

Estate of Thomas C. Bowles (Cavalli v. Cavalli)

Below is a summary of a recent California trust/probate case of interest.

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You may have seen this trust litigation case, *Estate of Thomas C. Bowles (Cavalli v. Cavalli)*, in the Wednesday, December 24 Recorder or Daily Journal new case summaries. The case clarifies and reaffirms that when there is a trustee breach of fiduciary duty that is induced or in some manner assisted or allowed by a third party who benefits from the breach, a beneficiary of the trust has standing to bring suit against the the trustee, or the third party, or both the trustee and the third party.

The court upheld a beneficiary's right to file a Probate Code sec. 17200 petition for breach of fiduciary duty against the trustee, and a separate civil complaint against the third party for inducing or allowing the trustee to breach her fiduciary duties. The beneficiary alleged that the third party induced the trustee to sell a parcel of trust real property to the third party for less than fair market value.

At the time of the case the trustee who had allegedly breached her fiduciary duties had died, and had been replaced by a bank trustee. Defendants in part also argued that only the successor trustee had standing to bring suit. The court held otherwise, stating that in addition to the successor trustee, the beneficiary also had independent standing to bring actions against both the prior trustee, and the third party wrongdoer.

The court made a couple of additional findings:

-The beneficiary could bring an action against the third party wrongdoer without bringing an action against the trustee;

-With respect to the action against the third party, the court held that the beneficiary could have brought the action in either the civil department or the probate department, both of which have concurrent jurisdiction; and

-In establishing the liability of the third party, the beneficiary was not required to also establish that the third party stood in a fiduciary relationship with the trust or intentionally directed misrepresentations or other wrongdoing at the beneficiaries.

I expect that we are going to see more of these types of situations and cases, and trust cases that involve aspects of both probate and civil proceedings.

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