

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GARY SALZMAN,

Plaintiff and Appellant,

v.

DAWN L. PHILLIPS,

Defendant and Respondent.

B288026

(Los Angeles County  
Super. Ct. No. MC023536)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian C. Yep, Judge. Affirmed.

Gary Salzman, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

This case is before us for the second time. In the prior appeal, we reversed the order of the trial court denying Gary Salzman’s motion for an order for the sale of real property belonging to Dawn Phillips, against whom Salzman previously had obtained a default money judgment.<sup>1</sup> (*Salzman v. Phillips* (May 17, 2017, No. B276460) (*Salzman I*.) On remand, the trial court again denied Salzman’s motion for an order selling Phillips’ property, this time on the basis that Phillips received the property as trustee of a trust. We affirm.

## BACKGROUND

In December 2015, Salzman obtained a judgment against Phillips for fraud in the amount of \$75,382.18, including costs, interest, and attorney fees. In compliance with the Enforcement of Judgments Law (Code Civ. Proc., §§ 680.010-724.260),<sup>2</sup> Salzman “recorded an abstract of judgment (§ 697.310), obtained a writ of execution and delivered it to the levying officer, and timely applied for an order of sale. (§§ 699.510, 699.520, 699.530, 704.750.)” (*Salzman I, supra*, 2017 Cal. App. Unpub. LEXIS 3370, at p. \*9.)

At the first hearing on Salzman’s application for an order for the sale of Phillips’ property, Phillips’ defense purportedly was “I didn’t do it.” (*Salzman I, supra*, 2017 Cal. App. Unpub. LEXIS 3370, at p. \*4.)

---

<sup>1</sup> We note that Phillips’ name is occasionally spelled with one “l” in the record. It is unclear which spelling is correct. We will spell it “Phillips,” but we mean no disrespect if that is incorrect.

<sup>2</sup> Unspecified statutory references will be to the Code of Civil Procedure.

The trial court denied the application on the ground that “We don’t sell houses here.” (*Ibid.*) There was no indication in the prior appeal that Phillips did not own the property outright. We reversed for the court to hold a hearing to determine whether the property was subject to a homestead exemption. (*Salzman I, supra*, 2017 Cal. App. Unpub. LEXIS 3370, at pp. \*10-\*11; see § 704.780.)

On July 28, 2017, Salzman filed another motion and application for an order for the sale of Phillips’ real property. He attached a certified copy of a quitclaim deed recorded on December 4, 2009, transferring the subject property to Phillips as trustee or successor trustee of a trust. Specifically, the quitclaim deed provided as follows: “for valuable consideration, receipt of which is hereby acknowledged, Jesse Michael Daye hereby remits, releases, and forever quitclaims to Dawn Leanne Philips, Trustee or Successor Trustee of The Philips Family Special Needs Trust for Jesse Michael Daye dated October 6, 2009 the following described real property in the County of Los Angeles, State of California, [¶] Commonly known as: 40645 168th Street East Lancaster, California 93535.” The quitclaim deed further stated, “This is a bonafide [*sic*] gift grantor received nothing in return.”

The trial court again denied Salzman’s motion. The court stated that “[t]he trust documents were not provided to this Court and it is not known whether the trust is revocable or irrevocable. . . . Plaintiff’s judgment against Defendant was in Defendant’s individual capacity and did not arise out of Defendant’s conduct as Trustee of the Philips Family Special Needs Trust, nor was Defendant’s conduct on behalf of the Trust. The transfer of the Property into the Trust was not a

fraudulent transfer or a transfer to avoid creditors since the Trust was created and the Property was quitclaimed into the Trust well before the judgment in this case was entered and/or the events giving rise to the judgment took place.”

## DISCUSSION

Salzman contends that the trial court’s refusal to order the sale of Phillips’ real property violated the doctrine of law of the case.<sup>3</sup> “““The law of the case doctrine states that when, in deciding an appeal, an appellate court ‘states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal.’ [Citation.]’ [Citation.]” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 356.)

Salzman complied with the requirements of the Enforcements of Judgments Law insofar as he complied with the requirements for execution of a judgment on a dwelling house that might be subject to the homestead exemption. (See *Salzman I, supra*, 2017 Cal. App. Unpub. LEXIS 3370, at pp. \*5-\*9.) However, because no question was

---

<sup>3</sup> We grant Salzman’s motion to augment the record. One of the exhibits attached to Salzman’s motion is an August 31, 2018 notice of auction from the Los Angeles County Treasurer and Tax Collector, informing him that the property at issue was scheduled for sale at public auction on October 22, 2018. Salzman has not indicated whether the property was sold at the public auction.

raised whether Phillips owned the property, we never decided in the prior appeal whether Phillips had an interest in the dwelling house that was subject to execution. Law of the case accordingly does not apply.

