

COURT OF APPEAL, SECOND DISTRICT, DIVISION 5

Novak v. Fay

Novak v. Fay, 236 Cal.App.4th 329, 186 Cal.Rptr.3d 451 (Cal. App. 2015) · No. B256889

SUMMARY

An attorney's charging lien created by a contingency fee agreement attached to the client's after-acquired beneficial interest in a trust upon settlement and probate court approval. Under Probate Code section 9391, the attorney as lienholder could enforce the lien against trust assets without filing a creditor's claim, and the one-year statute of limitations under Code of Civil Procedure section 366.2 did not apply. The client's subsequent death and assignment of his interest to another did not destroy the preexisting lien. The probate court's denial of the attorney's petition to enforce the lien was reversed.

CASE DETAILS

COURT	Court of Appeal, Second District, Division 5
WRITING FOR THE COURT	Turner, P.J.; Mosk, J.; Goodman, J.
JURISDICTION	California
DOCKET	B256889
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from probate court order denying petition to enforce attorney fee lien.
STANDARD OF REVIEW	De novo review for statutory interpretation and contract interpretation.
PRECEDENTIAL VALUE	published
PARTIES	Mark S. Novak v. Michael Fay, as Trustee

TOPICS

- probate procedure
- probate
- attorney fees
- contracts
- statute of limitations

PRACTICE AREAS

- Probate
- Attorney Fee Liens
- Contingency Fee Agreements

QUESTIONS PRESENTED

1. Whether plaintiff, as an equitable lienholder under Probate Code section 9391, was required to file a creditor's claim in probate rather than enforce his lien directly.
2. Whether Mr. Kelly made a nonprobate transfer of his beneficial interest under Probate Code section 5000.

HOLDINGS

1. Plaintiff was not required to file a creditor's claim because he held a lien on property in the decedent's estate, and under Probate Code section 9391, he could enforce the lien directly. The statute of limitations in Code of Civil Procedure section 366.2 does not apply to such an action.

KEY QUOTATIONS

"A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. (Civ.Code, § 2872.) An attorney's lien 'upon the fund or judgment which he has recovered for his compensation as attorney in recovering the fund or judgment ... is denominated a "charging lien."' (Goodrich v. McDonald (1889) [112 N.Y. 157], 19 N.E. 649, 651.)" (at 336)

"[Mr. Kelly] agrees to pay [plaintiff] 40% of all recoveries by way of settlement.... 'Recovery' includes, but is not limited to, all distributions to [Ms. Teitler's] estate from the Teitler Family Trust, i.e. distribution to which [Mr. Kelly] is entitled to 50% as [Ms. Teitler's] spouse." (at 332)

"It is agreed that Attorney may retain his share in full out of the amount finally collected by settlement; and it is further agreed that Attorney shall have all general, possessory, or retaining liens, and all special or charging liens known to the common law. [Mr. Kelly] expressly assigns to Attorney to the extent of his fees and disbursements, all assets and sums realized by way of settlement, arbitration, or trial." (at 332)

"An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In that case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest." (at 337)

FACTUAL BACKGROUND

In 2007, Mr. Kelly and plaintiff entered into a contingency fee agreement for representation in a probate matter. The agreement granted plaintiff a lien on any recovery. Mr. Kelly filed a pretermitted spouse petition against the Dana Teitler Trust. In 2011, the parties settled, and the probate court approved the settlement in January 2012, giving Mr. Kelly a 40% beneficial interest in the trust. Mr. Kelly died in July 2012 without disposing of his interest. Plaintiff filed a petition to enforce his lien in June 2013. The probate court denied the petition.

PROCEDURAL HISTORY

Mr. Kelly, represented by plaintiff, filed a pretermitted spouse petition against the Dana Teitler Trust. The parties settled, and the probate court approved the settlement in January 2012. Mr. Kelly died in July 2012. Plaintiff filed a petition to enforce his attorney fee lien in June 2013. The probate court denied the petition, ruling that plaintiff should have filed a creditor's claim and that the statute of limitations barred the claim. Plaintiff appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The probate court's order is reversed. On remand, the probate court shall grant plaintiff's petition to enforce the attorney fee lien, and resolve any remaining issues, including the value of Mr. Kelly's interest in the trust.

CASES CITED

- Estate of Wilson, 211 Cal.App.4th 1284, 1290 (2012)
- Harustak v. Wilkins, 84 Cal.App.4th 208, 212 (2000)
- Parsons v. Bristol Development Co., 62 Cal.2d 861, 865-866 (1965)
- Francois v. Goel, Le Francois v. Goel, 35 Cal.4th 1094, 1098 (2005)
- Phillips v. Sprint PCS, 209 Cal.App.4th 758, 768 (2012)
- Forrest v. Department of Corporations, 150 Cal.App.4th 183, 202-203 (2007)
- Shalant v. Girardi, 51 Cal.4th 1164, 1173 (2011)
- Advanced Building Maintenance v. State Comp. Ins. Fund, 49 Cal.App.4th 1388, 1392 (1996)
- Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff, 194 Cal.App.4th 423, 445 (2011)
- Wilson v. Science Applications Internat. Corp., 52 Cal.App.4th 1025, 1032 n.3 (1997)
- Fletcher v. Davis, 33 Cal.4th 61, 66 (2004)
- Carroll v. Interstate Brands Corp., Carroll v. Interstate Brands Corp., 99 Cal.App.4th 1168, 1172 (2002)
- Goodrich v. McDonald, 112 N.Y. 157, 19 N.E. 649, 651 (1889)
- Cetenko v. United California Bank, 30 Cal.3d 528, 531-532 (1982)
- Little v. Amber Hotel Co., 202 Cal.App.4th 280, 293 (2011)
- Cappa v. F & K Rock & Sand, Inc., 203 Cal.App.3d 172, 174-175 (1988)
- Isrin v. Superior Court, 63 Cal.2d 153, 158 (1965)
- Kroff v. Larson, 167 Cal.App.3d 857, 861 (1985)
- Bibend v. L. & L.F. & L. Ins. Co., 30 Cal. 78, 86 (1866)
- Kreling v. Kreling, 118 Cal. 413, 419 (1897)
- Garter v. Metzdorf Associates, 217 Cal.App.2d 812, 821 (1963)
- Bank of California v. McCoy, 23 Cal.App.2d 192, 198 (1937)
- Corporation of America v. Marks, 10 Cal.2d 218, 220-221 (1937)
- Hibernia etc. Soc. v. Wackenreuder, 99 Cal. 503, 508 (1893)
- Schwartz v. Edmunds, 20 Cal.App.2d 530, 533 (1937)
- Bradley v. Breen, 73 Cal.App.4th 798, 803 (1999)
- Liuzza v. Bell, 40 Cal.App.2d 417, 432 (1940)
- Buck v. City of Eureka, 97 Cal. 135, 137-138 (1893)

- Cullerton v. Mead, 22 Cal. 96, 98 (1863)

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