

RESOLUTION 04-11-2012

DIGEST

Trust Instruments: Confirming Application of Parol Evidence Rule.

Amends Code of Civil Procedure section 1856 to confirm that trust instruments are agreements subject to the parol evidence rule.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 1856 to confirm that trust instruments are agreements subject to the parol evidence rule. This resolution should be approved in principle, to eliminate the potential for confusion, harmonize the decisional and statutory law, and clarify that the rules that apply to the interpretation of trust instruments are the same as for all other written contracts.

The proponent offers a string of case citations that are on point, to the effect that in the interpretation of trust instruments, extrinsic evidence which legitimately bears on intent is admissible only when the trust instrument is unclear or ambiguous. The statute should match the case law.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1856 to read as follows:

- 1 § 1856
- 2 (a) Terms set forth in a writing intended by the parties as a final expression of their
- 3 agreement with respect to such terms as are included therein may not be contradicted by
- 4 evidence of any prior agreement or of a contemporaneous oral agreement.
- 5 (b) The terms set forth in a writing described in subdivision (a) may be explained or
- 6 supplemented by evidence of consistent additional terms unless the writing is intended also as a
- 7 complete and exclusive statement of the terms of the agreement.
- 8 (c) The terms set forth in a writing described in subdivision (a) may be explained or
- 9 supplemented by course of dealing or usage of trade or by course of performance.
- 10 (d) The court shall determine whether the writing is intended by the parties as a final
- 11 expression of their agreement with respect to such terms as are included therein and whether the
- 12 writing is intended also as a complete and exclusive statement of the terms of the agreement.
- 13 (e) Where a mistake or imperfection of the writing is put in issue by the pleadings, this
- 14 section does not exclude evidence relevant to that issue.
- 15 (f) Where the validity of the agreement is the fact in dispute, this section does not
- 16 exclude evidence relevant to that issue.

17 (g) This section does not exclude other evidence of the circumstances under which the
18 agreement was made or to which it relates, as defined in Section 1860, or to explain an extrinsic
19 ambiguity or otherwise interpret the terms of the agreement, or to establish illegality or fraud.

20 (h) As used in this section, the term agreement includes trust instruments, deeds and
21 wills, as well as contracts between parties.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS

Existing Law: In its present form, Code of Civil Procedure section 1856, subdivision (h), defines an agreement to include deeds, wills, and contracts between the parties, but does not include trust instruments. Present case law, however, holds that trust instruments are within the scope of the parol evidence rule. (*Miller v. Security-First National Bank of Los Angeles* (1933) 219 Cal.120, 128-129, *Lonely Maiden Productions, LLC v. Goldentree Asset Mgmt., LP* (2011) 201 Cal.App.4th 368, 380, *Wells Fargo Bank v. Marshall* (1993) 20 Cal.App.4th 447, 453, *Levy v. Crocker-Citizens National Bank* (1971) 14 Cal.App.3d 102, 104, *Krapp v. Sterling Savings and Loan Assoc.* (1970) 9 Cal.App.3d 1033, 1045.)

This Resolution: This resolution would eliminate any doubt that trust instruments are in fact covered by the parol evidence rule stated in Code of Civil Procedure section 1856.

The Problem: In its present form, the omission of trust instruments from the coverage of Code of Civil Procedure section 1856, subdivision (h), could lead to unpredictability in the admission or exclusion of evidence regarding the construction and interpretation of trust instruments. Although case law has, to some extent, filled the void, the interests of certainty, clarity and predictability would be best served by amending the statute to include trust instruments within the definition of those agreements covered by the parol evidence rule.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Randall A. Spencer, 8665 Wilshire Boulevard Suite 210, Beverly Hills, CA 90211; (310) 659-6771 (phone); (310) 659-7354 (fax); randy@rtlewin.com

RESPONSIBLE FLOOR DELEGATE: Mike Sohigian