

BHBA TRUSTS & ESTATES SECTION – MONTHLY CASE UPDATE

***Goles v. Sawhney*, 2016 DJDAR 11562 (decided November 22, 2016)**

The Second Appellate District found that the trial court's determination of a minority shareholder's interest in a software company, which was obtained by averaging 3 appraisers' appraisals, was erroneous for two reasons: (1) the two lower appraisals did not include the plaintiff's derivative claim against the officer; and (2) Corporations Code section 2000 does not authorize a minority discount. The buying shareholder is already in control of the company, and, therefore, there is no reason to discount the selling of minority shareholder's interest for lack of control.

***Conservatorship of the Person of B.C.*, Filed December 16, 2016, Court of Appeal Case No. B270310**

The Court of Appeal affirmed the trial court's decision to appoint the disabled adult's aunt, not her husband, as her conservator though the trial court failed to advise proposed conservatee of her right to a jury trial pursuant to Probate Code section 1828. Unlike conservatorship proceedings under the Lanterman-Petris-Short Act, probate conservatorships do not require a personal waiver of the conservatee's right to jury trial.

This case involves a young lady (B.C.) who at age of 30 overdosed on methamphetamines and alcohol, and nearly died in 2012. The resulting lack of oxygen to her brain caused physical and mental impairments. She had a child with her boyfriend, Jesse. Subsequently, this woman's mother suddenly died, leaving B.C. with an inheritance of \$450,000, and Jesse married her. B.C. then went to live with Jesse who stopped administering her medication because he felt she was more alert without it. When B.C. received \$30,000 in disability benefits, Jesse spent the entire sum on travel, jewelry and an entire new wardrobe. The trial court also noted that B.C. started using the drug again.

B.C.'s aunt then filed for conservatorship, and the trial court granted the aunt's petition over B.C.'s objection. At trial, the court failed to consult B.C.'s opinion on the conservatorship and the appointment of her aunt as her proposed conservator, though Probate Code section 1828 requires that the trial court do so. B.C. appealed the trial court's order on the ground that the trial court failed to inform her of her right to a jury trial.

The Court of Appeal affirmed the trial court's decision and held that the trial court's failure to comply with Section 1828 was a harmless error because, unlike the LPS proceedings, there is no threat of civil confinement, and therefore, the conservatee needs to demand a jury trial if that's what she wants.

***Southern California Gas Co. v. Flannery*, 2016 DJDAR 11266, filed November 14, 2016**

The objecting party's belated interpleader answer lacking factual specificity was held insufficient to merit a trial or a summary judgment motion on issues plead in the untimely Answer. This action arose out the 2008 Sesnon wildfire. When various disputes arose among Mr. Flannery, his

former companion and their former lawyer over the settlement funds, the Gas Company deposited the settlement funds with the L.A. Superior Court and filed a complaint in interpleader. More than two and a half years after the Gas Company filed the interpleader complaint and after they had lost their anti-SLAPP appeal, Mr. Flannery and his new lawyer filed an Answer. The trial court granted the motions for attorneys' fees filed by Mr. Flannery's former partner, former lawyer and the Gas Company, respectively, and Mr. Flannery appealed the Judgment awarding the fees. The Court of Appeal affirmed the Judgment on the ground that the untimely deficient Answer does not warrant a trial.

Horike v. Coldwell Banker Residential Brokerage Co. 2016 S.O.S. 5825, filed November 21, 2016

The buyer and the seller were represented by a broker, Coldwell Banker, which acted as "dual agent" through an "associate licensee." The associate licensee, who acted on the broker's behalf in the real property transaction, owed the buyer an equivalent duty of disclosure under Civil Code section 2079.13(b).