

SUPREME COURT OF CALIFORNIA

Lucas v. Hamm

56 Cal. 2d 583 (Cal. 1961) · No. S. F. No. 20269 · Decided September 5, 1961

SUMMARY

The Supreme Court of California held that intended beneficiaries of a will may bring negligence and third-party-beneficiary contract claims against the attorney who drafted the will, notwithstanding the absence of privity. The court nevertheless concluded that the alleged drafting error involving the rule against perpetuities and restraints on alienation did not establish negligence or breach of contract because the issue was sufficiently complex that an attorney of ordinary skill might have made the error. The court also affirmed dismissal of a separate negligence claim concerning the scope of releases in a will-contest settlement.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Gibson, C. J.; Traynor, J.; Schauer, J.; McComb, J.; Peters, J.; White, J.; Dooling, J.
JURISDICTION	California
DECIDED	September 5, 1961
DOCKET	S. F. No. 20269
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff beneficiaries appealed from a judgment of dismissal entered after the trial court sustained a general demurrer to their second amended complaint without leave to amend.
STANDARD OF REVIEW	The court reviewed the judgment following the sustaining of a general demurrer, accepting properly pleaded allegations for purposes of determining whether the complaint stated a cause of action, and reviewed the denial of leave to amend for abuse of discretion.
PRECEDENTIAL VALUE	Published California Supreme Court decision; precedential.
PARTIES	Robert Lucas et al. v. L. S. Hamm

TOPICS

- professional negligence
- negligence
- contracts
- third party beneficiary
- will contests

PRACTICE AREAS

professional negligence

estate planning

probate

contracts

trusts

QUESTIONS PRESENTED

1. Whether beneficiaries who were not in privity with an attorney hired to draft a will may recover in negligence for losses caused by negligent drafting.
2. Whether intended beneficiaries of a will may recover as third-party beneficiaries for the attorney's breach of the contract with the testator to draft the will.
3. Whether the alleged error in drafting the testamentary trust established negligence or breach of contract under the professional standard applicable to attorneys.
4. Whether the allegations concerning inadequate releases in a will-contest settlement stated a cause of action for negligence.

HOLDINGS

1. Lack of contractual privity does not preclude an intended beneficiary from maintaining a tort action against an attorney for negligent drafting of a will.
2. An intended beneficiary of a will who loses testamentary rights because the attorney drafting the will failed to fulfill the attorney's contractual obligations may recover as a third-party beneficiary.
3. An attorney is not liable for every mistake and is not liable for an error concerning a legal question on which reasonable doubt may be entertained by well-informed lawyers; the alleged drafting error did not establish negligence or breach of contract under the circumstances pleaded.
4. The allegations that the attorney failed to obtain broader releases did not state a negligence claim because the complaint did not allege that the contestants were willing to sign broader releases or that the attorney could have secured them.

KEY QUOTATIONS

"It follows that the lack of privity between plaintiffs and defendant does not preclude plaintiffs from maintaining an action in tort against defendant." (at 589)

"We conclude that intended beneficiaries of a will who lose their testamentary rights because of failure of the attorney who drew the will to properly fulfill his obligations under his contract with the testator may recover as third-party beneficiaries." (at 591)

"However, an attorney is not liable either to his client or to a beneficiary under a will for errors of the kind alleged in the first and second causes of action." (at 591)

FACTUAL BACKGROUND

The plaintiffs were beneficiaries under Eugene H. Emmick's will. They alleged that attorney L. S. Hamm negligently drafted the will and codicils, causing a residual trust to be invalid under California's rules against perpetuities and restraints on alienation, and that they consequently received \$75,000 less than they would have

received under properly drafted instruments. They also alleged that Hamm negligently handled releases in a will-contest settlement, causing them to lose an additional \$15,000. The complaint alleged that Hamm represented the testator in drafting the will and the executors in handling the later settlement.

PROCEDURAL HISTORY

The beneficiaries of a will sued the attorney who drafted the testamentary instruments, asserting negligence and breach of contract based on defects in the will and negligence in handling releases related to a will contest. The trial court sustained a general demurrer to the second amended complaint without leave to amend and entered judgment for the attorney. The California Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Buckley v. Gray, 110 Cal. 339, 342-347 (1895)
- Biakanja v. Irving, 49 Cal. 2d 647, 648-650 (1958)
- Walker Bank & Trust Co. v. First Security Corp., 9 Utah 2d 215, 341 P.2d 944, 945 et seq. (1959)
- Johnson v. Holmes Tuttle Lincoln-Merc., 160 Cal. App. 2d 290, 296 et seq. (1958)
- James Stewart & Co. v. Law, 149 Tex. 392, 233 S.W.2d 558, 561-562 (1950)
- Smith v. Anglo-California Trust Co., 205 Cal. 496, 502 (1928)
- Fruitvale Canning Co. v. Cotton, 115 Cal. App. 2d 622, 625 (1953)
- Estate of Kruger, 130 Cal. 621, 626 (1901)
- Moser v. Western Harness Racing Assn., 89 Cal. App. 2d 1, 7 (1948)
- Armstrong v. Adams, 102 Cal. App. 677, 684 (1930)
- Lally v. Kuster, 177 Cal. 783, 786 (1918)
- National Savings Bank v. Ward, 100 U.S. 195, 198 (1879)
- Estate of Johnston, 47 Cal. 2d 265, 269-270 (1957)
- Estate of Campbell, 28 Cal. App. 2d 102, 103 et seq. (1938)
- Estate of Phelps, 182 Cal. 752, 759-760 (1920)
- Estate of Heberle, 155 Cal. 723, 726-727 (1910)
- Comunale v. Traders & General Ins. Co., 50 Cal. 2d 654, 663 (1958)