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2017 IL App (3d) 160260-U

Order filed April 11, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

HICKORY POINT BANK & TRUST, FSB,)	Appeal from the Circuit Court
A federal savings bank,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois.
Plaintiff-Appellant,)	
)	
v.)	
)	
NATURAL CONCEPTS, INC., an Illinois)	
Corporation, JAMES R. FORD, and)	
LONI L. LANGE,)	Appeal No. 3-16-0260
)	Circuit No. 15-L-8
Defendants,)	
)	
and)	
)	
DONALD A. SIMPSON,)	
)	
Intervenor)	
)	
(Donald A. Simpson,)	Honorable
)	Suzanne L. Patton,
Intervenor-Appellee).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Holdridge and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court properly found that irrevocable trust was not a self-settled trust and denied the bank’s motion for liquidation and turnover of assets.
(2) Imposition of a judicial lien was properly denied because assets were held in a trust in good faith.

¶ 2 Plaintiff, Hickory Point Bank (HPB), appeals from an action for default judgment on a promissory note and security agreements, which were personally guaranteed by defendants James R. Ford and Loni L. Lange (also known as Londa L. Lange). The trial court granted judgment in HPB’s favor but denied the bank’s motion for liquidation and turnover of assets or, in the alternative, a judicial lien against property held in an irrevocable trust. We affirm.

¶ 3 **FACTS**

¶ 4 Natural Concepts, Inc. is an Illinois corporation formed by James Ford. In April of 2013, defendants Ford and Lange entered into security agreements and personal guarantees with HPB to secure a loan for Natural Concepts. In January of 2015, Natural Concepts defaulted on the loan, and HPB filed suit against the company and Ford and Lange as personal guarantors. Pursuant to the promissory note, security agreements and personal guarantees, the trial court entered judgment by confession against defendants.

¶ 5 In a citation to discover assets directed at Lange, HPB discovered that Lange had an interest in an irrevocable family trust known as the “Lange Irrevocable Trust.” The sole asset of the trust is four parcels of property once owned by Lange’s father and intervenor, Donald Simpson.

¶ 6 According to discovery, Donald and his wife, Nyla Simpson, transferred four parcels of real estate as trustees of “The Simpson Family Trust Agreement” to Lange, individually, through a trustee’s deed dated February 22, 2008. Three weeks later, on March 17, 2008, Lange transferred the property into the Lange Irrevocable Trust by quitclaim deed in trust. The

trustee's deed was recorded on March 24, 2008. The quitclaim deed was recorded on May 7, 2008.

¶ 7 The stated purpose of the Lange Irrevocable Trust is to support the Simpsons during their lifetimes. The trust names Lange and two of her sons as trustees and gives them discretion to pay income from the trust property to Lange's parents as necessary. The trust further states that upon the last of both Donald and Nyla to die, all trust assets are to be distributed as follows: (1) 85% to Lange, and (2) 15% to Lange's three sons in equal shares. If Lange is not living upon the death of both Donald and Nyla, all of the trust estate is to be distributed to her three sons in equal shares. Nyla passed away in 2014. Donald is still alive and resides on one of the four parcels held in the trust.

¶ 8 HPB filed a motion for liquidation and turnover of assets of the trust, or in the alternative, a judicial lien against the trust property to satisfy the default judgment against Lange. In its motion, HPB argued that the Lange Irrevocable Trust was self-settled by Lange and that the bank should be permitted to execute against her interest in the trust. Alternatively, HPB argued that it should be allowed to assert a judicial lien against Lange's interest in the trust that would attach once the trust assets were distributed.

¶ 9 The trial court held that the trust was not self-settled and was protected from judgment creditors under section 2-1403 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1403 (West 2014)). The court denied HPB's motion and entered a finding for interlocutory appeal pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 10

ANALYSIS

¶ 11

I

¶ 12 HPB contends that the trial court erred in finding that the trust was not a self-settled trust and that the bank could not execute its judgment on the trust assets. HPB argues that the Lange Irrevocable Trust is a “self-settled” trust because it was created by Lange for her benefit and that the rule against such trusts allows creditors to liquidate those assets.

