

05402-4

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Court of Appeals
Division I
Washington State

Appellate Case Number 65462-4-1
Appeal from Snohomish County Superior Court
Case # 09 2 07764 7

Appellant

Robert Grundstein Esq./WSBA 20389
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vs

Appellee

Leon Grundstein et al.
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Appellant Reply Brief /December 15, 2010

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COURT OF APPEALS
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Introduction

The subject of Partition in the lower court was a real estate asset in the inventory of our mother's trust. It was under the sole control of Leon Grundstein/Gencare. It was not divided during the TEDRA action, but merely identified. The individual rights of all parties to their proportionate share in this asset had not been exercised until the action for partition in Snohomish county. All parties had a legitimate expectation in the value of the Scriber Gardens share. This expectation is not foiled or defeated by the argument claiming access is limited to precise statutory vehicles, or not at all.

Appellee/Gencare Leon Grundstein created an enormous amount of financial uncertainty which had to be managed. Not only did he embezzle from his semi-conscious 95 year old mother, but jeopardized the assets of his sisters, one of whom has a severe cognitive disorder with psychotic features. My mother needed her assets. Her husband had predeceased her and she had to pay Leon Grundstein to stay in one of his assisted living facilities for several years. In addition, the beneficiaries of the Trust had to have their inheritance protected.

L. Grundstein abused the trust he held by way of his mother's

Power of Attorney, Guardianship and Trustee for our mother's living trust. He secretly took 100 thousand dollars for his own business and failed to account for other amounts over twenty thousand dollars. His misappropriations weren't discovered until 2006 because he refused to provide mandatory annual accountings for over 2 years.

It is said that "possession is 10/10ths of the law. It can take up to Fifty Thousand dollars to challenge a trust. It's an amount that can be used as a threat against the exposure of criminal activity. Leon Grundstein had to be pursued in court. It took the presence of police and civil action to get L. Grundstein to reveal amounts he had illegally removed from the Trust of Dorothy Grundstein.

2

Legal Argument/Response to Appellee Brief

a

Appellees Have Disregarded the Issue of Attorney Interest Conflict

The issue of attorney Meltzer's conflict of interest in this case is conspicuously absent from his brief. He was not permitted to represent L. Grundstein AND the people (Margaret Grundstein and Miriam Levin) who stand to benefit from a ruling AGAINST appellee.

This is the second time he has done this. Meltzer represented

Appellee L. Grundstein and the Trust from which he was stealing in the TEDRA action I brought on behalf of our mother, Dorothy Grundstein.

His fees in both actions should be disgorged.

b

Division of the Subject Asset is not Contingent on a Statute
Equity Will Create a Remedy to Meet Reasonable Expectations

Pages 5 through 9 of Appellee brief are devoted to saying that existing statutory authority is not sufficient to provide access to the value of the Scriber Gardens share.

Appellant does not rely on statutory authority by itself, but on the principles of equity. Equity follows the law and will find a remedy. Equity can expand the application of statutes or create a new remedy to do justice.

Appellant provided case law as authority for the application of partition to an LLC which was in the business of real estate. In addition, Equity respects the legitimate expectations of a party with respect to his/her economic interests. Appellant and his sisters had a ¼ interest in the subject property of the action below.

c

The TEDRA Action Was Not Res Judicata to a Subsequent Partition
Action
Preclusion Does Not Apply

The TEDRA action only identified trust property to be paid.

Appellee Grundstein was under an obligation to do meaningful distribution of the Scriber Gardens share, but refused to do so. He only stated that all parties now have a ¼ interest, but would not tell us how much it was worth, how much it had been making since its creation in 1997 nor anything else.

Another action was necessary to force disbursement of each party's share in this real estate asset. The action could have been one for partition, contempt or for an accounting.

d
Leon Grundstein/Gencare Exercised Sole Control Over the Scriber
Gardens Share

It is disingenuous for L. Grundstein to claim Gencare has no interest or responsibility with respect to Scriber Gardens. Gencare is the company by which L. Grundstein operates. It is necessary to plead hypothetically and alternatively to join all possible parties who may be controlling the Scriber Gardens share since Appellee refused to give any information about the share for the prior 10 years.

Even if Gencare had no controlling interest in the subject of partition, Leon Grundstein was exercising control and authority over this asset. Personal liability was always available against the controlling individual and Leon Grundstein is named in the Complaint.

e

Attorney Fees Were Not Appropriate

J. Appel of Snohomish said on many occasions that “I never did understand this case”. It showed.

How can attorney fees be assessed if appellant was not subject to any rule 12 motions, if he survived a motion to dismiss on other grounds, if discovery was ordered and the if the case was proceeding prior to a disruptive motion for summary judgment? C. Tinney allowed an amendment to appellant's complaint.

If the case was not good, barring fraud or misrepresentation, it would/should have been dismissed very early on or after complete discovery.

Attorney fees could not even have been contemplated until the time a motion for summary judgment was offered and could only have been awarded if Plaintiff had performed some fraud, incompetence, or deceit revealed in the facts of that motion. There was no fraud or deceit here.

Judge Appel preemptorily curtailed the conduct of this case.

f

Grundstein Was Not Vexatious Appellee Made a Motion for Filing Restrictions Which Was Denied

Grundstein is not a vexatious litigator in Washington. This was tried by J. Appel in Snohomish and he found there was no reason for filing restrictions.

g

Grundstein is Not a Vexatious Litigator in Ohio
This is a Void Order Which is Being Litigated in the U.S. Supreme Court
as Case No. 10-473 and in the 6th Circuit as Case No. 10-3109

This is irrelevant name calling on the part of attorney Meltzer. If one looks at the facts of the Supreme Court action one can see that Grundstein was defending our mother against predatory behavior. Meltzer and his client find it appropriate to cite Appellants behavior in support of our mother as a vice.

h

This is The Second Time Appellee L. Grundstein Has Embezzled as a
Fiduciary

The first time was in the Estate of Anne Grundstein. It was necessary to sue in Washington D.C. To force Leon Grundstein to identify the location of over a half million dollars he had sequestered for over a year and a half.

For Leon Grundstein, Fiduciary responsibilities are a means to steal and misappropriate.

I
Respondent Attorney Meltzer Always Asks for Sanctions
It's a Bad Faith Tactic Designed to Discourage Good Faith Argument
and
Participation in the Development of the law

Meltzer always asks for sanctions. It's unethical and unhealthy for the legal system which should be available to educate opinion through dialogue and the examination of ideas.

3
Conclusion

Appellant has provided ample reason why it is legitimate for him to claim a proportionate disbursement for the Scriber Gardens share. He had legitimate expectations as the holder of an economic interest. The precise nature of this interest is irrelevant. Leon Grundstein had sole control of this asset and had refused to give any information about it for years.

Respondent attorney indulges in significant name calling and the direction of this Court's attention to alleged and irrelevant defects.

I would think his time is better spent managing his own conflicts of interest and to counsel his client to stop stealing from his mother and sisters.

Good rules need good intent for them to work. A venal mind can

use rules to break the intent of the law. The law is evidence of a culture of fairness. That culture precedes and is more important than precise procedural compliance.

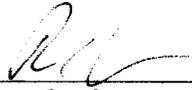


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Certificate of Mailing

I certify that a copy of this Reply Brief was sent to R. Meltzer by USPS and email on December 15, 2010 at the following address

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R. Grundstein