

Title

Equity's doctrine of unclean hands still has serious teeth, at least in the world of trusts.

Text

"The doctrine of unclean hands is unique to equity and has no analog at law. Unlike most legal doctrines, its aim is not to aid the search for truth, or even promote justice for the litigants. Its purpose is protection of the reputation of equity itself, and of those courts that exist to provide equity. The awesome power of equity, as opposed to the limited civil power of the law courts, would be intolerable unless stringently cabined by a doctrine under which Chancery withholds this power where invoked by wrongdoers whose bad acts are a part of the cause of action itself." *In re Niki & Darren Irrev. Tr.*, 2020 WL 8421676 (Del. Ch. Feb. 4, 2020). Thus, a trustee-beneficiary who wrongfully decants a trust in the absence of an express power to invade principal may not later have the equity court void the decanting if to do so would benefit the trustee-beneficiary at the expense of another beneficiary. *See, e.g., Id.*

Though there may be no unclean-hands analog at law, the equitable doctrine of judicial estoppel serves a similar purpose, namely, to "protect the integrity of the judicial process" by prohibiting parties "from deliberately changing positions according to the exigencies of the moment." *See State of New Hampshire v. State of Maine*, 532 U.S. 742, 121 S. Ct. 1808 (2001). Thus, "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895). In other words, he is judicially estopped from assuming the contrary position.

The doctrine of unclean hands is to not to be confused with equitable estoppel, see §5.5 of *Loring and Rounds: A Trustee's Handbook* (2021), the relevant portion of which sub-section is reproduced in the appendix below.

Appendix

[From §5.5 of *Loring and Rounds: A Trustee's Handbook* (2021)]

Equitable estoppel in the trust context. A trust beneficiary who accepts an equitable benefit incident to the trust relationship may be equitably estopped from challenging the trust's validity or its terms. The doctrine of equitable estoppel "precludes one who accepts a benefit from thereafter challenging the validity of the thing that conferred the benefit."⁹⁴ In the trust context, there are two exceptions: The first is that the acceptance of a benefit was without "full knowledge of the relevant facts and circumstances, including the contents of the ... trust and the circumstances surrounding the instrument's execution, or where the acceptance of a benefit was procured or

⁹⁴*Cleland v. Cleland*, 117 N.E.3d 539 (Ill. App. Ct. 2018).

induced by fraud or mistake.”⁹⁵ The second is that that acceptance will not preclude challenging provisions of the trust that are contrary to law or public policy. Ergo: (1) The trustee should see to it that the beneficiary has a full subjective understanding of the terms of the trust and the circumstances surrounding its creation prior to making any distributions of income and/or principal and (2) the beneficiary who has problems with the terms of the trust and/or the circumstances surrounding its creation should see to it that any distributions from the trustee to the beneficiary are not even constructively accepted.

⁹⁵Cleland v. Cleland, 117 N.E.3d 539 (Ill. App. Ct. 2018).