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No. 71831-2

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

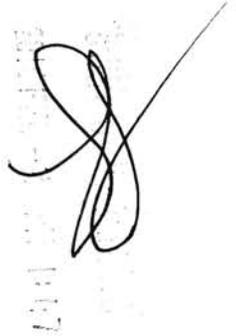
GARY RICHARDSON,

Respondent/Cross-Appellant,

v.

LILY FU,

Appellant/Cross-Respondent.



APPEAL FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY
THE HONORABLE DAVID KURTZ

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

SMITH GOODFRIEND, P.S.

MOEN LAW OFFICES, P.S.

By: Howard M. Goodfriend
WSBA No. 14355
Ian C. Cairns
WSBA No. 43210

By: Bruce R. Moen
WSBA No. 6640

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

1325 Fourth Avenue, Suite 1025
Seattle, WA 98101
(206) 441-1156

Attorneys for Respondent/Cross-Appellant

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I. INTRODUCTION

Ms. Fu's appeal is just the latest chapter in her ongoing effort to prevent Mr. Richardson from obtaining – in this action or any other action – the benefit of the CR 2A agreement Ms. Fu signed three years ago allowing her to retain \$6 million of the parties' \$6.5 million estate in exchange for transferring two real properties to Mr. Richardson. After arguing in her opening brief that Mr. Richardson should file a fraudulent transfer action “and join all parties he deems necessary for complete relief,” Ms. Fu now argues that the trial court “*did not* defer specific enforcement of the CR2A Agreement to a separate fraudulent transfer action.” (*Compare* App. Br. 13 *with* Reply Br. 5 (emphasis added)) That Ms. Fu's dissembling continues in this Court underscores the need to end this litigation once and for all by remanding for entry of an order quieting title in Mr. Richardson against Ms. Fu, her trust, her partnership, and any person or entity claiming title through them. This Court should further direct the trial court to order that the assets of Ms. Fu's trust and partnership are available for satisfaction of her other obligations under the decree.

II. CROSS-REPLY ARGUMENT

A trial court errs when it fails to recognize the scope of its own authority. *Sales v. Weyerhaeuser Co.*, 138 Wn. App. 222, 232, ¶ 26, 156 P.3d 303 (2007), *aff'd*, 163 Wn.2d 14, 177 P.3d 1122 (2008). Here, the trial court did just that, because its findings that Ms. Fu used her personal trust and family partnership to evade her CR 2A obligations mandated enforcement of the CR 2A *in this action*. Instead, the trial court deferred providing effective relief on the erroneous basis that there “may be additional parties who have an interest in [the] parcels and who are not before the court in this action.” (FF 18, CP 42; CL 2, CP 42) Overwhelming evidence established that any “additional parties” were Ms. Fu’s alter egos. This Court should remand for entry of an order quieting title in Mr. Richardson against Ms. Fu, her trust, and her partnership, and directing that the assets of Ms. Fu’s trust and partnership are available for satisfaction of her monetary obligations.

Ms. Fu fails to distinguish *W. G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 298 P.2d 1107 (1956), in which the Supreme Court held that a dissolution court could disregard a corporate entity in enforcing a divorce decree because the corporation was the alter ego of a husband and “the interests of justice require[d] it.” 49 Wn.2d

at 207-08. Ms. Fu does not dispute any of the facts establishing her “domination and control” over her personal trust and family partnership. *Platts*, 49 Wn.2d at 207. For instance, she does not dispute that she was the trustor, trustee, and sole beneficiary of her trust, with full authority to transfer trust property, (CP 355, 359, 361, 369, 382, 421; Exs. 13-14) or that as the general partner of her family partnership she was “solely responsible for the management of the Partnership business” and authorized to “convey . . . any of the property . . . of the Limited Partners . . . and . . . to execute in the Partnership’s name, any and all deeds.” (CP 432, 435, 437 (authorizing Ms. Fu to “convey[] in the name of any Partner” partnership property); Exs. 8-9); *see also* RCW 25.10.381. Nor does she dispute that she in fact used the trust and partnership “for carrying out [her] own plans and purposes,” *e.g.*, indiscriminately using rents earned from trust and partnership property to pay her personal line of credit. (*Compare Platts*, 49 Wn.2d at 209 with 1/3 RP 56-57, 155-56; 1/6 RP 32)¹

¹ *Marriage of Wallace*, 111 Wn. App. 697, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003) is not “directly on point,” as Ms. Fu contends. (Reply Br. 9) *Wallace* involved a purportedly fraudulent transfer by a husband to his father, not a transfer from a party to her alter ego.