¶ 13 Simpson, the only party to respond, contends that HPB cannot satisfy its judgment against Lange by liquidating or placing a lien on the trust property because the trust is protected under section 2-1403 of the Code.

¶ 14 In this case, the facts are not in dispute. Whether the trust is self-settled and whether section 2-1403 protects the trust property are purely questions of law subject to *de novo* review. See *In re Clinton S.*, 2016 IL App (2d) 151138, ¶ 21 (where facts surrounding issues are not in dispute, issues are questions purely of law and the appropriate standard is *de novo*).

¶ 15 A “self-settled” trust is a term that defines a settlor’s relationship with the trust. According to Black’s Law Dictionary, a self-settled trust is “a trust in which the settlor is also the person who is to receive the benefits from the trust, usually set up in an attempt to protect the trust assets from creditors.” Black’s Law Dictionary 1518 (7th ed. 2002). Most states have adopted the common law rule that a self-settled trust created for the settlor’s own benefit will not protect trust assets from the settlor’s creditors. Restatement (Second) Trusts §156 (1959). Illinois follows that general rule and allows execution by a creditor against assets held in a self-settled trust. See *Rush University Medical Center v. Sessions*, 2012 IL 112906, ¶ 20.

¶ 16 In accordance with the common law rule, section 2-1403 of the Code protects trust assets from creditors while withholding any protection from execution on trust assets if the debtor created or funded the trust in an attempt to shield the assets from creditors. See 735 ILCS 5/2-1403 (West 2014). Specifically, section 2-1403 provides:

“No court, except as otherwise provided in this Section, shall order the satisfaction of a judgment out of any property held in trust for the judgment debtor if such trust has, in good faith, been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor.” 735 ILCS 5/2-1403 (West 2014).

Under the plain terms of the statute, a creditor’s judgment cannot be satisfied by funds held in trust for a judgment debtor if (1) the trust was created in good faith and (2) a person other than the judgment debtor created the trust or the funds held in trust proceeded from someone other than the judgment debtor. 735 ILCS 5/2-1403 (West 2014); see also *Gallagher v. Union Square Condominium Homeowner’s Ass’n*, 397 Ill. App. 3d 1037, 1042 (2010) (best indication of legislative intent is plain and ordinary meaning of words used in the statute).

¶ 17

A. Good Faith

¶ 18

Here, the Lange Irrevocable Trust was created by an agreement between Lange and the Simpsons in March of 2008 and funded with a transfer of trust property using a quitclaim deed that was recorded in May of 2008. Lange incurred personal liability on the Natural Concepts loan almost five years later in April of 2013. Nothing in the record shows that Lange created the irrevocable trust in an attempt to evade judgment creditors or to shield the assets from HPB at the time the trust was created. The trust language itself indicates that it was designed for the care of Donald and Nyla Simpson during their lifetimes. In addition, the trust was created well in advance of the debt that was incurred. It was not intended to insulate the trust proceeds from HPB or thwart payment of the debt. We therefore agree with the trial court’s holding that the trust was created in good faith and was not self-settled. See 735 ILCS 5/2-1403 (West 2014).

¶ 19 The bank argues that the good faith prong of section 2-1403 is immaterial and relies on *Sessions*, 2012 IL 112906, ¶¶ 20-23, in support of its argument that self-settled trusts are void as to creditors. In *Sessions*, the defendant established an irrevocable spendthrift trust in which he was the settler and lifetime beneficiary and named himself as the “trust protector” with the power to appoint and remove trustees and change beneficiaries. He then made a \$1.5 million philanthropic pledge to Rush University Medical Center for the construction of a president’s house, and the medical center constructed the building. He later became ill and blamed the medical center for his illness. He revoked his will and executed a new will that made no mention of the medical center pledge. The medical center filed suit against the trustees of the trust, seeking full payment of the pledge by relying on the common law rule that if a settler creates a self-settled spendthrift trust for his own benefit, it is void as to existing or future creditors. *Id.* ¶¶ 4-7.

