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Summary of In re Aboud Inter Vivos Trust, 129 Nev. Adv. Op. 97

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TRUST LAW: JURISDICTION OVER TRUST PROPERTY,
TRUSTEES, AND THIRD PARTIES

Summary

The Court determined two issues: (1) whether NRS 164.010(1) and NRS 164.015(6) give the court in rem jurisdiction to impose a constructive trust on previous trust property; and (2) whether a district court may grant a monetary judgment against former trustees and third parties that was based on the district court's in rem jurisdiction.

Disposition

NRS 164.010(1) and NRS 164.015(6) only give in rem jurisdiction to present trust property. Furthermore, NRS 164.010(1) and NRS 164.015(6) only confer in rem jurisdiction, personal jurisdiction must be attained through the traditional means.

Factual and Procedural History

In 1979, Betty Jo and Michael Aboud, a married couple, created an inter vivos trust, which consisted of various real property and a restaurant known as The Griddle. When Michael Aboud died in 1998, the trust assets were distributed into a survivor's trust and an irrevocable residual trust. The residual trust named as beneficiaries the couple's four adult children: David Aboud, Michael J. Aboud, Michelle Sheppard, and Robin Gonzales. Betty Jo and Michael Sheppard, Michelle's husband, were the successor co-trustees of both trusts.

In 1999, Betty Jo and her children created the Aboud Family Partners Limited Partnership. The partnership agreement named Betty Jo, Michael Sheppard, and the survivor's trust as general partners and the residual trust and the other family members as limited partners.

In 2000, Betty Jo and Michael Sheppard transferred all of the trusts' assets to the partnership. In exchange for the transfer, the residual trust received a 49.18% share in the partnership, and the survivor's trust received a 28.62% interest in the partnership. All of the beneficiaries to the trusts consented to this transaction.

In 2001, Michael Sheppard resigned as co-trustee of the trusts and as general partner of the partnership, leaving Betty Jo and the survivor's trust as the only general partners. In 2005, Betty Jo, without the knowledge or consent of the remaining residual trust beneficiaries, transferred the Partnerships assets to I.C.A.N., a NV corporation formed by David Aboud. As consideration for the transfer, I.C.A.N. executed two promissory notes and David renounced his beneficial interest in the residual trust. However, there was no monetary consideration given by I.C.A.N. for The Griddle restaurant.

In 2006, Betty Jo resigned as trustee of the residual trust and Ashley Hickey, David's girlfriend became the sole successor trustee. Ashley then provided an accounting of the trust for 1999 through 2005.

Michelle then filed a petition to remove Ashley as trustee, alleging that Ashley had breached her fiduciary duties to the trust by engaging in self-dealing. In response, Ashley argued

¹ By Emily Anderson

that Betty Jo, not Ashley, was trustee during the time in which Michelle claims that the alleged self-dealing occurred. Michelle acknowledged this fact in her response and alleged that Betty Jo may have breached her fiduciary duties to the residual trust by failing to properly account for trust property.

The district court granted Michelle's motion for summary judgment, in part, suspending Ashley as successor trustee and appointing Barry Solomon as an independent successor trustee. It ordered Solomon to perform an accounting of the trust. In Solomon's accounting report, he determined that Betty Jo breached her fiduciary duties to the partnership by transferring The Griddle to I.C.A.N. for no monetary consideration.

Relying on Solomon's determination, Michelle requested, without filing a complaint or serving a summons, that Betty Jo, David, I.C.A.N., and Ashley be held jointly and severally liable for any monetary damage to the residual trust. The district court entered judgment against Betty Jo and I.C.A.N., holding them jointly and severally liable for a \$782,078.98 monetary judgment. It also imposed a constructive trust on I.C.A.N.'s assets. Betty Jo, David, and I.C.A.N. then appealed.

Discussion

The Court pointed out that “NRS 164.010(1) confers in rem jurisdiction on the district court over trust property in all trust administration actions” and that “NRS 164.015(6) provides that a district court's order in a trust administration action is ‘binding in rem upon the trust estate and upon the interests of all beneficiaries.’”² However, here the assets that were improperly transferred from the Partnership were no longer trust property. Therefore, the assets transferred were “the property of the partnership and not the trusts,” so the district court did not have in rem jurisdiction over these assets.

Because the district court held Betty Jo and I.C.A.N. personally liable for the judgment, it “exceeded the in rem jurisdiction over trust assets provided by NRS 164.010(1) and NRS 164.015(6).” NRS 164.010(1) and NRS 164.015(6) gave the district court in rem jurisdiction but not jurisdiction to impose personal judgments against Betty Jo and I.C.A.N. Therefore, the district court did not have the personal jurisdiction necessary to impose personal liability against Betty Jo and I.C.A.N.

Conclusion

Because the assets ceased to be trust property after the beneficiaries properly transferred them to the partnership, NRS 164.010(1) and NRS 164.015(6) do not give the court in rem jurisdiction over these non-trust assets. Furthermore, the monetary judgments imposed on the former trustee and the third party were personal judgments that require personal jurisdiction, which NRS 164.010(1) and NRS 164.015(6) does not provide.

² NEV. REV. STAT. § 164.015(6) (2013).