in finding no jurisdiction to hear such a case by the probate court.

The basic jurisdictional rule relating to this case is that "while the superior court, sitting in probate, is a court of general jurisdiction, 'the proceedings being statutory in their nature, the court has no other powers than those given by statute and such incidental powers as pertain to it and enable the court to exercise the jurisdiction conferred upon it, and can only determine those questions or matters arising in the estate which it is authorized to do.'" (McPike v. Superior Court (1934) 220 Cal. 254, 258; Estate of Bissinger (1964) 60 Cal.2d 756, 764.)

Appellant contends that Probate Code section 17200, subdivision (b) (2), authorized his action in the probate court. Probate Code section 17200, in pertinent part, provides: "(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust. [Para] (b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes: [Para] (1) Determining questions of construction of a trust instrument. (2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right." (Emphasis added.)

Probate Code section 15800 provides: "Except to the extent that the trust instrument otherwise provides . . . during the time that a trust is revocable and the person holding the power to revoke the trust is competent: [Para] (a) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division."

Thus, the plain language of Probate Code section 15800 precludes appellant from bringing his action in the probate court. Appellant is at best a contingent beneficiary seeking to bring an action against the respondent who is competent and holds the power to revoke the trust. Appellant clearly lacks statutory authority to proceed in this manner.

Further support for this obvious construction is found in comments of the California Law Revision Committee which proposed the above Probate Code sections in December, 1985. That committee specifically stated with respect to revocable trusts that: "The proposed law limits the rights of beneficiaries of revocable trusts during the time when the trust may be revoked. Hence, beneficiaries of revocable trusts may not petition the court relating to internal trust affairs." (18 Cal. Law Revision Com. Rep. (Dec. 1985) p. 505, 513, emphasis added.)

With respect to case law relating to jurisdiction of the pro-

bate court, the trial judge expressed awareness of a case that at the time was a "new case" that indicated a lack of jurisdiction. It appears likely that the case was *Estate of Mullins* (1988) 206 Cal.App.3d 924, which appeared December 20, 1985, shortly before the January 6, 1989 trial court proceedings in this case.

In *Estate of Mullins*, supra, 206 Cal.App.3d at pages 928-931, the factual situation was very similar to the instant case. A niece of the decedent's husband sought to impose a constructive trust on the trust estate set up by decedent. The niece's action was predicated on an alleged oral agreement between decedent and decedent's husband.

In the instant case, appellant alleged an "agreement" between Miranda and respondent Tate to leave the entirety of both of their trusts to appellant. Certainly nothing stated in the two trust agreements supports such an allegation. Apparently, appellant relies on evidence of some oral agreement between Miranda and respondent to that effect. As set forth above, there was no offer of proof in that regard. Appellant does rely on the existence of the reciprocal trusts as part of the consideration of the alleged agreement. The petition of appellant did not challenge the validity of the trust agreements of Miranda and respondent.

In *Estate of Mullins*, supra, 206 Cal.App.3d at page 931, the court stated: "The petition, in fact, does not challenge the 1945 will and trust; instead it expressly relies upon the 1983 will only as evidence of a contract. The cause of action is clearly one to impose a constructive trust. Just as clearly, it makes its contractual claim adversely to the beneficiaries of the trust, and does not seek to affect its internal affairs. We therefore find the probate court correctly ruled in finding it lacked jurisdiction to hear the petition, and affirm its ruling dismissing the petition."

In the instant case, appellant likewise seeks to make a claim adverse to the respondent who was the primary beneficiary of the Miranda trust as Miranda's "good friend and business partner." While appellant here contends he is not seeking a constructive trust, he is certainly making a contractual claim adverse to the true beneficiary of the Miranda trust—respondent Tate. He seeks to prevent respondent from exercising his clear power to alter, amend, or revoke said trust.

Lastly, appellant contends that *Estate of Mullins*, supra, differs from the instant case in that the petitioner in the *Mullins* case was a stranger to the trust, while appellant was a named beneficiary. However, it is clear that appellant is a contingent beneficiary to both the Miranda and Tate trusts, who would only get distribution if either primary beneficiary did not survive the trustor who died first. Both trusts also described appellant as merely their "business associate" without the added words "good friend" with which they described each other. The statutory law and the specific trust wording had the effect of placing appellant in the same category as the petitioner in the *Mullins* case.

We do not find that appellant brought his appeal in bad faith or that said appeal is frivolous and accordingly, the request for sanctions is denied.

DISPOSITION

The order (judgment) is affirmed. Respondents to recover their costs. Respondents' request for sanctions is denied.

GOERTZEN, J.

We concur:

WOODS, P.J.

GEORGE, J.