Rather than address these facts, Ms. Fu argues that even if a court unwound her transfer of the properties awarded to Mr. Richardson under the CR 2A from her personal trust to her family partnership, title would revert to her trust and thus “title would not be in Ms. Fu’s name.” (Reply Br. 8) But that ignores that as Ms. Fu’s alter ego, her trust *was Ms. Fu*, and thus title would legally “be in Ms. Fu’s name.” Moreover, it ignores that both the partnership and trust were Ms. Fu’s alter egos, a fact to which Ms. Fu herself testified. (1/3 RP 155 (trust-partnership transfer was “me to myself”)) The trial court could have, and should have, enforced the CR 2A by quieting title in Mr. Richardson against Ms. Fu, her trust, and her family partnership. The trial court erred in refusing to do so despite its express finding that the “impossibility” in transferring the properties was “largely of [Ms. Fu’s] own making and should not be allowed to bar the implementation of the CR 2A.” (FF 14, CP 41)

Ms. Fu’s reply brief makes abundantly clear her aim to prevent Mr. Richardson from ever receiving the benefit of the CR 2A agreement. Ms. Fu argues that the trial court “did not defer specific enforcement of the CR2A Agreement to a separate fraudulent transfer action.” (Reply Br. 5) Ms. Fu presumably hopes

that a ruling by this Court that enforcement of the CR 2A was not “deferred” combined with a dismissal “with prejudice” will collaterally estop any efforts by Mr. Richardson to enforce the CR 2A in a subsequent action. This Court should reject Ms. Fu’s effort to thwart the CR 2A agreement that she signed voluntarily, with the advice of counsel, and that provided her \$6 million in benefits.

In any event, the trial court did defer (erroneously) enforcement of the CR 2A, expressly stating that the CR 2A could not be enforced “in this action,” but acknowledging that Mr. Richardson could pursue a separate action to enforce the CR 2A. (CP 34, 42; 5/9 RP 18 (trial court acknowledging there would be “future developments”)) Indeed, the language specifying that the CR 2A could not be enforced “in this action” was added to the trial court’s findings at the suggestion of Ms. Fu’s counsel. (5/9 RP 7-8, 16-17; *see also* App. Br. 13 (suggesting that Mr. Richardson file a fraudulent transfer action “and join all parties he deems necessary for complete relief”))

While Ms. Fu may prefer to prolong her battle of attrition with Mr. Richardson in a brand new fraudulent conveyance proceeding, this Court need not and should not concern itself with another action. It should instead put an end to this farce by

remanding for entry of an order *in this action* quieting title in Mr. Richardson against Ms. Fu, her trust, and her partnership, and directing that the assets of Ms. Fu's trust and partnership are available for satisfaction of her monetary obligations.

III. CONCLUSION

This Court should remand for entry of an order quieting title in Mr. Richardson against Ms. Fu, her trust, and her partnership, and directing that the assets of Ms. Fu's trust and partnership are available for satisfaction of *all* her obligations under the decree. This Court should also affirm the trial court's findings regarding Ms. Fu's intransigence, and award Mr. Richardson his attorney's fees on appeal.

Dated this 30th day of January, 2015.

SMITH GOODFRIEND, P.S.

MOEN LAW OFFICES, P.S.

By: _____

Howard M. Goodfriend
WSBA No. 14355
Ian C. Cairns
WSBA No. 43210

By: _____

Bruce R. Moen
WSBA No. 6640

Attorneys for Respondent/Cross-Appellant

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 30, 2015, I arranged for service of the foregoing Reply Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-File
Bruce Moen Moen Law Offices, PS 1325 4 th Avenue, Suite 1025 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Walter John Sinsheimer Sinsheimer & Meltzer, Inc. P.S. 701 5th Avenue, Suite 4100 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 30th day of January, 2015.



Victoria K. Vigoren