The Enforcement of Judgments law addresses the enforcement of a money judgment against an interest in a trust in section 695.030, which provides in part: “(a) Except as otherwise provided by statute, property of the judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment. [¶] (b) The following property is subject to enforcement of a money judgment: [¶] (1) An interest in a trust, to the extent provided by law.” However, the procedure applies to the interest held by the beneficiary of a trust. (See § 709.010, subd. (b) [“The judgment debtor’s interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by a judgment creditor to a court having jurisdiction over administration of the trust as prescribed in Part 5 (commencing with Section 17000) of Division 9 of the Probate Code. The judgment debtor’s interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor’s interest, collection of trust income, and liquidation and transfer of trust property by the trustee”].) Here, Phillips, the judgment debtor, is not the beneficiary of the trust but the trustee.

Section 695.010 states that, “[e]xcept as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.” (§ 695.010, subd. (a).) However, “property of the

judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment.” (§ 695.030, subd. (a).) “It is well established that property held by the debtor in trust is not subject to attachment for his debts. [Citation.]” (*Richion v. Mahoney* (1976) 62 Cal.App.3d 604, 609; see also *Townsend v. Greeley* (1866) 72 U.S. 326, 337 [applying California law, stating, “[t]rust property, thus held, is not the subject of seizure and sale under judgment and execution against the trustee, whether that trustee be a natural or an artificial person”]; *Siegel v. Boston (In re Sale Guar. Corp.)* (9th Cir. BAP 1998) 220 B.R. 660, 669 [“An unbroken line of California cases holds that a judgment lien creditor cannot reach property that the judgment debtor holds in trust for another”].) Because Phillips holds the property as trustee, it is not subject to attachment.<sup>4</sup>

---

<sup>4</sup> The Enforcement of Judgments Law does provide a procedure whereby “a judgment creditor may apply to the court on noticed motion for an order applying contingent interests to the satisfaction of a money judgment.” (8 Witkin, Cal. Procedure (5th ed. 2019 update) Enforcement of Judgment, § 323.) Section 709.020 provides: “The judgment creditor may apply to the court on noticed motion for an order applying to the satisfaction of a money judgment a contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor. The interest of the judgment debtor may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to the imposition of a lien on or the sale of the judgment debtor’s interest.” “Section 709.020 is intended to permit the court, in an examination proceeding or creditor’s suit or otherwise, to fashion a suitable remedy through its equitable powers in order to prevent a sacrifice sale of the judgment debtor’s interest while preserving the rights of the judgment creditor.” (Cal. Law Revision Com. com., Deering’s Ann. Code Civ. Proc., foll. § 709.020.)

Salzman relies on *Keitel v. Heubel* (2002) 103 Cal.App.4th 324 (*Keitel*) to argue that the property is subject to the claim of a judgment debtor, but *Keitel* is distinguishable. There, the plaintiff (*Keitel*) obtained a jury verdict against the defendants (the Heubels) for \$361,267 in her action claiming she had been deprived of her rightful share of her mother's estate by the Heubels' fraud and undue influence. The day before judgment was entered, the Heubels executed four grant deeds, granting real property to three co-trustees of a revocable living trust, which provided that ownership of the trust property reverted to the Heubels if the trust was revoked. When *Keitel* attempted to levy and execute upon the real property to satisfy her judgment, the Sheriff refused to execute on the property because the grant deeds indicated it was owned by the trust. As pertinent here,<sup>5</sup> the appellate court affirmed the trial court's order permitting *Keitel* to execute against the property in the trust. (*Id.* at p. 328.) The court relied on Probate Code section 18200, which provides: "If the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor." "This provision clearly and explicitly permitted *Keitel*, as a judgment creditor, to reach real property held in the trust over which the Heubels retained the power of revocation." (*Id.* at p. 337.)

---

<sup>5</sup> *Keitel* also addressed the effect of the defendants' bankruptcy proceedings and whether the defendants and their counsel should be sanctioned. (*Keitel, supra*, 103 Cal.App.4th at p. 330.)

*Keitel* is distinguishable. There, the trust was revocable and therefore subject to creditors' claims under Probate Code section 18200. (*Keitel, supra*, 103 Cal.App.4th at p. 337.) As the trial court reasoned, there is no indication here whether The Philips Family Special Needs Trust is a revocable trust.

Moreover, even if the trust is revocable, unlike in *Keitel*, the judgment debtor here is the trustee of the trust, not the settlor. Probate Code section 18200 accordingly does not apply. The trial court did not err in denying Salzman's application for an order for the sale of the property.

### **DISPOSITION**

The order appealed from is affirmed. Appellant shall bear his own costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.