¶ 20 The Illinois Supreme Court found that the common law rule was still valid law, noting that “it is not a fraudulent transfer of funds that renders the trust void as to creditors under the common law, but rather it is the spendthrift provision in the self-settled trust and the settlor’s retention of the benefits that renders the trust void as to creditors.” *Session*, 2012 IL 112906, ¶ 23. The court found that the trust was void and awarded plaintiff the full amount of the pledge. *Id.* ¶ 36.

¶ 21 We find *Sessions* factually dissimilar to this case. *Sessions* involved a self-settled spendthrift trust where the settler was the primary beneficiary and was attempting to evade a creditor. Here, Lange is not the primary beneficiary. The trust was set up for the benefit of Lange’s parents during their lifetime and was funded with assets that were originally held by Donald and Nyla Simpson. Lange possesses nothing more than a contingent remainder interest

that will only vest if her father predeceases her. Thus, the spendthrift rule discussed in *Sessions* does not apply.

¶ 22 B. Trust Funds did not Proceed from the Judgment Debtor

¶ 23 The second requirement of section 2-1403 has also been met by the Lange Irrevocable Trust in that the funds “proceeded from someone other than the judgment debtor.” See 735 ILCS 5/2-1403 (West 2014).

¶ 24 Section 2-1403 does not define “proceeded from.” The ordinary definition of the word “proceed” is “to come forth from a source; to carry on an action; to move along a course.” Webster’s Third New International Dictionary 1807 (1976). In this case, the trust was created by Lange, but the four parcels of real estate that comprise the corpus of the trust proceeded from the Simpson Family Trust. The parcels were deeded from the Simpsons, as trustees of the prior trust, to Lange. Within weeks, Lange then created an irrevocable trust and funded the trust with the real estate for the benefit of the Simpsons during their lifetime. Although the trust assets were briefly owned by Lange, they came from and originated from Donald and Nyla Simpson. The assets were temporarily deeded to Lange to move them into a trust for her parents. Thus, the trust assets proceeded from someone other than the judgment debtor and were protected from Lange’s creditors under section 2-1403 of the Code.

¶ 25 II

¶ 26 In the alternative, HPB argues that it should be allowed to impose a lien against Lange’s 85% interest in the trust assets under section 2-1403. It argues that nothing in section 2-1403 requires the creditor to wait until the beneficiary receives the funds before seeking the imposition of a lien against those funds. See *Community Bank of Elmhurst v. Klein*, 2014 IL App (2d) 121074, ¶ 16.

¶ 27 It is well-settled that a creditor may not impose a lien on funds that are in the hands of a trustee. *Knight v. Gregory*, 322 Ill. App. 194, 200 (1944). In other words, a creditor may not impose a lien against funds that are in a trust. See *Klein*, 2014 IL App (2d) 121074, ¶¶ 11, 15 (interpreting *Knight* and section 2-1403). However, once those funds are distributed to a beneficiary under the terms of the trust, a creditor may have access to them. *Id.* ¶¶ 15-16.

¶ 28 Defendant attempts to argue that a judgment lien is appropriate because the Lange Irrevocable Trust is a self-settled trust and, for that reason, Lange is not afforded protection by the language of section 2-1403 as were the defendants in *Knight*. As we have discussed, the irrevocable trust in this case was created using assets from the Simpson Family Trust for the primary benefit of Donald and Nyla Simpson; it is not a self-settled trust. Moreover, the trust assets have not been distributed to Lange and the other beneficiaries under the terms of the irrevocable trust; the four parcels are still held in trust. Therefore, Lange's interest cannot be liable for debt as a matter of law, and HPB may not impose a lien against the trust property. *Cf. Klein*, 2014 IL App (2d) 121074, ¶ 16.

¶ 29 **CONCLUSION**

¶ 30 The judgment of the circuit court of Peoria County is affirmed.

¶ 31 Affirmed.