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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LOWELL T. PATTON et al.,

Plaintiffs and Respondents,

v.

VENTURA COUNTY COUNCIL
BOY SCOUTS OF AMERICA

Defendant and Appellant.

2d Civil No. B278628
(Super. Ct. No. P079997)
(Ventura County)

The Ventura County Council Boy Scouts of America (VCC) obtained an order compelling respondent Sally Patton Walter, administrative and management trustee of the Patton Family Lead Trust (the Lead Trust), to distribute \$238,669.20 of the Lead Trust's assets to VCC. VCC also sought an award of interest on the amount of the distribution. The trial court declined to award interest. VCC appeals. We affirm.

Facts

Lowell Patton established the Patton Family Lead Trust in February 2003. The trust documents required him to make an irrevocable gift of property to the Lead Trust (the “Trust Estate”). Thereafter, the Administrative Trustee was required to distribute annually a portion of the Trust Estate to five beneficiaries, each of which is a charity. The Lead Trust terminates after 15 years and any remainder is to be distributed to three members of the Patton family. VCC is one of the beneficiaries of the Lead Trust.

Respondent Sally Patton Walter is the Administrative Trustee of the Lead Trust. Among other things, the trust agreement provides that the Administrative Trustee shall be responsible to “determine the amount and character of the distributions to be made to a [charitable beneficiary,] and, to make said distributions.” The Administrative Trustee also has the power to “withhold from distribution, in the Trustee’s discretion, at the time specified for distribution of any property in this Trust, without the payment of interest, all or any part of said property, if the Administrative Trustee determines that the property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise.”

Lowell Patton contributed to the Lead Trust his interest in some Santa Monica real estate. The property was sold about three years later for approximately \$3 million. The Administrative Trustee made no distributions from the Lead Trust to the beneficiaries.

In February 2006, Lowell Patton, Sally Patton Walter, and others brought an action for damages and to set aside the Lead Trust on the ground that fraud or

misrepresentation had accompanied the creation of the Trust. VCC was joined as a Doe defendant in that action. Nearly two years later, in November 2007, the same plaintiffs filed a second lawsuit against the beneficiaries of the Lead Trust, seeking both damages and to set aside the Lead Trust. The actions were consolidated in December 2008.

In 2009, one of the charitable beneficiaries filed a motion to remove respondent, Sally Patton Walter, as the trustee of the Lead Trust. The trial court denied that motion. It found, “The alleged failure to make distributions to the charitable beneficiaries, given the current state of the pleadings, is not an appropriate basis for removing this trustee. If it is true that the charitable beneficiaries participated with Estate Strategies et al. in defrauding the settlors it would be completely inappropriate to distribute trust income or assets to the charitable beneficiaries. [Respondent] is required to protect the trust assets and to account to the parties. No trust assets are to be disbursed without prior court approval.” It does not appear from the limited record before us that either respondents or any of the charitable beneficiaries thereafter sought court approval for distribution of the Lead Trust’s assets.

Eventually, respondents settled the Lead Trust’s action against all of the charities except VCC. Under the settlement agreement, the settling charitable beneficiaries assigned their rights and interests in the Lead Trust to the Patton family’s church, the Church of Jesus Christ of Latter Day Saints (the LDS Church). In May 2012, respondents distributed over \$1.4 million from the Lead Trust to the LDS Church, representing the annual payments that had accumulated during the litigation. Thereafter, respondents made annual payments

from the Lead Trust to the LDS Church as provided in the trust agreement. Respondents made no such payments to VCC.

Respondents' action against VCC went to trial in March 2016. After respondents rested, VCC moved for judgment under Code of Civil Procedure, § 631.8. The trial court granted the motion and entered judgment in favor of VCC and against respondents. In July 2016, the trial court granted VCC's Petition to Compel Distribution from [the Lead] Trust. Its order directed respondents to distribute \$238,669.20 to VCC, the total amount of annual distributions that would have been made had respondents made them annually since the creation of the Lead Trust. The trial court did not award interest on that amount. Appellant contends the latter determination, that VCC is not entitled to interest on the unpaid distributions, was error.

Standard of Review

VCC urges us to independently review the trial court's order declining to award interest on the unpaid distributions, because the question whether VCC is entitled to interest is a question of law. Where the judgment or order construes the provisions of a written trust agreement in the context of undisputed facts, we apply the de novo standard of review. (*Giammarrusco v. Simon* (2009) 171 Cal.App.4th 1586, 1600; *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 55-56.) Here, however, the question does not involve construing the trust agreement. Rather, the question here is whether the trial court properly declined to award interest after it ordered respondents to distribute trust assets to VCC. We review the trial court's choice of remedy for abuse of discretion. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1256.) "An abuse of discretion occurs if, in light of the applicable law and considering

all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.]” (*Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 894.)

Discussion

VCC characterizes the Lead Trust agreement as a contract. (*In re Estate of Bodger* (1955) 130 Cal.App.2d 416, 424-425 [“A declaration of trust constitutes a contract between the trustor and the trustee for the benefit of a third party”].) It then notes that interest is an element of damages for breach of contract. (Civ. Code, §§ 3289, subd. (b), 3302.) Respondents breached the Lead Trust agreement, VCC contends, by failing to make the annual payments provided for in the agreement. The trial court's order compelling respondents to distribute over \$230,000 in trust assets to VCC is an implied finding that respondents breached the Lead Trust agreement. VCC concludes it should also be awarded interest on the amount of the distribution.

“The remedies of a beneficiary against the trustee are exclusively in equity.” (Prob. Code, § 16421.)¹ Those remedies may include an order for the distribution of trust assets to the beneficiary. (§ 16420, subd. (a)(1)-(2).) Probate Code section 16440, subdivision (a) specifies the circumstances under which interest may also be awarded. The statute provides, “If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances: (1) Any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest. (2) Any profit made by the trustee through the breach of trust, with interest. (3) Any

¹ All further statutory references are to the Probate Code.

profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.” (*Ibid.*)

Here, the trial court ordered respondents to distribute money from the Lead Trust to VCC. Neither the judgment nor the order compelling distribution includes an express finding that respondents breached the trust. Nor did the trial court make any factual findings that respondents engaged in conduct that would support an award of interest under Probate Code section 16440. It did not find that respondents caused a loss or depreciation in the value of the trust, that Sally Patton Walter profited from a breach of trust or that respondents prevented the trust estate from earning a profit. (§ 16440, subd. (a)(1)-(3).)

VCC contends the finding that respondents breached the trust is implied in the order compelling distribution, because the trust agreement requires annual distributions and the trial court’s order required respondents to distribute funds previously withheld from distribution. We cannot read the order so broadly. Respondents did not make annual distributions during the litigation. The trust agreement, however, authorizes respondents to withhold annual distributions if respondents determine that trust assets “may be subject to conflicting claims, to tax deficiencies or to liabilities, contingent or otherwise.” In addition, the trial court ordered respondents, in February 2009 to withhold distributions from the trust until respondents obtained court approval for them. Finally, we note again that the order compelling distribution contains no express factual finding that respondents engaged in any conduct that would support an award of interest under Probate Code section 16440. Under these circumstances, the trial court did not abuse its discretion

when it declined to award interest on the distribution it ordered respondents to make.

The judgment (order compelling distribution) is affirmed. Costs on appeal to respondents.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

Jones & Lester and Mark A. Lester, for Defendant
and Appellant.

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