CASE UPDATES – AUGUST 15, 2017

BHBA Trusts & Estates Section

EXPERT WITNESS
***Conservatorship of K.W.*, filed Aug. 3, 2017, First Dist. A418614.**

In a case involving appointment of conservatorship, permitting the jury to consider case-specific hearsay testimony of psychiatrist violates the "Sanchez" rule, but reversal was not warranted because the error was harmless.

Following a contested bench trial, the court found K.W. to be gravely disabled and appointed a Conservator for a one-year term under the LPS Act. The following year, the Conservator petitioned for reappointment. A psychiatrist expert testified as to K.W.'s behavior based on his own observations and those of others. The trial court reappointed the Conservator after a jury trial was affirmed. The LPS Act permits the involuntary appointment of a conservator for a person who is "gravely disabled as a result of a mental disorder." Under *People v. Sanchez*, a 2016 case, there was a "paradigm shift" concerning an expert's use of case-specific out-of-court statements in that hearsay statements can be admitted only if they meet applicable exceptions to the hearsay rule. Because not all of the psychiatrist's testimony was inadmissible under the Sanchez rule, the error was harmless.

COLLATERAL ESTOPPEL
***Ayala v. Dawson*, filed Aug. 4, 2017, 2017 S.O.S. 3926.**

In an Unlawful Detainer action, Ayala (the tenant defendant) filed a motion to quash service of summons on him on the ground that he was not a tenant, but, rather, held equitable title under an oral installment sale contract to buy the property. Dawson countered that Ayala was a tenant under a written lease. After an evidentiary hearing on Ayala's motion to quash service, Dawson prevailed, took a default judgment against Ayala, and Ayala subsequently vacated the property.

In a separate, concurrent action by Ayala against Dawson for fraud and various other claims, Ayala once again pursued the theory that he held equitable title under an installment sale contract. He argued, as he did in the unlawful detainer action, that Dawson, a real estate broker, deceived him into signing the lease while misrepresenting that the document was simply the memorialization of a preexisting oral contract of sale. The court granted summary judgment for Dawson, ruling that under the doctrine of collateral estoppel Ayala was barred from relitigating his fraud-in-the-inducement theory.

RES JUDICATA
Marriage of Florencia B. and Garcia, filed Aug. 4, 2017.

The putative wife's first unsuccessful dissolution action and the subsequent nullity action do not involve the same primary rights; hence, res judicata does not bar relief in the latter nullity/spousal support action.

In 2014, Florence filed a dissolution action against Juan. Finding no valid marriage, the family court dismissed the action. Florencia then filed this instant nullity action, alleging fraud and seeking spousal support. The court determined that Florencia was a putative spouse and ordered Juan to pay spousal support. Juan contended that the second action was barred by res judicata.

Res judicata bars relitigation of the same cause of action in a second action between the same parties. However, a cause of action based on the harm suffered, rather than on a particular theory asserted or relief sought in a prior action may not necessarily have the preclusive effect on a subsequent action. Hence, the primary right, i.e., a claimant's entitlement to be free from the particular injury suffered, must be distinguished from the legal theory and the remedy sought.

Here, Florencia's dissolution action had no preclusive effect on the subsequent nullity action.

STATUTE OF LIMITATIONS
***GPA West Residential Association, Inc. v. Hulven Int'l, Inc.*, Filed 8/9/17, 2017 DJDAR 7758.**

The plaintiff filed its suit more than 7 years after the alleged fraudulent transfer occurred. The Court of Appeal held that the trial court improperly overruled the demurrer where the alleged acts are governed by the Uniform Fraudulent Transfer Act's 7-year statute of repose. Civil Code section 3439.09(c) is a statute of repose not subject to tolling or the discovery rule because it "was intended to completely extinguish a right of action and not merely a remedy, and … [did] not provide for tolling or delayed discovery … ."

TRUSTEES
***Faulkner v. Klein*, filed Aug. 7, 2017 – Unpublished Decisions.**

The saga involving Herbalife, Inc. founder Mark Hughes's estate continues.

After Judge Beckloff ousted all three successor co-trustees (the settlor's attorney, executive and father) for their wrongdoing, Judge Green appointed Fiduciary Trust Int'l at the settlor's son Alexander Hughes' request, rather than Samantha Faulkner, a named successor trustee for the Mark Hughes Family Trust.

The trustees who were removed from their trustee positions for wrongdoing filed a motion to disqualify the law firm of Miller Bardoness because two of the firm's former associates worked on trust matters during their employment with their other firms (Christensen Miller) and partner Louis "Skip" Miller negotiated a fee payment between the trust and his former firm (Christensen Miller).

The Court of Appeal reversed the probate court's decision granting the motion to disqualify the Miller Baroness firm because the moving party, the former trustee who had been removed for wrongdoing had no standing. The lawyers represented the office of the trustee, not the removed trustees personally.

In a separate opinion, the Court of Appeal also reversed the trial court's appointment Fiduciary Trust International as trustee, holding that the probate court should have appointed the successor trustees nominated in the trust.