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Summary of Cadle Co. v. Woods & Erickson LLP, 131 Nev. Adv. Op. 15 (Mar. 26, 2015)

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Recommended Citation

Wynott, Adam, "Summary of Cadle Co. v. Woods & Erickson LLP, 131 Nev. Adv. Op. 15 (Mar. 26, 2015)" (2015). *Nevada Supreme Court Summaries*. 858.
<https://scholars.law.unlv.edu/nvscs/858>

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ACCESSORY LIABILITY: FRAUDULENT TRANSFER ACTIONS

Summary

The Court held Nevada does not recognize accessory liability for fraudulent transfers. Additionally, the Court ruled a court may only award costs based on a showing of sufficient evidence that a cost is reasonable, required, and incurred.

Background

Appellant, Cadle Company (Cadle), attempted to collect on a judgment against Robert Krause, who engaged respondent, Woods & Erickson, LLP (Woods), for estate planning services. Krause transferred assets into an asset protection trust created by Woods.

In district court, Cadle prevailed against Krause but failed to show clear and convincing evidence that Woods acted to defraud or deceive. After the trial, the district court awarded Woods attorney fees, Cadle appealed both decisions, which resulted in this action.

Discussion

Accessory liability for fraudulent transfers

The Court ruled a party that does not receive fraudulently transferred property, or benefit from its transfer, are not an accessory. This decision brings Nevada into the majority of jurisdictions that do not assign accessory liability for fraudulent transfers.²

Nevada law requires concerted action with intent to commit an unlawful act in order to attach civil conspiracy liability. A third party's involvement is not subject to legal remedies because (1) the third party has no control of the property and (2) an aggrieved party may seek remedy from the transferor or transferee.

In this case, Woods acted as a third party without the concerted action or malicious intent that would give rise to a legal remedy. Instead Nevada law allows a creditor an equitable right to disputed property, not a cause for seeking damages.³

Proper documentation of costs

A court may only award reasonable, incurred costs. A party must submit adequate, justifying documentation related to costs. Merely submitting a memorandum of costs is insufficient. In order to receive costs, a party must properly demonstrate that costs are reasonable, essential, and actually paid by the party. Without proper evidence, a court may not award costs.

¹ By Adam Wynott.

² See *GATX Corp. v. Addington*, 879 F. Supp. 2d 633, 648-50 (E.D. Ky. 2012).

³ NEV. REV. STAT. 112.210(1).

Photocopies

The Court requires evidence detailing the date, rate, and necessity of each cost in a case. In this case Woods submitted an affidavit listing its photocopying costs, which is insufficient.

Deposition transcripts

The Court requires justifying documentation for costs awarded. In this case Woods provided records showing an expense of \$1,116.75, yet the district court awarded \$1,921.25 based on an affidavit. Without detailed, itemized records of expenses, a court may not award costs.

Conclusion

In this case the Court ruled that Nevada does not recognize accessory liability in fraudulent transfer cases. Additionally, the Court found that costs awarded to a party must be properly documented and reasonable.